



भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY OF INDIA

Ref: IRDA/ENF/ORD/ONS/076/04/2017

दिनांक: ५ अप्रैल २०१७

मुख्य कार्यकारी अधिकारी
मैगमा एचडीआई जेनरल इन्शुरन्स कम्पनी लिमिटेड
ब्लॉक ३बी, दूसरी मंज़िल, बी २०१-२०२
इकोस्पेस बिज़नेस पार्क
अम्बुजा रियल्टी कैंपस, एक्शन एरिया II
न्यू टाउन, राजरहाट
कोलकाता, ७००१५६

महोदय,

विषय: १७ जून से २६ जून २०१४ तक संचालित निरीक्षण
के संबंध में अंतिम आदेश का निर्गम

यह १७ जून से २६ जून २०१४ तक प्राधिकरण द्वारा किये गये आपकी कंपनी के निरीक्षण के संदर्भ में है। उपर्युक्त निरीक्षण के संबंध में आपकी कंपनी द्वारा प्रेषित किये गये सभी प्रस्तुतीकरणों और उत्तरों पर विचार करने के बाद अब प्राधिकरण ने इस विषय में अंतिम आदेश जारी किया है। उपर्युक्त आदेश की एक प्रति आपकी कंपनी द्वारा आवश्यक अनुपालन के लिए इसके साथ संलग्न है।

भवदीय
सिके मैती
०६/०५/२०१७
महाप्रबंधक (प्रवर्तन)



भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY OF INDIA

Ref: IRDA/ENF/ORD/ONS/076/04/2017

Final Order in the matter of

M/s Magma HDI General Insurance Company Limited

Based on reply to the Show Cause Notice dated 2nd November, 2016 and submissions made during Personal Hearing on 11th January, 2017 at 11-30 am taken by Member (F&I) 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 Magma HDI General Insurance Company Ltd. (Hereinafter referred to as "Insurer") during 17th to 26th June, 2014.

The inspection was intended to check the compliance of the insurer to Insurance Act, 1938, IRDA Act, 1999 and the Rules, Regulations, Circulars, Guidelines and other directions issued there under by the Authority. The inspection covered the activities of the insurer related to the period of two Financial years 2012-13 and 2013-14.

The Authority forwarded a copy of the report of the said inspection to the Insurer seeking comments and the insurer's comments were received vide their letter dated 13th December, 2014. Further, in response to certain queries raised by the Authority vide e-mail dated 23rd May, 2016, the insurer furnished clarifications vide their letter dated 13th June, 2016. Upon examining the submissions made by the Insurer, the Authority issued Show Cause Notice on 2nd November, 2016, which was responded to by the Insurer vide letter dated 12th December, 2016. As requested therein, a personal hearing was given to the Insurer on 11th January, 2017. Mr. Rajive Kumaraswami, MD & CEO, Mr. Gaurav Parasrampurua, Chief Financial Officer, Mr. Amit Bhandari, Chief Technical Officer and Mr. Anand R.Choudhary Head (Legal) and Chief Compliance Officer were present in the hearing on behalf of the General Insurer. On behalf of the Authority, Mrs V.R.Iyer, Member (F&I), Shri Prabhat Kumar Maiti, GM (Enforcement), Shri B.Raghavan, DGM (Enforcement) and Shri Sankara Srinivas, OSD (Non Life) were present during the personal hearing.

The submissions made by the insurer in their written reply to the Show Cause Notice, the documents submitted by the insurer in evidence of their submissions in reply and also those made in and after the personal hearing have been considered by the Authority and accordingly the decisions thereon are detailed below.

Charges, Submissions in reply thereof and Decisions:

1. Charge No. 1:

As per para 8.4 of guidelines on outsourcing of activities by insurance companies, agents, corporate agents, Brokers, TPAs and Surveyors and other regulated entities shall not be contracted to perform any outsourced activity other than those permitted by respective regulations/instructions governing their licensing and functioning.

The insurer engaged M/s. Magma Fincorp Ltd, the promoter and Corporate Agent, through services agreement for infrastructure and real estate support, administrative support, assistance in procurement, Information technology, HR functions, accounts and taxation and legal services support. Accordingly, an amount of Rs. 4.30 Crs in 2012-13 and Rs. 9.80 Crs in 2013-14 was paid to M/s. Magma Fincorp Ltd.

Further, payments made by the insurer to M/s. Magma Fincorp Ltd for services and rent amounting to Rs. 107.17 lacs was not shown in 31B (2) statement

Violation of:

Para Nos. 8.4/5 of the guidelines on outsourcing contained in Circular No. IRDA/Life/CIR/GLD/013/02/2011 dated 1st February, 2011 and Section 31B (2) of the Insurance Act, 1938.

Submission of Insurer:

When the insurer had applied for license, the business model was based on the premise that they would use shared services of Magma Fincorp Ltd. so that the costs can be minimized. Further, all the payments which were made by the insurer to their Corporate Agent e.g. rent, IT server and some part of HR services were on actual cost sharing basis. This has been evidenced by the independent auditor report.

Further, there was no linkage of payments to the business done by the corporate agent. This is obvious from the fact that though the business had increased six times from Rs 250 mn to Rs 1500 mn, the payout towards shared services did not increase in the same proportion and it continues to move in the range of services utilized for the period.

Regarding the charge of non-disclosure of payments in 31B (2) statement, it was not done as the payment was not in the nature of remuneration related to business sourcing, the same was not disclosed in 31B (2).

Decision:

Para 8.4/5 of the guidelines on outsourcing contained in Circular No. IRDA/Life/CIR/GLD/013/02/2011 dated 1st February, 2011 clearly specifies that Agents,

Corporate Agents, Brokers, TPAs and Surveyors and other regulated entities shall not be contracted to perform any outsourced activity other than those permitted by the respective regulations/instructions governing their licensing and functioning. As per section 3(2A) read with section 3(4)(f) (Pre amended) of Insurance Act 1938, a registered Insurance Company is mandated to follow any regulation or order made, or any direction issued by the Authority. Hence by making agreement with the entity for service and corporate agency before applying to the Authority for grant of registration to function as insurer and annexing the said agreement with the application for registration, the insurer cannot assume that the Authority by granting registration to the insurer had approved the contents of the agreement (entered into prior to grant of registration) with the regulated entity. It is to be appreciated that the Outsourcing Guidelines dated 1st February, 2011 which clearly prohibit any insurer from utilizing another regulated entity for any activity other than those permitted by the regulations governing them cannot be permitted to be violated. This condition is all the more applicable in regard to an insurer who utilizes the services of another regulated entity which is the promoter of the insurer. However considering that the insurer applied for registration in October, 2009 and the certificate of registration was issued in May, 2012 and the Outsourcing Guidelines were issued in the intervening period i.e. on 1st February, 2011 and also considering that only one full financial year was covered by the said on-site inspection, charge is not pressed. However, the insurer is directed to take necessary action to ensure that the Corporate Agent is not utilized for any activity other than those which the corporate agent is licensed to do, in order to comply with Para 8.4/5 of the guidelines on outsourcing contained in Circular No. IRDA/Life/CIR/GLD/013/02/2011. To enable the Insurer to comply with the direction, the Authority grants the Insurer a timeline of 9 months, i.e. upto 31st December 2017.

Regarding the violation of Section 31B (2) of the Insurance Act, 1938, the submission of the insurer is accepted and the charge is not pressed.

2. Charge No.2

As per the Circular No. 067/IRDA/F&A /Mar 08, the insurer is required to disclose by way of disclosing in notes to accounts the bifurcation of expenses under various heads viz., "outsourcing expenses", "marketing expenses" etc., correctly. It was observed that the insurer is disclosing Marketing Expenses of Rs.16.76 crore under Infrastructure Support expenses. Therefore, the insurer has not complied with the provisions of the said circular.

Violation of

Circular No. 067/IRDA/F&A /Mar 08 dated 28th March 2008.

Submission of Insurer:

The amount of Rs 16.76 crores has been disclosed under "infrastructure support expenses" since the said expenses pertains towards infrastructure. There is no intention on the part

of the insurer to conceal any information but the information has been disclosed under a separate head. Authority may provide further guidance on the same.

With reference to the Circular No. 067/IRDA/F&A /Mar 08, the necessary disclosure has been done in the Notes to Accounts though the nomenclature used in their Books of Accounts is different from that mentioned in the circular.

Decision:

The submission of the insurer that they have disclosed the amount of Rs.16.76 crores in the Notes to Accounts under infrastructure support expenses and that there was no intention to conceal any information is noted. In this connection, it should be noted that there was no charge against the insurer of concealing any information but only that they had not shown the expenses by segregating them under different heads as required under the Circular No. 067/IRDA/F&A /Mar 08. It has logically been prescribed in the Circular that expenses towards different purposes must be shown under the respective head to which the expense belongs. Hence it is not expected that the insurer show the expenses under heads of insurer's choice which is tantamount to tampering with the formats prescribed. In this background, the Authority advises the insurer to ensure compliance with the Circular No. IRDA/F&I/CIR/F&A/231/10/2012 dated 5th October, 2012.

3. Charge No.3

It was observed that the insurer engaged unlicensed individuals / entities / motor dealers for soliciting insurance business. The business solicited through these unlicensed individuals/entities has been booked as "Direct Business", and the remuneration was paid in the name of reimbursement of support services. It was noticed that 114 intermediary code numbers were created in the intermediary master in the names of various individuals / entities / motor dealers/ etc under Direct Referral category and 5 codes under corporate sales. The business sourced through these entities was logged in on the said code numbers.

It is evident from the premium registers maintained by the insurer that these unlicensed individuals / entities are engaged in solicitation of insurance business. The illustrative list of unlicensed individuals / Motor Dealers/other entities who were involved in soliciting insurance business with the details of remuneration paid during the year 2013-14 were perused by the inspection team and the following observations emerge:

- (a) As per the premium register for 2013-14, the amount of business premium solicited by these unlicensed individuals / entities during the year 2013-14 was to the tune of 3300 policies with a gross written premium of about Rs. 4.77 crore. The payout made to sample of 40 of these individuals / entities was around Rs. 1.07 crore during 2013-14. The majority of the policies solicited by these individuals / entities were Motor policies.

- (b) The sample of ten copies of agreements entered with the Motor Dealers and others by the Insurer and the copies of payment vouchers along with Invoice/Bill preferred by the motor dealers/others were perused.. It has been observed that the scope of services in the agreements and particulars in invoice for the services are similar. Apart from invoice/Bill, there are no supporting documents to justify that the charges are for rendering the services indicated therein in the bill.
- (c) The sample underwriting documents of the policies booked under Direct Referral category as perused by the inspection team clearly establish that the motor dealers are used in soliciting insurance business and were remunerated under account head of support services. It is evident from the above findings that the insurer had sourced the business premium through unlicensed persons/entities in violation of Authority's circular IRDA/CIR/011/2003, dated 27-03-2003.

Submission of Insurer:

The entities as mentioned in the observation under RFG and CRP code were not used for solicitation of insurance business. These entities provide us infrastructure support services and the payment done to them is in lieu of such service provided. We have entered into agreements with these entities in respect of providing us space to display of our standees and product brochures, office space and other infrastructure support for our staff on a need basis during our off site marketing efforts. Payment is done post due scrutiny of the relevant invoices submitted. We also deduct income tax at source, as applicable, under the Income Tax Act 1961, for these vendors. Wherever such vendors charge Service Tax, the Company ensures that the service tax is paid only to parties duly registered with Service tax department by validating their service tax registration number from the Government website.

Whatever policies were sourced during these marketing campaigns were booked under direct category.

The insurer submitted that the remuneration was not linked to the business sourced but was for various services availed from these entities including infrastructure services.

Decision:

The prescription in Authority's circular No. IRDA/CIR/011/2003, dated 27-03-2003 is categorically clear that unlicensed persons/entities must not be used for procuring or soliciting insurance business. In the light of this prescription, the insurer has attempted to counter the violation of the above circular, which they have been charged with, by submitting that the payments made by the insurer to those entities are towards infrastructure support services availed by the insurer from them. These arguments have been put forward by the insurer to bring home the point that the payments were in fact made for services availed from the entities by the insurer and not for soliciting insurance business. To make the actions appear tenable and genuine, the Invoice/bill preferred by

the motor dealers/others were prepared in such a fashion as to be fully in tune with the details mentioned in the payment Vouchers of the insurer.

The insurer has not given any explanation/ reasons for

1. Creating 114 intermediary code numbers in the intermediary master in the names of various individuals / entities / motor dealers/ etc under Direct Referral category and 5 codes under corporate sales.
2. Making payment in addition to that paid for outsourced services.
3. Specifying the name of the Motor dealers in the proposal form as the name of Intermediary.

The above facts clearly indicate that the insurer had entered into agreements with individuals, motor dealers etc. for solicitation of business under the guise of availing the so called "services" envisaged in the agreements. Hence, these unlicensed entities were used by the insurer for soliciting insurance business. Hence the violation Authority's circular No.IRDA/CIR/011/2003, dated 27-03-2003, for using unlicensed entities for procuring business is proved and for the said violation, an amount of Rs.5,00,000/- is levied on the insurer under Section 102(b) of the Insurance Act, 1938.

The insurer is directed to stop forthwith the utilization of unlicensed entities for soliciting insurance business on their behalf so as to comply with the above referred Circular.

4. Charge No.4

The examination of payments to insurance brokers reveals that the following insurance brokers received other remuneration apart from brokerage commission which is in contravention of Circular No: 011/IRDA/Brok-Comm/Aug-08 dated 25-08-2008 and Regulation 19 of Brokers Regulations. The details are as follows.

Insurance Broker	Bill date	Gross Amount paid under other Remuneration.	TDS	Observations
Prudent Insurance Brokers Pvt Ltd.	8/10/2013	200000	4000	The payout declared under 31B (2) statement was Rs. 13.2. The Total payment as per TDS was Rs. 13.60
Loyal Insurance Brokers Limited	10/26/2013	30509	610	The Total commission as per TDS was 98427

Submission of Insurer:

The payments made to M/s Prudent Insurance Brokers Pvt. Ltd. was towards sponsorship of a seminar and M/s Loyal Insurance Brokers Pvt. Ltd. was towards reimbursement of costs for training workshop organized by them. Both these payments were one-time payment towards the respective services rendered by them and were not linked to the business solicited by them. The invoices raised by the brokers against which the payments were made will substantiate the activity carried out by the brokers.

Further, M/s. Prudent Insurance Brokers had done a business of Rs. 118.47 lakhs and Loyal Insurance Brokers had done business of Rs. 19.00 lakhs in FY 2013-14. The commission paid to both the brokers was Rs. 13.32 lakhs and Rs. 0.89 lakhs against the allowable commission of Rs. 16.18 lakhs and Rs. 1.94 lakhs respectively. The payment done to both the brokers other than commission (Rs. 2 lakhs to Prudent Insurance Brokers and Rs. 0.35 lakhs to Loyal Insurance Brokers) were not linked to the business procured and were pertaining to genuine events. Looking at the business sourced by the Brokers and the commissions paid, the payments made for the aforementioned activities is not material enough and within IRDAI commission limits.

Decision:

Circular No: 011/IRDA/Brok-Comm/Aug-08 dated 25-08-2008 and Regulation 19 of Brokers Regulations mandate that no payment other than brokerage/commission is payable to a broker. A plain reading of these provisions will reveal that the above referred circular and regulation clearly restrain any insurer from making any payment other than brokerage/commission to any broker. Still, in the present case, it is noticed, as acknowledged by the insurer themselves, that payment other than brokerage/commission has been made to the brokers. For making such payments to the brokers, the insurer has given an argument that these payments relate to some seminar and workshops conducted by the brokers and further that even if the said payments were included, the total payments made to the brokers remain within the allowable limits of commission. While taking note of the submissions made by the insurer, it is emphasized that the purpose and objective behind the propositions in the circular and regulation is to prevent the payment of any nature other than brokerage/commission to which a broker is eligible as per regulation.

In the light of the above, the insurer is directed not to make any payment other than that allowed under the IRDAI (Payment of Commission or Remuneration or Reward to Insurance Agent and Insurance Intermediaries) Regulations, 2016, in conjunction with the directions contained in the Circular No: 011/IRDA/Brok-Comm/Aug-08 dated 25-08-2008.

5. Charge No.5

The insurer in Form NL-40- Business Acquisition through different channels as on 31st March, 2014 declared that businesses of 206.57 lacs with 1247 policies were acquired from referrals.

However, the insurer in Format INT 5 on details of Referral Partners for 2012-13 and 2013-14 separately stated as NIL. The insurer, therefore, has not provided correct information on business from referrals.

This shows lack of internal control mechanism and is violation of the Guidelines on corporate Governance contained in Annexure II under Circular No. IRDA/F&A/CIR/025/2009-10, dated 5th August, 2009.

Submission of Insurer:

The INT 5 format (Control Sheets) provided to the insurer prior to inspection was erroneously updated. However, the business done through referrals was duly reported in NL-40 under a separate head hence there was no intention on the part of insurer to conceal any information from the Authority. Hence the human error committed while updating INT 5 may be condoned.

It is also submitted that the company has been taking necessary corrective measures to ensure that the internal controls are further strengthened so that such errors are not committed.

Decision

The submissions made by the insurer including that they have been taking necessary corrective steps to ensure that the internal controls are further strengthened so that such errors are not committed, are accepted and the charge is not pressed.

6. Charge No. 6

(a) It was informed that out of the 47 approved products, only 15 or 16 products were configured in the insurer's IT system "Genisys" as on date of inspection and all other products are being handled manually. The insurer was asked to provide the details of products that were configured in the system but the system was not arranged to the inspection team for verification of configured products.

The insurer at the time of filing of products for Authority's approval had confirmed in Form-A (para-5.4) for all the products that the insurer's system will provide data on each of the risk factors in respect of premium and claims.

System set up is an essential pre-requisite for approval of a product.

(b) It was observed from the sample policies verified that the insurer had accepted risk as a coinsurance follower in some 'Event Cancellation Insurance' policies though the insurer had no approved product of its own. There is no provision in the board approved underwriting

policy for "Event Cancellation Policy" and the head underwriter of the insurer had expressed following reservations on acceptance of the business as coinsurance follower:

- a. The insurer do not have approved Event Insurance policy,
- b. 'Event Insurance' was specifically excluded from insurers Miscellaneous Surplus Treaty, and
- c. Keeping coinsurance share to Magma's net may not be feasible.

However, the policies were accepted as 'exception' keeping the risks to insurers net without reinsurance support. This fact was not informed to the Board either before or after acceptance of the risk. The insurers incurred claims ratio in respect of 'Event Insurance' was 439% as at 31/03/2014.

Though there was no provision in the board approved underwriting policy for accepting "Event Cancellation insurance", the insurer accepted the risk through co-insurance / re-insurance support.

(c) In respect of standalone terrorism insurance policy (Policy No. P0014000100/1101/100112) issued by the insurer, it was observed that the insurer had not transferred the risk to the 'Terrorism Pool' though the risk written was within the pool capacity. The entire risk in this policy had been transferred to 'HDI Gerling' who is the foreign partner of the insurer. This is in violation of para-6 of File & Use Guidelines for General Insurance Products dated 28th September, 2006. This policy was written under product code 1101 (SFSP) though there was no underlying fire policy issued by the insurer.

Violation of:

- (i) Point 5.4 of Form A under para 25(i) of the File & Use Guidelines contained in IRDA's Circular No. 021/IRDA/F&U/Sep.06 dated 28-9-2006.
- (ii) Para 11 of the File & Use Guidelines contained in IRDA's Circular No. 021/IRDA/F&U/Sep.06 dated 28-9-2006.

Submission of Insurer:

(a) For launch of any product, the insurer uses Genisys Configurator (GC) for booking of all the products sourced from various branches pan India wherein it captures risk details. GC is a standard IT system used by many of the general insurance companies in India for booking the business. The insurer for its own analytics customizes each of the products and makes changes/configures it in the GC. It has cost implications. Hence, only when a product reaches a threshold volume, it further customizes it to manage the product.

Further, the insurer has made the necessary developments in their core system from premium booking to claims processing of all the approved products. The insurer has also assured that they have adequate mechanism in place for servicing the customers and generation of necessary reports for the said products.

(b) Para 18 of Circular No.:021/1RDA/F&U/Sep-06 dated 28-9-2006 reads as follows;
"Where a risk is co-insured, the primary responsibility to comply with these guidelines will rest with the leading co-insurer. However, all other co-insurers will remain responsible to satisfy themselves by enquiry that the guidelines have been complied with. The leading co-insurer shall confirm to all other co-insurers as soon as the terms are agreed and in any case, immediately upon attachment of risk that the File and Use guidelines have been complied with. "

Thus the primary responsibility to comply with the Guidelines in terms of filing and approval of the product rests with the leading co-insurer i.e. National Insurance Company (NIC) in this case. In the present case the insurer was the follower and they participated as co-insurer with an understanding that there is no regulatory requirement to have an identical product approved by the Authority before entering into co-insurance arrangement.

Further, since the insurer had accepted the risk as co-insurer and not as lead insurer, they had underwritten the risk based on lead terms from a reputed insurance company. It had accepted only 5% share and the premium involved was in the range of 1.3 to 2.5 lacs. The insurer followed board approved UW policy to underwrite the risk.

(c) Since the risk underwritten was of SI Rs 1920 cr, which was beyond pool capacity, it had sought terms from international market. The pool allows cession of any risk only when it is as per terms and conditions of the pool, decided in the beginning of every year. It does not have any mechanism for accepting any risk which has any other international terms. This practice is followed by the Indian market.

Further, the said policy was not ceded with HDI but was placed with different reinsurers

Decision:

(a) Insurer's attention is drawn to the condition/requirement that the products should be configured in the insurer's system. It is subject to such a condition only that the products submitted by the insurer are approved by the Authority. Still, even after the products having been approved by the Authority, the insurer has not configured the approved products in their system. This is not only a deviation from the requirement of the F& U guidelines but is also a failure to abide by the insurer's confirmation in Form-A (para-5.4) that the insurer's system will provide data on each of the risk factors in respect of premium and claims. The insurer has attempted to explain away their deviation/failure by stating that they have made necessary developments in their core system from premium booking to claims processing of all the approved products and further that they have adequate mechanism in place for servicing the customers and generation of necessary reports for the said products.

While taking note of the submissions made by the insurer, the Authority advises that the insurer must strictly abide by the conditions prescribed in the guidelines on product filing procedures for general insurance products dated 18th February 2016 and must not deviate from the said conditions/requirements. The insurer must take note of this direction for immediate and future compliance.

(b) Post personal hearing, the insurer submitted a copy of the underwriting policy document which was approved by their Board on 12-10-12 wherein it is mentioned under the head "Product Range" that the insurer shall be prepared to offer, among other insurance products. Taking note of this submission of the insurer, the charge is not pressed.

(c) The submissions made by the insurer are accepted and the charge is not pressed.

7. Charge no. 7

(a) Standard proposal form for Motor Liability only policies

It was observed in sample Motor 'Liability Only' policies issued by the insurer that the standard proposal form prescribed by the Authority vide circular No. IRDA/NL/F&U/Cir/Misc/101/06/2010 dated 28th June, 2010 was not being used by the insurer.

(b) Standard proposal form for Motor package policies

The Authority had approved insurer's motor insurance products subject to the condition that the proposal forms of motor package policies shall include at least all the items of 'standard proposal form' prescribed as per circular No. IRDA/NL/F&U/Cir/Misc/101/06/2010 dated 28th June, 2010. However, it was observed from the proposal forms used by the insurer in respect of motor package policies that all the mandatory items of 'standard proposal form' were not included.

Submission of Insurer:

The necessary rectifications/corrective steps have been implemented and the insurer has started to incorporate all the questions of the sample proposal form as prescribed by the Authority

Decision:

While taking note of the submission made by the insurer that necessary corrective steps have been taken, the Authority advises the insurer to ensure that they comply with Circular No. IRDA/NL/F&U/Cir/Misc/101/06/2010 dated 28th June, 2010 and that the proposal forms used by them conform fully to the requirements and contents prescribed in the above circular.

8. Charge No. 8

As per Regulation 4(1)&(2) of IRDA, (General insurance- Reinsurance) Regulations, 2013, 'Every insurer wanting to write inward reinsurance business shall have a well-defined

underwriting policy approved by its Board of Directors for underwriting inward reinsurance business'. And 'The insurer shall file with the Authority, at least forty five days before the commencement of each financial year, its underwriting policy stating the classes of business, geographical scope, underwriting limits and profit objective'.

It was observed during the FY 2013-14, the insurer had written domestic inward reinsurance business. However, the insurer do not have an underwriting policy approved by its Board of Directors for underwriting inward reinsurance business and further the insurer had not filed reinsurance inward underwriting policy as required by the regulation. Thus, the insurer had not complied with above stated regulation.

Violation of:

Regulation 4(1)&(2) of IRDA, (General insurance- Reinsurance) Regulations, 2013

Submission of Insurer:

The Reinsurance policy was revised and approved by the Board in the meeting held on 23rd July, 2014 and was subsequently filed with the Authority on 04th August, 2014. We have taken necessary corrective steps to ensure that the Reinsurance policy is duly approved by the Board and subsequently filed the same with the Authority as per the Regulations. The revised Reinsurance policy was subsequently filed with the Authority on 15th February, 2016.

Decision:

Attention of the Insurer is drawn to Regulation 4(1) & (2) of the IRDA (General Insurance – Reinsurance) Regulations, 2013 which mandate the insurer to have a well defined underwriting policy for inward reinsurance business. The insurer should note that this is a regulatory prescription which the insurer should abide by. Still the insurer did not have an underwriting policy for Inward Reinsurance. While viewing the fact that the insurer has taken corrective steps and is filing with the Authority the underwriting policy for inward reinsurance as required, the Authority advises the insurer to be careful not to repeat the above said deviation/violation.

9. Charge No.9

(a) As per the Section 3(12) General insurance- Reinsurance Regulation, 2013, 'Every insurer shall offer an opportunity to the Indian Reinsurer to participate in its facultative and treaty surpluses before placement of such cessions outside India'. On examining the sample facultative placements outside India, it was observed that there were no documents to confirm that an opportunity to the Indian reinsurer was offered and the insurer had not provided any documents or communications to show that an opportunity to the Indian reinsurer was given before placement of cessions outside India.

For instance, under Fire (standalone Terrorism Pool) line of business the following policies where the insurer ceded 100% to Lloyds Syndicate Reinsurer.

Policy no	Risk Start date	Risk End Date	Sum Insured (Rs.)	Gross Written Premium (Rs.)	Facultative	Name of Broker	Commission Amount Facultative
P0014000100/1101/100008	20-04-13	19-04-14	1981.43 Crs	32,00,000	32,00,000	Almondz	80,000
P0014000100/1101/100112	01-07-13	30-06-14	1920 Crs	27,99,929	27,99,929	Reliance Composite	69,998
P0014000100/1101/100638	01-01-14	31-12-14	1613.60 Crs	27,60,000	27,60,000	Almondz	69,000

Thus, the insurer had not complied with the above regulatory requirement.

(b) The insurer had placed 417 policies with the HDI Gerling out of total 428 facultative placements in the FY 2013-14. The insurer had not provided any documentary proof or communications to show that the insurer had offered an opportunity to the Indian reinsurer before placement with the HDI Gerling Welt Services AG (as required under section 3(12) of Reinsurance Regulation, 2013).

Violation of:

Regulation 3(12) General insurance- Reinsurance Regulation, 2013

Submission of Insurer (a) and (b):

(a) During the FY 2013-14, the Indian Market Terrorism pool had a capacity of Rs. 1,000 crore per risk. The standard market practice for insured's seeking coverage beyond the Indian Market Terrorism pool capacity of Rs. 1,000 crore was to seek facultative support from the international market in totality as the international market does not accept partial cessions.

In the three cases, as highlighted by the Authority, the sum Insured's was Rs. 1,981.4 Cr, 1,920 Cr & 1,613.6 Cr respectively. As the Sum insured for all these cases were far exceeding the capacity of Terrorism Pool (i.e. Rs 1,000 Cr) prevailing at that time, the reinsurance on the said risk was placed entirely in the international market which is as per the Indian market practice on such risks.

It may be noted that GIC Re has with effect from March 2016 expressed a desire to participate in risks which are ceded entirely in the international market by way of formation

of Standalone Terrorism Facility at GIC Re. This further indicates that such a practice only incepted in 2016 on international placements to use domestic capacity.

(b) Submission of Insurer:

Magma HDI started its operations in September 2012. Being a new entrant, the company was not able to obtain large automatic treaty capacities thereby the company had to rely on facultative support from HDI. This facultative support was also backed by HDI's technical understanding on products such as Clinical trial, public liability, Commercial Gen liability etc. which are any way subject to re-insurer terms, conditions and rates. Furthermore capacity for these lines of business was limited in India.

The company has already initiated steps with a view to create larger automatic capacities with a view to reduce its dependence on facultative reinsurance. Going forward, the company shall maximize the utilization of available domestic capacity. The management team is confident that these arrangements would be effective during the FY 2017-18.

Decision :

In case of Charge 9(a) the submissions that they sought facultative support from the international market in totality as the international market does not accept partial cessions is taken on record. In case of charge 9(b) , taking into account the grounds furnished by the insurer and the submission that they have already initiated steps to reduce its dependence on facultative reinsurance the charge is not pressed.

10. Charge No.10

Regulation 3(11) of IRDA (General Insurance – Reinsurance) Regulations, 2013

(a) The reinsurer HDI Gerling Welt Services AG 'Standard and poor' rating is 'A+ outlook stable' which falls under the bracket of greater than BBB and up to AA of standard & poor and allowable limit of cession under Regulation 3(11) is 15% of total reinsurance premium ceded outside India being placed with any one reinsurer.

(b) However, it was observed under Fire, Marine, Misc lines of business the insurer had placed the business with HDI Gerling Welt Services AG which exceeded the maximum limit allowed by the Authority. The total premium ceded to the foreign reinsurer during the FY 2013-14 was Rs. 30.14 crores out of which Rs. 24.62 crores (81.69%) business ceded to HDI Gerling Welt Services AG.

(c) Further, in this regard the insurer had not informed and obtained the approval of the Authority for exceeding the limit sated in the Regulation 3(11) of said regulations. Thus, the insurer had not complied with clause 3(11) of General insurance- Reinsurance Regulation, 2013.

Regulation 3(2) of IRDA (General Insurance – Reinsurance) Regulations, 2013

(d) As per the Regulation 3(2) of IRDA (General insurance- Reinsurance) Regulations, 2013, 'Every insurer shall maintain the maximum possible retention commensurate with its financial strength, quality of risks and the volume of the business '.

(e) Total premium paid under reinsurance facultative placements by the insurer during the FY 2013-14 was Rs. 26.23 crores out of which Rs.24.62 crores (93.86%) FAC business placed with the HDI Gerling Welt Services AG.

(f) Out of 417 facultative placements with the HDI Gerling Welt Services AG, Under 250 policies, after 5% obligatory session with the GIC of India, the insurer had retained only 0.05% of the risk and balance (94.95%) was ceded to the HDI.

(g) For example, the insurer had accepted the following liability policies and ceded almost 100% of the risk to the reinsurer 'HDI Gerling' who is the foreign partner of the insurer irrespective of insurer's own retention capacity as per the 'retention policy'. The insurer's retention was mere 0% to 0.05% in these policies. This amounts to merely fronting the business to the foreign reinsurer.

FY	Policy No. & Insured	Policy Type	TSI (Rs.)	Retention as % of TSI
13-14	P0014000100/2701/100001 (Octapharma AG)	Clinical Trial Liability	7,30,68,900	0.05%
13-14	P0014000100/2702/100001 (Boskalis International BV)	Public Liability Industrial	39,13,81,500	0.05%
12-13	P0013000100/2701/100002 (Laboratorios De Esteve S.A. & Veeda Clinical Research Pvt Ltd)	Clinical Trial Liability	14,43,71,460	0.00%
12-13	P0013000100/2701/100001 (iProcess Clinical Marketing Pvt Ltd & New York University School of Medicine)	Clinical Trial Liability	10,89,40,000	0.00%
12-13	P0013000100/2702/100001 (Boskalis International bv.)	Public Liability Industrial	35,28,25,600	0.00%
12-13	P0013000100/2701/100003 (ASTRAZENECA PHARMA INDIA LTD)	Clinical Trial Liability	9,90,80,000	0.05%

(h) On examining the facultative placements, it was observed that the insurer had entered into an agreement with the HDI Gerling Welt Services AG for the reinsurance placements with them on 22-05-2013. The agreement between the insurer and the HDI Gerling Welt

Services AG did not mention anything about type of cessions ceded to the HDI and covers administrative and remuneration conditions.

(i) It is pertinent to note that facultative placements are arranged for a part or all of a single policy in which cession is negotiated separately.

(j) Further it was observed that the insurer had not obtained the facultative placement slips from the HDI Gerling Welt Services AG of the reinsurance business ceded to them (417 facultative placements during the FY 2013-14). The acceptance of the reinsurance cessions and the conditions stated in the FAC placements could not be verified.

Violation of:

Regulation 3(11) and 3(2) of IRDA (General Insurance – Reinsurance) Regulations, 2013

Submission of Insurer:

Magma HDI started its operations in September 2012. The company started its operations with a capital base of Rs. 208 crore. In the initial formative years, the company focused growing its motor portfolio which constitutes over 80% of its gross written premium.

The governing principle of the retention reinsurance philosophy was to maximize retentions on lines of business which had low limits of indemnity, diversified premium book and the company had a reasonable/ good understanding of the underwriting product class. Consequently, given that the motor business was the standard line of business, the company was maximizing retention on this line of business.

On the other hand, on lines of business such as Clinical Trials wherein the understanding of the company was still evolving and the fact that the company was yet to develop a diversified book of business, the company felt it appropriate to keep low retentions and to reinsure a significant part of this risk even though the limits of indemnity was small with a view to manage the volatility on its capital base. Similarly, on other lines of business like Public Liability, the retentions were kept low keeping in mind the higher limits of indemnity keeping the same principle of managing the capital volatility.

The arrangement was not a fronting arrangement but as part of the overall philosophy of the retention reinsurance philosophy of the company.

Being a new entrant, the company was not able to obtain large automatic treaty capacities thereby the company had to rely on facultative support from HDI. This facultative support was also backed by HDI's technical understanding on products.

The company has already initiated steps with a view to create larger automatic capacities as well as explore other facultative reinsurers with a view to reduce its cessions to HDI. Further, the insurer is in the process of enhancing its reinsurance capacities which would be

led by Indian reinsurer. It would try to maximize retention within the country by taking support from foreign reinsurers having office in India.

Decision

The grounds and reasons furnished by the insurer apart from the actual situation they were facing by virtue of their being a new entrant on the general insurance field, which suggest that their failure to comply with the Regulation 3(11) and 3(2) of the General Insurance – Reinsurance Regulations is due to the fact that they were in the initial stages of operation—are taken on record. While taking an objective view of the insurer's submissions, the Authority advises the insurer to take all steps necessary to comply with the regulation 3(2)(a) and 3(11)(e) of IRDAI (General Insurance -Reinsurance) Regulations 2016.

11. Charge No.11

A few files in which the claims relating to theft of vehicles were dealt were examined to ascertain whether any reduction from IDV has been done. In all the claims, the consent letter was obtained from claimants for mutually negotiated settlement.

The GR 8 of IMT, 2002 of the Policy clause mandates an insurer to consider the total loss claims of theft of vehicle where liability is reasonably clear for settlement for IDV in the policy. But it is found from the examination of the sample claim files that the provisions of GR-8 were deviated notwithstanding the fact that reasons were provided therein in claim notes. The insurer has not documented standard procedure in considering the claims on non standard/substandard basis.

The insurer's settlement of claims for reduced IDV in theft claims for whatever reasons is, therefore, contrary to the provisions of GR-8 of Insured Declared Value of IMT, 2002.

Submission of Insurer:

All the claims, as highlighted during inspection, were considered for settlement on compromise basis since there was certain violation of warranties or partial non-compliances of the policy conditions or on account of deficiencies in submission of documents or on the basis of previous judicial rulings from apex Court / Commission. While settlement of such claims, whenever there are issues, rather than repudiating the claim we preferred settling the same on non-standard basis with the due consent of the insured, to service and support the insured. As a matter of grace, the company considered such claims for settlement subject to some minor deductions.

Decision:

No charge is pressed, taking note of the confirmation of the insurer that rather than repudiating due to claim deficiencies, the claims were considered. Insurer is hereby advised to ensure compliance to General Regulation 8 of tariff wordings.

12. Charge No.12

The insurer appointed the internal surveyors who are not possessing license for assessment of Motor Own damage claims with estimated loss /assessed loss exceeding Rs. 20,000/- in contravention of Section 64UM of Insurance Act, 1938. The following table provides the summary of internal surveys in 2012-13 and 2013-14.

No of Internal surveyors	51
No of Internal surveyors holding surveyor license	26
No of internal surveyors not holding surveyor license	25
Total number of survey reports submitted by Internal surveyors	4215
Total number of survey reports submitted by Internal surveyors holding surveyor license	1873
Total number of survey reports submitted by Internal surveyors not holding surveyor license	2372

The details of survey assessments done by some 21 surveyors were examined and it was found that though they had no surveyor licence, they had carried out assessment of Motor Own damage claims where losses exceeded Rs. 20,000/-. The following assessments done by a few of them reveal that they had assessed claims whose value is far above Rs.20000/-.

S.No	Claim No	Estimated Loss in Rs.	Assessed Loss in Rs.
1	C/14/300005/4101/2/05002501	30000	74455
2	C/14/200027/4101/1/05000501	110000	100000
3	C/14/300005/4103/2/05010401	105874	105874
4	C/14/200004/4103/1/05005001	134000	134000
5	C/14/100007/4103/2/05019101	74475	74475
6	C/14/400005/4103/1/05001201	90201	97000

Though the insurer was aware that the estimated loss/assessed loss was exceeding the prescribed limit, the licensed surveyor report was not obtained as required under section 64UM (2) of Insurance Act, 1938.

Submission of Insurer:

Mostly surveyor appointments are done before obtaining repair estimate & thus without exact knowledge on the possible assessment. However considering about 10500 claims have been settled during 2012-13 & 2013-14, it is observed that in about 6% cases survey for

>20k claim has been conducted by unlicensed internal surveyor. It has now taken corrective action to take views of external surveyors when the claimed amount is more than the prescribed threshold set by the Authority.

Decision:

In any of the cases cited in the Inspection observation, it can objectively be concluded that the probable estimated loss could certainly exceed the limit prescribed by the Act, thus warranting appointment of a surveyor. But the insurer went ahead without the appointment of licensed surveyors. Taking note of the submission that Insurer has taken steps to decide the appointment of licensed surveyor in compliance with the Act/Regulation, charge is not pressed. However the Insurer is directed ensure compliance to Regulation 12 of IRDAI(Insurance Surveyors & Loss Assessors) Regulation 2015 to be read with section 64UM(4) of Insurance Act 1938.

13. 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	Charge: Engaging regulated entities for activities other than that for which they are licensed to. Provision: Para 8.4/5 of outsourcing guidelines dated 1-2-11 Section 31B(2) of Insurance Act, 1938	Direction to follow guidelines/regulations
2	Charge: Failure to follow Circular No. 067/IRDA/F&A /Mar 08 (Segregation of expenses)	Advisory to follow the contents of the Circular No.IRDA/F&I/ CIR/F&A/231/10/2012 dated 5 th October, 2012 .
3	Charge: Using unlicensed entities for procuring insurance business - Provision: Circular IRDA/CIR/011/2003, dated 27-03-2003	Penalty of Rs.5,00,000 under Section 102(b)
4	Charge: Payments to Brokers other than brokerage/commission – Provision: Circular No: 011/IRDA/Brok-Comm/Aug-08 dated 25-08-2008 and Regulation 19 of Brokers Regulations.	Direction to abide by the Circular and regulation.
5	Charge: Inconsistency in the data furnished by the insurer	Charge dropped

	Provision: Circular No. IRDA/F&A/ CIR/025/2009-10, dated 5th August, 2009.	
6	Charge: Violation of File and use guidelines Provision: Point 5.4 of Form A under para 25(i) of IRDA's Circular No. 021/IRDA/F&U/Sep.06 dated 28-9-2006 & Para 11 of the File & Use Guidelines contained in IRDA's Circular No. 021/IRDA/F&U/Sep.06 dated 28-9-2006.	(a) – Direction (b) and (c) – dropped
7	Charge: Failures to use proposal forms prescribed by the guidelines Provision: Circular No. IRDA/NL/F&U/Cir/Misc/101/06/2010 dated 28th June, 2010	Direction to comply with the guidelines
8.	Charge: Absence of underwriting policy in regard to Inward Reinsurance Provision: Regulation Section 4(1)&(2) of IRDA, (General insurance- Reinsurance) Regulations, 2013,	Advisory to be careful not to repeat the deviation from the regulation.
9	Charge: Failure to provide opportunity to Indian Reinsurer Provision: Section 3(12) General insurance- Reinsurance Regulation, 2013	Dropped
10	Charge: Exceeding the maximum limit on the premium to be ceded to one foreign reinsurer Failure to maintain the maximum possible retention Provision: Regulation 3(11) of RDA (General Insurance – Reinsurance) Regulations, 2013 & Regulation 3(2) of IRDA (General Insurance – Reinsurance) Regulations, 2013	Advisory to comply with the regulations in full.
11	Charge: Settlement of claims under theft for lesser than IDV. Provision: GR-8 of Indian Motor Tariff 2002	Advisory to comply with Indian Motor Tariff provisions.
12	Charge: Appointment of surveyors who did not have licence for claims exceeding the limit prescribed in the regulations Provision: Section 64UM(2) of the Insurance Act, 1938 & 12(2) of IRDA (Surveyors & Los Assessors) Regulations 2015	Direction to comply with the Insurance Act and Regulations.

14. Conclusion:

(i) As directed under the respective charges, the penalty of *Rs.5,00,000 (Rupees Five lakh only)* shall be remitted by the General 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. P.K.Maiti, General Manager (Enforcement) at the Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad -500 004.


(ii) *Further,*

(a) The General Insurer shall confirm compliance in respect of all the directions referred to in this Order, within 21 days from the date of receipt of this order.

(b) The Order shall be placed before the Audit committee of the General Insurer and also in the next immediate Board meeting and the General Insurer shall provide a copy of the minutes of the discussion.

15. If the General 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: 5th April, 2017


(V.R. Iyer)
Member (F&I)
