

Ref.: IRDA/F&A/ORD/FA/214/10/2022

**Order**

**In the matter of M/s Max Life Insurance Co. Ltd**

Pursuant to the issue of Show Cause Notice (SCN) dated 2<sup>nd</sup> September, 2022 to M/s Max Life Insurance Co. Ltd. for (i) allowing the shareholder Axis Bank Ltd., and its group companies viz., Axis Securities Ltd and Axis Capital Ltd to make undue profits/gains from purchase and sale of equity shares of Max Life Insurance Company Ltd., by violating the directions of the Authority thereby misusing the dual relationship of the bank as a shareholder and corporate agent and (ii) Misrepresenting to the Authority on compliance with the Directions issued vide letter dated 28<sup>th</sup> January, 2021, to obtain prior approval for transfer of shares to Axis Bank and its group companies.

**Factual Matrix**

1. Max Life Insurance Co. Ltd (herein after referred to as 'Insurer') has been granted certificate of registration bearing No. 104 to carry on the Life Insurance Business. Axis Bank Ltd., has been granted certificate of registration bearing No. CA00069 to act as a Corporate Agent for insurance companies by the IRDAI under sub-section (1) of Section 42D of the Insurance Act, 1938 read with Regulations 4 and 9 of IRDAI (Registration of Corporate Agents) Regulations, 2015 (Corporate Agent Regulations). The Axis Bank has been authorized to act as a corporate agent for Max Life Insurance Company. Axis bank is also an investor in the Max Life Insurance Co. Ltd.
2. As per the provisions of Section 6A(4)(b)(ii) and (iii) of the Insurance Act, 1938, read with Regulations 3(a), 3(b) and 4 of the IRDAI (Transfer of Equity shares of Insurance Companies) Regulations, 2015, every insurance company is required to seek prior approval of Insurance Regulatory and Development Authority of India (herein after referred as the 'Authority') for the transfer of shares exceeding 1% of its shareholding or if aggregate shareholding of a shareholder exceeds 5% of its paid up capital.
3. While processing the share transfer applications seeking approval under Sec 6A of the Insurance Act, 1938 and regulations made thereunder, the Authority ensures compliance with the applicable law and regulatory stipulations, directions, etc.,
4. The Authority received a proposal dated 16<sup>th</sup> March, 2020 for restructuring of the shareholding from the Insurer. It was modified by the applicant insurer several times within a period of 7-8 months. Finally, a proposal for restructuring, with three stages of transactions was submitted to the Authority in November, 2020.
5. The Insurer's proposal for restructuring of shareholding consisted of the following:

- a. The share swap transaction between Max Financial Service Limited (MFSL) and Mitsui Sumitomo International (MSI) wherein 20.57% of share capital of the insurer was exchanged or swapped for 21.87% share capital of the listed Indian promoter, MFSL.
  - b. Acquisition of 12.002% share capital of the Insurer by its corporate agent Axis Bank Ltd. and its Group of companies from its existing Indian promoter, MFSL (9.002%-Axis Bank, 2% - Axis Capital & 1% - Axis Securities).
  - c. The transfer of the remaining 5.167% share Capital (after the share swap in the first stage) held by the foreign promoter MSI, to Indian promoter MFSL.
6. The Authority, had granted approval for the first stage vide its letters dated 27<sup>th</sup> November, 2020. The Authority while processing 2<sup>nd</sup> Stage of restructuring of shareholding of the insurer, vide its letter dated 28<sup>th</sup> January, 2021 had directed the following:

*“The basis for determining or calculating the Fair Market Value(FMV) for allotment of shares, transfer of shares among the shareholders needs to be clear and needs to be uniformly followed. A suitable provision to this effect be incorporated in the RSHA and **any other related agreement**” (emphasis added)”.*

7. The Insurer vide letter dated 5<sup>th</sup> February, 2021 submitted that the basis of determination of fair market value of the equity shares shall be through a process run by two investment bankers and be uniformly followed across the agreement. The Authority vide letter dated 24<sup>th</sup> February, 2021 had granted approval for the 2<sup>nd</sup> stage of shareholding restructuring.
8. The insurer vide letter dated 14<sup>th</sup> May, 2021 had sought prior approval for transfer of 5.167% equity shares totalling to 9,91,36,573 equity shares of insurer held by MSI to MFSL, the third and final stage of the proposed restructuring.
9. While processing the above application, the Authority in order to examine the compliance with directions issued by it, had sought details of the prices at which the transfer of shares was registered by the Insurer after the issuance of directions dated 28<sup>th</sup> January, 2021. The Insurer vide letter dated 27<sup>th</sup> October, 2021 had inter-alia submitted the following:

S. No.	Date	Buyer	Seller	Shareholding in Max Life (%)	Number of Shares	Price Per Share (Rs.)	Total Consideration (Rs.) (in Cr.)
1	March 15 and 16, 2021	MFSL & MSI	Axis Bank	0.998	1,91,49,752	166.00	318
2	March 26, 2021	Axis Capital	MFSL	2	3,83,76,257	31.51	121

3	March 26, 2021	Axis Securities	MFSL	1	1,91,88,128	31.51	60
4	April 6, 2021	Axis Bank	MFSL	9.002	17,27,31,531	32.12	555
5	Proposed	MFSL	MSI	5.167	9,91,36,573	85.00	843

10. The transaction at SI.No.1 above, where Axis Bank is the seller, price per equity share of Insurer is at Rs.166 each as on 15<sup>th</sup> & 16<sup>th</sup> March, 2021, whereas for transactions at SI.No.2 to 4 above, where Axis Bank is buyer the price is Rs.31.51/Rs.32.12 per equity share of insurer (i.e., same equity share is valued differently based on whether Axis Bank is buyer or seller), as on 26<sup>th</sup> March, 2021. The gap between the buy and sell transactions is 10 to 11 days.
11. From the above table it was noticed that the insurer has not complied with Authority's direction and a Show Cause notice(SCN) dated 2.09.2022 wherein the insurer was charged for
- for not complying with the directions issued vide letter dated 28<sup>th</sup> January, 2021 and misrepresenting to the Authority to obtain its approval; and
  - under Section 102(b) of Insurance Act, 1938 for alleged violation of directions issued by the Authority vide its letters dated 5<sup>th</sup> February, 2016 and 28<sup>th</sup> January, 2021.
12. The insurer vide its response dated 5<sup>th</sup> Sept 2022 to the said SCN issued by the Authority, had requested for a personal hearing. Accordingly, the insurer was given a personal hearing on the 13<sup>th</sup> Sept 2022 at the office of the Authority at Hyderabad. On behalf of the Insurer the following were present -
- Mr. Prashant Tripathy-MD and CEO-Max Life Insurance Co. Ltd
  - Mr. Mohit Talwar-Director Max Life Insurance Co. Ltd/Max Financial Services Limited

On behalf of the Authority (IRDAI) following were present -

- Mr. Debasish Panda-Chairman
- Mr. Rakesh Joshi-Member-F&I
- Dr. Mamta Suri-ED-F&I
- Mr. Shardul Admane-GM-F&I
- Ms. A.Sageena-AGM-Legal
- Mr. G.Sivaramakrishna-AGM-F&I

The submissions made by the insurer in their written response to the Show Cause Notice, those made during the course of the personal hearing and the documents submitted by the insurer to the Authority in this regard have been considered by the Authority and accordingly the decisions on the charges are detailed below



### 13. Charges:

- a) The insurer, while registering the transfer of shares, has not complied with the directions of the Authority vide letters dated 28<sup>th</sup> January, 2021 and 05<sup>th</sup> February, 2016 and not followed its own submissions. The transfer of shares was not done at fair market value determined on a uniform basis, which has led to Axis Bank, a registered Corporate Agent of the Insurer along with its group companies, receiving undue monetary gain of significant amounts from such buy/ sale of equity shares. It is therefore, alleged that the transactions of transfer of shares in contravention of the directions issued by the Authority has resulted in circumventing the maximum limits of commission or remuneration or reward stipulated under IRDAI (Payment of Commission or Remuneration or Reward to Insurance Agents and Insurance Intermediaries) Regulations, 2016 read with reg. 18(1) of the IRDAI (Registration of Corporate Agents) Regulations, 2015.
- b) The insurer registered the share transfer in violation of the directions issued by the Authority vide communication dated 28<sup>th</sup> January, 2021. The said transactions of transfer of shares on substantially differential prices by the promoters of the insurer have resulted in passing on undue monetary gain to the Corporate Agent-Axis Bank, thereby alleged to have violated Reg. 18(1) of the IRDAI (Registration of Corporate Agents) Regulations, 2015 and payment of remuneration as specified by the Authority under IRDAI (Payment of Commission or remuneration or rewards to agents, intermediaries and insurance intermediaries) Regulations, 2016.
- c) Misrepresentation to the Authority on compliance with the directions issued vide letter dated 28<sup>th</sup> January, 2021 to obtain approval from the Authority for transfer of shares in terms of Section 6A of the Insurance Act, 1938.

14.1 In reply to SCN the insurer merely repeated its earlier submissions made in the correspondence exchanged with the Authority, more particularly, its letter dt 27<sup>th</sup> October, 2021, and in its reply dated 5<sup>th</sup> Sept 2022 to the SCN as well as during the personal hearing on 13<sup>th</sup> Sept 2022. The insurer reiterated its submissions that the transactions were subject matter of separate and prior arrangements and agreements between the parties for which separate approvals were sought the Authority. In the personal hearing also, the insurer reiterated the same. During the personal hearing the Authority clarified and reiterated that it does not approve the agreements between the parties in relation to the transactions in shares of an insurer but only the transactions of transfer of shares, in terms of the Sec 6A of the Insurance Act, 1938 and the Regulations made thereunder. The insurer admitted and accepted the same.

14.2. It was also clarified to the representatives of the insurer and accepted by the insurer that the directions issued by the Authority under Insurance Act, 1938 and Regulations made thereunder shall prevail over any private agreements between the parties, in respect of transactions of transfer of shares of an insurer under section 6A of the Insurance Act, 1938.

14.3 The Authority also pointed out that its letters dt 24<sup>th</sup> Dec 2020 and 28<sup>th</sup> January, 2021 to the insurer clearly stipulated that the insurer was required to comply with the directions of the Authority contained therein and that the Authority shall proceed with their/ its application for transfer of shares only on confirmation of compliance by them. Therefore, the submission of the insurer at para 2 (a) (iii) of their response to SCN that the Authority has provided 'comments and observations' to be incorporated in the Restated Shareholders Agreement (RSHA) is a misrepresentation of the facts to mislead the Authority.

14.4. During the hearing, the representatives of the insurer were asked whether they had complied with the directions at para 2 (b) of the Authority letter dt 28<sup>th</sup> January, 2021 regarding deletion of certain clauses of the RSHA. It was informed to them that they had complied with the same but they had *not fully complied* with the directions contained at para 2 (a) of the same letter. The representatives of the insurer were then asked as to why they had complied with one direction in the letter while they had not complied with the other direction, in the same letter which required that "...*The basis for determining or calculating the Fair Market Value(FMV) for allotment of shares, transfer of shares among the shareholders needs to be clear and needs to be uniformly followed*". They could not provide any response to the same.


14.5 The insurer has submitted in its response dt 5<sup>th</sup> Sept 2022 at para 2 (a) (iii) that the share purchase agreement dated 27<sup>th</sup> April, 2020, Option Agreement dated 23<sup>rd</sup> October, 2015 and the options agreement dated 3<sup>rd</sup> March, 2020 were not subject matter of the transactions contemplated under the RSHA and therefore, would not be covered under the other related agreements as referred in the 28<sup>th</sup> January 2021, letter of the Authority. The representatives of the insurer were pointed out that the Authority was informed only about the above referred agreements relating to transfer of shares by the insurer, in addition to the RSHA.

14.6 They were then asked that if the above referred agreements are not the ones referred by the Authority as related, as all the three above referred agreements were about transfer of shares of the insurer (Max Life), whether there were any other agreements which the insurer has not shared or informed to the Authority. The representatives of the insurer did not provide any response.

14.7 Further, the letter of the Authority vide ref: IRDAI/F&A-Life/MAX-Life/2015-16/LR dated 5<sup>th</sup> February, 2016 under para 3 States the following:

*"The Insurer and Axis Bank shall ensure that the transfer of shares under the current proposal as well as subsequent sale/transfer of shares by Axis Bank does not violate the provisions of Insurance Act, 1938 and the Guidelines applicable to Corporate Agents issued by the Authority, in any manner"* (emphasis added)

14.8 The representatives of the insurer were then specifically asked whether they can confirm that the parties, including Axis Bank have not violated or circumvented the applicable law 'in any



manner' as directed by the Authority in above letter. They could not provide any response to the same.

## **15. Consideration of Response and findings**

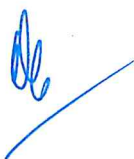
15.1 The insurer was not able to provide acceptable justification for not adhering to the directions of the Authority regarding amendments to be made to the RSHA and other related agreements in relation to the transactions between the parties consisting of shares of the insurer.

15.2 The insurer had furnished the other agreements, i.e. share purchase agreement of April 2020 and MSI options agreement of March 2020 upon being sought by the Authority. On perusal of the agreements as well as the earlier agreement with Axis Bank, i.e. October 2015 Option agreement, it was noticed that the basis for determining or calculating the Fair Market Value for the transactions in shares of the insurer (Max Life) was not uniform between the various parties. Therefore, in order to prevent any mischief and/ or abuse or circumvention of the applicable law, the Authority had clearly advised the insurer, vide its letter dt 28<sup>th</sup> January, 2021, to incorporate suitable provisions in the agreements to ensure uniform basis for determining or calculating the Fair Market Value of shares of the insurer and to make the necessary amendments to that effect in other related agreements.

15.3 All the three agreements between the various parties are concerned with the transactions in the shares of the insurer (Max Life). The subject matter of these agreements are transaction of shares of the insurer. Therefore, they are the related agreements referred to in the letter of the Authority dated 28<sup>th</sup> January, 2021.

15.4 The Authority had granted approval for the second stage of the restructuring proposal wherein Axis Bank and its group companies were to acquire 12.002% shares of the insurer, based on the confirmation of the insurer vide letter dated 5<sup>th</sup> Feb 2021 that they have made amendments to incorporate the directions of the Authority in order to ensure the uniformity in the basis for determination or calculation of Fair Market Value of the shares of the insurer. Authority had granted approval in good faith, based on the submissions/ confirmation by the insurer.

15.5 Subsequently, while verifying the compliance with the conditions and directions stipulated by the Authority for the second stage of the restructuring proposal, from the correspondence of the Insurer vide letter dated 27<sup>th</sup> October, 2021 it was noticed that 5<sup>th</sup> February, 2021 submissions to the Authority was clearly a misrepresentation by the insurer in order to obtain the approval for transfer of shares under second stage of restructuring.



## 16. Conclusion

16.1 From the submissions made by the insurer and the documents available on record of the Authority, it is evident that the Axis Bank has sold its stake of 0.998% shares of Max Life in March 2021 to MFSL & MSI at Rs 166/- per share. Subsequently, in March-April 2021, Axis Bank and its group entities acquired 12.002% shares from MFSL at price range of Rs 31.51 – Rs 32.12 per share. This is not in compliance with the directions issued by the Authority vide letter dt 28<sup>th</sup> Jan 2021 wherein it was clearly directed that the

*“The basis for determining or calculating the Fair Market Value(FMV) for allotment of shares, transfer of shares among the shareholders needs to be clear and needs to be uniformly followed. A suitable provision to this effect be incorporated in the RSHA and **any other related agreement**” (emphasis added)*”.

**16.2** The Insurer has not complied with the directions issued by the Authority vide letters dated 28<sup>th</sup> January, 2021, and dated 5<sup>th</sup> February, 2016. The said act of the insurer establishes that the Insurer has allowed the Shareholder Axis Bank Ltd and its group companies to make undue profits /gains from purchase and sale of equity shares of Max Life Insurance Company Ltd., thereby misusing the dual relationship of the bank as a shareholder and corporate agent.

**16.3** Further the Insurer vide letter dated 5<sup>th</sup> February, 2021 has misrepresented to the Authority regarding compliance with the directions issued by it vide letter dated 28<sup>th</sup> January, 2021 to obtain approval for transfer of shares to Axis Bank and its Group companies.

## 17. Decision

**Charge: Not complying with the directions issued by the Authority.**

**Decision:** The Insurer has not complied with the directions issued by the Authority vide letters dated 28<sup>th</sup> January, 2021, and dated 5<sup>th</sup> February, 2016. Therefore, a penalty of Rs 1 crore (Rupees One Crore only) is imposed on the insurer by invoking section 102(b) of the Insurance Act, 1938.

**Charge: Misrepresentation in order to obtain approval of the Authority.**

**Decision:** Insurer, vide letter dated 5<sup>th</sup> February, 2021 has misrepresented to the Authority regarding compliance with the directions issued vide letter dated 28<sup>th</sup> January, 2021 to obtain approval for transfer of shares to Axis Bank and its Group companies.

Therefore, a penalty of Rs 1 crore (Rupees One Crore only) is imposed on the insurer by invoking section 102 of the Insurance Act, 1938.

**Charge: Registering transfer of shares in violation of the directions of the Authority resulting in passing of undue monetary consideration of substantial amounts to corporate agent.**

**Decision:** By undertaking and facilitating the transactions of transfer of its shares between the parties in violation of the directions of the Authority, the insurer has circumvented the maximum limits of commission or remuneration or reward as stipulated in IRDAI (Payment of Commission or Remuneration or Reward to insurance Agents and Insurance Intermediaries) Regulations, 2016 read with Reg 18(1) of IRDAI (Registration of Corporate Agents) Regulations, 2015.

Therefore, a penalty of Rs 1 crore (Rupees One Crore only) is imposed on the insurer by invoking section 102(b) of the Insurance Act, 1938.


The total penalty amount of Rs 3 crore (Rupees Three Crore only) shall be remitted by the insurer by debiting the Profit and Loss Account within a period of 21 days from the date of issuance of this Order through NEFT/RTGS (details for which will be communicated separately). An intimation of remittance may be sent to Shri Shardul Admane, General Manager (F& I) at the Insurance Regulatory and Development Authority of India, Survey No.115/1, Financial District, Nanakramguda, Hyderabad 500032, email id [finance.life@irda.gov.in](mailto:finance.life@irda.gov.in)

The insurer is hereby directed that this Order shall be placed before the Board of the insurer at its next immediate meeting, so that the Board can take note of the violations and take necessary preventive steps to avoid such violations in future. The Authority may be provided with copies of extracts of the minutes of the said meeting.

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: 13<sup>th</sup> Oct - 2022

  
(Debasish Panda)  
Chairman