



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLETE BENCH

In the matter of

### Appeal No. 21 of 2025

Crescent Star Insurance Limited

...Appellant

versus

Commissioner, Insurance Division, SECP

...Respondent

### Date of Hearing:

April 29, 2026

### Present:

#### For the Appellant:

1. Mr. Zeeshan Abdullah, Counsel
2. Mr. Tanveer Ahmed, Authorized Representative

#### For the Respondent:

1. Mr. Sohail Qadri, Director/HOD, Adjudication Department-I, SECP
2. Mr. Shafiq-ur-Rehman, Additional Joint Director, Adjudication Department-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 21 of 2025 filed by Crescent Star Insurance Limited (the "Appellant") against the Order dated March 03, 2025 (the "Impugned Order") passed by the Commissioner, Insurance Division, SECP (the "Respondent"), under the Section 156 of the Insurance Ordinance, 2000 (the "Ordinance") read with Section 41(1), 11(1)(d) of the Ordinance and Rule 17 of the Insurance Rules, 2017 (the "Rules").
2. Brief facts of the case are that the Appellant is a public limited company listed on the Pakistan Stock Exchange Limited ("PSX") and is engaged in providing non-life general insurance services, primarily in the areas of fire and property damage, marine, aviation and transport, motor, credit and suretyship, accident and health, and miscellaneous insurance. On July 31, 2018, *Al Wasl* Insurance Brokers Limited informed the Securities

MARK



## Securities and Exchange Commission of Pakistan

and Exchange Commission of Pakistan (the “Commission”) regarding termination of the ‘Whole Account Excess of Loss Treaty’ and ‘Motor Excess of Loss Treaty’ reinsurance arrangement with the Appellant with effect from January 01, 2018 on account of non-settlement of dues. Subsequently, the Commission, vide letter dated August 30, 2018, required the Appellant to furnish evidence of its reinsurance arrangements in compliance with Section 11(1)(d) and Section 41(1) of the Ordinance read with Rule 17 of Rules, however, no satisfactory response was provided. The Commission also sought comments from Pakistan Reinsurance Company Limited (“PRCL”) regarding its participation in the Appellant’s reinsurance arrangements for the year 2018. PRCL vide its letter dated September 14, 2018 to the Commission, confirmed non-participation in the Appellant’s reinsurance arrangements for the year 2018 due to outstanding dues amounting to Rs. 41.87 million. In view of the foregoing, in terms of Section 41(4) of the Ordinance, the Commission afforded an opportunity of hearing to the Appellant through the notice dated October 04, 2018. Notwithstanding the repeated opportunities so afforded, the Appellant failed to appear at any of the scheduled hearings. The Appellant thereafter submitted a written response vide letter dated October 30, 2018, wherein it was, *inter alia*, stated that the Appellant had shifted from treaty reinsurance arrangements to facultative reinsurance while retaining risk exposure up to 5% of its equity.

3. The Commission, not being satisfied with the explanation furnished by the Appellant and in exercise of powers conferred under Section 41(4) of the Ordinance, issued a direction dated November 06, 2018 (the “Direction”), requiring the Appellant to effect and maintain adequate reinsurance treaty arrangements in accordance with Section 11(1)(d) and Section 41 of the Ordinance read with Rule 17 of the Rules, and to submit requisite details within seven (07) days thereof. The Appellant, however, failed to comply with the said Direction and did not provide any evidence of having effected or maintained compliant reinsurance arrangements within the stipulated period. Accordingly, taking cognizance of the apparent contravention, the Respondent issued a show-cause notice dated December 11, 2018 (the “SCN”) to the Appellant and its Board of Directors for violation of the aforesaid statutory provisions. It is pertinent to note that subsequently, vide letter dated May 21, 2020, the Respondent issued a corrigendum to the SCN, clarifying that the proceedings would continue under all provisions cited therein except for Section 63 of the Ordinance, which now stood withdrawn from the SCN. In response to the SCN, the Appellant submitted its

MARK



## Securities and Exchange Commission of Pakistan

written reply on December 27, 2018 asserting, *inter alia*, that facultative reinsurance constituted a permissible form of reinsurance arrangement within the meaning of Section 41 of the Ordinance, the discretion to determine the nature and structure of reinsurance arrangements vested with the Board of Directors, and that the Commission lacked authority to compel adoption of treaty reinsurance arrangements. The Appellant preferred an appeal against the SCN proceedings before the Appellate Bench (the “Bench”) on the ground that impugned proceedings emanated from the Direction issued under Section 41(4) of the Ordinance, however, the said appeal was returned on the ground that the Direction constituted an administrative direction not amenable to appeal under proviso (a) to Section 33(1) of the Securities and Exchange Commission of Pakistan Act, 1997 (the “SECP Act”).

4. Thereafter, the Appellant invoked the constitutional jurisdiction of the Hon’ble Sindh High Court by filing Constitutional Petition No. D-8903 of 2018, challenging the Direction and the SCN. The Hon’ble Sindh High Court, vide judgment dated October 31, 2024, disposed of the petition with directions to the Commission to decide the matter afresh through *de novo* proceedings after affording a full opportunity of hearing to the Appellant, in accordance with law. Pursuant thereto, the Respondent conducted a hearing on January 15, 2025.
5. The Respondent concluded that the Appellant failed to maintain adequate and effective reinsurance arrangements covering both individual and aggregate risk exposures as required under Section 41(1) of the Ordinance read with Rule 17 of the Rules. It was observed that the Appellant’s shift from treaty to facultative reinsurance, without comprehensive treaty coverage, rendered its arrangements deficient and non-compliant with solvency requirements. In this regard, the portfolio of the Appellant’s insurance business was reviewed, which reflected that for the year ended December 31, 2018, the Appellant reported gross premium written of Rs. 114.618 million’, incurred underwriting losses of Rs. 89.181 million, and was insolvent to the extent of Rs. 268.660 million, thereby substantiating the inadequacy of its reinsurance framework. Accordingly, the Respondent held that the Appellant had contravened the provisions of Section 11(1)(d) and Section 41(1) of the Ordinance read with Rule 17 of the Rules, and vide Impugned Order, imposed a penalty of Rs. 500,000/- (Rupees Five Hundred Thousand Only) on the

W/10/2025



## Securities and Exchange Commission of Pakistan

Appellant under Section 156 of the Ordinance, along with directions to ensure immediate rectification and future compliance with the statutory regime governing reinsurance arrangements.

6. The Appellant assailed the Impugned Order on the following grounds, *inter alia*, that the Impugned Order was contrary to law and facts, having failed to adequately address the issues involved, particularly those remanded for determination by the Hon'ble Sindh High Court in its judgment dated October 31, 2024. It was contended that the Respondent neither properly appreciated the explanation and material placed on record nor rendered definitive findings on the core legal questions, thereby rendering the Impugned Order unsustainable in law. The Appellant further submitted that Section 41(1) of the Ordinance vests discretion in the Board of Directors to determine the nature of reinsurance arrangements, and that facultative reinsurance constitutes a legally permissible form of arrangement within the meaning of the phrase "such reinsurance arrangements." It was argued that the decision of the Board to adopt facultative reinsurance was a valid commercial decision, and that the Respondent lacked authority to override such discretion or to compel the Appellant to maintain treaty reinsurance, as such direction infringed upon the commercial autonomy of the insurer.
7. The Appellant further contended that the powers conferred under Section 41(4) of the Ordinance are limited to directing "modifications" in existing reinsurance arrangements and do not extend to mandating a complete substitution or imposition of a specific category of reinsurance. It was submitted that the Respondent erroneously interpreted the said provision to justify directing the Appellant to adopt treaty reinsurance, which amounted to exceeding statutory jurisdiction and rendering Section 41(1) of the Ordinance redundant. In this regard, reliance was placed on principles of harmonious interpretation, asserting that Sections 41(1) and 41(4) of the Ordinance must be construed in a manner that preserves the discretion of the Board while permitting regulatory oversight only to the extent necessary to safeguard policyholders' interests without imposing unreasonable restrictions on commercial liberty, as also reflected in the first proviso to Section 7(7) of the Ordinance.



## Securities and Exchange Commission of Pakistan

8. The Appellant further submitted that the Respondent erred in concluding that facultative reinsurance arrangements were inherently inadequate or non-compliant, and failed to properly assess whether the Appellant's arrangements met solvency requirements. It was argued that the Respondent misapplied the judgment in "*East West Insurance Company Limited v. Executive Director (Insurance)*" (2011 CLD 1402), wherein the Bench has in fact recognized that the Commission cannot override the discretion of the Board in reinsurance matters. The Appellant emphasized that the key issues identified by the Hon'ble Sindh High Court namely; whether only treaty reinsurance is mandated under Section 41(1) of the Ordinance, and whether the Commission can compel substitution of reinsurance arrangements under Section 41(4) of the Ordinance, remained undecided, as no conclusive findings were rendered in the Impugned Order to this effect despite recording the Appellant's submissions.
  
9. The Appellant further submitted that facultative reinsurance is a recognized and permissible form under the statutory framework, and that the expression "at all times maintain" in Section 41(1) does not imply continuous maintenance of treaty arrangements but rather requires that solvency is not jeopardized upon settlement of claims. It was argued that Rule 18 of the Rules also acknowledges facultative reinsurance, thereby affirming its legality. The Appellant further contended that the Respondent's observations regarding the superiority of treaty reinsurance were legally flawed, contrary to legislative intent, and based on misconceived assumptions, including the suggestion that facultative reinsurance is inadequate for aggregate exposures. It was submitted that facultative arrangements allow flexibility and negotiation on a case-to-case basis, and that market realities, including cost considerations such as 'Minimum Deposit Premium' in treaty arrangements, were not properly appreciated.
  
10. The Appellant also assailed the Respondent's reliance on its financial position, contending that the figures relating to gross premium written, underwriting losses, and solvency shortfall were irrelevant to the issue of reinsurance arrangements and were erroneously attributed thereto. It was submitted that the alleged insolvency arose from separate regulatory proceedings, particularly relating to investments in a related party, and not from the reinsurance framework adopted by the Appellant, and therefore could not form a valid basis for concluding non-compliance with Section 41 of the Ordinance. It was thus argued

mark



## Securities and Exchange Commission of Pakistan

that the Respondent's findings were based on misinterpretation of facts and law, and lacked nexus with the alleged contravention.

11. The Appellant further submitted that the Impugned Order imposed an unreasonable financial and administrative burden by compelling maintenance of costly treaty arrangements, thereby restricting commercial liberty of the Appellant, contrary to the statutory scheme. It was also contended that the imposition of penalty under Section 156 of the Ordinance was unjustified, as no willful contravention, bad faith, or material risk to policyholders had been established. The Appellant submitted that the exercise of statutory powers must be reasonable, fair, and aligned with the purpose of the enactment. The Appellant stated that the Respondent failed to adhere to the aforementioned principles. Accordingly, the Appellant prayed that the Impugned Order be set aside.
12. The Respondent, controverting the grounds raised by the Appellant in the appeal, submitted, *inter alia*, that the Impugned Order was passed strictly in accordance with law, after due compliance with the directions of the Hon'ble Sindh High Court and observance of principles of natural justice. It was contended that, pursuant to the judgment dated October 31, 2024, the matter was decided afresh through *de novo* proceedings, wherein a hearing was duly afforded to the Appellant on January 15, 2025, attended by the Appellant's authorized representatives, and detailed written submissions dated January 11, 2025 were also considered. The Respondent emphasized that the Impugned Order was passed independently, without being influenced by the earlier Direction, and after due consideration of all material available on record.
13. On merits, the Respondent submitted that under Section 41(1) of the Ordinance, the Board of Directors is under a statutory obligation to effect and maintain, at all times, such reinsurance arrangements as are adequate to ensure continuing compliance with solvency requirements, having due regard to both individual risk exposures and aggregate losses arising out of individual events. It was argued that the discretion of the Board is not absolute but circumscribed by this overarching statutory objective, and remains subject to regulatory oversight by the Commission in order to safeguard the interests of policyholders. In this regard, reliance was placed on the judgment in "*East West Insurance Company Limited v. Executive Director (Insurance)*" (2011 CLD 1402), wherein it was



## Securities and Exchange Commission of Pakistan

held that compliance with reinsurance requirements cannot be left solely to the discretion of the directors and that the Commission is empowered to intervene where such discretion is exercised in a manner detrimental to statutory objectives.

14. The Respondent further submitted that a clear distinction exists between facultative and treaty reinsurance, as elaborated in the Impugned Order, and while facultative reinsurance caters to individual risks, it is inherently incapable of addressing aggregate exposures arising from multiple risks or catastrophic events. It was contended that the Appellant's decision to rely exclusively on facultative reinsurance for all classes of business was fundamentally flawed, as it failed to ensure comprehensive and continuous risk coverage. In contrast, treaty reinsurance provides broad-based coverage across an entire portfolio, thereby constituting a more effective mechanism for ensuring solvency and risk mitigation. Accordingly, it was argued that the absence of treaty reinsurance arrangements exposed the Appellant to heightened risk and uncertainty, particularly where reinsurers may decline facultative placements or impose unfavourable terms.
15. Addressing the Appellant's contention regarding lack of authority under Section 41(4) of the Ordinance, the Respondent submitted that the said provision expressly empowers the Commission to direct insurers to modify their reinsurance arrangements, including requiring adoption of a specific category of reinsurance where necessary to meet statutory objectives. It was contended that such power necessarily includes the authority to direct an insurer to obtain treaty reinsurance where its existing arrangements are found inadequate, and that this does not amount to overriding the Board's discretion but rather constitutes lawful regulatory intervention in furtherance of the Ordinance's objectives. The Respondent maintained that the Appellant's interpretation of the term "modification" was unduly restrictive and contrary to the scheme of the law.
16. The Respondent further submitted that the Impugned Order had duly addressed all arguments advanced by the Appellant and rendered reasoned findings on all the key legal issues, including the interplay between Sections 41(1) and 41(4) of the Ordinance. It was reiterated that the Board's discretion must be exercised in a manner that ensures solvency at all times, and where such discretion results in inadequate coverage, particularly in respect of aggregate exposures, the Commission is duty-bound to intervene. It was



## Securities and Exchange Commission of Pakistan

submitted that facultative reinsurance, by its very nature, cannot ensure continuous and comprehensive coverage required under the law, and therefore cannot substitute treaty reinsurance for an entire portfolio of risks.

17. With respect to the financial position of the Appellant, the Respondent submitted that the underwriting portfolio and financial indicators were rightly considered to assess the adequacy of reinsurance arrangements. It was submitted that during the year 2018, the Appellant underwrote multiple classes of business with gross premium written of Rs. 114.618 million, incurred underwriting losses of Rs. 89.181 million, and was insolvent to the extent of Rs. 268.660 million. It was contended that, in view of such financial stress and exposure, the Appellant was required to maintain robust and comprehensive reinsurance arrangements, including treaty coverage, to ensure compliance with solvency requirements. The Respondent further submitted that the Appellant failed to substantiate its claim that the insolvency position was unrelated to its reinsurance arrangements.
18. The Respondent also pointed out that the Appellant had historically maintained treaty reinsurance arrangements in prior years, and only shifted to facultative reinsurance after termination of treaties due to non-settlement of dues, thereby indicating that the change was not based on sound risk management considerations but compelled by circumstances, without due regard to statutory obligations. It was further submitted that such conduct exposed the Appellant to significant risk and justified regulatory intervention.
19. The Respondent further submitted that the contravention was willful, inasmuch as the Appellant had knowingly failed to comply with the statutory requirements despite specific Direction issued by the Commission, thereby exhibiting a reckless disregard of its legal obligations. The Respondent argued that such conduct squarely falls within the ambit of "willful default," thus rendering the imposition of penalty under Section 156 of the Ordinance lawful and justified. It was contended that the Impugned Order had been passed strictly in accordance with due process of law, and that any interference with the findings would undermine the Commission's regulatory mandate, particularly in safeguarding policyholders' interests and maintaining market discipline. Accordingly, the Respondent prayed for dismissal of the appeal.



## Securities and Exchange Commission of Pakistan

20. The Bench has heard both the parties at length and perused the record. The questions which arise for determination of the Bench are as under:
- i. Whether, under Section 41(1) of the Ordinance read with Rule 17 of the Rules, an insurer is mandatorily required to maintain treaty reinsurance arrangements, or whether facultative reinsurance alone can constitute “adequate reinsurance arrangements” within the meaning of the law?
  - ii. Whether the discretion vested in the Board of Directors under Section 41(1) of the Ordinance to determine the nature and structure of reinsurance arrangements is absolute, or whether such discretion is subject to regulatory oversight by the Commission?
  - iii. Whether the powers conferred upon the Commission under Section 41(4) of the Ordinance extend to directing adoption of a specific category of reinsurance, including treaty reinsurance, or are limited to modification of existing arrangements?
  - iv. Whether the Impugned Order is legally sustainable in terms of validity of findings on contravention based on relevant material including financial position, and imposition of the penalty imposed under Section 156 of the Ordinance?
21. At the outset, the Bench considers it appropriate to examine the relevant provision in order to ascertain its true scope and import. A plain and contextual reading of Section 41(1) of the Ordinance obligates an insurer to effect and at all times maintain such reinsurance arrangement as are adequate to ensure continuing compliance relating to solvency. The statutory language is materially open-textured and does not prescribe any specific form of reinsurance, whether treaty or facultative. The legislative scheme, therefore, adopts a functional standard of adequacy rather than mandating any particular commercial structure. The focus of the provision is not the types of reinsurance arrangements but their sufficiency in ensuring solvency compliance at all times. Section 41(1) of the Ordinance is reproduced hereunder for ease of reference:

*“41. Requirement to effect and maintain reinsurance arrangements.- (1) An insurer shall effect and shall at all times maintain such reinsurance arrangements as are, in the opinion of the directors (or such other person or*



## Securities and Exchange Commission of Pakistan

*body responsible for conducting the management and business of the insurer), formed on reasonable grounds, having regard to the exposures of the insurer in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events, adequate to ensure continuing compliance by the insurer with the provisions of this Ordinance relating to solvency.”*

22. The Bench observes that Section 41(1) of the Ordinance does not prescribe any specific form of reinsurance, whether treaty or facultative. The statutory language “such reinsurance arrangements” is deliberately broad and confers flexibility, subject to the overarching requirement of adequacy vis-a-vis solvency. This position is further reinforced by Section 4(3) of the Ordinance, which recognizes both facultative and treaty reinsurance as distinct and legitimate classes of business. Therefore, the law does not mandate treaty reinsurance *per se*. However, the permissibility of facultative reinsurance is not absolute. It must satisfy the statutory test of adequacy in relation to both individual and aggregate exposures. Accordingly, facultative reinsurance may constitute valid compliance only where it demonstrably ensures continuing solvency. For ease of reference Section 4(3) of the Ordinance is reproduced below:

***“4. Classes of life and non-life business.- ...***

*(3) For the purposes of this Ordinance, the following shall be the classes of business into*

*which non-life insurance business is divided:*

*(a) for direct and facultative reinsurance business;*

*(i) Class 1 being fire and property damage business;*

*(ii) Class 2 being marine, aviation and transport business;*

*(iii) Class 3 being motor third party compulsory business;*

*(iv) Class 4 being liability business;*

*(v) Class 5 being workers' compensation business;*

*(vi) Class 6 being credit and suretyship business;*

*(vii) Class 7 being accident and health business; and*

*(viii) Class 8 being agriculture insurance including crop insurance;*

*(ix) Class 9 being miscellaneous business;*

*(b) for treaty reinsurance business:*

*(i) Class 9 being proportional treaty business; and*

*(ii) Class 10 being non-proportional treaty business.”*

(emphasis provided)



## Securities and Exchange Commission of Pakistan

23. The governing statutory standard is thus adequacy, not form. The legal issue is whether the reinsurance arrangements, in whatever structure adopted, are sufficient to address both individual risk exposures and aggregate losses arising from insured events. Facultative reinsurance, as a matter of law, therefore remains a permissible mode of compliance, provided it demonstrably satisfies the adequacy threshold embedded in Section 41(1) of the Ordinance. Any contrary interpretation would improperly substitute judicial or regulatory preference for legislative intent. The Hon'ble Islamabad High Court in *W.P. No. 3946/2024*, titled "*Crescent Star Insurance Limited v. Securities and Exchange Commission of Pakistan, and another*" acknowledged that facultative reinsurance is a recognized mode of reinsurance. Relevant paragraph of the judgment is reproduced hereunder:

*"13. The respondent authority has not taken into account the concept of facultative reinsurance, where reinsurer assumes of risk on case-by-case basis. Accordingly, the primary question whether facultative reinsurance itself needs further reinsurance, depends on several factors. These include facultative insurer's risk appetite, capacity to absorb potential loss, regulatory capital requirements, and the need to manage risk-based capital, as well as the desire to diversify risk and limit exposure to specific industries, geographies, or types of risk, and the facultative insurance business strategy and goals such as increasing market share or expanding into new markets. Therefore, if the facultative insurer determines that further reinsurance is necessary, it may seek retrocession from other companies to manage risk, increase capacity, and improve capital efficiency. However, the ultimate decision to seek further insurance depends on the facultative insurer's specific business needs, risk tolerance, and strategic objectives. As such, there is no legal requirement for a facultative insurer to obtain further insurance from other companies to do business; rather, it is a choice of the company. Nonetheless, the regulator could potentially issue directions to the insurer company for enforcement of compliance with regulatory requirements, and in case of non-compliance, restrictions on business operations, penalties, and fines may be imposed accordingly. There is no denial that regulators typically have broad powers to ensure that insurers operate in a safe and sound manner, and compliance with regulatory requirements is essential to maintaining the trust and confidence of policyholders in the broader market."*

*MATIL*



## Securities and Exchange Commission of Pakistan

24. The Bench further holds that Section 41(1) of the Ordinance vests the determination of adequacy of reinsurance arrangements in the opinion of the directors but such discretion is not unfettered. Section 41(1) of the Ordinance itself qualifies such discretion by requiring that the opinion of the directors be formed “on reasonable grounds” and with due regard to risk exposures and solvency requirements. This embeds an objective standard, rendering such discretion reviewable. The regulatory framework, read with the supervisory mandate of the Commission, clearly envisages oversight to ensure that such discretion is not exercised in a manner detrimental to policyholders’ interests. The discretion exercised by the Board is therefore structured discretion, circumscribed by law and not absolute in nature.
25. The record reflects that the Board had, in fact, already exercised its discretion by opting for treaty reinsurance. However, the said treaty reinsurance arrangement stood terminated on account of non-settlement of outstanding dues by the Appellant. Thereafter, the Appellant resorted to facultative reinsurance. The subsequent shift, therefore, did not amount to an exercise of discretion, as the same had already been exercised. It was, rather, a consequence of the Appellant’s inability to discharge its financial obligations under the existing treaty arrangements, and the fact that, thereafter, no reinsurer was willing to provide treaty reinsurance to the Appellant.
26. It is a settled principle of administrative and regulatory jurisprudence that where statutory discretion is vested in an authority, it remains subject to regulatory scrutiny. Any construction treating such discretion as unreviewable would render the statutory safeguards nugatory and defeat the policy objective of protecting policyholders’ interests. In this context, reliance is placed on case titled “*East West Insurance Company Limited v. Executive Director (Insurance)*” reported as **2011 CLD 1402**, wherein it was held that although directors may determine reinsurance arrangements, such determination must conform to statutory objectives and remains amenable to regulatory intervention where exercised arbitrarily or inconsistently with law. Relevant excerpt from the cited judgment is reproduced hereunder for ease of reference:

*“Be that as it may, the compliance of re-insurance treaty cannot be left at the sole discretion of the directors of the company. The Commission has been*

MARK



## Securities and Exchange Commission of Pakistan

*entrusted with the powers to oversee the contract of insurance in terms of 20(4)(r) of SECP Act read with 2(xxvii) and 2(iii) of the Ordinance and as and when the directors transgress their powers, the Commission can take action against the directors to ensure the interest of the policy holder."*

This principle is further strengthened by the Hon'ble Sindh High Court in case titled "**Societe Generale v. Registrar of Trade Marks**" reported as **2002 CLD 37**. Relevant portion of the judgment is reproduced below:

*"... Discretion it is to be and, must be exercised, fairly, equitably, with vigilant circumspection, care and caution, based on cogent, sound and supportive reasons in accordance with set principles of law, mere bald statement that a particular order has been passed because a discretion vests in the authority is nothing but erroneous exercise of discretion liable to be corrected and reviewed whenever it comes under judicial scrutiny."*

27. The regulatory power conferred upon the Commission under Section 41(4) of the Ordinance which authorizes it to direct "modifications" in reinsurance arrangements, is to be construed in a purposive manner. The term "modification" is of wide import and, in its ordinary legal sense, includes alteration, restructuring, substitution, or realignment. Read in this light, Section 41(4) is not a mere ancillary provision but an enabling mechanism which equips the regulator with effective supervisory authority to ensure that insurers remain compliant with statutory solvency requirements at all times. Any restrictive interpretation would defeat the very object of the regulatory framework, which is the protection of policyholders, and the financial integrity of the insurance sector.
28. It is well-settled that regulatory statutes must be interpreted in a manner that advances their remedial and protective purpose. Provisions conferring regulatory powers must receive a purposive interpretation to ensure that the legislative intent is not frustrated by narrow or technical construction. The Hon'ble Supreme Court of Pakistan in the case titled "**Messrs Elahi Cotton Mills Ltd. v. Federation of Pakistan**" reported as **PLD 1997 SC 582** held that:

*"That Courts while interpreting laws relating to economic activities view the same with greater latitude than the laws relating to civil rights such as freedom of speech, religion etc., keeping in view the complexity of economic*



## Securities and Exchange Commission of Pakistan

*problems which do not admit of solution through any doctrinaire or straitjacket formula..."*

It implies that while insurers may have discretion in structuring reinsurance arrangements, such discretion is neither unfettered nor immune from regulatory scrutiny, and the Commission is fully empowered to intervene where arrangements are inconsistent with statutory objectives of solvency and risk management.

29. A purposive construction of Section 41(4) of the Ordinance, therefore, necessarily leads to the conclusion that the Commission is empowered to issue binding directions requiring modification, restructuring, or realignment of reinsurance arrangements suitable to risk mitigation. The exercise of such power is not dependent on the form of reinsurance but on its adequacy in ensuring compliance with solvency margins and protection of stakeholders' interests. The guiding consideration is the financial soundness of the insurer and the systemic protection of policyholders' funds. In **CP No. D-8903 of 2018** titled "**Crescent Insurance Limited v. SECP and another**" the Hon'ble Sindh High Court recognized that the regulator is competent to examine and direct alterations in reinsurance structures where necessary, provided such determination is preceded by a holistic assessment of compliance and risk exposure.

30. In this statutory and jurisprudential backdrop, the Commission's authority under Section 41(4) of the Ordinance is clearly designed as a corrective and protective tool to be exercised where the insurer's arrangements pose risks to solvency or fail to adequately safeguard the interests of shareholders and policyholders. The Commission is not a passive observer but a statutory guardian entrusted with ensuring that insurance companies remain financially viable and capable of meeting their obligations. At the same time, such regulatory intervention must remain firmly anchored in an objective assessment of facts and must not be guided by any generalized preference for a particular mode of reinsurance. It is therefore evident that the regulatory power under Section 41(4) of the Ordinance is both substantive and remedial in nature. Where the Commission, on the basis of material on record, forms a considered opinion that existing reinsurance arrangements are inadequate or pose a risk to solvency, it is not only empowered but duty-bound to issue appropriate directions. Such directions are inherently linked to the statutory objective of safeguarding financial stability and protecting stakeholders' interests, and their validity is



## Securities and Exchange Commission of Pakistan

to be judged in light of reasonableness, proportionality, and alignment with the overarching regulatory purpose.

31. The Bench observes that the reasoning adopted in the Impugned Order proceeds on a generalized assumption as to the relative superiority of treaty reinsurance, without undertaking the requisite fact-specific and evidence-based inquiry mandated under Section 41(1) of the Ordinance as to whether there exist any reinsurance arrangement sufficient to meet solvency requirements. The statutory framework clearly prescribes regulatory intervention not on the form or classification of reinsurance, but on its adequacy in ensuring continuous compliance with solvency requirements. While it is equally well-settled that, upon establishing such inadequacy on the basis of objective material, the Commission is fully empowered under Section 41(4) to direct modification, restructuring, or realignment of reinsurance arrangements, including transition towards treaty arrangements where warranted, such power must be exercised on the foundation of a structured evidentiary assessment. The absence of such analysis renders the findings in the Impugned Order legally unsustainable.
32. The Bench further observes that although the financial position of the Appellant, including its solvency status and underwriting performance, constitutes a relevant regulatory consideration, the impugned determination fails to establish a clear and proximate nexus between such financial indicators and the alleged inadequacy of reinsurance arrangements. In matters concerning solvency oversight, it is imperative that any conclusion of non-compliance be anchored in demonstrable linkage between the insurer's financial condition and the structural efficacy of its risk mitigation mechanisms. In the absence of such causal connection, reliance on financial deterioration alone cannot sustain a finding of contravention under Section 41 of the Ordinance.
33. In view of the foregoing, the matter is remanded to the Respondent for adjudication afresh in accordance with law, with the following observations:
  - i. The Respondent shall, in the first instance, determine, on the basis of documentary and other admissible evidence, whether any reinsurance arrangement, whether treaty or facultative, was actually in force and operative during the relevant period;



## Securities and Exchange Commission of Pakistan

- ii. The Respondent shall thereafter assess whether such arrangement(s), satisfy the statutory requirement of adequacy under Section 41(1) of the Ordinance, with specific reference to both individual risk exposures and aggregate loss scenarios;
  - iii. The Respondent shall examine whether any financial impairment or solvency deficiency, if established, is directly attributable to the nature, structure, or inadequacy of such reinsurance arrangements;
34. Where such inadequacy is established on the basis of cogent material, the Respondent shall be at liberty to exercise its statutory powers under Section 156 read with Section 41(1) of the Ordinance, with a view to securing compliance with the Ordinance and safeguarding the interests of policyholders and shareholders.
35. Any person or party aggrieved by this Order may, within thirty (30) days from the date hereof, file a Review under section 32B(2), or within sixty (60) days prefer an Appeal under section 34, of the Securities and Exchange Commission of Pakistan Act, 1997 before the competent forum, in accordance with law.
36. The appeal stands disposed of in the above terms, with no order as to costs.

(Imtiaz Haider)  
Commissioner

(Muhammad Ali Farid Khwaja)  
Commissioner

Announced on:

**07 MAY 2026**