



INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Pak Kuwait Takaful Company Limited

Show Cause Notice Issue Date: April 29, 2015

Date of Hearing: June 16, 2015

Attended By: Syed Wajahatullah Quadri
Chief Financial Officer
M/s. Pak Kuwait Takaful Company Ltd

Date of Order: August 3, 2015

ORDER

Under Section 36 and Section 46(6) read with Section 11(1), Section 156 and Section 158 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Pak Kuwait Takaful Company Limited (the "Company") and the chief executive and directors for alleged contravention of Section 36 and Section 46(6) read with Section 11(1) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, its chief executive and directors shall be collectively referred to as the "Respondents" hereinafter.

A. Background

2. The Company submitted its annual audited accounts and regulatory returns (hereinafter called the "financial statements") for the year ended December 31, 2013 in pursuance of the provision of Section 46(1) and Section 51(1) of the Ordinance. While reviewing the financial statements it was observed that the Company was insolvent by an amount of Rs. 31,310,673/- and that the Company filed a statement of compliance in pursuance of Section 46(6) of the Ordinance in which the Company declared to have complied with the provisions of the Ordinance and the rules made thereunder relating to solvency during the year 2013., Therefore, a Show Cause Notice (SCN) dated April 29, 2015 was issued to the Respondents, calling upon them to show cause as to why the fine as provided

Has



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under Section 156 and/or Section 158 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law. The contents of the show cause notice are reproduced below:

**SUBJECT: SHOW CAUSE NOTICE UNDER SECTION 36 AND SECTION 46(6)
READ WITH SECTION 11(1), SECTION 156 AND SECTION 158 OF THE
INSURANCE ORDINANCE, 2000**

1. WHEREAS, M/s. Pak Kuwait Takaful Company Limited (the "Company") has submitted its Annual Audited Accounts and Regulatory Returns (hereinafter called the "financial statements") for the year ended December 31, 2013 in pursuance of the provision of Section 46(1) and Section 51(1) of the Insurance Ordinance, 2000 (the "Ordinance").

2. AND WHEREAS, from the financial statements for the year ended December 31, 2013, it prima facie appears that the Company was insolvent by an amount of Rs. 31.31 millions, to be calculated as under:

Method A

Amount Prescribed by the Commission	A	125,000,000
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Method B

Gross Earned Premium	b1	526,571,971
Less: Reinsurance Expense (Up to 50%)	b2	(248,881,955)
Net Earned Premium	$B \times 5 = b1 - b2$	277,690,016
20% of the Net Earned Premium	B	55,538,003

Method C

Provision for Unearned Premium	c1	199,391,114
Provision for Outstanding Claims	c2	96,397,979
Total Provisions	$c3 = c1 + c2$	295,789,093
Less:		
Prepaid Reinsurance Premium (Up to 50%)	c4	(82,653,540)
Reinsurance Recoveries Against Outstanding Claims (Up to 50%)	c5	(51,440,984)
Total Deductions	$c6 = c4 + c5$	(134,094,524)



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Net Balance	$C \times 5 = c3 - c6$	161,694,569
20% of the Net Balance	C	32,338,914
Solvency Requirement (Greatest of Method A, B & C)	$M = \text{MAX}(A, B, C)$	125,000,000
Solvency Calculation		
Admissible Assets as per Regulatory Returns	s1	648,384,987
Less: Total Liabilities	s2	(554,695,660)
Excess Admissible Assets over Total Liabilities	$S = s1 - s2$	93,689,327
Excess / (Shortage) Over Minimum Solvency Requirement	$S - M$	(31,310,673)

3. AND WHEREAS, in terms of Section 11(1)(c) of the Ordinance, the Company is required to ensure that the provisions of the Ordinance relating to the minimum solvency are met at all times. And, the provisions relating to the minimum solvency have been laid down under Section 36 of the Ordinance.

4. AND WHEREAS, Section 11(1)(c) of the Ordinance states that:

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

...

(c) the provisions of this Ordinance relating to minimum solvency requirements are complied with;"

5. AND WHEREAS, the relevant provisions of Section 36 of the Ordinance state that:

"Insurers of non-life insurance business to have assets in excess of minimum solvency requirement.- (1) An insurer registered under this Ordinance to carry on non-life insurance business shall at all times have admissible assets in Pakistan in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement.

(2) An insurer incorporated in Pakistan and registered under this Ordinance to carry on non-life insurance shall at all times have admissible assets in excess of its liabilities of an amount greater than or equal to the minimum solvency requirement.

(3) For the purposes of this section, the minimum solvency requirement is the greatest of:

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- (a) such required minimum amount as may be prescribed by the Commission¹;
- (b) such percentage as may be prescribed by the Commission of its earned premium revenue in the preceding twelve months, net of reinsurance expense subject to a maximum deduction for reinsurance of fifty per cent of the gross figure²; and
- (c) such percentage as may be prescribed by the Commission of the sum of its liability for unexpired risk and its liability for outstanding claims, net of reinsurance subject to a maximum deduction for reinsurance in each case of fifty per cent of the gross figure³:

Provided that in the case of an insurer incorporated in a jurisdiction outside Pakistan the amounts set out in clauses (b) and (c) of this sub-section shall be calculated with reference to the earned premium revenue, unexpired risk liability and outstanding claims liability and related reinsurance balances of that insurer in respect of its insurance business in Pakistan only."

6. AND WHEREAS, it has further been observed that along with the financial statements for the year ended December 31, 2013, the Company has submitted a statement of compliance dated March 24, 2014, in pursuance of Section 46(6) of the Ordinance, whereby the Company has declared that "As at the date of the statement, the insurer continues to be in compliance with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements".

7. AND WHEREAS, in view of the preceding paras hereof, it prima facie appears that the Company has made a material misstatement willfully and knowingly, as the Company has itself disclosed under Note 25 to the financial statements for the year ended December 31, 2013 that "As at 31 December 2013, the Company has not been able to meet the solvency related requirements as required by rule".

8. AND WHEREAS, for the alleged violation of Section 36 read with Section 11(1)(c) of the Ordinance, the above-named Directors and Chief Executive Officer of the Company are liable to be penalized under Section 156 of the Ordinance, which 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, 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

¹ Rule 13(1)(b) of the Securities and Exchange Commission (Insurance) Rules, 2002 stipulates an amount of Rs. 125 million for any date on or after December 31, 2013, but before December 31, 2014.

² Rule 13(2)(a) of the Securities and Exchange Commission (Insurance) Rules, 2002 stipulates twenty percent for an insurance company registered after the commencement date.

³ Rule 13(3)(a) of the Securities and Exchange Commission (Insurance) Rules, 2002 stipulates twenty percent for an insurance company registered after the commencement date.



case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues."

9. AND WHEREAS, for the alleged willful material misstatement, the above-named Directors and Chief Executive Officer of the Company are liable to be penalized under Section 158 of the Ordinance, which 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 [17 [by the Commission]18 with fine which may extend to one million rupees."

10. NOW, THEREFORE, you are hereby called upon to show cause in writing within ten (10) days from the date of receipt of this notice as to why penalty may not be imposed upon you for contravening the provisions of Section 36 read with Section 11(1)(c) and making a willful misstatement, as aforesaid. In the event that you wish to be represented by a Representative, please ensure that the authorizing instrument (a board resolution or a power of attorney as may be appropriate) is submitted to this office along with your reply to this notice. In case you decide to opt for a hearing, you may appear in person or through a Representative. Please note that any reply submitted by a Representative without an appropriate authorizing instrument may not be taken into consideration for the purposes of the proceedings. All documents submitted by you in support of the reply must be duly authenticated. Please note that you will be liable under law for any concealment of any evidence or misstatement made in response of this show cause notice. We have video link facility available in the city in which you reside. In case you wish to avail this option please inform the undersigned in writing so that appropriate arrangements may be made in this regard.

Please acknowledge the receipt of this notice through return fax at the number provided in the letterhead.

Sd./-
Hasnat Ahmad
Director

3. The Respondents, vide their letter dated May 08, 2015, requested the Commission to extend the date for submission of written comments in response to the aforementioned show cause notice. Hence, request of the Respondents was acceded to as requested, and the Respondents vide Commission's letter no. ID/Enf/PKTCL/2015/1099 dated May 08, 2015, were allowed a further period of (10) days to submit their comments.

4. Subsequently, the Respondents vide their letter dated May 18, 2015, submitted their comments as under:

"Pak Kuwait Takaful Company Limited ("PKTCL") is the first Islamic insurance Company in Pakistan thus making PKTCL the most experienced and financially



strong Takaful operator in Pakistan. Our shareholders comprise of institutional investors of repute from all over the world. We are fully cognizant of our legal obligations and our management including the Board of Directors have developed and implemented systems to ensure that no misreporting takes place and we always look towards SECP as being insurance sector regulator for guidance and interpretation/clarification of the provisions and requirements stipulated under the Insurance Ordinance, 2000 ("IO 2000").

It is relevant to mention here that the Board of Directors of PKTCL in its meeting held on February 06, 2014, realizing that there may be solvency issue/shortfall as at December 31, 2013, resolved to inject additional capital of Rs.50m through rights issue.

The referred statement of compliance in the above cited SCN was submitted in good faith and with due care having in mind and in anticipation that the solvency shortfall would be met through the Rights Issue. There was not even an iota of doubt and intention to mislead the regulator and or the public and shareholders by PKTCL to that it was not solvent as at December 31, 2013. Had it been the intention to misstate the financial figures, PKTCL would have never disclosed the same in Note 25 of the financial statements for the year ending on December 31, 2013. This disclosure by PKTCL in itself speaks that there was no intention to misstate the facts and nothing was concealed from the public/shareholders or the regulator. The passage of financial statements by the general meeting containing the said disclosure in Note 25 proves that full disclosure was made to all, however, the statement of Compliance contained no disclosure owing to the reasons explained in the following para. It is stated here that all applicable accounting standards and regulations were followed in preparation of PKTCL financial statements for the financial year which ended on December 31, 2013. PKTCL fully realizes and appreciates the requirement of correctly reflecting the solvency position in its annual accounts and this was clearly mentioned and reflected in the financial statements prepared for the year which ended on December 31, 2013.

Moreover, PKTCL made a full disclosure in Note 7 of the Regulatory Returns wherein the Company clearly disclosed as at December 31, 2013, that it has not been able to meet the solvency requirement as required by the said Rule. Similarly, same disclosure was also made in Note 25 of the Financial Statements for the year ended 2013.

The statement under Section 46(6) was only made to ensure compliance with the Insurance Ordinance 2000 based on our understanding that since no version other than standard one as provided in Insurance Ordinance 2000 was available to PKTCL, the statement was made to ensure that all the regulatory filings and financial statements for the year ended December 31, 2013 were submitted and filed as per patterns and prescribed statements under the IO 2000 and to be compliant with all the applicable laws.

It is also stated here that subsequent to approval of accounts, notices under section 86 of the companies Ordinance were sent to all shareholders and was also filed by



PKTCL with the Securities & Exchange commission of Pakistan. The shares on offer had been fully subscribed and the subscription amount had been received in PKTCL Bank Account.

It is humbly stated that PKTCL did not have any intention of concealing the facts nor PKTCL did as clarified in the above paras, directly or indirectly or misstate any financial position/figure requirement laid down under the provisions of the IO 2000 and no intentional misstatement has been made with the objective of misleading and/or contravening any requirement of law. The subsequent injection of capital by shareholders and meeting all requirements in terms of filing and submission in itself shows intentions of PKTCL and its directors to comply with the requirements in accordance with the provisions as laid down in IO 2000. We assure SECP that, in future, we would be more careful and disclosures will be made as clarified and interpreted by SECP.

Accordingly we request you to kindly drop the proceedings on the subject SCN and PKTCL will be grateful to SECP for taking a lenient view on the basis of events and action that PKTCL took to comply with the deficient requirements."

B. Hearings

5. Thereafter, the Commission vide letter no. ID/ENF/PKTCL/2015/1254 dated June 04, 2015, scheduled a hearing for June 16, 2015 at 11:00 a.m. at the Head Office of the Commission in Islamabad to provide an opportunity of being heard to the Respondents. The hearing was attended by Syed Wajahatullah Quadri, Chief Financial Officer of the Company, who furnished a power of attorney in his favor duly accompanied by the Board's resolution authorizing him to represent the Respondents before the Commission in the instant matter.

6. Brief proceedings of the hearing of June 16, 2015 are as follows:

- i. Mr. Quadri stated that the Respondents have already submitted their contentions before the Commission vide their letter of May 18, 2015;
- ii. Mr. Quadri stated that the statement of compliance, whereby the Company declared to have complied with the provisions of the Ordinance and the rules made thereunder relating to solvency, was submitted in good faith and there was no mal intention on part of the Respondents to mislead anyone i.e. the regulator, the public as well as the shareholders of the Company. He further stated that the disclosure in Note 25 of the financial statements and Note 7 of the Regulatory Returns as on December 31, 2013, clearly disclosed that the Company has not been able to meet the minimum solvency requirements. The Board of Directors, after realizing that there may be shortfall in the solvency margin as at December 31, 2013, resolved to inject additional capital of Rs. 50 million through right issue;



- iii. Mr. Quadri further stated that statement of compliance as required under Section 46(6) of the Ordinance was only made to ensure that all the regulatory returns and financial statements for the year ended December 31, 2013 were submitted and filed as per the prescribed format under the Ordinance;
- iv. Lastly, Mr. Quadri requested to take a lenient view as the Company neither concealed the facts nor it made any misstatement in the financial statements and regulatory returns. The injection of capital by shareholders, after meeting all the requirements in terms of filing and submission, itself shows intention of the Company as well as of its directors to comply with all the provisions as laid down in the Ordinance, Rules and Regulations.

C. Issues

7. The Respondents were required to ensure compliance with the mandatory provisions of Section 36 and Section 46(6) of the Ordinance.
8. The Company made material misstatement in the statement of compliance dated March 24, 2014 by stating that all the provisions of the Ordinance and Rules relating to the paid-up capital as well as solvency have been complied with by the Company, while the solvency position of the Company as on December 31, 2013 together with the disclosure made in Note 25 of the financial statements and Note 7 of the regulatory returns for the year ended December 31, 2013 negate the same, as the Company failed to meet the minimum solvency requirements.

D. Summary of arguments and conclusions in respect of each issue

9. Through the written as well as verbal responses of the Respondents, it is quite evident that the board of directors of the Company proceeded to inject additional capital of Rs.50 million, the resolution of which was passed in the month of February 2014 i.e. after realizing that the Company has failed to meet the minimum solvency requirements as on December 31, 2013. The responses further indicated that the Company is in the process of injecting further capital in order to meet the shortfall in its solvency position as on December 31, 2014. In this regard, the Company has also applied to increase its authorized capital to Rs. 1 billion. Therefore, it is quite evident that the Company failed to meet the minimum solvency requirements as on December 31, 2013 thereby violating the mandatory provisions of Section 36 of the Ordinance.
10. The issue of misstatement in statement of compliance submitted with the annual audited financial statements for the year ended December 31, 2013 has been carefully evaluated in light of the facts and explanation provided in the matter. It is



clear that provisions of Section 46(6) of the Ordinance do not provide for an alternative in case of non-compliance with the requirements of the Ordinance and Rules made thereunder. The Company has given adequate relevant disclosures in Note 25 of the financial statements and Note 7 of the regulatory returns as on December 31, 2013 that the Company could not meet the minimum solvency requirements. Hence, the misstatement in the statement of compliance cannot be construed as willful or having mal intentions to conceal the material facts concerning insolvency of the Company as on December 31, 2013. In the absence of any clear format for reporting any non-compliance with the solvency requirements, the benefit of doubt goes in favor of the Respondents. However, the Company could have given a short footnote in the statement of compliance about this material fact i.e. the Company's failure to meet minimum solvency requirements.

E. Overall conclusion

11. 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 Section 11(1)(c) and Section 36 of the Ordinance is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Company, its chief executive and directors. However, I take a lenient view regarding misstatement made in the statement of compliance under Section 46(6) of the Ordinance, given the practical difficulty that the said provisions do not prescribe any statement to disclose any non-compliance concerning the provisions of the Ordinance and Rules made thereunder which have been covered under the said statement of compliance.

12. 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 and prudence by proactively complying with the minimum solvency requirements i.e. by taking appropriate measures (including injection of additional capital) to meet the minimum solvency requirements as laid down under the Ordinance and Rules made thereunder. As the directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 11(1)(c) and Section 36 of the Ordinance, therefore, it could be legitimately inferred that the default concerning the minimum solvency was committed.



F. Penalties and directions

13. In exercise of the power conferred on me under Section 156 of the Ordinance, I impose a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) on the Company, due to the default of Section 11(1)(c) and Section 36 of the Ordinance, as mentioned in the above paras hereof. The Respondents are further directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

14. Hence, the Company is hereby directed to deposit the applicable fine 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 date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

15. 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.

Hasnat Ahmad
Director

