



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

**ORDER**

Ref: 461.1/F&A/1/BC-NLI/2006-07 to 2008-09/90/July 2012

3<sup>rd</sup> July, 2012

Mr. Romesh Sobti  
Managing Director & CEO,  
Indusind Bank Ltd.,  
8<sup>th</sup> 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 valid up to 29<sup>th</sup> July, 2013 to act as a Composite Corporate Agent of MS Choamandalam General Insurance Co. Ltd. and Aviva Life Insurance Co. Ltd. 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 14th July 2005 (herein after referred to as “the Guidelines”)

On review of the data submitted by MS Cholamandalam General Insurance Co. Ltd. (hereinafter referred to as “the insurer”) with the Authority in accordance with IRDA circular no. IRDA/F&I/CIR/F&A/008/01/2010 dated 21<sup>st</sup> January 2010, it was observed that the corporate agent has received payments from the insurer over and above the permissible commission limits in the form

Page 1 of 3

of "Data base Sharing/incentives to the employees of the corporate agent and infrastructure setting up costs" during the financial years 2007-08, 2008-09 and 2009-10.

The Authority issued a show cause notice to the Corporate agent on 30<sup>th</sup> August 2011 for having violated clause 21 of the Guidelines and Sec 40A(3) of the Insurance Act, 1938 read with the provisions of the circulars 033/IRDA/Brok-Comm/Dec-06 dated 04<sup>th</sup> Dec 2006 and 011/IRDA/Brok-Comm/Aug-08 dated 25<sup>th</sup> August, 2008. The Corporate agent submitted its reply in response to the Show Cause notice on 18<sup>th</sup> October, 2011. It is mentioned in the response that the insurer has entered into an infrastructure services agreement with the Indusind Bank and it is a co-incidence that the bank is also a corporate agent to the insurer. It is further indicated that the payments which were alleged to be in excess of the commission caps were not in the nature of commission and were not received in their capacity as the corporate agent. The payments were for infrastructure services which cannot be characterized as disguised commission. The corporate agent further requested the Authority to provide them with an opportunity to present their case personally.

Accordingly the Authority vide letter 14<sup>th</sup> November, 2011 called the corporate agent for personal hearing on 28<sup>th</sup> November, 2011. The Corporate agent was also intimated to carry along agreement copy of the infrastructure arrangement and to submit the details on the basis of which the calculation of the fees was agreed / received / substantiate on the payments received in relation to the services provided etc. On examination of the reply submitted in response to Show Cause notice /minutes of personal hearing and letters dated 05<sup>th</sup> December 2011/11<sup>th</sup> January 2012 (in response to the other details called vide IRDA letter dated 14<sup>th</sup> November 2011) , the following is observed.

- a. There was no infrastructure agreement per se between the two parties.
- b. The infrastructure arrangement was discussed in a meeting held between the two parties on 12<sup>th</sup> December 2008. However, in the minutes of the meeting, there is no mention on the exact cost structure for the infrastructure services. It is just indicated that the services shall be for commercial terms as may be agreed upon mutually from time to time.
- c. Whereas the infrastructure arrangement was discussed in the meeting held on 12<sup>th</sup> December 2008, payment to a tune of ₹499.69 Lakh was made by the insurer during the year 2007-08 i.e. even prior to the meeting date.
- d. Further the other payout details (as shown in the Annexure I) submitted by the insurer were bifurcated into each line of business. These payments together with commission have crossed maximum prescribed commission limits under each line of business.

It is therefore evident from the above that the payouts made in the form of infrastructure services were linked to the premium income generated by the Corporate Agent. The charges are therefore established that the payments were received by the corporate agent apart /over and above the





permissible commission rates in violation of Section 40A(3) of Insurance Act, 1938 read with the provisions of the circulars 033/IRDA/Brok-Comm/Dec-06 dated 04<sup>th</sup> Dec 2006 and 011/IRDA/Brok-Comm/Aug-08 dated 25<sup>th</sup> August 2008.

Having regard to the facts of the case, the Authority is of the considered view that a suitable penalty be imposed upon your company for each instance of violation as discussed above.

Accordingly, on a judicious exercise of the powers conferred upon it under Section 14(1) of the IRDA Act, 1999 read with Section 102 of Insurance Act, 1938, a penalty ₹5,00,000 each for financial years 2007-08, 2008-09 and 2009-10 totaling of ₹15,00,000(Rupees fifteen lakh) is imposed.

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: 3<sup>rd</sup> July, 2012

  
(R.K.Nair) .  
Member (F&I)  


**Annexure I**

**Year: 2007-08**

(₹ in Lakh)

Class of Business	Premium	Commission on Premium	Other pay-outs	Total Payouts	% allowed	% paid / received
Fire	199.76	19.48	24.52	44.00	10.00	22.03
Marine cargo	14.69	2.20	1.49	3.69	15.00	25.14
Motor	3201.37	213.16	442.79	655.95	10.00	20.49
Others	274.45	39.25	30.89	70.14	15.00	25.56
<b>Total</b>	<b>3690.27</b>	<b>274.09</b>	<b>499.69</b>	<b>773.78</b>		<b>20.96</b>

**Year: 2008-09**

(₹ in Lakh)

Class of Business	Premium	Commission on Premium	Other pay-outs	Total Payouts	% allowed	% paid / received
Fire	175.97	17.28	31.41	48.69	10.00	27.67
Marine Cargo	16.68	2.50	2.29	4.79	15.00	28.71
Motor	8436.75	536.80	1080.95	1617.75	10.00	19.18
Accident	575.17	86.26	38.45	124.72	15.00	21.68
Others	246.44	34.66	36.49	71.15	15.00	28.87
<b>Total</b>	<b>9451.01</b>	<b>677.51</b>	<b>1189.59</b>	<b>1867.10</b>		<b>19.76</b>

**Year: 2009-10**

(₹ in Lakh)

Class of Business	Premium	Commission on Premium	Other pay-outs	Total Payouts	% allowed	% paid / received
Fire	106.43	10.64	18.33	28.96	10.00	27.21
Marine Cargo	10.31	1.53	1.55	3.08	15.00	29.86
Motor	16245.66	1050.64	2013.00	3063.65	10.00	18.86
Accident	1138.01	169.26	51.74	221.00	15.00	19.42
Others	878.84	123.74	122.43	246.17	15.00	28.01
<b>Total</b>	<b>18379.25</b>	<b>1355.80</b>	<b>2207.75</b>	<b>3562.85</b>		<b>19.39</b>