



SECP

Insurance Division

Karachi

[Karachi]

Before Mohammed Asif Arif, Commissioner (Insurance)

*In the matter of*

**Pak Kuwait Takaful Company Limited**

Show Cause Notice Issue Date: March 11, 2013

Date of Hearing: 1. May 7, 2013  
2. March 28, 2014

Attended By: Mr. Syed Wajahatullah Quadri  
Chief Financial Officer  
M/s Pak Kuwait Takaful Company 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 Kuwait Takaful Company 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 March 1, 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'.

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

SECURITIES & EXCHANGE  
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2  
4th Floor, Wallace Road, Karachi, Pakistan

Tel: +92-21-32461053, +92-21-32465469 Fax: +92-21-32423248 Web: www.secp.gov.pk



*"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 Accumulated Deficit of the Participants' Takaful Fund (PTF) was Rs. 339,554,165/- and the balance of the PTF stood out to be at a deficit of Rs. 339,054,165/-.

6. In view of the above, 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

7. 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

8. In response to the said Show Cause Notice, M/s Mohsin Tayebaly & Co., vide their letter no. 1151/PKTL/01/542/13 dated March 22, 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.

9. 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, hence, the Rules are very much in field and are applicable.

10. 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**

11. Although the Company had not requested for a hearing in the matter, the Commission, on its own motion, had scheduled the hearing in the matter for May 7, 2013, which was communicated vide the Commission's hearing notice no. ID/Enf/PKTCL/2013/16423 dated April 29, 2013.

12. The hearing of May 7, 2013 was attended by Mr. Syed Wajahatullah Quadri, Chief Financial Officer of the Company, who, prior to the start of the hearing proceedings, handed over the Power of Attorney to the Commission, whereby he was authorized to appear before the Commission for presentation of the Company's stance in relation to the aforementioned Show Cause Notice. Mr. Quadri shall be referred to as the Company's representative hereinafter

13. Brief proceedings of the hearing of May 7, 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, and as per the repealed Takaful Rules, 2005, the Company is solvent;
- 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);
- c. The Company's representative mentioned that the Company is a law abiding entity and that it shall be in a position to abide by the Rules within 2 to 3 days of disposal of the petition by the Court, if the Rules are upheld.

14. Thereafter, the Company vide its letter dated May 24, 2013, while placing adherence to the Court's order of April 24, 2013, stated that the Rules have been suspended in their entirety by the Court, whereas, the Court's Order dated April 24, 2013, clearly states that the Rules may not be suspended until these Rules have been declared as illegal, void or ultra vires, therefore, the Rules have been termed as operative.

15. 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/PKTCL/2014/19090 dated March 10, 2014.

16. The hearing of March 28, 2014 was again attended by Mr. Syed Wajahatullah Quadri, Chief Financial Officer of the Company (the Company's representative).

17. 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 for the time being, which was duly supported by the written argument vide the Company's letter dated March 27, 2014, in which the Company had sought a waiver of up till December 31, 2015 in order 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.

#### Consideration of Company's Submissions

18. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representative, Mr. Syed Wajahatullah Quadri, Chief Financial Officer of the Company), 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.

19. 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

20. 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.

21. 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

22. 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, the Company is hereby advised to ensure compliance with the provisions of Rule 10(1)(k) of the Rules by March 31, 2015.

23. 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 Asif**  
Commissioner (Insurance)