



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

**ORDER**

Ref: IRDA/F&I/ORD/ 464.1/7B/F&A/RDL-31B/2010-11/67/2013-14

28<sup>th</sup> June, 2013

Mr. Romesh Sobti  
Managing Director & CEO,  
Indusind Bank Ltd.,  
8th Floor, Tower 1,  
One India Bulls Centre, 841,  
S.B. Marg, Elphinstone Road,  
Mumbai - 400013.

**Levy of penalty u/s 102 of the Insurance Act, 1938**

The Insurance Regulatory and Development Authority (herein after referred to as “the Authority”) has granted license to you M/s Indusind Bank Ltd. (herein after referred to as “the Corporate Agent”) bearing number 1749817 to act as a Composite Corporate Agent of Aviva Life Insurance Co. Ltd. and MS Cholamandalam General Insurance Co. Ltd. valid up to 29<sup>th</sup> July 2013 . In terms thereof, the Corporate Agent was subject to the terms and conditions of the license issued to it and was also required to abide by the relevant provisions of the Insurance Act,1938, the Insurance Regulatory and Development Authority Act,1999 (herein after referred to as “the IRDA Act,1999”), the Insurance Regulatory and Development Authority (Licensing of Corporate Agents) Regulations, 2002 (herein after referred to as “the Regulations”) and other directions issued by the Authority from time to time by way of circulars and/or Guidelines particularly, Circular no. 017/IRDA/Circular/CA Guidelines/2005 dated 14<sup>th</sup> July 2005 (herein after referred to as “the Guidelines”).

On review of the data submitted by Aviva Life Insurance Co. Ltd. (hereinafter referred to as “the insurer”) to the Authority in accordance with IRDA circular no. IRDA/F&I/CIR/DATA/066/03/2012 dated 2<sup>nd</sup> March 2012, it was observed that the corporate

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Page 1 of 7

agent has received payments from the insurer apart/over and above the permissible commission limits towards Infrastructure sharing arrangement, advertisement & publicity during the financial year 2011-12. Similar observations were also made in the payouts pertaining to the financial year 2010-11 and the same is being examined separately by the Authority.

The Authority issued a show cause notice to the Corporate agent on 8<sup>th</sup> February, 2013 for having violated clause 21 of the Guidelines and Sec 40A (1) of the Insurance Act, 1938 during the financial year 2011-12.

Details of the total payouts are as under:

₹ Crore

Particulars/premium type		First year Premium	Single Premium	2nd & 3rd year premium	Total
(i)	Premium generated	172.83	18.26	19.05	210.14
(ii)	Max Commission allowed* in %	40%	2%	7.50%	
Max Commission allowed* in Rs. Crore		69.13	0.37	1.43	70.93
(iii)	Commission paid	28.13	0.29	0.37	28.79
(iv)	Total other payouts				65.49
Total actual payouts					94.28
(v)	Excess paid by Insurer & received by Corporate Agent				23.35

\*in terms of Sec 40A (1) of Insurance Act, 1938

The Corporate agent in response to the Show Cause notice, submitted its reply vide letter dated 20<sup>th</sup> March 2013. It is mentioned therein that the Indusind bank and the insurer share two separate relationships - one as a corporate agent and Insurer and the other in the capacity of an infrastructure service provider and insurer. Further, the role of Indusind bank acting as a corporate agent is limited to solicitation and procurement of insurance business and is governed by the terms of corporate agency agreement, whereas Infrastructure services

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are governed by the terms of infrastructure facilities agreements. Infrastructure resources available with the bank were utilized by the insurer to increase the penetration of insurance business and for enhancing the insurance awareness of the public. Further, reference has been made of the letter issued by the insurer to the Authority dated 25<sup>th</sup> February 2009, wherein insurer has indicated about the then prevailing infrastructure arrangements with some of the corporate agents. The corporate agent's officials also visited the Authority and presented their case personally on 29<sup>th</sup> May 2013.

Whereas as per the submissions made by the insurer in this regard, significant number of employees were employed at the offices of the corporate agent for providing coordination and support for insurance sale conducted by corporate agents at their branch offices. The said offices were used for the purposes such as overseeing the sale of policies and verification of the application details at each service point, facilitating customer service, claims settlement, resolution of customer complaints, collection of renewal premium and general co-ordination. The insurer availed these services to ensure quality and hassle free services to customers. The insurer also availed the infrastructure facilities for display of information pertaining to Aviva Products. These arrangements were focused at promoting Aviva's brand image and involve the usage of physical space on premises owned/possessed by the corporate agent. Since the activities to be performed at each such branch were not directed to solicitation and procurement of insurance business and were in addition to rather than in substitution or replacement of the duties/obligations of the corporate agent, the access to branch network was provided in return for commercial rates.

The Authority is however of the view that it is obligatory on the part of the corporate agent to provide pre/post sale services to prospects/policyholders as also indicated in following provisions of the Act, IRDA (Licensing of insurance Agents) Regulations 2000, the Regulations 2002, the Guidelines :

- a. *As per Sec 64VB(4), "where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within 24 hours of the collection excluding bank and postal holidays".*

  


- b. *As per regulation on code of conduct i.e. 8 (1) (iii) of IRDA (Licensing of insurance agents) Regulations 2000, "every insurance agent shall, with a view to conserve the insurance business already procured through him, make every attempt to ensure remittance of the premiums by the policyholders within the stipulated time, by giving notice to the policyholder orally and in writing"*
- c. *As per regulation on code of conduct i.e. 9(1) (e) of IRDA (Licensing of corporate agents) Regulations 2002, "Give adequate pre-sales and post-sales advice to the insured in respect of the insurance products"*
- d. *As per regulation on code of conduct i.e. 9(1) (f) of IRDA (Licensing of corporate agents) Regulations 2002, "extend all possible help and co-operation to an insured in completion of all formalities and documentation in the event of a claim"*
- e. *As per clause 20 of IRDA Circular no. 017/IRDA/Circular/CA Guidelines/2005 dated 14.07.2005; "the agent shall provide to the insurer, a complete set of records in respect of the business sold by the agent, including completed proposal forms, copies of policies or certificates of insurance and a premium register with particulars of payment to the insurer, daily or at the most, on a weekly basis. Requirements of Sec 64VB shall be fully complied with".*

Further, the corporate agent referring to the letters of the insurer addressed to the Authority dated 25<sup>th</sup> February 2009 as advance intimation/ permission from the Authority for the infrastructure arrangements in the offices of corporate agents is not tenable. In this regard, the Authority hereby reiterates its stand clarified vide circular no. GEN/CIR/018/May-04 dated 24<sup>th</sup> May 2004; as per the said clarification, the approval of the Authority should not be taken as implicit with the intimation of a particular approach adopted and unless formal approval is conveyed, the insurers shall not act on the issues raised for clarification.

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The Authority further called for invoice copies from the insurer, raised by the corporate agent for the payments corresponding to the infrastructure arrangements/advertisements. The details of the same pertaining to the financial year 2011-12 are as indicated below:

Table 1

₹ Crore

	Infrastructure Agreement	Total	ST	Total incl ST	% to total
1	Workstation costs @ Rs. 27199 / per station	9.75	1.05	10.80	16.49
2	Co-branded banners/hoardings @ Rs. 5440/per branch	0.46	0.05	0.51	0.77
3	Standalone Advertisement in vehicle finance division @ Rs. 5440/ per VFD	0.65	0.07	0.72	1.10
4	Standalone Advertisement* on official website	1.62	0.17	1.80	2.75
5	Standalone Advertisement* - Printing & distribution in monthly statements @ 36 / per statement	3.60	0.39	3.98	6.08
6	Standalone Advertisement* - Printing & distribution in cheque books @ 272 / per book	32.49	3.50	35.99	54.95
	<b>Infrastructure &amp; Services Agreement</b>				
7	Workstation costs @ Rs. 27199 / per station	9.75	1.05	10.80	16.49
8	Visit to policyholder for cheque collection @ 113/per collection	0.30	0.03	0.33	0.50
9	Cheque Collection box @ 5440 / per box	0.49	0.05	0.54	0.83
10	Tele Calling @ Rs. 9/ per call	0.02	0.00	0.03	0.04
	<b>Grand total</b>	<b>59.12</b>	<b>6.36</b>	<b>65.49</b>	<b>100.00</b>

\*till September 2011, from October 2011 joint sale advertisements

The summary of the aforementioned details are in table 2 below:

Table 2

₹ Crore

Particulars	Total expenses	ST	Total incl ST	%
Workstation costs	19.49	2.10	21.59	32.97
Advertisements - Standalone	24.11	2.59	26.70	40.77
Advertisements - Co-branded/Joint sale	14.72	1.58	16.30	24.89
Others	0.81	0.09	0.90	1.37
<b>Total</b>	<b>59.12</b>	<b>6.36</b>	<b>65.49</b>	<b>100.00</b>

ST = Service tax

*Handwritten signature/initials*

As per clause 21 of Corporate Agents Guidelines “Insurer shall not pay any amount other than the permitted agency commission, whether as administration charge or reimbursement of expenses or profit commission or in any other form to corporate agent. This does not prevent insurer from sharing expenses of co-branded sales literature with the corporate agent. Such expenses, however, should be reasonable and should not in any way linked with the success in sale or premium earned by the corporate agent”. Thus an insurer cannot pay to the corporate agent or incur expenses towards corporate agents other than towards co-branding advertisements (apart from permitted agency commission) as per the said clause. However, insurer has paid considerable amounts to the corporate agent towards standalone advertisements/infrastructure arrangements.

It was also observed that the corporate agent in its annual report disclosed all the payouts including other payouts as fee received from sale of life insurance policies. This indicates that other payouts received by the corporate agent were nothing but disguised commission.

In view of the above, the following charges made against the corporate agent are found to have been established for the reasons mentioned there under:

The corporate agent has received payments apart/over and above permitted agency commission/remuneration during the financial year 2011-12 in violation of clause 21 of the Guidelines read with Sec 40A (1) of the Act.

Having regard to the facts of the case and the gravity of the violations committed by the corporate agent, the Authority in exercise of the powers vested in it under Section 102 of the Insurance Act, 1938 passes the following order:

“₹5, 00,000 (Five Lakh) penalty be imposed upon the corporate agent for receiving payouts during the financial year 2011-12 in violation of clause 21 of the Guidelines read with Sec 40A (1) of the Act.”

  


Further the corporate agent is directed to strictly adhere to the Insurance Act, 1938, Regulations made there under, Guidelines and Circulars issued in this regard from time to time.

The penalty amount shall be paid within a period of 15 days from the date of receipt of this order through a Cross Demand Draft in favour of "Insurance Regulatory and Development Authority" payable at Hyderabad, which may be sent to Mr. R.K.Sharma, Deputy Director (F&A) at the Insurance Regulatory and Development Authority, 3<sup>rd</sup> Floor, Parishrama Bhavan, Basheer Bagh, Hyderabad - 500004.

Place: Hyderabad  
Date: 28<sup>th</sup> June, 2013

*R.K.Nair*

(R.K.Nair)

Member (F&I)