



भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY OF INDIA

No. IRDA/ENF/ORD/ONS/ 260 /10 /2021

Final order in the matter of M/s. Safeway Insurance Brokers Pvt Ltd

[Based on reply to the Show Cause Notice dated 19th March 2020 and submissions made during Hearing through video-conferencing held on 10th December 2020 at 12 pm, chaired by Member (Non-Life) at the office of Insurance Regulatory and Development Authority of India, Hyderabad]

Background: -

1. The Insurance Regulatory and Development Authority of India (Authority) had conducted an onsite inspection of M/s Safeway Insurance Brokers Pvt Ltd ("Broker" or "Company") during 9th to 11th October 2017, in order to examine overall regulatory compliance by the Broker. The Authority forwarded a copy of the Inspection Report to the Broker on 9th November 2017 seeking comments and the Broker's response was received vide their letter dated 4th January 2018. Upon examining the documents on hand and submissions made by the Broker, the Authority issued Show Cause Notice (hereinafter referred to as "SCN") on 19th March 2020.

Show-Cause Notice, Reply and Hearing:

2. The Broker submitted its reply to the SCN by email dated 25th August, 2020. As requested therein, opportunity of hearing through video-conference was given to the Broker on 10th December 2020. Mrs Ritu Gupta, Principal Officer, Shri Inderjot Singh, Director and Shri Ashok Ghosh, Accounts Executive attended the hearing, on behalf of the Broker. On behalf of the Authority Shri Randip Singh Jagpal, CGM (Intermediaries), Shri Prabhat Kumar Maiti, GM (Enforcement), Shri B. Raghavan, DGM (Enforcement), Shri Udit Malhotra, AM (Enforcement) and Shri Indradeep Sah, AM (Brokers) attended the hearing.

The Principal Officer and other employees of the Broker were not prepared for the hearing and could not give any additional submissions during the hearing to the charges levelled against the Company. As such, the Company was given an additional opportunity to submit further clarification and documentary evidence, if any, within 7 days of the personal hearing. In reply, the Broker submitted its response vide mail dated 15th December 2020.

The submissions made by the Broker in their written reply to the Show Cause Notice, those made during the course of the hearing and submissions made vide email dated 15th December 2020 and the documents submitted by the Broker in evidence to their submissions have been considered by the Authority and accordingly the decisions on the charges are detailed below

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Charges, Submissions in reply thereof and Decisions:

3. Charge No. 1:

Violation of:

- Clause 1(b), 1(d) & 1(f) of Regulation 41 of IRDA (Insurance Brokers) Regulations, 2013.
- Clause 1(d) & 1(e) of Schedule VII read with Regulation 39 of IRDA (Insurance Brokers) Regulations, 2013.

The charge pertains to non-submission of requisite information by the Broker to the inspection team such as solicitation related documents, mandate letters, comparison chart, quotes, proposal form, policy documents, complaints related documentation etc. Also, many entries were found in premium register which were not accurate i.e. inaccurate data was being maintained in relation to commission received. The finding indicates poor maintenance of premium register and other policy related information by the Broker. The Broker did not ensure to check the correctness and authenticity of data while submitting to the Authority. Such actions of the Broker caused hindrance in enabling the inspection team to check the compliance of the Broker with the Regulations and seems a deliberate attempt to hide the facts and/or debar the Inspection team from examining the actual practices followed by them.

Submission of the Broker:

The Broker submitted that most of its clients were SME and retail segment clients, including for the sample taken, wherein the products sold are plain vanilla and standard products.

They do offer choice to the customer, but the customer asks for a specific insurer and therefore does not offer choice or a panel of insurers to the customer. The Broker submitted that their relationship with the customer is a continual one and there may be a blanket mandate rather than specific mandates for each policy.

Moreover, as the sample taken was from Mumbai, the level of documentation and the transmission, storage and retrieval of the requisite documentation in the past was a challenge due to the lack of a robust ERP based IT Systems for the Broker. This system would also do the job of a sales system recording the insurance solicitation trail and the process, binding of policies, generation of Invoices, tax accounting, reconciliation of receivables, reporting of discrepancies, inconsistencies and errors and omissions on the part of the insurer in making payments due to the Broker.

The Broker informed that they are in the process of acquiring an IT system and software for its core operations and would be implementing the same across the Company and migrating all the existing and relevant renewal data on to the ERP System. This initiative is to get better control over the business and run it in a streamlined and profitable manner and derisk operations with an electronic trail of solicitation and closure and scanning, storage and retrieval of documents like mandates, quotes, cheques, etc in one system.

Decision:



The Broker must note that the purpose of inspection by the Authority is to check and verify the compliance of the Broker to the provisions of law, rules, regulations, circulars which the Broker is subject to. The grant of registration to the Broker is on the condition that relevant statutory and regulatory provisions would be complied with. Hence for checking the Broker's compliance to Regulatory prescriptions, the Broker must make available to the Inspection team all the documents and records etc. (as deemed necessary by the Inspection team). But the Broker failed to provide the documents sought by the inspection team. In the absence of accessibility to many relevant documents, the inspection team could not check and verify the Broker's compliance to regulatory requirements. It is noted that the Broker themselves accepted in their submission that they have not maintained the documents properly.

The Broker is warned for the lapse and directed to ensure that it maintains requisite documents meticulously and provides them to Inspection team whenever asked for, in adherence with Clause 4 of Regulation 34 & Clause 1(c) & 1(e) of Schedule II- Form Z under Regulation 42(3) of IRDAI (Insurance Brokers) Regulations, 2018.

4. Charge No. 2

Violation of Clause 2(ii) of Regulation 8 of IRDA (Insurance Brokers) Regulations, 2013.

There is improper Premises management in the absence of valid Lease agreement of its offices.

The Broker in response to the inspection report, submitted that Delhi office lease agreement was already informed to the Auditors and has not provided any documentary evidence to counter the findings in the observation. The Broker did not check whether the lease agreement shared with the inspection team was valid.

It is apparent from the findings of the observation and submission of the Broker, that the Broker is not having proper lease agreement for its functioning for which the Broker is in violation of Clause 2(ii) of Regulation 8 of IRDA (Insurance Brokers) Regulations, 2013.

Submission of Broker:

The Broker submitted that it has a lease to the office premises in New Delhi with the LIC of India dated 14th February 1995. The Company was then named as Sohan Esel Pvt Ltd., and the name was later changed to Safeway Insurance Brokers Pvt Ltd., prior to licensing in 2003.

This lease had an auto-renew clause every three years with an escalation in rent and expired on 29-01-2004 when a fresh lease was to be executed. However, in practice, this was never done and the Broker is still the tenant and paying regular rent to the LIC of India. There is a litigation on the quantum of rent payable to LIC, due to which a fresh lease was never executed till date. However, the Broker is trying to settle the dispute with the LIC of India out of court and will advise the IRDAI when a fresh lease is signed off for the same premises.



Broker's Mumbai office functioned at Fort Area and on the death of their Branch Manager the operation was shifted to the residence of an employee of the Broker. Even that residential office was also closed, as intimated to the Authority vide Broker's letter dated 24th May, 2018.

The Broker has since furnished the fresh lease agreement for their Delhi office, which indicates that they have shifted their office premises to a new location in Delhi.

Decision:

Taking note of the submissions as above charge is not pressed further ; however the Broker is directed to ensure that it possesses infrastructure including proper lease agreement , so as to comply with Clause 2(b) of Regulation 8 of IRDAI (Insurance Brokers) Regulations, 2018; in letter and spirit.

5. Charge No. 3

Violation of Clause 2(iii) & 2(xiv) of Regulation 8 read with provisions of Schedule II under Regulation 8 of IRDA (Insurance Brokers) Regulations, 2013.

The charge pertains to failure of the Broker to obtain the renewal training certificate for two of its Qualified Persons which shows that the Qualified Persons have not undergone training on regular intervals as mandated under the Regulations.

The Broker, in its submission, has mentioned that it has kept the Authority informed in the past and had been warned for the delay in renewal training. But it has not provided any documentary evidence with respect to compliance from its side with regard to the renewal training of the respective Qualified Persons.

The Broker did not have minimum number of qualified persons in Branch office as mandated in the Regulations. The Broker has solicited policies from Mumbai office during a certain period, when there was no qualified person in the branch and training validity of one employee had also expired.

The Broker, by utilising the services of employees for solicitation from its office and branches, who have not completed their renewal training, is in violation of Clause 2(iii) & 2(xiv) of Regulation 8 read with provisions of Schedule II under Regulation 8 of IRDA (Insurance Brokers) Regulations, 2013.

Submission of Broker:

The Broker submitted that they did have a minimum of two trained insurance professionals on their rolls in Mumbai who were responsible for insurance solicitation. With regard to gap in renewal training, the reason for the same was explained to IRDAI at the time of its renewal of Licence and Broker apologised for the gap and laxity in the renewal training process. Nowadays, it is an online process, so the compliance is easier for Safeway Broker.

Decision:



It was noticed that there was gap in obtaining the renewal training certificate of Mr Pankaj Kumar Gupta. He has completed renewal training on 10th August, 2013 after which no further renewal training was undergone post September 2016.

Mr George Mani has completed first renewal training on 25th June 2009. The next renewal training was undergone on 28th September 2012 after a delay of three months. Also, no further renewal training was undergone post October, 2015.

It has been ascertained from the Broker and taken on record, based on the documents submitted by the Broker, that as on date the training requirements in relation to the BQPs are being correctly complied with.

However, for the violation as referred under this charge, by virtue of powers vested under Section 102 (b) of the Insurance Act, 1938, the Authority levies on the Broker a penalty of Rs 2,00,000/- (Rupees Two lakh only), which is calculated based on two aforementioned persons of the Broker not completing their renewal training within stipulated timeline (at the rate of Rs 1 lakh per person for two individuals).

The Broker is further directed to ensure that its BQPs complete their renewal training within stipulated timeline in accordance with Clause 3 of Regulation 14 of IRDAI (Insurance Brokers) Regulations, 2018.

6. Charge No. 4

Violation of Regulation 29 (2) and Regulation 30 (1) of IRDA (Insurance Brokers) Regulations, 2013 & Section VI of Authority's circular no. IRDA/BROKER/MISC/CIR/232/10/2014 dated 21st October 2014.

There was delay in the submission of Quarterly and half yearly returns by the Broker. The number of days ranged from a minimum of 5 days to maximum of 5 months.

Year	Returns	Last Date of submission as per Regulation	Date of submission to the Authority	Delay
2015-16	Final Accounts	30-Sep-16	18-Oct-16	18 days
2014-15	April- September 2014	31-Oct-14	2-March-15	5 months
2014-15	October 2014-March2015	30-Apr-15	Not Submitted	5 months
2015-16	April- September 2015	31-Oct-15	29-Jan-16	4 months
2015-16	October 2015-March2016	30-Apr-16	30-June-16	2 months
2016-17	April- September 2016	31-Oct-16	16-Dec-16	45 days
2016-17	October 2016-March2017	30-Apr-17	5-May-17	5 days



The online returns through BAP module for 2016-17 have not been submitted. Further, their online returns for 2014-15 and 2015-16 were submitted in the BAP Portal on 21st February 2017 and 18th September 2017. The charge pertains to failure of the Broker to submit the returns to the Authority within the stipulated time frame as mandated in the Regulations which has also been acknowledged by the Broker. It is evident from the findings that the Broker is having no inclination towards filing returns with the Authority within the timeframe and this has been observed in different instances.

Submission of Broker:

The Broker accepted the fact that there were some delays in the submission of quarterly returns and BAP returns, but now it is careful in its submission. The Broker stated that most of the delays were due to initial teething problem with the BAP system and the learning of its staff to execute the BAP implementation and some challenges in data capturing due to delays in TDS certificates from Public Sector Insurers in the past. Most of the challenges are over by now and the Broker endeavours to complete the regulatory filing on BAP during the time lines stipulated.

Decision:

The Broker, in its submission has accepted to the lapse on its part regarding non submission of returns within stipulated time frame. It is pertinent to mention that the Broker, despite being regularly pointed out by Authority in this regard, has continued to delay the submission of the returns.

The Broker is warned for the lapse. The Broker is further directed to ensure that it submits the returns to the Authority within stipulated timeline as envisaged in Regulation 39 of IRDAI (Insurance Brokers) Regulations, 2018.

7. Charge No. 5

Violation of Clause 3(b) of Schedule VI–A under Regulation 28 of IRDA (Insurance Brokers) Regulations, 2013

The Broker has made substantial payments to individuals in their capacity of Service providers although the Broker has declared to the Authority that it is not utilising the services of Service provider.

The functions enlisted in the Agreement (executed between the Broker and Service provider) are integral functions of the Broker which needs to be performed by its own employees and outsourcing these functions to a third party service provider is tantamount to utilisation of services of agents and canvassers.

The Broker, in its submission, has stated that all the persons mentioned in the observation were its regular employees. But the Broker could not provide any appointment letter of these so-called employees and thus the submission of the Broker seems a mere cover-up to its violations.

Submission of Broker:

The Regulator took cognizance of the practice of using Service providers and advised all brokers not to use service providers as policy servicing was a core function that the brokers must not outsource. Since July 2015, on the advice of the IRDAI, the Broker has stopped using Service Providers.

Since the financial year starts at April 1, 2015, there may be some spill over during the financial year 2015-16 which may be reflected in the balance sheet as all these transactions were above board and reflected as balance sheet entries with proper TDS being deducted and paid. But from July 2015 onwards when the Regulator asked Broker to stop the practice and fined it Rs 10.20 lacs for doing so, which it has deposited with the IRDAI with an undertaking not to employ service providers it has ceased to employ service providers. The Regulator should look at the balance sheet entry in the financial year 2015-16 as a residual or a run off entry for the existing business prior to July 2015.

Since the Broker was penalized for the lapse as were other brokers as well for the same practice, the Broker submitted an undertaking that it is no more employing service providers post July 2015 and requested the Authority not to invoke any penalty for the same omission as it has paid the penalty once for the same.

Broker's Statutory Auditor, M/s Charanjit Malhotra & Co., had also issued a Quarterly Certificate on November 18, 2015, March 3, 2016, May 28, 2016, July 22, 2016 & December 2, 2016, to the IRDAI regarding its compliance of Regulation 3(b) of the code of conduct of the IRDA (Insurance Brokers) Regulations, 2002 whereby they certified that Broker is not utilizing the services of service providers (agents and canvassers) any more after an analysis of the broker's books of account.

Decision:

Clause 3(b) of Schedule VI–A under Regulation 28 of IRDA (Insurance Brokers) Regulations, 2013 mandates the Broker not to employ agents or canvassers to bring in business. The Broker was previously penalised for same violation and the statutory auditors of the Broker submitted certification, confirming that it is not utilising the services of agents and canvassers. Despite the penalty levied by the Authority and certification by the statutory auditors of the Broker, the Broker utilised the services of service providers (agents and canvassers) and made payments to service providers in the year 2016-17. The Broker could not justify the payments made to individuals and could not provide evidence in support of their claim that these individuals were employees of the Broker.

For the nine individuals out of instances identified in the Inspection observation, the Broker could not provide evidence that the individuals were employees of the Broker and also could not provide reasons (with evidence) in lieu of which regular payments were made to them. This implies that these nine individuals are engaged as canvassers to bring business.

The Broker violated Authority's order dated 28th July 2015, by making payments to these nine agents/canvassers identified in the Inspection observation, under the guise of them being Service Providers. Therefore, by virtue of powers vested in it under Section 102 (b) of the Insurance Act, 1938, the Authority levies on the Broker a penalty of Rs. 9.00 Lakh (Rs Nine



Lakhs only) which is arrived at on the basis of number of individuals to whom payments were made by the Broker.

Broker is further advised to ensure that no agents or canvassers are employed to bring in business so as to comply with Clause 3(b) of Schedule I – Form H under Regulation 30 & 8(2) of IRDAI (Insurance Brokers) Regulations, 2018 in letter and spirit.

8. Charge No. 6

Violation of Clause 2(a) of Schedule III read with Regulation 13 of IRDA (Insurance Brokers) Regulations, 2013.

The Professional Indemnity policy taken by the Broker is not in adherence with the Regulations. The Indemnity clause mentioned in the policy does not cover all the risk conditions as specified in the Broker Regulations. Also the Retroactive date should be the date when the Broker started its business but the date mentioned in the policy is 10 years later than the Broker's inception date. The Broker, by not obtaining Professional Indemnity policy as stipulated in the Regulations, is in violation of Regulation 13 read with provisions of Schedule III of IRDA (Insurance Brokers) Regulations, 2013. As per the said provision, every insurance Broker shall take out and maintain at all times a professional indemnity insurance cover throughout the validity of the period of the licence granted to them by the Authority, as specified in Schedule III of the Brokers Regulations. Further, as per clause 2(a) of Schedule III, the indemnity cover shall be on a yearly basis for the entire period of licence

Submission of Broker:

The Broker submitted that it has been in operations since 2003 and the policy does not have a retroactive date since inception but since 2013 as its business is mostly non-life, which are annually renewable contracts and the civil legal limitation clause under the IPC is 3 years only so there is no enforceability of the retroactive date as the insurance policies have expired by then and the contracts fulfilled. Hence retroactive period since 2013 is as good as 2003.

In any case, the Broker is aware that for any errors or omissions or frauds which are not covered by the policy are on its net account and it is its own insurer to that extent.

As the Broker does not deal in cash or handle client money, the Broker had not bought a fidelity or a cash cover as it does not feel the requirement of such an extension.

The last year's and the current year Professional Indemnity Policy (Policy No 040703272P101709453, from 21/05/2020 to 20/05/2021, from United India insurance, however has full coverage and covers the following perils:

1. Any error or omission or negligence on their part or on the part of their employees and directors
2. Any loss of money or other property for which the insurance broker is legally liable in consequences of any financial or fraudulent act or omission
3. Any loss of documents and costs and expenses incurred in replacing or restoring such documents



4. Dishonest or fraudulent acts or omissions by insurance broker's employees or former employees

Decision:

Clause 2(a) of Schedule III under Regulation 13 of IRDA (Insurance Brokers) Regulations, 2013 mandates the Broker to have Professional Indemnity policy for the entire period of licence. The retroactive date in the Professional Indemnity policy submitted by the Broker dates to year 2013 whereas the inception year of operations of the Broker is 2003. The Broker's submission that "Broker is aware that for any errors or omissions or frauds which are not covered by the policy are on its net account and it is its own insurer to that extent" indicates that Broker has deliberately violated the said Regulation.

Regarding the Broker's submission that their liability under the non-life insurance contracts is barred by legal limitation of 3 years and hence there is no enforceability of retroactive date, it is reiterated that the retroactive date is clearly enforceable under the law. The enforceability for retroactive date arises from the fact that Clause 2(a) of Schedule III under Regulation 13 of IRDA (Insurance Brokers) Regulations, 2013 mandates the Professional Indemnity policy to cover the Broker's liability from the date of inception. Thus it is clear that the Broker is liable for any claim arising out of actions performed by them since the date of inception.

The Broker is warned for the lapse. Further, the Broker is directed to obtain proper endorsement so as to ensure that its Professional Indemnity policy is in adherence with provisions of Schedule II – Form S under Regulation 24(1) of IRDAI (Insurance Brokers) Regulations, 2018, in all respects and confirm compliance to the Authority regarding same within one month of receipt of this order.

9. Charge No. 7

Violation of Clause 6 of Regulation 29 of IRDA (Insurance Brokers) Regulations, 2013

The charge indicates failure of the Broker to submit a certificate from their Statutory auditors confirming that the Broker is complying with various provisions of IRDAI Broker Regulations. The Broker, in its submission, has stated that it is asking its auditors to certify the compliance to IRDAI Regulations. This shows that till date, the Broker has not got a certificate from the Auditors regarding compliance of various Regulations of the Authority.

From the perusal of previous records, it is observed that the Broker has not furnished the certificates since FY 2014-15.

The Broker, by not obtaining a certificate confirming the compliance of IRDAI Regulations, from its statutory Auditor, is in violation of Clause 6 of Regulation 29 of IRDA (Insurance Brokers) Regulations, 2013.

Submission of Broker:



The Broker submitted that the certificates for the FY 2014-15 & 2015-16 from the Statutory Auditor have since then already submitted to IRDAI.

Decision:

The Broker has submitted the certificates for years 2018-19 & 2019-20; in the format as prescribed under IRDAI (Insurance Brokers) Regulations, 2018. Taking note of the same, the Broker is advised to ensure continuous compliance of Clause 7 of Regulation 34 of IRDAI (Insurance Brokers) Regulations, 2018.

10. Summary of Decisions:

The following is the summary of decisions in this order:

Charge No.	Brief Title of charge and the provisions violated	Decision
1	Charge: Non submission of requisite information Provision: Clause 1(b), 1(d) & 1(f) of Regulation 41 & Clause 1(d) & 1(e) of Schedule VII read with Regulation 39 of IRDA (Insurance Brokers) Regulations, 2013.	Warning and Direction
2	Charge: Improper Premises Management Provision: Clause 2(ii) of Regulation 8 of IRDA (Insurance Brokers) Regulations, 2013	Direction
3	Charge: Deficiency in the Renewal Training of BQPs Provision: Clause 2(iii) & 2(xiv) of Regulation 8 read with provisions of Schedule II under Regulation 8 of IRDA (Insurance Brokers) Regulations, 2013	Penalty of Rs. Two Lakhs & Direction
4	Charge: Delay in submission of returns Provision: Regulation 29 (2) and Regulation 30 (1) of IRDA (Insurance Brokers) Regulations, 2013 & Section VI of Authority's circular no. IRDA/BROKER/MISC/CIR/232/10/2014 dated 21 st October 2014.	Warning & Direction
5	Charge: Utilisation of Agents and Canvassers Provision: Clause 3(b) of Schedule VI–A under Regulation 28 of IRDA (Insurance Brokers) Regulations, 2013	Penalty of Nine Lakhs and Advisory
6	Charge: Professional Indemnity Policy is not in line with the regulatory requirement. Provision: Clause 2(a) of Schedule III read with Regulation 13 of IRDA (Insurance Brokers) Regulations, 2013.	Warning & Direction



7	Charge: Non-submission, Certificate from Statutory Auditors Provision : Clause 6 of Regulation 29 of IRDA (Insurance Brokers) Regulations, 2013	Advisory
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11. As directed under the respective charges, the penalty of Rs Eleven lakhs shall be remitted by the Insurance broker within a period of 45 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 Mr. Prabhat Kumar Maiti, General Manager (Enforcement) at the Insurance Regulatory and Development Authority of India, Sy. No. 115/1; Financial District; Nanakramguda; Gachibowli; Hyderabad – 500032.

12. The Broker shall confirm compliance in respect of the above decisions, within 21 days from the date of receipt of this order. The order shall be placed before the Audit committee of the Broker and also in the next immediate Board meeting and the Broker shall submit to the Authority a copy of the minutes of the discussion.

13. If the Broker feels aggrieved by any of the decisions in this order, an appeal may be preferred to the Securities Appellate Tribunal as per Section 110 of the Insurance Act, 1938.

14. The Broker is required to acknowledge receipt of this Order.

Place: Hyderabad
Date: 4th October 2021

Sd/-
(T.L. Alamelu)
Member (Non Life)

