

Ref: IRDAI/E&C/ORD/MISC/124/09/2024

Order in the matter of Marsh India Insurance Brokers Pvt Ltd.

1. Based on the

- i) Show Cause Notice ("SCN") reference No. IRDA/ Enforcement / 2022 / 679 / SCN dated 30th January, 2024 issued to M/s Marsh India Insurance Brokers Pvt Ltd. **(Broker)** in connection with the remote onsite inspection conducted by the Authority from 10th to 18th January, 2022.
- ii) Submissions made by the Broker vide email dated 21st February, 2024 in response to the aforesaid SCN.
- iii) Submissions made by the Broker during the personal hearing held on 30th July, 2024 at 2.30 PM, by the panel of Two Whole Time Members of the Authority- Shri PK Arora (Member-Actuary) and Shri Rajay Kumar Sinha (Member-F&I).
- iv) Further submissions made by the Broker vide email dated 14th August and 20th August, 2024.

2. Background

2.1. The Authority had conducted a remote inspection of M/s Marsh India Insurance Brokers Pvt Ltd. (Broker) from 10th to 18th January, 2022. The inspection report, inter alia, revealed certain violations of provisions of the Insurance Act, 1938 and Regulations and Guidelines issued thereunder.

2.2. A copy of the inspection report was forwarded to the Broker on 17th February, 2022 seeking their response and the response was received vide letter dated 7th March, 2022.

- 2.3. On examining the submissions made by the Broker, a show cause notice (SCN) was issued on 30th January, 2024. The Broker replied to the SCN vide letter dated 21st February, 2024. As requested by the Broker, personal hearing was granted to the Broker on 30th July, 2024.
- 2.4. On behalf of the Broker, Shri Sanjay Kedia, Principal Officer & Director; Shri Joseph Lonappan, Head of Specialities & Placements; Ms. Reena Bhatnagar, Senior Business Director; Shri Jerry Flahive, General Counsel, India, Middle East & Africa; Shri Prashant Pandey, Chief Legal & Compliance Officer and Ms. Jayenthy Rodrigues, Head of Compliance and on behalf of the Authority, Shri PK Arora (Member-Actuary), Shri Rajay Kumar Sinha (Member-F&I), Shri R K Sharma (CGM), Shri T.V. Rao (GM), Shri Sanjay Kr. Verma (GM) and Shri Saket Gupta (Manager) attended the hearing.
- 2.5. The submissions made by the Broker in its letter dated 7th March, 2022, submission made after SCN vide email dated 21st February, 2024 and submissions during the personal hearing on 30th July, 2024 and those made vide email dated 14th August, 2024 and 20th August, 2024 have been carefully considered by the Authority and are summarized below:

3. Charge-1 (Observation-5)

Violation of Clause (f) of Schedule II-Form U under Regulation 33(2) of IRDAI (Insurance Brokers) Regulations, 2018 which reads as under:

“(f) he shall take steps to promptly remit premiums/claims received to reinsurers/insurers/foreign insurance brokers, but not later than by fifteen days or as specified in the Terms of Business Agreement from the date of receipt of the monies into their Insurance Bank Account. Any delay in remittance shall be informed to the reinsurer/insurer / foreign insurance broker and shall take their written consent for such delay;”

3.1. Inspection Observation-5

It was observed that the Broker held the premium received from the clients in Insurance Bank Account (IBA) for more than 15 days. The broker did not remit the premium to the insurer/reinsurer within the time limit of 15 days.

3.2. **Summary of Broker's Submissions:**

- 3.2.1. Provisions of FEMA and other RBI Guidelines stipulate collection of mandatory tax and other documents as pre-requisite to remittance of premiums abroad. Requirement for these documents are duly notified to cedant and reinsurer in advance. Despite knowledge of these documents being necessary for remittance of premium, there were occasional delays in furnishing these, causing delay in remittance of premium within 15 days. Schedule II – Form U of IRDAI (Insurance Brokers) Regulations, recognizes operational delays in remittance of premium, and provides for regularization of delay through notification to reinsurer / insurer / foreign reinsurance broker and their acknowledgement. The Broker pointed out certain instances where the intervening lag in remittance was duly notified to reinsurer / insurer / foreign reinsurance broker.
- 3.2.2. Premium payment warranties have been changed to Premium Payment Conditions which allow the continuity of coverage. Premium for facultative business is being collected in most cases only after all the documents are in place.
- 3.2.3. The amounts were lying in non-interest bearing account and the Broker did not earn any money on the amounts. The Broker further submitted that sample cases highlighted in the inspection observation under the SCN were satisfactorily closed and the premiums were remitted.
- 3.2.4. The insurers have showed reluctance in signing the TOBAs explicitly therefore their implied or deemed consent is taken as approval for TOBA as long as they continue to take the services of the Broker.

3.2.5. The Broker further said that they have represented to the IRDAI for directing the insures to abide by the TOBAs.

3.3. Decision on Charge 1:

3.3.1. The Broker was asked to furnish the reasons for delay including the timelines in TOBAs against each cases mentioned under Annexure 35(a), (b) and (c) to the inspection observation under the SCN where in some cases, the delay in remittance of premium was observed to be more than 900 days. The exact break up of delays along with the amounts is provided below:

FY	Particulars	Delay (1-30 days)	Delay (31-90) days)	Delay (91-120 days)	Delay (120-180 days)	Delay (180 and beyond days)	Total
2018-19	No of cases	253	58	17	13	29	370
	Amount	3,28,26,00,626	36,45,96,788	9,58,36,274	3,42,05,938	4,19,51,740	3,81,91,91,366
2019-20	No of cases	56	13	01	00	05	75
	Amount	3,71,71,39,061	15,95,87,909	15,10,604	0	34,58,287	3,88,16,95,861
2020-21	No of cases	234	96	17	19	15	381
	Amount	3,66,69,04,758	75,93,20,186	27,44,92,568	12,02,63,233	1,22,77,656	4,83,32,58,400
Total	No of cases	543	167	35	32	49	826
	Amount	10,66,66,44,445	1,28,35,04,883	37,18,39,445	15,44,69,171	5,76,87,682	12,53,41,45,627

* Remittances done up to 15 days are not considered as delayed.

3.3.2. Arguendo, even if the consent to TOBAs is accepted as “deemed” consent, the Broker has failed to showcase against the cases mentioned in the aforesaid annexures that the inordinate delays in remittance of premium were either on account of RBI requirements, documentary requirements or as stipulated in TOBAs entered into by the Broker. Merely stating that there are multiple variables due to which the premium could not be remitted without specifically tagging the

cases with suitable explanations is evasive and fails to satisfy the Authority that the Broker has put in place robust and efficient systems and controls to ensure timely remittance of reinsurance premiums thereby defeating the very purpose of clause (f) of Schedule II-Form U of IRDAI (Insurance Brokers) Regulations, 2018. So far, there is no explanation by the Broker for the named cases in Annexures 35 (a), (b) and (c) either in the reply to SCN or the further replies.

- 3.3.3. The Broker's submission that the amounts are lying in a non-interest bearing account does not address the concern, as the Broker was under obligation to remit the dues within stipulated time unless it has taken written consent of reinsurer for the delay.
- 3.3.4. It is pertinent to mention that on the said violation, an Advisory was issued vide letter dated 19.10.2019 for delay in remittance of amounts to the tune of Rs. 76.95 crores. The Broker contested during the personal hearing that the violation alleged in extant SCN is not repeated as the requirement under clause (f) of Schedule II-Form U was not part of erstwhile Brokers Regulations of 2013. It is to be noted that the regulatory intent even in the absence of explicit provision during erstwhile inspection was same as that of clause (f) of Schedule II-Form U of IRDAI (Insurance Brokers) Regulations, 2018. A Re-Insurance Broker is not expected to sit on monies which are due to the reinsurers beyond a reasonable time. Precisely, for this reason, the Broker was advised to remit the reinsurance premiums within time. The Broker had confirmed their compliance of Authority's advice vide email dated 11th November, 2019 and showed compliance of Schedule II Form U on their own accord. In spite of earlier Advisory, the Broker has failed to improve the systems even after five years from the date of issuance of the erstwhile Advisory, as far as the remittance of monies/premium is concerned.

3.3.5. The delay in remittance is an evidence of operational inefficiency and also failure to comply with the regulatory obligations of the Broker. Thus, the Broker has violated Schedule II-Form U (f) of IRDAI (Insurance Brokers) Regulations, 2018.

3.3.6. **In view of the above and a history of similar violations persisting for long, in exercise of the powers vested under Section 102(b) of the Insurance Act, 1938, the Authority hereby imposes a penalty of Rs. One Crore (1 Crore) for the violation of clause (f) of Schedule II-Form U of IRDAI (Insurance Brokers) Regulations, 2018 since the violation has continued to occur for more than three years.**

3.3.7. **Further, the Broker is directed to**

- a) **undertake a review of all pending remittances and file an action taken report including the status of pending remittances as on 30-09-2024.**
- b) **review internal controls and identify deficiencies in processes and draw an action plan to ensure that issues are addressed and corrective actions are implemented to bring average delay with mandated Turn Around Times as per Regulations.**

4. Summary of Decisions:

Charge No.	Violation of Provisions	Decision
1	Clause (f) of Schedule II-Form U of IRDAI (Insurance Brokers) Regulations, 2018.	Penalty of Rs. One Crore and Direction

5. **The penalty amount of Rs. One Crore (1 Crore) shall be remitted by the Broker within a period of forty-five days from the date of receipt of this order through NEFT/RTGS (details for which will be communicated separately). An intimation of**

remittance may be sent to Shri T. Venkateswara Rao, General Manager (Enforcement & Compliance) at the Insurance Regulatory and Development Authority of India, Survey No. 115/1, Financial District, Nanakramguda, Hyderabad 500032, email id enforcement@irdai.gov.in.

6. Further,

- a) The Order shall be placed before the Board of the Broker in the upcoming Board Meeting and the Broker shall provide a copy of the minutes of the discussion.
- b) The Broker shall submit an Action Taken Report to the Authority on direction given within 90 days from the date of this Order.

7. If the Broker feels aggrieved by this Order, an appeal may be preferred to the Securities Appellate Tribunal as per the provisions of Section 110 of the Insurance Act, 1938.

Rajay Kumar Sinha
Member (F&I)

PK Arora
Member (Actuary)

Place: Hyderabad

Date: 14th October, 2024