



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

Ref: IRDA /ENF /ORD /ONS/ 019 / 01 /2015

**Final Order in the matter of
M/s Acme Insurance Broking Services (P) Ltd**

(under Regulation 32 (2) of the IRDA (Insurance Brokers) Regulations, 2002.)

Based on the reply to the Show Cause Notice dated 7th August, 2014 and submissions made during Personal Hearing, Chaired by Sh. M. Ramaprasad, Member (Non-Life), IRDAI held on 16th October 2014 at 5 pm at the office of the Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavan, Basheer Bagh, Hyderabad

The Insurance Regulatory and Development Authority of India (hereinafter, referred to as 'the Authority') carried out an onsite inspection of **M/s Acme Insurance Broking Services (P) Ltd** (Earlier known as ACME Insurance Services P. Ltd.), Composite Broker with License Code No. CB 005/ 02, Certificate No. 102, having registered office at 3A, III Floor, 'JANMALS', 17, Jagannathan Road, Nungambakkam, Chennai-600 034, hereinafter, referred to as the insurance broker) from 12th June 2012 to 14th June 2012. The Authority forwarded the inspection report to the insurance broker vide letter dated 19th October 2012 seeking their comments on the same.

Upon examining the submissions made by the insurance broker vide letter dated 5th November 2012, the Authority raised further queries vide letter dated 21st July 2014. insurance broker responded vide their letter dated 31st July 2014. On review of various submissions of the Insurance Broker, the Authority had issued a Show Cause Notice on 7th August 2014 which was responded to by the insurance broker vide letter dated 21st

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August 2014. As requested therein, personal hearing was given to the insurance broker on 16th October 2014.

Sh. Vikram Injeti, Principal Officer was present at the hearing on behalf of the insurance broker. On behalf of the Authority, Dr. Mamta Suri, Sr. JD (Inspection & Compliance), Sh. Randip Singh Jagpal, Sr. JD (Intermediaries), Smt. B. Padmaja, Sr. AD (Inspection Compliance) were present in the personal hearing.

The submissions made by the insurance broker in their written reply to Show Cause Notice as also those made during the course of the personal hearing were taken into account. The explanation offered by the insurance broker to various charges raised as regards violation/non-compliance with the IRDA (Insurance Brokers) Regulations, 2002 (the Regulations 2002) in the Show Cause Notice and the decisions thereon are as follows:

Charge 1

Inspection Observation 1:

No trained persons employed at the insurance broker's Bangalore office.

Concern/Violation: Absence of trained manpower at Bangalore office and no documentary proof made available to show that no business is solicited/marketed through that office. This is in violation of the Regulations, 2002 which mandates the insurance broker to ensure trained manpower to effectively discharge their activities as an insurance broker.

Submissions made by the insurance broker: *Insurance broker submitted that there was no business solicited through their Bangalore office. All businesses were done centrally from Chennai (including the business of clients based at Bangalore). The office was dysfunctional with regard to soliciting/marketing activities.*

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Decision:

The insurance broker's submissions as regards proofs of correspondence with Bangalore based clients through the trained officials stationed at Chennai Office have been considered. It is observed that insurance broker provided contradicting responses in their submissions on two occasions (In letter dated 5th November 2012 two people were said to be joining the company and that they were being trained. In letter dated 31st July 2014, the insurance broker submitted that there were no new appointments during the specified period). It is also observed that the insurance broker has submitted contradictory details of an employee who had resigned from their Company.

The Authority has taken note of the aforesaid contradictory responses and the fact that the insurance broker has not furnished any documentary evidence to substantiate their assertions that there is no solicitation of business from the Bangalore office. Further, based on the information obtained it was observed that approximately 10% of the total business was procured from the Bangalore based clients. Thus, it is difficult to accept that solicitation of business was not carried out from Bangalore office as claimed by the insurance broker.

The above acts of the insurance broker are considered as in violation of Regulation 9 (2) (B) of the IRDA (Insurance Broker) Regulations 2002. Thus, a penalty of ₹ 3 lakh is imposed on the insurance broker under the powers vested under Section 102 (b) of the Insurance Act, 1938.

The Authority, under Regulation 32 (2) of the Regulations, 2002 further, directs the insurance broker to close the Bangalore office within a period of 30 days from the date of receipt of this order, under intimation to the Authority, failing which the Authority would be at liberty to invoke Regulation 34 of the Regulations 2002.



Charge 2

Inspection Observation 2:

The financial statements of the insurance broker show income under the head 'Insurance Broking' 'Consultancy Fee' and 'Interest Income'.

Concern/Violation: Regulation 10 (1) (iv) of the Regulations, 2002, requires the insurance broker to exclusively carry on the business of an insurance broker as licensed thereunder.

Submissions made by the insurance broker: *As insurance broker can render insurance consultancy/risk management, they had performed the same. They further indicated that the regulation provides for charging brokerage only from insurer and is silent about not charging fees from clients for rendering insurance consultancy /risk management.*

Decision:

The interpretation of the Regulations, 2002 as submitted by the insurance broker is incorrect and therefore not acceptable. While Regulation 3 and 4 lays down the functions to be performed by direct broker and reinsurance broker, Regulation 19 indicates the maximum remuneration payable for various services rendered. Regulation 3, 4 and 19 are to be read together and cannot be read severally.

The insurance broker is hereby, warned for violation of Regulation 10 (1) (iv) of the Regulations, 2002 and is further directed to discontinue 'other than' insurance broking services, with immediate effect under intimation to the Authority.

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Charge 3

Inspection Observation: 3

Insurance broker has entered into agreements with couple of global entities to place with Indian Insurer, the insurance business from Indian entities of Multi National Corporations.

Concern/Violation: A review of agreements with the above noted global entities indicates the following:

- The entity named M/s Globex International will be helping the insurance broker in placement of insurance business and revenue thereon be shared between the two parties. It is also observed that Globex works like an exchange between the domestic broker and local foreign broker through which commission is shared by the local broker with the foreign broker
- The other arrangement with the global entity M/s. Trust Risk Control AG (TRC) clearly indicates that all the revenue resulting from the servicing of clients directly or indirectly introduced by TRC/TRC Members/Service Partners either by way of commission or fees or any other kind of income will be shared with the insurance broker in the pre-defined proportion.

The above agreements are in violation of 3 (b) of the Code of Conduct under Regulation 21 of the Regulations, 2002 and IRDA Circular Ref. 026/IRDA/INS. Brokers/Oct 05 dated 11th October 2005 which does not permit employing agents or canvassers to bring in business.

Submissions made by the insurance broker: *Insurance broker has submitted that the M/s Trust Risk Control (TRC) and M/s Globex International are not foreign brokers but merely a network organisations. None of the local accounts have earned beyond*

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threshold limits laid down in the agreements and as such no revenue sharing had actually happened in the either of the two cases. The insurance broker has further confirmed that the agreements with M/s Globex have been terminated and that with M/s TRC was not renewed.

Decision:

The Authority considered the submissions that neither of the two entities was a foreign broker but were merely networking organizations. The Authority also notes that there had been no sharing of revenue as agreed upon between the parties and that the agreements have been terminated or not renewed. However, the Authority considers the above arrangements as a violation of 3 (b) of the Code of Conduct under Regulation 21 of the Regulations, 2002 and IRDA Circular Ref. 026/IRDA/INS. Brokers/Oct 05 dated 11th October 2005 as the terms of agreements clearly indicate business thresholds over which revenue was agreed to be shared. The above referred violation attracts Regulation 34 but keeping in view the fact that the agreements were never acted upon despite intent on the part of the broker to use these agreements for revenue sharing with the parties to the agreements, the Authority impose a penalty of ₹ 2 lakh under section 102 (b) of the Insurance Act, 1938.

Charge 4

Inspection Observation: 4

Concealment of information on the part of the Principle Officer of the insurance broker about directorship and shareholding in M/s ACME Ventures Pvt. Ltd.

Concern/Violation: From the financial statements of M/s ACME Ventures Pvt. Ltd. (which happened to be a corporate agent with Tata AIG General Insurance Co. Ltd., till 2003), it was observed that they were performing insurance related activities till its dissolution in November 2011. The Principal Officer of the insurance broker has

continued to act as director and shareholder in the M/s ACME Ventures Pvt. Ltd. and this information was concealed from the Authority.

The insurance broker is liable under Regulation 34 (1) (c) of the Regulations, 2002 for concealment or failure to disclose material facts in application.

Submissions made by the insurance broker: *Insurance broker has submitted that the M/s ACME Ventures Pvt. Ltd. was not involved in insurance related activities but was undertaking activities like market studies/ benchmarking of benefits/ HR consulting. As Sh. Vikram Injeti was a nominal shareholder, the same was not informed to the Authority. The company's name is struck off and dissolved.*

Decision:

Non-disclosure of details of the group entity, in which the insurance broker's principal officer was a shareholder at the time of renewal of license is a clear violation and is liable for action under Regulation 34 (1) (c) of the Regulations, 2002. On due consideration of the submissions made by the insurance broker a penalty of ₹ 2 lakh is levied under section 102 (b) of the Insurance Act, 1938.

Charge 5

Inspection observation: 6

The Broker is placing significant proportion of its re-insurance business with foreign reinsurers or foreign brokers and the insured is also a foreign national.

Concern/Violation: Regulation 10 (iv) of the Regulations, 2002 states that the applicant shall exclusively carry on the business of insurance broker as licensed under these regulations.

Submissions made by the insurance broker: *Insurance broker has submitted that the Indian reinsurer is present in treaties as lead, and they have just done a follow line with such reinsurance programs.*



Decision

Doing business for and on behalf of foreign companies for which the broker is not licensed by the IRDAI is a violation of the Regulations 2002 and terms and conditions of license. Insurance broker is hereby directed under Regulation 32 (2) of the Regulations 2002, to discontinue the practice within 30 days of the date of receipt of this order, under intimation to the Authority.

Charge 6

Inspection observation: 7

Interest on fixed deposit recognised on cash basis.

Concern/Violation: Recognising interest on fixed deposit on cash basis is a violation of Regulation 25 (1) the Regulations, 2002

Submissions made by the insurance broker: *Insurance broker has submitted that the normal convention used to define accrued income is to take income which arises on a time bound manner. However, the point to be considered here is that even though 'income may accrue' it will still not be considered as income until such accrued income becomes due and the company has a right to such accrued and due income. This is especially true in the case of fixed deposit, which earns interest on the basis of time. The accrued interest will not be considered as income until such time it becomes due, as the depositor can and may break the deposit, thus reducing the interest finally payable to him due to pre-closure*

Decision:

Insurance broker's contentions and interpretation of the concept of 'accrual' basis of accounting is not acceptable. The ICAI's guidance note on 'accrual basis of accounting' at para 3.10 (i) clearly states that the accounting is to be postponed only when there is significant uncertainty as to measurability or

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collectability. Insurance broker is directed to comply with the requirement of Accounting Standards of ICAI and the Regulations, 2002 with immediate effect.

Order Summary:

In conclusion, as directed under the respective charges, penalty of ₹ 7 lakh (Rupees Seven Lakh Only) shall be remitted by the insurance broker by a crossed demand draft (DD) drawn in favour of the Insurance Regulatory and Development Authority, payable at Hyderabad or through the NEFT (as per the details being communicated in a separate e-mail to the insurance broker), within a period of 15 days from the date of receipt of this Order.

Confirmation of NEFT/ DD may be sent to Shri Lalit Kumar, FA(Enforcement) at the Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavan, Basheer bagh, Hyderabad 500 004.



(M. Ramaprasad)
Member (Non-Life)

Place: Hyderabad

Date: 23rd January 2015

