



SECP
Insurance Division
Karachi

[Karachi]

Before Mohammed Asif Arif, Commissioner (Insurance)

In the matter of

Pak Qatar General Takaful Limited

Show Cause Notice Issue Date: March 11, 2013

Date of Hearing: 1. September 19, 2013
2. March 28, 2014

Attended By: 1. Mr. Taimur Mirza, Advocate
2. Mr. Muhammad Kamran Saleem
Chief Financial Officer & Company Secretary
M/s Pak Qatar General Takaful Limited

Date of Order: May 14, 2014

ORDER

(Under Rule 10(1)(k) Read with Rule 12(1)(d) of the Takaful Rules, 2012)

.....

This Order shall dispose of the proceedings initiated against M/s Pak Qatar General Takaful Limited ("the Company") for not complying with the provisions of Rule 10(1)(k) of the Takaful Rules, 2012 (the "Rules").

Background Facts

2. The Company through its letter dated February 25, 2013 had provided the Statement of Assets & Liabilities as on January 31, 2013, in response to the Commission's letter dated February 4, 2013.

3. It was observed in the Company's Statement of Assets & Liabilities as on January 31, 2013 that the Company has contravened the provision of Rule 10(1)(k) of the Rules which relates to the 'Conditions applicable to operators'.

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4. The provisions of Rule 10(1)(k) of the Rules state 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:
..."*

5. As per the Statement of Assets & Liabilities as on January 31, 2013, the Total Assets and Total Liabilities of the Participants' Takaful Fund (PTF) were as follows:

| | |
|-------------------------|-----------------|
| Total Assets (PTF) | Rs. 365,119,735 |
| Total Liabilities (PTF) | Rs. 491,578,815 |

6. It was quite evident that the Total Liabilities of the PTF have surpassed the Total Assets of the PTF by an amount of Rs. 126,459,080/-.

7. In this view, even if the Total Assets of the PTF would have been taken as admissible, the PTF will stand insolvent, and hence, it appeared that the provisions of Rule 10(1)(k) of the Rules have been violated to a greater extent, which attract penal action against the Company as provided under Rule 12(1)(d) of the Rules.

Show Cause Notice

8. Accordingly, the Show Cause Notice was issued on March 11, 2013 under Rule 10(1)(k) read with Rule 12(1)(d) of the Rules to the Company, its Chief Executive and the Directors, calling upon them to show cause as to why the penalty, as provided under Rule 12(1)(d), should not be invoked against the Company for not complying with the provisions of Rule 10(1)(k) of the Rules.

Company's Response to the Show Cause Notice

9. In response to the said Show Cause Notice, the Company, vide their letter of March 13, 2013, acknowledged the receipt of the said Show Cause Notice and also stated that they would intend to appear in person to clarify the queries and concerns raised therein.

10. Thereafter, M/s Mohsin Tayebaly & Co., vide their letter dated March 25, 2013, mentioned that they have been instructed by the Company to submit reply to the Show Cause Notice, and further stated that the Hon'ble High Court of Sindh has made the Rules unenforceable and inapplicable as the Commission was ordered to maintain status quo. Moreover, they further argued that the Rules are not in the field



in the light of the stay granted by the Court in Constitutional Petition No. D-2791 of 2012. Therefore, the Commission may not enforce the Rules at the very first instance.

11. Subsequently, the Company, vide its letter dated March 29, 2013, while reiterating the contents of the abovementioned letter of M/s Mohsin Tayebaly & Co., stated that the Company is fully solvent as per the requirement of the repealed Takaful Rules, 2005.

12. In this regard, it would be important to state that the Order of the Hon'ble High Court of Sindh, whereby all parties were required to maintain status quo, does not set the Rules aside.

13. And, in view of the preceding para, it is quite evident that the Company has contravened the provisions of Rule 10(1)(k) of the Rules by not maintaining excess admissible assets over liabilities of the Company's Participants' Takaful Fund (PTF).

Hearing of the Case & Subsequent Developments

14. Since, the Company had already showed their intention to appear in person vide their letter of March 13, 2013, the Commission had scheduled the hearing in the matter for May 7, 2013, which was communicated vide the Commission's hearing notice no. ID/Enf/PQGTL/2013/16422 dated April 29, 2013. However, M/s Mohsin Tayebaly & Co. vide their letter dated May 10, 2013 had requested the Commission to schedule a hearing in the matter at any date.

15. The Commission, vide its hearing notice no. ID/Enf/PQGTL/2013/17065 dated September 12, 2013, had again scheduled the hearing for September 19, 2013.

16. The hearing of September 19, 2013 was attended by Mr. Taimur Mirza of M/s Mohsin Tayebaly & Co., who was asked right before the commencement of the hearing to hand over the Power of Attorney to the Commission, to which he stated that the same will be provided in due course. So, for the time being, the representation of Mr. Taimur on behalf of the Company, its Directors and the Chief Executive Officer was accepted. However, later on, M/s Mohsin Tayebaly & Co., vide their letter no. IM1161/PQGT/01 dated September 20, 2013, had provided the requisite Power of Attorney in favor of Mr. Taimur Mirza, which was duly signed by Mr. Muhammad Kamran Saleem, Chief Financial Officer and Company Secretary, who was duly authorized by the Board of Directors of the Company to act on their behalf in the matter of the Show Cause Notice vide their resolution passed on February 16, 2013.

17. Brief proceedings of the hearing of September 19, 2013 are as follows:



- a. The Company's representative was asked to present the stance of the Company, on which the Company's representative stated that the Constitutional Petition No. D-2791 of 2012 is still pending before the Hon'ble High Court of Sindh and the Court's Order of August 1, 2012, requiring the Commission to maintain status quo, is still intact, therefore, the Rules are inoperative and the repealed Takaful Rules, 2005 are in field;
- b. The Company's representative was clarified that the Rules have not been made inoperative by the Court in the light of its Order, these Rules are still in the field. Then, the Company's representative was advised to seek clarification from the Court on the operability of the Rules (Takaful Rules, 2012).

18. However, before proceeding further in the matter towards its conclusion, to see if any subsequent developments are there, another hearing was scheduled for March 28, 2014, which was communicated vide the Commission's hearing notice no. ID/Enf/PQGTL/2014/19091 dated March 10, 2014.

19. The hearing of March 28, 2014 was attended by Mr. Muhammad Kamran Saleem, Chief Financial Officer and Company Secretary of the Company, duly assisted by Mr. Muneeb Afzal, Chief Internal Auditor of the Company.

20. Brief proceedings of the hearing of March 28, 2014 are as follows:

- a. The Company's representative was asked to present the stance of the Company and its Directors, and also inform the Commission about any further developments in the matter;
- b. The Company's representative stated that the Company would like to request the Commission to condone the requirement of the Rules under consideration up till December 31, 2015, in order for them to meet the requirements of the Rules. He further mentioned that the Company intends to abide by all statutes, rules and regulations in letter and spirit, and he further assured that the Company will do that in future as well, however, the Company needs further time to ensure compliance with the aforementioned requirement of the law.

21. On April 9, 2014, the Company has provided the certified copy of the resolution of the Board of Directors of the Company, passed in their meeting of April 3, 2014, which stated that:

"RESOLVED THAT, subject to legal obligations in respect of order passed by the Honourable High Court of Sindh in Constitutional Petition No. D-2791 of 2012 to maintain status quo in respect of Takaful Rules 2012, in pursuance to the requirements



of Rule 10(1)(k) and/or any other related clause/sub-clause of the Takaful Rules 2012, the statutory condition to maintain admissible assets in excess of its liabilities for Participant Takaful Fund, should be complied with in the capacity of an Operator with effect from first quarter 2015..."

Consideration of Company's Submissions

22. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representatives, Mr. Muhammad Kamran Saleem, Chief Financial Officer & the Company Secretary of the Company, and Mr. Taimur Mirza of M/s Mohsin Tayebaly & Co.), and have also referred to the provisions of the Rules. I am of the view that there has been an established default of Rule 10(1)(k) of the Rules, as the Company was required to maintain excess admissible assets over liabilities in its Participants' Takaful Fund at all times, which was not adhered to by the Company as on January 31, 2013.

23. However, before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day-to-day running of the Company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. Hence, the Directors are gauged against a higher standard of accountability which requires them to be vigilant and perform their duties with due care. In the instant case, however, the Company and its Directors have failed to maintain excess admissible assets over liabilities in its Participants' Takaful Fund of the Company at all times, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

Conclusion

24. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Rule 10(1)(k) of the Rules is established. Therefore, the penalty as provided under Rule 12(1)(d) of the Rules can be invoked against the Company.

25. Rule 12(1)(d) of the Rules states that:

"Revocation of Authorization.- (1) The Commission may by order suspend or revoke the authorization of an Operator either wholly or in respect of a class of business, as the case may be, if it is satisfied that,-

...



(d) the Operator has failed to maintain a surplus of admissible assets over liabilities in each Participant Takaful Fund, in case of General Takaful business in accordance with the provisions of these Rules;

...

Order

26. In exercise of the power conferred on me under Rule 12(1)(d) of the Rules, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the Company has agreed to ensure compliance with the requirements of the Rules, and that the requirements of the Rules are quite stringent compared to those of the repealed Takaful Rules, 2005, for which more time shall be required to deploy additional resources for ensuring compliance with these requirements. Moreover, the act of the Company has not harmed the interests of the policyholders / participants of the Company. However, since the Board of Directors of the Company have resolved in their meeting of April 3, 2014 that they intend to ensure compliance with the requirements of Rule 10(1)(k) of the Rules with effect from the first quarter of 2015, the Company is hereby advised to ensure compliance with the provisions of Rule 10(1)(k) of the Rules by March 31, 2015.

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

Mohammed Asif Arif
Commissioner (Insurance)