



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Takaful Pakistan Limited

Show Cause Notice Issue Date: February 13, 2013
Date of Hearing: April 4, 2013
Attended By: Mr. Taimur Mirza
Advocate / Legal Counsel
M/s Mohsin Tayebaly & Co.
Date of Order: May 15, 2013

ORDER

(Under Section 54 Read with Section 156 of the Insurance Ordinance, 2000)

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This Order shall dispose of the proceedings initiated against M/s Takaful Pakistan Limited ("the Company") for not complying with the provisions of Section 54 of the Insurance Ordinance, 2000 (the "Ordinance").

Background Facts

2. The provisions of Section 54 of the Ordinance state that:

"Abstract of proceedings of general meetings.- Every insurer, being a company or body corporate incorporated under any law for the time being in force in Pakistan, shall furnish to the Commission a certified copy of the minutes of the proceedings of every general meeting as entered in the Minutes Book of the insurer within thirty days from the holding of the meeting to which it relates."

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3. It appeared that the Company has not submitted the extracts of the Annual General Meeting for the year 2011, as required under Section 54 of the Ordinance.
4. In view of the above, it appeared that the Company had contravened the provisions of Section 54 of the Ordinance, which attract penal action against the Company as provided under Section 156 of the Ordinance.

Show Cause Notice

5. Accordingly, the Show Cause Notice was issued on February 13, 2013 under Section 54 read with 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 54 of the Ordinance.

Company's Response to the Show Cause Notice

6. In response to the said Show Cause Notice, the Company through M/s Mohsin Tayebaly & Co., vide their letter no. IM894/TKPL/03/04/412/13 dated February 27, 2013, stated that:

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

1. *That as per Section 158 of the Companies Ordinance, 1984 our Client held its annual general meeting on 27.04.2012, within the prescribed period from the close of its financial year, occurring on 31.12.2011.*
2. *That vide letter dated 30.04.2013, our Client has already provided the Commission with certified copies of the minutes of the extracts of said annual general meeting along with all necessary documents within the period prescribed under Section 54 of the Insurance Ordinance, 2000 (the "Ordinance"), which had been received by the Commission. Nonetheless, a copy of the said letter along with the necessary documents has been attached herewith and marked as Annexure A for your convenience.*
3. *In view of the above, there has been no contravention of Section 54 of the Ordinance and hence the provisions of Section 156 of the Ordinance are not applicable. The Commission is therefore requested to kindly withdraw the Notice and issue the finding that our Client has not committed the contraventions alleged in the Notice.*
4. *Without prejudice to the above, it is also submitted that our Client would be willing to appear before the Commission through us in order to put forth its defense to the*

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allegations raise in the Notice against it and also produce further documents in support of its defense at such hearing if the same is deemed necessary."

7. The annexure to the above quoted reply of the Company (through M/s Mohsin Tayebaly & Co.) reveals that the Company had sent the minutes of the 6th Annual General Meeting, which was held on April 27, 2012, vide the Company's letter dated April 30, 2012, which was received by the Company Registration Office - Karachi on the same day.

8. However, on the perusal of the minutes of the 6th Annual General Meeting, which was held on April 27, 2012, it appears that the said minutes were signed by the Mr. Muhammad Irfan, Acting Company Secretary of the Company, which is contrary to the provisions of Section 173(2) of the Companies Ordinance, 1984, which states that:

"Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the succeeding meeting, shall be evidence of the proceedings."

9. The provisions of Section 54 of the Ordinance require that a certified copy of the minutes of the general meetings be forwarded to the Commission as they have been entered in the minutes book, and the provisions of Section 173 of the Companies Ordinance, 1984 tell us as to how the minutes be recorded in the minutes book.

10. Furthermore, the Ordinance under Section 2(xiii) lays down the definition of the word "Commission" as:

"'Commission' means the Securities and Exchange Commission of Pakistan constituted under section 3 of the SECP Act;"

11. And, the Commission has been empowered under Section 20(2) of the SECP Act, 1997 to structure itself into divisions, wings or such other sub-divisions in order to perform its functions and to exercise its powers efficiently, in pursuance of which, the Commission had formed the Insurance Division to discharge its duties, perform its functions and to exercise its powers, relating to the insurance / takaful sector, as provided subsequently under Section 20 the SECP Act, 1997.

12. Accordingly, the Company was required to file a certified copy of the aforementioned minutes of the Annual General Meeting of April 27, 2012 with the Insurance Division in order to ensure compliance with the provisions of Section 54 of the Ordinance, which has not been done by the Company.

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Hearing of the Case & Subsequent Developments

13. As the Company, through M/s Mohsin Tayebaly & Co., had requested for a hearing in the matter, vide their reply to the aforesaid Show Cause Notice, as quoted hereinabove, the Commission had initially scheduled the hearing in the matter for March 15, 2013 at 12:00 p.m., which was communicated to the Company via the Commission's hearing notice no. ID/Enf/TPL/2013/15852 dated March 8, 2013. However, the Company, through M/s Mohsin Tayebaly & Co. vide their letter no. IM894/TKPL/01/485/2013 dated March 14, 2013 requested the Commission to adjourn the hearing with at least 10 to 15 days' notice.
14. Accordingly, the Commission had rescheduled the hearing in the matter for April 4, 2013 at 11:00 a.m., which was communicated to the Company via the Commission's hearing notice no. ID/Enf/TPL/2013/16110 dated March 22, 2013.
15. Accordingly, the said hearing, which was held on April 4, 2013 at 11:00 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).
16. Brief proceedings of the hearing of April 4, 2013 are as follows:
- Prior to the start of the hearing proceedings, the Company's representative handed over the undated Power of Attorney / Vakalatnama to the Commission;
 - 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;
 - The Company's representative was asked to present the stance of the Company, to which the Company's representative stated that the Company had filed the minutes of the Annual General Meeting of April 27, 2012 on April 30, 2012 with the Registrar of Companies at Companies Registration Office - Karachi;
 - On making a clarification to the Company's representative on filing of the minutes with the Commission, the Company's representative argued that the Companies Registration Office - Karachi is a part of the Commission, and thus, the Company has not contravened the provisions of Section 54 of the Ordinance;



- e. The Company's representative further argued that the matter has to be judged on the basis that the Companies Registration Office – Karachi is part of the Commission;
- f. It was then clarified to the Company's representative that even if the Commission considers that the Company has not contravened the provisions of Section 54 of the Ordinance to extent of the filing of the minutes of the Annual General Meeting of April 27, 2012, the minutes so filed do not conform to the requirements of the provisions of Section 54 of the Ordinance and those of Section 173 of the Companies Ordinance, 1984, as certified copy of these minutes were required to be filed.

Consideration of Company's Submissions

17. 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. I am of the view that there has been an established default of Section 54 of the Ordinance, as the Company and its Directors were required to file certified copy of the minutes of the Annual General Meeting, which was held on April 27, 2012, with the Commission, as they have been recorded / entered in the minutes' book.

18. 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 Section 54 of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

Conclusion

19. 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 54 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.

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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 156 of the Ordinance, instead of imposing maximum penalty onto the Company and / or its Directors, I take a lenient view, and thus, condone the Company due to the fact that the Company had inadvertently filed the minutes of the Annual General Meeting, which was held on April 27, 2012, with the Companies Registration Office - Karachi instead of filing them with the Commission (i.e. the Insurance Division), and that the effect of such contravention has not adversely affected the Company's policyholders and its shareholders.

However, the Company is hereby issued a stern warning that in case of similar non-compliance in future a stronger action against the Company will be taken.

22. 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.

Tariq Hussain
Director