



INSURANCE DIVISION  
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

*In the matter of*

Pak Kuwait Takaful Company Limited

Show Cause Notice Number ID/Enf/PKTCL/2017/9679 dated May 26, 2017  
and Issue Date:

Date of Hearing: June 23, 2017

Attended By:

1. Mr. Ijaz Ahmed  
Advocate  
(Authorized Representative)
2. Mr. Sarfraz Ahmed  
Advocate  
(Authorized Representative)

Date of Order: July 25, 2017

**ORDER**

Under Section 11(1)(e), Section 12(4), Section 12(5) read with Section 60, Section 63  
and 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 its Board of Directors for alleged contravention of Section 11(1)(e), Section 12(4), Section 12(5) read with Section 60, Section 63 and Section 156 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Board of Directors shall be referred to as the "Respondents" hereinafter.

2. Facts of the matter are that the Commission received the following complaints regarding non-payment of claims against the Company:-

- i) United Bank Limited
- ii) Mr. Umair Ahmed;
- iii) Mr. Muhammad Saeed Ahmed;
- iv) Syed Arman Ali;
- v) Mr. Saleem Chirag; and
- vi) Mr. Shaukat Ali;



3. The complaints were forwarded to the Company for their resolution. The Company, in response to three of the complaints stated as under:-

*"..... We regret to inform you that we are unable to pay the claim now because we do not have funds and as soon as we arrange the fund we will pay the claim accordingly"*

4. In view of the above, it appeared that the Company and the above named Directors have violated the provisions under Section 11(1)(e), Section 12(4) and Section 12(5) of the Ordinance.

5. Section 11(1)(e) of the Ordinance requires that:

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

*....*

*(e) the insurer is, and is likely to continue to be, able to meet its liabilities;"*

6. Section 12(4) of the Ordinance states that:

*"The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the interests of policy holders and potential policy holders."*

7. Section 12(5) of the Ordinance states that:

*"(5) The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it:*

*(a) fails to satisfy an obligation to which it is subject by virtue of this Ordinance;*

*...."*

8. Hence, the Commission initiated proceedings against the Respondents by issuance of a Show Cause Notice bearing number ID/Enf/PKTCL/2017/9679 dated May 26, 2017, thereby calling upon them to show cause as to why the directions under Section 60 and/or Section 63 of the Ordinance may not be issued and why the fine, as provided under Section 156 of the Ordinance should not be imposed for contravention of Section 11(1)(e), Section 12(4) and Section 12(5) of the Ordinance.

9. In response to the aforementioned Show Cause Notice, the Authorized Representative of the Respondents, Ijaz Ahmed & Associates, vide letter dated June 12, 2017, submitted response which is 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 11(1)(e), 12(4) and 12(5) 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 (Pvt.) 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 nominees 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 the PKTCL nor had any direct interaction with the management of the PKTCL in the ordinary course.

5. All matters relating to PKTCL's takaful activities including new takaful business, claims lodged and all other matters in relation thereto are part of the management function of the ordinary business of PKTCL. The management headed by the former chief executive officer was therefore responsible to ensure that all such functions are performed in accordance with the law and complete and accurate information is recorded in the books of the PKTCL and is also placed before the Board.

6. Non-executive directors are only involved in decision making process in respect of the matters that are brought before the Board. The Answering Respondents had accepted the management's version of the transactions in good faith and in ordinary course of business.

7. Etiqa Overseas Investment Pte. Limited Malaysia (Etiqa), a major shareholder of PKTCL, used to conduct the business and operational review of the PKTCL after every 3 to 4 years on behalf of the shareholders and Board of Directors. In November 2014, Etiqa undertook an operational review of certain processes of PKTCL. Following their review, Etiqa reported their findings annexed as Annexure A to the Board in the 50th Board meeting held on December 1, 2014. The Board concluded that based on the findings of and conclusions by the Etiqa Team, it is apparent that the management, which was in full control of the affairs of PKTCL and in particular the former chief executive officer was aware and in full control of the issues of under reserving of claims and the implications thereof and the irregularities found in the contribution register and the impact it would have on receivables, under reserving and understatement or losses and provision of liabilities. This would result in the company's inability to pay claims and reflect inaccurate cash flows in addition to portraying perilous overall company financial position. Based on this misleading information, inaccurate accounting reports were prepared for the regulators, directors and shareholders.



The Board of Directors pursuant to meeting took the following actions:

- i. appointed Chartered Accountants i.e. Ernst & Young to confidentially conduct a forensic audit to validate the findings of the Etiqa team and to come up with any other irregularities/fraud that may exist.
- ii. formed an Executive Committee comprising of certain members of the Board to oversee the forensic audit and to review and improve the policies, procedures and internal controls of the Company.
- iii. removal of CEO and COO.

8. The Executive Committee of the Board met on December 18, 2014, January 28, 2015 and March 5, 2015 and took various steps to improve the control environment and control procedures of PKTCL. These steps together with revisions in Underwriting Limit of Authorities, Claim Limit of Authorities and Cheque Signing Authorities.

9. On March 06, 2015 Ernst & Young, the independent Chartered Accountant firm, submitted its report that was deliberated by the Board of PKTCL in its meeting held on March 31, 2015. The investigation showed that certain irregularities have been committed at the behest of the then chief executive officer of PKTCL and misleading information was being submitted to the Board at his behest. The report by independent Chartered Accountants identified that contributions, receivables and related heads were overstated and claims liabilities and related accounts were under reserved. PKTCL in its revised audited accounts and the required regulatory returns for the year ended December 31, 2014 has appropriately disclosed the shortfall of solvency.

10. The Board has also taken action against those who were found responsible for misconducting the business affairs of PKTCL. Former chief executive officer was removed with effect from May 21, 2015. Chief operating officer was also removed on May 29, 2015.

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

- (i) The contents of paragraph 2 and 3 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 4 and 5 of the Show Cause Notice are matter of record and do not require any comments.
- (iii) As regards the contents of paragraph 6 of the Show Cause Notice it is respectfully submitted that the Board was never informed of irregularities



until the same was disclosed in Board meeting held on December 1, 2014 when the issue were pointed by Etiqa. As submitted above the Board has immediately taken all possible steps to ensure the true and fair conduct of business by PKTCL. It is further submitted that the PKTCL has requested the Commission vide its letter dated January 23, 2017 to allow it to withdraw its deposit with the State Bank of Pakistan. for payment to the Policy Holders against their claims. However the Commission vide its letter dated February 1, 2017 had refused PKTCL's request. PKTCL therefore has no funds to pay the claims and given the overall position of PKTCL the directors are not in a position to raise funds from any other sponsor.

The directors had also a buyer for PKTCL's business and had sought Commission's permission for this purpose vide letter dated January 6, 2016. However the Commission vide its letter dated February 26, 2016 refused to grant such permission

- (iv) As regards the contents of paragraph 7 and 8 of the Show Cause Notice, it is respectfully submitted that the PKTCL is not undertaking any new business since October 2016.
- (v) As regards the contents of paragraph 9 and 10 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 non payment of the policy holder's claims is beyond the control of the directors.

12. It is once again requested that the Commission may kindly grant permission allowing PKTCL to withdraw the deposit from State Bank of Pakistan in order to enable it to make payments to Its policy holders.

The Board has also decided to proceed with winding up of the PKTCL. PKTCL has been trying to finalize the accounts to ascertain the final position of its liabilities. However on account of irregularities by the management headed by the former chief executive office, it has become very difficult to complete this exercise.

13. We may also inform the Commission that Mr. Ahmed Nasharuddin, Mr. Tinggal Bahari have relived as directors or the PKTCL since July 1, 2017, Mr. Fahad Bader Alrushaid Albader has relived as directors of the PKTCL since April 25, 2017, and may be issued notices independently if the Commission intends to initiate any proceedings against them...."

10. The Commission, vide its notice no. ID/Enf/PKTCL/2017/9999 dated June 14, 2017, scheduled the hearing for June 22, 2017 at 11:30 am. However, on the request of the Authorized Representative, the hearing was rescheduled on June 23,





2017 at 9:00 am. The aforesaid hearing was attended by Mr. Ijaz Ahmed and Mr. Sarfraz Ahmed of M/s. Ijaz Ahmed & Associates as Authorized Representatives of the Respondents. The Authorized Representatives appeared for the hearing at SECP's Karachi Office which was connected through video link with Head Office of the Commission.

11. Brief proceeding of the hearing of July 23, 2017 are as follows;
- i. The Authorized Representative stated that the Company did not have sufficient funds to settle the liabilities and therefore, it has requested the Commission to allow withdrawal of the statutory deposit from State Bank of Pakistan (SBP);
  - ii. The Authorized Representative apprised that existing shareholders are not willing to inject more funds into the Company. Therefore, its Board of Directors has passed a resolution for voluntary liquidation of the Company;
  - iii. The Authorized Representative was of the view that the situation is beyond the control of Directors who are not responsible for the current state of affairs of the Company. He maintained that the Directors have only one option i.e. to resign from the Board of the Company;
  - iv. The Authorized Representative requested the Commission to allow the Company to achieve orderly closure of its business;
  - v. Lastly, the Authorized Representative committed that all liabilities of the Company would be ascertained and duly audited accounts would be submitted to the Commission.
12. The Company was required to continue to meet its liabilities. However, the Company admitted its failure to meet its liabilities due to insufficient funds. The Company being an insurer was required to conduct its business with due regard to the interests of its policyholders. By not settling the liabilities, it may be inferred that the business of the Company was not conducted in a sound and prudent manner.
13. The Respondents have admitted in their written response submitted to the Commission vide letter dated June 12, 2017 that former CEO of the Company was involved in overstatement of contributions, receivables and related heads while claims liabilities and related accounts were understated. The Company revised audited accounts and the required regulatory returns for the year ended December 31, 2014 and disclosed shortfall in solvency requirements. It is evident from the above that the Company's business was not conducted in a sound and prudent manner which is in contravention of Section 11(1)(e), Section 12(4) and Section 12(5) of the Ordinance.



14. The Company has stopped its underwriting/insurance business due to its inability to meet the minimum paid up capital requirement. Furthermore, as per written response of the Respondents, Board of Directors of the Company has decided to proceed with winding up of the Company. The relevant extract from the response of June 12, 2017 is reproduced hereunder:

*"...The Board has also decided to proceed with winding up of the PKTCL. PKTCL has been trying to finalize the accounts to ascertain the final position of its liabilities. However on account of irregularities by the management headed by the former chief executive office, it has become very difficult to complete this exercise...."*

15. 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 Regulation, the Ordinance and other legal references, I am of the view that the default of 11(1)(e), Section 12(4) and Section 12(5) of the Ordinance is established. Therefore, ceasing directive under Section 63(1) and fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

16. Section 63(1) of the Ordinance states 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."*

17. 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."*

18. 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 with due care, integrity and prudence i.e. the management has failed to conduct its business with due regard to the



interests of policyholders and potential policyholders. As the directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 11(1)(e), Section 12(4) and Section 12(5) of the Ordinance, therefore, it could be legitimately inferred that the default concerning sound and prudent management was committed.

19. In exercise of the power conferred on me under Section 156 of the Ordinance, I take a lenient view and do not impose penalty on to the Respondents. However, in exercise of the powers conferred on me pursuant to Section 63(1) of the Ordinance read with S.R.O. 122(I)/2016 dated February 12, 2016, I hereby direct M/s. Pak Kuwait Takaful Company Limited to cease entering into new contracts of insurance for the reasons set forth above and this direction shall have effect one month from the date of direction Further, the given direction to cease entering into new contracts of insurance shall only be revoked if the reasons for direction stated above shall have ceased to exist.

20. For the purpose of Section 63(4) of the Ordinance, statement of the reasons for the direction is provided under paras 2, 3 (failure to pay claims), 12 (failure to conduct business in sound and prudent manner), 13 (shortfall in solvency requirements) and 14 (decision of the board for voluntary winding up of the Company) of this Order.

21. In addition to the above, the Company is directed to settle all complaints/liabilities without any further delay. Furthermore, the Company is advised to ascertain its liabilities and submit audited accounts/regulatory returns for the year ended December 31, 2016 to the Commission at the earliest.

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 Chief Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Fida Hussain Samoo**  
Commissioner (Insurance)

