



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

Pak Qatar General Takaful Limited

Show Cause Notice Issue Date: January 28, 2013

Date of Hearing: May 17, 2013

Attended By:

1. Mr. Najmullah Khan  
Chief Operating Officer  
Pak Qatar General Takaful Limited; and
2. Mr. Muhammad Shakir Siddiqui  
Shariah Compliance Officer  
Pak Qatar General Takaful Limited.

Date of Order: June 28, 2013

**ORDER**

(Under Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Pak Qatar General Takaful Limited ("the Company") for not complying with the principles of Islamic Shariah, thereby violating the definition of "takaful" business as laid down under Section 2(ixiv) of the Insurance Ordinance, 2000 (the "Ordinance").

**Background Facts**

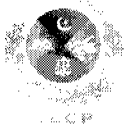
2. Takaful is a scheme of mutual assistance to the participants in case of occurrence of certain contingencies and the participants mutually agree to contribute to the common fund for this purpose, in compliance of the principles of Shariah. So, the prime objective of a Takaful Operator is to conduct Takaful Business based on the principles of Islamic Shariah.

SECURITIES & EXCHANGE  
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2  
4th Floor, Wallace Road, Karachi, Pakistan

Tel: +92-21-32461053, +92-21-32465469 Fax: +92-21-32423248 Web: www.secp.gov.pk

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3. Takaful has been defined under Section 2(lxiv) of the Ordinance, which states that:

““Takaful” means a scheme based on mutual assistance in compliance with the provisions of Islamic shariah, and which provides for mutual financial aid and assistance to the participants in case of occurrence of certain contingencies and whereby the participants mutually agree to contribute to the common fund for that purpose;” (Underlined to put emphasis)

4. Rule 26 of the Takaful Rules, 2012 (the “Rules of 2012”) requires that each operator shall appoint a Shariah Advisor who shall be responsible for the approval of the following:

- (a) Products including all related documentation;
- (b) Participants’ Takaful Fund policy;
- (c) Investment policy;
- (d) Re-takaful arrangements; and
- (e) Distribution of surplus to the participants.

Rule 26 of the Rules of 2012 further requires that the Shariah Advisor shall ensure adherence to the conditions specified by the Commission upon advice of the Shariah Advisory Board on all matters.

Similarly, the repealed Takaful Rules, 2005 (the “repealed Rules of 2005”) required that the Shariah Board shall formulated all operational practices. As Rule 34 of the repealed Rules of 2005 required that:

*“Shariah Board.-(1) Each Takaful operator shall appoint a Shariah Board (SB) of not less than three members which shall be responsible for the approval of products, documentation as well as approval of all operational practices and investment of funds which shall be filed with the Commission.”*

5. In this regard, the Shariah Guidelines formulated and issued by the Shariah Supervisory Board (SSB) of the general takaful operators have allowed the co-takaful arrangements with conventional insurers subject to various conditions. These guidelines required that in the case of co-takaful arrangements with conventional insurers, the respective operator shall be required to pay its own share of claim directly to the client / participant / policyholder as well as receive its share of contribution directly from the client / participants / policyholder. This means that the Company was not allowed to receive contributions and settle claims through conventional insurers.



6. Moreover, the Company's Shariah Board has also prescribed the Shariah Guidelines for the Company regarding Co-Takaful arrangements with the conventional insurers. Clause 7 of these Shariah Guidelines state that:

*"The contribution cheque received from the participant for the coverage share should be issued in the name of the takaful company, whether the takaful company is the leader or the follower."*

7. In this regard, the Company was advised to provide detail of the amount of premium collected by conventional insurance companies and paid to the Company vide letter of this office dated August 24, 2012. It is evident from the detail provided by the Company that the conventional insurance companies have been collecting premium on behalf of the the Company, which appeared to be in contravention of the Shariah Guidelines provided by the Shariah Board to the Company. The Company has further submitted the following information regarding the collection of contributions from the insurance companies in respect of co-takaful arrangements:

Name of the Insurance Company	Year		
	2009	2010	2011
Adamjee Insurance Company	56,935	143,095	16,875
Crescent Star Insurance Company Limited	176,341	-	-
Century Insurance Company Limited	-	-	-
Habib Insurance Company Limited	-	-	-
EFU General Insurance Limited	2,400,916	3,031,814	4,193,950
IGI Insurance Limited	148,533	542,221	262,746
Jubilee General Insurance Company Limited	495,365	471,175	37,331
Reliance Insurance Company Limited	-	-	-
UBL Insurers Limited	-	2,345	-
Universal Insurance Company Limited	-	-	-
Premier Insurance Limited	-	-	-
<b>GRAND TOTAL</b>	<b>3,278,090</b>	<b>4,190,650</b>	<b>4,510,902</b>

By looking at this, it was observed that the Company has violated the Shariah Guidelines relating to co-takaful arrangements with the conventional insurers.

8. In view of the above, it appeared that the Company has violated the basic idea and definition of Takaful scheme by acting against the principles of Shariah, as laid down under the guidelines formulated and issued by the Shariah Supervisory Board, which is detrimental to the interests of the participants of the takaful fund, and hence, attracts penal action against the Company as provided under Section 156 of the Ordinance.

*Ali*



**Show Cause Notice**

9. Accordingly, the Show Cause Notice was issued on January 28, 2013 under 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 the principles of Islamic Shariah as envisaged in the Shariah Guidelines issued by the Shariah Supervisory Board of the general takaful operators, which, as of now, acts as a benchmark for adherence to the principles of Islamic Shariah, in terms of Section 2(ixiv) of the Ordinance.

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

10. In response to the said Show Cause Notice, the Company, vide its letter dated February 11, 2013, stated that:

*"...In this connection, we would like to draw your kind attention to Clause 2 of the Shariah Guidelines which states that:*

*"Allocation of the coverage share must be by the prospect, not from any Insurance Company."*

*As per the above clause the company is obligated to ensure that the client/prospect has full knowledge about the respective coverage under Co-Takaful arrangement.*

*Clause 7 of the Pak Qatar General Takaful Shariah guidelines was just to ensure the above mentioned clause 2, and there are instances where the Company received its contribution share directly from the prospect. However, there are also cases wherein the contribution cheque was received in the name of leader as per market practice. Please note that it is also understood and mentioned in the Shariah Guidelines that the leader acts in the capacity of Wakeel for other follower in the Co-Insurance/Co-Takaful arrangement to make necessary processes easier for the client such as collection of contribution, surveying of property and issuance of claims etc. In view we understand that it is permissible for a company to receive contribution in either of method discussed above..."*

11. In the above-quoted reply of the Company, the Company believes that the leader (whether a conventional insurer or a takaful operator) acts as a "Wakeel" in co-insurance / co-takaful arrangement, and that the Shariah Advisors of the Company had included Clause 7 in their Shariah Guidelines just to ensure that the participant / client / policyholder has full knowledge about the takaful coverage, in terms of Clause 2 thereof.



12. The Company has further shown concerns that it is a generally accepted market practice that the leader of the co-insurance / co-takaful arrangement receives premiums / contribution and settles / pays the claims, and accordingly, the Company believes that this market practice is permissible under the Company's Shariah Guidelines.

13. However, it is for sure that if the Shariah Scholars have prescribed any condition in respect of co-insurance / co-takaful arrangements where a takaful operator has to deal with a conventional insurer, then the same should have been followed in letter and spirit so as to ensure 100 percent adherence to the principles of Islamic Shariah, in pursuance of the basic idea and definition of the takaful business.

### Hearings of the Case & Subsequent Developments

14. Although, the Company had not requested for hearing in the matter, the Commission, on its own motion, had scheduled the hearing in the matter for March 26, 2013 at 2:30 p.m., which was communicated to the Company via the Commission's hearing notices no. ID/Enf/Pak-Qatar General/2013/15867 dated March 12, 2013.

15. The Company, vide its letter dated March 25, 2013, had requested the Commission to adjourn the hearing till the middle of April 2013, as the matter has been under discussion before the Company's Shariah Board.

16. Thereafter, in order to provide a hearing opportunity to the Company, the Commission had rescheduled the hearing in the matter for April 15, 2013 at 11:00 a.m., which was communicated to the Company via the Commission's hearing notice no. ID/ENF/Pak-Qatar General/2013/16157 dated March 29, 2013.

17. However, no one appeared to represent the Company for the hearing in the matter, which was scheduled for April 15, 2013 at 11:00 a.m. However, the Company, vide its letter dated April 29, 2013, had regretted for not appearing for the said hearing in the matter, and thereby requested the Commission to reschedule the hearing.

18. Therefore, in order to provide another hearing opportunity to the Company, the Commission had again rescheduled the hearing in the matter for May 17, 2013 at 10:30 a.m., which was communicated to the Company via the Commission's hearing notice no. ID/ENF/Pak-Qatar General/2013/16463 dated May 2, 2013.

19. Accordingly, the said hearing was attended by Mr. Najmullah Khan, Chief Operating Officer of the Company and Mr. Muhammad Shakir Siddiqui, Shariah Compliance Officer of the Company (who will be referred to as the "Company's representatives" hereinafter).



20. Brief proceedings of the hearing of May 17, 2013 are as follows:

- a. Prior to the start of the hearing proceedings, the Company's representatives handed over the Power of Attorney to the Commission, whereby both the Company's representatives were authorized to appear before the Commission in order to present the Company's viewpoint in relation to the aforesaid Show Cause Notice;
- b. The Company's representative was asked to present the stance of the Company, on which the Company's representatives stated that their Shariah Board had deliberated over the issue raised in the Show Cause Notice of January 28, 2013, and they have prepared a comprehensive reply for presentation before the Commission, which was then handed over to the competent authority, which stated as follows:

*"We were approached by the management of Pak Qatar General Takaful in connection with show cause notes issued by SECP. Further we examined the reply of the management. Apparently, it is a violation of the given Shariah guidelines. The details of which are as hereunder:*

*We acknowledge and endorse that the clause 2 as well as clause 7 of the said guidelines have a significant and momentous role in Co-Takaful business, but the fact to be told that actually disputed Clause 7 of the aforementioned guidelines was just to insure the clause 2 of the Guidelines. This assurance is utmost necessary to avoid facultative arrangement with conventional companies. So it would be considered necessary for the company to obtain letter of coverage share from the prospect/ participant. Furthermore, as a substitute of aforesaid coverage letter, below mentioned mode of confirmation are also acceptable:*

- Confirmation of the Takaful share by the participant
- Via email
- Contribution check in the name of Takaful company
- Claim disbursement direct to the participant
- Any other reply from the participant to conventional leader which express his willingness towards Takaful share, etc.

*Additionally, the said guidelines expressed that the leader acts in the capacity of wakeel for other following companies, if a conventional company collected contribution/premium on behalf of the Takaful company from the participant/client, it would not be considered such a violation which leads to any non compliance, yes, ideally this should be according to the given guidelines."*

*He;*



- c. The Company's representatives further stated that their Shariah Board have an opinion that the Company has violated the Shariah Guidelines but no non-compliance is there, and they have further prepared the new guideline to cater this area;
- d. The Company's representatives then stated that the Company is now fully compliance with respect to the Shariah Guidelines, and assured that the Company shall adhere to the Shariah Guidelines in future;
- e. The Company's representatives were then asked to provide evidence of compliance with the Shariah Guidelines within 15 days from the date of hearing;
- f. Lastly, the Company's representatives prayed to the Commission that the violation may please be condoned.

21. Thereafter, the Company, vide its letter dated May 28, 2013, stated that:

*"...we would like to confirm as follows:*

- *For all future cases, we have put systems in place and issued internal guideline for strict compliance of our Shariah Advisory Board instructions; Copies of the same are being enclosed for your records and files (Annex A).*
- *As regards the existing cases we have taken measures to adhere the said guidelines. To substantiate our commitment to the cause, we hereby enclose a list of participants (Annex B) wherein we have been receiving payments directly from the participants and the proof thereof can be provided if desired. Further we have recently returned a cheque to Leader Company, and a letter directly addressed to the client (Annex C) requesting them for issuance of cheque for our respective participation in our favour.*
- *As you can appreciate some Follower cases have already been closed and hence these stand completed in our files.*
- *There are some Follower cases on our files which were taken under the lead of conventional insurers, before issuance of Shariah Guideline. Therefore these practically do not attract compliance.*

*However your offices can be assured that all future Follower business under the lead of conventional insurers will be written as per the guidelines issued by our Shariah Advisory Board..."*

*As:*



22. The annexure to the above-quoted letter of the Company appeared to be in order as mentioned in the said letter.

### Consideration of Company's Submissions

23. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representatives, Mr. Najmullah Khan, Chief Operating Officer of the Company and Mr. Muhammad Shakir Siddiqui, Shariah Compliance Officer of the Company, and have also referred to the provisions of the Ordinance and facts of the case. I am of the view that there has been an established default of the Shariah Guidelines, issued by the Shariah Supervisory Board of the general takaful operators and those issued by the Shariah Advisory Board of the Company read with Section 2(lxiv) of the Ordinance i.e. the idea and definition of the takaful business. However, the Company has taken measures to ensure adherence to the Shariah Guidelines, as mentioned hereinabove.

24. Moreover, before proceeding further, I find it relevant to discuss that the Company should at all times comply with the principles of Shariah, which is the most integral part of the Takaful business in terms of Section 2(lxiv) of the Ordinance.

### Conclusion

25. 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 2(lxiv) of the Ordinance was there. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and/or its Directors.

26. 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."*

*Ali*





**Order**

27. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact:

- a. THAT the Company's management has adopted the required procedures to ensure adherence to the Shariah Guidelines issued by the Shariah Supervisory Board of the general takaful operators, and those of the Shariah Advisors of the Company; and
- b. THAT the Company has introduced certain in-built systems to ensure such compliance in future.

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

28. 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**  
Director