



भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY OF INDIA

Ref: IRDA/F&A/ORD/EMT/132/07/2016

Order

Expenses of Management (EoM) incurred in excess of the prescribed limits-contravention of the provisions of Section 40B of Insurance Act, 1938 read with Rule 17D of the Insurance Rules, 1939 and Section 102 of Insurance Act, 1938.

Ref:

1. EoM Statements submitted to the Authority for the financial year 2014-15
2. IRDAI letter 446/11/F&A/EML/2014-15/94/2015-16 dated 29th October 2015
3. Insurer's reply letter reference EXL/REGL/103/2015-16 dated 30th November 2015
4. IRDAI Show Cause Notice 446/11/EML/F&A/2014-15/213/2015-16 dated 28th March 2016
5. Insurer's reply letter reference EXL/REGL/10/2016-17 dated 19th April 2016

(1) The Insurance Regulatory and Development Authority of India (herein after referred to as "the Authority") issued the certificate of registration bearing No. 114 to Exide Life Insurance Co. Ltd. (herein after referred to as "the insurer") on 2nd August 2001 to carry on the business of Life Insurance in India in terms of Section 3 of the Insurance Act, 1938. In terms thereof, the insurer is subject to the terms and conditions of the certificate of registration and is required to abide by the provisions of the Insurance Act, 1938 (herein after referred to as 'the Act'), the Insurance Regulatory and Development Authority Act, 1999, and other directions issued by the Authority from time to time by way of circulars and/or guidelines.

Charge:

(2) The Insurer was in exemption period as regards compliance with prescribed limits of Expenses of Management (EoM) under Section 40B read with Rule 17D until the year 2006-07. Post exemption period, the insurer has been non-compliant with the EoM limits and was administered first warning under Section 64K (2) of the

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Insurance Act, 1938 vide IRDAI's Order reference IRDA/F&A/WRN/EMT/184/11/2010 dated 18th November 2010.

- (3) Subsequently, the non-compliance with EoM limits continued and the insurer sought additional time for compliance. The Authority, vide letter dated 2nd May 2013, had given time upto end FY 2013-14 to ensure compliance. On further request of the insurer, the time period was later extended by one more year, i.e., FY 2014-15 vide the Authority's letter dated 13th February 2014. The insurer was also directed that in the absence of compliance by end FY 2014-15, such excess amount shall have to be borne by the shareholders by charging it to P&L account.
- (4) From the EoM statement filed for FY 2014-15, it is observed that EoM was 136.03% of the prescribed limit and hence the insurer was not compliant with the prescribed limits under Section 40B read with Rule 17D. As observed from the disclosures under 'notes to accounts' in the Annual Report of FY 2014-15, the insurer has defied the directions of the Authority by not charging the excess amount of prescribed EoM levels to shareholders account.
- (5) The Authority communicated the findings to the insurer vide letter dated 29th October 2015 and sought explanation for non-compliance. The insurer submitted its response vide letter dated 30th November 2015. The Authority examined the reply of the insurer and issued Show Cause Notice vide letter dated 28th March 2016. The insurer submitted its reply to the Show Cause Notice vide letter dated 19th April 2016. The insurer has not requested for a personal hearing. As such, final decision in this matter is being given based on the records available and considering various written submissions of the insurer till date.
- (6) Submissions of the insurer are as under:
1. It was never their intention to defy any of the directions. Disclosures made in the Annual Report for FY 2014-15 were in spirit of maintaining utmost transparency on the expense position of the insurer. (vide letter dated 30th November 2015)

2. The insurer endeavours to ensure that the interest of the policyholders is protected and they get reasonable return on their investments. Bonus in line with the targeted bonus as per product file and use are declared with adequate support of the shareholders. (vide letter dated 19th April 2016)
3. The insurer has managed the PAR fund prudently and has kept the interest of the policyholders protected. It has been requested that their submissions may be viewed leniently. (vide letter dated 19th April 2016)

Decision:

(7) The Authority after considering various submissions of the insurer is of the following view:

1. As seen from the EoM statements filed with the Authority for the FY 2014-15 EoM of the insurer was 136.30% of the prescribed limits. Therefore, shareholders of the Insurer should have borne the excess of the prescribed limits by charging the excess to P&L account, as per the directions of the Authority issued vide letter dated 13th February 2014. However, as observed from the disclosures in the Annual Report 2014-15 of the insurer, as under, the insurer has defied the directions of the Authority:

Note No. 29 of Notes to Accounts on Expenses of Management of the insurer reads as under:

"The Company was granted one year extension upto the financial year 2014-15 to comply with the limits of expenses of management as provided in Section 40B of Insurance Act, 1938 read with rule 17D of Insurance Rules 1939. In the letter dated February 13, 2014, IRDAI had stated that in case the Expenses of Management exceed the allowable limit in FY 2014-15 such excess amount shall be borne by the shareholders by charging it to Profit & Loss Account. In the current year, the Company has exceeded the limits for expenses of management as per Section 40B of the Insurance Act, 1938 read with Rule 17D of the Insurance Rules 1939.



The Company has articulated its expense position vis-à-vis business plans, constraints and also submitted to IRDAI vide their letter dated 2nd February 2015 that it would not be able to meet the requirements in the financial year 2014-15 and has requested for an extension. No reply has been received from IRDAI.

Subsequently, during the year the Insurance act, 1938 vide Gazette Notification dated 23rd March 2015 has been amended. Section 40B which governs the limits on Expenses of Management has been amended wherein it is provided that the limits on expenses of management shall be specified by the regulations made under the Insurance Laws (Amendment) Act 2015. Since notification of the fresh Regulations/amendments to the existing Regulations is expected to take some time, IRDAI has inter-alia advised companies to prepare expenses of management schedule as per existing Rule 17D.

In view of the above change in law, the excess amount over the limits has not been transferred to the Shareholders account."

2. IRDAI notes with concern that there is continuous violation of the provisions of Section 40B of the Insurance Act, 1938 read with Rule 17D of the Insurance Rules 1939 by the insurer, which will have an adverse effect on the insurer, so also on the policyholders.
3. Vide IRDAI's circular reference IRDAI/F&A/CIR/FA/059/03/2015 dated 31st March 2015, all insurers were advised inter alia, that they shall continue to comply with the provisions of Rule 17D of the Insurance Rules 1939 until further orders. Accordingly, the insurer is required to compute EoM limits as per Section 40B read with Rule 17D in the FY 2014-15. As the insurer was non-compliant with the prescribed limits, the excess of EoM limits should have been borne by the Shareholders by charging to P&L account. The insurer has not complied with the directions of the Authority in the matter, which is not acceptable. A mere disclosure of this non-compliance in the notes to accounts to the Annual Report

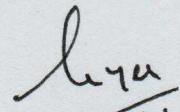
2014-15 does not absolve the insurer from the aforesaid non-compliance. Having regard to the facts of the case and the gravity of the violation committed by the insurer, the Authority, in exercise of powers vested under Section 102(b) of the Insurance Act, 1938 imposes a penalty of ₹ 5 lakh (Rupees Five Lakh only).

4. The penalty shall be remitted within a period of 15 days from the date of receipt of this Order by the Insurer through NEFT/ RTGS (details for which will be communicated separately). An intimation of remittance may be sent to Dr. (Ms) Mamta Suri, HoD (F&A) at the Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavan, Basheer bagh, Hyderabad 500 004.

The penalty amount shall be debited to shareholders' account.

5. The Insurer is further directed to charge the excess of EoM limits of FY 2014-15 to shareholders by debiting P&L account and confirm compliance within 15 days of receipt of this order. A detailed disclosure in the matter shall be made in the notes to accounts of the annual financial statements.
6. The Insurer is further advised to note that any future occurrence of defiance of the directions of the Authority, non-compliance of the provisions of Insurance Act, 1938, the IRDA Act, 1999 and the Rules and Regulations issued thereunder, as also the various directions issued by the Authority shall be viewed seriously and visited with appropriate action by the Authority.
7. The Insurer is further directed to strictly adhere to the Act, Regulations made there under, Guidelines and Circulars issued in this regard from time to time.

Place: Hyderabad
Date: July 12, 2016


(VR Iyer)
Member (F&I)