



Ref.No: IRDA/ENF/ORD/ONS/006/01/2016

Final Order in the matter of M/s Iffco-Tokio General Insurance CO Limited

Based on reply to the Show Cause Notice dated 3rd July, 2015 and submissions made during Personal Hearing on 9th September, 2015 at 3:00 pm taken by Member (F&I) at the office of Insurance Regulatory and Development Authority of India , 3rd 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 Iffco-Tokio General Insurance Co Ltd (hereinafter referred to as "the General Insurer") from 22nd to 26th November, 2010. The Authority forwarded the copy of the Inspection Report to the Insurer seeking comments on the same under the cover letter dated 16th March, 2011. Upon examining the submissions made by the Insurer vide letter dated 29th April, 2011 the Authority issued Show Cause Notice on 16th June, 2015 which was responded to by the Insurer vide letter dated 3rd July, 2015. As requested therein, a personal hearing was given to the Insurer on 9th September, 2015. Mr. Yogesh Lohiya, MD & CEO, Mr.H.O.Suri, Director-Marketing, Mr.R.Kannan, EVP, were present in the hearing on behalf of the General Insurer. On behalf of the Authority, Mrs.V.R.Iyer, Member (F&I), Mr.Lalit Kumar, FA & HOD (Enforcement), Mr.Suresh Mathur, Sr.JD (Non-life), Mr.Prabhat Kumar Maiti, JD (Enforcement) and Mr. K.Sridhar, Sr.AD (Enforcement) were present during the personal hearing.

The submissions made by the Insurer in their written reply to the inspection observations, Show Cause Notice and also those made during the course of the personal hearing have been taken into account.

The findings on the explanations offered by the General Insurer to the issues raised in the Show Cause Notice and the decisions thereon are detailed below.

1. Charge – 1

Out of the seven members of the Board of Directors of Corporate agent, ITISL, six are also Directors on the insurer Board.

Violation of Regulation 9(2)(ii)(k) of IRDA (Licensing of corporate agents) Regulations,2002.

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Submission of the insurer:

Insurer vide its reply dated 3rd July, 2015 to the show cause notice has informed that the Board of Directors of ITISL was reconstituted on 29th April 2014, by nominating seven new directors on the Board ensuring that there are no common directors between ITGI and ITIS. During personal hearing on 9th September, 2015, insurer further clarified that w.e.f 11/08/2014, the Board of the subsidiary company cum corporate agent has been reconstituted and since then there are no common directors between ITGI & IT IS.

Decision:

Insurer took note of the inspection observation and reconstituted the Board without having any common directors on the Board. **Taking note of the submissions, no charge is pressed.**

2. Charge – 2

The corporate agent M/s ITIS is handling many core functions of the insurer, such as identifying, training and recruitment of agents (both individual and cooperative), servicing of ITGI Customers, servicing tie-up arrangements, opening branches for itself and later on converting it into a full fledged ITGI branch. The corporate agent derives its remuneration from the ITGI towards commission and also from other activities.

Further, it is also observed from internal audit report of the corporate agent that around 750 persons other than specified persons were involved in soliciting insurance business and the corporate agent in its reply had not contradicted the audit observation.

Violation of

- 1) Violation of Clause 2, 17 and 21 of IRDA circular dated 14-07-2005 on 'Licensing of Corporate Agents' and Regulation 9 (2) (ii) (l & m) of IRDA (Licensing of Corporate Agents) Regulation, 2002 and (Licensing of Corporate Agents) (Amendment) Regulation, 2010
- 2) Circular ref.no: IRDA/CIR/011/2003, dated 27-03-2003 by procuring business through persons other than specified persons of corporate agent.

Submission of the insurer:

Insurer submitted that ITISL does not recruit agents but only facilitates in identifying persons for considering their suitability and appointment by ITGI and intimates the

details of such personnel to IFFCO TOKIO. It is the insurer who appoints the agents on assessing the suitability of the personnel.

Insurer also submitted that the corporate agent procures business through its employees who are certified "Specified persons" and provides various other non core services such as data entry, scanning, indexing, submission of proposals, printing of receipt, issuance of receipt & dispatch, printing of policy & dispatch, physical storage of documents, collection of claims documents and submission to ITGI, through other employees, who are not required to be certified "Specified persons". ITGI has paid service charges to ITIS only for providing various non core services.

Decision:

On examination of the documents and corporate agents internal audit report, it is noted that corporate agent of the insurer sourced business through persons other than 'Specified persons'. Further, insurers latest annual report of 2014-15 too state that the trainees of the corporate agent solicit business.

As per the Regulation, only the persons qualified as 'Specified persons' of the corporate agent are authorized to solicit business and insurer by accepting the business sourced by other than insurance professionals has violated the **Corporate Agents Regulations / guidelines. The Authority in exercise of the powers vested under Section 102(b) of the Insurance Act, imposes a penalty of Rs.5 Lakh.**

On the corporate agent rendering other services to the insurer, decision is given at **charge 3** of the Order.

3. Charge – 3

The company entered into two agreements with corporate agent M/s ITIS i.e. (1) Corporate Agency Agreement and (2) Services Agreement on 2.2.2004. Monthly payments are made to ITIS on client basis and also franchise basis. Various activities were outsourced such as quotation of premium, issuing of cover notes, issuance of policies, endorsement handling, premium collections, coordinating claims of clients, training to staff of dealer/franchisee, counter management charges, monitoring of agents etc., In addition to the above, services such as database management, market watch, training seminars etc would be provided on specific directions at the rates to be mutually agreed from time to time.

Handwritten signatures and initials in black ink, including a large signature on the left and several smaller initials or marks on the right.

On examination of a few sample Invoices raised, it reveals that apart from corporate clients, ITIS also serviced many entities, whose names suggest that they are also active in the insurance sector and could be acting as agent, corporate agents etc.

The insurer had paid Rs.27.27 crores to the ITIS as professional and legal fees for the year 2009-10. It is noted that the Authority at the time of renewal of its license wrote a letter dated 27.6.06 to the CEO of ITGI with few directions.

Violation of clause 21 of corporate agent guidelines dated 14-07-2005 and para 8.4 and 19 of the outsourcing guidelines by continuing the tie up even after issue of Authority Outsourcing guidelines dated 1st Feb, 2011.

Submission of the insurer:

Insurer submitted that the proposal to establish a 100% owned subsidiary company to work as corporate agent and also to provide other services was discussed with Authority and a concept note was submitted with the scope of activities of ITIS. Only after Authority approval vide letter dated 10th April, 2003, M/s ITIS is incorporated as a 100% owned subsidiary company on 1st August, 2003 and has been working as corporate agent since 1st September, 2003, based on the Regulations applicable on the date of incorporation.

The Regulations were however, supplemented by fresh Corporate Agents guidelines dated 14th July,2005 and Outsourcing guidelines dated 1st February, 2011.

Immediately on 10th February, 2006 and on 7th June, 2011, M/s ITGI submitted to IRDA the difficulty in implementing the circulars and the reasons of its peculiar constitution and activities duly approved by IRDA. After issue of Corporate Agency guidelines, the license of M/s ITIS was renewed on 23rd August, 2006 with certain stipulations and all are complied by ITGI and ITIS. Thereafter, Authority had very kindly appreciated our submission by renewing corporate agency in 2009 and again after issue of Outsourcing guidelines on 1st February, 2011 license was renewed in 2012 and 2015.

Insurer further submitted that M/s ITIS being a 100% subsidiary working on no profit basis, is on a different footing as compared to other Corporate agents/vendors who are profit oriented commercial organizations. During the period of 12 years, ITIS has grown to a total manpower of 1500 employees with presence in over 400 locations. Informed that Payments to ITISL in respect of non core services rendered are depicted in the Annual Reports and ITIS being a 100% subsidiary of ITGI is working



on a "No Profit" basis and does not pay any dividend to its stakeholders. Hence the operations of ITIS are not comparable to other Corporate Agents.

It is therefore requested to permit ITIS to continue its operations both as Corporate Agent and Service Provider.

Decision:

Authority is aware of the fact that M/s ITGI only after taking prior permission from Authority has incorporated a 100% owned subsidiary to act as its corporate agent.

However, from the documents submitted by the insurer to Authority before seeking permission for incorporating a subsidiary company, it is noted as below:

- Conceptual note: To undertake only those activities as are permissible under Regulations for a corporate agent.
- Articles of Association (clause 3): So long as the company is engaged in any business which is subject to any Regulation, Rules, direction and control of IRDA, the company shall observe and comply with all directions, regulations, conditions etc., issued or granted by IRDA from to time including but not limited to distribution of profits and regulation of the business being carried on by the company.
- Memorandum of Association (Clause 3-A-3): To carry on the business of service providers to any insurance companies, subject to the approval of the competent authority.

Also, in the corporate agency agreement entered by insurer with M/s ITIS, it is also clearly stated by both the parties that the corporate agent would transact such business as usually pertains to a insurance corporate agent and also to comply with all directions or specific orders of the Authority along with all applicable laws, Rules and Regulations.

Further, Authority while conveying the

- a) Approval to establish a 100% distribution company, has informed that the approval is for the purpose of becoming the Corporate agent of ITGI.
- b) Renewal of the corporate agency on 23rd August, 2006 and also in subsequent renewals, insurer was informed that Authority reserves the right to revisit the issue of an insurer having a fully owned subsidiary as a corporate agent.



From all above it is clearly evident that Authority granted permission to insurer for establishing a subsidiary company for agency and services based on the rules/Regulations/guidelines applicable as on the date of application and also only after clear confirmation from insurer that it would comply with the directions issued by the Authority from time to time.

Post Authority approval to insurer for establishing a 100% subsidiary company to act as corporate agent in year 2003, Authority came out with Corporate Agents Guidelines on 14th July, 2005 and Outsourcing guidelines on 1st February, 2011.

Since, as per these guidelines, a corporate agent is not allowed to enter into additional relationships with an insurer as per clause 21 of the Corporate Agency guidelines dated 14th July, 2005 and para 8.4/5 of the outsourcing guidelines dated 1st February, 2011, the general insurer is hereby directed to choose either to continue the corporate agency agreement or the Service agreement with M/s Iffco Tokio Insurance Services.

Looking at the volume of the business sourced and the level of the services rendered by the corporate agent, insurer **is advised to give a road map** to comply with the Regulations and guidelines in order to carry on either the service agreement or the corporate agency agreement with M/s ITIS. Insurer decision is to be conveyed to Authority within 3 months of issue of Order.

4. Charge – 4

Insurer had entered into an Agency agreement with M/s. Maruti Insurance Agency Services Ltd (MIASL). Insurer authorized MIASL in the agreement to procure and solicit motor insurance business on exclusive basis with respect to motor vehicles manufactured by Maruti Udyog Ltd. It is not clear as to how can the insurer authorize MIASL to procure and solicit all business emanating from Maruti Udyog Ltd. The ultimate decision to choose an insurance agent and an insurer rests with the policyholder and not with any corporate agent or insurer.

Further, subsequent to the cancellation of the Maruti corporate agency license by IRDA on 31.3.10, insurer is still accepting the business through Maruti Dealers thereby procuring business through non-licensed entities.



Violation of Regulation 9(1) (d & e) & 9 (2) (ii) (a) of IRDA (Licensing of corporate agents) Regulations, 2002 and IRDA circular ref. IRDA/Cir/011/2003, dated 27.03.2003.

Submission of the insurer:

Insurer submitted that the intention of having an exclusivity clause in the agreement is in line with the regulation which says that a corporate agent has to be exclusive to one insurance company. Further, insurer submitted that the choice of insurer remains with the customer. Further, it is also evident from the company's share being less than 7% in the total Maruti dealerships' motor business, which means policies were issued only to customers consenting to take from our company.

With regard to solicitation of business after cancellation of Maruti Corporate Agent license, insurer submitted that the business was sourced by its own employees and business booked under the corporate agency after the expiry of its agency license was with regard to the premium collected prior to termination of their agency license. Insurer further confirmed that none of the premiums collected from the Maruti dealers after termination of the said corporate agency of Maruti were booked in the said corporate agency. Insurer also submitted that the corporate agent license was terminated immediately on 12-06-2010 on cancellation of the license by IRDA.

Decision for charge 2 & 4:

Authority vide order dated 31/03/2010 has cancelled the license of M/s. Maruti Insurance Agency Services Ltd effective from 1/7/2010. Since insurer confirmed on cancelling the corporate agency agreement on 12/06/2010 and stopping of accepting business from corporate agent, no charges are pressed.

On the exclusivity clause in the corporate agency agreement, Authority notes from the submission of the insurer that only 7% of the business of the Maruti business is booked under the corporate agency with insurer, which implies that only those customers who opt for the cover with insurer were covered, as such, no charge is pressed.

5. Charge – 5

M/s. ITGI entered into an MOU with M/s. Honda Siel Cars India Ltd (HSCI). Insurer agreed to pay HSCI a fee for utilization of the infrastructure established and maintained by or through HSCI, for access to customer database that would be available to the insurer and service charges payable to dealers for providing support at dealerships. On examining the agreement, it is observed that the terms and



conditions of agreement were non compliant with various directions and Regulations of the Authority.

Violation of

- a) Section 64UM of Insurance Act, 1938 by agreeing to bound to the loss estimation of surveyor.
- b) General Regulation 9 on 'depreciation' of Indian Motor Tariff wordings, Point 1, 2 & 28 of F&U guidelines dated 28/09/2006, Authority Circular ref. No. IRDA/NL/CIR/F&U/073/11/200 dated 16-11-2009 and Point 8 of Authority circular ref.no.048/IRDA/De-tariff/Dec-07 dated 18th Dec, 2007 by accepting to treat all electric parts as 'other parts' thereby changing the erstwhile tariff wordings in arriving at depreciation.
- c) Regulation 11(14) of IRDA (Sharing of Database for Distribution of Insurance Products) Regulations, 2010 read with Circular: No. IRDA/Life/Misc. /Cir./125/08/2010, dated 5-8-2010 and No.IRDA/Life/Cir/Misc /126 /08/2010, dated 9-8-2010 by not terminating existing referral arrangements.

Submission of the insurer:

The Dealership arrangement with Honda Siel Cars has facilitated IFFCO TOKIO for providing space, computers, F&F, internet connectivity, telephones for our personnel for generation of on-line policies at their outlets. These facilities are at costs which are reimbursed to the dealer on actual basis. Insurer submission on each of the charge is as below:

- 1) On the loss estimation clause in agreement, insurer submitted that the payment to the workshop / insured is made only after verification of actual repair / replacement carried out on the vehicle and only after the company liability is established. There is no commitment on the quantum of claim with reference to original estimate.
- 2) On the charge of changing the tariff wordings, insurer submitted that the circular referred 16-11-2009 and IMT GR9 does not contain any provision on treatment (for the purpose of depreciation) of electric parts in a certain category and therefore this clause in the agreement does not violate any provision of the tariff wordings or other guidelines
- 3) On having sharing of database clause in the MOU with HSCI w.e.f. 18th September 2009, insurer submitted that it was agreed that a fee will be paid for utilization of its infrastructure and customer database and at that point of time the referred regulations did not exist and further confirmed that though the



agreement talked about sharing of database, no such database is shared and payment is made in this respect to HSCI. The agreement was renewed on 1st October, 2013 and utilization of database of the HSCI is deleted from the revised agreement. Hence no referral arrangement exists with HSCI.

Decision:

On examination of the inspection observation, available documents and insurer's submission, it is noted that

- a) The claim payment to the repairer is only after establishing the company's liability and no commitment is given to dealer/repairer on the quantum of claim with reference to the original estimate. Hence, no charge is pressed.
- b) Clause 14.7 of annexure B of the agreement with HSCI states that 'headlight assembly' will be treated as 'other parts' where depreciation depends upon the age of the vehicle. General Regulation 9 of India Motor Tariff, 2002 clearly states how depreciation is to be arrived in case of partial loss claims on various parts. Insurer allowed depreciation percentage applicable for 'other parts' on 'head light assembly' instead of 'plastic parts', for the business sourced under the agreement. Thus insurer has given differential treatment for the same class of risk sourced through motor dealer tie ups and other channels. Thus insurer has violated GR 9 of erstwhile tariff wordings and other circulars including the 16th November, 2009 circular referred in the charge which provide that terms and conditions of erstwhile motor tariff should not be varied without the Authority's express approval.

As such, in view of the violations observed, the Authority in exercise of the powers vested in Section 102 (b) of the Act imposes a **penalty of Rs. 5 lakh**. The Insurer is also hereby directed to ensure compliance with the F&U guidelines issued by Authority from time to time

- c) On having 'sharing of database' clause in the agreement, insurer submitted that though the agreement has the clause, no payments were offered to the dealer for database and the clause was removed from the renewed agreement w.e.f 1st October, 2013. Hence, no charge is pressed.

The Insurer is also hereby directed to re-examine the agreements and to ensure compliance with the F&U guidelines, Outsourcing guidelines and IRDAI (Sharing of Database) Regulations, 2010.



6. Charge – 6

Insurer entered into MOUs with banks to act as referrals. In the MOU with M/s. Wardhman Urban Co-op. Bank Ltd, insurer agreed to pay additional 7% commission for offering their support and other facilities and incentive @ 2.5% / 5% if the claim ratio is less than 40% / 30%. In the MOU with Bhavani Sahakari bank Ltd, insurer was paying to the bank for infrastructure facilities for its branches at Dadar, Ghatkopar and Gorai, Borivali (west).

Violation of point 1 and 10 of IRDA circular ref.no.IRDA / Cir /003/2003 dated 30/01/2003 and point 6 of circular ref.no.IRDA/Cir/004/2003 dated 14/2/2003 on referral arrangement with banks.

Submission of the insurer:

Insurer submitted that, in respect of additional commissions agreed to Wardhman Bank in MOU, it was an obvious mistake in the agreement and no additional commission was paid other than the admissible amount. The additional commission was erroneously stated and was neither claimed by the Wardhaman Bank nor paid by IFFCO TOKIO at any time.

On the agreement with Bhavani Sahakari Bank Ltd, insurer submitted that it was for temporary use of its facilities like space for desk, telephone, fax, space allotted for sign boards, dedicated computer, printer and Modem on need base and rent /charges were paid on actual usage basis in compliance to Authority circulars on referral arrangements with banks.

Insurer further informed that, on the basis of IRDA circular IRDA/Life/Cir/Misc/126/08/2010 dated 9th Aug 2010, all referral agreements with tie up banks including Bhavani Sahakar and Wardhman Urban Cooperative Bank Ltd were terminated.

Decision:

Authority notes from the insurer submission that no additional payout was made over and above commission to Wardhaman bank and the payout made to Bhavani Sahakari bank was only for using the infrastructure facilities on cost to cost basis in compliance to Authority circulars referral arrangements with banks. Hence, no charges is pressed.



7. Charge – 7

On verification of class-wise reinsurance placements it is observed that insurer ceded above 10% of the total reinsurance premium to reinsurers outside India. Prior to placement of reinsurance business in excess of 10%, the insurer has never obtained the specific approval from the Authority.

Violation of Section 3(9) of IRDA (General Insurance Reinsurance) Regulation, 2000.

Submission of the insurer:

Insurer submitted that 60% of their cessions are on facultative basis, as such cessions keep on changing with every policy written and cessions % per reinsurer will be known only after the year end. At year end a letter is sent to the authority for specific approval of cessions greater than 10%.

Further informed that, approvals for class wise cessions in excess of 10% will be submitted hereafter for specific approval of the Authority and are also monitoring cessions at the end of three quarters i.e. ending December every year to ensure compliance. In confirmation of submission, insurer also submitted a copy of analysis of reinsurance cessions of 2014-15 done as at Dec, 2014.

Decision:

Though insurer submitted that the company cedes mostly on facultative basis and arrives at cessions only at year end, it cannot be the reason to deviate from the Regulation.

The Authority directs the insurer to scrupulously comply with Regulatory provisions henceforth. Insurer **is advised** to seek prior approval from Authority before placing cessions to foreign reinsurers beyond the permissible limits.

8. Charge – 8

a) Dues from Other Entities: The insurer is showing an amount of Rs.468 crores as 'Dues from other entities carrying on insurance business'. Out of this only an amount of Rs.0.43 crore was disallowed for solvency margin calculation.

b) Re-insurance Dues: The insurer is showing an amount of 17.63 crores as reinsurance balances and the amount was taken for available solvency margin calculation stating that no due is pending for more than 90 days. On examining sample records, it is observed that the ledgers of two brokers are showing the



reinsurance dues pending for more than 90 days and were not disallowed while arriving at the solvency margin calculation

Violation of Regulation 2 (1) (h) of IRDA (Assets, Solvency, etc) Regulations, 2000 and point 2 of circular no. 12/IRDA/F&A/CIR/May-09, dated 26-5-2009.

Submission of the insurer:

a) The amounts shown as due from other entities of Rs. 468 Crore, mainly comprised of recoverables on account of Motor Pool (approx Rs.297 Cr.) and Terrorism Pool (approx Rs.58 Cr.). The remaining amounts, due from co-insurers and reinsurers were fully reconciled and confirmed balances except to the extent of Rs 0.43 Crores which were overdue and were taken as a disallowance for solvency purposes. Reinsurance is accounted on every policy and the period of 90 days for recovery is considered from the date the amount becomes due.

b) The balances relating to one broker were not due for recovery on the date on which solvency was worked out, since this was a foreign inward transaction and there was no Premium payment warranty (PPW). These balances were fully recovered in 2010-11. The Balances relating to another broker amounting to Rs.4,304,322 could not be recovered and were written off in 2011-12 .This balance was taken as a disallowance for solvency purposes.

Decision:

Regulation 2(1) (h) under schedule I of IRDA (ASLM) Regulation, 2000 clearly state that in case of any reinsurer's balance outstanding for more than 3 months, such asset to be placed with value zero. Period of 90 days is to be reckoned from the date of the transaction but not from the date on which it becomes due. The insurer has not complied with the procedures prescribed with respect to receivables pertaining to the sample two brokers examined. Insurer **is advised** to ensure strict compliance henceforth and any non compliance observed in future would be viewed seriously.

9. Charge – 9

The insurer is making payments to its corporate agent 'M/s Lanson Value Added Services' under the head "Legal & Professional Charges". An amount of Rs.57.46 lakh was paid during 2009-10 under the head 'Legal and professional charges' over and above commission. Insurer has not provided the copy of the agreement and vouchers related to the payments for verification.



Violation of clause 21 of Corporate agent guidelines dated 14-07-2005 and 011/IRDA/Brok-comm/Aug-08 dated 25-08-2008.

Submission of the insurer:

Lanson is a part of a group company with varied business interests including mobilizing insurance business and also offering insurance ancillary services. Apart from sourcing insurance business of their dealerships and other direct customers, they were offering their infrastructure. The said payment was made on actual basis for services and use of their infrastructure, electricity, internet, stationary, use of their manpower etc for conduct of the above business. The agreement has been terminated w.e.f. 9th Jan 2012.

Decision:

The Authority takes note of the insurer submission that the payments were towards the infrastructure and other services offered by the corporate agent and terminating the agreement w.e.f. 9th Jan, 2012.

Insurer is advised henceforth to ensure strict compliance to the provisions of the Regulations and the guidelines issued by the Authority from time to time. Insurer is advised to terminate all such agreements non complying with the various Regulations & guidelines of the Authority. Any non compliance observed in future would be viewed strictly.

In conclusion, as directed under the respective charges, the penalty of Rs.10 lakh (Rupees Ten Lakh only) shall be debited to the shareholders' account of the general insurer and the amount shall be remitted to Insurance Regulatory and Development Authority of India within a period of 15 days from the date of receipt of this Order. The penalty shall be remitted through the NEFT as per details being intimated to the insurer as per a separate e-mail. The transfer shall be made under intimation to Mr.Lalit Kumar, FA & HOD-Enforcement.

Further,

- a) The General Insurer shall confirm compliance in respect of all the directions referred to in this Order, within 15 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 insurer and also in the next immediate Board meeting and to provide a copy of the minutes of the discussion.
- c) If the general insurer feels aggrieved by any of the decisions in this order, an appeal may be preferred to Securities Appellate Tribunal as per Section.110 of the Insurance Act, 1938.

Place: Hyderabad
Date: 07/01/2016


(V R IYER)
Member (F&I)

