



**Directions of Insurance Regulatory and Development Authority of India
under Section 34 of the Insurance Act, 1938**

**In the matter of
SBI Life Insurance Company Ltd.**

References:

- (i) *Government of India's (GOI's) Order dated 4/11/2015 (hereinafter referred to as "GOI's Order") remanding the matter to Insurance Regulatory and Development Authority of India (hereinafter referred to as "Authority/IRDAI" for deciding the case keeping in view the facts mentioned in para 5 of the GOI's Order in the matter of SBI Life Insurance Company Ltd. (hereinafter referred to as "SBI Life").*
- (ii) *Correspondence between SBI Life and the Authority post issue of GOI's Order.*
- (iii) *Submissions of SBI Life during personal hearing held on January 28, 2016*
- (iv) *Show Cause Notice (SCN) Dated May 9, 2016*
- (v) *Response of SBI Life dated June 10, 2016 to the SCN*
- (vi) *Submissions of SBI Life during Personal hearing held on August 23, 2016*

1. Background:

- 1.1. During June 2008, Authority carried out an onsite Inspection on SBI Life Insurance Company Ltd. It was observed during the Inspection that in respect of its group insurance product Super Suraksha, SBI Life has made payments at the rate of 20% of Single Premium towards reimbursement of administrative expenses amounting to Rs. 204.71 Cr to 14 Group Master Policyholders (hereinafter referred to as "MPHs"), which is in violation of Clause C4 of Group Insurance Guidelines dated 14th July, 2005.

- 1.2 After due process of issuing Show Cause Notice, allowing Personal Hearing and taking into account the written submissions of SBI Life as well as those submitted in the personal hearing, the Order dated 08th July, 2011 was issued by the Authority imposing a penalty of Rs 70 lacs for violation of Clause C4 of Group Insurance Guidelines. It was clarified in the said Order that the said penalty imposed was without prejudice to the action that the Authority may further take in the matter.
- 1.3 Consequently a Notice dated 9th March 2012 was issued asking SBI Life to show cause as to why the Authority should not pass directions for recovery of the monies paid to Master Policy Holders in violation of group guidelines. On considering the submissions of SBI Life vide its letter dated 30th March, 2012 and also based on SBI Life's submissions in the personal hearing dated 09th May, 2012 expressing inability to recover the said amounts from Master Policy holders, the Authority under Section 34 of the Insurance Act issued Directions vide Order dated 05th October 2012 directing SBI Life to distribute the wrongful payments of administrative charges paid to its different MPHs (from November, 2007 to August, 2009) by way of refund to the respective members / beneficiaries of the group insurance policies describing the methodology of how to actually carryout the exercise and that the amount to be refunded will be made good by the shareholders of SBI Life.
- 1.4 SBI Life made a representation dated November 02, 2012 under Section 34 (2) of the Insurance Act, 1938 which was examined and a personal hearing was accorded on 4th December 2013. Taking into account the submissions made in written representation as well as during the course of personal hearing, the Authority vide its letter dated 20th October, 2014 rejected the representation stating that there were no mitigating factors to consider in the representation and reiterated to implement the directions dated 5th October, 2012.
- 1.5 SBI Life preferred an appeal to the Government of India under Section 110 H of Insurance Act, 1938 against the Order dated 20th October, 2014 passed by the Authority. The Government of India following the due process of calling for written submissions as well

as conducting Personal Hearing, has passed an ORDER dated 4th November, 2015 in the said matter and remanded the matter to IRDAI for deciding the case keeping in view the facts mentioned in Para 5 of the GOI's Order dated 4th November, 2015.

1.6 Para 5 of the GOI's Order is as follows:

The main contention of SBI Life in the appeal is that the Policyholders' interests were not adversely affected at any point of time nor was there any loss to the policyholders of SBI Life – Super Suraksha as the same loading of 20% administration expenses was considered even in the replacement product 'SBI Life – Dhanaraksha' which was compliant with IRDAI's Group Insurance Guidelines issued vide Circular No. 015/IRDA/Life/Circular/GI Guidelines/2005 dated 14th July, 2005 and is supported by the following submissions:

- a. *SBI Life – Super Suraksha was approved by IRDAI in 2003 along with the premium rates, which included the component of payment of administration fees. The premium charged to the policyholders was strictly as per approval, wherein the cost of the administration was incorporated in the premium itself.*
- b. *If SBI Life would not have paid the said administrative fee to the master policyholder (MPH), the set of services would not have been provided by the MPH and would have had to be provided by SBI Life. SBI Life would have had to incur additional expenses which would be similar to the amounts as paid to the MPH as administrative fee.*
- c. *Both, 'SBI Life-Super Suraksha' and the replacement product 'SBI Life-Dhanaraksha' were approved by IRDAI and all the expenses loading proposed in the product were also approved by IRDAI as part of the File & Use approval process. The expenses loading incorporated in the product are assessed by the Company and are based on their own actual/expected experience and the same is certified by the Appointed Actuary of the Company as fair and justified and endorsed by the regulator as part of the product approval process.*

d. Expense Loadings approved in the products:

Product	Commission Loading	Administration Expense Loading	Total expense loading for sale and administration
Super Suraksha	0%	20%	20%
Dhanaraksha(Single Premium)	2%	18%	20%

Both products have been duly approved by the Regulator

Dhanaraksha is replacement product which has been sold after phasing out 'Super Suraksha' and the administration fee payment

- e. It is pertinent to note that the pricing of the product was approved by IRDA with the same assumptions of loading of 20% administration expenses in the price.
- f. The total expense loading to cover the administration expenses in both the original (SBI Life – Super Suraksha) and replacement product (SBI Life- Dhanaraksha) is the same.
- The inference is that in the older product, the administration expense loaded was 20% which was paid to the MPH as compensation for the various support activities carried out.
 - Even in the replacement product, the same 20% is loaded into the premium, i.e. 2% is paid to the Corporate agent as commission and 18% is retained by the Company for the support services now being carried by the Company in-house.
- g. Since loading with respect to administration expenses in both products is same (i.e. 20%), an in principle pricing of the products resulted in similar premium.
- h. It is also pertinent to note that both the products are of different vintage, the former was priced in 2001 and the latter in 2007. Hence the expenses and mortality loading are expected to be different because of the changing company experience.
- i. Since the premium in the original product and the replacement product carry the same total loading of 20% towards administration

expenses and which have been approved by the IRDAI itself and is irrespective of whether an administration fee is paid to the MPH or not. It is submitted that there is no premium to refund as the premium would have been the same.

- j. *Therefore the payment of administration fee was in no way detrimental to the interests of the members of the groups.*

2. Consequent to the GOI's Order dated 4th November, 2015, the contentions and supporting submissions of SBI Life mentioned under Para 5 of the GOI were verified with the actual records available with the Authority and certain clarifications and documents were sought from SBI Life, vide Authority's letters dated December 4, 2015 and December 29, 2015 to verify whether there was any basis and/or documentary evidence with SBI Life for its main contentions and supporting submissions mentioned under Para 5 of GOI's Order. SBI Life has submitted its response vide letters dated December 10, 2015 and January 7, 2016 respectively. After examining the two responses of SBI Life, the Chairman-IRDAI has accorded a personal hearing to SBI Life on January 28, 2016 at IRDAI-Hyderabad in the matter to (i) Make any additional submissions that they may have including production of any further documents, and (ii) Point out and substantiate where in the F&U and other documents, based on which Authority's approval was given, "20% of Premium as administrative fee/expenses" was stated. The submissions made by SBI Life during personal hearing minutes were recorded and signed.

3. **Submissions made by SBI Life during Personal hearing dt January 28, 2016**

- (i) SBI Life during the personal hearing stated that SBI Life – Super Suraksha product (Super Suraksha) is originally One Year Renewable Group Term (OYRGT) policy and in 2003, SBI Life modified the product to include the single premium and credit life component. When SBI Life officials were asked to show where in the original product File and Use (F&U) or in 2003 modification documents, reference to credit life component is made, *SBI Life officials stated that there is no explicit reference to credit life component in the modification request letter dated 30/10/2003 and also in the corresponding approval of the Authority dated 31/10/2003.*

(ii) During personal hearing, SBI Life officials, inter alia, submitted that in the product 'Dhanraksha Plus SP' 2% of Single premium is loaded for commission and 18% is loaded for Administrative expenses and this 'Dhanraksha Plus SP' is a replacement product of 'Super Suraksha' and they both have same 20% of Premium as loading of Commission plus administrative expenses. When SBI Life officials were asked to show documentary evidence where the "20% of premium towards administrative expenses" is mentioned in the documents submitted at the time of 2003 modification of Super Suraksha, they have referred to the sensitivity analysis part of Profit Testing document forwarded to the Authority through SBI Life's letter dated December 10, 2015. When asked whether this is an authenticated document because it is not signed by the Appointed Actuary like the premium table submitted which is signed one and when confirmation was sought from SBI Life Officials whether this was the same document submitted by SBI Life at the time of taking approval of 2003 modification, *SBI Life officials replied that the profit testing document as available in their office records was duly submitted along with the Company's response dated December 10, 2015 to the Authority's letter dated December 4, 2015.* SBI Life officials also submitted that this profit testing document is in generic template format which is used for profit testing and pointed to the part under sensitivity analysis part of the document where there was a mention of 20% for 'commission + profit margin' as the then used template did not have any separate field for 'Administrative Expenses'. *SBI Life officials stated that the field 'commission + profit margin' therefore referred to the administrative expenses loading.* With regard to 0 % commission for Super Suraksha, mentioned in the para 5 of GOI's Order, there is no reference of commission as 0% in the profit testing document. *When asked to submit the documents which clearly show the 0% loading for Commission and 20% of premium as administrative expenses in Super Suraksha product which they might have submitted to GOI at the time of making their submissions on which the GOI would have relied upon, SBI Life officials submitted that they have not given any such document to GOI.* Thus no supporting documents are made available by SBI Life which establish that SBI Life indeed filed with the Authority, for approval, expenses / commission rates referred in Para 5 of the Order of the GOI dated 4/11/2015. *SBI Life officials also stated that all documents supporting the inclusion of administration expenses were already submitted to the Authority vide its letter dated December 10,*

2015 and indicated that they would not be submitting any further documents.

4. After examining the matter under para 5 of GOI Order dated 4/11/2015 and submissions made by SBI Life in the personal hearing dt 28/1/2016, the Authority has issued a Show Cause Notice (SCN) dated May 9, 2016 to SBI Life. SBI Life submitted its response vide letter dated June 10, 2016. As requested by SBI Life, a personal hearing was accorded by Chairman-IRDAI on 23/8/2016 at IRDAI-Hyderabad in the matter. The submissions made by SBI Life during personal hearing were recorded and signed. The factual findings and observations on the contents of para 5 of GOI Order dated 4/11/2015 are as below:

i. **Para 5 of GOI's Order dated 4th November 2015 states that** the main contention of SBI Life in the appeal is that the Policyholders' interests were not adversely affected at any point of time nor was there any loss to the policyholders of SBI Life – Super Suraksha as the same loading of 20% administration expenses was considered even in the replacement product 'SBI Life – Dhanaraksha' which was compliant with IRDAI's Group Insurance Guidelines issued vide Circular No. 015/IRDA/Life/Circular/GI Guidelines/2005 dated 14th July, 2005 and is supported by the following submissions:

Authority's Observation: The original file & use documents of Super Suraksha submitted by SBI Life in 2001, the filings made by SBI Life in 2003 while introducing Single Premium mode, the replies by SBI Life vide letters dated December 10, 2015 and January 7, 2016 and attached documents are examined. SBI Life has also confirmed that no further documents are submitted to Govt of India. Loading of 20% administration expenses was neither considered in Super Suraksha nor Dhanaraksha Plus SP as per the filings made by SBI Life and as such the above contention of SBI Life is not correct and hence misleading.

ii. **Para 5 (a) of the GOI's Order dated 4th November, 2015 states that:** SBI Life – Super Suraksha was approved by IRDAI in 2003 along with the premium rates, which included the component of payment of administration fees. The premium charged to the policyholders was strictly as per approval, wherein the cost of the administration was incorporated in the premium itself.

And

- iii. **Para 5 (b) GOI's Order dated 4th November 2015 states that** If SBI Life would not have paid the said administrative fee to the master policyholder (MPH), the set of services would not have been provided by the MPH and would have had to be provided by SBI Life. SBI Life would have had to incur additional expenses which would be similar to the amounts as paid to the MPH as administrative fee.

Authority's observations: The point to be seen here is not whether SBI Life would have incurred similar expenditure, but that there is no explicit mention by SBI Life about inclusion of component of payment of administration fees in the premium rates of Super Suraksha filed in 2003.

In the absence of explicit mention of 20% of premium as administration fees to Master Policyholders in 2003 filing, the allowed expenses are equal to 13.5% of the loaded premium as approved under the original filing(F&U) of Super Suraksha in 2001. In 2003, SBI Life's proposal of addition of one more mode of premium i.e. "Single premium" was agreed to by the Authority, which as per SBI life was in great demand. In fact when the premium payment frequency is reduced to one time (Single Premium), it is reasonable to expect the allowed expenses to further go down less than even 13.5%. Therefore in Super Suraksha SP, payment of 20% of premium as administrative fees to Master Policy Holders against projected/filed/approved expenses of 13.5% is not only indefensible but also clearly detrimental to the members of the scheme and is in clear violation of General Instructions Point No. 5 and 7 and point No.4 of File & Use Procedure Circular dated 12/12/2001 as well as Clause C(4) of *Guidelines on Group Insurance Policies (Group Guidelines)* dated 14/7/2005 issued by the Authority. This is irrespective of whether it is paid to MPH or whether SBI Life would have incurred the expenditure themselves. Hence, the submissions of SBI Life in para 5 (a) &(b) of the GOI Order are neither correct nor acceptable.

- iv. **Para 5 (c) of the GOI's Order dated 4th November, 2015 states that** both, 'SBI Life-Super Suraksha' and the replacement product 'SBI Life-Dhanaraksha' were approved by IRDAI and all the expenses loading proposed in the product were also approved by IRDAI as part of the File & Use approval process. The expenses loading incorporated in the product

are assessed by the Company and are based on their own actual/expected experience and the same is certified by the Appointed Actuary of the Company as fair and justified and endorsed by the regulator as part of the product approval process.

Authority's observations: SBI Life submitted that *all the expense loadings proposed in the product* were also approved by IRDAI as part of File & Use approval process. It means *if the expense loadings are not proposed* in the product as part of File & Use process by SBI Life, approval of IRDAI to such expense loadings cannot be deemed or assumed. It is clearly established as per Authority's observations for (i) above that in the filings of Super Suraksha in 2001 and 2003 SBI Life did not propose 20% expense loadings or administrative expenses and thus the same are not approved by IRDAI. Further SBI Life's Super Suraksha filing in 2001 have 13.5% expense loadings. The filings by SBI life at the time of modification in 2003 did not mention any change in the expense loadings. Thus IRDAI approval for expense loadings are for 13.5% only which were explicitly proposed by SBI Life in 2001 filings. There cannot be any deemed approval by IRDAI for any enhanced expense loading which is not explicitly stated in the filings with IRDAI. Else entire process of File & use would be bypassed by entities extending spacious reasoning of deemed approval after perpetrating self-serving actions.

Expense loadings proposed in the product filing have significant bearing and implications to the premium charged and thus to the interests of policyholders and therefore are required to be explicitly stated in the product filing and certified by the Appointed Actuary of the Insurer that they are fair and justified.

In the absence of clear and categorical filing by SBI Life with regard to payment of administrative expenses and approval by the Authority, paying 20% of single premium as administrative expenses to the Master Policyholders which is in violation of Clause C(4) of Group Guidelines, is clearly detrimental to the interests of members of the group scheme.

- v. **Para 5 (d) of the GOI's Order dated 4th November, 2015** states that the following is the table showing Expense Loadings approved in the products:

Product	Commission Loading	Administration Expense Loading	Total expense loading for sale and administration
Super Suraksha	0%	20%	20%
Dhanaraksha(Single Premium)	2%	18%	20%

Both products have been duly approved by the Regulator

Dhanaraksha is replacement product which has been sold after phasing out 'Super Suraksha' and the administration fee payment

Authority's Observations: With due respect to and notwithstanding the above, the fact remains that the loadings submitted in the above para i.e. 0% for Commission and 20% for administration expense loading in Super Suraksha 2003 were neither filed with Authority nor approved. The expense loadings filed in case of Dhanaraksha Plus SP are also different from what is stated in the table-as per the filings by SBI Life with the Authority which are 2% for Commission and 12% of premium net of commission towards expenses, 18% of premium net of commission towards administration costs and 10% of premium net of commission as Profit Margin. It is regretted that the submissions made by SBI Life before the Appellate Authority of GOI are therefore erroneous as they are contrary to the facts on record.

vi. Para 5 (e) of the GOI's Order dated 4th November, 2015 states that it is pertinent to note that the pricing of the product was approved by IRDAI with the same assumptions of loading of 20% administration expenses in the price.

Authority's observations: The submission of the SBI Life before the Government of India is not true as the assumptions of loading 20% administration expenses in the price were not filed with IRDAI and hence there cannot be any approval by IRDAI as explained in details in para (vii) further.

vii. Para 5 (f) of the GOI's Order dated 4th November, 2015 states that the total expense loading to cover the administration expenses in both the original (SBI Life – Super Suraksha) and replacement product (SBI Life-Dhanaraksha) is the same.

- The inference is that in the older product, the administration expense loaded was 20% which was paid to the MPH as compensation for the various support activities carried out.
- Even in the replacement product, the same 20% is loaded into the premium, i.e. 2% is paid to the Corporate agent as commission and 18% is retained by the Company for the support services now being carried by the Company in-house.

Authority's observations: As the actual filings of SBI Life are in variance with their submissions as stated in Para 5 of GOI Order as pointed out above in 3 (ii) to 3 (vi), the total expense loading to cover the administration expenses in both SBI Life Super Suraksha and SBI Life Dhanaraksha is not the same. The commission and expense loadings of the two products as per filings of SBI Life are quite different, which are depicted as hereunder in the table below:

Product features	Super Suraksha	Dhanraksha Plus SP
First Year Expense related to Premium	13.5% of loaded premium <i>(This is as per 2001 filing. In 2003 filing there is no mention/modification of the same)</i>	12% of premium net of commission towards expenses 18% of premium net of commission towards administrative costs 10% of premium net of commission towards profit margin
Commission	Maximum of 2% of the loaded premium	2% of gross single premium
Profit Margin	Loaded in expenses	10% of premium net of commission
Overall ceiling on (Expenses + administrative costs + profit margin)	Nil	Rs. 1,000 per Rs. 1,00,000 SA

viii. Para 5 (g) of the GOI's Order dated 4th November, 2015 states that since loading with respect to administration expenses in both products is same (i.e. 20%), an in principle pricing of the products resulted in similar premium.

Authority's observations: As illustrated in the point (vii) above, Super Suraksha and Dhanaraksha Plus SP are different products - one being group term with fixed cover and the other group credit life with decreasing life cover in consonance with the reducing outstanding loan, the pricing of both these products is entirely on different footing and hence no inference can be drawn by comparing the two. Further Both the products have been approved by the authority at two different times one in 2001 and second in 2007 at two different rates of expense loadings and hence both these are not comparable.

ix. **Para 5 (h) of the GOI's Order dated 4th November, 2015 states that** it is also pertinent to note that both the products are of different vintage, the former was priced in 2001 and the latter in 2007. Hence the expenses and mortality loading are expected to be different because of the changing company experience.

Authority's observations: It is observed that the expenses loading in Super Suraksha and Dhanaraksha Plus SP are not same. Hence, the expenses in both these products are different.

x. **Para 5(i) of the GOI's Order dated 4th November, 2015 states that** since the premium in the original product and the replacement product carry the same total loading of 20% towards administration expenses and which have been approved by the IRDAI itself and is irrespective of whether an administration fee is paid to the MPH or not. It is submitted that there is no premium to refund as the premium would have been the same.

Authority's observations: In Super Suraksha which SBI Life referred to as original product, loading of 20% towards administration expenses was neither expressly stated in the filing and hence the question of approval of the same by IRDAI does not arise. The filed and approved expense loadings of Dhanaraksha Plus SP are not as stated in para 5 of the GOI Order dated 4th November, 2015 and are different from Super Suraksha. Hence it is denied that Authority had granted any approval of 20% Expenses under Super Suraksha. Therefore the comparison of the two products is inappropriate.

- xi. Para 5(j) of the GOI's Order dated 4th November, 2015 states that** therefore the payment of administration fee was in no way detrimental to the interests of the members of the groups.

Authority's observations: SBI Life submission before the Government of India is not true as the expense loadings incorporated in the product and stated explicitly in the filing before the Authority are assessed by the company and are based on their own actual/expected experience and the same is certified by the Appointed Actuary of the Company as fair and justified. Thus the expense loadings cannot be more than 13.5% as 20% loadings was neither filed with nor approved by the Authority. As against the 13.5% loadings, payment of 20% of single premium as administrative expenses to Master Policyholders is clearly and obviously detrimental to the members of the group scheme.

- 5. The findings on the explanations offered by SBI Life to the issues raised in the Show Cause Notice dated May 9, 2016 and the decisions are as follows:**

5.1 Charge No.1: The product Super Suraksha Single Premium version as filed with IRDAI in 2003 and approved is not a credit life policy with sum assured reducing with outstanding loan as stated by SBI Life in its appeal to Govt of India dated November 11, 2014 and in its letter to the Authority dated January 7, 2016 and treating this product as credit life policy without the approval of the Authority is in violation of General Instructions Point No.5 and 7 and Point No.4 of File and Use Procedure Circular dated 12/12/2001.

SBI Life submitted the following:

- (i) IRDAI expressly condoned violations by SBI Life in relation to the Credit Life Component of the Super Suraksha Product and advised to ensure compliance to File and Use Guidelines vide letter dated 10th May, 2010. Hence, there can be no scope for this issue to once again arise in the present SCN.
- (ii) There was no system of approval of products specified anywhere in any section of the Insurance Act, 1938, except Section 3B and 40B, which requires the filing of premium bases along with certification from the Appointed Actuary before the product is offered for sale. As such the charge is not maintainable.

Decision:

- (i) The contentions of SBI Life that IRDAI expressly condoned violations by SBI Life in relation to the Credit Life Component of the Super Suraksha Product prove the charge 1 of File and Use violation with regard to credit life component by its own admission clearly. Further on examination of letter dated 10th May 2010 reveals that the File and use violations dealt with therein are
- a) Certificate of Insurance given to different Master Policy holders contain different terms and conditions which is inconsistent with the filed version of Super Suraksha.
 - b) Insurer offered different premium tables (age-band wise) for master policy holders under Home loan scheme (Super Suraksha), which are inconsistent with the premium rates filed with the Authority.
 - c) Though there is no provision for surrender in Super Suraksha policy, the policies sold as home loan products under single premium mode are allowed to be surrendered at a pre-determined formula.
 - d) In some cases the claim is rejected as the death occurred within 45 days from the DOC and quoting the reasons "Intimated late (after 90 days), which are not included in the F&U of the product Super Suraksha.
- (ii) The File and Use violation relating to credit life component was not one of them. Therefore the contention of SBI life cannot be accepted.
- (iii) The present charge is that the product Super Suraksha Single Premium version as filed with IRDAI in 2003 and approved is not a credit life policy with sum assured reducing with outstanding loan as stated by SBI Life in its appeal to Govt of India dated November 11, 2014 and in its letter to the Authority dated January 7, 2016. As per the filing in 2003, SBI Life has added only single premium mode in the plan which is Group Pure Term product.
- (iv) Therefore by treating Super Suraksha single premium as credit life policy without filing the same as credit life policy, SBI Life has violated General Instructions Point No.5 and 7 and Point No.4 of File and Use Procedure Circular dated 12/12/2001 and SBI Life is issued strict WARNING for the

same. Further, the possible implications of treating “Super Suraksha single premium plan” as “Reducing cover long term Credit Life policy” while filing the same with the Authority as Single premium version of Group pure term product require examination in terms of

- a) Appropriateness of premium charged for Reducing cover long term credit policy and
 - b) Appropriateness of claims paid
- in respect of all policies issued under this plan.

Therefore, the Authority directs SBI Life to get the matter freshly examined by its Appointed Actuary and submit a certificate with complete details in a format to be specified separately and Action Taken Report in this regard along with observations of Board of SBI Life within 120 days from the date of this Order.

5.2 Charge No.2:

- (i) From the above submissions of SBI Life, it is noted that neither the original F&U documents of Super Suraksha in 2001 nor the documents submitted in 2003 while introducing single premium component of Super Suraksha contain the 0% loading as commission and 20% as administration expenses loading as mentioned in the Para 5 of the GOI Order and therefore the same are not approved by the Authority. Hence, the submissions of SBI Life that both the products Super Suraksha and Dhanraksha SP have 20% of Premium as loading of Commission plus administrative expenses, which are filed by SBI Life with IRDAI and approved by IRDAI, is not correct and is not substantiated by any documentary evidence. Expenses mentioned in the original F&U are 13.5% of loaded premium and commission as maximum 2% for each channel in the case of Super Suraksha. There is no explicit mention of administrative expenses but against profit margins, it is mentioned that “loaded in the expenses, which comprise administrative costs and margin”. That means the 13.5% premium shown against expenses is inclusive of expenses, administrative costs and profit margins. There is no percentage mentioned for administrative costs exclusively. Hence, the payouts of 20% of Single premium as administrative costs to the Master Policyholders are in violation of provisions of General Instructions point Nos 5 and 7 and point No. 4 of File & Use Procedure Circular dated

12/12/2001 and provisions of Clause C-4 of Guidelines on Group Insurance Policies (Group Guidelines) dated 14/7/2005.

- (ii) The payments of 20% premium as administrative costs to Master Policyholders against the total expense provision of 13.5% (including expenses, administrative costs and profit margin) not only violate the F&U and Group Guidelines but also is in clear detriment to the interests of the members of the scheme/group policies because the expense loadings incorporated in the product (13.5%) are assessed by the company and are based on their own actual/expected experience and the same is certified by the Appointed Actuary of the Company as fair and justified. *As against 13.5% expense loadings filed and approved, payment of 20% of premium as administrative expenses to Master Policyholders is clearly detrimental to the interests of the members of the scheme.*
- (iii) Further the expense loadings of 13.5% are assessed by the Insurer for OYRGTA which is expected to come down if the mode of premium payment is reduced to one time as in the case of single premium. Under the circumstances hiking the payment of administrative expenses to 20% of single premium is without any basis or approval and is clearly detrimental to the interests of the members of the group scheme. It has only benefitted the Master Policy holders at the cost of members of the group scheme who ended up paying the higher premium. SBI Life has paid as administrative costs i.e. 20% of premium when total expenses loading in the Super Suraksha itself is only 13.5% of premium. *Hence, paying this 20% of premium as administrative fee to the Master Policyholders*
 - (a) is imprudent and poor management of conducting the business*
 - (b) is in violation of the General Instructions Point No.5 and 7 and Point No. 4 of File and Use Procedure Circular dated 12/12/2001.*
 - (c) is unfair and detrimental to the interests of the members of the group schemes/policies and*
 - (d) is in violation of the Clause C-4 of Guidelines on Group Insurance Policies dated 14/7/2005.*

SBI Life submitted the following:

- (i) That they have complied with the requirements of Sections 3 B and 40B of the IA, 1938, the charge is not maintainable.

- (ii) As regards the Clause C-4 of Guidelines on Group Insurance Policies dated 14/7/2005, SBI Life submits that these are guidelines and are effective prospectively.
- (iii) SBI Life has been registered to transact life insurance business, and is free to manufacture its products while transacting insurance business, subject to provisions of Section 3 B and 40B of the Insurance Act, 1938. This particular product was made to the satisfaction of borrowers of housing loans from banks and if the insurance product is not to the liking of a customer after purchase, he has the right to exercise free look period of 14 days option as per IRDA' PPI Regulations. Therefore, this product was not against the interests of the policyholders, and IRDAI's charge is not maintainable.
- (iv) The opinion of the IRDAI on design of the product is not maintainable and it is not in accordance with Section 40B, Section 2(11) of Insurance Act, 1938
- (v) SBI Life further submits that it has neither been imprudent nor displayed poor management of conducting business and/or that it has not ever acted in violation of the General Instructions Point No.5 and 7 and Point No.4 of File and Use Procedure Circular dated 12/12/2001 and/or that its actions have been unfair and detrimental to the interests of members of the group schemes/policies and/or that it is in violation of Clause C4 of Group Guidelines dated 14/7/2005 for reasons set forth in detail in the response.
- (vi) SBI Life filed an application dated 30/10/2003 with IRDAI through its Appointed Actuary which was approved by IRDAI on 31/10/2003 and inherent in such approval was the entire gamut of premiums, underlying profitability assumptions and administration expenses, which were approved at a point in time prior to regulations (which came into force in December 2003) requiring specific approvals of modifications to insurance products. SBI Life was entitled to rely on the approval granted by IRDAI, and it is not available to IRDAI to resile from its approval, and indeed, IRDAI is bound by its approval and/or stopped from contending otherwise. In any event, the circumscribed powers now available in remand proceedings preclude scope for the IRDAI to proceed on the basis that there was any detriment caused to the policyholders of Super Suraksha product and/or for any such element to be brought into the ambit of the present Show Cause Notice.

(vii) SBI Life during personal hearing, inter alia, briefed the events of the case in chronological order and mentioned that 20% administrative expenses in Super Suraksha 'actually paid' with 20% expenses (2% commission + 18% administrative expenses) loaded in the replacement product i.e. Dhanraksha Plus SP. SBI Life also contended that the Authority has approved the replacement product and acknowledged Dhanraksha Plus SP to be the replacement product in their order dated 5/10/2012.

(viii) **SBI Life also raised, certain jurisdictional issues in its response dated June 10, 2016 which are reproduced hereunder**

- a. The legal implication of the Order of the Appellate Authority (Government of India's Order dated 4/11/2015) is to cast a mandate upon the Authority, by the Appellate Authority, nullifying all findings which culminated into the impugned directions/orders of 5/10/2012 and 20/10/2014, which are thus liable to de novo adjudication, without re-opening matters which are recorded as 'submissions' in paragraph 5 of the Appellate Authority's Order.
- b. It is a matter of record that after recording the facts raised before the Appellate Authority, by ourselves, as Appellant, the Appellate Authority (GOI) set aside the IRDAI's Order dated 20 October 2014 by remanding IRDAI's Order and the directions dated 5/10/2012 to IRDAI **"for deciding the case keeping in view the facts mentioned in paragraph 5 above"** (emphasis supplied). Hence, the directions of the Appellate Authority results in the facts set out in Para 5 being liable to be taken into account, in adjudication, on remand. In the circumstances, these facts are liable to be treated as final and conclusive, and governed by issue estoppels and/or res judicata and/or constructive res judicata and/or principles analogous thereto. The Appellate Authority's remand is thus on the condition that the paragraph 5 facts be taken into consideration and is therefore a remand in which jurisdiction of IRDAI was this limited.
- c. In the circumstances, it is no longer available to a Show Cause Notice to be issued around matters observed in paragraph 5 of the Appellate Authority's Order and/or for those findings to be re-opened, since the forum before whom our submissions were capable of being assailed (subject to merit therein, if any) was the

Appellate Authority, which has fully accepted our submissions in paragraph 5 of the Appellate Authority's Order. Allegations of incorrect submissions made before the Ministry of Finance, Government of India, are unfair and contrary to records of such appellate process and can find no place in the Show Cause Notice at all. Indeed, any iota of doubt around accuracy and completeness of submissions made before the Appellate Authority were liable to be raised then by the IRDAI, rather than through pointing to ostensible inaccuracies in the Show Cause Notice. The Show Cause Notice, to the extent it raises observations, through paragraph 4, around submissions and corollary findings before the Appellate Authority, undermines these findings of the Appellate Authority, and is contrary to law and without jurisdiction.

With regard to the jurisdictional issues raised by SBI Life, it is to state that

- (i) Para 6 of GOI's Order dated 4/11/2015 states that the Government is of the view that IRDAI's Order dated 20/10/2014 and the Directions dated 05/10/2012 issued under Section 34 (1) (b), which required SBI Life to recover from Master Policyholders the various payments (including administration fee amounting to Rs. 84.32 crores) made on or after November 5, 2007 till August 231, 2009 and refund these amounts to the policyholders as the interest of policyholders was adversely affected, **be remanded to IRDAI for deciding the case keeping in view the facts mentioned in para 5 above (of the Order dated 4/11/2015).**
- (ii) Hence to decide the case keeping in view the facts mentioned in para 5 of the Order dated 4/11/2015, the Authority has powers to look into the merits on the points mentioned by the GOI in its Order dated 4/11/2015 and the contents mentioned in the Para 5 of the said Order of GOI are not "findings" or "conclusions" arrived at by the Appellate Authority (GOI) but contentions and supporting submissions of SBI Life as clearly mentioned in the Para 5 itself. Had they been findings or conclusions, there would be no need to remand the matter back to the Authority, but an Order could have been passed by the Appellate Authority (GOI) by itself. Further, the Authority cannot ignore the facts as available on

records. However, before proceeding on the basis of factual records as available, to decide the case, the Authority sought necessary clarifications from SBI Life on the contents mentioned under para 5 of SBI Life and granted a personal hearing in January 2016 (as stated in para 4 above) and after examining the written submissions and additional submissions made during personal hearing, a Show Cause Notice was issued again on May 9, 2016 so that one more opportunity can be given to SBI Life to provide documentary evidences and submissions to establish the facts mentioned under para 5 of the GOI Order. Such an action by the Authority is not to undermine the findings of the Appellate Authority and is not contrary to law but well within the jurisdiction and is well within the Orders issued by the GOI.

Decision:

- (a) Reference to Sections 3B and 40B and 2(11) of Insurance Act made by SBI Life are not relevant here.
- (b) Group Guidelines of 2005 are applicable and effective from the date of issue i.e. 14/7/2005 and no payment to the Master Policyholders was allowed under the same.
- (c) Group Guidelines, 2005 were directions issued to all Life Insurers under Section 34 of Insurance Act, 1938 to be adhered to and as stated expressly in Section 34 itself that Insurers shall be bound to comply with such directions.
- (d) The provisions of C-4 of Group Guidelines prohibiting any payments by the Insurer to Master Policy Holder are prospective in nature which means from the effective date no such payments can be made under any group insurance product whether such product is approved before or after the issue of guidelines. As such there is nothing that compels SBI Life and no justification, legal or otherwise whatsoever to continue such payments under Super Suraksha after the issue of regulatory directions/guidelines prohibiting the same which take precedence over any obligations of SBI Life.

(e) Here, the payments of administrative costs to MPHs are detrimental to the interests of members of the group scheme because these payouts were higher than the expense loadings approved under F&U. The response of SBI Life that the policyholders/members can exercise free look option is not relevant here because the policyholders/members may not know that SBI Life is paying a huge administrative costs to MPHs which are not allowed as per Group Guidelines and that SBI Life incurring/paying more administrative costs than what is filed and approved under File and Use. Hence, paying 20% of single premium towards administrative costs to MPHs which payment was prohibited under Group Guidelines and which rates are not approved under F&U is detrimental to the members of the group policies because this is loaded in the premiums and these premiums are paid by the members of the Super Suraksha group policies.

(f) Para 5 of GOI's Order dated 4th November 2015 states that the main contention of SBI Life is that the Policyholders' interests were not adversely affected at any point of time nor was there any loss to the policyholders of SBI Life – Super Suraksha as the same loading of 20% administration expenses was considered even in the replacement product 'SBI Life – Dhanaraksha' which was compliant with IRDAI's Group Insurance Guidelines issued vide Circular No. 015/IRDA/Life/Circular/GI Guidelines/2005 dated 14th July, 2005.

The veracity of the above contention that the policyholders' interests were not adversely affected at any point of time nor was there any loss to the policyholders of Super Suraksha was examined by comparing the premiums charged to policyholders under Super Suraksha-SP and Dhanaraksha Plus-SP.

SBI Life vide its letter dated December 11, 2013 submitted the following premium tables for a Sum Assured of Rs. 5 lakhs for both the product Super Suraksha-SP and Dhanaraksha Plus SP. SBI Life also mentioned that for the sake of equivalence, the premiums have been calculated at the same loan rate of interest (11%) and the pricing is strictly as per the assumptions stated in the File and Use.

(Amount in Rs.)

Single Premium for 5,00,000 Sum Assured (Loan Interest 11%)								
Age/Term	5 years		10 years		15 years		20 years	
	SS	DPSP	SS	DPSP	SS	DPSP	SS	DPSP
30	2,570	2,059	5,210	4,114	8,065	6,580	11,375	9,936
35	3,065	2,520	6,825	5,581	11,590	9,580	17,760	14,594
40	4,395	3,514	10,055	8,032	16,560	13,803	24,500	19,517
45	5,880	4,888	13,830	11,595	22,115	17,944	32,910	26,334
50	9,705	7,987	20,685	16,894	33,965	26,035	50,360	39,705

- SS – Product Super Suraksha
- DPSP – Product Dhanraksha Plus SP

It can be seen from the above table that Super Suraksha SP premiums chargeable to members of the group schemes are higher than Dhanaraksha Plus SP by 20% approximately across all the age groups. Thus the main contention of SBI Life as per para 5 of the GOI order that policyholder's interests were not adversely affected at any time nor was there any loss to the policyholders of Super Suraksha are not tenable.

(g) In 2003 filings, only a new mode of payment i.e. single premium was introduced. The Authority's letter dated 31/10/2003 mentioned that they agreed to the proposal of offering single premium under SBI Life-Super Suraksha. Infact, when there is no mention of loading of administrative expenses at the time of adding one more mode of Single Premium. Therefore in the absence of express mention in the filings, it would be assumed that there is no modification to the expenses loading and the original expense loadings under approved F&U of 2001 prevail.

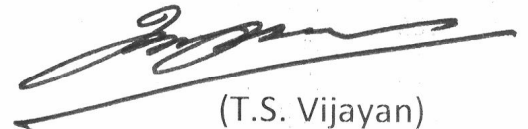
(h) With regard to the submission of SBI Life that the Authority has approved the replacement product and acknowledged Dhanraksha Plus SP to be the replacement product in their order dated 5/10/2012, the Authority under point No. (c) of the said Final Order dated 5/10/2012 stated "that the explanation offered by the Life Insurer for not replacing the then existing product, immediately on getting approval for a new product by the Authority is also **not tenable** in view of the fact that the insurer continued to sell the old product much beyond the date of approval accorded to the new product. **Such explanation cannot legalize a payment which is prohibited in the guidelines.**"

Hence, in view of the above points, it is concluded that the payouts to Master policyholders at the rate of 20% of single premium as administrative fee to the Master Policyholders in Super Suraksha.

- *is imprudent and poor management of conducting the business*
- *is in violation of the General Instructions Point No.5 and 7 and Point No. 4 of File and Use Procedure Circular dated 12/12/2001.*
- *is in violation of the Clause C-4 of Guidelines on Group Insurance Policies dated 14/7/2005.*
- *is unfair and detrimental to the interests of the members of the group scheme*

In view of the above, the Authority reiterates its directions issued vide Ref No: IRDA/Life/ORD/Misc/228/10/2012 dated October 5, 2012 for compliance. Further SBI Life is also directed -

- To pay the interest on the refundable amount at a rate which is 2% above the bank rate as stipulated in Regulation 8 (5) of IRDA (Protection of Policyholders' Interests) Regulations, 2002 to the members of the group insurance policies to be calculated from the expiry of six (6) months from the date of these directions to the date of actual payment.
- To submit a Board approved Action Taken Report to the Authority within a time span of one month after compliance of these directions and completion of the refund activity.



(T.S. Vijayan)
Chairman

Date: 11th January 2017
Place: Hyderabad