



INSURANCE DIVISION  
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

*In the matter of*

**Pak Qatar General Takaful Limited**

Show Cause Notice No. and Issue Date: ID/Enf/PQGTL/2018/13410 dated  
January 29, 2018

Date of Hearing: March 7, 2018

Attended By: 1. Mr. Farrukh V. Junaidy  
Director  
Pak Qatar Family Takaful Limited  
2. Mr. M. Kamran Saleem  
CFO & Company Secretary  
Pak Qatar Family & General Takaful  
Limited

Date of Order: March 16, 2018

**ORDER**

**Under Regulation 2(1) and 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 read with Section 65, Section 156 and Section 158 of the Insurance Ordinance, 2000**

.....  
This Order shall dispose of the proceedings initiated against M/s. Pak Qatar General Takaful Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Regulation 2(1) and 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 (the "Regulations"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry on the business of general takaful in Pakistan.

3. The Commission received a complaint vide letter dated July 18, 2017 alleging that Mr. Said Gul, a member of the Board of Directors of the Company and designated as Managing Director (MD) has been running the affairs of the Company, instead of CEO approved by the SECP. In pursuance thereof, an onsite inspection was ordered vide order dated September 8, 2017.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 2 -

4. As per the report submitted by the inspection team, the organogram of the Company placed Mr. Said Gul, the MD, as a tier in-between the Board of Directors and the Chief Executive of the Company. The Companies Ordinance, 1984, the Companies Act, 2017 and the Insurance Ordinance, 2000, do not provide for an MD's position. The Regulations prescribe a prior and mandatory approval of the SECP for the position of the CEO, to be the top position in the Company, which directly reports to the Board of Directors. Regulation 2(1) of the said Regulations includes the Chief Executive Officer by whatever name called and principal officer of the insurer.

5. The respective roles, job descriptions of the MD and the CEO presented the former as the one assuming responsibilities and powers of the both: the Board and the CEO, relegating the CEO accountable to the MD. This amounted to circumvention of Section 2(6) of the Companies Ordinance, 1984 and Section 2(14) of the Companies Act, 2017 that required whole or substantially whole powers of management of affairs to rest with the CEO.

6. The MD appointed the CEO with comments "for and on behalf of the Directors" and determined terms & conditions of his appointment as conveyed in General Power of Attorney (GPA) vide letter dated June 1, 2017. The minutes of the subsequent Board of Directors meeting dated August 15, 2017 ratifying the said appointment and GPA, appeared to be an afterthought attempt to set the record straight.

7. The Financial Authority Manual (FAM) of the Company, effective June 1, 2016, granted far more powers to the MD than the approved CEO. It carried approval signatures of the MD on each page and contained significant decisions relating to financial responsibilities, powers and policy matters. It is pertinent to mention that clause (xi)(b) of the Code of Corporate Governance for Insurer, 2016 (the "Code") requires the Board of Directors to formulate significant policies including those covered under the said manual, which were approved by the MD. There was not much involvement of CEO, commensurate to his position, in operational/procedural manual except claim approval above Rs. 1.0 million, approval of which was granted by the MD vide letter dated June 23, 2017.

8. Since his assumption of the charge as the CEO, Mr. Zahid Hussain Awan was out of country (Pakistan) for 37 working days out of 64 working days from April 1, 2017 to June 30, 2017 i.e. approximately 50% of the time. The said number of absences indicated his limited involvement in the affairs of the Company.

9. Mr. Zahid Hussain Awan was appointed CEO of the Company without any remuneration. His Appointment Letter dated March 31, 2017 conveyed his package, "as approved in March 21, 2017 Board of Directors Meeting." A copy of the annexure to the minutes signed by the Chairman mentioned that the CEO will work free of cost. It is also pertinent to mention that Section 25 of the Contract Act, 1872 states that "Agreement without consideration is void, unless it is in writing and registered ...." However, the appointment letter dated March 31, 2017 signed by the MD and received by the CEO, a copy of which was submitted to the inspection team, was not registered, hence the CEO's employment agreement appeared to be void.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 3 -

10. The Company obtained approval of the CEO from SECP to comply with regulation 2(2) of the Regulations, but delegated most of the operational and administrative powers to the MD. The inspection team was of the view that Mr. Zahid Hussain Awan, the approved CEO of the Company, was neither handling all (or substantially all), nor delegated the operational powers to his subordinates. He was entrusted with the operational and administrative powers far below than the position of CEO warranted as mandated under the law.

11. In view of the above, it appeared to the Commission that the Company failed to meet the mandatory requirements prescribed under Regulation 2(1) and 2(2) of the Regulations,

12. Regulation 2(1) of the Regulations states that:

*"These regulations shall be applicable to the following persons:*

- (i) Chief Executive, by whatever name called and principal officer of the insurer;*
- (ii) Directors of the insurer; and*
- (iii) Key Officers of the insurer...."*

13. Regulation 2(2) of the Regulations states that:

*"A proposed director or chief executive or principal officer of the insurer shall not assume the charge of office until the appointment has been approved by the Commission."*

14. Section 2(6)<sup>1</sup> of the Companies Ordinance, 1984 states that:

*"Chief Executive", in relation to a company mean an individual who, subject to the control and directions of the director, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of the company,...."*

15. Clause (xi)(b) of the Code states that:

*"The Board of Director adopts a vision/mission statement and overall corporate strategy for the insurer and also formulate significant policies, having regard to the level of materiality as may be determined by it;*

*Explanation – Significant policies for this purpose may include:*

- Product Development;...*
- Procurement of goods and services;*
- Marketing;*
- Acquisition and disposal of fixed assets;...*
- Donation, Charities, Contribution and other payment of similar nature;*
- Determination and delegation of financial powers;*

<sup>1</sup> Section 2(14) of the Companies Act, 2017



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 4 -

*Transactions or contracts with associates companies and related parties;  
Remuneration policy for the directors and the senior management (including Chief Executive Officer), key officers and other employees of the insurer...."*

16. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/PQFTL/2018/13410 dated January 29, 2018 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 and/or Section 158 of the Ordinance should not be imposed on them and/or direction under Section 65 of the Ordinance may not be issued for the aforementioned alleged contraventions of the law.

17. The authorized representative of the Respondents, Mohsin Tayebaly & Co. vide letter dated February 6, 2018 sought an extension of further 10 days to submit reply to the aforesaid Show Cause Notice. The request of the Company was acceded to and extension was granted until February 16, 2018.

18. Thereafter, the authorized representative of the Respondents vide letter dated February 14, 2018 submitted response to the SCN, which is summarized hereunder:

- i. It is denied that the MD was/is running the affairs of the Company instead of the CEO. The position of MD exists between the Board and the CEO, in the manner that the former is representing the Board, just for facilitating the executive management.
- ii. Company's officials fully cooperated with the inspection team of the Commission.
- iii. Mr. Said Gul was given the position of MD in 2012. He worked as CEO of the Company until mid-2015. The Board released him from the position of CEO upon his request and consequent to his resignation, Mr. Javed Muslim was appointed as CEO by the Board in August 2015.
- iv. Mr. Zahid Hussain Awan needed to have a formal "attorney letter" to execute deeds on behalf of the Company as required under the law to legitimate his actions. Due to unavailability of Directors, the Board meeting could not be held since AGM in April 2017 till July 2017; therefore, MD in consultation with the Chairman and other Directors issued the subject General Power of Attorney (GPA). However, the same was approved in the next Board meeting held on August 15, 2017.
- v. No ceiling was placed on the CEO's powers to sign banking instrument, cheques except for the one in mid-2016 in the area of Shareholder's Fund only to curb the expenses.
- vi. After becoming CEO of the Company effective April, 2017, Mr. Zahid became involved in the Company's affairs and exercised his powers without limitation/ceiling. Formal up-dation of documents/manuals usually takes time,



## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 5 -

therefore, revised manuals were implemented w.e.f. July, 2017 and subsequently approved by the Board in August, 2017.

- vii. Before assuming the charge of CEO, Mr. Zahid was residing abroad and therefore needed transition time to make arrangements for his permanent stay in Pakistan. Therefore, he was granted exemption by the MD from marking regular attendance through face reader machine, though he had been visiting Pakistan back-and-forth (his passport already shared with inspection team).
  - viii. The SECP's inspection letter mentioned the period to be covered from 01.01.16 until 30.06.17. During the period from 01.01.16 until 21.03.17, Mr. Javed Muslim was the CEO of PQGTL and the entire business was conducted by him. Instead of considering the said period, inspection team only targeted the period of 3 months during Mr. Zahid was making arrangements to take charge.
  - ix. Mr. Zahid was not externally hired CEO, and as per his appointment terms and conditions, "the Board may periodically review his performance and remuneration policy and may elect at its discretion to start his remuneration in future."
  - x. The CEO or a Director working without any remuneration does not violate any regulation or statute.
  - xi. The CEO of the Company has direct as well as indirect lines of reporting with respect to different departmental heads. Therefore, the Company is not liable to be penalized for the allegation of more powers being delegated to the MD in comparison to the CEO.
  - xii. FAM is an internal document and the same may be revised by the Company and/or Board as many times as deemed expedient. Therefore, compliance or non-compliance with an internal document may be addressed by the Board and/or its Committees, instead of the regulator.
  - xiii. No serious issues were found during onsite and offsite inspections.
  - xiv. In light of the above facts, a request for taking lenient view and withdrawal of notice has been made.
19. The Commission, vide its notice no. ID/Enf/PQGTL/2018/13877 dated March 2, 2018, scheduled the hearing for March 7, 2018 at the Company Registration Office Karachi.
20. The hearing was attended by the authorized representatives of the Respondents namely Mr. Farrukh V. Junaidy and Mr. M. Kamran Saleem representing all the Respondents before the Commission in the instant matter.



## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 6 -

21. During the hearing, the Representatives maintained that the CEO is actually running the affairs of PQGTL instead of the MD. They explained that the position of MD exists between the Board and the CEO, where the MD is representing the Board, just to facilitate the executive management. They apprised the Commission that steps have been taken to address the concerns of the Commission such as delegation of power has been regularized, that CEO will be paid remuneration, and CEO will have permanent office in Pakistan. The Representatives requested the Commission to take lenient view in the matter.

22. The Commission approved appointment of Mr. Zahid Hussain Awan as CEO of the Company under the Regulations. However, Financial Authority Manual (FAM) of the Company, effective June 1, 2016, granted far more powers to the MD than the approved CEO.

23. Since Mr. Said Gul, MD, did not meet the eligibility criteria under the Regulations for appointment as CEO (by whatever name called and principle officer) of an insurance/takaful company, therefore, the Company circumvented the requirement of regulation 2(2) of the Regulations, by appointing another person as CEO and retained all his powers with the position of MD.

24. There were indicators which led the inspection team to conclude that the CEO was neither handling all matters nor he had been delegated the operational powers. It was also observed that the CEO was out of country (Pakistan) for approximately 50% of the time from April 1, 2017 to June 30, 2017. These absences proved his limited involvement in the affairs of the Company. Moreover, the appointed CEO was working without any remuneration as per the agreement between the Company and him.

25. It can be inferred from the above that the Respondents were acting in contravention of Regulation 2(1) and 2(2) of the Regulations. However, Company has requested the Commission to take lenient view in the matter as the Company has taken the following measures to rectify the non-compliance:-

- i. Delegation of powers to the existing CEO has been regularized;
- ii. Lawful remuneration has been approved for the existing CEO i.e. Mr. Zahid Hussain Awan; and
- iii. The existing CEO shall have permanent office in Pakistan.

26. 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 violations of Regulation 2(1) and 2(2) of the Regulations are clearly established, for which the Respondents may be penalized in terms of Section 156 and/or Section 158 of the Ordinance and/or direction to remove the Board of the Company may be issued.

27. 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*



## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 7 -

*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."*

28. Section 158 of the Ordinance of 2000 states that:

***Penalty for false statement in document.-** Except as otherwise provided in this Ordinance, whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Ordinance, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable by the Commission with fine which may extend to one million rupees.*

29. Section 65 of the Insurance Ordinance, 2000 states that:

***"Power to remove Chairman, Director, etc. of the insurer.-** (1) If, after the completion of a special audit under section 49 or investigation under section 59, or otherwise on reasonable grounds, the Commission has reason to believe that a person holding the office of Chief Executive, Chairman, director, manager or principal officer, by whatever name called (including the principal officer in Pakistan of an insurer incorporated in a jurisdiction outside Pakistan), of an insurer has contravened the provisions of any law (including, in the case of a company any such person having become disqualified under the provisions of section 187 of the Companies Ordinance) and that the contravention is of such a nature that the association of such person with the insurer or insurance broker is or is likely to be detrimental to the interest of the insurer or of the policy holders, or is otherwise undesirable, such person not being a fit and proper person [the Commission may make an order that such person shall cease to hold the office with the insurer with effect from such date as may be specified in the order, and thereupon that office shall, with effect from the said date, become vacant....*

*(3) An order under sub-section (1) in respect of any person may also provide that he shall not, without the previous permission in writing of the Commission in any way, directly, or indirectly, be concerned with, or take part in the management of the insurer or any other insurer for such period not exceeding five years as may be specified in the order.*

*(4) No order under sub-section (1) shall be made in respect of any person without giving him an opportunity of being heard unless the Commission is of the opinion that any delay in making the order would be detrimental to the interest of the insurer or of the policy holders.*

*...."*

30. In exercise of the power conferred on me under Section 65, Section 156 and Section 158 of the Ordinance read with S.R.O. 750(I)/2017 dated August 2, 2017, I, instead of taking any punitive action against the Respondents as provided under the




# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 8 -

said provision, take a lenient view by issuing a stern warning that in case of similar non-compliance in future, strict action against the Respondents will be taken.

31. 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.

  
Tahir Mahmood  
Commissioner (Insurance)

