



SECP  
Insurance Division  
Karachi

[Karachi]

Before Muhammad Asif Arif, Commissioner (Insurance)

*In the matter of*

Takaful Pakistan Limited

Show Cause Notice Issue Date: March 11, 2013

Date of Hearing: April 29, 2013

Attended By: Mr. Taimur Mirza  
Advocate / Legal Counsel  
M/s Mohsin Tayebaly & Co.

Date of Order: May 8, 2013

ORDER

(Under Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012, Section 11(1)(f) and Section 12(1)(b) Read With Section 63(1) and Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Takaful Pakistan Limited ("the Company") and its Directors for not complying with the requirements of Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 (the "Regulations"), and Section 12(1)(b) and Section 11(1)(f) of the Insurance Ordinance, 2000 (the "Ordinance").

Background Facts

2. The provision of Clause (f) of Sub-section (1) of Section 11 of the Ordinance states that:

*"Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:*

...

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(f) the insurer meets, and is likely to continue to meet, criteria for sound and prudent management including without limitation those set out in section 12;..."

3. The provision of Clause (b) of Sub-section (1) of Section 12 of the Ordinance requires that:

*"Criteria for sound and prudent management.- (1) For the purposes of this Ordinance, the following shall, without limitation, be recognised as criteria for sound and prudent management of an insurer or applicant for registration as a person authorised to carry on insurance business:*

...

*(b) each director and officer or (in the case of an applicant which is a body corporate incorporated outside Pakistan) the principal officer in Pakistan of the insurer or applicant is a fit and proper person to hold that position;..."*

4. Regulation 2(2) of the Regulations requires that:

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

5. It was evident from the Company's letter dated January 6, 2013, bearing subject "S.R.O. 15(1)/2012 – Notification of Insurance Companies (Sound and Prudent Management) Regulation – 2012", that Dr. Mumtaz Ahmed Hashmi, Director is holding the office of the Chief Executive Officer, and the position has been termed as "Chief Executive Officer (Acting)".

6. It was further noted that the abovementioned Director of the Company has not assumed the charge of office of the Chief Executive Officer of the Company with the approval of the Commission, thereby it appeared that the Company and its Directors, who were responsible for appointing a Chief Executive Officer in terms of the provisions of Section 199 of the Companies Ordinance, 1984, have contravened the provisions of Regulation 2(2) of the Regulations and Section 12(1)(b) read with Section 11(1)(f) of the Ordinance, which attracts penal provisions as provided under Section 63(1) and Section 156 of the Ordinance.

#### Show Cause Notice

7. Accordingly, the Show Cause Notice was issued on March 11, 2013 under Regulation 2(2) of the Regulations, Section 11(1)(f) and Section 12(1)(b) read with Section 63(1) and Section 156 of the Ordinance to the Company and its Directors, calling upon them to show cause as to why the penalty, as provided under Section 156



of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Regulation 2(2) of the Regulations, and Section 12(1)(b) and Section 11(1)(f) of the Ordinance.

### Company's Response to the Show Cause Notice

8. M/s Mohsin Tayebaly & Co., vide their letter no IM894/TKPL/01/540/13 dated March 22, 2013, while acting on behalf of the Company, submitted response to the aforesaid Show Cause Notice, whereby they had stated that:

*"...We have been instructed to reply to the Notice as follows:*

- 1. That the contents of the Notice are denied as misconceived and misplaced. It is stated at the very outset that our client has the highest respect and regard for the Commission and it is inconceivable that our client would ever deliberately breach or violate any applicable law. It is submitted that our client has never done anything illegal or improper and had ever promptly filled the new Form 29 on 10.01.2013 thereby suggesting a change in the particulars of the directors and officers of our client which is again a proof of the fact that our client scrupulously adheres to all the company laws and the legal requirements as set forth there under.*
- 2. That having an unblemished record our client hereby makes an earnest request for being excused this one time for having failed to timely seek the necessary approval of the Commission as is required under Regulation 2(2) of the Insurance Companies (Sound & Prudent Management) Regulations, 2012 before appointing the new CEO (Acting), Mr. Mumtaz A. Hashmi on 9.01.2013 which omission / oversight of our client is nothing but a bona fide and genuine mistake for which our client regrets and tenders an unconditional apology to the Commission in the first instance.*
- 3. That however it is very shocking and surprising that the Commission has deemed the omission / oversight of our client as such a grave violation that it has instead of giving a fair opportunity to our client to undo the wrong has rather directly issued the Notice setting forth the consequences / adverse actions which it proposes to take which are extremely prejudicial to the rights and interests of our client.*
- 4. That it is pointed that the penalty / fine as suggested in the Notice is not sustainable under the law and is clearly disproportionate to the alleged offense of our client which if reviewed objectively and impartially is a genuine and bona fide mistake. Our client has fully complied with all the provisions of law but for this little omission which otherwise can be allowed to be rectified by the Commission without any problem. Conversely, the omission / oversight of our*



*client certainly does not merit imposition of such a harsh penalty as is envisaged under section 63 and / or 156 of the IO, 2000.*

5. *That in view of the correct factual position as mentioned herein above, it is respectfully stated that there is no need or justification to criticize / penalize our client so harshly and unjustly over the issue / concern raised in the Notice. The Commission is hereby urged to allow our client to do the needful and let off our client this time with a caution. Such an approach would be conducive to better relations and would otherwise serve as a clear endorsement of the Regulations, 2012." (Underlined to put emphasis)*

9. The reply of the Company, through M/s Mohsin Tayebaly & Co., gives an impression that the Company has unintentionally contravened the provisions of Regulation 2(2) of the Regulations, and Section 12(1)(b) and Section 11(1)(f) of the Ordinance, however, the Company and its Directors have still not filed the application for seeking approval of the Commission for appointing Dr. Mumtaz Ahmed Hashmi to fill in the position of the Chief Executive Officer of the Company, as required under Regulation 2(2) of the Regulations and Section 12(1)(b) of the Ordinance. This indicates that the default was committed and further prolonged by the Company and its Directors knowingly and willfully, and that the contravention was not merely an unintentional oversight / omission, instead mala fide of the Company and / or its Directors it is evident from continuous and deliberate negligence in complying with the applicable laws.

10. The above quoted reply further indicates that the Company considers the violation as negligible and ignorable. It would be pertinent to mention that the aforementioned laws are equally applicable on all insurers, which fall within the purview of the Ordinance, and that no particular entity can be given any sort of exemption or relaxation, which the law itself does not permit or provide for. Accordingly, Regulation 2(2) of the Regulations does not empower / permit the Commission to grant any sort of exemption or relaxation to the person / insurer concerned.

11. Further that the Company is under the impression (or expresses to be so) that the Commission has to allow the Company to rectify the aforesaid violation. At the very outset, the provisions of Regulation 2(2) of the Regulations and Section 12(1)(b) of the Ordinance do not empower the Commission to allow or disallow any person / entity to file an application under Regulation 2(2) of the Regulations. In fact, it is the utmost responsibility of the person concerned and the insurer to adhere to the said provision of the Regulations, at all times. And under no circumstance, the Commission may ever disallow or prohibit any person / entity to file an application for seeking the approval of the Commission prior to assuming the charge of the office of the director and / or the chief executive officer of that particular entity.



12. Above all, the Company and its Directors had an ample time to file the application for approval of the Commission regarding appointment of Dr. Mumtaz Ahmed Hashmi as the Chief Executive Officer of the Company, which the Company and its Directors have failed to comply.

### Hearings of the Case & Subsequent Developments

13. 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 April 29, 2013 at 11:30 a.m., which was communicated to the Company via the Commission's hearing notice no. ID/Enf/TakafulPK/2013/16301 dated April 8, 2013.

14. Accordingly, the said hearing, which was held on April 29, 2013 at 11:30 a.m., was attended by Mr. Taimur Mirza, Advocate, M/s Mohsin Tayebaly & Co., on behalf of the Company (who will be referred to as the "Company's representative" hereinafter).

15. Brief proceedings of the hearing of April 4, 2013 are as follows:

- a. Prior to the start of the hearing proceedings, the Company's representative handed over the undated Power of Attorney / Vakalatnama to the Commission;
- b. The said Power of Attorney / Vakalatnama was signed by Dr. Mumtaz Ahmed Hashmi, the Director of the Company, who was empowered by the Chairman of Board of Directors of the Company to appear himself, or to engage or appoint any legal practitioner to act on behalf of the Company and its Board of Directors in any legal cases, vide Circular Resolution of the Board of Directors dated January 9, 2013;
- c. The Company's representative was asked to present the stance of the Company, to which the Company's representative stated that the Company seeks apology for delaying the filing of application as required under Regulation 2(2) of the Regulations for the approval of the Commission regarding the appointment of the Chief Executive Officer of the Company;
- d. The Company's representative further indicated that it was merely an inadvertent oversight of the Company to seek approval of the Commission for the appointment of the Chief Executive Officer of the Company, which should not be treated as a grave violation for which penal actions as mentioned in the aforesaid Show Cause Notice;



- e. The Company's representative was asked as to when the Company and its Directors will adhere to the provisions of Regulation 2(2) of the Regulations and Section 12(1)(b) of the Ordinance, as they have yet not filed the application with the Commission for approval under the said Regulation;
- f. The Company's representative replied that he does not have the knowledge about that, but he will surely ask his client (i.e. the Company) to provide a discrete timeline for compliance of the same;
- g. It was then stated that even if it was an oversight on part of the Company and its Directors, the Company could have filed the application under Regulation 2(2) of the Regulations after the aforesaid Show Cause Notice was issued, but the Company and its Directors have failed to file the said application, which further indicates that the Company is not committed to ensure compliance with the provisions of the applicable laws and that the default was committed and prolonged knowingly and intentionally;

#### Consideration of Company's Submissions

16. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through Mr. Taimur Mirza of M/s Mohsin Tayebaly & Co., and have also referred to the provisions of the Ordinance and the Regulations. I am of the view that there has been an established default of Regulation 2(2) of the Regulations, and Section 12(1)(b) and Section 11(1)(f) of the Ordinance, as the Company and its Directors were required to seek approval of the Commission before appointing Dr. Mumtaz Ahmed Hashmi as the Chief Executive Officer of the Company, which the Company and its Directors have not complied with even till the date hereof, despite the fact that the Show Cause Notice in the matter was issued to the Company and its Directors on March 11, 2013.

17. 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 Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Regulation 2(2) of the Regulations and Section 12(1)(b) read with Section 11(1)(f) of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed and prolonged / continued knowingly and willfully.



### Conclusion

18. 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 Regulation 2(2) of the Regulations and Section 12(1)(b) read with Section 11(1)(f) of the Ordinance is established. Therefore, the direction under Section 63(1) of the Ordinance and / or the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and/or its Directors.

19. Sub-section (1) of Section 63 of the Ordinance state that:

*"Power of Commission to issue direction to cease entering into new contracts of insurance.- (1) The Commission may issue a direction to cease entering into new contracts of insurance if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11."*

20. Section 156 of the Ordinance states 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, 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."*

### Order

21. In exercise of the power conferred on me under Section 63(1) and Section 156 of the Ordinance, instead of directing the Company to cease entering into new contracts of insurance / takaful, I impose a fine of Rs. 1,000,000/- (Rupees One Million Only) on Dr. Mumtaz Ahmed Hashmi, Director of the Company, for not seeking the approval of the Commission prior to his appointment as the Chief Executive Officer of the Company and continuing such default till the date hereof, and I further impose a fine of Rs. 200,000/- (Rupees Two Hundred Thousand Only) on each of the remaining six Directors of the Company for not ensuring the appointment of a 'Fit and Proper' person to act as the Chief Executive Officer. The Director-wise breakup of the penalties imposed is given as follows:



S.No	Name of Director	Penalty Imposed
1	Dr. Mumtaz Ahmed Hashmi - Director	Rs. 1,000,000/-
2	Mr. Syed Tariq Hussain - Chairman	Rs. 200,000/-
3	Mr. Shafqaat Ahmed - Director	Rs. 200,000/-
4	Mr. Haseeb Ahmed - Director	Rs. 200,000/-
5	Mr. Tahir Naz Siddiqui - Director	Rs. 200,000/-
6	Mr. Ahmed Shuja Kidwai - Director	Rs. 200,000/-
7	Mr. Syed Azhar Abbas Jafri - Director	Rs. 200,000/-
<b>Total Penalty Imposed</b>		<b>Rs. 2,200,000/-</b>

22. Each of the above named Directors of *M/s. Takaful Pakistan Limited* are hereby directed to deposit their respective penalties, as imposed in the preceding Para hereof, totaling to an amount of Rs. 2,200,000/- (Rupees Two Million Two Hundred Thousand Only) 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 receipt of this Order and furnish receipted vouchers issued in the name of Commission for information and record.

23. The Company and its Directors are also directed to take immediate steps to ensure belated compliance with the provisions of Regulation 2(2) of the Regulations and Section 12(1)(b) and Section 11(1)(f) of the Ordinance by immediately seeking the approval of the Commission for the appointment of a 'Fit and Proper' person to act as the Chief Executive Officer of the Company.

24. Moreover, since the appointment of Dr. Mumtaz Ahmed Hashmi as the Chief Executive Officer of the Company is deemed void *ab initio* in terms of Regulation 2(2) of the Regulations, therefore, the Company and its Directors are hereby directed to rectify the decisions and powers of the Chief Executive Officer of the Company that have been exercised by Dr. Mumtaz Ahmed Hashmi, until the appointment of a 'Fit and Proper' person to act as the Chief Executive Officer is approved by the Commission.

25. This Order is issued without prejudice to any other action that the Commission may initiate against the Company, its Directors and / or its management in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Muhammad Asif Arif**  
Commissioner (Insurance)