



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

Ref: IRDA/Life/SBI Life/OIR-SCN/292 (6)

20th October, 2014

Mr Arijit Basu,
Managing Director and CEO,
SBI Life insurance Co. Ltd
Natraj, M.V. Road,
Western Express Highway Junction,
Andheri (East),
Mumbai – 400 069

Dear Sir,

Re: Reply to Representation dated 2.11.2012 under Section 34 (2) against Directions dated 05th October, 2012 issued under Section 34 (1) of the Insurance Act, 1938

Reference is invited to your Company's letter Ref. No: SBIL/66/2012-13 dated 02nd November, 2012 forwarding the application seeking the cancellation / modification / review of the Directions Ref No. IRDA/ORD/Misc/228/10/2012 dated 05th October, 2012 issued by the Authority under Section 34 (1) (b) of Insurance Act, 1938.

BACK GROUND: During June, 2008 onsite inspection was carried out on your life insurance company. It was observed in the Inspection that the payment of reimbursement of group administrative expenses to various master policy holders was considered as the violation of Clause C – 4 of Group Insurance Guidelines dated 14th July, 2005. It was also observed that in violation of Clause C-4 of Group Insurance Guidelines an amount of Rs 204.71 Crores were paid by your company to 14 Master Policy Holders. After due process, the Order Ref:IRDA/Life/ORD/Misc/158/07/2011 dated 08th July, 2011 was issued by the Authority imposing a penalty of Rs 70 lacs for violation of Clause C – 4 of Group Insurance Guidelines. It was clarified in the said order that the said penalty was imposed without prejudice to the action that the Authority may further take. On considering the submissions made vide your Company's letter dated 30th March, 2012 in response to the Notice dated 09th March, 2012 and also based on the submissions in the personal hearing dated 09th May, 2012, Authority under Section 34 of the Act issued Order Ref No. IRDA/Life/ORD/Misc/228/10/2012 dated 05th October 2012 and issued directions under Section 34 of the Act directing your company to distribute the wrongful payments of Rs 84.31 Crores (made from November, 2007 to August, 2009) to members / beneficiaries of the respective group insurance policies. Now, your company forwarded a representation dated November 02, 2012 under Section 34 (2) of the Insurance Act, 1938.

The following are, inter alia, the gist / substance of pleas preferred therein.

- a. The Notice to Show Cause issued by IRDA asked the company to show cause as to why the Authority should not pass directions for recovery of the monies so paid to Master Policy Holders (MPHs), while the directions require the company to refund amounts to policyholders. Had it been revealed upfront to the company, it would have made appropriate submissions.
- b. Show Cause Notice (SCN) and Directions issued did not explain how the payments made were detrimental to the interests of the policyholders.
- c. Basis of assumptions made by the Authority are not disclosed either in the SCN or in the directions.
- d. Directions are contrary to the principles of Natural Justice.
- e. Since directions are retrospective in nature, they fall outside the purview of IRDA.
- f. The differential treatment meted out to various payments made during two different periods of (1) between July 2005 to November 2007 and (2) after November, 2007 is unusual.
- g. Company's interpretation of applicability of Group Guidelines is justifiable.
- h. There is no separate commission paid to the Master Policy Holders majority of whom are Corporate agents and 2% commission could have been validly paid to them.
- i. As Clause C (4) permitted MPHs to collect fee from Members of the Group Insurance up to January 04, 2011 and MPHs did not collect the same, consequently administration fee was paid, the same is not detrimental to the interests of Policyholders.
- j. Shareholders were not given any opportunity to show cause as to why the Directions which adversely affect them should not be issued and the Directions can only be issued under Section 34 of the Act to an Insurer as defined in Section 2 (9) of the Act.
- k. Directions are difficult to implement and contrary to law.

As sought by your company a personal hearing was also accorded on 04th December, 2013 which was attended by the then CEO Mr Atanu Sen and other team members. The submissions made in the representation dated 02nd November, 2012 and those that are made during the personal hearing were given a careful consideration as stated hereunder.

- a. It was represented that the Notice to Show Cause issued by the Authority asked your company to show cause as to why the Authority should not pass directions for recovery of the monies from Master Policy Holders (MPHs) whereas the final directions issued required it to refund amounts to policyholders. It was also contended, that if this had been revealed in the notice the company would have made appropriate submissions.
 - i) On examining the representation, it is to state that directions are issued by the Authority after taking into consideration, the submissions of your company and its express inability to recover the amounts from the Master Policy Holders. Further, the Authority has the prerogative of giving such directions as considered necessary in the interest of the policyholders. Therefore, the Authority is of the considered view that the directions to distribute, the administrative charges wrongfully paid,



to the members of group insurance policies are not extraneous to the Show Cause Notice.

- b. It was submitted by your company that in the Show Cause Notice (SCN) as well as the Directions issued, the Authority did not explain how the payments made were detrimental to the interests of the policyholders. It is further contended that the basis of assumptions made by the Authority is not disclosed either in the Show Cause Notice or in the directions.
 - i) In this regard, it is stated that any violation of the Authority's Regulations / Guidelines is ipso facto detrimental to the policyholders' interest as the Guidelines are framed keeping the objective of protecting the policy holders interest in the mind. Also it was categorically mentioned in the notice dated 09th March, 2012 that the action of your company is in violation of Clause C (4) of the Group Insurance Guidelines dated 14th July, 2005 and even opportunity was given to your company to prove that there was no violation of guidelines of the Authority
- c. The representation of your company that the directions are contrary to the principles of Natural Justice, cannot be considered for the reasons that the company was given every opportunity for presenting their submissions and a personal hearing was also accorded on 09th May, 2012 and submissions made therein by the company are also considered.
- d. With regard to submissions in the representation that directions fall outside the purview of IRDA it is clarified that the Authority, while exercising its power under Section 34 of the Act can issue any directions to prevent the continuation of adverse consequences of the financial loss caused to the policy holders and also issue direction to make good/ rectify the financial loss by way of redistribution.
- e. On the submissions that issuing directions under Section 34 of the Act, after imposing a penalty of Rs 70 lacs for the same contravention is double jeopardy, it is considered that issuing directions for re-distributing the monies amongst the affected policyholders shall not be regarded as a penalty. Further it was already made clear in the orders dated 08th July, 2011 that the penalty was without prejudice to any further actions the Authority might take.
- f. The submissions of your company that Clause - C(4) of Group Insurance Guidelines permitted Master Policy Holders to collect fee from Members of the Group Insurance up to 04th January, 2011 and MPHs did not collect the same, instead administration fee was paid which is not detrimental to the interests of Policyholders is not acceptable. To this submission it is stated that as per the guidelines the collection of any service charges by the Master policy holders would have been with prior intimation to members and any non-collection of service charges will not justify wrongful payments made by your company in the name of "*administrative fees*".
- g. The submissions of your company that the Directions under Section 34 of the Act can only be issued to the Insurers and that these directions contemplate

action to be taken against the shareholders who were not given any opportunity of being heard are also examined. In this regard, it may be noted that the approach of your company to distance itself from the shareholders fund is not acceptable. The directions in fact are issued to your company itself which is a juristic entity and which is responsible for adhering to the directions of the Authority and to make good the said amount out of the shareholder's fund which is part of the insurance company.

Other points forming part of this representation which were already submitted earlier by the Life Insurer have also been examined now and no new mitigating factors are found.

In the light of the above, the Authority did not find any mitigating factors to consider either in the submissions made in the personal hearing or in the representation preferred under Section 34 (2) of the Act and therefore the representation preferred under Section 34 (2) of the Act is rejected and accordingly disposed off. Your company is hereby directed to immediately implement the directions Ref No. IRDA/Life/ORD/Misc/ 228/10/2012 dated 05th October, 2012 of the Authority and submit a compliance report within thirty days from the date of this letter.

Yours faithfully,



(T S VIJAYAN)
CHAIRMAN