



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I Adjudication Division

*Before*

**Shahzad Afzal Khan, Director/Head of Department (Adjudication Department-I)**

*In the matter of*

### **Salaam Takaful Limited**

Show Cause Notice No. ID/Enf/SalamTakaful/2018/3533  
& Issue Date: September 26, 2023  
Date of Hearing: December 6, 2023  
Attended By: Mr. Rashid Sadiq, Legal Counsel  
(Authorised Representative)

### **ORDER**

#### **Under Section 42(2) & (4) of the Insurance Ordinance, 2000 read with SRO 771(I)/2007 dated July 30, 2007 and Section 11(1)(d) and Section 156 of the Ordinance**

This Order shall dispose of the proceedings initiated vide Show Cause Notice No. ID/Enf/Salam Takaful/2018/3533 dated September 26, 2023 (the SCN) served on Salam Takaful Limited (the Company and/or the Respondent) under Section 42(2) & (4) of the Insurance Ordinance, 2000 (the Ordinance) read with SRO 771(I)/2007 dated July 30, 2007 (SRO 771(I)/2007) and Section 11(1)(d) and Section 156 of the Ordinance.

2. Brief facts leading to this case are:

- The Company is registered under the Ordinance to undertake general takaful business in Pakistan.
- Pursuant to the provisions of Section 42(2) of the Ordinance read with SRO 771(I)/2007, every insurer is required to reinsure with Pakistan Reinsurance Company Limited (PRCL) not less than thirty-five percent (35%) of the business, which is in excess of the aggregate of; (i) the insurer's net retention; and (ii) the sum insured otherwise reinsured with PRCL or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan.
- PRCL vide letter dated June 15, 2023 and subsequently vide letter dated July 06, 2023 informed the Commission that the Company has not accepted PRCL's share participation in its following treaties for the year 2023 and disregarded the PRCL's "First Right of Refusal", which is duly recognized under SRO 771(I)/2007, despite the fact that PRCL vide email dated 22.12.2022 communicated its share acceptance to the Company:

S. No.	Type of Treaty	PRCL's share
1.	Engineering Quota Share & Surplus	25%
2.	Marine Cargo XOL	35%
3.	Misc. Accident & Bond Quota Share & Surplus	35%
4.	Whole Account XOL	35%
5.	Terrorism & Sabotage Fac. Obligatory Quota Share	35%
6.	Fire Quota Share & Surplus	Nil
7.	Motor XOL	Nil
8.	Travel Quota Share	Nil



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 2 -

- d) The relevant department of the Commission sought summary of treaty re-takaful arrangements for the year 2023 from the Company vide email dated July 12, 2023, which was provided by the Company vide email dated July 26, 2023.
- e) While reviewing the summary of treaty re-takaful arrangements for the year 2023 submitted by the Company, it was observed that the Company has failed to place thirty-five (35) percent of its business with PRCL in respect of its treaties, which, *prima facie*, constitutes contravention of Section 42(2) of the Ordinance read with SRO 771(I)/2007 and Section 11(1)(d).
- f) The Commission vide email dated August 23, 2023 advised the Company to furnish its explanation on the aforesaid observation. The Company vide email dated September 5, 2023 submitted its reply in the matter as under:

*"..... Regrettably, PRCL has conveyed their unwillingness to engage in our Re-Takaful Treaty arrangements on a non-uniform and partial basis. This stance by PRCL has exposed us to the risk of inadequate retakaful coverage, potentially jeopardizing our solvency and policyholders' interests. It's essential to note that international retakaful operators, in line with retakaful principles of equity, fairness, and anti-selection, do not participate in Retakaful Treaties on a partial or non-uniform basis.*

*..... Despite our persistent efforts to reach a mutually beneficial resolution, PRCL has remained steadfast in their refusal to consider our request for uniform participation. This divergent standpoint by PRCL is detrimental to our operational freedom and leaves us with no viable alternative but to seek adequate retakaful coverage from international retakaful operators on a 100% cession basis, without the involvement of PRCL. Partial and non-uniform placements are unfeasible in the prevailing reinsurance market conditions, and it is our fiduciary duty to safeguard our company against the risk of insolvency, which directly contradicts the interests of our valued policyholders. This course of action aligns with the mandate and responsibility entrusted to us by Section 41 of the Ordinance, as well as the principles of commercial liberty and business viability acknowledged in sub-section 7 of section 7 of the Ordinance and sub-sections (3) and (4) of section 22 of the SECP Act 1997....."*

- g) The aforesaid stance of the Company was not found to be cogent as the Company was required to offer thirty-five percent (35%) share of its treaty re-takaful business to PRCL without imposing any condition including uniform participation basis. Moreover, the Company was required accept the First Right of Refusal of PRCL in the matter without imposing any condition.
3. In view of the above, that the Company, *prima facie*, has failed to ensure compliance with the provisions of Section 42(2) of the Ordinance read with SRO 771(I)/2007 and Section 11(1)(d) of the Ordinance.
4. Contravention of Section 42(2) of the Ordinance attracts the penal provisions of Section 42(4) of the Ordinance and contravention of Section 11(1)(d) attracts penal provisions contained in Section 156 of the Ordinance.
5. Therefore, SCN was served on the Company calling upon it to show cause in writing within 14 days of the date of the SCN as to why penalty may not be imposed on it for contravening the aforesaid provisions of the law
6. The relevant provisions of the Law are reproduced as under:



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 3 -

### Section 11(1) of the Ordinance:

Conditions imposed on registered insurers. -(1) An insurer registered under this Ordinance shall at all times ensure that:

- .....
- (d) the provisions of this Ordinance relating to the obtaining of reinsurance arrangements are complied with;

### Section 42 of the Ordinance:

#### 42. Compulsory cession.-

(2) The Federal Government may, by notification in the official Gazette, direct that every insurer shall offer to reinsure with the Company such proportion as is determined on such basis as may be specified in such notification of its direct non-life insurance business which is in excess of the aggregate of:

- (a) the insurer's net retention;  
(b) the sum insured required to be reinsured under sub-section (1); and  
(c) the sum insured otherwise reinsured with the Company or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan.

(3) The reinsurance set out in sub-section (2) shall for the purposes of this Ordinance constitute a treaty contract of reinsurance between the insurer and the Company, operating on a risks attaching basis.

(4) Whoever contravenes the foregoing provisions of this section shall be punishable with a fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the day on which the contravention continues.

### SRO 771(I)/2007 dated July 30, 2007:

The Federal Government is pleased to notify that the right of first refusal entitlement of Pakistan Reinsurance Company Limited shall remain in force and every insurer operating in Pakistan shall continue to reinsure with Pakistan Reinsurance Company Limited not less than thirty five percent of business which is in excess of aggregate of :-

- (a) the insurer's net retention; and  
(b) the sum insured otherwise reinsured with the Company or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan.

(j) name and addresses of re-insurers with their respective shares and their rating by reputable international rating agencies;

(k) maximum liabilities of each reinsurer; and

(l) name and addresses of broker who placed reinsurance.

### Section 156 of the Ordinance:

**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, [or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer] 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.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 4 -

7. The Company submitted its reply vide letter dated October 9, 2023 in response to the SCN, the relevant extract of which are reproduced as under:

*(Quote):*

*This is in reference to the Show Cause Notice with reference number ID/Enf/SalaamTakaful/2018/3533, dated September 26, 2023. We wish to submit our responses and bring to your attention the practical challenges we have encountered:*

1. *We acknowledge the regulatory framework in Pakistan pertaining to insurance, which mandates that 35% of the shares be held by PRCL, with PRCL having the First Right of Refusal.*
2. *Salaam Takaful Limited had indeed offered PRCL the 35% share vide its email dated 22.12.2022, and PRCL responded with a counteroffer vide email dated 29.12.2022 that was not accepted by Salaam Takaful Limited. It is crucial to note that no specific conditions were imposed on PRCL. However, we communicated to PRCL the impracticality of partial and non-uniform placements within the current reinsurance market.*
3. *Insurance is fundamentally a contractual agreement between the insured and the insurer. In the case of reinsurance, the insurance company acts as the insured party, and the reinsurance company serves as the insurer. According to Contract Law, no contract is valid without the essential elements of offer and acceptance. In our situation, PRCL holds the first right of refusal, and Salaam Takaful Limited made the offer of the 35% share. In our understanding, PRCL has the right to either accept or decline this offer. However, PRCL introduced conditions to Salaam Takaful Limited, which we find unacceptable.*
4. *Salaam Takaful Limited sought a face-to-face meeting with PRCL to discuss these matters, but PRCL declined to meet with our senior management. Furthermore, PRCL's stance and attitude appeared inflexible.*
5. *Given the current reinsurance market conditions, partial and non-uniform placements are unfeasible, and we cannot expose our company to the risk of insolvency, which is clearly against the interests of our policyholders. This decision is in alignment with the responsibilities outlined in Section 41 of the Ordinance, the principle of commercial liberty, and ensuring the viability of our business, as recognized in sub-section 7 of Section 7 of the Ordinance and sub-sections (3) and (4) of Section 22 of the SECP Act 1997.*
6. *Due to PRCL's rigid stance, which encroached upon our commercial liberty, we were left with no alternative but to pursue adequate retakaful coverage from international retakaful operators, with a 100% cession, excluding PRCL's participation.*
7. *Further to our submission, please note that the current regulatory requirements relating to reinsurance have been evolved over the last two decades and their unintended consequences have also aggravated the problems of the non-life insurance players in structuring their reinsurance programs. This is explained below:*

*On one hand, as per Section 41 of the Insurance Ordinance, 2000 ("Ordinance"), it is the responsibility and mandate of the insurer to maintain adequate reinsurance arrangements, on the other hand, Sections 42 and 43 of the Ordinance, along with relevant rules and notifications, govern to ensure Compulsory Cession of direct nonlife treaty reinsurance (including retakaful) business with the Pakistan Reinsurance Company Limited (PRCL), and the First Right of Refusal has also been given to PRCL. However, in case PRCL gives the counteroffer or imposes*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 5 -

*conditions on the acceptance of their risk instead of refusal, this scenario has not been addressed in the current regulatory framework. This scenario is important because the reinsurance treaties are based on bouquet for all classes with uniform share of participation. This is because an integrated risk management approach is required in structuring the reinsurance treaties. That it's must be kept in consideration that Our Company first offered PRCL participation in reinsurance treaty arrangement on the basis of uniform participation in conformity with SRO No. 771 (I)/2007 which was rejected by PRCL, that the rejection of PRCL has to be constructed as a refusal which was accompanied with a fresh offer to reinsure as per table contained in letter dated 22.12.2022 which was rejected by Our Company for reasons which have been explained earlier hence no omission or violation has been committed by Our Company in any sense or form.*

*We would like to mention that the aforementioned issue was intimated to the Commission vide email dated 31-12-2022 (email attached) and the risk was placed in the international market. Thus, it is hereby requested to consider the practical difficulties and withdraw the show cause notice.*

*(Unquote)*

8. The Authorised Representative vide letter dated November 24, 2023 made further submissions in the matter, the relevant extracts of which are reproduced as under:

*(Quote):*

*We write on behalf of M/S Salaam Takaful Limited (the 'Company') in response to the Show Cause Notice issued to the Company, by the Securities and Exchange Commission of Pakistan (the 'SECP' or 'Commission'), under Section 42(2) and (4) of the Insurance Ordinance, 2000 (the 'Ordinance') read with SRO 771(1)/2007 dated July 30, 2007 (the 'SRO') and Section 11(1)(d) of the Ordinance and Rule 17 of the Insurance Rules, 2017 (the 'Rules') and Section 156 of the Ordinance dated 26 September, 2023 bearing reference No. ID/Enf/Salaam Takaful/2018/3533 (the 'SCN') whereby the Company has been asked to show cause as to why 'penalty may not be imposed upon it for contravening the aforesaid provisions of the law'.*

2. *At the very outset, it is submitted that the Company always endeavors to abide by the applicable laws in letter and spirit. The directors and CEO of the Company are professionals of high repute and cannot even think of deliberately violating any provisions of the applicable law.*

3. *The following may be noted by way of background in the matter*

*(i) Between 29 November, 2022 to 22 December, 2022 representatives of Pakistan Reinsurance Company Limited ('PRCL') and the Company exchanged email communications relating to renewal of reinsurances. By way of initiating the reinsurance PRCL wrote to the Company through email dated 06 December, 2022 as follows:*

*"Your immediate action in this regard is desired as it will help PRCL to decide its share participation in each of your treaty, and give you ample time to make appropriate arrangements incase PRCL declines to participate or changes its share participation in any of your treaties. Any delay in submission of the desired data from your side will lead to delay in the conveying of PRCL's decision regarding Participation in your treaties for which PRCL shall not take any responsibility." (emphasis provided)*

*(ii) Through email dated 22 December, 2022 PRCL shared its provisional share participation with the Company with the heading: 'Indicative, Non-binding and Not valid for SECP', whereby*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 6 -

they refused to take up the Company offer of a uniform 35% as per terms of the SRO by proposing an alternate/ counter offer as under:

"PRCL(WRTO)'s provisional share participation in your following treaties for the year 2023.

S. No.	Type of Treaty	PRCL(WRTO) Share 2023 (Provisional)
1	Fire Quota Share & Surplus	NIL
2	Engg Quota Share & Surplus	25%
3	Marine Cargo XOL	35%
4	Misc. Accident & Bond Quota Share & Surplus	35%
5	Motor XOL	NIL
6	Whole Account XOL	35%
7	Terrorism & Sabotage Fae Obligatory Quota Share	35%

(iii) In response, through emails dated 22 December, 2022, the Company informed PRCL that their counter-offer was unacceptable where it had not been uniformly accepted and a revised acceptance was requested by the Company from PRCL.

(iv) Through emails dated 26 December, 2022 the Company sent PRCL reminders and then through email dated 28 December, 2022 the Company positively informed PRCL that its offer was a 'bouquet' one that did not allow PRCL to pick and choose which classes of cover the PRCL would reinsure;

(v) The PRCL replied through emails dated 28 December, 2022 and 29 December, 2022 saying that the request of the Company to reconsider uniform acceptance of the offer made had not been acceded to.

(vi) The Company tried reasoning with PRCL through its email dated 29 December, 2022 by informing it of international practices which rely on uniform treaty participation, as follows:

"That as communicated to you previously the fact that the participation of PRCL is not uniform, and it varies according to treaty results is causing us hindrance in negotiating with international underwriters since it is an internationally accepted insurance practice that all treaty participation is done on equal shares across the board even after negative treaties result. That in case we were to accept the terms provided by you, it will become extremely hard for us to negotiate the terms with the international reinsurers/Retakaful operators which would directly hamper our ability to comply with the conditions of our license.

Therefore, we request that you reconsider your proposal to one which is in line with international practices allowing us to make adequate arrangements to ensure that we continue to undertake our business in the best interest of the general public.

In view of above, we would once again like to offer you 35% share across all treaties on bouquet basis for acceptance - Leader's quote sheet attached once again for your perusal and acceptance. Kindly let us have your final decision before 1 :00 pm tomorrow of our offer, enabling us to make necessary arrangements well in time. (emphasis provided)

(vii) Through email dated 30 December, 2022, in evident exercise of its right to first refusal, PRCL refused the offer made by the Company by remaining adamant that it would not adjust its stance by stating as under:



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 7 -

"Refer to your below email, it is to inform you that PRCL(WRTO)'s share participation in your Retakaful treaties for the year 2023 will remain the same as we have communicated to you vide our earlier email.

Furthermore, PRCL(WRTO)'s share participation in your Travel Quota share Retakaful Treaty is NIL.

Moreover, our formal acceptance letter along with other terms and conditions, reporting mechanism and updated treaty Forms will be sent to you shortly.

(viii) Through email dated 30 December, 2022 the Company replied to the above by reiterating its stance that the requirements of PRCL, which deviated drastically from the offer made by the Company, could not be complied with.

(ix) The Company then proceeded to inform the SECP of its interactions with PRCL and expectations of offers to the international markets that PRCL was refusing to meet. Through email dated 31 December, 2022 the Company wrote to the SECP and sought its counsel as under:

"Dear Waseem Sb.

Trust you are well.

As per Section 41 of the Insurance Ordinance, 2000 (" Ordinance"), it is the responsibility and mandate of the insurer to maintain adequate reinsurance arrangements. Section 41(1) of the Ordinance is reproduced below for ease of reference:

*"41. Requirement to effect and maintain reinsurance arrangements.- (1) An insurer shall effect and shall at all times maintain such reinsurance arrangements as are, in the opinion of the directors (or such other person or body responsible for conducting the management and business of the insurer), formed on reasonable grounds, having regard to the exposures of the insurer in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events, adequate to ensure continuing compliance by the insurer with the provisions of this Ordinance relating to solvency." [Text italicized and underlined for emphasis only]*

Furthermore, Sections 42 and 43 of the Ordinance, along with relevant rules and notifications, govern to ensure Compulsory Cession of direct non-life treaty reinsurance (including retakaful) business with the Pakistan Reinsurance Company Limited (PRCL). In compliance with these, we wish to bring to your kind knowledge that as per routine practice in relation to the renewal of our bouquet Motor and Non-Motor treaties, we approached PRCL for a 35% mandatory share of participation for the year 2023. However, they have communicated their partial and non-uniform participation in our Re-Takaful Treaty arrangements. Such a rigid stance by PRCL renders us exposed to the risk of having inadequate retakaful coverage which may hit our solvency. This is because the International Retakaful Operators, in line with retakaful principles of equity, fairness and anti-selection do not participate in Retakaful Treaties on a partial and non-uniform basis.

Following is the partial and non-uniform basis participation which has been communicated to us by PRCL;

S. No. types of treaty PRCL(WRTO) Share 2022 PRCL(WRTO) Share 2023



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 8 -

S. No.	Types of treaty	PRCL(WRTO) Share 2022	PRCL(WRTO) Share 2023
1	Fire Quota Share & Surplus	35%	NIL
2	Engg Quota Share & Surplus	35%	25%
3	Marine Cargo XOL	35%	35%
4	Misc. Accident & Bond Quota Share & Surplus	35%	35%
5	Motor XOL	35%	NIL
6	Whole Account XOL	35%	35%

Despite our several approaches to them, they have refused to consider our request and have shown their unwillingness to participate in our Treaty Program on a uniform share basis. This non-conforming view point by PRCL is adverse<sup>h1</sup> affecting our commercial liber<sup>h1</sup> and has left us with no choice but to proceed to obtain adequate retakaful coverage from international retakaful operators on 100% cession without the participation of PRCL, since partial and non-uniform placement is impossible in the current prevalent reinsurance market conditions and we cannot expose our company to the risk of insolvency which is clearly against the interests of our policyholders. This is in line with the mandate and responsibility bestowed upon us by Section 41 of the Ordinance and the principle of commercial liberty and ensuring our business viability recognized by sub-section 7 of section 7 of the Ordinance and sub-sections (3) and (4) of section 22 of the SECP Act 1997.

We are enclosing our trail of exchanges between us and PRCL for your record, information and counsel." (emphasis provided)

(x) You will appreciate that the offer made to PRCL complied with the applicable law as well as international standards and any offer that would have been made by the Company to international retakaful operators and in making the offer first to PRCL the Company fulfilled its legal obligation to make such an offer in terms of Section 42 of the Ordinance and the SRO.

(xi) However, no counsel was received from the SECP in response to the company Company's abovementioned email and instead the SCN was issued on 26 September, 2023 apparently at the behest of PRCL where, through paragraph 3 of the SCN, the SECP informed the Company as follows:

"3. AND WHEREAS, in this regard, PRCL vide letter dated Tune 15, 2023 and subsequently vide letter dated July 06, 2023 informed the Commission that the Compam<sup>1</sup> has not accepted PRCL' s share participation in its following treaties for the year 2023 and disregarded the PRCL' s "First Right of Refusal" recognized under SRO 771 (I)/2007 despite the fact that PRCL vide email dated 22.12.2022 communicated its share acceptance to the Company:

S. No.	Types of treaty	PRCL's share
1	Engineering Quota Share & Surplus	25%
2	Marine Cargo XOL	35%
3	Misc. Accident & Bond Quota Share & Surplus	35%
4	Whole Account XOL	35%
5	Terrorism & Sabotage Fac. Obligatory Quota Share	35%
6	Fire Quota Share & Surplus	Nil
7	Motor XOL	Nil
8	Travel Quota Share	Nil



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 9 -

(xii) The Company initially replied to the SCN through email dated 09 October, 2023 (the 'Response') and is issuing this reply in furtherance of the Response.

(xiii) Where the SCN seeks to penalize the Company for alleged contravention of Sections 11(1)(d), 42(2) and (4) of the Ordinance (read with the SRO) and Rule 17 of the Rules, we may reproduce the same hereunder for ease of reference along with other relevant provisions of the law:

### Section 11(1)(d) of the Ordinance:

**"11. Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:**

*The provisions of the Ordinance relating to the obtaining of reinsurance arrangements are complied with;"*

### Sections 41 and 42 of the Ordinance:

**"41. Requirement to effect and maintain reinsurance arrangements» (1) An insurer shall effect and shall at all times maintain such reinsurance arrangements as are, in the opinion of the directors (or such other person or body responsible for conducting the management and business of the insurer), formed on reasonable grounds, having regard to the exposures of the insurer in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events, adequate to ensure continuing compliance by the insurer with the provisions of this Ordinance relating to solvency.**

*(2) Every insurer shall submit to the Commission, in the manner prescribed by the Commission and not less than one month prior to the coming into effect, or as soon as practicable thereafter, of any treaty reinsurance arrangement entered into by the insurer as cedant, such features of that reinsurance arrangement as may be prescribed by the Commission.*

*(3) Where any reinsurance treaty the particulars of which have been submitted to the Commission under sub-section (2) is altered or any new treaty reinsurance arrangement is made after the submission of the information under sub-section (2), the insurer concerned shall submit to the Commission, in the manner prescribed by the Commission, particulars of such alteration in the treaty or such new treaty reinsurance arrangement within one month of such alteration or arrangement and shall submit such farther information or clarification as the Commission may require.*

*(4) the commission may, at any time and after giving the insurer an opportunity of being heard, for reasons to be recorded in writing, direct the insurer to make such modifications in his reinsurance arrangements as the Commission may specify.*

*(5) The Federal Government may make rules, not inconsistent with subsection (1), governing the reinsurance outside Pakistan, other than on a treaty basis, of insurance business underwritten by an insurer in Pakistan.*

*Explanations- For the purposes of this section, "reinsurance" includes "retrocession ".*

### **42. Compulsory Cession.-**



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 10 -

(2) The Federal Government may, by notification in the official Gazette, direct that every insurer shall offer to reinsure with the Company such proportion as is determined on such basis as may be specified in such notification of its direct non-life insurance business which is in excess of the aggregate of

(a) the insurer's net retention;

(b) the sum insured required to be reinsured under sub-section (1); and

(c) the sum insured otherwise reinsured with the Company or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan.

(3) The reinsurance set out in sub-section (2) shall for the purposes of this Ordinance constitute a treaty contract of reinsurance between the insurer and the Company, operating on a risks attaching basis.

(4) Whoever contravenes the foregoing provisions of this section shall be punishable with a fine which may extend to ten thousand rupees and with a further fine may extend to one thousand rupees every day after the day on which the contravention continues.

(5) The Federal Government may, by notification in the official Gazette and on reasonable grounds, exempt any insurer and the Company from the preceding requirements of this section so far as concerns any part of any class or sub-class of business."

### **The SRO:**

"S.R.O. 771 (I)/2007.- In exercise of the powers conferred by sub-section (2) of sections 42 of the Insurance Ordinance, 2000 (XXXIX of 2000) and in supersession of this Minister's Notification SRO 1080(I)/2006, dated the 28th October, 2006, the Federal Government is pleased to notify that the right of first refusal entitlement of Pakistan Reinsurance Company Limited shall remain in force and every insurer operating in Pakistan shall continue to reinsure with Pakistan Reinsurance Company Limited not less than thirty-five per cent of the business which is in excess of the aggregate of-

(a) the insurer's net retention; and

(b) the sum insured otherwise reinsured with the company or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan."

### **Rule 17 of the Rules:**

"17. Requirement to effect and maintain reinsurance arrangements> (1) For the purposes of sub-sections (2) and (3) of section 41 of the Ordinance, the following information shall be submitted in respect of each reinsurance arrangement namely:-

(a) Type of reinsurance treaty;

(b) number of lines or slabs, as the case may be;

(c) insurers maximum retention;

(d) maximum liabilities under total reinsurance treaty;

(e) estimated premium income;

(f) aggregate commission loss limit if any;

(g) commission;

(h) profit commission;



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet- 11 -

- (i) over riding commission;
- (j) name and addresses of re-insurers with their respective shares and their rating by reputable international rating agencies;
- (k) maximum liabilities of each reinsurer; and
- (l) name and addresses of broker who placed reinsurance.

(2) If the insurer's retention is based on maximum probable loss the maximum liabilities of each reinsurer must be stated, including maximum liability under the total reinsurance treaty and a separate statement for each class or sub-class of business shall be furnished."

### Section 156 of the Ordinance:

**"156. 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, or any direction made by the commission shall have the power to impose fine on the insurer 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."

4. Accordingly, in light of the above background, please find below the Company response to allegations contained in the SCN.

### B. Submissions

5. It is submitted that there has been no contravention of the law as alleged in the SCN and detailed submissions on the various aspects of this argument are presented below.

### Right of First Refusal and obligations of PRCL

6. In the first instance it is submitted that the Company has not violated provisions of Section 42 of the Ordinance and has not 'disregarded the PRCL's "First Right of Refusal" recognized under SRO 771(!)/2007'. You will appreciate that Section 42 of the Ordinance only requires the making of an offer to PRCL and places no compulsion on the Company to actually ensure that PRCL takes up the offer. The relevant aspect of Section 42 of the Ordinance is worth repeating and is reproduced hereunder for ease of reference:

"(2) The Federal Government may, by notification in the official Gazette, direct that even/ insurer shall offer to reinsure with the Company such proportion as is determined on such basis as may be specified in such notification of its direct non-life insurance business which is in excess of the aggregate of .." (emphasis provided)

7. You will appreciate that the Company has discharged its duty under Section 42 of the Ordinance by making the 'bouquet program' offer to PRCL. The basis of the offer made to PRCL is the same as will have been made to international retakaful operators having discharged its duties under the Ordinance, there was no obligation on the Company to field counteroffers from PRCL. In fact, to do so would be a direct violation of the law provided in Section 42 of the Ordinance and entirely contrary to the intent of Parliament.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 12 -

8. The 'right of first refusal' (the 'ROFR') as contained in the SRO is a recognition of the fact that an insurer need only make the offer following which PRCL may either accept or reject the same. As already mentioned in the Response there is no regulatory framework to support an interpretation of the law that would allow PRCL to make a counteroffer and then require compulsion of acceptance of such counter offer by an insurer. The relevant extract of the Response is reproduced hereunder for ease of reference:

"On one hand, as per Section 41 of the Insurance Ordinance, 2000 (" Ordinance"), it is the responsibility and mandate of the insurer to maintain adequate reinsurance arrangements, on the other hand, Sections 42 and 43 of the Ordinance, along with relevant rules and notifications, govern to ensure Compulsory Cession of direct non-life treats] reinsurance (including retakaful) business with the Pakistan Reinsurance Company Limited (PRCL), and the First Right of Refusal has also been given to PRCL. However, in case PRCL gives the counteroffer or imposes conditions on the acceptance of their risk instead of refusal, this scenario has not been addressed in the current regulatory framework."

9. Where the SCN fails to define or discuss what is meant by ROFR it may be helpful to rely on informative texts to understand the concept. In this regard, the definition of the term ROFR has been provided in the Black's Law Dictionary (8th Edition) as under:

"right of first refusal. A potential buyer's contractual right to meet the terms of a third party's higher offer. • For example, if Beth has a right of first refusal on the purchase of Sam's house, and if Terry offers to buy the house for \$300,000, then Beth can match this offer and prevent Terry from buying it."

10. In light of the above, you will appreciate that there has been no violation of the rights of PRCL to refuse the offer extended by the Compan and internationally and prevent retakaful providers from taking up the same offer. In fact, by making a counteroffer, PRCL has effectively exercised its ROFR where the making of a counter-offer acts to extinguish the original offer. In this regard it may be helpful to review the contractual concept of a counteroffer or 'counter proposal' as helpfully elucidated by the Sindh High Court in the case of Dr. Tariq Mehmood Memon v. Province of Sindh (2007 MLD 1225) where, in relevant part, the court noted as under:

"20. It needs no authority to say that unless an offer is accepted unconditionally no enforceable contract comes into being. Where the acceptance is contingent or conditional then it amounts to a counter proposal."

11. The Black's Law Dictionary (8th Edition) provides the following definition for the term counteroffer:

"counteroffer, n. Contracts. An offeree's new offer that varies the terms of the original offer and that ordinarily rejects and terminates the original offer. • A late or defective acceptance is considered a counter-offer ..."

12. You will appreciate that PRCL's requirement that the Company adjust its offer is actually a counteroffer which operates to extinguish the original offer and this action of PRCL constitutes the exercise of its ROFR as provided for in the SRO which then entitles the Company to contract with parties willing to take up the original offer. Where the Company has complied with the requirements of Section 42 of the Ordinance, PRCL must absolutely accept the offer in order for a contract for reinsurance to be formalized or may exercise its right to refuse the offer made in terms of the SRO. There can be no counter-proposal made, if the terms of the primary law are to be



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 13 -

*complied with, nor can the Company be compelled to enter into a detrimental bargain when their offer may be unconditionally and absolutely accepted by other willing persons.*

13. *Commentary on Section 7 of the Contract Act, 1872 (the 'Contract Act') as contained in the book titled The Law of Contract by Shaukat Mahmood may be found helpful in understanding how a 'counter-proposal' may extinguish an offer. Relevant extracts of the same are reproduced hereunder for ease of reference:*

*"4. Counter-proposal. An acceptance with a variation in the terms of an offer or with a qualification is simply a counter-proposal. Its communication does not amount to the acceptance of a proposal or an offer made by the other party. On the other hand, a counter-offer amounts to rejection of the original offer. An offer once refused is dead and cannot be accepted unless renewed. In the latter case if it is accepted a binding contract is created."*

14. *In commenting as above, the book relies on the case of*

*"... It is well settled that an acceptance must be absolute and unconditional and must correspond to the terms of the offer without leaving any term open to further negotiations. If it contains a material variation of the terms of the offer, there is no consensus ad idem on agreement upon which a contract can be I [sic] founded. If it introduces terms not comprised in the offer, no contract is made and the original offer must be deemed to have been refused and a counter-offer made. A qualified acceptance is equivalent to a new offer which may either be accepted or rejected. In Haji Muhammad v. Spinner ((1900) 24 Born. 510), Jenkins, C. L observed: -*

*"That is to say, until there is such an acceptance, the stage of negotiations has not passed and no legal obligation is imposed. Similarly, any departure from the terms of the offer or any qualification vitiates the acceptance it accompanied unless it is agreed to by the person from whom the offer comes. In other words, an acceptance with a variation is no acceptance; it is simply a counter-proposal which must be accepted by the original promisor before a contract is made." (emphasis provided)*

15. *Accordingly, it is submitted that there has been no violation of Section 42 of the Ordinance read with the SRO by the Company which is not obligated to entertain counter-offers from PRCL, and if terms of the SRO are to be given their intended meaning, PRCL must reinsure the entire 35% offered by the Company where the SRO categorically instructs that 'even; insurer operating in Pakistan shall continue to reinsure with Pakistan Reinsurance Company Limited not less than thirty-five per cent of the business.'*

16. *You will appreciate that the SRO obligates PRCL to reinsure not less than 35% and where PRCL has attempted to circumvent the requirement by refusing to meet the threshold in three of the class categories offered, it is in violation of the SRO itself and the SECP may take appropriate action against it for the protection of national interests and proper administration of the law.*

17. *Where there has been no violation of Section 42 of the Ordinance read with the SRO, the SCN must be withdrawn without any adverse consequences for the Company.*

### Application of the mind and provision of reasons by the SECP

18. *From a perusal of the proceedings initiated by SECP through the SCN, it appears that they have been initiated at the behest of PRCL with no independent application of the mind by the SECP. In the first instance, there has been no discussion on what constitutes an offer in terms of Section 42*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 14 -

of the Ordinance and what constitutes a 'right of first refusal' for purposes of the SRO and whether, when read together, the mentioned provisions allow the making of a counter-offer by PRCL which must be accepted by the Company to its and its policy-holders' detriment.

19. This evident lack of discussion and cogent reasons reveals that the SECP has not applied its mind to the proper application of the law and the proceedings, therefore, suffer from infirmity that is subject to judicial review and liable to be set-aside. In the recent case of *Bestway Cement Ltd. v. Full Bench of National Industrial Relation's Commission (2023 PLC 101)* the Islamabad High Court observed the requirement for independent application of judicial mind while setting aside orders passed by the full bench of the National Industrial Relation Commission noting that '[t]he Impugned Order II passed by the learned Full Bench NIRC does not reflect any independent application of judicial mind'.

20. In the case of *Mohammad Aslam Wadani v. Presiding Officer, District Consumer Court D.G. Khan (2023 YLR 130)*, the Multan Bench of the Lahore High Court cited several supreme court judgments and other pertinent and informative cases before observing and ruling on the requirement for the independent application of mind to a matter before the consumer court, as under:

"18. In all the above cases, judicial Orders were gauged against the barometer of clear ascertainment of issues requiring judicial determination i.e settling of facts in issue and relevant facts (to prove which evidence must be adduced), evidence adduced by parties, evaluation of such evidence and then decision reached by means of clear and apparent application of judicial mind to the issues and evidence. The Orders and judgments lacking such ingredients were considered as nonexistent and cases were remanded back to the forums which rendered such impugned Orders since such Orders being non-speaking lacked judicial sanctity.

19. Furthermore and irrespective of the issue of strict application of Code of Civil Procedure, 1908 or Qanun-e-Shahadat Order, 1984, the learned Consumer Court is bestowed with powers to adjudicate upon the rights and liabilities of the parties and to pass legally binding, judicially executable judgments/ Orders imposing fulfilment of obligations upon parties and directing payment of compensation as well as damages under Section 31 of the Act, 2005. Hence, a final Order of a Consumer Court passed under Section 31 must, at the very least, pass the test of being a legally valid judgment/Order depicting independent application of judicial mind upon the critical aspects of a controversy .... " (emphasis provided)

21. The abovementioned case highlights the requirement to demonstrate independent application of mind to proceedings to be carried out by regulatory authorities as may be demonstrated through provision of adequate reasons. Similarly, in the case of *Zam Zam LPG (Pvt.) Limited v. Federation of Pakistan (2023 PTD 649)*, the Sindh High Court ruled as under:

"14. We are of the view that it cannot be said by the department that after a detailed examination and an overview of the record /documents, as furnished by the petitioner, after the selection of the case for audit only then they would be able to justify the reasons of selection of case for audit with regard to the abnormal tax profile/dubious purchases and supplies of the petitioner as, in our view, this exercise if completed earlier, prior to the intimation given to the petitioner, then it was incumbent upon the department to have given specific reasons, cited instances are pointed out through the impugned letter as to those specific reasons for coming to the conclusion with regard to the abnormal tax profile, dubious purchases and supplies. In the decision given in the case of *Atlas Honda Ltd. v. Pakistan and others (2022 PTD 866)* a Bench of this Court has observed as under:



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 15 -

19. *The purposive interpretation of Section 177 requires the commissioner to apply his mind to each taxpayer's individual case. If he decides to select a taxpayer for audit he must give mindful, legitimate reasons that arises out from the record. If there is no independent application of mind in giving reasons to select a taxpayer for an audit under section 177 then the purpose of section 177 is not achieved and it could not be said to be an exercise undertaken by the Commissioner under section 177. Transparency must be ensured by Commissioner. The authorities were vested with the powers to exercise their discretions and it/they should act in a way that the structured discretion should be seen to have been done in a transparent and fair manner to avoid abuse of process as discussed in the case of Wateen Telecom.*

20. *We do not agree with the contention of Mr. Metlo, relying on Indus Sugar and PPL (Supra) cases that even irrelevant and illogical reasoning for calling record to conduct audit would serve the purpose and those illogical and irrelevant reasons would count towards the requirement of Section 177 to provide reasons. If that principle is taken to be correct then it would conclude the expression of providing reasons as utterly redundant, which is perhaps not the intent of the legislature. It would give a room to such officers to conduct roving and fishing expedition which has always been ruled out in dispensation of justice. Reasons should have arisen out of the subject however these reasons, at the same time, does not mean to be of taxpayer's liking but should make a reference to the context by logic. Section 177 empowers commissioner to call record for conducting audit and First proviso to it cuts it in a way that reasons are inevitable to be followed by audit. Second Proviso further strengthened the stand that it must be communicated to the taxpayer. If that is the standing of reasons then its value cannot be diluted by saying that it carries no weight even if illogical and senseless reasons are provided. In the case of Cellandgene Pharmaceuticals which is co-authored by the author of PPL, Bench observed that where notice under section 177 provides sufficient reasoning for selecting a case for audit, the law then does not provide for any alternate course for taxpayer. This interpretation would also support the above understanding of reasons to be provided by Commissioner under section 177 of Ordinance, 2001. Our understanding of Section 177 is also supported by Allah Din's case in Para 16 where emphasis on furnishing reasons was made and that it must be communicated to taxpayer.*

21. *Thus, under section 177 of the Ordinance, 2001 the Commissioner himself must apply his mind to a specific taxpayer's return and if he decides to audit the taxpayer he must give reasons for his decision. Such reasons must be legitimate and mindful queries that must challenge the taxpayer's returns as framed and filed. A Commissioner is always expected to give mindful reason and if illogical reasons are considered as sufficient then perhaps there is no wisdom in submitting reasons at all. It could only be an eyewash and would lack transparency. By providing prior reasons before audit legislature has provided transparency in the process.*

15. *It May be noted that the provisions of Section 177 of the Income Tax Ordinance, 2001 and Section 46 of the Federal Excise Act are parametria to the Section 25 of the Act. In the decision given in the case of Pakistan Telecommunication Company Ltd. (mentioned in para 4 above) a Bench of Islamabad High Court, after detailed discussion, has observed that giving reasons for selection of a case for audit are prerequisite of Section 25 of the Act and the powers enshrined in this regard upon the Commissioner have to be exercised in a rational manner as those powers are neither unguided nor unfettered nor a Commissioner can pick and choose arbitrarily and capriciously with regard to conducting audit in a matter.*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 16 -

*The learned Single Judges of this Court and that of Lahore High Court as well as the Islamabad High Court in the cases of Indus Motor Compam1 Limited, Wateen Telecom Ltd. through Authorized attorney, Dewan Sugar Mills Ltd., Hyundai Nishat Motor (Pvt.) Limited, Raza Motor Industries and M/s. Pakistan Tobacco Compam1 Limited (cited above) have also highlighted this aspect that while exercising the powers under Section 5 of the Act, the department is required to give reasons and those reasons should demonstrate application of mind of the Commissioner in selecting the case for audit.*

16. *The word II reason II connotes an expression giving justification for an action, a ground to explain something, a consensus of informed thoughts whether factual or legal. In our view reasons should be so explicit so as to catch one's eye at the first glimpse. It should not be a leap in a dark or a subject of fishing and roving expedition, but has to be based on sound principles of law. Before conducting audit, the department is legally obliged to muster those grounds after proper application of mind and thereafter, while confronting the taxpayer about selecting the case for audit, mindful as well as meaningful reasons have to be advanced, which have to be convincingly intimated to the taxpayer to enable the latter to furnish a suitable reply and advance objections, if any, and those reasons should be based on independent application of mind and, as explained above, not on the basis of some unfounded notions, or capricious believes. We are of the view that requirements of Section 25 would not be fulfilled until and unless proper, just and identifiable reasons are intimated to the taxpayer with regard to selection of his case for audit and only when such reasons are given and thereafter if no compelling response is received, the case could be selected for audit and the other parameters as enshrined under Section 25 would then come into play, as this requirement of the law in our view cannot be termed to be simply procedural only.*

.....  
18. *We also tend to agree with the contention raised by Mr. Mushtaq Hussain Qazi that the parameters as enshrined under Section 24A of the General Clauses Act, with regard to exercise of discretion by an executive authority, for giving reasons for its decision are mandatory and any action taken by an executive authority in violation of that principle is liable to be struck down hence the decision given in the case of Muhammad Amin Muhammad Bashir Limited, Zain Yar Khan, Messrs Airport Support Services and Amanullah Khan (quoted above) are attracted in the present case. We also agree with Mr. Qazi that if an authority is saddled with the responsibility of exercising discretion, the said discretion has to be carried out fairly and justly. Reference in this regard may be made to the decision given in the case of Mejee Flour and General Mills (Pvt.) Ltd. (noted above). It is also a settled principle of law that a thing has to be done in the manner prescribed or not done at all and superstructure built on the basis of an illegality is liable to crumble to the ground. The decisions noted supra, vide paragraphs 5 of this judgment, thus are found to be relevant and applicable in the present matter.*

19. *As a result of what has been stated and noted above, we are of the view that the letter dated 12.11.2021 and the subsequent Notices dated 17.11.2021 and 19.01.2022 are not in accordance with law; the same therefore stand vacated. The petition, therefore, along with the listed application, stands allowed with no order as to cost. However, before parting with the order, we would like to state that the department is fully authorized under the law that if they have certain requisite material for selecting the case of the petitioner for audit, the same should be communicated to the petitioner and proceedings may be initiated afresh in accordance with law." (emphasis provided)*

22. *It is submitted that the SCN does not address substantial issues involved in the matter at hand that is necessary for establishing proceedings as legitimate, fair and just. Reliance is placed*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 17 -

on case laws reported as 2002 MLD 130, 2013 PTD 1531 and Walk Gas Limited. Accordingly, the SCN lacks validity and is liable to be set-aside on this count alone.

### Penalty and Constitutional protection against double punishment

23. You will appreciate that Section 42 of the Ordinance prescribes its own penalty regime through Section 42(4) thereof which provides as under:

*"(4) Whoever contravenes the foregoing provisions of this section shall be punishable with a fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the day on which the contravention continues."*

24. In light of the above express provision of law, the reference to Section 156 of the Ordinance is misconstrued and forced. It is also submitted that the SCN reliance on provisions of Section 11(1)(d) of the Ordinance is an irrelevant consideration.

25. It is vehemently averred that the Company is in complete compliance with the law prescribing reinsurance requirements and that the controversy surrounding 'compulsory cessation' has no bearing on reinsurance arrangements to be maintained by the Company which, it is submitted, the Company already has in place to the satisfaction of the law.

26. The above is unconstitutional where the provisions of Article 13 of the Constitution of the Islamic Republic of Pakistan (the 'Constitution') strictly protects against double punishment in the following terms:

**"13. Protection against double punishment and self-incrimination. - No person-**

- (a) shall be prosecuted or punished for the same offence more than once; or
- (b) shall, when accused of an offence, be compelled to be a witness against himself"

27. You will appreciate that where Section 42(4) of the Ordinance already provides a scheme of penalty for violation of provisions of Section 42 of the Ordinance, no other penalizing provision of the law may be relied on. Additionally, where the reference to Section 11 of the Ordinance relies on the perceived violation of Section 42 of the Ordinance, this misconstruction is patently unconstitutional and liable to be set-aside as such. Accordingly, it is submitted that the SCN must be withdrawn on this count as well.

28. Without prejudice to the above submissions, the following submissions are made on merits for a complete response to the SCN.

### **C. Submissions on Merits**

29. To the extent that Paragraph 1 of the SCN identifies particulars of the Company the contents thereof are not denied.

30. To the extent that Paragraph 2 the SCN proposes that "pursuant to the provisions of section 42(2) of the ordinance and Rule 17(1) of the Insurance Rules, 2017 (the Insurance Rules) read with SRO 771 (J)/2007 dated July 30, 2007 (SRO 771 (1)/2007), every insurer is required to reinsure with Pakistan Reinsurance Company Limited (PRCL) not less than thirty five (35) percent of the business, which is in excess of the aggregate of; (i) the insurer's net retention; and (ii) the sum insured otherwise reinsured with PRCL or with any other insurer in Pakistan but excluding any part



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 18 -

reinsured outside Pakistan", the same is vehemently denied where the requirement of the primary law, Section 42(2) of the Ordinance, is only that an insurer offer to reinsure with PRCL.

31. You will appreciate that in making the offer to PRCL, the Company has discharged its legal obligation and that if PRCL exercises its right of first refusal to reject the offer, there is no obligation on the Company to insist on acceptance of such offer by PRCL nor is there any compulsion on an insurer to comply with counterproposals made by PRCL. In the matter at hand, it is PRCL that is in violation of the law and acting against national interests and interests of policy holders of the Company when attempting to file complaint against the Company to SECP to force a reinsurance deal which is unlawful, unreasonable, unfair and unethical.

32. It is also placed on record that the letters of PRCL dated 15 June, 2023 and 06 July, 2023 are the only basis of issuance of the SCN, however, copies of the same have not been attached or shared with the Company allowing it to rebut the same. This is contrary to the principals of natural justice and impinges on the right of the Company to due process, fair trial and treatment in accordance with law as provided under Article 4 and Article 10A of the Constitution of Pakistan.

33. To the extent that Paragraph 3 of the SCN suggests that the Company, in not accepting the detrimental and non-compliant counteroffer made by PRCL, has somehow "disregarded the PRCL's "First Right of Refusal" recognized under SRO 771 (1)/2007 despite the fact that PRCL vide email dated 22.12.2022 communicated its share acceptance to the Company", the same is vehemently denied where PRCL categorically rejected the offer of the Company by proposing the counteroffer and thereby exercised its first right of refusal and now forcing through SECP shared complaints not with the Company to accept the counter offer, unlawfully.

34. The allegation contained in this paragraph of the SCN is entirely misconstrued. Had the intent of the law been to compel insurers to comply with the unreasonable demands of PRCL to the detriment of the insurance market, insurer and its policy holders, the law would have made express provisioning for the same and had such a law been promulgated it would have suffered from unconstitutionality where it would operate to violate valuable constitutionally guaranteed property rights of the citizens of Pakistan.

35. The SECP must uphold the mandate of the law and the Constitution by thwarting such unlawful attempts of PRCL to disregard the mandatory applicable law and interests of the markets SECP regulates.

36. To the extent that Paragraph 4 of the SCN relates to provision of information by the Company at the request of the SECP, the same is not denied except that it is noted with disappointment that there is no mention of the email dated 31 December, 2022 sent by the Company to the SECP, that predates the correspondence initiated by PRCL and is mentioned hereinabove, informing them in detail of the actions of PRCL and seeking SECP counsel in the matter to which the Company received no response.

37. To the extent that Paragraph 5 of the SCN observes that "the Company has failed to place thirty-five (35) percent of its business with PRCL in respect of its treaties, which, prima facie, constitutes contravention of Section 42(2) of the Ordinance read with SRO 771 (1)/2007 and Section 11(1)(d) and Rule 17 of the Insurance Rules", it is vehemently denied that the fault lies with the Company or that the Company is in violation of the laws mentioned.

38. It is reiterated that there has actually been no violation of applicable law by the Company and that where the Company has fulfilled all obligations of the law in terms of Sections 41 to 43 of



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 19 -

*the Ordinance, provisions of Section 11(1)(d) of the Ordinance are entirely inapplicable to the case at hand and even if, by some absurd construction of the law, the Company could be found in violation of Section 42(2) of the Ordinance alleged in the SCN.*

39. *To the extent that Paragraph 6 of the SCN reproduced segments of the Company Response, the same is not denied.*

40. *Where Paragraph 7 of the SCN attempts to provide reasons for rejecting the Response of, the same is found woefully lacking where it concludes the basis for issuance of proceedings by stating that "the stance of the Company is not found to be cogent as the Company was required to offer thirty five percent share of its treaty re-takaful business to PRCL without imposing any condition including uniform participation basis. Moreover, the Company was required accept the First Right of Refusal of PRCL in the matter without imposing am/ condition."*

41. *In the first instance, where this paragraph recognizes that the Company was required to offer 35% of its treaty re-takaful business the Company is in agreement with this assessment of the law. However, where the paragraph proceeds to assert that the Company was required to "accept the First Right of Refusal" it is unclear how the Company has rejected PRCL's ROFR where it has accepted that PRCL does not wish to take up the offer made given the nature of the counteroffer which violates provisions of the SRO itself. The SCN also does not specify which aspect of the law requires the making of an offer "without imposing any conditions" as well as making of counter offers.*

42. *The paragraph, therefore, seems to contradict itself when asserting the obligation of the Company as terminating at making the offer yet also being additionally obligated to "accept the First Right of Refusal" which sentence construction also does not make any logical sense. There has been no expansion on what the SCN perceives the ROFR to signify and how an insurer is meant to accept it.*

43. *For the foregoing, the proceedings initiated through the SCN must be set aside without any adverse order against the Company.*

44. *To the extent that Paragraph 8 of the SCN states that "the Company, prima facie, has failed to ensure compliance with the provisions of Section 42(2) of the Ordinance read with SRO 771(I)/2007 and Section 11(1)(d) of the Ordinance and Rule 17 of the Insurance Ordinance Rules, 2017", the same is vehemently denied as the SCN itself recognizes that Section 42(2) of the Ordinance requires only the making of an offer by an insurer and the SRO requires acceptance of the exercise of the ROFR by PRCL. Given that the Company has complied with the law in letter and in spirit there is not even a prima facie case made out against it and, accordingly, this SCN must be set-aside if the mandate of the law is to be upheld.*

45. *Where Paragraph 9 of the SCN notes that "contravention of Section 42(2) of the Ordinance attracts the penal provisions of Section 42(4) of the Ordinance and contravention of Section 11 (1)(d) attracts penal provisions contained in Section 156 of the Ordinance", the same is not denied, however, it is vehemently denied that the Company has violated either of the provisions of law mentioned. With particular reference to Section 11(1)(d) of the Ordinance, it may be appreciated that the Company has all requisite reinsurance arrangements in place as required by law even if the same have been secured without the involvement of PRCL which may be made answerable for harming the national interest by deviating from the requirements of the SRO that demand that it either accept the 35% reinsurance offer or reject it.*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 20 -

46. To the extent that Paragraph 10 of the SCN reproduced provisions of law that it seeks to rely on, the same is not disputed. However, without prejudice to the argument that Section 42 of the Ordinance has also not been violated, it is vehemently denied that provisions of Section 11 of the Ordinance and Rule 17 of the Rules are attracted to the scenario at hand.

47. Where Paragraphs 11 to 17 of the SCN relate to operational matters, they require no response.

### Prayer

48. In view of the above submissions, it is prayed that the SECP may withdraw the SCN without any adverse consequences for the Company.

We hope that the above is found to the satisfaction of the SECP. We remain available if you require any further information of documents in this matter.

(Unquote)

9. In order to provide the Respondent/Company an opportunity of personal representation, hearing in the matter was fixed for December 6, 2023. The said hearing was held through zoom meeting link on the scheduled date and was attended by Mr. Rashid Sadiq (Counsel for the Respondent) as the Authorized Representative (**the Authorised Representative**). During the hearing, the Authorised Representative was advised to submit the reasons for alleged non-compliance, as narrated in the SCN. The Authorised Representative reiterated the submissions and arguments made in written reply.

10. Subsequent to hearing, the Authorised Representative vide letter dated December 21, 2023 made further submissions as under:

(Quote)

Further to hearing held on 06 December, 2023 in the matter of captioned Show Cause Notice issued to M/s Salaam Takaful Limited (the 'Company'), by the Securities and Exchange Commission of Pakistan (the 'SECP or 'Commission), under Section 42(2) and (4) of the Insurance Ordinance, 2000 (the 'Ordinance) read with SRO 771(1)/2007 dated July 30, 2007 (the 'SRO') and Section 11(1)(d) of the Ordinance and Rule 17 of the Insurance Rules, 2017 (the 'Rules) and Section 156 of the Ordinance, we are pleased to submit the following evidence with regard to offer of 35% share of its all direct non-life insurance business to Pakistan Reinsurance Company Limited ('PRCL) in terms of Section 42(2) of the Ordinance.

a) Through email dated 16 December, 2022, the Company offered 35% of the Travel Quota treaty to PRCL (Annex 1)

b) Subsequently, through email dated 21 December, 2022, (Annex 2), the Company provided PRCL the terms of the following four (4) treaties received from lead reinsurers:

- Fire Quota share & Surplus Treaty
- Engineering Quota share and surplus treaty
- Miscellaneous Quota share & Surplus treaty
- Travel Quota Share Treaty.

It was also informed that terms of the following four (4) Treaties are yet to be received from lead insurers and the same will be shared on receipt.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 21 -

- *Whole account Excess of Loss Treaty;*
- *Marine Excess of Loss Treaty*
- *Motor Excess of Loss Treaty*
- *Terrorism Program.*

*PRCL was requested to confirm its participation in above eight (8) Treaties;*

*c) Through email dated 22 December 2022 (Annex 3) generated at 11:07 AM PRCL required details of Travel Treaty;*

*d) Through another email 22 December 2022 (Annex 4) generated at 11:07 AM PRCL has conveyed provisional indicative non-binding share participation, as follows:*

<b>S.No.</b>	<b>Type of Treaty</b>	<b>PRCL (WRTO) Share 2023 (Provisional)</b>
<b>1</b>	<b>Fire Quota Share &amp; Surplus</b>	<b>NIL</b>
<b>2</b>	<b>Engg Quota Share &amp; Surplus</b>	<b>25%</b>
<b>3</b>	<b>Marine Cargo XOL.</b>	<b>35%</b>
<b>4</b>	<b>Misc. Accident &amp; Bond Quota Share &amp; Surplus</b>	<b>35%</b>
<b>5</b>	<b>Motor XOL</b>	<b>NIL</b>
<b>6</b>	<b>Whole Account XOL</b>	<b>35%</b>
<b>7</b>	<b>Terrorism &amp; Sabotage Fac Obligatory Quota</b>	<b>35%</b>
<b>8</b>	<b>Travel Quota Share</b>	<b>NIL</b>

*e) You will appreciate that instead of accepting 35% of all direct non-life insurance business in terms of Section 42 (2) of the Insurance Ordinance, comprising eight (8) Treaties, PRCL has not accepted Travel Quota, Fire Quota Share & Surplus and Motor XOL Treaties and reduced the share in Engineering Quota Share Surplus Treaty from 35% to 25%;*

*f) The above communication vitiated the offer of the Company made under Section 42 of the Ordinance and was a counter offer as it has changed the offer made by the Company as per applicable law;*

*g) The Company vide its email dated 22 December 2022 (Annex 5) informed PRCL that its proposal of various shares was not acceptable and strongly recommended PRCL to renew its share in all Treaties as uniform;*

*h) In addition to verbal requests made to PRCL, though vide email dated 23 December 2022 (Annex 6), the Company again requested PRCL, to confirm its revised participation;*

*i) Through email dated 26 December 2023 (Annex 7) the Company requested PRCL to confirm its final and uniform share participation for all Treaties including travel:*

*1) The Company through its subsequent email dated 26 December 2023 (Annex 8) sent final quota sheet to PRCL requesting final share confirmation.*

*k) Through email dated 28 December, 2023 (Annex 9) the Company again requested PRCL to confirm its final uniform participation for all classes as variable share are not acceptable to lead insurers.*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 22 -

l) Through email dated 29 December, 2023 (Annex10) the Company was informed that PRCL has discussed the request of the Company to reconsider PRCL share participation in Re-takaful Treaty but not acceded to and PRCL's stance will remain the same as communication to you vide earlier email.

m) The Company through its email dated 31 December, 2023 (Annex11) while giving background to the matter has requested for counsel of SECP, however, there was no response from the SECP till to-date.

n) Through email dated 04 January, 2023 (Annex12), the Company quoted excerpts from the Ordinance while trying to convince PRCL to accept 35% share participation across the board as its counter offer was not acceptable.

2. In view of the above submissions, it is prayed that the SECP may withdraw the SCN without any adverse consequences for the Company as the Company has made offer to reinsure 35% of its all direct non-life business as required under Section 42(2) of the Ordinance read with SRO 771(1)/2007 dated July 30, 2007.

We hope the above is found to the satisfaction of the SECP. We remain available if you require any further information or documents in this matter.

(Unquote)

11. Upon review of the instant case, the submissions and arguments of the Respondent Company and its Authorised Representative may be summarized as under:

- i) PRCL possesses the prerogative to either accept or decline any treaty offered by the Company, as stipulated by law, entitling it to the first right of refusal. Consequently, PRCL is not obligated to accept the entirety of the proposed arrangement as a unified package. It exercises its first right of refusal not only across different insurance classes but also within sub-classes, carefully considering its underwriting capacity and the viability of the offered business.
- ii) In line with this, PRCL evaluates the offered business based on its capacity and feasibility, determining the percentage of the offer and class/sub-class, which it can accept before giving the counteroffer.
- iii) Subsequently, PRCL communicated to the company the counteroffer it can accommodate, considering its capacity and feasibility. However, the Company did not accept the PRCL's adjusted offer and proceeded to approach international insurers, declining PRCL's counteroffer.

12. I have examined the facts of the case in light of the applicable provisions of the law and have given due consideration to the written as well as verbal submissions and arguments of the Respondent and its Authorised Representatives. I am of the considered view that the Company has offered/placed with PRCL the statutory share of its re-takaful business for acceptance. Furthermore, PRCL communicated its adjusted percentage vide letter dated 22.12.2022, whereby the counteroffer was given by PRCL refusing the participation in 'Fire Quota Share & Surplus', 'Motor XL' and 'Travel Quota Share' treaties, as under the law it is the prerogative of PRCL to exercise its first right of refusal and to give counteroffer based on its underwriting capacity and feasibility of the business. However, the Company did not accept that counteroffer and approached International Insurers to offer its re-takaful business, which constitutes non-compliance of the requirements of Section 42(2) read with SRO 771(I)/2007. In addition, the Company has also failed to comply with the requirements of Section 11(1)(d) of the Ordinance as the provisions of the Ordinance



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Division Adjudication Department-I

Continuation Sheet - 23 -

relating to the reinsurance arrangements have not been compiled with. Contravention of Section 42(2) of the Ordinance attracts the penal provisions of Section 42(4) of the Ordinance and contravention of Section 11(1)(d) attracts penal provisions contained in Section 156 of the Ordinance.

13. However, considering the facts and submissions that the Company has invariably offered treaty arrangements in respect of all classes of business to the PRCL as required under the provisions of the law. Moreover, in order to fulfil its obligation under Section 41 of the Ordinance, the Company had to place its business for the accepted classes of business with the international reinsurers. Therefore, keeping in view the aforesaid facts and submissions, I hereby conclude the instant proceedings with a warning to the Company to ensure meticulous compliance of the aforesaid provisions of the law in future.

14. This Order is being issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Shahzad Afzal Khan**  
Director/Head of Department  
(Adjudication Department-I)

**Announced:**  
February 28, 2024  
Islamabad.