



No. IRDA/ENF/ORD/ONS/ 219 /09/2017

**Final Order in the matter of
M/s. Afro-Asian Insurance & Reinsurance Brokers (India) Pvt Ltd**

Based on reply to the Show Cause Notice dated 19th June 2017 and submissions made during Personal Hearing held on 10th August, 2017 at 03:00 p.m. taken by Member (Non Life) at the office of Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad.

Background:-

The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") carried out an onsite inspection of M/s. Afro-Asian Insurance & Reinsurance Brokers (India) Pvt Ltd (hereinafter referred to as "the broker") during 13-11-2014 to 15-11-2014. The Authority forwarded a copy of the Inspection Report to the broker seeking comments and the broker's comments were received vide their letter dated 25-05-2015. Upon examining the submissions made by the broker, the Authority issued Show Cause Notice on 19-06-2017 which was responded to by the broker vide letter dated 29-06-2017 & 25-07-2017. As requested therein, a personal hearing was given to the Broker on 10th August 2017. Shri Jay Thakker, Principal Officer was present in the hearing on behalf of the Broker. On behalf of the Authority, Mr. PJ Joseph, Member (Non Life), Shri Randip Singh Jagpal, HOD (Intermediaries), Shri Prabhat Kumar Maiti, GM (Enforcement), Shri B.Raghavan, DGM (Enforcement), and Shri Udit Malhotra, Assistant (Enforcement) were present during the personal hearing.

The submissions made by the broker in their written reply to the Show Cause Notice and those made during the course of the personal hearing and the documents submitted by the Broker in reply to SCN and in evidence of their submissions in Personal Hearing have been considered by the Authority and accordingly the decision on the charge is detailed below.

1. Charge No 1

It was observed that the Broker did not perform the functions of a Reinsurance Broker as prescribed in the Regulation. The Broker after obtaining the primary information on reinsurance requirements of Indian insurers/reinsurer advised the clients that Afro Asian Insurance Services Ltd. (UK) will act on behalf of the Broker for the reinsurance requirements/ placements. Accordingly, the clients were asked to transact its business directly with AAIS(UK) including the payment of premium to the account of AAIS(UK). Upon receipt of premium amount from the ceding companies, AAIS(UK) sent the Credit Note to the Broker confirming the amount of Brokerage due. The examination of Ledger

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accounts revealed that AAIS(UK) remitted consolidated amounts to the Broker and the same were credited into Ledger account - Afro Asian Insu Ser Ltd UK (Brokerage Credit) was debited with the Brokerage becoming due to the Broker . The Broker informed that the Brokerage is shared in proportion of 50:50 between it and AAIS (UK) for Reinsurance placements referred and transacted through AAIS (UK) but did not possess any supporting document in respect of reinsurance contracts confirming the sharing of Brokerage with AAIS (UK). Since the complete placements are effected by AAIS (UK), the data and records pertain to reinsurance transactions were not available at AAIRBIPL office. The Inspection observation reveals that the broker is not discharging the professional role and responsibilities expected from a Composite Insurance Broker, registered in India, as envisaged under Regulation 4 of IRDA (Insurance Brokers) Regulations, 2013.

Submissions of Broker:-

The Broker in its submission accepted that the management in charge at the time of inspection were not performing the functions of a reinsurance broker as expected by the shareholders and in accordance with the Regulations set forth by the IRDA. The change of management is a consequence of the same. The Broker further submitted that now the UK Company is not relied on for any placements other than the historic placements with PTA Re and for other placements in Lloyds and the status of the UK Company for the placement of AAIRBIPL's business into Lloyd's of London is "pari passu" with other Lloyd's Brokers.

The Broker also submitted that now it directly markets business to reinsurers to obtain quotes and place business. It is also, actively involved in soliciting business overseas and placing directly with overseas reinsurers and advising on program design and structuring of solutions for clients both in India & International

Further, Mr. Udai Patel of the UK Company AAIS has stepped down from the position of The Managing Director of the AAIRBIPL company and handed over the same to Mr. Jay Thakker who is now the Principal Officer & Managing Director of the company to Independently manage it. Electronic record keeping and systems are in place to ensure that functions are carried out properly in accordance with the set workflow.

Charge No 2

The websites of the Broker and AAIS (UK) show each other as one of the global offices of the parent company. Vital documents/records like underwriting information, insurance cover and terms, premium register etc were neither maintained at the Broker office, nor were provided to the Inspecting officers. The Broker during inspection attempted to compile reinsurance placement register after trying to obtain the details from AAIS (UK) London office despite prior communication of documents/data required by IRDA Inspection team. It is evident that the Broker was acting as business referral provider to AAIS(UK) for Reinsurance business.

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Submissions of Broker:-

The Broker submitted that it is now actively involved in advising on program design and structuring of solutions for clients both in India & International.

Charge No 4(a)

In its Reinsurance placements, the Broker barely collected the premium and remitted to the reinsurer or collected the claims due from the reinsurer to be passed on to the insured. The collection of premium/ remittance to reinsurer has been transacted through AAIS (UK) Bank account namely Lloyds TSB Bank. The Insurance Bank Account of the Broker therefore has very few transactions.

Submissions of Broker:-

The Broker informed that IBA Account has been opened on 2nd August 2011 with HDFC Bank, Church gate branch with IBA account no 05012560004148.

Charge No 7

AAIS (UK) is not registered to do business in India. But it has promoted the Broker through FDI. Hence it has been influencing the Broker for intermediation of the reinsurance business and in this process, the role of Indian Broker has been reduced to mere referral provider and earning a share of commission while abdicating the responsibilities of discharging the functions of a reinsurance Broker.

Submissions of Broker:-

The Broker submitted that following the appointment of Mr. Jay Thakker to head the reinsurance division the company has developed large volume of international business including that in the Middle East and Sri Lanka .Thus all remedial steps are in place and the company is functioning as a professional reinsurance broker.

Decision (for Charges 1, 2, 4a and 7):-

All the instances referred above clearly show that the Broker has delegated all its functions to AAIS (UK) and has failed to perform the functions of a Reinsurance Broker as envisaged under Regulation 4 of IRDA (Insurance Brokers) Regulations, 2013. The Broker in its submission has confirmed that the company in its current form is performing all the functions of a reinsurance broker as prescribed under the Regulations in a meticulous manner and is not reliant on the AAIS (UK) - this is a covert submission on the broker's part that they hitherto did not perform the functions of a Reinsurance broker properly. The Broker has

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neither refuted any of the grounds of the observations, nor provided any logical clarification/justification for the manner in which they functioned and has simply confined themselves to saying that with the new team in place, they are adhering to the Regulations now.

Once a Broker is registered with the Authority, they are obligated to abide by all the regulatory prescriptions applicable to them. In the extant case, the broker has pursued a practice, which is not in compliance to the regulation, since they are registered with the Authority. Considering that the Broker committed violations of aforesaid regulations for a long period (since year 2004 till current PO has taken over charge), in exercise of the powers vested in it under Section 102(b) of Insurance Act, 1938, Authority imposes a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) for those violations. The Broker is further directed to ensure compliance of Regulation 4 of IRDA (Insurance Brokers) Regulations, 2013, in letter and spirit.

2. Charge No 3 :-

- a. Conduct in matters relating to clients relationship: It was observed that the Broker is not obtaining the written mandate from all the retail clients and many of the corporate clients in respect of direct broking to represent the client to the insurer and developing terms on the basis of the information provided by the client.
- b. Conduct in relation to explanation of insurance contract and documentation: The Broker is lacking in compliance with code of conduct requirements of the Broker Regulations since the reinsurance contracts records are not maintained and the ceding companies are deprived of the professional advice on the above matters

Submissions of Broker:-

The Broker accepted its shortcoming in respect of charges on both points for past practice. It further submitted that currently mandates are being obtained from all clients. The Broker also submitted that system & new software is now adopted in reinsurance, all the records are being maintained.

Decision:-

The Broker has accepted the shortcomings on its part for not obtaining the written mandate from retail and corporate clients in respect of direct broking to represent the client to the Insurer and developing terms on the basis of the information provided by the client. This is a violation of Clause 2(h) of Schedule VIA under Regulation 28 of IRDA (Insurance Brokers) Regulations, 2013. The Broker is warned for the violation. Further, taking note of the submission that currently mandates are being obtained from all clients, the Broker is directed to comply with the said regulation.

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The Broker has also accepted to the shortcomings on its part for being unable to render professional advice to ceding companies due to non-maintenance of reinsurance contracts. This is a violation of Clause 2(c) of Schedule I under Regulation 4 of the IRDA (Insurance Brokers) Regulations, 2013. The Broker is warned for such violation. Further considering the submission that currently all the records are being maintained, the Broker is directed to ensure compliance of the said regulation in letter and spirit.

3. Charge No 4(b) & 4(c) :-

It was observed that the periodic reports on the ageing of balances and settlements were not available in the office of the Broker. The same had to be obtained from AAIS (UK) and the Broker is not maintaining the system to monitor the timely settlement of balances as the segregation of insurance money in Insurance Bank Account is not occurring at AAIRBIPL office. It was also observed that there is a gap of more than one year in collecting the premium and remitting to the reinsurer and/or collecting the claims due from the reinsurer to be passed on to the insured in cases examined which reflects on inadequate system to monitor the timely performance of reinsurance broker functions.

The Broker did not furnish a copy of the following:

- a copy of certificate duly certified by a Chartered Accountant on the compliance of each and every provision of Schedule V read with Regulation 27 of the Brokers Regulations, 2013;
- a copy of certificate duly certified by a Chartered Accountant on the amount of charges, fees or brokerage/commission earned during the period and any transfers made to any other account.

Submissions of Broker:-

For the first part of the observation the Broker submitted that the functions of the reinsurance broker are in practice as per Regulations since November 2013, after the taking over by the new team.

For the second part of the observation, the Broker accepted shortcomings on its part and submitted that the previous Principal Officer did not discharge his duties as expected and that is why the team along with the Principal Officer was changed.

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Decision:-

In the first part of the observation, different instances such as non-availability of periodic reports on the ageing of balances and settlements, non-maintenance of system to monitor the timely settlement of balances or time gap of more than one year in collecting the premium and remitting to the reinsurer and/or collecting the claims due from the reinsurer to be passed on to the Insurer have been mentioned which indicate lack of proper internal controls and systems and shoddy accounting practices in the Broker. This is a violation of Regulation 31(1) of the IRDA (Insurance Broker) Regulations 2013. The Broker is warned for such violation. The Broker is further directed to ensure that such violation does not recur.

In the second part of the observation pertaining to non furnishing of copy of Chartered Accountant's certificate to the Inspection team, the Broker has accepted shortcoming on its part and their submission that they later submitted the required documents to the Authority subsequent to the Inspection is taken on record and charge is not pressed. However the Broker is advised to ensure compliance to the provisions of Schedule V of Regulation 27 of IRDA (Insurance Brokers) Regulations, 2013 and other relevant regulatory prescriptions as amended from time to time.

4. Charge No 5:-

It was observed that the Broker had not filed online returns for the years 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14.

The https://www.irda.gov.in/Broker/BRO_OIC/broker_OICMain confirmed that AAIRBIPL had not filed online returns. However, the Broker submitted letter to the inspection team, confirming the online returns were filed. But the hard copies were not provided to substantiate the confirmation. The confirmation letter of AAIRBIPL is, therefore, evasive and it did not comply with Authority's circular 009/IRDA/ BRO/MAY06 dated 26/05/2006 since 2009-10

Submissions of Broker:-

The Broker accepted the failure to file past returns online and further submitted that following inspection, regular online returns are filed, the last being filed for 1st quarter 2017.

Decision:-

The Broker has itself accepted to the shortcoming that it failed to file past returns online. It has also assured that they are filing regular online returns post inspection. The Broker is directed to ensure that online returns are filed regularly

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at IRDA portal without fail so as to comply with the provisions of Authority's circular 009/IRDA/ BRO/MAY06 dated 26/05/2006 and relevant regulatory prescriptions as amended from time to time.

5. Charge No 6:-

The Broker did not ensure that a proper system of internal audit is practiced in its business. The Broker stated that considering the small business volume, the company has no separate internal audit system. However CAs M/s Arvind Shah & Co. stated in the Annexure to Auditors Report that the company has an internal audit system commensurate with the size and nature of business. The facts stated by the Broker and the auditors are contrary to each other and therefore inconsistent. Also the Broker has not put in place an internal audit system and not designated a Compliance officer.

The supporting documents, necessary to explain the transactions with AAIS(UK) and giving the details of receipt of Brokerage from AAIS(UK) were not available at the Broker's office. The Principal Officer and senior officials were not able to give transaction of the details. The Books of account are not supported with documents to explain the receipts from AAIS (UK)

Additionally, the amounts received from AAIS(UK) but not adjusted in the Ledger account are shown as Other current liabilities in the audited balance sheet. In the trial balance, these unadjusted amounts were shown as current liabilities (Advance from Clients). However, there is no corresponding increase in the income from business operations of the Broker.

Submissions of Broker:-

The Broker submitted that it has put in place an Internal Audit Committee and Compliance Committee.

Decision:-

Different instances mentioned in the observation point towards absence of internal controls and systems of the Broker. The contradictory statements of the Broker and Auditors regarding the internal audit system of the company imply that the internal audit system is not functioning properly. Also the entity was not having a designated compliance officer which is mandatory in case of Reinsurance and composite Brokers.

The specific instances regarding the Reinsurance business of the company show complete lack of prudence on the part of the Broker and point towards improper

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transactions, shoddy accounting practices and lack of proper maintenance of supporting documents necessary to explain the transactions related to Reinsurance business. Mere submission by the Broker regarding appointment of internal audit and compliance committee doesn't imply that the Broker has made the required changes in its internal practices in adherence to the aforesaid Regulation. Also it is an indirect admission on the part of the Broker, that in the past there were lack of internal controls and systems in the company. The Broker has also not refuted the observation or provided any logical clarification for their past action. All the aforementioned instances in the observation are a violation of Regulation 31 of IRDA (Insurance Brokers) Regulations 2013. The Broker is warned for the violation. Further the Broker is directed to comply with the said regulation and also to have a designated compliance officer in place.

6. Charge No 8:-

The Principal Officer of the Broker is a Director. The organization chart of the Broker shows that the 'Principal Officer' is not exclusively responsible for the activities of the composite broking company since he was posted on the same line along with ED (Reinsurance) and Director (Finance). The Principal Officer, ED (Reinsurance) and Director (Finance) report to the Managing Director. Further, it was observed that the Principal Officer is not well acquainted with the activities of the Broking Company as he did not explain the affairs of the company in respect of reinsurance and finance functions and he did not furnish the details of submission of final accounts, half yearly returns and filing of online returns to the Authority

Submissions of Broker:-

The Broker submitted that the new management team is working very conscientiously to meet the expectations of the stakeholders whilst carrying out the duties with due observations of the Regulations. The current Principal Officer does not hold any other charges. He is designated as Principal Officer & Managing Director.

Decision:-

Considering the submission of the Broker that the incumbent Principal officer does not hold any other charge and submitted that the new management team is working very conscientiously to meet the expectations of the stakeholders whilst carrying out the duties with due observance of the Regulations, charge is not pressed. However the Broker is directed to ensure compliance of Circular-IRDA/BRO/36/AUG-04 dated 18-08-2004, Regulation 2(m) of IRDA (Insurance Brokers) Regulations, 2013 and relevant regulatory requirements as amended from time to time.

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7. Summary of Decisions:

The following is the summary of decisions in this order:

Charge No.	Brief Title of charge and the provisions violated	Decision
1,2, 4a and 7	Charge: Functions of Reinsurance Broker Provision: Regulation 4 of IRDA (Insurance Brokers) Regulations , 2013	Penalty of Rs. 5 Lacs & Direction.
3	Charge: Code of Conduct Provision: Clause 2(h) of Schedule VIA under Regulation 28, Clause 2(c) of Schedule I under Regulation 4 of the IRDA (Insurance Brokers) Regulations, 2013.	Warning and Direction
4(b) and 4(c)	Charge: Internal controls and systems and non submission of Certificates Provision: Regulation 31(1) and Schedule V of Regulation 27 of IRDA (Insurance Brokers) Regulations, 2013.	Direction & Advisory
5	Charge: Non submission of Online Returns Provision: Provisions of Authority's circular 009/IRDA/BRO/MAY06 dated 26/05/2006	Direction
6	Charge: Internal Controls & Systems Provision: Regulation 31 of IRDA(Insurance Brokers) Regulations 2013	Warning and Direction
8	Charge: Position of Principal Officer Provision: Regulation 2(m) of IRDA(Insurance Brokers) Regulations, 2013 and Provisions of Circular-IRDA/BRO/36/AUG-04 dated 18-08-2004	Direction

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8. Conclusion

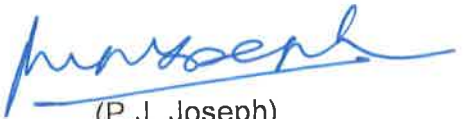
The Broking firm shall confirm compliance in respect of all the directions referred to in paras 1 to 6 of this Order, within 21 days from the date of receipt of this order.

As directed under the respective charges, the penalty of Rs. 5,00,000/- (Rupees Five 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 Kumar Maiti, General Manager (Enforcement) at the Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavanam, Basheerbagh, and Hyderabad- 500004.

The Order shall be placed before the Audit committee of the broking firm and also in the next immediate Board meeting and the licensed entity shall provide a copy of the minutes of the discussion.

9. 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: 19-09-2017



(P.J. Joseph)
Member (Non Life)

