



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

Pak Qatar Family Takaful Limited

Show Cause Notice Issue Date: January 2, 2013

Date of Hearing: January 28, 2013

Attended By:

1. Mr. Waqas Ahmad, Senior Manager - Operations, Pak Qatar Family Takaful Limited
2. Mr. Syed Fakher-i-Alam, Senior Manager - Operations, Pak Qatar Family Takaful Limited

Date of Order: February 26, 2013

### ORDER

(Under Section 76(1) read with Section 95 and Section 156 of the Insurance Ordinance, 2000)

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This Order shall dispose of the proceedings initiated against M/s Pak Qatar Family Takaful Limited ("the Company") for not complying with Section 76(1) read with Section 95 of the Insurance Ordinance, 2000 ("the Ordinance").

### Background Facts

2. The relevant provision of Section 76(1) of the Ordinance states that:

*"Insurer not to engage in misleading or deceptive conduct.- (1) An insurer shall not, in the course of its business as an insurer, engage in conduct that is misleading or deceptive or is likely to mislead or deceive."*

3. Section 95 of the Ordinance states that:

*"Liability of Insurer for act or omissions of agent.- (1) Every insurer shall, so far as relates to a contract of insurance entered into by the insurer through an agent, be*

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*liable to the policy holder for the acts or omissions of that agent as though that agent were an employee of the insurer, in circumstances where the policy holder has relied in good faith on the agent and as a consequence has suffered loss or damage. Liability shall be absolute and shall not be capable of being contracted out of, either in the agency agreement or on a policy, proposal or other document.*

*(2) For the purposes of this Part, any person who, for remuneration arranges insurance cover for a policy holder or intending policy holder, and who is not a registered insurance broker, shall be presumed to be the agent of the insurer in relation to any matter relating to insurance.*

*(3) The provisions of the foregoing sub-section shall not operate to limit, curtail, diminish or extinguish any liability of the insurer to which the insurer would otherwise have been subject."*

4. It was observed that Bank Islami Pakistan (the "Bank") had published an advertisement in Daily Dawn newspaper of October 27, 2012, wherein three takaful products of the Company were advertised i.e. the Wedding Plan, the Retirement Plan and the Education Plan. However, the name of the Company was not printed anywhere in the said advertisement. Resultantly, this advertisement did not suggest any role of the Company, and therefore, the advertisement was deceptive / misleading for the public at large.

5. The Commission, vide its letter no. ID/SUP/PQFT/01 14823 dated November 2, 2012, while referring to the aforesaid advertisement, stated that the Bank being a corporate agent of the Company has attempted to market three products of the Company, as aforesaid, however, the Guideline no. 4.3.1 of the Bancassurance Guidelines, 2010 states that any sales related material shall be approved by both the insurer and the bank. The letter of the Commission further stated that Guideline no. 4.3.2 and 4.3.3 of these Guidelines suggest that the insurer shall be responsible for all liabilities under a policy, and, it appeared that the aforesaid advertisement was published without taking these Guidelines and the provisions of Section 76 read with Section 95 of the Ordinance into account.

6. The Company, vide its letter dated November 15, 2012, had enclosed a copy of clarification / comments from the Bank vide their letter dated November 13, 2012, which stated that the Bank has stopped publishing this advertisement till such time they are in accordance with the Commission's Bancassurance Guidelines. The Bank further admitted that the advertisement was itself not clear as it should have been.

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7. The Bank was acting as an agent of the Company, and since, Section 95 of the Ordinance holds the insurer liable for every act and/or omissions of the agent of that particular insurer.

8. In view of the foregoing paras, it appeared that the Company has failed to comply with the afore-mentioned Sections of the Ordinance, which attract the penal provision as provided under Section 156 of the Ordinance.

#### Show Cause Notice

9. Accordingly, the Show Cause Notice was issued on January 2, 2013 under Section 76(1) read with Section 95 and Section 156 of the Ordinance to the Chief Executive and Directors of the Company, 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 Section 76(1) read with Section 95 of the Ordinance.

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

10. In response to the said Show Cause Notice, the Company, vide their letter of January 15, 2013, while referring to their email of January 10, 2013, requested the Commission to provide a hearing opportunity in the matter in order to present their stance and provide the desired clarification.

#### Hearings of the Case & Subsequent Developments

11. As requested by the Company, vide their letter of January 15, 2013, the hearing in the matter was scheduled for January 28, 2013, which was communicated to the Company via hearing notice no. ID/ENF/PQFTL/2013/15277 dated January 16, 2013.

12. The Company, vide their letter dated January 23, 2013, have nominated Mr. Waqas Ahmad, Senior Manager - Operations and Mr. Syed Fakhar-i-Alam, Senior Manager - Operations to attend the hearing in the matter, which was scheduled for January 28, 2013.

13. Accordingly, the said hearing was attended by Mr. Waqas Ahmad, Senior Manager - Operations and Mr. Syed Fakhar-i-Alam, Senior Manager - Operations (who will be referred to as the "Company's representatives" hereinafter).

14. Brief proceedings of the hearing of January 28, 2013 are as follows:

- a. The Company's representatives were asked to present the Company's contentions in the matter of the aforesaid Show Cause Notice.



- b. The Company's representatives stated that the Company still has the same views as entailed in their earlier letters in the matter. The Company, while commenting on issues raised via the Commission's letter no. ID/SUP/PQFTL/01/14823 dated November 2, 2012, vide their letter of November 15, 2012, stated that the words "Save Rs. 15,000/- pm and get Coverage of upto Rs.2,000,000/-\*" as envisaged in the advertisement of October 27, 2012 clearly talk about the coverage and not the maturity proceeds, and a sample illustration was enclosed therewith, which illustrated that if a person born on January 1, 1980 pays a contribution of Rs.15,000/- and chooses a term of 28 years, will easily get the coverage of Rs.5,040,000/-. Moreover, the word "upto" means no guarantee and "\*" refers to "Conditions apply".
- c. The Company's representatives further stated that the letter of Bank Islami Pakistan Limited dated November 13, 2012 also reveals that the Bank has stopped any further advertisements from appearing in the media until they have been edited to conform to the SECP's Bancassurance Guidelines, and that any further advertisements, as well as amended version of the said advertisement, will be sent to the Company for its approval, prior to being released to media. The Company's representatives further elaborated that prior to the sale of any product of the Company, respective brochures are shown to the potential customer / policyholder, which contain fullest details about the product and relevant details of the Company.
- d. The Company's representatives then presented the newspaper cuttings of another advertisement wherein the name of the Company was included. This advertisement was published in Daily Dawn and Daily Express newspapers of January 27, 2013.
- e. It was then indicated that the wording "Save Rs.15,000 per month and get a Coverage of up to Rs.5,000,000\*" gives an impression that if an account holder of the Bank saves Rs.15,000/- per month in his account then he will automatically be entitled to a coverage of up to Rs. 5,000,000/-, which is itself deceptive and misleading.
- f. The Company's representatives mentioned that if a person is interested in getting a cover from the Bank, then he will definitely be provided with a brochure detailing about the nature and mode of the cover, which he will be getting. Moreover, the new advertisement clearly displays the name and logo of the Company.
- g. It was then mentioned that it was the responsibility of the Company's Directors and management to educate their agents, and, in case any



deceptive / misleading information is communicated either to a single prospective client or the public at large, the Company and its Directors will be held responsible for the acts and omissions of their agents;

- h. Lastly, the Company's representatives made a commitment that a written response along with the copies of the documents, presented during the hearing, will be submitted in due course.
15. Thereafter, the Company, vide their letter dated February 4, 2013, had provided a detailed post-hearing response wherein it was stated that:

*"...2. The advertisement was published without any intention to violated SECP Guidelines. Actually the advertisement published in the newspaper was an extract from the brochure and Bank Islami published the same under the impression that brochure was already approved by SECP. However, they have taken corrective measures by stopping the advertisement immediately and assured that in future due care will be exercised.*

*3. Immediately upon noticing the advertisement the matter was taken up with Bank Islami. In parallel we also received notice from SECP. The first step taken was to stop the publication of advertisement in news paper. This can be observed from reply of Bank Islami submitted with our earlier reply that publication of advertisement was immediately stopped.*

*4. Bank Islami has published new advertisement as per the SECP Guidelines in leading news paper so that if any ambiguity was created among public from previous advertisement the same would be removed. Originals from Daily Dawn & Express were submitted in hearing*

*5. As a precautionary measure we have also issued an Email to all partner banks as a refresher to make sure observance of SECP's bancassurance guidelines..."*

16. Vide the same letter, the Company had enclosed copy of advertisements by Bank Islami in Daily Dawn, Daily Jang, Daily Express and Daily Nawaye Waqt, and also a confirmation email from Bank Islami whereby the Bank had confirmed the issuance of the amended advertisement as per the SECP's Guidelines and the Bank further undertook to follow these Guidelines in future.

17. Subsequently, the Commission, vide its letter no. ID/Enf/PQFTL/2013/15436 dated February 6, 2013, has asked the Company to disclose the total amount of contribution underwritten by the Company through Bank Islami Pakistan till the date of publication of another such advertisement in which the name of your Company was included i.e. January 27, 2013.



18. In response to the Commission's letter of February 6, 2013, the Company, vide their letter of February 7, 2013, have disclosed that a total of 149 policies, with total collected contributions of Rs. 10,357,900/-, were underwritten through Bank Islami from October 28, 2012 till January 27, 2013.

### Consideration of Company's Submissions

19. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representatives, Mr. Waqas Ahmad, Senior Manager - Operations and Mr. Syed Fakhar-i-Alam, Senior Manager - Operations), and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default of Section 76(1) read with Section 95 of the Ordinance, as Bank Islami Pakistan Limited was acting as an agent of the Company, and the Company was required to ensure that the advertisement of the Company's products, which was published by Bank Islami Pakistan Limited, should not contain any deceptive and / or misleading information.

20. 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 the Section 76(1) read with Section 95 of the Ordinance i.e. the Directors of the Company were required to ensure that all of its agents, including Bank Islami Pakistan Limited, may not publish / advertise any deceptive and / or misleading information which could deceive the public at large, therefore, it could be legitimately inferred that the default was committed.

### Conclusion

21. 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 Section 76(1) read with Section 95 of the Ordinance is established. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and/or its Directors.

22. Section 156 of the Ordinance states that:

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*"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

23. In exercise of the power conferred on me under Section 156 of the Ordinance, a fine of Rs. 800,000/- (Rupees Eight Hundred Thousand Only) is imposed onto the Company, and a fine of Rs. 200,000/- (Rupees Two Hundred Thousand Only) is imposed onto the Chief Executive Officer of the Company, based on the following grounds:

- a. that the Company and its management (especially the Chief Executive Officer) had failed to ensure compliance with the provisions of Section 76(1) read with Section 95 of the Ordinance, by not ensuring publication of advertisement by one of its agents, which does not contain any deceptive and / or misleading information; and
- b. that the deceptive / misleading advertisement has been rolling out in the media for a continuous period of 3 months i.e. from October 27, 2012 to January 26, 2013, and that the Company has underwritten 149 policies with Rs.10,357,000/- as contributions collected through Bank Islami Pakistan Limited till January 27, 2013. These policies were underwritten during the period in which misleading advertisement was being publicized in the leading newspapers.

24. M/s. Pak Qatar Family Takaful Limited and its Chief Executive Officer are hereby directed to deposit the aforesaid fine of Rs. 800,000/- (Rupees Eight Hundred Thousand Only) and Rs. 200,000/- (Rupees Two Hundred Thousand Only), respectively, totaling to an amount of Rs. 1,000,000/- (Rupees One Million 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.


25. The Company and its management are also directed to take necessary measures for properly educating their agents in respect of all the applicable laws that are relevant to arrangement of agency, and that the Company and its management should avoid publication / disclosure of any misleading and / or deceptive

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information, either by the Company itself or by any of its agents, as required by Section 76(1) of the Ordinance.

26. 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.

  
Tariq Hussain 26/02/2013.  
Director