



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

ORDER

Ref: IRDA/F&I/ORD/464.1/7B/F&A/RDL-31B/2010-11/128/2013-14 23rd September, 2013

Mr. Devinder Pal Singh,
Chairman & Managing Director,
Punjab & Sind Bank, Head office,
7th Floor, 21, Rajendra Place,
New Delhi - 110 008.

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 Punjab & Sind Bank (herein after referred to as “the Bank”/“the Corporate Agent”) bearing number 1784337 to act as a Corporate Agent of Aviva Life Insurance Co. Ltd. (hereinafter referred to as “the insurer”). 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 for the financial year 2011-12 by the insurer in accordance with IRDA circular no. IRDA/F&I/CIR/DATA/066/03/2012 dated 2nd March 2012, it was observed that the corporate agent has received payments from the insurer apart/over and above the permissible commission limits towards Rent for Infrastructure facilities and Advertisement & publicity. The Authority issued a Show Cause Notice to the Corporate agent on 8th February, 2013 for having violated Sec 40A (1) of the Insurance Act, 1938 read with clause 21 of the Guidelines during the financial year 2011-12.

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Details of the total payouts are as under:

₹ Lakh

Particulars/premium type		First year Premium	Single Premium	2nd & 3rd year premium	4th year premium & onwards	Total
(i)	Premium generated	2849.54	166.86	5944.67	2169.35	11130.43
(ii)	Max Commission allowed %	40%	2%	7.50%	5%	
	Max Commission allowed in Rs.	1139.82	3.34	445.85	108.47	1697.47
(iii)	Commission paid	537.96	3.32	203.71	72.86	817.85
(iv)	Total other payouts					1398.81
	Total actual payouts					2216.66
(v)	Excess paid by Insurer, received by Corporate Agent					519.19

*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 21st March 2013. It is mentioned therein that it had entered into an Infrastructure & facilities agreement with the Insurer with the objective to provide proper, timely, hassle free service to their policyholder-customers (herein after referred to as customers). Under the said agreement the Insurer would avail Infrastructure facilities service in order to protect and promote the corporate agent's customers interests. The insurer has decided to set up service points across all the branches of the bank in India which would be managed by the former's trained personnel for the purposes such as overseeing the sale of policies and verification of the application forms, helping customer for their service needs, claim settlement, resolution of customer complaints, collection of renewal premiums and general co-ordination. The infrastructure and facilities for the purpose of the agreement included work space, electricity, water and telephone in each branch of the bank during the business hours.

It is further mentioned in the response that the access fee received from the insurer under the infrastructure and facilities agreement is reasonable in view of the total cost to the Bank on its infrastructure across pan India branch network. The Bank as a corporate agent have to bear fixed cost/operational cost, make efforts, depute staff to garner insurance business and in case insurer's products are not accepted by bank customers, the core business of the bank is affected as it had deployed its resources for insurance business. They were also given to understand by the insurer that payouts on infrastructure facilities have been transparently

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reported to IRDA from time to time. The said infrastructure and facilities fee does not fall in the purview of clause 21 of Guidelines and Sec 40A (1) of the Act as it is not linked to level of premium collected by the insurer.

An opportunity for personal hearing was accorded to the corporate agent on 2nd August 2013 on its request. Accordingly, Mr. G.S.Dhall, General Manager, Punjab & Sind Bank represented the corporate agent during the personal hearing.

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, the Regulations 2002 and 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. 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".
- c. 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".
- d. As per regulation on code of conduct i.e. 9 (2) (iii) of IRDA (Licensing of corporate agents) Regulations 2002,, "every corporate 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".
- 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".

In addition to the above, as per the following provisions of the Regulations 2002, it is obligatory on the part of the corporate agent to give adequate information to the prospects

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about the insurer / the insurance products of the insurer with whom it is tied up and also of it being corporate agent of the Insurer:

- a. Regulation on code of conduct i.e. 9(2)(i)(a) of Regulations 2002, “identify itself and the insurance Company of whom he is a representative”.
- b. Regulation on code of conduct i.e. 9(2)(i)(c) of IRDA of Regulations 2002, “disseminate the requisite information in respect of insurance products offered for sale by the insurer and take into account the needs of the prospect while recommending a specific insurance plan”.

The corporate agent has mentioned that it was given to understand by the insurer that payouts on infrastructure facilities have been transparently reported to IRDA from time to time. This reasoning is not tenable. In this regard, the Authority hereby reiterates its stand clarified vide circular no. GEN/CIR/018/May-04 dated 24th 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.

It was further observed that the corporate agent in its annual report for the financial year 2011-12 has disclosed payments received towards infrastructure facilities as fee received from Bancassurance business. This indicates that the same was nothing but disguised commission. While total premium income to total other payouts / total payouts ratio were analyzed for the financial years 2006-07 to 2011-12; it was observed that as the total premium income has grown year on year, the other payouts have also grown. This means that the other payouts had a positive correlation with the total premium income and cannot be deemed independent of business procured. Thus the total payouts made by the insurer and received by the corporate agent during the financial year 2011-12 are in violation the limits prescribed in Sec 40A limits.

Clause 21 of Corporate Agents Guidelines reads as “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) which again shall be

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shared and be reasonable. However, insurer has paid considerable amounts to the corporate agent towards infrastructure arrangements.

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 Sec 40A (1) of the Act read with clause 21 of the Guidelines .

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 Sec 40A (1) of the Act read with clause 21 of the Guidelines.”

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

Place: Hyderabad
Date: 23rd September, 2013


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