



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

Ref:IRDA/enf/ord/ons/093/04/2017

Final order

Subject: Final order in the matter of M/S Life and General Insurance and Reinsurance Brokers Pvt Ltd.

This order is issued on the basis of the reply of the broker to the Show Cause Notice dated 24th February 2016 and submissions made during Personal Hearing on 02nd August, 2016 at 12.00 PM, taken by Member (F&I) at the office of Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavan, Basheerbagh, Hyderabad.

Background:

On site inspection of M/s Life and General Insurance and Reinsurance Brokers Pvt limited (hereinafter called the broker or the broking company) was conducted by the Authority during the period, from 09th April, 2014 to 11th April, 2014. The Inspection findings were communicated to the broker on 28/04/2014 for their comments. The broker submitted its comments to the Authority by its letter dated 12/05/2014. A show cause notice was issued to the broker by the Authority on 24/02/2016. The broker submitted its reply to the authority by its letter dated 05/04/2016. In its reply to the show cause notice, the broker had requested for the personal hearing.

The personal hearing of the broker was conducted on 02/08/2016 at IRDAI office, 3rd Floor, Parishram Bhavan, Basheer Bagh, Hyderabad.

Personal Hearing was granted by Member (F&I). The personal hearing was attended by Mr. Mohan L Lunawat, Director of the Broking Company and Mr. Indrajit Pandit, Principal Officer of the Broking Company. From the side of the Authority, Mr Randeep Singh, Chief General Manager, Intermediary, Mr PK Maiti, General Manager, Enforcement and Mr. Vikas Jain, Assistant General Manager, Enforcement were also present.

Each of the inspection findings mentioned in Show Cause Notice, the submission of the Broker and the final decision of the Authority are presented below:

Charges, Submissions in reply thereof and Decisions:

1. Charge 1: In regard to the functions of reinsurance Broker under Regulation 4(d), which requires reinsurance broker to maintain the database of available reinsurance markets, including solvency ratings of individual reinsurers, the Broking Company was asked to state the security screening procedures adopted and the procedure followed by the broker to keep abreast of developments in the international markets, the broker had submitted that it was placing its business with the reinsurers who have Unique

Identification Number (UIN) allotted by IRDA. However, a case of the reinsurer without UIN was examined, with whom the reinsurance had placed reinsurance contract, in 2012.

Violation/Concern: In the above transaction, the violation of Regulation 4 (m) of IRDA (Insurance Brokers) Regulations, 2002/ Para 2 (m) of Schedule I under Regulation 4 of IRDA (Insurance Brokers) Regulations, 2013 was observed which states that the function of a re-insurance broker shall include exercising due care and diligence at the time of selection of reinsurers and international insurance brokers having regard to their respective security rating and establishing respective responsibilities at the time of engaging their services.

Submission of the Broker: The Broker has replied that they continuously monitor an interim database of accessible reinsurance markets including their solvency ratings and IRDA UINs. Besides it, the broker also pays annual visits to their several acquainted reinsurance markets to periodically gauge their current financial health and reputation. Personal visits and attending Reinsurance Conferences keep the Broker well abreast of developments in the international markets, thus adhering to Regulation 4(d).

The Broker submitted that it provides the cedant with a through summary of the participating Reinsurers with regards to its financial strength and credit rating, overall market reputation and any further information required by the cedant before they make their decision to place business with said Reinsurer and only after all the information about the Reinsurer is provided to the satisfaction of the cedant and having secured the cedant's approval of the Reinsurer, the broker proceeds to bind the reinsurance contract.

In regard to reinsurance transaction (Debit note no. FAC/12-13/23/prop) mentioned in the report, the broker submitted that it involved the Original Insured 'Isla LPG Corporation' and the Reinsurer 'Transsiberian Reinsurance Corp'. Isla LPG Corporation is based in Philippines and the Broker was approached by 'Polaris Reinsurance Brokers Inc.' also based in the Philippines. It submitted that Polaris Reinsurance Brokers Inc is a duly licensed reinsurance broker by the Philippines regulator and the IRDA circular reference no. IRDA/NL/GDL/ RIN/015/01/2012 dated 6th January, 2012, stipulate cross-border Reinsurers to obtain the UIN to engage in to Reinsurance contracts with Insurers domiciled in India. Since the Original Insured as well as the cedant is based in Philippines, the Reinsurer is not required to obtain the IRDA UIN.

Decision: In view of the submission of the broker, charges are not pressed and the broker is advised to apply due diligence in identifying the cross border reinsurers especially which are not registered with IRDAI.

2. **Charge 2:** As per code of conduct clause 8, every insurance broker is required to have in place, a system for recording and monitoring complaints. The Broker is not maintaining the record of complaints/grievances of policyholders

Violation/Concern: The above is the violation of the provisions of clause 8 of code of conduct under Regulation 21 of IRDA (Insurance Brokers) Regulations, 2002/ the provisions of Para 8 of Schedule VI-A under Regulation 28 of IRDA (Insurance Brokers) Regulations, 2013 which states the code of conduct in relation to receipt of complaints

Submission of the Broker: The Broker submitted that they have started maintaining a complaint register with effect from April 01, 2014 and they are also circulating a claims registration procedure to be followed by each of their clients with effect from April 01, 2015.

Decision: In view of the broker's submission, the charge is not pressed. However, the broker is directed to ensure the compliance to the regulation in this regard, in letter and spirit in future.

3. **Charge 3:** The perusal of Insurance Bank accounts for the financial years 2009-10 to 2013-14 revealed that the broker had removed from insurance bank account the amount over and above commission earned and utilized for payments other than remittance of premium/ payment of claims was in violation of clause 23(2) (g) of said regulations.

Violation/Concern: The above is the violation of Regulation 23(2) (g) of IRDA Brokers Regulation 2002 similar to point (g) of Schedule V under Regulation 27 of IRDA (Insurance Brokers) Regulations, 2013 which stipulates that the reinsurance broker shall only remove from the "Insurance Bank Account" charges, fees or commission earned and may transferred to any other account.

Submission of the Broker: The Broker submitted that the two transactions in the years 2009-10 and 2010-11 mentioned in that section were transacted by their accounting team without knowledge of stipulation provided by Reg. 23 of IRDA Regulations (Insurance Brokers), 2002". When these transactions came to light, the accounting team was educated about the said regulation and was instructed to refrain from carrying out any such transactions from the Insurance Bank Account in the future and there have been no such transactions since then and the two aforementioned transactions did not affect any premium monies in the bank account. The transactions performed were a part of brokerage earned by LGIRBPL which was accrued in the bank account, as conveyed to the officials during the inspection.

Decision: In view of the broker's submission that the amount withdrawn from the bank account was within the permissible limit of their commission and further

rectifying their system in this regard, the charges are not pressed, but broker is directed to ensure the strict compliance to the above regulation without failure.

4. **Charge 4:** The examination of the accounts and service tax returns filed revealed that the insurance commission is recognized in books of account on cash basis.

Violation/Concern: The above is the non-compliance of Regulation 25 of IRDA (Insurance Brokers) Regulations, 2002, similar to Regulation 29 of IRDA (Insurance Brokers) Regulations, 2013 which stipulates the maintenance of books of account, records etc.

Submission of the Broker: The Broker has submitted that when their client pays the premium to the insurance company through them, brokerage becomes due and so the service tax liability. In some cases, their client pays the premium directly to the insurance company without informing them immediately thereafter. They come to know only when they receive the brokerage. In such cases, they pay service tax on receiving the brokerage; hence, it appears that they are recognizing income on cash basis.

Further the broker submitted that the annual accounts are finalized on the basis of Form 26AS pertaining to the income accrued and tax deducted by the insurance companies during the financial year. Accordingly service tax liability is created on the income accrued during the financial year. The broker also submitted the certificate of Chartered accountant in this regard, certifying that the books of accounts are maintained on accrual basis.

Decision: In view of the broker's submission the charge is not pressed.

5. **Charge 5:** The examination of payments related to consultancy and professional charges revealed that the support documents for the service received were not available in the records. The books of account are not sufficiently supported with documents to justify the payments made to professionals/consultants in the sample cases examined for the year 2013-14 which shows that the Broking Company did not adhere to the condition of licence and provisions of the Regulation 27 of said Regulations.

In regard to the above, it was revealed from the reply of the broker that the broker had revenue sharing arrangement with another broker for servicing the clients on behalf of the other broker, to whom contact was assigned by the client.

Violation/Concern: The above is the non compliance with clause 7(1) of the IRDA Guidelines on insurance and Reinsurance of General Insurance Risk (IRDA guidelines 020/NL/IRDA/06 dated 15th September, 2005), which states "*it is not permitted for one broker to appoint another broker to handle the broking of an*

account that has been given to that broker to handle by the client", by accepting the appointment in such manner without the mandate of the client."

Submission of the Broker: The Broker has responded that, Government of Maharashtra Agriculture Department had placed an advertisement in news papers for appointment of Brokers for serving the Farmers Personal Accident Policy called as Shetkari Apghat Vima Yojna whereby around 10 Brokers had applied in which Bhart Re Insurance was awarded Nashik Region and we were awarded Pune Region.

Bhart Re Insurance was not able to service Nashik Division and hence the Broker offered them to serve Nashik Division on revenue sharing terms which they accepted and paid to the Broker appropriate fees as per the understanding.

Accordingly, the Broker has received fees, on raising invoices as advised, from Bhart Re and the Broker has not made any payment to them as mentioned in the Inspection Report".

Decision: From the submission of the broker, it is evident that the appointment of the broker to service the Nashik Division under Shetkari Apghat Vima Yojna of Government of Maharashtra was made by Bharat Re Insurance Brokers, on the basis of sharing of revenue and the broker had no mandate from the client (here government of Maharashtra). Hence, the broker is warned for the said violation and directed to abstain from accepting the appointment by another broker without proper mandate by the client and directed to ensure provisions of Para 7(1) of IRDA Guidelines dated 020/NL/IRDA/06 dated 15th September, 2005.

6. Charge 6: From the list of employees it was observed that an employee since 12/9/2011, was holding agency license with New India Assurance Co Ltd.

While the Broking Company had submitted an undertaking dated 9th May, 2012 with its renewal application of 2012 that "None of the Broking Company /Associate Companies/ Directors/Promoters/ Key Management Personnel/ Principal Officer/ Employees are holding Agency/ Corporate Agency/ TPA/ Surveyor License."

The Broking Company, thus, furnished wrong undertaking and failed to disclose material facts in the application submitted for obtaining a licence.

Violation/Concern: The violation of Regulation 34 (1) (c) of IRDA (Insurance Brokers) Regulations, 2002/ Regulation 41 (1) (c) of IRDA (Insurance Brokers) Regulations, 2013 was observed, which provides that the license of an insurance broker may be cancelled or suspended "if he furnishes wrong or false information; or conceals or fails to disclose material facts in the application submitted for obtaining a licence".

Submission of the Broker: The Broker submitted that at the time of furnishing the undertaking in May 2012 for renewing the License, the Broker was not aware that the said employee held an agency license since she had not informed the Broker and subsequently they had directed her to terminate her agency license and this violation was caused due to ignorance.

Decision: In view of the broker's submission, the charge is not pressed. The broker is directed to apply due diligence and have a procedure to ensure the compliance to the regulation in future.

7. **Charge 7:** During the inspection of the broker it was observed that it had not revealed the information about two court cases filed against it in its renewal application dated 07/05/2012 to the authority.

Violation/Concern: The violation of Regulation 34 (1) (c) of IRDA (Insurance Brokers) Regulations, 2002/ Regulation 41 (1) (c) of IRDA (Insurance Brokers) Regulations, 2013 was observed which provides that the license of an insurance broker may be cancelled or suspended "if he furnishes wrong or false information; or conceals or fails to disclose material facts in the application submitted for obtaining a licence".

Submission of the Broker: The Broker submitted that they had the understanding that they had to disclose the disputes with clients, co brokers or insurance companies and in one of the case, the grounds raised by the party were irrelevant as far as they were concerned since there was no agreement between them and the Broker and this being basis of the Broker understanding it was not declared in column 5.1 of their application dated 7th may, 2012 and the Broker had also submitted that the details of the other case because the it was a writ petition against the Government of Maharashtra and the Broker was made a party to it. They were not concerned with the litigation as they had no dispute with either parties and it was not disclosed in the renewal application.

Decision: In view of the broker's submission that it was inadvertent non disclosure on their part and the cases were not directly against them, the broker is warned against the violation of the provisions of Regulation 34 (1) (c) of IRDA (Insurance Brokers) Regulations, 2002/ Regulation 41 (1) (c) of IRDA (Insurance Brokers) Regulations, 2013.

8. **Charge 8:** The Broker applied for addition of life broking vide application dated September, 2013. The license was granted on 29th November, 2013. Meanwhile, the Broker placed the Group Term life insurance policy Number 502527 with Max Life Insurance Co Ltd effective from 01/1/02012 and Group Term Insurance policy with Birla Sun life Insurance Co Ltd effective from 05/09/2013. The copies of policies were examined.

Violation/Concern: The above is the violation of the provisions of Regulation 41(1) of IRDA (Insurance Brokers) Regulation, 2002/ Regulation 51(1) of IRDA (Insurance Brokers) Regulation, 2013 read with section 42 D (8) of Insurance Act, 1938.

Submission of the Broker: The Broker submitted that they had applied for inclusion of life license to IRDA on 12th December, 2012 and later they were informed that their application had been misplaced due to shifting of office premises. So, they had re-submitted their application on 19th September, 2013. As they had closed the Group Medclaim and Group Personal Accident policies of the client, they were keen to include the Broker in their Group Term policy. The Broker had informed both the clients and Insurance Companies that they were yet to obtain license to conduct life business. The insurance companies have booked the business in Broker's name and have started the documentation process for empanelling them a broker after they got the license and the broker informed that it had not received any brokerage for the business booked under their name.

Decision: The submission of the broker cannot be accepted as evident from the copies of the policies placed with the insurers. Hence the broker violated the provisions of Regulation 41(1) of IRDA (Insurance Brokers) Regulation, 2002/ Regulation 51(1) of IRDA (Insurance Brokers) Regulation, 2013 read with section 42 D (8) of Insurance Act, 1938 by placing the life insurance business without having a valid License. Hence, the broker is warned against the violation of Regulation 51(1) of IRDA (Insurance Brokers) Regulation, 2013 and directed to ensure that this kind of action is not repeated in future.

9. **Charge 9:** The Broker had rendered claims consultancy for marine claim for a claim assessed for Rs. 1, 63, 52,117 which was beyond a permissible limit of Rs 1 Crore and as per the written mandate addressed to the Broker, the consultancy fees payable was expressed as 3 percent of the claim amount realized which is not in line with the clause 3(iii) that requires the fee shall not be expressed as percentage of the claim. However the broker had received a consultancy fee of Rs 1 lakh.

Violation/Concern: The broker has violated clause 3 (i) and 3 (iii) of IRDA circular – IRDA/BRK/CIR/GLD/270/12/2011 dated 7th December, 2011.

Submission of the Broker: The broker submitted that the client had independently put up the claim with Cholamandalam General Insurance Company and after it was rejected, they had sought their advice regarding payability. In response to the request, they had advised them that we shall give the opinion and the fees thereof shall be charged by them. They were also requested to discuss the claim technicalities with the insurer on payability aspect. Despite this, the insurer maintained their stand on non

payability. Accordingly they were paid fees for Rs 1 lakh. The broker submitted that their action was confined to opinion and did not amount to claim consultancy.

Decision: The broker's submission is not accepted that the giving professional opinion does not fall under the category of consultancy. Hence, the broker is warned against this kind of practice and directed to ensure the compliance to IRDAI circulars and relevant regulations in this regard.

1. 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: Not maintaining the details of reinsurers having IRDA UIN number. Provision: Para 2 (m) of Schedule I under Regulation 4 of IRDA (Insurance Brokers) Regulations, 2013:	Advisory issued
2	Charge: not maintaining the record of complaints/grievances of policyholders. Provision: Para 8 of Schedule VI-A under Regulation 28 of IRDA (Insurance Brokers) Regulations, 2013.	Direction issued
3	Charge: Removing the amount over and above commission earned from insurance bank account. Provision: Para (g) of Schedule V under Regulation 27 of IRDA (Insurance Brokers) Regulations, 2013	Direction issued
4	Charge: Recognition of commission in books of account on cash basis Provision: Regulation 29 of IRDA (Insurance Brokers) Regulations, 2013	Dropped
5	Charge: Having revenue sharing arrangement with another broker for servicing the clients on behalf of the other broker Provision: Para 7(1) of IRDA Guidelines dated 020/NL/IRDA/06 dated 15th September, 2005	Warned
6	Charge: not disclosing the information of employees having agency license in renewal application. Provision: Para 7(1) of IRDA Guidelines dated 020/NL/IRDA/06 dated 15th September, 2005.	Direction issued
7	Charge: not disclosing the information of court cases in renewal application. Provision: Regulation 41 (1) (c) of IRDA (Insurance Brokers) Regulations, 2013	Warned
8	Charge: Soliciting insurance business before the	Warned

	date of license Provision: Regulation 51(1) of IRDA (Insurance Brokers) Regulation, 2013.	
9	Charge: providing claim consultancy for the amount beyond 1 crore rupees Provision: Clause 3(i) and 3 (iii) of IRDA circular IRDA/BRK/CIR/GLD/270/ 12/2011 dated 7 th December, 2011	Warned

Further

- a) The Broker shall confirm compliance in respect of all the directions referred to in this Order, within 21 days from the date of receipt of this order.
- b) 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.

Place: Hyderabad
Date : 24th April, 2017


(V.R. Iyer)
Member (F&I)
