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SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Enforcement)

In the matter of

M/s. Pak Qatar Family Takaful Limited

Show Cause Notice No. and Date : ID/Enf/PQFTL/2019/233 dated March 15, 2019

Date of Hearing: May 23, 2019

Attended By: Farhan Shaukat
Head of Investment
Pak Qatar Family Takaful Limited

Mr. Jehanzaib Ahmed
Manager Legal and Compliance
Pak Qatar Family Takaful Limited

Barrister Adam Hassan Malik
Authorized Representative

Date of Order: July 10, 2019

ORDER

Under Rule 16 of the Insurance Rules, 2017 read with Section 35(7) and Section 156
of the Insurance Ordinance, 2000

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This Order shall dispose of the proceedings initiated against M/s. Pak Qatar Family Takaful Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Rule 16 of the Insurance Rules, 2017 (the "Rules") read with Section 35(7) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be referred to as the "Respondents" hereinafter.

2. The Company is registered with the Securities and Exchange Commission of Pakistan (the "Commission") under the Ordinance to carry on Family Takaful business in Pakistan.

3. While examining the annual audited financial statements of the Company for the year ended December 31, 2017, it was observed that the Company did not comply with the minimum investment requirement in Government Securities as

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required under Rule 16 of the Rules read with Section 35(7) of the Ordinance. The investments held by the Company in Government Securities in its Shareholders' Fund and Statutory Funds as on December 31, 2017 were as follows:

Rs. in 000's

	Shareholders' Fund	Individual Family Takaful	Group Family Takaful	Group Health Takaful	TOTAL
Government securities	123,271	1,816,635	116,198	-	2,056,104
Total assets	1,277,598	17,080,776	285,963	420,250	19,064,587
Government Securities as percentage of total assets	9.6%	10.6%	40.6%	0.0%	10.8%

4. The Company in response to the Commission's letter dated September 28, 2018, submitted its comments vide its letter dated October 24, 2018 as under:

"As it is clearly mentioned in Rule 16 that either 30% assets of Shareholders' fund or of a statutory fund of life insurer must be invested in Government Securities. Therefore, in following mentioned calculations it is presented that Group Family Statutory Fund are meeting above mentioned requirements of Rule 16 of Insurance Rules 2017."

5. Previously, the Commission vide letter dated April 6, 2018, warned the Company due to the similar non-compliance. In response, the Company vide its letter dated April 11, 2018 stated that:-

"We are also obliged to your lenient considerations on the matters as specified in the letter and shall ensure due diligence in maintaining proper reporting of regulatory returns and compliance with the statutory requirements in future."

6. Similar non-compliance was also noted in the statement of assets and liabilities (unaudited) as on December 31, 2018, submitted by the Company under Section 46(2) of the Ordinance, as mentioned below:-

Rs. in 000's

	Shareholders' Fund	Individual Family Takaful	Group Family Takaful	Group Health Takaful	TOTAL
Government Securities	137,912	47,187	123,000	-	308,099
Total Assets	1,584,323	19,292,857	305,331	577,490	21,760,001
Government Securities as percentage of Total Assets.	8.7%	0.2%	40.3%	0.0%	1.4%

7. The Company invested 8.7% of assets of the Shareholders' Fund, 0.2% of assets of the Individual Family Takaful Fund. However, investment of the Group Health Takaful Fund in Government securities was nil.

8. In view of the above, it appeared that the Company contravened the provisions of Rule 16 of the Insurance Rules, 2017 read with Section 35(7) of the Ordinance.

9. Rule 16 of the Insurance Rules, 2017 requires that:

"Assets to be invested in securities: "(1) Thirty per cent of the assets, excluding inter-fund receivables of the shareholders' fund of a life insurer, or of a statutory



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fund of a life insurer, other than a statutory fund which contains only investment linked policies, shall be invested in Government securities, under sub-section (7) of section 35 of the Ordinance.

(2) A further ten percent of the assets, excluding inter-fund receivables of the shareholders' fund of a life insurer, or of a statutory fund of a life insurer, other than a statutory fund which contains only investment linked policies, shall be invested in a combination of Government securities and other approved securities, sub-section (7) of section 35 of the Ordinance."

10. Section 35(7) of the Ordinance states that:

"(7) The Federal Government may prescribe a percentage or percentages of the assets of the shareholders' fund of a life insurer, or of a statutory fund of a life insurer, other than a statutory fund which contains only investment-linked policies, which shall be invested in Government securities, or in a combination of Government securities and other approved securities."

11. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/PQFTL/2019/233 dated March 15, 2019 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 on them for the aforementioned alleged contraventions of the law.

12. Thereafter, the Respondents vide letter dated March 28, 2019 submitted their reply in respect of the aforementioned SCN, which is summarized hereunder:

- i. SECP vide its letter dated April 6, 2018 directed us to make statutory compliance of making requisite investment in the Shareholders' Fund and Statutory Funds based on review of financial statements for the year ended December 31, 2016. In response to the said letter, we responded on April 11, 2018 and conveyed our intention to make statutory compliance for future reporting period.
- ii. Commission's letter dated April 6, 2018 was received much after the end of financial year 2017, i.e., December 31, 2017. Thus, there was no way statutory compliance could be made for the year ended December 31, 2017.
- iii. Further, the Commission vide letter dated September 28, 2018 again raised this issue. The Company responded vide letter dated October 24, 2018. However, the Company did not receive any comments in response to its letter. We therefore, inferred that being satisfied no action was considered necessary by the Commission on this issue.
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- iv. Some of the Statutory Funds maintained by Pak-Qatar are either exempted from investment in Government Securities under Rule 16 of the Rules or it is not possible for Pak-Qatar to invest 30% in Government Securities out of those statutory funds. The detail of all Pak-Qatar Statutory Funds is as follows: -

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- a. Individual Family Fund. This fund is exempted under Rule 16 of the Insurance Rules, 2017 as it contains only investment linked policies. Therefore, Pak-Qatar had discretion over the percentage, which is invested in the Government Securities.
- b. Group Family Fund Pak-Qatar is in compliance with the requirements of Rule 16 as more than 30% of this Statutory Fund has been invested in Government Securities.
- c. Group Health Fund as at December 31, 2017, for this Statutory Fund, more than 80 percent of assets were receivables. Remaining 20 percent was kept for the payments of claims/other cash outflows. Due to the nature of the assets in this fund, it was technically impossible for Pak-Qatar to spend 30 percent of assets of this fund in government securities. (As at December 31, 2017, out of the total assets of Rs. 420 million, the amount of Rs. 355 million is 'Contribution due but unpaid*. The amount in 'Current and other accounts* was Rs. 56 million; while there is nil amount invested in any form.) The Cash Flow Statement for the same period clearly depicts the cash inflow and outflow position, whereby an amount of Rs. 1,107 million was received as 'Contributions', against which Claims Expenses & Wakalah Fee paid amounted to Rs. 1,101 million. Accordingly, if 30 percent of assets of this fund is invested in Government Securities or even in any other approved security, then it will not be possible for Pak-Qatar to manage its operating cash flows for Group health takaful.
- d. Shareholder's Fund as already mentioned in the preceding paragraphs, we obtained legal opinions from number of law firms who are of the opinion that the obligation under Rule 16(i) are 'either', 'or', in nature, therefore, requiring Pak-Qatar to either invest 30% of Shareholders' Fund or Statutory Fund.
- v. Accordingly, as highlighted above, Pak-Qatar is maintaining three Statutory Funds. One of the funds, i.e. Individual Family Fund is exempted from the requirements of Rule 16 of the Rules. In case of Group Family Fund, complete compliance is made with the requirements of Rule 16 of the Rules. For the Group Health Fund, the only fund which is in non-compliance of Rule 16 of the Rules, it is not practical for Pak-Qatar to invest 30 percent due to the complex nature and frequency of cash outflows in form of claims from the fund as explained above. Furthermore, it is also evident from the annual accounts of Pak-Qatar that no other investment in private securities and sukuk has been made under Group Health Fund.
- vi. In light of the foregoing, non-compliance of Rule 16 of the Rules is not deliberate and absolutely unintentional. It is solely based on the fact that assets' classification and movements of funds are such that amount available for investments is not such to strictly comply with the requirement of the aforesaid Rule. Considering, the unintentional act on the part of Pak-

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Qatar, it is hereby requested that to kindly consider the prevalent circumstance and take a lenient view on Pak-Qatar's approach in the application of relevant rule.

- vii. We would like to draw attention of the esteemed Regulator to the scarcity of Shari'ah Compliant avenues for investments and that too in the form of Government Securities. The application of Rule 16(1) of the Rules has no implication in the manner of investments returns for conventional insurance companies, as they have the opportunity to invest in Pakistan Investment Bonds (PIBs) and/or Treasury Bills; however, on the contrary Takaful companies cannot take the leverage of investing in aforesaid securities. They can only invest in Government Sukuk, where the current rates of returns are not significantly competitive as compared to other non-governmental fixed securities.
- viii. Takaful Companies can only invest in Government Sukuk, where the current rate of return is not competitive as compared with the IRR of private Sukuk. The result of strict compliance with the Rule 16(1) of the Rules in the form of 30% of total assets (excluding Unit-Linked Fund) would reasonably impact the investment return of Takaful entity.
- ix. Therefore, if the SECP could specially approve some other Shari'ah compliant avenues for Takaful companies to invest as allowed under Rule 16(1) of the Rules. This will highly facilitate Takaful companies in having additional avenues as well as it will also enable them to earn stable and competing returns on their investments. Moreover, is it possible that Takaful companies may invest 30% or 40% of aggregate balance of its Takaful Fund (without discrimination, i.e., combined Waqf Fund of Individual Life/Group Life/Group Health) instead of total assets in Government Securities? If this is allowable than the compliance with the law under discussion would still be easier and practical for Takaful companies.
- x. We again request your good-self to kindly condone our honest misunderstanding, while we assure you to comply with the requirements of this section in letter and spirit effective immediately. Just to assure your esteemed office about our compliance with your instructions; we are pleased to inform you that effective March 31, 2019, Pak-Qatar has made appropriate adjustments in fixed income securities to accommodate 30% of the assets' (excluding Unit-linked Fund's Assets) be invested in Government Securities.

13. Subsequently, the Commission, vide letter dated May 16, 2019, scheduled the hearing on May 23, 2019 at the Head Office of the Commission in Islamabad.

14. The said hearing was attended by the Authorized Representatives of the Respondents namely Mr. Farhan Shaukat, Mr. Jehanzaib Ahmed and Barrister Adam Hassan Malik through video link, at the Commission's Karachi Office.



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15. During the hearing, the Authorized Representatives reiterated the comments submitted vide the Respondents' reply March 28, 2019. They explained that the Company interpreted Rule 16 of the Rules differently and were of the view that investments to be made either in the Shareholders' Fund or Statutory Fund. The Authorized Representative stated that Company wishes to diversify risks and suggested that the Commission should approve/allow more funds for investment purposes. They requested the Commission to take lenient view as warning was already issued in the matter in April 2018.

16. In terms of Section 35(7) of the Ordinance, percentage or percentages of the assets of the Shareholders' Fund of a life insurer, or of a Statutory Fund of a life insurer, other than a Statutory Fund which contains only investment-linked policies, which shall be invested in Government Securities, or in a combination of Government Securities and other approved securities have been prescribed under Rule 16 of the Rules. As per Rules 16(1) of the Rules Thirty per cent of the assets, excluding inter-fund receivables of the Shareholders' Fund of a life insurer, or of a Statutory Fund of a life insurer, other than a Statutory Fund which contains only investment linked policies, shall be invested in Government Securities. Moreover, Rule 16(2) of the Rules requires that a further ten percent of the assets, excluding inter-fund receivables of the Shareholders' Fund of a life insurer, or of a Statutory Fund of a life insurer, other than a Statutory Fund which contains only investment linked policies, shall be invested in a combination of Government Securities and other approved securities.

17. However, perusal of the annual audited financial statements of the Company for the year ended December 31, 2017, revealed that the Company did not adhere to with the minimum prescribed percentage of 30% and further 10% of assets to be invested in a combination of Government Securities and other approved securities in its Shareholders' Fund and Statutory Funds as required under Rule 16 of the Rules read with Section 35(7) of the Ordinance.

18. There is no excuse for interpretation of law here as the Commission had issued a warning letter to the Company on April 6, 2018 for similar non-compliance.

19. The Respondents have stated that non-compliance of Rule 16 of the Rules was not deliberate and absolutely unintentional. They have further requested the Commission to condone their honest misunderstanding, while they assured to comply with the requirements of Rule 16 of the Rules in letter and spirit immediately. The Respondents have apprised this Office that effective March 31, 2019, the Company has made appropriate adjustments in fixed income securities to accommodate 30% of the assets' (excluding Unit-linked Fund's Assets) be invested in Government Securities.



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20. Needless to say the Company failed to meet the mandatory requirements prescribed under Rule 16 of the Rules read with Section 35(7) of the Ordinance for the year ended December 31, 2017.

21. 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 the default of Rule 16 of the Rules read with Section 35(7) of the Ordinance is clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

22. 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, 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.”

23. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the fine as provided under the said provision, take a lenient view, and issue a warning that in case of similar non-compliance in future a strict action against the Respondents will be taken. The Company is further directed to submit compliance report with the minimum prescribed percentage of assets to be invested in a combination of Government Securities and other approved securities in its Shareholders Fund and Statutory Funds as required under Rule 16 of the Rules read with Section 35(7) of the Ordinance within one month of the date of this Order.

24. 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/HoD (Enforcement)

