



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

Pak Kuwait Takaful Company Limited

Show Cause Notice Issue Date: February 26, 2014

Date of Hearings: May 28, 2014

Attended By: Mr. Syed Wajahatullah Quadri (Chief Financial Officer)  
Mr. Aziz Kapadia, (Company Secretary)

Date of Order: July 21, 2014

**ORDER**

(Under Section 180 read with Circular No. 3 of 2006 and Section 186 of the Companies Ordinance, 1984)

.....

This Order shall dispose of the proceedings initiated against directors of M/s Pak Kuwait Takaful Company Limited and others (herein referred to as "the Respondent") for not complying with the provision of Section 180 read with Circular No. 3 of 2006 and Section 186 of the Companies Ordinance, 1984 ("the Ordinance").

**Background Facts**

2. M/s Pak Kuwait Takaful Company Limited ("the Company") is a public limited company, incorporated under the Companies Ordinance, 1984 ("the Ordinance").
3. The relevant provisions of Section 180 of the Companies Ordinance, 1984 (the "Ordinance") state that:

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*“Term of office of directors.- (1) A director elected under section 178 holding office for a period of three years unless he earlier resigns, becomes disqualified from being a director or otherwise ceases to hold office.*

*(2) Any casual vacancy occurring among the directors may be filled up by the directors and the person so appointed shall hold office for the remainder of the term of the director in whose place he is appointed.”*

4. The Circular No. 3 of 2006 dated February 10, 2006 state that:

*“.....the companies are directed to hold the election of directors immediately on expiry of the term of three years in an annual or extra ordinary meeting as the circumstances may warrant.”*

5. As per the record of this office the last election of Directors of the Company were held on June 27, 2010 which infer that the Company’s election of directors held on June 3, 2013 were held prior to the expiry of the term of the existing directors. In this regard, your attention is invited towards Circular No. 3 of 2006 dated February 10, 2006 which directs the companies to hold the election of directors immediately after expiry of the term of three years.

6. In response of the query raised by the Supervision wing of the Insurance Division, the Company replied that the extra ordinary general meeting was held on June 3, 2013 before the expiry of the term as the term of directors was ending on June 26, 2013 which happened to be the middle of the summer vacations. A lot of representatives of the Shareholders who were given the Proxy to participate in the Extra Ordinary General Meeting (“EOGM”) were due for holidays and this is the only reason why the elections were held in advance.

7. The Company response was reveals that the Company violates the section 180 of the Companies Ordinance, 1984 and Circular no. 3 of 2006.

8. In view of the abovementioned facts, it appeared that the Respondent have failed to ensure compliance with the provisions of Section 180 of the Ordinance AND Circular no. 3 of 2006, for which the Company and all the responsible persons can be penalized under Section 186 of the Ordinance.

#### Show Cause Notice

9. Accordingly, the Show Cause Notice was issued on February 26, 2014 under Section 180 read with Circular No. of 2006 and Section 186 of the Ordinance to the Chief Executive and Directors and the Company Secretary, calling upon them to show cause as to why the penalty, as provided under Section 186 of the Ordinance, should

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not be imposed upon them for not complying with provisions of Section 180 of the Ordinance and Circular No. 3 Of 2006.

Company's Response to the Show Cause Notice

10. The Company vides its letter dated March 12, 2014, submitted reply to the Show Cause Notice, whereby they had stated that:

*".....the recent election of directors of Pak-Kuwait Takaful Company Limited has been carried out in accordance with the applicable provisions of Companies Ordinance, 1984. All relevant sections of the Ordinance have been complied with and the elections of Directors are valid.*

*.....the shareholders of Pak-Kuwait Takaful Company Limited comprise of International Investors from all over the world.....*

*Majority of our shareholders are foreign companies. The Pakistani shareholders are also financial institutions which have foreign participation. Being an amalgamation of foreign entities it has always been our Company's practice to organize shareholders meetings keeping in mind the availability of the representative of these international companies to participate in these meetings. This is done to ensure that meetings are held at a time when majority of our shareholder's representatives can attend and participate in the decision making process involved at the shareholders meetings. Such consensus is important in taking the Company forward and has been the hallmark behind our Company's sustained growth over the years.*

*It is this sole reason of ensuring maximum participation that the election of directors were held on June 3, 2013 before the expiry of the term as the term of directors was ending on June 26, 2013 which happened to be the middle o the summer vacations. A lot of the representatives of the shareholders who were given the Proxy to participate in the Extra Ordinary General Meeting were due for holidays and this is the only reason why the elections were held in advance. Had the elections been held at a later date the representatives of shareholders would not have been able to participate which would have led to the shareholders finding it difficult to assign representatives to attend the meeting. This is the consideration which was behind the Company's decision to hold the meeting on June 3, 2013.*

*Emphasis may please be placed on the fact that all shareholders participated in the Extra Ordinary General Meeting and no confusion has been caused by the early holding of the elections. All shareholders are satisfied with the outcome of the Directors elections. The elections have not been questioned by any of our Shareholders. The Corporate Registrar has also recorded the holding of elections and no objections have been raised in respect of the statutory Form 27, Form 28 and Form 29 which have been filled in respect of the Elections of Directors.*

.....

*The intention behind holding the elections early was merely to facilitate the shareholders and to ensure full participation of the representative of all our shareholders. It should also be noted that the elections have been held in the same month in which the current term of the directors was expired...."*

*Ali;*



**Hearings of the Case & Subsequent Developments**

11. The hearing in the matter was scheduled on May 28, 2014 at 11:30 A.M., accordingly, the said hearing was attended by Mr. Syed Wajahatullah Quadri and Mr. Aziz Kapadia, the authorized representative on behalf of the Chief Executive, and Directors of the Company (herein referred to as "the Representative").
12. Brief proceedings of the hearing of May 28, 2014 are as follows:
- The Representative was asked to present the stance of the Company, to which they stated that the intent of the Company was not mala fide, and that the date of Elections was June 26<sup>th</sup> 2013 and was conducted on June 3<sup>rd</sup> 2013 in the same month and the reasons already stated in the reply dated March 12, 2014;
  - The Representative was asked whether the Company intimate the registrar of the Companies, the Representative replied that in-fact the Election was conducted earlier and we had not intimate to the registrar;
  - The Director Insurance asked whether the Company took approval of the Directors under Insurance Companies (Sound and Prudent Management) Regulation 2012 from the Commission, the Representative stated that Yes the Company took the Approval from the Commission;
  - The Representative further stated that the noncompliance was not intended and early conduct of election was to facilitate the participants and shareholders and also prayed for condone the matter as the non-compliance was not intentional and willful.

**Consideration of Company's Submissions**

13. I have carefully examined and given due consideration to the written and verbal submissions of the Company, and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default under the relevant provision of the Ordinance and Circular 3 of 2006. The Representative of the notice has also admitted this as well and showed the commitment of the Company to fulfill the requirement and will not repeat the wrong practice in future.

14. 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 over looked and failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in

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connection with the aforesaid statutory requirement of the Section 180 of the Ordinance i.e. the Directors of the Company were required to follow the laws in letter and spirit at any cost, therefore, it could be legitimately inferred that the default was committed.

### Conclusion

15. 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 180 of the Ordinance read with Circular No. 3 of 2006 is established, and to a greater extent, the Company has also accepted its default. Therefore, the penalty as provided under Section 186 of the Ordinance can be imposed on the Respondent.

16. Section 186 of the Ordinance states that:

*“Penalties. - Whoever knowingly and willfully contravenes or fails to comply with any of the provisions of sections 174 to 185 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming or continuing a director of the company for a period not exceeding three years.”*

### Order

17. In exercise of the power conferred on me under Section 186 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Respondent due to fact that the act of conducting the elections of the directors just before its expiry of three of terms of election was conducted in the same month wherein the election was due and the intention was to deceive or harm the participant of the Company and its shareholders and the representative also ensure that the provision of the Ordinance will follow in its letter and spirit.

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

18. 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