



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

ORDER

Ref: IRDA/F&I/ORD/ 464.1/7A/RDL-31B/2010-11/76/2013-14

16th July, 2013

Mr. Rajesh Sud,
Chief Executive Officer,
Max Life Insurance Co. India Ltd.,
11th Floor, DLF Square,
Jacaranda Marg, DLF City, Phase - II,
Gurgaon - 122 002.

Levy of Penalty under Section 102 of the Insurance Act, 1938

The Insurance Regulatory and Development Authority (herein after referred to as "the Authority") issued a certificate of registration bearing no.104 to Max Life Insurance Co. Ltd., (herein after referred to as "the insurer") on 15th November 2000 to carry on business of Life Insurance in India in terms of Section 3 of the Insurance Act, 1938 (herein after referred to as "the Act"). The said certificate of registration is further renewed on 1st April 2013. In terms thereof the insurer was subject to the terms and conditions of the certificate of registration and was also required to abide by the provisions of the Insurance Act, 1938, the IRDA Act, 1999, particularly 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 returns filed with the Authority on 4th August 2010 in accordance with IRDA circular no. IRDA/F&I/CIR/DATA/091/06/2010 dated 11th June 2010 w.r.to the financial year 2009-10, it was observed that the insurer has paid other payouts apart from permissible commission to Corporate Agent - Barclays Investment & Loans (India) Ltd. in the form of Infrastructure facilities availed in the premises of the corporate agent in violation of the provisions of clause 21 of the Guidelines.

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The Authority communicated the findings to the insurer on 27th May 2011 and sought explanation. The insurer submitted its response vide its letter dated 1st July 2011. As per the submissions, the insurer requested the corporate agent to allow the presence of the insurer's employees in the corporate agent's specified branches for carrying out enhanced training to specified persons of the corporate agent and to carry out processing services of policies sourced by specified persons of the corporate agent. The Authority examined the response of the insurer and issued Show Cause notice on 17th December 2012. The insurer submitted its reply to the Show Cause notice on 15th January 2013. Furthermore, the Insurer's officials visited the Authority and presented their case personally on 15th May 2013.

The insurer contended that of the total other payouts of ₹41.55 Lakh, ₹7.45 Lakh was not made to the corporate agent but was paid to other vendors and was inadvertently shown as made to the corporate agent in the returns submitted under IRDA circular no. IRDA/F&I/CIR/DATA/091/06/2010 dated 11th June 2010. So it was only ₹ 34.10 Lakh which was paid to the corporate agent. Insurer has further indicated that payments made do not, in any case exceed the overall limits specified under Sec 40A of the Insurance Act, 1938.

The Authority further called for infrastructure agreement copy/invoice copies from the insurer, raised by the corporate agent for the payments corresponding to the infrastructure arrangements. The details of the premium generated by the corporate agent and the payouts made by the insurer to the corporate agent during the financial year 2008-09 were also called. As advised by the Authority, vide email dated 22nd April 2013, insurer submitted the details of the payouts made to the corporate agent during the financial year 2008-09/infrastructure agreements copies/invoice copies. And upon seeking further clarifications, the insurer vide email dated 2nd May 2013/6th May 2013 submitted revised information w.r.to payouts made to the corporate agent during the financial year 2009-10.

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The details of the premium/commission /other payouts for the financial year 2008-09 and the revised details for the financial year 2009-10 are as indicated below:

FY 2008-09

₹ Lakh

Particulars/type of premium and commission		New Business			Total
		First year premium-Assurance	Single Premium-Assurance	Deferred Annuity 1st Year	
(i)	Premium Collected	415.21	3.21	0.1	418.52
(ii)	Max. Commission allowed* %	40%	2%	7.50%	
	Max. Commission allowed* Rs. Lakh	166.08	0.06	0.01	166.16
(iii)	Commission Paid	122.88	0.02	0.01	122.91
(iv)	Other Payouts				500.00
	Total actual payouts				622.91
(v)	Excess paid by the Insurer & received by the Corporate Agent				456.75

FY 2009-10

₹ Lakh

Particulars/type of premium and commission		New Business			Renewal Premium		Total
		First year premium - Assurance	Single Prem. Assurance	Deferred Annuity 1st Year	Deferred Annuity 2nd year & beyond	Multi Pay 2nd & 3rd year	
(i)	Premium Collected	1391.09	0.95	1.92	1.00	163.68	1558.64
(ii)	Max Commission allowed* in %	40%	2%	7.50%	2%	7.50%	
	Max Commission allowed* Rs. Lakh	556.44	0.02	0.14	0.02	12.28	568.90
(iii)	Commission Paid	511.38	0.01	0.13	0.01	7.90	519.43
(iv)	Other Payouts						100.25
	Total actual payouts						619.68
(v)	Excess paid by the Insurer & received by the Corporate Agent						50.79

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

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It is evident from the above that the payouts apart from commission have crossed the maximum limits under Sec 40A (1) of the Insurance Act, 1938. Thus the insurer's contention of other payouts being anyway within Sec 40A (1) limits is defeated by insurer himself.

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 other than towards co-branding advertisements (apart from permitted agency commission) as per the said clause. However, insurer has paid to the corporate agent considerable amounts towards Infrastructure facilities.

Furthermore, as per various provisions under the Act, IRDA (Licensing of Insurance Agents) Regulations 2000, the Regulations 2002, the Guidelines as indicated below, it is obligatory on the part of the corporate agent to provide pre/post sale services to its customers/policyholders:

- 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*"

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- 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".

However, if an insurance company intends to open new offices, it shall be governed by Sec 64VC (1) of the Act, which reads as "No insurer shall after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India without obtaining the prior permission of the Authority". For the purposes of this section "place of business" includes a branch, sub-branch, inspectorate, organization office and any other office, by whatever name called. Whereas, the insurer has not sought any approval of the Authority.

In view of the above, the Authority is of the considered view that insurer has violated the following provisions of the Act and the Guidelines w.r.to the payouts made to the corporate agent Barclays Investments & Loans (India) Limited:

1. Clause 21 of the Guidelines read with Sec 40A of the Act during the financial year 2008-09.
2. Clause 21 of the Guidelines read with Sec 40A of the Act during the financial year 2009-10.

Having regard to the facts of the case and the gravity of the violations committed by the insurer, the Authority in exercise of powers vested in it under section 102 of the Insurance Act, 1938 passes the following Order.

"The insurer is imposed a penalty of ₹10, 00,000.00 (₹ 5, 00, 000 each for the financial year 2008-09 and 2009-10) for payouts made to Corporate agent Barclays Investments & Loans (India) Limited apart/over and above permissible commission limits in violation of clause 21 of Guidelines read with Sec 40A of the Act.

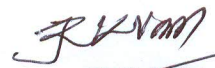
The penalty amount shall be debited to the Shareholders A/c".

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Further the insurer 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, 3rd Floor, Parishrama Bhavan, Basheer Bagh, Hyderabad - 500004.

Place: Hyderabad
Date: 16th July, 2013



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

