



Ref. IRDA/ENF/MISC/ONS/074/04/2016

**Final Order in the matter of M/s. Bharti AXA Life Insurance Company Limited**

Based on reply to Show Cause Notice dated 22<sup>nd</sup> January, 2016 and submissions made during Personal Hearing chaired by Mrs. V.R.Iyer, Member (F&I), Insurance Regulatory and Development Authority of India (IRDAI) on 23<sup>rd</sup> March, 2016 at the office of Insurance Regulatory and Development Authority of India, 3<sup>rd</sup> Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad.

The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") carried out an onsite inspection of M/s. Bharti AXA Life Insurance Company Limited (hereinafter referred to as "the Life Insurer/Company") from 4<sup>th</sup> February, 2013 to 15<sup>th</sup> February, 2013. The Authority forwarded the copy of the Inspection Report to the Life Insurer vide letter dated 13<sup>th</sup> May, 2013 seeking comments on the same which was responded to by the Life Insurer vide letter dated 7<sup>th</sup> June, 2013. Post scrutiny of the first compliance, the Authority had raised further queries vide e-mail dated 19<sup>th</sup> November, 2015 which was responded to vide email dated 30<sup>th</sup> November, 2015. Upon examining the submissions made by the Life Insurer vide letter dated 7<sup>th</sup> June, 2013 and email dated 30<sup>th</sup> November, 2015, the Authority issued a Show Cause Notice on 22<sup>nd</sup> January, 2016 which was responded to by the Life Insurer vide letter dated 18<sup>th</sup> February, 2016. As requested therein, a personal hearing was given to the Life Insurer on 23<sup>rd</sup> March, 2016. Mr. Sandeep Ghosh, CEO, Mr. Rajeev Kumar, CFO, Mr.C.L.Bhardhwaj, SVP (Compliance) and Ms.Vimpal Mehta, Manager were present in the hearing on behalf of the Life Insurer. On behalf of the Authority, Mr.Lalit Kumar, FA & HoD (Enforcement), Ms. Mamta Suri, Sr.JD (F&A), Mr.V.Jayanth Kumar, JD (Life), Mr.Prabhat Kumar Maiti, JD(Enforcement) and Mr. K.Sridhar Rao, Sr. Assistant Director (Enforcement), were present in the personal hearing.

The submissions made by the Life Insurer in their written replies vide letter dated 7<sup>th</sup> June, 2013 and email dated 30<sup>th</sup> November, 2015, reply to Show Cause Notice and the submissions made during the course of the personal hearing were taken into account.

The findings on the explanations offered by the Life Insurer to the following charges and the decisions are as follows.

**Charge 1**

The Life Insurer is using RLS applications for their core life policy administration system, RLS application system is provided by the Axa Asia Pacific holdings limited, this system's main database server presently located in Singapore SingTel DC. Thus, policy wise details of all policy holders are sent to the main server located in Singapore SingTel DC. It was also observed that in case of their Channel management system (RCMS Application) and Financial system – RGL, both application main server and back up servers are at Singapore SingTel DC and Germany DC respectively.

Page 1 of 10

**Violation of Regulation 7(c) of IRDA (Registration of Indian Insurance Companies) Regulations, 2000 and Clause 9.8 of Outsourcing Guidelines Circular No IRDA/ LIFE/ CIR/ GLD/ 013/02/2011 dated 01/02/2011.**

**Submission by the Life Insurer**

*The Life Insurer submitted that, while all the functions of Bharti AXA Life are carried out within the organisation, specific activities within the functions have been outsourced in compliance with the Outsourcing Guidelines. With specific reference to data storage, even though the data centres have been hosted outside India, necessary data protection, security and other risk control measures as enshrined in the Authority's Outsourcing guidelines have been carried out to ensure that the risks associated with such outsourcing are mitigated. The arrangement with entity for hosting servers states that it shall comply with all the applicable laws of India which includes adherence to rules/regulators notified by the Indian Authority, IT Rules etc. The contract neither prevents nor impedes the Company from meeting the regulatory requirements.*

*The Life Insurer further submitted that, after notification of IRDAI (Maintenance of Insurance Records) Regulations, 2015 which mandates that all the data centres shall be located and maintained in India only, the Company vide letter dated 14/09/2015 requested the Authority, to allow to store policy records including that held in electronic mode pertaining to all the policies issued in India in Centres located in any geographical location which fulfil minimum standards as may be deemed fit by the Authority. The Authority while rejecting the representation, directed/granted the Company vide letter dated 24/09/2015 to shift the servers within six months period.*

*The Life Insurer submitted that they have vide letter dated 04/12/2015 requested the Authority to re-consider their request of maintaining data servers outside India giving opinion of KPMG on practices of other Regulators viz., Reserve Bank of India and Securities & Exchange Board of India (SEBI) on outsourcing activities with overseas vendors, however, they submitted that the reply/communication from the Authority is awaited as on date.*

*The Life Insurer submitted that, at last, they have contemplated on bringing the servers back to India to be in compliant with the referred Regulations. However, the Life Insurer pleaded that the directions of the Authority, that the servers shall be shifted within six months from 24/09/2015 could not be adhered in anticipation of the Authority's reply to the representation made vide letter dated 04/12/2015 referred in the above paragraph. Hence the Life Insurer vide letter dated 22/03/2016 requested the Authority to provide further extension of time till end of December, 2016.*

**Decision**

**The submissions made are taken on record. However, the Authority already has processed the representation made by the Life Insurer vide letter dated 22/03/2016,**

and accorded time period up 30/09/2016 to shift the servers to be in line with the IRDAI (Maintenance of Insurance Records) Regulations, 2015 vide letter No. IRDA/Life/Misc/15-16 dated 30/03/2016. The Life Insurer is advised to comply with the same under intimation to the Authority.

### Charge 2

When a policy is completed with Non-Standard Age proof, a consent letter is being taken which contains an undertaking by the insured that, he would not approach the insurer to revise the age and premium even if he is able to produce a standard age proof at a later date and would continue to pay the extra throughout the term of the policy.

***Violation of provisions of Section 45 of Insurance Act, 1938 and Regulation 6(4) of IRDA (Protection of Policyholders' Interests) Regulations, 2002.***

### Submission by the Life Insurer

*The Life Insurer submitted that, keeping in mind that there could be a risk of moral hazard that a subsequent Standard Age proof could be based on an underlying non-standard Age proof; the Company had inserted the undertaking as stated above while obtaining Sub-standard age proofs. The Life Insurer further submitted that, notwithstanding to the above, the Company has, despite taking the undertaking letter referred to in the observation, accepted the subsequent Standard Age proof in all cases and age extra was removed after receipt of the Standard Age proof. The Life Insurer also submitted copies of letters sent to the Customer accepting the Standard Age Proofs. Further the Life insurer submitted that the Company has removed the said undertaking since 2013.*

### Decision

The life insurer shall note that Categorization of age proofs is as "Standard Age proof" and "Non-Standard Age Proof" and a list of standard and non-standard age proofs are generally prescribed by the Life Insurer himself. Hence, if a standard age proof is submitted, there shall not be any question as to how it has been obtained and it is none of the company's business to check what was underlying age proof submitted to obtain the same. It is appropriate to remove age extra on receipt of standard age proof. However, considering the submissions that, though the Company had initially obtained the undertaking from the customer, in reality they have accepted if any customer requests for acceptance of Standard Age proofs and confirmation that they have discontinued the practice as on date, **no charges are being pressed**. The Life Insurer is advised not to opt for such practices hereinafter.

### Charge 3

It was observed that the policy bonds along with proposal forms were not issued within 30 days from the underwriting decision date in a considerable number of policies issued during

2011-12. However, it is mandated that proposal forms shall be processed promptly and furnish the insured, a copy of the proposal form free of charge within 30 days of acceptance of the proposal.

***Violation of Regulation 4 of IRDA (Protection of Policyholders' Interests) Regulations, 2002.***

**Submissions by the Life Insurer**

*The Company has in place a process to ensure that the policies are issued well within the timeline of 30 days of acceptance of the proposal. In order to ensure that the policies issued to the customers are accurate, the Company undertakes quality check and in case the company notices any discrepancy then it is corrected and policy document is issued free of errors. The Life Insurer further informed that the matter has been taken up with the concerned vendors and over the past 2 years significant improvement (2014 – 99.79% and 2015-99.97% of policies were dispatched in time) has been shown in the TAT for issuance of policy bonds to comply with the regulatory timelines.*

**Decision**

**Considering the submissions made, no charges are being pressed. However, the Life Insurer shall continuously strive to achieve 100% dispatch of policies within prescribed TATs.**

**Charge 4**

In a certain number of policies (480) though there was no requirement pending before date of maturity, it was not ensured that the maturity claims are settled on or before maturity date. Further, out of 480 cheques issued towards maturity proceeds of these policies, only 89 cheques were encashed by the policyholders and the rest 391 cheques were not encashed by the policyholders.

***Violation of Clause 6 of Annexure II of Corporate Governance Guidelines, IRDA/F&A/CIR/025/2009-10 dated 05/08/2009 and Regulation 8 of IRDA (Protection of Policyholders' Interests) Regulations, 2002.***

**Submission by the Life Insurer**

*The Life Insurer submitted that they have necessary processes and controls in place for settlement of maturity claims. One month before the maturity date of the Policy, the Company had sent letters to all the Policyholders for submission of Policy bond. Since there was no response from the Policyholders, the Company officials visited the village to meet the village Sarpanch in seeking help to get the policy bond from the Policyholders. Some Policyholders informed the Company officials that they have lost the original policy document and hence they could not submit the Policy document to the Company.*



Keeping in mind that the maturity claim was on a Rural Life Insurance product and also considering that the maturity claim amount was only Rs. 220, the Company accordingly took a stand to settle the claims by waiving policy bond. The Company noted that out of 480 cheques issued, only 89 cheques were encashed by the Policyholders. On account of this, the Company officials personally visited the Rural areas and noted that most of the Policyholders does not have any bank account due to which the cheques were not encashed by the Policyholder. Thus, the Company officials re-visited for handing over the maturity amount to the Policyholders after obtaining KYC (Know Your Customer) documents wherever the Policyholder was available. Despite all the efforts, still 70 maturity cheques are not encashed (out of total 480). The Life Insurer submitted that they are constantly making efforts to ensure that all the cheques are encashed.

### **Decision**

Considering the submissions made, **no charges are being pressed**. However, from the submissions it is evident that the Life insurer issued maturity cheques to those policy holders who are not contactable; hence a number of maturity cheques were pending to be encashed. This indicate lack of controls in maturity claims' settlements. Hence the Life Insurer is advised to settle the claim only on receipt of the requirements. Further the Life Insurer is advised to ensure proper KYC to be done at the time of issuance of the policies so as to control such instances.

### **Charge No.5**

The Life Insurer has adopted the calculation of interest payable on the delayed claims by calculating the number of days delay in settlement starting from the 31<sup>st</sup> day of receipt of last requirement instead of calculating the number of days delay in settlement from the date of receipt of last requirement.

### **Violation of Regulation 8(5) of IRDA (Protection of Policyholders' Interests) Regulations, 2002.**

### **Submission by the Life Insurer**

The Life Insurer submitted that the relevant Regulations provide 30 days time limit to insurance companies to decide a claim from the date of receipt of all requirements. If the time taken is beyond the 30 days, which is the due date for taking a decision on a claim, then interest is payable beyond the due date when 30 days expire. As per the Regulations, the insurer is required to pay interest for the delay beyond 30 days as per the Regulations. However, notwithstanding to the above understanding, the Life insurer submitted that they have amended the process from 2013 in line with the Authority's observation. The Life Insurer also confirmed that they have re-opened all the existing delayed cases and paid penal interests from the date of last requirement.





## Decision

The Life Insurer's submissions are considered and hence no charges are being pressed. However, the Life Insurer is advised to ensure continuous compliance of the said Regulations.

## Charge 6

Amounts are paid to Group Policyholders (GPH) in the name of "Market Research", "Sales Training", "Display of publicity material" etc.

**Violation of Clause B-2 and C-4 of Group Insurance Guidelines, Circular No.015/IRDA/Life/Circular/GI Guidelines/2005 dated 14/07/2005.**

## Submission by the Life Insurer

*The Life Insurer contended that, where the Group Policyholders are also engaged in a line of business and rendering services which any customer of such Group Policy Holder can avail in normal course of business and if such services are also rendered to the Insurance Company who has issued the Group policy, such services would be outside the scope of the Group guidelines. For example: services rendered by a Courier company to an insurance company from which the Courier company has taken a group insurance policy for its employees. The intention of the Guidelines is not to restrict availing services which are rendered at arm's length by the Group policyholder to the insurance company as such services are availed for business needs. Hence the payouts do not fall within the prohibition under Group Insurance Guidelines dated 14 July 2005. Further submitted that, although services availed by the Company had no relevance to services offered under Group Insurance Contract and also based on Authority's stance with other insurance companies, they had discontinued the contracts with Group policy holders (Vendors) w.e.f. 14/09/2012.*

## Decision

There shall not be any payments as management expenses or documentation expenses or profit commission or bulk discount or payment of any other description to the group organizer or group manager. The contention of the Life Insurer that the services availed by the Company had no relevance to services offered under Group insurance contract is not tenable because the Group Master policyholders are not engaged in the primary business of offering the services availed by the Life Insurer. Further the said guidelines also prevent the Life Insurers from entering into agreements with group organizers. Hence it can be construed that the said arrangements were made to channelize extra payouts to the Group Master policyholders thereby violated the provisions of said Group Insurance Guidelines. The Life Insurer has made considerable payouts under the guise of these agreements. Hence as per the powers vested on the Authority vide Section 102(b) of Insurance Act, 1938, a penalty of Rs.5,00,000 is levied on the Life Insurer. The Life Insurer is advised to ensure compliance of the said guidelines hereinafter.



## Charge 7

A leasing agreement entered with an entity is considered as Operating Lease instead of Financial Lease.

***Violation of Regulation 2(e) of IRDA (Assets Liabilities and Solvency Margin of Insurers) Regulations, 2000 and Violation of Regulation 3(1) read with Clause 1 of Schedule A (Part 1) of IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002 (Accounting Standard 19 prescribed by ICAI).***

## Submission by the Life Insurer

*The Life Insurer submitted that as per the terms and conditions of the lease, the lease is fit to be considered as operating lease. Prior to entering into an arrangement for operating lease, the proposal was discussed with their statutory auditors who had signed the financial statements for that year. The treatment of the Operating lease is in conformity with the Accounting standards which were also reviewed by the subsequent statutory auditors of the Company. The Life Insurer also submitted opinion from an audit firm which viewed that on the basis of facts and circumstances', applying the various criteria, the Company's practice of treating the lease as operating lease is correct. The Life insurer further confirmed that even if the lease be treated as financial lease, there was no negative impact on the solvency margin requirements and the company's solvency margin would have been 155% for the said year.*

## Decision

**As per Clause 11 of the lease agreement, in case of the lease cancellation, the Life insurer is required to pay all losses associated with termination of lease agreement including liquidated damages equal to the aggregate amount of present value of all future rentals payable under the agreement. Thus as per Para 9a of AS 19, the classification of lease as operating lease by the Life insurer instead of financial lease is not justified. However, considering the submissions made, no charges are being pressed and the Life insurer is advised to review the practice and ensure compliance with referred Regulations.**

## Charge 8

Agreements were entered with related parties of the Brokers and payouts are made in the name of Sending mailers, imparting training to sales staff and Advertisements etc

***Violation of Regulation 19 of IRDA (Insurance Brokers) Regulations, 2002.***



### **Submission by the Life Insurer**

*The Life Insurer certified that one of the entities referred in the observation is not a Related Party of any Distributor. With regard to another entity, the life insurer submitted that they have availed regular business services during the normal course of its business. Further submitted that the services carried out were based on an agreement entered into with them, as per the objects clause of the entities' Memorandum of Association authorising them to provide certain business services. The Company confirms that necessary due diligence was done while scrutinising the credentials of the entity before finalising and entering into a contract with them and the Company has ensured that the spirit of provisions of Clause 9.12 of the Guidelines on Outsourcing of Activities by Insurance Companies, dated 01 February 2011 has been taken care of while outsourcing the services. Further, the terms and conditions of the outsourcing services were finalised on the basis of prevailing market rates. The payments made against the outsourcing services availed from the entity were also in the Outsourcing Returns in the year 2011-12. The Life Insurer further informed that the services availed do not have any relevance to the insurance broking service provided by the Insurance Broker. The Life Insurer argued that there is no regulatory prohibition in availing services from related party of an insurance broker. The payouts referred herein were also reported under outsourcing activities, as mandated in Outsourcing Guidelines, 2011 issued by the Authority. Further the Life Insurer had given a certification that the agreement with the entity which is a related party of the broker has been discontinued with effect from 01/10/2013.*

### **Decision**

**The submission that one entity is not a related party of any insurance distributor is taken on record. The certification that enough due diligence is exercised before outsourcing the activity to the related party of the insurance broker is also taken on record. In light of the same, no charges are being pressed. However, the Life Insurer is advised to continuously protect the spirit of Clause 9.12 of Outsourcing Guidelines, 2011 while entering into such outsourcing agreements.**

### **Charge 9**

**a) Under the Life Insurer's ULIP product 'Bharti AXA Life True Wealth' (UIN-130L036V01), premiums are invested in 'True Wealth Fund', which provides highest unit price recorded during the tracking period before policy maturity. CPPI method was used for determining investment strategy for the fund on daily basis. . But it was observed that the Life Insurer is taking a view different from the respective software recommended investment pattern. Hence, as the insurer is not taking necessary exposure to the equities and investment pattern is based on decision of the Investment Manager. Thus, levy of guarantee charge**





(0.35% p.a. of the fund) while investing more than the CPPI algorithm recommended proportion of the fund in debt securities is not reasonable.

b) On examination of the procedure adopted by the Life Insurer in declaring the interest to be credited to the policyholders' account value, under 'Bachat Bima' product, it was observed that the Life Insurer is deducting '0.5% p.a.' in addition to maximum allowable deduction towards account management charge of 2.75% p.a.

***Violation of file and use procedures.***

**Submission by the Life Insurer**

**For (a)**

*The investment department uses AXA Group's proprietary CPPI model which is a modified version of the conventional CPPI model (which is used by Actuarial Department to evaluate the funds ability to meet the guarantee). The AXA's Group's proprietary model has enhanced features like volatility caps and momentum strategy in built for better risk management. The results of AXA proprietary model differs from the basic CPPI model output maintained by the actuarial department. As part of risk management the output of this conventional CPPI model acts as a second level of check done by the actuarial department, where they review if the fund has sufficient exposure to bonds to meet the guarantee at maturity. The company follows the investment pattern as per the product mandate and file and use document which allows investment allocation of 0-100 in equities, gilts and money market instruments. The guarantee charges are levied for guaranteeing the highest NAV recorded during the tracking period or Rs.12/- whichever is higher to protect the customer returns as well as to cover the risk of the company due to investments in both equity and debt securities which are exposed to market risk, gap risk and reinvestment risk. Since the Company takes the risks as above, the levy of the guarantee charges is reasonable. The Life Insurer also demonstrated with a chart that compared equity exposures between CPPI model and actual wherein they tried to establish that there is no significant difference in equity exposure.*

**For (b)**

*Since this product is a universal life product with interest declared in advance, care and caution was exercised not to subsidise between different policyholders. For example, if the interest declared is 5% on April 1, 2013 and the interest rate drops to 4.5% on May 1, 2013, then the policyholders entering late would also get 5% interest at the cost of other policyholders. Therefore the Company held back a buffer of 0.5% to ensure there is no cross subsidy between the policyholders. It is important to note that this is not a charge and will be refunded in the policyholders account on termination of the contract in the manner in which they have contributed.*



## Decision

Considering the submissions of the Life Insurer, no charges are being pressed.

## Summary:


In conclusion, as directed under the respective charges, the penalty of Rs.5,00,000 (Rupees Five Lakhs only) shall be remitted by the Life Insurer by debiting shareholders' account 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. Lalit Kumar, F.A. & HoD (Enforcement) at the Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad-500 004.

## *Further*

- a) The Life Insurer shall confirm compliance in respect of all the directions referred to in this Order, within 21 days from the date of issuance of this order. Timelines, if any as applicable shall also be communicated to the Authority.
- b) The Order shall be placed before the Audit committee of the Life Insurer and also in the next immediate Board meeting and to provide a copy of the minutes of the discussion.
- c) If the Life Insurer 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: 12<sup>th</sup> April, 2016

  
(V R Iyer)

Member (F&I)

