



बीमा विनियामक और विकास प्राधिकरण
**INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY**

IRDA/LIFE/ORD/MISC/ 160 /07/2012

Final Order in the matter of

M/s. ING VYSYA Life Insurance Company Ltd.

Based on Reply to Show Cause Notice Dt 18th April ,2012 and Submissions made in Personal Hearing on May 29, 2012 at 03.00 PM at the office of Insurance Regulatory & Development Authority, 3rd Floor, Parishram Bhavanam, Basheer Bagh, Hyderabad

Chaired by Sri J Hari Narayan, Chairman, IRDA

The Insurance Regulatory and Development Authority (hereinafter referred to as "the Authority") carried out an onsite focused inspection of M/s ING Vysya Life Insurance Company Ltd (herein after referred to as "the insurer") with regard to unapproved Referral entities between 02/05/2011 and 03/05/2011 which inter-alia revealed violations of the provisions of the Insurance Act, 1938 (the Act), various regulations/ guidelines/circulars issued by the Authority.

The Authority forwarded the copy of the inspection report to the insurer under the cover of letter dated July 11, 2011 and sought the comments of the insurer to the same. Upon examining the submissions made by the insurer vide letter dated 29/07/2011, the Authority issued notice to show-cause dated 18th April, 2012 which was responded to by the insurer vide its letter dated 15th May'2012. As per the request of the insurer, a personal hearing was given to the insurer by Chairman, IRDA on 29th of May, 2012. Mr. Kshitij Jain, Managing Director of the insurer and his team were present in the hearing. On behalf of IRDA, Mr. S. Roy Chowdhury, Member (Life), Mr. Kunnel Prem, CSO(Life), Mr. V. Jayanth Kumar, JD (Life) and Mr. Gautam Kumar , DD (Life) were present in the personal hearing. The submissions of the insurer in their written reply to Show Cause Notice as also those made during the course of the personal hearing were taken into account.

The findings/decision on the explanations offered by the Life Insurer to the issues raised in the Show Cause Notice (SCN) dated 18th April , 2012 are as follows:

SCN 1 - Inspection Observation No. A { 1 } -

It is observed that business has been logged under codes allotted to the following Referral entities/individuals:

- a. M/s India Finsol Pvt Ltd
- b. M/s Popular Mini Finance
- c. Individual Referral code 60069700

It is further observed that M/s India Finsol Ltd has also given the Advisor's Confidential Report despite not being a licensed agent. The above referral

transactions have been conducted subsequent to the notification of IRDA (Sharing of Database for Distribution of Insurance Products) Regulations 2010.

Inspection Observation No. A - (2), (3), (4) and (5) – It is noticed that the code details in Life Asia system in respect of many referral companies are still active. Business is logged in using the referral codes which in fact should have been terminated on the notification of the above referred Regulations. It is noticed that the insurer has procured around 15,800 policies from the unapproved referral entities during the period from September 2010 to April 2011.

These observations A –(1) , (2), (3), (4) and (5) are in violation of Regulation 6(1) and 11(14) of IRDA (Sharing of Database for Distribution of Insurance Products) Regulations 2010.

Decision: The insurer has submitted that after the termination of all the referral relationships on Aug 12, 2010, the Insurer's IT system was still reflecting the names of these terminated partners in respect of policies procured by its Sales Officers from open market during the period from September 2010 to April 2011 and the necessary modification in the IT system to deactivate the terminated referral partners was finally carried out and a confirmation in this regard was submitted to the authority on December 23, 2011. The Insurer has also submitted that individual Referral code 60069700 was inadvertently created in the IT System during the automation process and was not mapped to any of the referral partners. The ACR given by India Finsol was also claimed to be inadvertent error by the Insurer.

The insurer has further confirmed that no remuneration was paid by the company to any of its terminated / unapproved referral partners post regulations. The submissions of the insurer have been taken into account and the charges are not pressed.

SCN 2- Inspection Observation No. B (1) &(2) – It is observed that payments are made to referral entities towards sales expenses – contests, professional fee – other research, marketing expenses, service tax funds., etc prior to notification of IRDA (Sharing of Database for Distribution of Insurance Products) Regulations 2010. These are in violation of provision VI of the Referral Circular No. IRDA/CIR/004/2003 dated 14/2/2003 and Circular No. 28/IRDA/Life/Referrals/2007-08 dated 7th February 2008.

Decision: The Insurer has submitted that the company has paid the referral fees under the various heads as observed by the authority and that the said payments are in compliance with clause VI of the said circular and are well within the overall prescribed limit of 5.5% of the total premium as the business generated through referral arrangements was less than 10% of gross premium underwritten by the Insurer.

The insurer's submission is not accepted as the 5.5% limit was applied only at the level of total business of all referral entities and it is observed that at

individual referral entity level the referral payout exceeded the 5.5% limit in case of majority of referral entities.

Hence, the payouts made to the referral entities by the Insurer under various heads such as Sales expenses-contests, Professional fee -other research, Marketing expenses, Service tax refunds etc. are in violation of the provision VI of the Referral Circular No. IRDA/CIR/004/2003 dated 14/2/2003 and Circular No. 28/IRDA/Life/Referrals/2007-08 dated 7th February 2008.

On analyzing the details of payments made in 2009-10 and 2010-11 to various referral partners, it is found that during 2009-10, there were a total of 215 referral partners out of which no business was written through 41 referral partners. Out of the balance 174 cases, all of them have been paid referral fee in excess of 5.5% of the business written and in two specific cases, the excess payments were significantly heavy i.e more than Rs. 25 lakhs.

In the year 2010-11, there were a total of 261 referral partners and no business was conducted through 93 of them. Out of the remaining 168 referral partners, in 135 cases payments have been made in excess of what has been prescribed.

For all these reasons, for the two cases during 2009-10 where the excess referral payment were more than 25 Lakhs (over and above 5.5% of business written) and for the two financial years where the company has been generally making excess payments, a penalty @ Rs. 5 lakhs each totaling Rs. 20 lakhs fine is imposed under Section 102(b) of Insurance Act, 1938.

SCN 3 - Inspection Observation No. B (3) - It is observed that an amount of approx Rs.20 crore was paid to ING Vysya Bank, Corporate Agent towards reimbursement of marketing expenses over and above the commission paid. This is in violation of Clause 21 of Guidelines on Licensing of Corporate Agents dated 14th July 2005.

Decision: The insurer has submitted that payouts to ING Vysya Bank are reimbursement of marketing support cost for advertisements primarily aimed at building the brand image of the company and have no direct or indirect reference to the sale of insurance products by IVB. It is also reimbursement of expenses towards setting up the sales kiosks, organizing the road shows and customer awareness programs at different bank locations which has helped the life company to design its products and service its customers better.

On analyzing the payouts made to the ING Vysya Bank, it is found that the commission paid to this corporate agent is 9.41% and 13.59% of the total business done in 2009-10 and 2010-11 respectively. Other than the commission, the company has paid Rs. 2666.37 Lakhs (9.07%) and 3258.89 Lakhs (10.81%) as Marketing Expenses and for various other services in these two financial years respectively.

Further, the insurer has also contributed to the total expenses made by the ING group for Brand Advertisements during two financial years as below which do not relate to garnering business.

F.Y.	Total Expenses by the ING Group	Contribution by ING Vysya Life	Contribution %age
2009-10	Rs. 9442 Lakhs	Rs. 3800 Lakhs	40.52%
2010-11	Rs. 9905 Lakhs	Rs. 3938 Lakhs	39.75%

Taking into the account the facts submitted by the insurer, it has been established that ING Vysya Life Insurance Co has paid the amount over and above the eligible commission to its corporate Agent, the IVB Bank, which exceed the prescribed and reasonable amounts under the Clause 21 of Corporate Agency guidelines dt 14th July 2005 .

As it is clear that the Insurer has made the payments consecutively in two financial years in excess of what has been prescribed in the relevant regulations , a penalty of Rs. 10 Lakhs at the rate of Rs. 5 Lakhs for violations in each financial year , is imposed under sec 102 (b) of the Insurance Act 1938.

Accordingly, in exercise of the powers conferred upon me under the provisions of the Insurance Act, 1938, I hereby direct the insurer to remit the penalty of **Rs. 30 Lakhs** , by debiting shareholders account, within a period of 15 days from the date of receipt of this Order through a cross demand draft drawn in favour of Insurance Regulatory and Development Authority and payable at Hyderabad which may be sent to Mr. V.Jayanth Kumar , Joint Director (Life) at the Insurance Regulatory and Development Authority, 3rd Floor, Parisrama Bhavan, Basheer Bagh, Hyderabad 500 004.

Place: Hyderabad
Date: July 30 , 2012


(J Hari Narayan)
Chairman