



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director/HoD (Enforcement)

In the matter of

UBL Insurers Limited

Show Cause Notice No. and Issue Date: ID/Enf/UBL/2019/358 dated April 5, 2019

Date of Hearing: April 25, 2019

Attended By: Mr. Nadeem Raza
Chief Financial Officer
M/s. UBL Insurers Limited

Abdul Sattar Vaid
Director/Company Secretary
M/s. UBL Insurers Limited

Date of Order: May 9, 2019

ORDER

Under Rule 10(1)(k) and Rule 20(1) of the Takaful Rules, 2012 read with Section 156 of the Insurance Ordinance, 2000

.....
This Order shall dispose of the proceedings initiated against M/s. UBL Insurers Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Rule 10(1)(k) and Rule 20(1) of the Takaful Rules, 2012 (the "Rules"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry on the business of non-life insurance and general takaful/window takaful in Pakistan.

3. The Company, vide letter dated December 27, 2018, was advised to provide the statement of assets for solvency purpose / calculation of admissible assets for the Participant Takaful Fund (PTF) of its window takaful operations as on December 31, 2017. In response, the Company, vide letter dated January 27, 2019, provided the statement of assets for solvency purpose / calculation of admissible assets for the PTF.

4. Review of the aforesaid statement/calculation submitted by the Company and annual audited accounts of the Company for the year ended December 31, 2017 revealed that admissible assets of the Company's PTF were less than liabilities of the PTF as shown in the table below:-

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	Amount (Rupees in Thousand)
Total admissible assets of the PTF as per calculation provided by the Company	145,871
Less: Total Liabilities of the PTF	210,471
Excess/ (Shortfall)	(64,600)

5. Hence, it appeared to the Commission that the Company failed to comply with Rule 10(1)(k) and Rule 20(1) of the Rules.

6. Rule 10(1)(k) of the Rules states that:

“Conditions applicable to Operator.- (1) An Operator,-

*....
(k) shall ensure that in case of General Takaful each Participant Takaful Fund, at all times, has admissible assets in excess of its liabilities:*

Explanation: For this purpose any amount receivable from the Operator shall be deemed to be inadmissible.”

7. Rule 20(1) of the Rules states that:

“Qard-e-hasna.- (1) In the case of a General Takaful if, at any point in time admissible assets in a Participant Takaful Fund are not sufficient to cover liabilities, the deficit shall be funded by way of actual transfer of funds as qard-e-hasna (interest free loan) from the Operator’s Fund to that Participant Takaful Fund.”

8. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/UBL/2019/358 dated April 5, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 of the Ordinance should not be imposed on them and for the aforementioned alleged contraventions of the law.

9. Thereafter, the Respondents submitted their reply vide letter dated April 11, 2019, as under:-

*“.....
We would like to submit that full compliance with the law is of utmost importance for UBL Insurers Limited and we always endeavor to make sure that as a responsible Company we comply with all the legal requirements unless it is due to unintentional oversight or divergent interpretation of law.*

UBL Insurers limited started its Window Takaful Operation from January 01, 2016 and the admissible assets of Participant Takaful Fund (PTF) were lower of liabilities of PTF during the year which was compensated through Qard e Hasna" and after that the admissible assets were excess of liabilities of PTF by Rs. 12.025 million. We reproduce below the calculation of the net admissible assets of PTF for the year ended December 31, 2017.



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Total admissible assets (a)	145,871,125
Total liabilities	215,471,692
Less: Retakaful / co-takaful payables	(47,315,487)
Less: Wakala and mudarib fee payable	(29,309,996)
Less: Qard e Hasna	<u>(5,000,000)</u>
Net Liabilities (b)	<u>133,846,209</u>
Net Admissible assets (c=a-b)	<u>12,024,916</u>

If we exclude the Retakaful / co-takaful payables and wakala fee payable of Rs. 76.625 million from the liabilities of PTF of Rs. 215.472 million the liabilities of Rs. 133.846 million will be adequately met by admissible assets of Rs. 145.871 million and net admissible assets would be higher by Rs. 12.025 million.

The explanation of aforementioned working is as under;

With regard to Insurance Ordinance, 2000 we would like to submit that section 32(2)(h) explains that the premium due and payable to the Insurer but not paid for more than three months from the date due and payable shall deemed to be inadmissible assets and rule 10(1)(k) of Takaful Rules, 2012 explains that the receivable from the Operator shall deemed to be inadmissible assets but does not mention whether to include or exclude the Re-Takaful/Co-Takaful payables and the payable to Operator Fund in the total liabilities of the Participant Fund.

The reason to exclude any contribution due and payable to the Takaful operator but not paid for more than three months from the date due and payable shall deemed to be inadmissible assets is that solvency should not take into account the benefit of receivable which is not paid for more than three months from the date due and payable. Further, the reason to exclude any receivable from operator fund as admissible asset of the Participant Fund is that solvency should not take into account the benefit of any receivable from operator as admissible asset of the Participant Fund and if there is any deficiency it should be compensated through transfer of asset such as Qard-e-Hasna from Operator Fund to participant Takaful Fund.

Similarly the reason for excluding Re-Takaful/Co-Takaful payables from liability is that as the premium due and payable to the Insurer but not paid for more than three months from the date due and payable shall deemed to be inadmissible assets not considered as asset for the purpose of determining solvency, any payable to Re-Takaful/Co-Takaful operator for more than 3 months from the date due and payable should also not be considered as a liability.

Similarly the reason for excluding wakala fee from liability is that as any receivable from Operator Fund is not considered as asset for the purpose of determining solvency, any payable to the operator fund should also not be considered as a liability. If due to that liability any deficit needs to be made up by the Operator Fund it will have to be compensated through Qard-e-Hasna. In any case it is the Operator who has to compensate for the deficit in the Participant Fund.



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It was the accounting principal that if the assets from a specific source is not taken into account then the liability to the same source should also be treated in the same manner, therefore, the 'Re-Takaful/Co-Takaful payables' and 'Wakala fee payable' to PTF was excluded from the total liabilities of the PTF for determining solvency.

However, the Competent Commission shared the working of admissible assets of PTF which are lower than the liabilities of PTF by Rs. 64.600 million.

The difference of working arise due to Re-Takaful/Co-Takaful payables and Wakala and mudarib fee payable which were excluded by the Company from the total liabilities by Rs. 76.625 million.

If we adopt same assumptions for the year ended December 31, 2018 as applied for calculation of net admissible assets for the year ended December 31, 2017. The calculation would be as under;

Total admissible assets (a)	371,000,715
Total liabilities	352,385,742
Less: Retakaful / co-takaful payables	(57,092,331)
Less: Wakala and mudarib fee payable	(50,939,328)
Less: Qard e Hasna	(5,000,000)
Net Liabilities (b)	<u>239,354,083</u>

Net Admissible assets (c=a-b) 131,646,632

However, we admit that Re-Takaful/Co-Takaful payables and Wakala and mudarib fee payable which were excluded by the Company from the total liabilities of the PTF and we appraised the Competent Commission that the default has been rectified and corrective measure have been adopted in the annual accounts for the year ended December 31, 2018 in accordance with Rule 10(1)(k) of the Takaful Rules, 2012. The calculation of the net admissible assets of PTF for the year ended December 31, 2018 is produce below.

Total admissible assets (a)	<u>371,000,715</u>
Total liabilities	352,385,742
Less: Qard e Hasna	(5,000,000)
Net Liabilities (b)	<u>347,385,742</u>
Net Admissible assets (c=a-b)	<u>23,614,973</u>

It was our second year of Window Takaful Operations and as such we tried out best to ensure that we comply with all the relevant statutes.

We therefore regret this on our part and request you that a lenient view may please be taken as this was the second year of the commencement of the Window Takaful Operations and this inadvertent misunderstanding be ignored and condoned being unintentional.

Therefore, you are requested that the error to be condoned which was unintentional and further requested not to impose the penalty as already the default has been rectified by the Company and corrective measure have been adopted in the annual accounts for the



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year ended December 31, 2018 in accordance with Rule 10(l)(k) of the Takaful Rules, 2012.

.....”

10. The hearing in the matter was held on April 25, 2019 at the Head Office of the Commission, which was attended by the Authorized Representatives of the Respondents namely Mr. Nadeem Raza and Mr. Abdul Sattar Vaid.

11. During the hearing, the Authorized Representatives admitted that due to misinterpretation of the Rules, the Company could not comply Rule 10(1)(k) and Rule 20(1) of the Rules. They apprised that the Company has complied with the requirement of Rule 10(1)(k) of the Rules for the year ended December 31, 2018. The Representatives were of the view that the Company started window takaful operations only recently i.e. in the year 2016. The Authorized Representatives requested the Commission to condone the omission and take lenient view in the instant matter.

12. In terms of Rule 10(1)(k) of the Rules, the Company was required to have admissible assets in excess of its liabilities at all times in each PTF. However, it was observed that admissible assets of the Company's PTF were less than the liabilities for the year ended December 31, 2017 i.e. a shortfall of Rs. 64.6 million was observed. It is pertinent to mention here that Rule 2 of the Rules explicitly states that:

“(2) Words and expressions used but not defined in these Rules shall, unless there is anything repugnant in the subject or context, have the same meaning as are assigned to them in the Ordinance.”

13. It can be inferred that solvency of PTF shall be calculated in accordance with provisions of the Ordinance for compliance in PTF under Rule 10(1)(k) of the Rules. As per Section 32(2)(h) of the Ordinance, contributions due and payable to the Takaful Operator but not paid for more than three months from the date due and payable are not admissible for the purpose of solvency.

14. The Company should have included re-takaful/co-takaful payables and the wakala fee payable by PTF to the Operator's Fund in the liabilities of the PTF. These liabilities should have also been considered for calculating the solvency margin in the PTF. The Operator was required to provide qard-e-hasna to fund the deficit in the PTF as per Rule 20(1) of the Rules, which states that if at any point in time admissible assets in a PTF are not sufficient to cover liabilities, the deficit shall be funded by way of actual transfer of funds as qard-e-hasna (interest free loan) from the Operator's Fund to that PTF. Moreover, as per financial statements for the year ended December 31, 2017, net equity of the Operator's Fund was Rs. 45.451 million which was not sufficient to cover the deficit of the PTF amounting to Rs. 64.6 million even if the qard-e-hasna was transferred as per Rule 20(1) of the Rules.

15. However, the Respondents have apprised that the default has been rectified in the annual accounts for the year ended December 31, 2018 in accordance with Rule 10(1)(k) of the Rules. According to the Company, admissible assets in the PTF are in

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excess of its liabilities for the year ended December 31, 2018 by Rs. 23.6 million. The Respondents have admitted that re-takaful/co-takaful payables and wakala/mudarib fee payable, which were excluded by the Company from the total liabilities of the PTF have also been included to calculate the solvency margin of the PTF for the year ended December 31, 2018.

16. Needless to say that the admissible assets of the Company's PTF were less than the liabilities based on the annual audited accounts and regulatory returns of the Company for the year ended December 31, 2017. The arguments, documents and evidences which have been submitted by the Respondents so far have been found to be evidencing the fact that the Company has failed to comply with Rule 10(1)(k) and Rule 20(1) of the Rules.

17. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance, the Rules made thereunder and/or other legal references. I am of the view that the violations of Rule 10(1)(k) of the Rules is clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

18. Section 156 of the Ordinance provides that:

"Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer, and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues."

19. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the fine as provided under the said provision, take a lenient view, and issue a warning that in case of similar non-compliance in future a strict action against the Respondents will be taken.

20. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Hasnat Ahmad

Director/HoD (Enforcement)

