

Ref: IRDAI/NL/ORD/MISC/092/04/2021

Order in the matter of M/s Bajaj Allianz General Insurance Company Ltd.

Based on the

- (i) Show Cause Notice (SCN) reference No. IRDAI/ADJ/BAGICL/02/2019-20 dated 1st November, 2019 issued by the Adjudicating Officer (AO) under Rule 4 of Insurance (Procedure for Holding Inquiry by Adjudicating Officer) Rules, 2016.
- (ii) Response of M/s Bajaj Allianz General Insurance Company Limited, (BAGICL or insurer) dated 7th July, 2020 to the aforesaid SCN.
- (iii) Submissions made by BAGICL before the AO during virtual Personal Hearing held on 22nd July, 2020.
- (iv) Inquiry Report dated 31st August, 2020 given by the AO.
- (v) Authority's letter dated 15th October, 2020 to BAGICL giving them an opportunity to make its submission on the Inquiry Report of AO.
- (vi) Submissions made by BAGICL during personal hearing held on 21st January, 2021 through video conference at 4:30 PM granted by Chairman of the Authority.

1. Background:

- 1.1. A focused inspection of M/s Bajaj Allianz General Insurance Company Limited was carried out by the Authority from 12th to 14th February, 2018, with specific emphasis on implementation of Motor Insurance Service Provider Guidelines (MISP Guidelines). The inspection, inter-alia, revealed that the insurer had been transacting motor insurance business through certain Automobile Dealers without appointing them as Motor Insurance Service Providers (MISP) to distribute and/ or service motor insurance policies. Based on the motor insurance premium register for the period 1st November, 2017 to 31st January, 2018, submitted by the insurer during the inspection, it was observed that the insurer had transacted the insurance business through automobile dealers who were not appointed as MISPs.
- 1.2. As the above action of insurer appeared to be in violation of Section 42D (8) of the Insurance Act, 1938, the matter was referred to the Adjudicating Officer under Sec. 105C of the Insurance Act, 1938 on 29th January, 2019. The other findings of the inspection report were concluded in the order dated 13th September, 2019.

- 1.3. The Adjudicating Officer issued a show cause notice (SCN) dated 1st November, 2019 to the insurer. The insurer vide its letter dated 7th July, 2020 submitted the response to the SCN. As per the request of the insurer, the AO granted them a personal hearing on 22nd July, 2020.
- 1.4. The Adjudicating Officer submitted the inquiry report to the Authority on 31st August, 2020, recommending a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) under section 105C of the Insurance Act, 1938.
- 1.5. The inquiry report of the Adjudicating Officer was forwarded to the insurer vide letter dated 15th October, 2020. The insurer replied through its letter dated 6th November, 2020 and sought a personal hearing, which was granted on 21st January, 2021.
- 1.6. On behalf of the insurer, Shri Tapan Singhel, MD & CEO, Shri Ramandeep Sahni, CFO, Shri Aditya Sharma, Head-Motor Business, Shri Gurneesh Khurana, Head of Motor LoB and Shri Onkar Kothari, Company Secretary & Compliance Officer were present in the hearing. From IRDAI, Shri Randip Singh Jagpal, CGM (Intermediaries), Smt. Yegnapriya Bharath, CGM (Non-Life), Shri K. Mahipal Reddy, GM (NL) and Shri A. Rama Sudheer, Manager (NL) attended the hearing.
- 1.7. The violation stated in the SCN dated 1st November, 2019, submissions of the insurer in reply to the SCN, analysis and recommendation of the AO, the written submissions of the insurer and submissions during personal hearing held on 21st January, 2021 have been carefully examined in arriving at the decision given below.

2. Charge:

Violation of Section 42D (8) of Insurance Act, 1938:

- 2.1. As per Sub-section (8) of Section 42D of the Insurance Act, 1938: *`Any person who acts as an intermediary or an insurance intermediary without being registered under this section to act as such, shall be liable to a penalty which may extend to ten lakh rupees and any person who appoints as an intermediary or an insurance intermediary or any person not registered to act as such or transacts any insurance business in India through any such person, shall be liable to a penalty which may extend to one crore rupees`.*

2.2. BAGICL had been transacting motor insurance business through automobile dealers without appointing them as Motor Insurance Service Providers (MISP) to distribute and / or service motor insurance policies of automotive vehicles sold through it in violation of Section 42D (8) of Insurance Act, 1938. The motor insurance premium register from 1st November, 2017 to 31st January, 2018 revealed that the insurer has transacted such insurance business.

3. **Summary of Insurer's submissions to SCN:**

3.1. The insurer has submitted that the subject matter of SCN dated 1st November, 2019, has already been examined and concluded by the Authority. The company should not be subject to double jeopardy.

3.2. The insurer cited the provisions of Section 42D (8) & (9) and 2 (10) (A) – [which is erroneously mentioned instead of 2 (10B) of Insurance Act, 1938], Section 2 (1) (f) of the IRDA Act, 1999, MISP Guidelines 4(a) and IRDAI (Payment of commission or remuneration or rewards to insurance agents and insurance intermediaries) Regulations, 2016 and submitted that they believe MISPs do not come under the purview of Section 42D (8) & (9) of Insurance Act, 1938 and the violations with regard to MISP Guidelines if any, do not fall within the ambit of Section 105C of Insurance Act, 1938 requiring the adjudication process.

3.3. The Company had arrangement for sharing of infrastructure facilities with numerous motor dealers. At the commencement of the MISP Guidelines, such arrangements had to be terminated to comply with the requirements of MISP Guidelines. However, the services for the customers could not be affected. Stopping the sourcing of business from motor dealers until they complete all the compliances under MISP Guidelines would have been a disservice to the customers and prejudicial to the interest of the policyholders. The insurer submitted that the dealers referred to in Annexures to SCN were only enrolled and not appointed as MISPs for pending compliance with other requirement of MISP Guidelines but transacted motor insurance business through them. Further, the insurer submitted that subsequent to enrolment as such, engagement of a few automotive dealers was terminated due to their unwillingness to pursue their appointment as MISPs.

4. **Analysis and Recommendation of Inquiry Report:**

- 4.1. The AO in the inquiry report has clarified that the contention of insurer that the present matter has already been examined by the Authority vide its order dated 13th September, 2019 is incorrect. While other issues emanating from the inspection report dated 12th April, 2018 were dealt with in the aforementioned order, observation no. 9 of the inspection report which is the basis of the Adjudicating proceedings was not concluded therein.
- 4.2. As per the inquiry report of AO, the automobile dealers not licensed as MISPs were appointed by BAGICL for intermediation of insurance business. The contention of the insurer that the period from 31st August, 2017 to 31st October, 2017 was not sufficient for seamless migration to new distribution framework is not tenable. That the MISP Guidelines would come into force on 1st November, 2017 was known in advance to all general insurers. The attempt of the Insurer to make a distinction between 'enrollment' and 'appointment' only obfuscates the matter, considering the fact that business was sourced through these entities without appointing them as MISPs.
- 4.3. The AO after considering the facts and circumstances of the case and analyzing the factors of disproportionate gain or unfair advantage through the act of non-compliance by the insurer, loss to the policyholders and repetitive nature of the non-compliance, has recommended a penalty of Rs. 10,00,000 /- (Rupees Ten Lakhs only) under section 105C of the Insurance Act, 1938 for violation of Section 42D (8) of Insurance Act, 1938.
5. **Summary of Insurer's submissions on Inquiry Report of AO and during Personal Hearing:**
 - 5.1. The insurer reiterated that the industry was given an extremely short time of two months to overhaul existing arrangements to bring automotive dealers in line with MISP Guidelines. Despite best efforts by BAGICL and the dealers, there were still some automotive dealers who had initiated the appointment process with BAGICL but had not been appointed by BAGICL as MISPs by the due date of 1st November, 2017 due to pending requirements. During this period the dealers would not take on any full responsibility or obligations of an MISP but would continue introducing customers to BAGICL. However, BAGICL ensured that no payments / incentives would be made to these proposed MISPs. The arrangement was intended to be for a very short transitional period of time. None of the proposed MISPs engaged in servicing of the policies of facilitation services for the policyholders or the insurer. They only involved in directing the prospects to BAGICL to avail motor insurance.
 - 5.2. The insurer further submitted that an auto dealer which has merely to introduce a customer to BAGICL without receiving any payment from BAGICL during the transitional phase surrounding implementation of the MISP Guidelines in

anticipation of being sponsored as an MISIP by BAGICL cannot be considered to have been intermediating or transacting insurance business within the meaning of Section 42D (8) of the Act. At best such dealer can be considered as introducer who is conducting this activity without any incentive from the insurer while in the process of obtaining appointment to act as an MISIP for the insurer.

- 5.3. The insurer has stated that the mere fact that BAGICL had designated certain internal 'IMD' codes for the concerned dealers to monitor the introductions made by the dealers cannot be construed as BAGICL having appointed the dealer as an intermediary or an MISIP. It is pertinent to note that such codes were not communicated to the dealers and were only for the internal use of BAGICL.
- 5.4. The insurer submitted that while the practice of proposed MISIPs introducing prospects may be seen as an irregular measure, this lasted only for a very short period of time spanning over three months when the dealers were in the process of complying with the requirements prescribed under the MISIP Guidelines.
- 5.5. The insurer stated that the practice of proposed MISIPs introducing customers was clearly in anticipation of their appointment by and continued long term relationship with BAGICL as MISIPs. The practice was duly discontinued once it became clear to BAGICL that the dealers did not wish to proceed as MISIPs and these introductions were stopped well before the inspection which was held in February, 2018. The insurer further stated that BAGICL has not acquired disproportionate gain or unfair advantage that is quantifiable by the amount of commission / fees held back in relating to business gained by BAGICL as a result of introductions of the proposed MISIPs.
- 5.6. During personal hearing, the insurer reiterated the written submissions in response to inquiry report of AO. In addition, the insurer confirmed that the business procured through these entities was stopped by 31st March, 2018 and submitted that the distribution fees were kept on hold. Further, the insurer submitted that Section 42D (8) of the Insurance Act, 1938 did not apply to MISIP in view of Authority's order issued to another insurer and read with definition of intermediaries in the Insurance Act, 1938 and IRDA Act, 1999.

6. **Decision:**

- 6.1. During the personal hearing, the insurer submitted that the above charge was already covered in the Authority's order dated 13th September, 2019 and the current personal hearing is third in sequence on the same subject. When asked to show under which of the thirteen charges in the order dated 13th September, 2019, the above violation was covered, the insurer could not furnish any satisfactory reply. The concern raised by the insurer in its letter dated 15th January, 2020 that the company should not be subject to double jeopardy has already been clarified in the inquiry report of AO and the point is also summarized in para 4.1 of this order.
- 6.2. Thus, the contention of the insurer that the charge has already been examined and concluded by the Authority is not tenable. The inspection finding pertaining to entities placing motor insurance business with the insurer without being appointed as MISPs is in violation of section 42D (8) of the Insurance Act, 1938 for which Adjudication Procedure under section 105C of the Insurance Act, 1938 is mandated. Accordingly, the due process prescribed under Insurance (Procedure for Holding Inquiry by Adjudicating Officer) Rules, 2016 has been followed.
- 6.3. The insurer has also pointed out that MISPs do not come under the purview of Section 42D (8) & (9) of Insurance Act, 1938 and the violations with regard to MISP Guidelines if any, do not fall within the ambit of Section 105C of Insurance Act, 1938 requiring the adjudication process.
- 6.4. According to the inspection report, BAGICL had been transacting motor insurance business through certain automobile dealers without appointing them as Motor Insurance Service Providers (MISP). The Guideline 3(f) of MISP guidelines defines MISP as an automobile dealer appointed by the insurer or the insurance intermediary to distribute and/ or service motor insurance policies of automotive vehicles sold through it. Through the introduction of Guidelines on MISP in 2017, the automobile dealers were permitted to distribute and service motor insurance policies on the basis of an agreement entered into between the insurer/intermediary and the MISP.
- 6.5. BAGICL has engaged certain automobile dealers to transact motor insurance business. It is evident that these entities here in question are not engaged as MISPs as there existed no agreement to that effect as required under MISP guidelines. Hence, the automobile dealers engaged by BAGICL in this instance are unauthorized to solicit and place insurance business. On a careful reading of section 42D (8) of the Insurance Act 1938, it is clear that the action of insurer attracts the provisions of Section 42D (8) which states that *any person who appoints as an intermediary or an insurance intermediary or any person not registered to act as such or transacts any insurance business in India through any such person, shall be liable to a penalty which may extend to one crore rupees.*
- 6.6. As per MISP guidelines, any automobile dealer as defined in guidelines 3(c) and one who does not attract any of the disqualifications as laid down in Section 42 of

the Insurance Act, 1938 shall be eligible to become a MISP. Considering that Section 42 of the Insurance Act, 1938 is applicable to MISPs for their eligibility, the provisions of section 42D (8) cannot be perceived as unenforceable in case automobile dealers are not appointed as MISPs and transact insurance business in the capacity of unauthorized persons. Indeed, MISP guidelines require that the MISP shall also comply with the provisions of the Insurance Act, 1938, the IRDA Act, 1999, the Regulations made there under, guidelines and circulars issued by the Authority from time to time.

- 6.7.** Section 42D (8) of the Insurance Act is meant to deal with unauthorized entities or persons engaged to transact insurance business. The focus of the section that any person not registered to act as such or transacts any insurance business in India shall not be overlooked while applying it to the instant matter. The said section not only covers any person not registered to act as such or transacts any insurance business in India but provides for stringent penalty for engaging them.
- 6.8.** If the above interpretation (para 6.3) of BAGICL is accepted, any insurance company could, with impunity, engage unregistered entities or persons to transact insurance business and would not be questioned under Section 42D (8) of Insurance Act, 1938. Such an interpretation would give the insurer unbridled license to misuse transacting insurance business through unregistered persons. Hence, the interpretation advanced by 'BAGICL' that Section 42D (8) read with Section 105C of Insurance Act, 1938, requiring the adjudication process is not applicable in this matter is misconceived and cannot be accepted.
- 6.9.** The insurer also argued that stopping the sourcing of business from motor dealers until they complete all the compliances under MISP Guidelines would have been a disservice to the customers and prejudicial to the interest of the policyholders. This cannot be a valid justification to transact insurance business with unregistered entities. It is noted that the insurer had agreements with 56 automotive dealers prior to commencement of MISP guidelines purportedly in terms of providing infrastructure facilities and these agreements were terminated by 31st October, 2017.
- 6.10.** Further, the argument advanced by insurer in para 6.9 does not hold for 34 automotive dealers listed in SCN as it is found that these dealers did not have any agreement even prior to 1st November, 2017 but they had been placing motor insurance business without being appointed as MISPs. All these 90 automotive dealers stood on equal footing as unregistered entities or persons in terms of Section 42D (8) of Insurance Act, 1938.

- 6.11.** The submission of the insurer that this arrangement with these automotive dealers was intended to be for a short transitional period also cannot be accepted, as no such transitional period was envisaged as per the Guidelines.
- 6.12.** Further, the insurer submitted that the distribution fee was held back. However, non-payment or withholding the distribution fee cannot be a justification for violation of provisions of Section 42D (8) of the Insurance Act, 1938 as these motor insurance business was transacted through unregistered entities / persons.
- 6.13.** The insurer expressed that their company was the first to be inspected and there was not enough time for them to put MISP matters in definitive order. In this regard, it may be appreciated that all general insurers were on the same plane for implementation of MISP guidelines effective from 1st November, 2017 and two months' time was available for implementation by all insurers as well. There is no reason to believe that the inspection findings would have been different whether it was conducted three months after commencement of MISP guidelines or at a later date as the material facts would have remained same irrespective of timing of inspection.
- 6.14.** In view of the facts and circumstances of the matter and for the reasons stated above, the insurer is found to have violated provisions of Section 42D (8) of the Insurance Act, 1938 from November, 2017 to January, 2018, by soliciting 2,214 motor insurance policies involving premium of Rs.1,44,61,677 through 90 unregistered entities.
- 6.15.** The insurer during personal hearing admitted that the transaction of insurance business through above unregistered persons continued till 31st March, 2018 which would further increase the number of insurance policies solicited and the amount of premium.
- 6.16.** The Adjudication Officer has recommended a penalty of Rs. 10,00,000 under section 105C of the Insurance Act, 1938.
- 6.17.** Considering the nature and quantum of violation of Section 42D (8) of Insurance Act, 1938. I concur with the recommendation of Adjudication Officer.
- 6.18.** Accordingly, in exercise of the powers vested upon the Authority under section 105C of the Insurance Act, 1938, a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) is hereby imposed on the insurer for violation of the provisions of Section 42D (8) of Insurance Act, 1938.

7. The penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) shall be remitted by the insurer by debiting the shareholders' account within a period of forty-five days from the date of receipt of this order through NEFT/RTGS (details for which will be communicated separately). An intimation of remittance of penalty shall be sent to Smt. Yegnapriya Bharat, Chief General Manager (Non-Life), IRDAI, Sy.no. 115/1, Financial District, Nanakramguda, Hyderabad-500032.
8. The order shall be placed before the Board of the insurer in the upcoming Board Meeting and the insurer shall provide a copy of the minutes of Board meeting to the Authority.
9. If the insurer feels aggrieved by this Order, an appeal may be preferred to the Securities Appellate Tribunal as per the provisions of Section 110 of the Insurance Act, 1938.

Place: Hyderabad
Date: 15th April, 2021

Sd/-
(Dr. Subhash C. Khuntia)
Chairman