



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/2018/13557 Dated
February 6, 2018

Date of Hearing: March 7, 2018

Attended By:

1. Mr. M. Nasir Ali Syed
Chief Executive Officer
Pak Qatar Family Takaful Limited
2. Mr. Farrukh V. Junaidy
Consultant
3. Mr. M. Kamran Saleem
CFO & Company Secretary
Pak Qatar Family & General Takaful
Limited

Date of Order: March 16, 2018

ORDER

Under Section 67 read with Section 156 of the Insurance Ordinance, 2000.

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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 Section 67 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Ordinance to carry on the business of general takaful in Pakistan.

3. Review of the Annual Audited Accounts of the Company for the year ended December 31, 2016 revealed that 17,249,976 shares (36.59%) held by 'Mr. Said Gul & his family' were sold to Pak Qatar Investment (Pvt.) Ltd. (PQIL) without prior approval of the Commission as required under Section 67 of the Ordinance.

4. In view of the above it appeared to the Commission that the Company failed to meet the mandatory requirements of Section 67 of the Ordinance.



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5. Section 67 of the Ordinance states that:

“Approval of acquisition or transfer.- (1) Any proposed transaction for the acquisition of a shareholding of more than ten per cent. (10%) in an insurance company, or, in the case of a non-life insurer, of the whole or any part exceeding ten per cent. (measured by either the premium income or the sum of the liabilities for unearned premium and outstanding claims and the premium deficiency reserve proposed to be acquired) of the business located in Pakistan of an insurer (whether in one or a number of related transactions and whether at the same or different times) shall not proceed unless, on application by the transferor, approval is given by the Commission.

Explanation: A number of transactions shall be deemed to be related if there being more than one purchaser, those purchasers are acting together or in concert or if, in all the facts and circumstances of the case, there is such a relationship between the purchasers or such common purpose between them so that it would be reasonable to conclude that the transactions are related.

(2) The application required under sub-section (1) shall be made in such form and shall be accompanied by such documents as may be prescribed.

(3) The Commission may, within 15 days from the receipt of the application, require the applicant to submit such further documents and information as may be required for it to make an informed decision about the transaction in the interests of policy holders and shareholders and the applicant shall provide the same within a period of seven days or such later period as the applicant may in writing request.

(4) If after sixty days of the receipt of the application or the receipt of any additional material under sub-section (3), approval has not been granted or a notice given to the applicant declining approval, the Commission shall be deemed to have given its approval.

(5) Approval given or deemed to be given by the Commission under this section shall not preclude the necessity of obtaining any such approval or consent required to be obtained from the Commission under the provisions of any other applicable law”

6. Accordingly, a Show Cause Notice (SCN) No ID/Enf/PQGTL/2018/13557 Dated February 6, 2018 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.

7. Thereafter, the Respondents submitted their reply vide letter dated February 20, 2018, which is summarized hereunder:

- i. Threshold of shareholding of 10% and above under Section 67 of the Ordinance applies to the transferor. In the instant case, transfer percentage of each transferor is less than 10%.
- ii. The referred transaction is not any sale/transfer of shareholding from one party to another party rather this was only intended to corporatize the shareholding



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in the Company from the individual family members of Mr. Said Gul to their wholly owned private limited company. During the year 2016, Mr. Said Gul and his family members incorporated M/s. Pak Qatar Investment (private) Limited (PQIL) and transferred their individual shareholding (less than 10% for each transferor) to their wholly owned Company without any sale consideration.

- iii. In this case, the acquirer i.e. PQIL is a wholly owned private limited Company of the transferors and in furtherance the transferors continue to enjoy their direct and indirect controlling influence on subject shares transferred to PQIL i.e. voting rights, control, and risk and reward associated in subject shares transferred still remain vested with the transferors/sellers.
- iv. Said Gul & family members continue to remain the beneficial owners of shares of the Company, even after transfer of shares to PQIL. Therefore, this cannot be classified as 'Acquisition by other party' whereby the beneficial ownership, control, voting rights, risk and reward associated with those shares transferred still remain vested with the transferor.
- v. PQIL is wholly owned and controlled by Said Gul and family members which means that Said Gul and family members have retained the same amount of control in the Company before and after the transfer of 17,249,976 ordinary shares in the Company. It is an important fact that neither the external party is involved in the above mentioned transfer of shares, nor consideration in monetary term is involved in the transaction. Furthermore, the transfer does not violate provision of Section 67 of the Ordinance because the transfer of shares does not in any way delete the ownership of Mr. Said Gul and his family members. It is not actual transfer of ownership or control from one party to another. This is a mere change of status from individual shareholders to a company.
- vi. Intention and spirit of law under Section 67 of the Ordinance is to protect the interest of policyholders and/or shareholders of the Company, when any transaction which involves more than 10% acquisition/transfer of insurance business from one party to another, thus changing the ownership structure. In the instant case, even after transfer of shares to PQIL, Said Gul & family members remain the beneficial ownership of the said shares of the Company.
- vii. The above transaction did not involve any intention of gaining undue advantage, which could be detrimental to any policyholder/shareholder and also did not derive any monetary benefits having any adverse effect to the interest of any policyholder/shareholder. Furthermore, above mentioned transfer of shares was clearly presented in the annual accounts of the Company and PQIL for the year ended 31 December 2016 and 30 June 2017 respectively.
- viii. Our actions may not be construed to contravene the provision of Section 67 of the Ordinance as the same was done merely on the basis of honest interpretation



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on part of management, which accordingly confined us from advising the transferor (being applicant) to seek approval of your good office in this regard.

ix. If required, we are ready to reverse the transfer of the above referred shares and reinstate the Member register to the previous position before this transfer transaction took place. We assure your good office, that in future we will take additional due care to avoid any similar incurrence.

8. 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.

9. 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.

10. During the hearing, the Representatives reiterated written comments submitted by the Respondents. They maintained that Said Gul and family members have retained the control in PQIL before and after the transfer of 17,249,976 ordinary shares of the Company. They further stated that Said Gul & family members remain the beneficial ownership of subject shares of the Company and therefore the said transfer of shares did not violate provision of Section 67 of the Ordinance. The Representatives requested the Commission to take lenient view in the matter.

11. In terms of Section 67 of the Ordinance, the Company was required to seek Commission's approval for acquisition or transfer of shareholding of more than 10% in an insurance company. The record of the Commission shows that the Company has failed to obtain prior approval for acquisition/transfer of the shareholding.

12. The Company in its response has stated that Said Gul and family members have retained the control in PQIL. Furthermore, it was stated that no monetary consideration was involved and Said Gul & family members remain the beneficial owner. The response of the Company is not tenable as regardless of the arguments, documents and evidences presented by the Company, the approval for transfer/acquisition should have been sought. This can be inferred from the plain reading of Section 67 of the Ordinance that approval is required from the Commission. Thus, the interpretation on part of the Respondents for not seeking prior approval shall be construed as violation of Section 67 of the Ordinance.

13. After issuance of the SCN, however, the Company has proposed rectification measure such as to reverse the transfer of the shares and reinstate the Member register to the previous position. The Respondents have further assured that in future they will take additional due care to avoid any similar occurrence

14. 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



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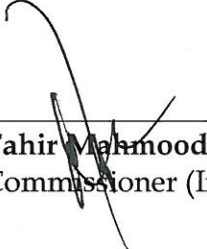
that the violations of Section 67 of the Ordinance are clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance and/or direction to cease entering into new contracts of insurance may be issued.

15. 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.”

16. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 750(I)/2017 dated August 2, 2017, I, instead of imposing the fine as provided under the said provision hereby issue a stern warning that in case of similar non-compliance in future a stronger action against the Company will be taken.

17. 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)

