



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 68 of 2024

Pak Qatar Family Takaful Limited

..... Appellant

Versus

Director/HOD, Adjudication - I

..... Respondent

Date of Hearing:

August 06, 2025

Present:

For the Appellant:

1. Mr. Atir Aqeel Ansari, Authorized Representative
2. Mr. Muhammad Ajmal Khan
3. Mr. Faraz Hussain

For the Respondent:

1. Mr. Sohail Qadri, Director/HOD, Adjudication-I, SECP
2. Mr. Shafiq ur Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 68 of 2024 filed by Pak Qatar Family Takaful Limited (the "Appellant"), against order dated September 03, 2024 (the "Impugned Order"), passed by the Director/HOD, Adjudication-I, SECP (the "Respondent"), under Section 156 of the Insurance Ordinance, 2000 (the "Ordinance"), read with Section 35(7) of the Ordinance and Rule 16 of the Insurance Rules, 2017 (the "Rules").
2. Brief facts of the case are that during the examination of the Appellant's annual audited regulatory returns for the year ended December 31, 2022, the Securities and Exchange Commission of Pakistan (the "Commission") observed certain contraventions of the statutory investment requirements prescribed under the Ordinance and the Rules. The Appellant was found to be non-compliant with the provisions of Section 35(7) of the Ordinance read with Rule 16 of the Rules. Specifically, the Appellant failed to invest 30% of the assets of its 'Group Health Takaful Fund' in government securities, and a further 10% thereof in a combination of government securities and other approved securities.



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Furthermore, the Appellant failed to comply with the corresponding investment requirement of 10% in respect of the assets of its 'Shareholders Fund', which was also found deficient. As per the disclosed figures for the financial year 2022, the percentage of assets invested in government and approved securities stood at 0.00% for the Statutory Fund (Group Health Takaful Fund) and 38.30% for the Shareholders' Fund, both falling short of the statutory requirements. Subsequently, as of September 30, 2023, the Appellant's compliance remained deficient, with the Group Health Takaful Fund still reflecting 0.00% investment in government or approved securities, and the Shareholders' Fund reflecting 39.34%. The Appellant, in its reply dated March 07, 2024, asserted that the Shareholders' Fund investment had increased to 42.20% upon exclusion of Right-of-Use assets, citing SRO 1012(I)/2022 dated July 05, 2022. Nevertheless, no investment had been made in respect of the Group Health Takaful Fund.

3. Pursuant to the initial observations, the Respondent issued a letter dated February 07, 2024 seeking an explanation, followed by issuance of the Show-Cause Notice dated April 23, 2024 (the "SCN"). The Appellant responded through written submissions dated March 07, 2024 and June 26, 2024. Hearing in the matter was held on June 11, 2024. The Respondent concluded that the Appellant had contravened Section 35(7) of the Ordinance read with Rule 16 of the Rules in respect of both Financial Year 2022, and accordingly imposed a penalty of Rs. 300,000/- (Rupees Three Hundred Thousand only) under Section 156 of the Ordinance.
4. The arguments put forth by the Appellant are summarized below:
 - i) The Impugned Order has been passed in departure from the language and intent of Section 35(7) of the Ordinance and Rule 16 of the Rules, and is thus legally unsustainable.
 - ii) The Respondent has erred in interpreting the provision, that the investment in government securities were to be made in the Shareholders' Fund as well as the Statutory Fund(s).
 - iii) Section 35(7), as well as Rule 16, use the term "or" when referring to the investment obligations which implies that the insurer has a choice whether to make these investments from the Statutory Fund(s) or the Shareholders Fund.
 - iv) The Appellate Bench's decision in **Appeal No. 65 of 2019** titled "**Dawood Family Takaful Limited Vs Director (Insurance-Enforcement), SECP**" supports this contention.
 - v) The Respondent's interpretation effectively substitutes "or" with "and," thereby imposing a dual compliance burden which is not correct. Such an interpretation, if accepted, would result in impracticable outcomes, particularly for newly incorporated



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insurance companies, which would be compelled to block up to 40% of their paid-up capital in government securities from inception, even before any policyholder liabilities arise, thereby defeating the economic viability of insurance operations.

- vi) The requirement to invest in government securities is intended to safeguard the interest of policyholders, not to impose mechanical financial restrictions. The legislature was mindful that Shareholders' Funds must be deployed towards essential operational expenditures such as procurement of immovable property, office infrastructure, and equipment, and therefore allowed discretion to insurers to meet the investment ratio from either of the funds.
- vii) The term "assets" used in Section 35(7) refers only to "investible assets," and cannot be extended to include non-investible or accounting assets such as receivables, deferred tax assets, right-of-use assets, prepayments, and accrued income, which are not readily available for investment. The Appellant contended that it cannot be penalized for failure to invest in respect of assets over which it has no actual control or possession. Upon appropriate exclusion of inadmissible assets such as receivables and right-of-use assets, the Shareholders' Fund of the Appellant was compliant with the 40% investment requirement.
- viii) Compliance in one fund i.e., the Shareholders' Fund should suffice for purposes of Section 35(7), particularly when the Group Health Takaful Fund has higher liquidity requirements due to high frequency of claims and it is impractical to invest the assets of this Fund.
- ix) The treatment of health-related takaful products should be uniform across life, which are currently required to invest 40% of their assets in government and other approved securities, and non-life takaful operators, which are currently not required to invest a portion of their assets in government and approved securities, especially as both types offer health cover on an annual basis and are similarly subject to solvency requirements.
- x) Even if a technical non-compliance is presumed, the case warranted a lenient view in light of the genuine constraints and the absence of *mala fide* intent.
- xi) The Impugned Order be set aside and the penalty imposed therein be vacated. It may be declared that the Respondent has wrongfully construed the word "or" as "and" in Section 35(7) of the Ordinance and that the term "assets" as used in Section 35(7) be interpreted to mean only "investible assets" and "admissible assets" as referred to in Section 35(1) of the Ordinance.



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5. The arguments put forth by the Respondent are summarized below:

- i) The Impugned Order does not suffer from any misreading or misapplication of Section 35(7) of the Ordinance, or Rule 16 of the Rules. The use of the conjunction "or" in the said provisions does not confer an option upon insurers to comply with investment requirements in either the Shareholders' Fund or the Statutory Fund. Rather, the legislative intent was to apply the prescribed investment percentages of 30% in government securities and a further 10% in government and other approved securities to the relevant funds regardless of whether the fund is a Shareholders' Fund or a Statutory Fund.
- ii) The Appellant's failure to make the required investments in respect of the Statutory Group Health Takaful Fund for the year ending December 31, 2022, amounted to a clear contravention of Section 35(7) of the Ordinance read with Rule 16 of the Rules. It was emphasized that in terms of Sections 14 and 17(3) and (4) of the Ordinance, all claims under policies must be settled from the Statutory fund, with the Shareholders' Fund acting merely as back-up or a backstopping arrangement in case the assets of the Statutory Fund fall short of its liabilities.
- iii) The Appellant's argument regarding investible versus non-investible assets was legally misconceived, as the law does not distinguish between types of assets for purposes of investment compliance. It is the insurer's responsibility to ensure that its asset structure enables both the timely settlement of claims and adherence to investment thresholds.
- iv) Under Section 32(2)(h) of the Ordinance, receivables such as 'Contribution due but unpaid' extending beyond three months are inadmissible for the purpose of solvency. The Appellant was obliged to collect contributions at the time of issuing policies in accordance with Rule 58 of the Insurance Rules, which prohibits issuance of a policy without premium receipt.
- v) While the Shareholders' Fund may have achieved subsequent compliance in 2023 purportedly reaching 42.20% investment when excluding right-of-use assets as per SRO 1012(I)/2022, the fact remains that as of December 31, 2022, the required investment thresholds for both funds were not fulfilled. Inadmissible assets could not be excluded for determining compliance under Section 35(7) of the Ordinance and Rule 16 of the Insurance Rules.
- vi) Although the issue of regulatory parity of life and non-life insurance business is beyond the scope of the instant appeal, it is evident that general takaful operators are also required to maintain fund-wise solvency under Rule 10(1)(k) of the Takaful Rules, 2012 ("Takaful Rules") and are obligated to support deficient funds through Qard-e-Hasna as per Rule 20(1) of the Takaful Rules.



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- vii) The case warrants no leniency, as the contravention has been established through due process and the Appellant had failed to comply with mandatory legal requirements to the detriment of policyholders' interests. Lastly, the Respondent submitted that the instant Appeal may kindly be dismissed being meritless.
6. The Bench has heard the arguments of both the parties and perused the record. The issue before the Bench is whether the use of the word "or" in Section 35(7) of the Ordinance read with Rule 16 of the Rules was correctly interpreted by the Respondent as requiring compliance with the investment thresholds for both the Shareholders' Fund and the Statutory Funds. The Bench observes that the interpretation of a legal provision should not be made in isolation from the object, purpose, and context of the law. The legislative intent behind Section 35(7) of the Ordinance is to ensure availability of less-risky and more liquid assets in the funds maintained by life insurers by mandating investment of a prescribed proportion of assets in government and other approved securities. This object would be undermined if insurers are permitted to meet the statutory investment thresholds from only one fund, thereby leaving the other fund exposed to high risk.
7. It needs to be emphasized that a minimum proportion of less-risky and more liquid assets is essential for the Statutory Fund which is maintained primarily for payment of insurance claims. Similar level of liquidity is also highly desirable in the Shareholders' Fund which may be needed to pay insurance claims (in case of shortfalls in the statutory funds) or other obligations of the insurers.
8. It is evident that the Statutory Fund is the primary/frontline arrangement to pay the insurance claims and it is important to maintain a certain proportion of less-risky and more liquid investments in this fund. As a result of the Appellant's interpretation and actions, the risk profile and the liquidity profile of the Statutory Fund have deteriorated.
9. The Bench observes that the law does not envisage any distinction between investible and non-investible assets for the purpose of determining compliance with the prescribed investment thresholds. It is, however, pertinent to note that certain categories of assets stand excluded, for the purposes of calculating the investment in government and other approved securities, by virtue of the proviso to sub-rule (2) of Rule 16 of the Rules, namely, inter-fund receivables of a Shareholders' Fund or a Statutory Fund and right-of-use assets, except right-of-use assets created against vehicles, office equipment, and intangible assets.
10. It is a settled principle of law that a decision of a Bench, while having persuasive value, does not constitute a binding precedent upon another Bench of equal strength. A similar Bench may reach a different conclusion than the earlier one, if the facts and circumstances of the case so warrant. The doctrine of binding precedent is attracted only where the judgment is rendered by a Bench of larger strength, in which case the principle of judicial discipline would mandate adherence to the said judgment.



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11. The Bench is of the view that the interpretation of the Respondent is consistent with the object and scheme of the Ordinance. The Commission's regulatory approach and the industry practice also confirm that life insurers are investing both their Shareholders' Fund and Statutory Funds in Government and other approved securities. This approach represents the correct and prudent application of the law and is aligned with its underlying purpose of protecting policyholders' interests by ensuring the financial soundness of all funds maintained by a life insurer.
12. Accordingly, the Respondent's decision is upheld in terms of its interpretation of the substantive law. However, considering that the Appellant had acted in good faith, the penalty imposed in the instant case is cancelled subject to the condition that the Appellant shall confirm that all of its funds including the Statutory Fund(s) and Shareholders' Fund are in compliance with the Respondent's decision.
13. If the Appellant fails to comply with these directions within sixty (60) days of the date of this order, the penalty shall stand restored.
14. The appeal is disposed of in the above terms with no orders as to costs.

(Abdul Rehman Warraich)
Commissioner

(Zeeshan Rehman Khattak)
Commissioner

Announced on:

01 OCT 2025