



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

Ref: IRDA/Enf/ord/ons/ IS 6 /09/2018

Order in the matter of

M/S AON Global Insurance Brokers Ltd. (Now M/S Global Insurance Brokers Ltd)

(Based on their reply to the Show Cause Notice dated 10th January, 2018, and submissions made during Personal Hearing on 12th June, 2018 at 03.30 PM, taken by Chairman, IRDAI, at the office of Insurance Regulatory and Development Authority of India, Financial District, Nanakramguda, Hyderabad, and the consent furnished by them vide their letter dated 6th September, 2018, for passing this order (in relation to Charge No.1) by referring to the provisions of IRDA (Insurance Brokers) Regulations, 2002, in response to Authority's letter dated 16th August, 2018)

Background:

1. M/S AON Global Insurance Brokers Ltd.(Now named as Global Insurance Brokers Ltd) was granted license by the Authority on 03rd March, 2002 to carry out the functions of a composite Insurance broker vide its original license no CB 052/02 which was renewed in continuation till 2nd March, 2021. The broker is subjected to the terms and conditions of the license/registration and is required to abide by the Insurance Act, 1938, Insurance Regulatory and Development Authority Act, 1999 and other regulations, circulars and guidelines issued there under, by the Authority.
2. An on-site inspection of M/S Global Insurance Brokers Ltd, (hereinafter referred to as "Insurance Broker" or "Company" or "AGIB") was conducted by the officials of Insurance Regulatory and Development Authority (hereinafter referred to as "Authority") during the period from 26/10/2015 to 28/10/2015. The Inspection findings were communicated to the Insurance broker for their comments on 04/01/2016. The Insurance broker submitted its response to the Authority by its letter dated 21/01/2016. After considering the response to the inspection findings and the supporting documents, Authority observed certain violations of the regulatory requirements, committed by the Insurance Broker and issued a notice dated 10/01/2018 to the Insurance Broker, to show cause as to why appropriate action should not be initiated. The Insurance Broker submitted its reply to the Authority by its letter dated 09/02/2018. In its reply to the show cause notice, the Insurance broker had requested for a personal hearing.
3. The Insurance Broker was granted personal hearing on 12/06/2018 at the office of IRDAI. On behalf of Insurance Broker, the personal hearing was attended by Mr. Prabodh Thakkar, Chairman; Ms. Rashmi Iyer, Principal Officer; Mr. Anant Pawar, Chief Broking Officer; Mr. Sunil Pal, Director of Finance and Mr. Pranav Kapadia, Executive Finance. On behalf of the Authority Dr. Subhash Chandra Kunthia, Chairman, Mr. Randip Singh Jagpal, CGM, Intermediaries; Mr P.K. Maiti, GM, Enforcement; Mr. G. R. Surya Kumar,

GM, Executive Assistant to Chairman and Mr Vikas Jain, AGM, Enforcement were present at the hearing.

Charges, Submissions in reply thereof and Decisions:

4. Charge 1: From the payment vouchers annexed with the Inspection report, it is clear that the Indian Licensed Broker (AGIB) has shared 25% to 50% of the brokerage with other foreign broker of the AON group. Those foreign brokers did not have any infrastructures support to AGIB. Further the Insurance Broker submitted that in every country, multinational clients engage a multinational broker having a presence in all the relevant countries to meet its global or regional broking requirement on a consistent manner. By combining this submission with the payment to multinational broker, it is clear that the AGIB has taken service of those foreign brokers in the capacity of a canvasser to bring business by leading to violation of Para 3(b) of Schedule III under Regulation 21 of IRDA (Insurance Brokers) Regulations, 2002

Submission of the Broker: The broker submitted that during the term of the joint venture with Aon, AGIB was a part of Aon's international business as its Indian Partner and the trend amongst multinational corporations has consistently been to meet their broking needs from multinational brokers on a global or regional basis and thus, as opposed to engaging individual Brokers in every country, multinational clients engage a multinational broker having a presence in all the relevant countries to meet its global or regional broking requirement on a consistent manner. As a member of Aon's international business, AGIB provided broking services in India as a part of Aon's multinational service offering. It further submitted that substantial contributions are being made by Aon internationally towards such offerings to clients, by bringing to bear research, technical analysis, expertise, technology, human resources, best practices and global relationships with multinational insurers. However broking services as such are only provided by the relevant licensed entity in each jurisdiction. In providing such services, such licensed entity benefits from the resources and efforts expended by Aon's international business in servicing, retaining, advising and managing such clients internationally, in keeping with global standards and developments, to meet their global requirements.

It further submitted that it has paid professional fees and expenses allocated towards the cost of such services in each case, which is in the best interest of the clients. AGIB in turn has also received advisory fees for its contributions towards accounts that are services in other countries. It also submitted that the professional fees paid by AGIB have been duly approved by the board and shareholders of AGIB, and validated as meeting arm's length requirements for transfer pricing purposes and AGIB's annual returns. Accounting for such fees on this basis has been consistently accepted by Income tax authorities.

It further submitted that imposing a substantial fixed service charge, regardless of the profitability of the relevant licensed entity (AGIB) would have placed a significant financial burden on the entity and based on the negotiations, a percentage of brokerage on the

SR

case to case basis was agreed in order to avoid overpayment and becoming uncompetitive.

Decision: During personal hearing, the Insurance Broker agreed to furnish documentary evidences in support of their claim that payments that were made to the subsidiaries of the AON Holding B. V., under the head of commission/revenue sharing, were indeed the payment for availing professional services. Post personal hearing the Insurance Broker furnished a set of documents; which indicates that the AGIB availed some services from the subsidiaries of the AON Holding B. V. However they failed to produce any mapping of the payments indicated in the inspection observation with that of any specific services availed from the subsidiaries of the AON Holding B. V. Further, the Insurance Broker failed to produce any written agreement with those foreign brokers, with explicit mention of any such services and basis of payment for availing such services. Hence they failed to justify that payments that were made under the head of commission/revenue sharing, were not for employing foreign brokers in the capacity of a canvasser to bring business. Hence the Insurance Broker has violated Para 3(b) of Schedule III under Regulation 21 of IRDA (Insurance Brokers) Regulations, 2002. The inspection observation was supported by an annexure which comprised of a list of 61 (Sixty one) policies, where such payments were made to the foreign broker under the head of commission/revenue sharing during the period 01/01/2011 to 31/12/2011. Considering the fact that the violation was committed before promulgation of Insurance Laws (Amendment) Act, 2015, the Authority by virtue of powers vested in it under Section 102(b) of Insurance Act 1938, levies a penalty of Rs. 1,00,000 (Rupees One Lakh only) on the Insurance Broker.

5. Charge 2: The Insurance broker has violated 34(1) & 34(2) of the Brokers regulations, 2013 by allowing the clients to remit premiums directly to offshore brokers, which prescribe that in case of any insurer/reinsurer licensed in India utilizes the services of a foreign broker for placement of reinsurance business with foreign Reinsurers, such placement shall be through an insurance broker licensed by the Authority which also shows the inability of the Insurance broker to collect and remit the money, as per regulation 27 (schedule V) of the IRDA (Insurance Brokers) Regulations, 2013.

Submission of the Broker: The Insurance Broker submitted that regulation 27(2) of the broker's regulation, 2013 would imply that it is not mandatory for the RI broker to collect and remit the premium and the parties are free to determine how the payment of the premium may be routed. They further submitted that in all the cases AGIB has been engaged as the primary broker for reinsurance placements overseas, as such placements have been made through AGIB in accordance with regulation 34 of the IRDAI (Insurance Brokers) Regulation, 2013 and as the Broker, AGIB's main responsibilities are to structure, solicit and advise on reinsurance cover for its client, while handling of premium is



incidental to the above. Further it submitted that in that this mechanism was followed only as an exception in 13.21% of AGIB's reinsurance placements during FY 2014-15. Until recent times, ceding Indian Insurers were uncomfortable making such large payments through Indian Brokers on account of perceived credit risks. In other cases, there was delay in payment by the ultimate clients at which point it was necessary for such insurers to credit the payments directly, offshore in order to avoid loss of coverage due to delays.

Decision: In their submission, the Insurance Broker sought to justify direct payment of reinsurance premium by the ceding insurer to the foreign broker, by differently interpreting regulation 27(2) of the IRDAI (Insurance Brokers) Regulations, 2013 and also submitting that this is a market practice. On the other hand, they submitted that this mechanism was followed only as an exception in 13.21% of AGIB's reinsurance placements during FY 2014-15. Further, by submitting that in cases where premium was not routed through AGIB, the share of brokerage was received by them, they sought to establish that they were following the correct business model, which apparently looks like fronting of reinsurance business to the foreign broker who is not having license to perform broking business in India. However, in view of the submission of the broker that since April 2017 they are handling all the remittances on behalf of Indian cedant, charge is not pressed but the Insurance broker is advised to ensure compliance to the Regulations 38(1) & 38(2) of IRDAI (Insurance Brokers) Regulations, 2018.

Summary of Decisions:

6. The following is the summary of decisions in this order:

Charge No.	Brief Title of charge and the provisions violated	Decision
1	Charge: sharing of brokerage with foreign brokers. Provision: Para 3(b) of Schedule III under Regulation 21 of IRDA (Insurance Brokers) Regulations, 2002.	Penalty of Rs. One Lakh.
2	Charge: Direct remittance of reinsurance premium by the client to the reinsurance broker abroad. Provision: 34(1) & 34(2) of the Brokers regulations, 2013	Advisory

Conclusion:

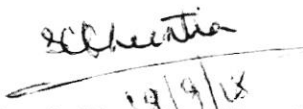
7. As directed under the respective charges, the penalty of Rs. 1,00,000/- (Rupees One Lakh only) shall be remitted by the Insurance broker within a period of 15 days from the date of receipt of this Order through NEFT/ RTGS (details for which will be communicated separately). An intimation of remittance may be sent to Mr.Prabhat

30

Kumar Maiti, General Manager (Enforcement) at the Insurance Regulatory and Development Authority of India, Sy. No. 115/1; Financial District; Nanakramguda; Gachibowli; Hyderabad – 500032.

8. The Broker shall confirm compliance in respect of all the directions referred to in Paras 4 and 5 of this Order, within 21 days from the date of receipt of this order. The order shall be placed before the Audit committee of the broking firm and also in the next immediate Board meeting and the Insurance broker shall submit to the Authority a copy of the minutes of the discussion.

9. If the Insurance 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.


19/9/18
(Dr. Subhash Chandra Khuntia)
Chairman

Date: 19th September, 2018