



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

Ref.No: IRDA/ENF/ORD/ONS/027/02/2015

February 06, 2015

Order in the matter of M/s Lambach Insurance Brokers Private Limited

Based on reply to the Show Cause Notice dated 28th August, 2014 and submissions made during Personal Hearing on 20th November, 2014, chaired by Member (Non-Life), IRDA at the office of Insurance Regulatory and Development Authority, 3rd Floor, Parishrama Bhavanam, BasheerBagh, Hyderabad.

The Insurance Regulatory and Development Authority (hereinafter referred to as "the Authority") carried out an onsite inspection of M/s Lambach Insurance Brokers Pvt. Ltd (hereinafter referred to as "the Broker") from 11th to 13th December, 2013. A copy of the Inspection Report was forwarded to the Broker on 24th December, 2013, seeking their comments on the issues raised in the Inspection report. The Broker submitted their response on 7th January, 2014. Upon examining the submissions made by the Broker in their letter dated 7th January, 2014, the Authority issued a Show Cause Notice on 5th August, 2014 which was responded to by the Broker vide letter dated 28th August, 2014. As requested therein, a personal hearing was given to the Broker on 20th November, 2014. Mr. Niraj Jain, chief Executive Officer and Mr. Rajesh Sadar, Existing Shareholder, were present in the hearing on behalf of the Broker. On behalf of the Authority, Mr. M.Rama Prasad, Member (Non-life), Dr. (Ms.) Mamta Suri, Sr.JD (Inspection & Compliance), Mr. Randip Singh Jagpal, Sr.JD (Intermediaries) and Mr. Sanjay Mohan Sharma, AD (I&C) were present during the personal hearing.

The submissions made by the Broker in their written reply to the Show Cause Notice as also those made during the course of the personal hearing have been considered by the Authority. On that basis, the conclusions arrived at by the Authority are as follows:

1. Charge – 1

The Broker is hosting web portal under <http://click2policy.com>. The website claims that they are among the top ten leading insurance brokers in South East Asia and more than 40 years have passed since their founding.

The above is violation of clause 10 (a) of Code of Conduct under regulation 21 of IRDA (Insurance Brokers) Regulations 2002 which requires the Broker to ensure that any statement made by them through Advertisement is not misleading.

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Broker's response:

The above said misleading statements on the given website had been removed and the said website had also been removed from the live server.

Decision:

The Broker has submitted a copy of the snapshot of the given website.

The Broker is well aware that they are under an obligation to abide by the Code of Conduct laid down in Schedule III under Regulation 21 of the IRDA (Insurance Brokers) Regulations, 2002. Clause 10 (a) of the said Code of Conduct specifies that every insurance broker shall ensure that statements released through Advertisements are not misleading or extravagant. But still the web portal of the Broker has given out a statement containing misleading content. The Broker themselves are accepting that the claim is misleading and they have removed it subsequently Considering that this violation is one that comes under Code of Conduct, the Authority takes a serious view of the violation. However, since this violation has been committed for the first time, the Authority takes a lenient view of the violation. But the broker is warned to strictly abide by the Code of Conduct prescribed in Schedule III of IRDA (Insurance Brokers) Regulations, 2002. Any future violation on this front will invite penal action.

Charge – 2

It is evident from the accounting records for 2011-12 that the Broker opened a Branch Office at Kanpur without disclosing the information to the Authority and solicited and procured insurance business without qualified employees at Kanpur.

The above is violation of Regulation 9(3) of IRDA (Insurance Brokers) Regulations, 2002, read with Section 42 (D) (5) (f) of Insurance Act 1938.

Broker's response:

Any business procured from Kanpur was solicited by the Delhi Branch office. To substantiate their view, the Broker has submitted evidence that a qualified person from Delhi Branch office travelled to Kanpur to solicit the insurance business and also submitted the copy of a policy of a Kanpur client issued at Mumbai during the concerned period.

Decision:

It is found that the broker undertook the initiative of conducting an independent pilot project in Kanpur on Micro insurance and the broker claims that the activities related to such a project were monitored by personnel from Delhi. However, the Broker had not kept the Authority informed of such an initiative. In view of this, the broker is warned to keep the Authority informed of any activity of this nature undertaken by them.



Charge -3

The broker had booked major loss on sale of Gold/Silver of Rs.43,68,884/- during the FY 2012-13 as a result of which the insurance broker's profit significantly reduced from the previous year. The Broker had also amended the Memorandum of Association (MoA) without informing the same to the Authority.

The Broker by trading/dealing in gold and silver has violated the provisions of Regulation 10 (1) (iv) read with Regulation 9 (2) (H) of IRDA (Insurance Brokers) Regulations, 2002 and also the provisions of Regulation 28 (1) (ii) of IRDA (Insurance Brokers) Regulations, 2002

Broker's response:

The Broker submitted that the management had passed the resolution and amended the MOA to carry out the said business. However, they had stopped investing in commodity market and there were no further transactions after 2013. They had taken this to their Board meeting held as on 31st December, 2013 wherein they had decided to amend their MOA accordingly. The Broker has submitted the copy of amended MOA with the Authority, after completion of all the formalities with ROC.

Decision:

The Broker is well aware that Regulation 10 (1) (iv) and Regulation 9 (2) (H) of IRDA (Insurance Brokers) Regulations, 2002, clearly specify that the Broker must engage exclusively in Broking business. In addition, the Broker has furnished to the Authority an Undertaking specifying that the broking company has been established solely for the purpose of broking business. Further, Regulation 28 (1) (ii) of IRDA (Insurance Brokers) Regulations, 2002 requires the Broker to intimate to the Authority any change in the information earlier provided by them to the Authority. But the activities indulged in by the Broker clearly violate the above Regulations and breached the Undertaking submitted by the Broker. For these violations, Authority imposes a financial penalty of Rs.2 lakh on the Broker. The Broker is further warned that any future violation of these Regulations will be dealt with more stringently.

Charges - 4

There is a delay of 10 days in remitting fee in 2012-13 and a delay of 9 days in paying fee in 2011-12. This is violation of Regulation 18 of IRDA (Insurance Brokers) Regulations 2002 which requires the broker to pay the renewal fee within the timeframe as prescribed in Schedule II of the Regulations..

Broker's response:

The Broker has accepted the delay of remitting the annual fees by 9 days in 2011-12 & 10 days in 2012-13. However, the Broker further added that, this delay was not intentional & it has happened inadvertently. They assure the Authority that in future such delay will not happen & annual fees will be remitted within the specified time limit.



Decision:

The Broker has violated Regulation 18 of IRDA (Insurance Brokers) Regulations 2002. Hence, a financial penalty of 10 percent of the annual fee payable i.e. Rs.10000/- per year for the financial years 2011-12 and 2012-13 (i.e. a total amount of Rs.20000/-) is imposed upon the Broker.

Charge – 5

The payment/receipt of Brokerage beyond prescribed percentage of 17.5% in miscellaneous class of business is not in conformity with limits specified in Circular 011/IRDA/Brok-Comn/Aug-08 dated 25-08-2008 and Regulation 19 of IRDA (Insurance Brokers) Regulations 2002.

Broker's response:

The brokerage statements generated by the insurers are driven by the system. The excess brokerage could be a systems error at the insurance companies' end. Subsequently that has been rectified and cheque of excess amount has been deposited with the insurance company. The Broker submitted to the Authority copies of letter as well as the cheque sent to the insurance company.

Decision:

Taking note of the submission, the charge is not being pressed. However, the Broker is warned to be cautious in future.

Charge – 6

The Broking Company was in 9th and 10th year of operations during the FY 2011-12 and 2012-13 respectively. The business emanated from Welspun group for the FY 2011-12 and 2012-13 was 52% and 45.5% which were above the stipulated limit i.e., 30% as applicable in those years. Even in the first half year of FY 2013-14 it was indicated that the premium of Welspun group was 39.60% of the total premium during the period

The above is violation of Regulation 20 of IRDA (Insurance Brokers) Regulations, 2002. Earlier first warning was also issued by the Authority vide letter IRDA/DB/019/02 dated 15th March 2012 for the same violation.

Broker's response: The Welspun group Account came into their books in 2011 only after the new management took control of the company. In the market conditions it is certainly a very tough task for any broker to substantially book fresh business to offset any bulk business emanating from a single client.





Decision:

The Broker's submission is not acceptable. This is a violation of Regulation 20 of IRDA (Insurance Brokers) Regulations, 2002. It may be mentioned that warning had been issued for the same violation committed by the broker earlier. Since the same violation has been committed in 2011-12 and 2012-13, a financial penalty of Rs.5 lakh is imposed on the broker"

Charge – 7

The professional Indemnity policies obtained by the Broking Company for the past three years have been examined. It was found that the policy schedule and conditions attached to policy indicates three different compulsory excess. There is, thus, inconsistent compulsory excess written within the same policy in all the three years of policies. Upon pointing out the discrepancy during inspection, the Broker obtained the endorsement on confirmation of compulsory excess and submitted the same.

The above is violation of the provisions of Regulation 24 (5) of IRDA (Insurance Brokers) Regulations 2002.

Broker's response:

Those were the system driven excess appearing on the policy. The same had been rectified and the current policy structure and terms are in line with the regulation.

Decision:

This is indeed a violation of Regulation 24(5) of IRDA (Insurance Brokers) Regulations 2002 which clearly specifies that "the uninsured excess in respect of each claim shall not exceed five per cent of the capital employed by the insurance broker in the business". Hence for this violation, a financial penalty of Rs.2 lakh is imposed on the broker. Further, the Broker is warned to be careful to avoid recurrence of such violations in future.

Charge -8

It was found that the Broker entered into an arrangement with M/s Shresth Leasing and Finance Ltd on 1st April, 2011 on providing detailed corporate advisory and analytical data on insurance sector. Similar arrangement was made with M/s Reserve Securities on 1st April, 2012. It was noticed that the agreements are not on appropriate stamp papers and the same are not bearing any name and signature of witness. The copies of the agreements were examined. The said arrangement/payments with/to service providers were not disclosed by the Broking Company in their annual online filings in Form G. Similarly, the expenses records confirm that the Broking Company has been hiring the services of individuals for professional services, consultation etc., for which no agreements were presented whereas substantial expenses were incurred in the name of Professional Charges and



Consultation charges. The service providers' arrangements are not disclosed in Form G of online returns which are required to be filed as per circular 009/IRDA/BRO/MAY06 dated 26th May, 2006.

Failure to furnish online returns in Form G the details of service providers' arrangements is violation of circular 009/IRDA/BRO/MAY06 dated 26th May, 2006 and of Regulation 28 of IRDA (Insurance Brokers) Regulations 2002.

Broker's response

There was an unintentional error during online filing of Form G wherein they have inadvertently not disclosed the details of service arrangements. In respect of the agreements entered into with M/s Shresth Leasing and Finance Ltd. and M/s Reserve Securities, the Broker confirms that they are rectifying the same with corrected agreements on proper stamp paper. Similarly, wherever professional charges were incurred, they shall be regularized by getting corrected agreements. The Broker has assured the Authority that in future they will ensure the complete compliance of Regulation 28.

Decision:

The Broker has admitted to the violations of Regulation 28 of IRDA (Insurance Brokers) Regulations, 2002. Hence for the said violations, the Authority imposes a penalty of Rs.2 lakh on the Broker.

Charge -9

On sample examination, it was found that the Broking Company employed an agent on its rolls. The Broking Company in its declaration filed along with their application for grant of license/renewal of license stated as under:

``I/We declare that I/we do not possess an insurance agent license under section 42 of the Act.``

The Broking Company also submits an undertaking in its renewal application which confirms as follows.

""None of the Broking Company /Associate Companies/ Directors/Promoters/ Key Management Personnel/ Principal Officer/ Employees is holding Agency/ Corporate Agency/ TPA/ Surveyor License.""

By employing agent in its roll, the Broking Company deviated from the undertaking submitted by them.

Broker's response:

There is no mechanism or means by which they can cross check the License Procurement or Validity of any individual.



Decision:

The purpose of taking an undertaking/declaration from an insurance broker to the effect that none connected with the broker is holding an Agency licence, before a licence is granted to them is to avoid conflict of interest. Hence by appointing agent on their rolls, the broker has breached the undertaking filed with the Authority. The said breach attracts provisions of Regulation 34(1)(k) of IRDA (Insurance Brokers) Regulations, 2002, which provides for cancellation or suspension of the Broking licence. Though the action of breach committed by the broker calls for cancellation or suspension of licence of the Broker, the Authority takes a lenient view and imposes a penalty of Rs.2 lakh on the Broker. The Broker is informed that any future violation on this front will attract more severe penal action.

Charge -10

The analysis of expenses in the year 2011-12 and 2012-13 reveals that major expenses of the Broker under "other expenses account" pertain to professional fees.

There are about 24 entities/individuals engaged for professional services. However, the service agreement exists only with M/s Shresth Leasing and Finance Ltd and M/s Reserve Securities. In some instances, it was observed that the broker had paid fees without any service agreement and any supporting documents to substantiate the services provided by the vendors.

In the absence of any authentic papers with the Broker to establish their claim of the professional services/consultation of the above service providers, the payments to the said service providers as in the case of consultant at Kanpur tantamount to remuneration for soliciting and procuring insurance business on behalf of the insurance broker in contravention of Clause 3(b) of Code of conduct under Regulation 21.

Broker's response:

Mr. J C Rakheja was not an employee engaged for procuring business but appointed as a consultant since he was well connected with local clients at Kanpur. Through his efforts the business was diverted to our company. Hence, we submit that his case may not be considered as employee appointed for soliciting and procuring business.

As regards Mrs. Sangeeta Poddar we have clarified that we have not utilized her services for procurement of business and that we were not aware about the agency background of Mrs. Poddar as she did not disclose it to us.

Mr. Dhananjay Vaidue was working in back office functions left our company on 1st Aug. 2012.

Decision:

The Broker has failed to comply with clause 3(b) of code of conduct under Regulation 21 of Insurance Brokers Regulations 2002.Hence, a financial penalty of Rs.2 lakh is imposed on the Broker.The Broker is strictly warned to ensure that the violation does not recur and any future recurrence of the violation shall invite serious penal action.

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In conclusion, the penalty amount of Rs 15,20,000/- (Rupees Fifteen lakh and twenty thousand only) as mentioned above shall be paid through Demand Draft drawn in favour of Insurance Regulatory and Development Authority payable at Hyderabad within 15 days from the receipt of this letter. The Demand Draft is required to be forwarded to **Shri. Lalit Kumar, Financial Adviser (Enforcement Department)**.

The Broker is required to ensure compliance with the above directions under intimation to the Authority.



(M. Ramaprasad)
Member (Non-Life)

