



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 15 of 2018

Dawood Family Takaful Limited  
Mr. Nasir Mahmood- Chief Executive Officer  
Mr. Ayaz Dawood- Director  
Syed Ishtiaq Hussain-Director  
Mr. Rizwan Ahmed Farid-Director  
Mr. Asad Muhammad Iqbal- Director  
Mr. Ghazanfar-ul-Islam- Director

...Appellants

versus

Commissioner Insurance (SECP), Islamabad

...Respondent

#### Date of hearing:

March 18, 2024

#### For the Appellant:

Mr. Hamza Siddiqui (Legal Counsel)  
Mr. Naveed Ahmed (Company Representative)

#### For the Respondents:

1. Mr. Shafique Ur Rehman, Additional Joint Director, Adjudication-I, SECP
2. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP

### ORDER

1. This Order shall dispose of Appeal No. 15 of 2018 filed by Dawood Family Takaful Limited and its Directors (the Appellants) through Mr. Ghazanfar-ul-Islam under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act), against the order dated April 9, 2018

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(the Impugned Order), passed by the Commissioner Insurance (the Respondent), for the contravention of Section 12(4) of the Insurance Ordinance 2000 (the Ordinance), wherein an aggregate penalty of Rs. 70,000/- was imposed upon the Appellants under Section 156 of the Ordinance.

2. Brief facts of the instant appeal are that the Respondent initiated a thematic review of bancassurance business of insurers/takaful operators in order to check compliance of the conduct of business with applicable regulatory provisions. The Appellants were advised to submit the product-wise persistency table. It was noted that the persistency benchmark set by Dawood Family Takaful Limited (the Company) for Silk Secure, Silk Education and Burj Hadi (the Products) was 75%, whereas the second-year persistency achieved by the Company in the year 2016 for all three products was less than 75%. Furthermore, the Company was required to submit a statement of bank-wise and product-wise Insurance policies. It was noted that the lapsation data provided by the company also revealed a very alarming situation in terms of the number of bancassurance policy-holders of the Company whose policies had lapsed. In the case of Silk Secure plan, out of 164 policies issued in 2013, only 70 policies were ongoing as on June 30, 2017 - a cumulative lapsation rate of 57%. In the case of Silk Education plan, of 33 policies issued in 2013, only 12 policies were ongoing as on June 30, 2017 - a cumulative lapsation rate of 64%. Similarly, in the case of Burj Hadi plan, of 29 policies issued in 2015, only 13 policies were ongoing as on June 30, 2017 - a cumulative lapsation rate of 55%. The Company, vide email dated November 1, 2017, was advised to submit its comments regarding the high lapsation rates and low level of second year persistency for the year 2016 for Burj Hadi Plan and Silk Education plan. The Company, in its response dated November 8, 2017, admitted low levels of the persistency and the measures taken by the Company to increase persistency levels were not termed as cogent or sufficient by the Respondent.
3. In light of the aforementioned violation the show-cause notice no. ID/Enf/DFTL/2018/13173 dated January 9, 2018 (the SCN) was issued to the Appellants. The Appellants submitted their reply to the SCN on February 2, 2018 and the hearing was scheduled for March 29, 2018, which was attended by the Chief Executive Officer of the Company and other authorised representatives of the Appellants. After examining the submissions and considering the facts, the Respondent, in exercise of powers

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conferred under Section 156 of the Ordinance, imposed an aggregate penalty of Rs. 70,000/- on the Appellants for the contravention of Section 12(4) of the Ordinance.

4. The Appellants have preferred this appeal *inter alia* on the grounds that in the Impugned Order the Respondent has failed to furnish any rationale for the imposition of a penalty upon the Appellants and that the Appellants have been making the relevant efforts to operate in the best interest of the policy-holders. The Appellants argued that neither the Ordinance nor the Bancassurance Regulations (the Regulations) make it mandatory for an insurance or takaful provider to maintain any persistency level, or establish a link between persistency levels and interest of the certificate holder. The Appellants while arguing the Appeal contended that in the insurance industry there are two causes of customer dissatisfaction, (i) the claims are wrongly rejected and (ii) where the return on the product is lower than the market rate; and that neither of the preceding indicators of customer dissatisfaction are present in the Appeal at hand as not a single claim was rejected and returns were consistent with the market. The Appellant further argued that the persistency rates stated by the Respondent were in fact miscalculated and that the Respondent had entirely overlooked the fact that a number of policies were discontinued due to the automatic non-forfeiture feature which is affected as a result of failure to make contributions. With regard to the Sarparast Hadi (formerly Burj Hadi) plan, the Appellants stated that the low persistency rates were attributable to the extraordinary event of the merger of Burj Bank with Bank Al-Baraka and as a result, majority of the sales staff of Burj Bank had resigned, resulting in a total decline in business between the Appellants and Al-Baraka Bank in the year 2016 to 2017. The Appellants argued that as per the Regulations, the onus for maintaining the persistency is on the Bank and not on the Insurance Company and further stated that it is inconceivable to attribute personal accountability for everyday transactions and dealings within a company directly to members of the executive management, whose professional duties are limited to major policy planning and corporate leadership and who are accordingly constrained by time and responsibility from personally handling or monitoring individual transactions or decisions. In view thereof, it was prayed that the Impugned order may kindly be *set aside*.
5. The Respondent while controverting the arguments of the Appellants, *inter alia* contended that the Appellants have no case on merits as the Company had failed to comply with regulatory requirements

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as laid down in the Regulations and as a consequence has failed to conduct business in a sound and prudent manner with due regard to the interest of the policy-holders. The Respondent argued that section 95(1) of the Ordinance makes the principal liable for any act or omissions by the agent, thus it was the responsibility of the Appellants to make sure that the persistency benchmark is maintained and incorporated. The Respondent, while rebutting the arguments of the Appellants, stated that the Ordinance and the Regulations make it mandatory for an insurance/takaful operator to maintain persistency level or establish link between persistency levels and interest of certificate holders thus the applicability of Section 12(4) of the Ordinance gives power to the Commission to initiate action where the interest of policyholders is affected. The Respondent stated that the steps taken by the Appellants to improve the persistency level were not adequate as low persistency levels and a high lapsation rate are supported by the fact that the Company conducted only a small number of trainings for bancassurance staff. The Respondent stated that as per the information provided by the Appellants, it transpired that for the period January 2016 until June 2017, only a one-day training for the bancassurance staff of Silk Bank was conducted and no training was conducted for the bancassurance staff of Bank Al-Baraka. The Respondent argued that the low level of persistency in Burj Hadi plan and lack of adequate training of Bancassurance staff reflected that the Appellant Company did not consider the interest of the policy-holders, thus, a clear violation of section 12(4) of the Ordinance is established. The Respondent while concluding the arguments, stated that the directors, in addition to the day-to-day running of the Company and management of its business, also have a fiduciary duty towards its customers and the directors are required to be more vigilant and perform duties with due care, hence the Impugned order shall be upheld against the Appellants.

6. The Appellate Bench (the Bench) has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellants had an obligation to adhere to the relevant provisions of the Ordinance which have to be followed in true letter and spirit. The Bench has noted that although the Regulation does not provide explicit provision with regard to maintaining a certain persistency level, however, the Appellant's failure to maintain persistency level depicts that the policy-holders were not satisfied with the services being provided and opted to not continue their policies. The Bench is of the opinion that the observation of the persistency level set by an insurer is a tool for the regulator to assess the satisfaction of the policy-holders and that whether the Insurer is giving due consideration to


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the interest of the policy-holders. The Bench believes that Section 12(4) of the Ordinance requires that the insurance company should operate in the best interest of the policy-holders, however, a low persistency level of policy-holders shows that the Appellants failed to uphold the spirit of law.

7. The Bench has also noted that no proper training of the bancassurance staff was conducted by the Company and the Appellants. In our view, this fact alone shows that the Appellants were not making the relevant/necessary efforts to retain customers to maintain the persistency level. A low persistency level is directly proportionate to a high level of lapsation of policies, which depicts that while offering the policy, and at the time premium is due, appropriate information was not shared with the policy-holders, therefore, they later on opted not to continue with their policies. The Bench would like to reiterate that the interest of the policy-holders should be the highest priority of an insurance company. The Securities and Exchange Commission of Pakistan as a regulator is duty bound to oversee factors such as persistency levels of policies and lapsation data of policies in order to ensure the interest of policyholders and to assess the quality of services being provided to the policy-holders.
8. In view of the foregoing, the Bench finds no reason to interfere with the Impugned order, therefore, by maintaining the Impugned Order, we hereby **dismiss** this Appeal without any order as to costs.

  
(Akif Saeed)  
Chairman/Commissioner

  
(Mujtaba Ahmad Lodhi)  
Commissioner

Announced on: 03 JUN 2024