



INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad Director (Insurance)

In the matter of

Pak-Kuwait Takaful Company Limited

Show Cause Notice Issue Date: ID/Enf/PakKuwait/2017/10819 Dated August 24, 2017

Date of Hearing: October 3, 2017

Attended By: Mr. Sarfraz Ahmed
Advocate
(On behalf of the Respondents)

Date of Order: November 22, 2017

ORDER

Under Section 46(1)(b) and Section 51(1) read with Section 156 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Pak-Kuwait Takaful Company Limited (the "Company") and the Chief Executive/Directors for alleged contravention of Section 46(1)(b) and Section 51 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, its Chief Executive and Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Ordinance to carry on General Takaful business in Pakistan.

3. The Company did not submit its annual audited accounts and regulatory returns for the year ended December 31, 2016 which were required to be submitted within four (4) months from the end of the period to which they refer i.e. April 30, 2017, as provided under Section 46(1)(b) and Section 51(1) of the Ordinance.

4. The Company was advised/reminded through letter dated May 25, 2017 to submit annual audited accounts and regulatory returns for the year ended December 31, 2016 without any further delay.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 2 -

5. The Company in its response dated June 15, 2017, replied as under:-

"We are now non-working entity as resolved by the Board of Directors, the auditor, M/S. A.F. Fergusons & Company, had been appointed to prepare annual statutory accounts as per Section 46(1) of the Insurance Ordinance, 2000. The Audited Accounts have not yet been finalized/prepared because the audit process is still going on. We shall, however, furnish the return to you within the period allowed/extended. Since the audited statement and accounts as referred in Section 46 are not finalized yet, so this letter may please be treated as an application to extend time for furnishing such a return."

6. The Commission vide letter dated June 20, 2017 responded to the aforesaid letter as under:

"The Company did not apply for extension of holding its general meeting and after delay of such time, now there is no provision available in the law to grant extension of time in filing of the annual audited accounts along with returns."

7. The Company neither replied to the Commission's letter dated June 20, 2017 nor submitted the annual audited accounts and regulatory returns. The Company therefore, *prima facie* failed to meet the mandatory requirements under Section 46(1)(b) and Section 51(1) of the Ordinance.

8. The relevant provisions of Section 46(1)(b) of the Ordinance state that:

"(1) Every insurer shall at the expiration of each year prepare and deliver to the Commission with reference to that year annual statutory accounts comprising the following statements duly audited by an approved auditor:

- (b) in the case of a non-life insurer,*
 - (i) a statement of assets and liabilities;*
 - (ii) a statement of profits and losses;*
 - (iii) a statement of cash flows;*
 - (iv) a statement of premiums;*
 - (v) a statement of claims;*
 - (vi) a statement of expenses;*
 - (vii) a statement of investment income;*
 - (viii) a statement of claims analysis;*
 - (ix) a statement of exposures; and*
 - (x) such other statements as may be prescribed by the Federal Government;*

each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf."



9. The relevant provision of Section 51(1) of the Ordinance provides that:

“Submission of returns: - (1) The audited statements and report referred to in subsections (1) and (5) of section 46 and the report and statement referred to in section 50, including any report referred to in sub-section (7) of section 50, shall be furnished as returns to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within four months from the end of the period to which they refer:

Provided that the Commission may on application by an insurer extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding one month.”

10. Therefore, a Show Cause Notice (SCN) #. ID/Enf/Pak Kuwait/2017/10819 dated August 24, 2017 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 upon them for the aforementioned alleged contraventions of the law.

11. The Respondents, through M/s. Ijaz Ahmed & Associates, hereinafter referred to as (the “Authorized Representative”), requested to extend the date for submission of the comments for a period of three weeks. The Commission did not accede to the said request, however, an extension until September 14, 2107 was allowed for submission of the comments.

12. Subsequently, the Authorized Representative vide letter dated September 13, 2017, submitted the comments, which are reproduced below:

“1. At the very outset it is clarified and submitted that the Answering Respondents have neither committed nor ever intended to commit any breach of section 46(1)(b) and Section 51(1) read with Section 156 of the Insurance Ordinance, 2000.

3. Pakistan Kuwait Takaful Company Limited ("PKTCL") is an unlisted public company. The shareholders comprise of reputable local and foreign institutional investors namely (i) Etiqa Overseas Investment Pte. Limited (ii) Pakistan Kuwait Investment Company (Pot.) Limited (iii) Noor Financial Investment Company (iv) Saudi Pak Industrial and Agricultural Investment Company Limited (v) Takaful Holdings Limited, Dubai (vi) Meezan Bank Limited (vii) Amana Takaful (Maldives) Plc.

4. The Answering Respondents (excluding the chief executive officer) were appointed as the directors of the PKTCL as nominee of shareholders of PKTCL. All the Answering Respondents were therefore non-executive directors and did not participate in the daily management of the business of PKTCL nor had any direct interaction with the management of the PKTCL in the ordinary course.

5. Due to mismanagement and irregularities of the former management employees of PKTCL, PKTCL suffered huge losses and consequently the board of PKTCL had on

Handwritten signature/initials in blue ink.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 4 -

September 8, 2016 resolved to windup the company. The Commission has already been informed about this fact in an earlier show cause proceedings. Due to irregularities and other mismanagement of the affairs of the PKTCL by the previous management the exercise of completing the financial statement has become very difficult.

6. *Auditor has been appointed in September, 2016 to audit the accounts of the company for the year ended December 31, 2016 on non-going basis. The basis of accounting has been changed and this fact of valuation of assets at net realizable value alone caused an unexpected delay in finalizing the financial statement of PKTCL.*

7. *It is further respectfully submitted that number of staff members has resigned in last 8 to 10 months. Consequently, PKTCL is left with very limited staff and the exercise of finalization of the financial statements has become very difficult.*

8. *Board of directors and current management of PKTCL are utilizing every resource available to them to finalize the financial statements as soon as possible.*

9. *PKTCL is not undertaking any new business since October 2016 and therefore the delay in finalizing the accounts does not have any material impact on the policyholders*

10. *In the aforesaid background facts Answering Respondent's parawise reply is submitted as follows,*

- (i) *The contents of paragraph 2 to 4 of the Show Cause Notice do not require any comments. However, as submitted above Answering- Respondents have neither committed nor ever intended to commit any breach of any provision of the Insurance Ordinance.*
- (ii) *The contents of paragraph 6 to 8 of the Show Cause Notice are matter of record and do not require any comments.*
- (iii) *As regards the contents of paragraph 9 to 11 of the Show Cause Notice. the factual position has been explained in the above paragraphs and the same is reiterated herein. It is further submitted that the Answering Respondents have neither committed nor ever intended to commit any breach of any provision of the Insurance Ordinance, 2000. It is evident from the above facts that finalization of the financial statements is beyond the control of the directors and management. The Answering Respondents are continuously following up with the auditors to finalize the financial statements to enable them to submit the same with the Commission. Major exercise of audit has already been completed and the preparation is in the final stages. PKTCL's management expects to finalize and submit the financial statement within 60 days to the Commission.*

We trust that the aforesaid clarifies the matter and accordingly the Show Cause Notice may kindly be withdrawn as against the Answering Respondents..."

13. Thereafter, the Commission vide letter no. ID/Enf/Pak Kuwait/2017/12056 dated September 26, 2017, scheduled a hearing for October 3, 2017 at 03:00 p.m. The hearing

Handwritten signature/initials



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 5 -

was held at Head Office of the Commission in Islamabad connected via video link with SECP's Karachi Office where Mr. Sarfraz Ahmed from M/s. Ijaz Ahmed & Associates attended the hearing as Authorized Representative, representing the Respondents before the Commission in the instant matter.

14. During the hearing, the Authorized Representative stated that:

- i. Most of the Board members are comprised of non-executive directors having no information about management of the Company;
- ii. Large number of employees of the Company have left.
- iii. The auditors of the Company have been appointed. However, accounts of the Company are still pending;
- iv. For new management, it is difficult to gather information pertaining to liabilities of the Company and present the same to the auditors;
- v. The Company is trying to finalize accounts so that the petition for winding up can be filed before the Court;
- vi. The management could not revive the Company despite its best efforts. Therefore, it was decided to prepare accounts on non-going concern basis;
- vii. The Company intends to settle all the outstanding liabilities;
- viii. The Commission may take lenient view in the matter.

15. In terms of Section 46(1)(b) read with Section 51(1) of the Ordinance, the Company was required to file the audited annual accounts and regulatory returns for the year ended December 31, 2016 within four months from the close of the year 2016, however, as evident from the record and arguments, the Company has failed to file the said financial statements till the date hereof. The reasons given by the Company for non-submission are not tenable. Therefore, violation of the aforementioned provisions of the Ordinance is clearly established.

16. In addition to the above, the Company was directed vide order dated July 25, 2017 to submit annual audited accounts and regulatory returns for the year ended December 31, 2016 to the Commission at the earliest. However, the Company failed to submit the required accounts/returns despite of the aforesaid direction.

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 default of Section 46(1)(b) and Section 51(1) of the Ordinance is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Company, its Chief Executive Officer and Directors.

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,

Handwritten signature/initials

SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 6 -

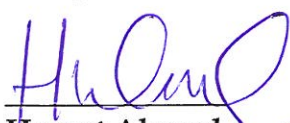
or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer, and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees 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. However, before proceeding further, I find it relevant to discuss the duties of the Directors who are, 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. 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 Directors have failed to perform their duties as laid down under the Ordinance and Rules made thereunder. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 46(1)(b) and Section 51(1) of the Ordinance; therefore, it could be legitimately inferred that the default concerning non-submission of annual audited accounts and regulatory returns was committed.

20. In exercise of the power conferred on me under Section 156 of the Ordinance I, instead of imposing the maximum fine as provided under the said provisions, impose a fine of Rs. 200,000/- (Two Hundred Thousand Only) on the Company due to the default of Section 46(1)(b) and Section 51(1) of the Ordinance, as mentioned in the above paras hereof. The Company and its management are further directed to immediately file the financial statements for the year 2016 along with the audit report thereon. The Respondents are hereby warned to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

21. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

22. 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 (Insurance)

