



ORDER of Insurance Regulatory and Development Authority of India under Section 102 of the Insurance Act, 1938 read with Section 14 of the IRDA Act, 1999 and Guidelines on Motor Insurance Service Provider dt 31.8.2017 and subsequent circulars

In the matter of M/s SMC Insurance Brokers Pvt Ltd.

**A. Background**

1. The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") issued Motor Insurance Service Provider guidelines (hereinafter referred to as MISP Guidelines) ref no. IRDA/ INT/ GDL/ MISP/ 202/ 08/ 2017 dated 31<sup>st</sup> August, 2017 after extensive consultations with the industry stakeholders. The objective of these guidelines was to recognise the role of automotive dealer in distributing and servicing motor insurance policies to have regulatory oversight over their activities connected to insurance. These guidelines were to come into force on 1<sup>st</sup> November, 2017. In the meantime, the Authority received requests for clarifications, extension of time, etc. The Authority vide its circular dated 1<sup>st</sup> November, 2017 clarified on various issues raised including one on creating a panel of insurance companies for selling motor insurance policies. The Authority vide another circular dated 1<sup>st</sup> November, 2017 informed the insurers and insurance intermediaries the launch of the MISP portal housed in IIB. The Authority in its communication of 17<sup>th</sup> October, 2017 advised all insurer and insurance intermediaries to follow the guidelines both in letter and spirit with regard to payment and receipt of fees, charges, by whatever name called.
2. Further clarification was issued by the Authority vide its circular dated 11<sup>th</sup> January, 2018 on creation of panel of insurers by insurance intermediary or MISP. The Authority categorically clarified that neither the insurance broker nor the MISP can create such a panel of insurers for selling motor insurance policies. It was also categorically stated in the same circular that no MISP or the insurance intermediary can enter into an agreement with an OEM which has an influence or bearing on the sale of motor insurance policies.
3. In the meantime, the Authority received complaints from policyholders against some of the MISP sponsored by insurers and insurance intermediaries are doing the following:
  - a) forcing motor customers to buy motor insurance policies of the insurers who are on their panel.
  - b) having uniform premium rates of different insurers for same motor vehicle
  - c) discriminating between insurance policyholder who has bought motor insurance from that motor dealer as against who has not bought from them

4. Some General Insurance Agents Association also complained to the Authority of the apparent conflict of interest in the role of MISP in selling insurance policies and servicing & repairing motor vehicles under the insurance policies sold by it, high claims ratio under the MISP channel, extra payments made to MISP by insurers, disparity of treatment to agents, etc.
5. The Authority also received complaints from insurers that insurance intermediaries have created panel of insurers which is in violation Guidelines on Motor Insurance Service Providers.

**B. Off-site inspection of SMC Insurance Brokers Pvt Ltd (SMC) by the Authority to check compliance of MISP Guidelines**

6. Since one year has elapsed from the issuance of the MISP Guidelines, it was decided to call for information from select insurance intermediaries who are mainly involved in selling and servicing motor insurance policies through the motor dealers. Accordingly, the Authority's vide letter ref no. IRDAI/ MISP/ UT-Brokers/ Aug 2018 dated 31<sup>st</sup> August, 2018 asked SMC Insurance Brokers Pvt Ltd (SMC) to furnish the following information:
  - a. Premium rates insurer-wise for different categories of vehicle insurance sold through MISP
  - b. Name of insurers empanelled by the insurance intermediary as on 31.7.2017 and 31.8.2018
  - c. Affidavit duly notarised by the PO confirming compliance of the following:
    1. Full compliance of MISP guidelines.
    2. Insurance programme implemented by the insurance intermediary is not linked to automobile sales by MISP either directly or indirectly
    3. OEM does not set targets or offer incentives to MISP in meeting sales targets.
7. SMC vide letter dated 10.9.2018 furnished the above information and also submitted a duly notarised affidavit confirming compliance of the MISP guidelines.
8. Based on the submission made, the Authority sought explanation on non-compliance of clause 5(f) (panel of insurers)/ clause 10 & 11 (code of conduct - same premium rate for different insurers) vide letter dated 25<sup>th</sup> September, 2018. Further methodology of calculating discounts, process flow chart with regard to pre-sales including issuance of insurance policies and post sales servicing and sample copies of motor insurance policies were sought. In addition, SMC was directed to share copy of the guidelines, circulars and correspondence exchanged on MISP with the Chairman of the Board of OEM's (Hero Motor Corp, Kawasaki, Yamaha, TVS Motors, Atul Auto, Escorts, Honda Scooters, Bajaj, Atul Auto, General Motors, Mahindra, Piaggio, Royal Enfield, Suzuki, TAFE Tractors, Toyota, BMW, Honda).
9. A reminder letter dated 18<sup>th</sup> October, 2018 was sent to expedite the submission of the necessary information. SMC furnished the above information vide letter dated 16<sup>th</sup> October, 2018 received by the Authority on 22<sup>nd</sup> October, 2019. As regards sharing the information with the Chairman of the Board of OEM, SMC submitted that it has not shared the information as according to it MISP does not cover OEMs. According to SMC, there is no role of OEM as far as insurance is concerned and as MISP is a





separate entity from OEM, neither MISPs nor SMC would like to have any involvement of the OEM. Such communication according to SMC may have adverse implications for dealers and may interfere with their relationship with the OEM. Additionally, according to SMC, it has no locus standi with the Chairman of Board of Directors of OEM when OEM has no role as per MISP guidelines.

10. On examining the submissions made by SMC vis-à-vis the information/ clarification sought, it is observed that SMC had not complied with the applicable provisions of the Authority's Regulations/ guidelines/ circulars. The Authority issued a Show Cause Notice to SMC vide its letter dated 10<sup>th</sup> July, 2019 laying out the charges for the violation of the MISP guidelines and the IRDAI (Insurance Brokers) Regulations, 2018. SMC submitted its response vide letter dated 27<sup>th</sup> July, 2019 and sought a personal hearing.
11. In view of the request of SMC, a personal hearing on the SCN was granted by Member (Distribution). The personal hearing was held on 21<sup>st</sup> October, 2019 in the office of the Authority in Hyderabad. The following officials were present during personal hearing:

On behalf of the Authority:

Shri Sujay Banarji – Member (Distribution)  
Shri Randip Singh Jagpal –CGM (Intermediary)  
Shri K. Srinivas – AGM (Brokers)  
Shri Indradeep Sah – Assistant Manager (Brokers)  
Shri Manoranjan Prusti – Assistant (Brokers)

On behalf of SMC Insurance Brokers Pvt Ltd:

Shri R P Bagga – Principal Officer  
Shri Pravin Aggarwal – Director  
Shri Vimal Goyal – Director  
Shri M. K. Garg – Ex-Director/ Advisor

12. Based on the charges levied against SMC in the SCN, response of SMC in its replies dated 10<sup>th</sup> September, 2018, 16<sup>th</sup> October, 2018 and 27<sup>th</sup> July, 2019, the submissions made by SMC during personal hearing on 21<sup>st</sup> October, 2019 and the reply dated 11<sup>th</sup> November, 2019 given by SMC as a follow-up of the personal hearing, the decision of the Authority with respect to each of the charges is as follows:

**I. Charge 1–**

**A. - Violation of clause 5 (f) of the MISP guidelines and subsequent clarifications dated 1<sup>st</sup> November, 2017 and 11<sup>th</sup> January, 2018 issued by the Authority**

- i) The Authority was informed by some general insurers stating that they are willing to enter into a service level agreement with SMC based on transparent and objective criteria. However, despite the insurance companies having made requests to SMC for empanelling them, SMC has neither

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responded nor empanelled them for selling motor insurance policies through their MISP's. SMC has therefore violated clause 5(f) of the MISP guidelines and subsequent clarifications dated 1<sup>st</sup> November, 2017 and 11<sup>th</sup> January, 2018 which states that that neither the insurance broker nor the MISP can create a panel of insurer for selling motor insurance policies.

**B. Submission of SMC:**

- i) SMC in its reply letter dated 10<sup>th</sup> September, 2018 to the Authority has enclosed an affidavit duly notarised stating that the MISP guidelines are being complied with in full. It has furnished names of general insurers that vary from minimum of 1 to a maximum of 4 depending upon the OEM who on its panel and sell motor insurance policies as against a total of 25 general insurers doing motor insurance business.
- ii) SMC in its reply dated 16.10.2018 stated that there are 6 insurers for Honda MISP's and 2 more have been added bringing to the total number of general insurers to 8. Whereas for "other than Honda" SMC submitted that the number of general insurers with whom it has a tie-up varies between 1 to 4 general insurers for the 20 OEMs. This is so because of two reasons i.e. a) option exercised by customers to select insurer where policy could be issued instantly; b) reluctance by many insurers to integrate with SMC IT systems. Further SMC stated that para 5(f) of the MISP guidelines states "one or more insurers" without specifying the exact number. Therefore, SMC is in compliance to the MISP Guidelines.
- iii) According to SMC, as MISP guidelines have ruled out any role for the OEM, it has been able to make MISP of over 20 insurers. However due to low number of MISP of these OEM's, the insurers are not inclined to do business of these OEMs. As per SMC's submissions it has no reservations of working with any insurer who falls within the transparent and objective criteria for insurers. According to SMC it also floated online inquiry to the insurers in respect of Honda four wheelers.
- iv) SMC in its reply letter dated 27<sup>th</sup> July, 2019 to the Authority has submitted the following:
  - a) SMC has denied violation of clause 5(f) and creation of a panel of insurers.
  - b) According to SMC as per their understanding of the clarification issued by the Authority, a "panel of insurers which is restrictive" means a Broker/ MISP cannot do business outside the insurers listed in the panel or customers cannot exercise option to take insurance from any insurer of his choice. SMC reiterated that they have not created any panel to restrict insurance companies. Instead a choice of other insurers is offered to customers by SMC through their manual system.
  - c) SMC has submitted the names of those insurers who have integrated their IT systems with SMC's IT systems. According to SMC integration of IT system of insurers with its IT systems does not amount to creation of a panel. As per SMC submission it has placed business for both Honda and others with insurers with and without IT integration.





- d) According to SMC, they are trying to expand integration of IT system with more and more insurers. This takes time, effort and resources. In case of "Honda", SMC has achieved integration with 10 insurers. There are 27 OEM consisting of 141 MISP for "other than Honda" and because of the low number and volume, SMC has integration with 5 insurers with 5 more in progress. According to SMC, integration takes 4-6 months and with limited IT resources, it is not feasible to have IT integration with all general insurers in one go or in a short period of time.
- e) According to SMC, it has not received requests from insurers for empanelment. Instead it has asked the Authority to provide the representation/ request/ complaint received from insurers. As per SMC, it is willing to increase the number of arrangements with insurers. According to SMC, creation of the panel is neither factual nor based on any evidence. SMC submitted that it has not received a single request or advice of an insurer desiring to have an arrangement and also not received any complaint.
- f) In the end SMC has sought guidance on MISP Guidelines and clarifications.
- v) During the personal hearing, SMC reiterated the above points. In addition, SMC submitted the following:
  - a) The business is being placed not only with the insurers who have IT integration with the MISP but also with the insurers who have no IT integration. The business is being placed through manual process where IT integration has not been done.
  - b) The customers are being given choice and it is not restricting their options. Further an SMS is sent to the customer about choice of insurers and choice of intermediaries for placing the insurance.
  - c) The process chart on how to proceed with non - integrated insurers and process flows of the MISP in dealing with such insurers.
  - d) written to many insurers for integration but did not get any response.
  - e) none of the regulations/ guidelines & clarifications state that choice of all insurers is mandatory and is to be offered to customers and that too through integration of IT systems.

**C. Observations on SMC reply and on the submissions made during personal hearing**

- i) SMC denied creating a panel and submitted that it works with all insurers. However, by their own admission has achieved IT integration with 10 insurers for "Honda" category and with 5 insurers for "other than Honda" category. From the submission made by SMC, it is noted that that the number of insurers in 2018 whose policies were sold using IT systems were 6 and during the course of the proceedings increased to 10 for "Honda" category. The number of insurers with whom IT integration has been achieved varies from a minimum of 1 to a maximum 4 general insurers in 2018 for "other than Honda" category. It is observed that there is no difference between creating panel and having IT integration with select insurers because the net result and outcome

is the same, i.e. exclusion of some insurers over others. SMC is therefore not in compliance of MISIP Guidelines even after 2 years of issuance and by their own submission will not be so in foreseeable future. SMC has stated forthrightly that it cannot comply with MISIP guidelines on grounds of IT integration.

- ii) SMC by expressing its willingness to increase the number of insurers with whom it will complete IT integration has proved that it is limiting the number of insurers, thereby creating a panel.
- iii) Member (Distribution) during the personal hearing made some observations and advised SMC to furnish the following information:
  - a) submit text of the SMS to the Authority sent by SMC to the customer about the choice of insurers and choice of intermediaries for placing insurance.
  - b) submit copies of correspondence done with the insurers for IT integration
  - c) furnish the statistics of the details of premium placed and number of policies issued separately for the insurers who have IT integration and who have no IT integration.

**D. SMC reply to Member (Distribution) advise and observations thereon**

- i) SMC submitted their response to Member (Distribution)'s observations vide their letter dated 11<sup>th</sup> November, 2019.
- ii) SMC submitted the text of the SMS sent to customers about choice of insurers and intermediaries for placing insurance. SMC has also submitted the Do's and Don't's for MISIP. It is observed that the SMS is intimation/ acknowledgment confirming the details of motor insurance policies sold to customer. The text of SMS has nothing of choice of insurers or intermediaries.
- iii) SMC has submitted copies of emails sent to 9 insurers in "Other than Honda" category. It is observed that not all insurers are covered. The response from the insurers is not included to know the outcome. The "Honda" vehicle category is not covered in the reply. The reply goes to show that SMC does not allow all insurers on their panel.
- iv) SMC has sold only 6 policies of Honda cars through the manual process. As against this the number of policies of insurers who are IT integrated with SMC are very high. It proves that the insurers who do not have IT integration are excluded from selling motor insurance policies, thereby creating a panel of insurers.

**E. Decision of the Authority**

- i) The Authority examined the charges levied against SMC in the Show Cause Notice issued to it. The Authority also perused the submission made by SMC. It also took note of the submission furnished during the personal hearing. It also advised steps to SMC and examined SMC's response to the advisory.
- ii) After taking into consideration all the facts placed before it, the Authority is of the view that:





- i) SMC has created a panel of general insurers for “Honda” vehicles and “Other than Honda” vehicles out of a total of 25 general insurers depending upon the make and model of different OEMs. Therefore, SMC created a panel of insurers through the process of IT integration.
- ii) Principal Officer of SMC submitted an affidavit that the MISP Guidelines are being complied with in full which is contrary and wrong to the facts presented above.
- iii) Member (Distribution) during the personal hearing advised SMC to share the information on the text of the SMS sent to the customers on the choice of insurers and intermediaries, correspondence exchanged with insurers on IT integration and the number of policies sold through manual mode versus IT system based mode. It is observed that the submissions of SMC prove that it created a panel of insurers in the guise of IT integration and denied servicing of other insurers
- iv) Guideline 5(f) of the MISP Guidelines and further clarification circulars issued by the Authority stipulates that if an insurance intermediary appoints the MISP, then it shall work for the number of insurers as allowed under the respective regulations governing the intermediary. Therefore, if a broker appoints a MISP, then the MISP shall work for all insurers, as the broker is allowed to work with all insurers.
- v) The submission of SMC regarding integration of IT system of the insurer with the Broker solely cannot be considered as the objective criteria for entering into agreement with the insurer for selling the motor insurance policies cannot be accepted. There was no objective and transparent criteria wherein the was able to establish on which they have entered into service level agreements with only 9 general insurers for selling motor insurance policies.
- vi) SMC being an insurance Broker shall have to enter into service level agreement with all the general insurers for providing better service to the policy holder. The SMC was not able to establish the objective and transparent criteria for entering into services level agreement with 9 General insurers instead of all general insurers which as a brokers they ought to have, and therefore is in violation of the MISP guidelines. By only providing the services of selected insurers for selling motor insurance policies the SMC has created a panel of selected insurers without any objective criteria. The creation of a panel of insurers by SMC will lead to undesirable market practices wherein the policyholders right to choose the insurer of his preference for the best rates available in the market is being adversely affected.
- vii) The above submissions by SMC establishes that SMC by having integration of IT systems with a few insurers has created a panel of insurers and has therefore violated clause 5 (f) of the MISP guidelines dated 31.8.2017 and subsequent clarifications dated 1<sup>st</sup> November, 2017 and 11<sup>th</sup> January, 2018.
- viii) In exercise of the powers vested in the Authority as per the provisions of the section 102(b) of the Insurance Act, 1938 read with Clause 15(15)(d) of the MISP Guidelines dated 31.08.2017, the Authority hereby imposes a penalty of Rs. 1 crore (Rupees One crore) for



the violation period exceeding 100 days which is from the date of implementation of the MISIP Guidelines i.e. 1<sup>st</sup> November, 2017 till date.

## II. Charge 2:

### A. Violation of

- i) Regulation 8(2)(o) of IRDAI (Insurance Brokers) Regulations, 2018;
- ii) Point No. 1, 2(a), 2(b), 3(e), 5(h) under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018.
- iii) Guideline 5(f), 6(a), 11(b), 11(c), 11(d), 11(e), 11(k), 11(l) & 11(m) of the MISIP guidelines dated 31.08.2017

a) The Authority is in receipt of President's Award Guide Book 2019 issued by Gaku Nakanishi, President & CEO, Honda Cars Ltd. The Guide Book is the dealer evaluation programme that covers multiple facets of business and maximizes dealer efforts in achieving highest level of performance across various parameters. The programme is linked to the rewards/ incentives which the dealer gets from the OEM. The Guide Book shows that of the 385 marks allocated to sales parameters, 40 marks are allotted for insurance penetration. The Guide Book gives the methodology of rewarding the dealer for retaining insurance policies issued through him. By having insurance penetration as one of the sales performance parameters and linking it to rewards, SMC has contradicted its assertion in the affidavit and also violated IRDA Circular no. IRDA/ INT/ MISIP/ 5/ 01/ 2018 dated 11<sup>th</sup> January, 2018 which states that no MISIP or the insurance intermediary can enter into an agreement with the OEM which has an influence or bearing on the sale of motor insurance policy.

By having allocation of marks for insurance penetration in the President's Award Guide Book makes MISIP force customers to buy motor insurance policies through them. SMC being the sponsor of the MISIP and being responsible for all omissions and commissions of MISIP has therefore violated the following provisions: i) inducing the customer and indulging in unfair business practice; ii) forcing the MISIP to make customers buy motor insurance policies from them and restricts choice of policyholder; iii) prejudicial to the interest of the policyholder and leading to unfair trade practices

b) The Authority is also in receipt of communication which deals with points not included in Service Level Agreement signed with KIA Motors. It covers among other things dealer reward scheme (volume based); domestic/ foreign trip; no discussion on loss ratio atleast for next 2 years; no insurance of KIA motors vehicles in insurers portfolio; all proposal from whatsoever channel of insurer to be insured in OEM MISIP code; deviations to be reported by insurers on quarterly basis; no policy cancellation in case of dealer cheque bounce; no withdrawal / reduction of business due to loss ratio on any model and/ or at any MISIP dealer, city, region, zone as per program, no communication to dealer on any subject w/o consent of SMC/ OEM;





no claim repudiation by any reason w/o consent of SMC/ OEM; accidental traffic diversion only to KIA workshop; credit card charges - 3% (mandatorily); business review – quarterly based on score card; own damage premium discount upto 60% for both Motor Package policy for private and commercial use with OEM/ SMC having the right to launch the program at a lesser discount, etc

By having understanding on points not included in SLA, SMC has acted against the interest of policyholder and stopped customer from getting lower premium rates that may be offered by insurers. By imposing above conditions, the customer is denied his rights and options to buy/ renew insurance policy from insurance intermediary and curtails choice of prospect/ policyholder which is prejudicial to interest of policyholder and leads to unfair trade practise. By having a cap on own damage premium discount SMC has not discharged his functions in the interest of the policyholder and therefore not conducted dealing with utmost faith and integrity nor acted with care and diligence. By having dealer reward scheme (volume based), no discussion on loss ratio for atleast 2 years, etc, SMC has violated MISIP Guidelines.

**B. Submission of SMC:**

- i) SMC in its reply letter dated 10.9.2018 to the Authority has enclosed an affidavit duly notarised that the OEM's do not set targets or offer incentives to SMC Insurance Brokers Pvt Ltd or to the MISIP's in meeting the sales target
- ii) SMC in its reply letter dated 27.07.2019 to the Authority has submitted the following:
  - a) the President's Award Guide Book is not a SMC document and they are not party to it. It has come to SMC's knowledge first time through SCN. SMC is not responsible for the action of Honda Cars Ltd (OEM) taken without their knowledge as they have no control over the OEM.
  - b) the Authority's circular dt 11<sup>th</sup> January, 2018 is an advice against entering into an agreement between broker/ MISIP with OEM. The Guide book is not an agreement and therefore SMC has not committed any violation.
  - c) the affidavit furnished to the Authority is correct as the Award Book does not refer to any targets or offer of incentive to SMC.
  - d) The clarification issued by Authority is advice/ advisory and not a rule/ regulation and therefore not binding on SMC.
  - e) no force was applied by MISIP to sell insurance policy. Further no customer complaint has been lodged. It is a presumption by the Authority that customer choice restricted through existence of a panel of insurers. The customers are offered a choice of insurers through IT system and through manual / back office system. Therefore, there is no violation of the MISIP Guidelines.

- f) With regard to KIA Motors, SMC submitted that there is no agreement signed between KIA Motors and SMC. SMC denied that the sheet of paper and "points not included in SLA" belong to SMC.
- g) During the personal hearing SMC submitted that there is no agreement entered by MISPs with the OEMs. The guidebook of OEMs is a common practice internationally and its main objective is to have highest level of their customer satisfaction. SMC submitted that out of the 28 parameters in the guidebook only two parameters pertain to insurance. SMC also submitted that they have only around 80% of the customers who have taken policies with them and this shows that they have been given choice and not forced to take insurance through MISPs.
- h) As regards the SLA with KIA Motors, SMC submitted that this is not a document signed by them with KIA motors or the general insurers. SMC was advised to submit copy of the agreement with the insurers.

**C. Observations on SMC reply and on the submissions made during personal hearing**

- i) SMC has submitted that the President's Award Guide Book is between the Honda (OEM) and the Dealer (MISP) and it has nothing to do with it. It is observed that the President's Guide Book is an agreement in the form of a guide book between Honda (OEM) and the dealer (MISP) in which the MISP has agreed to perform tasks for which he is rewarded, one of which is the sale and renewal of insurance policies. Since the MISP is sponsored by SMC, it is responsible for acts of omission and commission of the MISP. The MISP Guidelines do not allow OEM to set targets or offer incentives to MISP in meeting sales targets of insurance policies. By doing so the MISP and consequently SMC, being the sponsor of the MISP, has violated the MISP guidelines.
- ii) The submission of SMC that the Authority's circular of 11<sup>th</sup> January, 2018 is only an advisory and therefore have committed no violation is an incorrect interpretation. The Circulars of IRDAI are binding on the regulated entities, else there will be no purpose of issuing such circulars if they are not to be followed. The Circular dated 11<sup>th</sup> January 2018 is a clarification issued on MISP Guidelines and as such has to be read in harmony with MISP Guidelines 2017. Therefore, SMC has violated the MISP guidelines when the MISP agreed to the conditions contained in the President's Award Guide Book.
- iii) The assertion by SMC that they have not committed any violation by filing the affidavit that the MISP guidelines are being followed in full is wrong, because the Presidents' Award Guide Book 2019 (Term 1) issued by Honda Cars Ltd is dealer evaluation programme which gives methodology of rewarding dealer for retaining insurance policies issued through him.
- iv) There is no presumption on part of the Authority that customer choice is restricted by integrating IT systems of only few insurers and thereby creating of panel of insurers. The clarifications given by SMC bears that as only 6 insurance policies have been sold through the manual mode as against lakhs of policies sold through the IT integrated system. This is a clear case of IT





integration being applied to create a panel of insurers whose motor insurance policies are offered to the customers.

- v) As advised, SMC has submitted service level agreement between itself and one of the insurers with regard to KIA motors. The agreement is broadly in line with the conditions put in the MISIP Guidelines.

#### **D. Decision of the Authority**

- i) The Authority examined the charges levied against SMC in the Show Cause Notice issued to it. The Authority also perused the submission made by SMC. It also took note of the submission furnished during the personal hearing.
- ii) After taking into consideration all the facts placed before it, the Authority is of the view that:
  - a) The MISIP entered into an agreement with the Honda Cars Ltd (OEM) through the President's Award Guide Book (Term 1) which is a dealer evaluation programme and gives the methodology of rewarding dealer for retaining insurance policies issued through him. The marks under the programme are linked to the rewards/ incentives which the dealer gets from the OEM. By rewarding dealer for retaining insurance policies issued through him, the PO of SMC has contradicted its affirmations in the notorised affidavit and also violated MISIP Guidelines and circular no. IRDA/ INT/ MISIP/ 5/ 01/ 2018 dated 11<sup>th</sup> January, 2018.
  - b) By having allocation of marks for insurance penetration in the President's Award Guide Book makes the MISIP to force customers/ prospects buy motor insurance policies from them. Moreover, the MISIP offers motor insurance policies of those insurers whose IT systems are integrated with SMC portal thereby creating a panel of insurers. SMC being the sponsor of the MISIP and being responsible for all omissions and commissions of MISIP has therefore violated the following provisions:
    - i) 11(b) - force the prospect / policyholder to necessarily buy motor insurance policy through a particular insurance intermediary
    - ii) 11(c) - deny the prospect his rights and options to seek motor insurance policy or renewal of motor insurance policy from any insurance intermediary
    - iii) 11(e) - direct or indirect imposition of risk selection by insurers or curtailment of choice of the prospect/ policyholder
  - c) SMC has neither conducted its dealings with utmost good faith and integrity nor acted with care and diligence. SMC has therefore violated Regulation 8(2)(o), clause 1, 2(a),2(b),3(e), 5(h) of Schedule I - Form H - Regulations 30 - Code of Conduct - Insurance Broker of IRDAI (Insurance Brokers) Regulations, 2018.
  - d) By the above actions, the MISIP sponsored by SMC has violated the following guidelines:
    - (i) 11(k) - conduct its business in a manner prejudicial to the interest of the policyholder.
    - (ii) 11(l) - indulge in manipulating the insurance business.



(iii) 11(m) - indulge in unfair trade practices

Since under Guideline 6(a) SMC as sponsoring entity is responsible for all acts of omission and commission of MISIP, SMC has violated guidelines 11(b), 11(c), 11(e), 11(k), 11(l) & 11(m) read with 6(a) of the MISIP Guidelines dated 31.8.2017.

e) In exercise of the powers vested in the Authority as per the provisions of the section 102(b) of the Insurance Act, 1938 read with Clause 15(15)(d) of the MISIP Guidelines dated 31.08.2017, the Authority hereby imposes a penalty of Rs. 1 crore (Rupees one crore) for the violation period exceeding 100 days which is from the date of implementation of the MISIP Guidelines i.e. 1<sup>st</sup> November, 2018 till date.

### III. Charge 3:

#### A. Violation of

- i. Regulation 4 and Schedule I - Form A of IRDAI (Insurance Broker) Regulations, 2018
- ii. Point No. 1, 2(a), 2(b) and 3(e) under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018
- iii. Guideline 5(f), 6(a), 11(b), 11(c), 11(d), 11(e), 11(k), 11(l) & 11(m) of the MISIP guidelines dated 31.08.2017

a) SMC vide letter dated 10.9.2018 submitted a premium chart on the basis of which premiums are charged to the customers by insurers who have integrated through the broker IT system. It is observed that the premium being charged to the customer of different insurers is the same.

#### B. Submission of SMC:

- i) SMC in its reply dated 16.10.2018 have stated that the premium rates are decided by the insurers keeping in view various factors such as their guidelines, commercial considerations and ease of operations. According to SMC the insurers generally give a range of discount on OD premium. SMC has submitted that out of this range, it passes on the maximum discount to the customers whatever is agreed by insurers through the IT systems. According to SMC, it informs the prospect of the premium rates of different insurers and do not directly or indirectly control or interfere in determination of premium of policies.
- ii) SMC in its reply letter dated 27.07.2019 to the Authority has submitted the following:
  - a) The IRDAI (Insurance Broker) Regulations, 2018 and MISIP Guidelines do not state anything about the same or different premium rates to be offered to the prospect. In absence of causation and correlation between the two, the presumption that uniform premium rates quoted by insurers at their discretion as part of insurers marketing strategy cannot be part of appropriate package deal of price, terms and service from insurers.
  - b) They have performed their functions as laid down in Regulation 4 Form A of the IRDAI (Insurance brokers) Regulations, 2018. As per SMC, "appropriate cover and terms" is being





interpreted as “best terms, benefits and coverages” which in turn is linked to “uniform premium rates”. The coverage terms/ premium rates are in the domain of insurers & quoted by them. The brokers role is to give advice to customers about appropriate cover and terms. According to SMC there is difference between “best” and “appropriate” and also between “differential premium rates and appropriate terms. SMC is of the view that to discharge the function should the broker look for premium rate or overall interest of customer. It has to take into consideration package/ terms on a holistic basis. Therefore, the charge is levelled in general form without quoting and substantiating as to what part of functions is violated and in what form/ manner has SMC violated the function.

- c) Motor insurance policy is a standard product. There is no choice of different motor insurance products available. The point is not applicable in this case due to absence of choice of products. Further the code of conduct is from Brokers Regulations, 2018, whereas MISIP Guidelines has separate code of conduct for sponsoring entity, its employees and MISIP. Point 3 of MISIP Guidelines relate to “conduct in matters relating to sales practice”. There is no mention of degree of choice or providing comparison in terms of price, cover or service. Therefore, according to SMC Authority may not apply the Broker Regulations to MISIP business. Moreover, there are no customer complaints, premium rates are provided by insurers and MISIP has no role in determining the premium rates.
- iii) During the personal hearing SMC reiterated the above points. In addition, SMC submitted the following:
  - a) They have no role in fixing the premium rates. SMC also submitted post receiving show cause notice they wrote to the insurers to give rates afresh in view of the Authority’s observation. SMC submitted that they did not receive response from many insurers.
  - b) They do not have basis of advice to customers in a formal document. It is dynamic and not based on any fixed notions. SMC submitted that the basis of recommendations is done by MISIP on case to case basis, based on the experience on claims settlement.

**C. Observations on SMC reply and on the submissions made during personal hearing**

- i. On SMC’s submission that they have performed their functions completely it is observed that SMC has submitted that motor insurance policy is a standard insurance policy whose wordings are standardized is noted. However, each insurance company files the rates with the Authority. By informing the policyholder same rates uniformly across all the empanelled insurers reveals undue intervention by the broker in fixing the rates against the approved rates. As the terms/ wordings are standardized the premium quoted by insurers is same is not acceptable. There is no explicit and objective parameter to ascertain service. The broker being a representative of the customer, has a responsibility to ensure that he gets the best terms, benefits, coverages and render proper advice on appropriate insurance cover and terms. SMC has not ensured that the



customer gets the lowest premium rate for same terms, benefits, services. Therefore, SMC has not performed its functions as laid down in Point 1 - Functions of a direct broker given in Schedule I Form A under Regulation 4 of IRDAI (Insurance Brokers) Regulations, 2018.

- ii. It's a wrong assumption on part of SMC that since MISIP guidelines are issued, the IRDAI (Insurance Broker) Regulations, 2018 will not be applicable to Broker. SMC being a broker is subject to IRDAI (Insurance Broker) Regulations, 2018 and MISIP Guidelines.
- iii. SMC as per IRDAI (Insurance Broker) Regulations, 2018 is required to explain to the customer the degree of choice that products are on offer, provide comparison in terms of price, cover or service. SMC did not provide the comparison by offering products of all general insurers. Therefore, SMC violated the conduct in matters relating to clients relationship under Schedule I - Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018.
- iv. SMC is required to conduct dealing with clients with utmost good faith and integrity at all times, act with care and diligence. By not getting the best terms, benefits, coverages for the customer SMC did not conduct itself properly and violated conduct in matters relating to client's relationship under Schedule I - Form H dealing with Code of Conduct read with Section 42D (5)(g) and 42D (6) of the Insurance Act, 1938.

#### **D. Decision of the Authority**

- i) The Authority examined the charges levied against SMC in the Show Cause Notice issued to it. The Authority also perused the submission made by SMC. It also took note of the submission furnished during the personal hearing.
- ii) After taking into consideration all the facts placed before it, the Authority is of the view that:
  - a) SMC being a representative of the customer, has a responsibility to ensure that he gets the best terms, benefits, coverages and render proper advice on appropriate insurance cover and terms as per Point 1 – Functions of a direct broker given in Schedule- I, Form A under Regulation 4 of IRDAI (Insurance Broker) Regulations, 2018. By having a uniform rate across all insurers, SMC has not performed the functions of the direct broker and violated Regulation 4 of IRDAI (Insurance Broker) Regulations, 2018.
  - b) Further under Point No. 3 in conduct in matters relating to sales practice under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018 SMC is required to explain to the customer the degree of choice that products are on offer, provide comparison in terms of price, cover or service. By not explaining to the customer the degree of choice that products are on offer, providing the customer a comparison in terms of price, cover or service SMC has violated the conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018.





- c) In addition, under Point No. 2 in conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018 SMC is required to conduct its dealing with clients with utmost good faith and integrity at all times, act with care and diligence. By not getting the best terms, benefits, coverages for the customer SMC has not conducted its dealing with clients with utmost good faith and integrity, nor has it acted with care and diligence thereby violating the conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018 read with Section 42D (5)(g) and 42D (6) of the Insurance Act, 1938
- d) All the above submissions by SMC establishes that SMC has violated i) Regulation 4 of IRDAI (Insurance Broker) Regulations, 2018; ii) Point No. 2 of conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018; and iii) Point No. 3 of conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018.
- e) By having same premiums, discounts and add-on pricing the MISP sponsored violated the following guidelines: a) 11(d) - directly or indirectly control or interfere in determination of premium of policies; 11(k) – conduct its business in a manner prejudicial to the interest of the policyholder; 11(l) – indulge in manipulating the insurance business; 11(m) – indulge in unfair trade practices
- f) In exercise of the powers vested in the Authority as per the provisions of the section 102(b) of the Insurance Act, 1938 read with Clause 15(15)(d) of the MISP Guidelines dated 31.08.2017, the Authority hereby imposes a penalty of Rs. 1 crore (Rupees one crore) for the violation period exceeding 100 days, which is from the date of implementation of the MISP Guidelines i.e. 1<sup>st</sup> November, 2017 till date.

#### **IV. Charge 4:**

##### **A. Violation of**

##### **i. Section 102 of the Insurance Act, 1938, Regulation 49 of the IRDAI (Insurance Brokers) Regulations, 2018**

- a) SMC was directed, vide Authority's letter dated 25.09.2018, to share copy of the guidelines, circulars and correspondence exchanged on MISP with the Chairman of the Board of OEM's.

##### **B. Submission of SMC:**

- i) SMC in its reply letter dated 16.10.2018 submitted that it has not shared the information with the Chairman of the Board of OEM's as according to it MISP guidelines do not cover OEM's. Therefore, there is no role of OEM as far as insurance is concerned. According to SMC as MISP is a separate entity from OEM, neither MISP's nor SMC would like to have any involvement of the OEM. Such communication according to SMC may have adverse implications for dealers and may interfere with their relationship with the OEM. Additionally, according to SMC, it has no locus standi with the Chairman of Board of directors of OEM when OEM has no role as per MISP guidelines.
- ii) SMC in its reply letter dated 24.07.2019 to the Authority submitted that they have communicated the guidelines, the correspondence exchanged between SMC and the Authority on MISP with the Chairman of the Board of OEM's.
- iii) During the personal hearing SMC submitted that they have not received any response from any of the OEMs so far.

**C. Observations on SMC reply and on the submissions made during personal hearing**

- i. SMC has confirmed compliance of the Authority's direction.

**D. Decision of the Authority**

- i) The Authority examined the charges levied against SMC in the Show Cause Notice issued to it. The Authority also perused the submission made by SMC. It also took note of the submission furnished during the personal hearing.
- ii) After taking into consideration all the facts placed before it, the Authority accepts the submission of SMC and does not press the charge.

**C. Conclusion**

- i. SMC Insurance Brokers Pvt Limited is one of the large insurance broker having a dominant position in the selling and distribution of motor insurance in the country. It is part of the SMC group which is a diversified financial services company offering services across brokerage (equities, commodities and currency), investment banking, wealth management, distribution of third party financial products, financing depository services, insurance broking, clearing services, alternate investment fund and real estate advisory services. Therefore, as one of the top brokers in the motor insurance broking segment, SMC is seen as an ideal for other insurance brokers. In light of such expectations, SMC was expected to act diligently and with utmost care and responsibility giving no room for error. Unfortunately, SMC failed in complying with the MISP Guidelines which had been created to protect the interest of the policyholders and other stakeholders. This is evident from the penalties imposed for the violations of



various provisions of the MISP Guidelines. In order to ensure compliance with the MISP Guidelines and to improve governance in SMC, the Authority directs the SMC to undertake the following changes:

- a) dismantle panel of insurers and empanel all insurers on platform, have full integration with insurers computer systems, ensure premiums quoted to customers come directly from insurer systems without any intervention by the broker and report compliance within 2 months. In case any insurer does not wish to be part of the panel, the CEO of the general insurance company shall confirm the same in writing to the broker.
  - b) redesign the current system of seeking customer consent for purchasing the motor insurance policy in such a manner that the customer exercise choice of selecting the insurer through an OTP based system at the time of issuance of a new motor insurance policy and its renewal. The broker company shall complete the task in 6 months and report compliance.
  - c) submit a quarterly audit report from DISA/ CISA certified auditor that the electronic platform / portal complies with the requirements of the MISP guidelines and in no way interferes or places restrictions in the premium to be charged by insurers or in any way restricts / influences the choice of the customer
  - d) ensure compliance of Guideline 5(f) of the MISP guidelines and circular dated 1<sup>st</sup> November, 2017 and 11<sup>th</sup> January, 2018 and report compliance.
- ii. The Authority takes serious note that the affidavit submitted by the Principal Officer of SMC is contrary to the facts. Considering the seriousness of the issue, the Authority under Guidelines 15(d)(1) of MISP Guidelines directs that SMC shall not release performance incentives to the Principal Officer for one year from the date of this order. SMC shall submit compliance of this direction to the Authority.
  - iii. Based on above decisions in charge no. 1, 2 & 3 M/s. SMC Insurance Brokers Pvt Ltd., is hereby directed to pay a penalty of Rs.3,00,00,000/- (Rupees Three Crores only)
  - iv. The penalty of Rs 3,00,00,000/- (Rs. Three Crores) shall be remitted by SMC through NEFT / RTGS (details of which will be communicated separately) within a period of 15 days from the date of receipt of this order. An intimation of remittance by SMC may be sent to Shri. Randip Singh Jagpal, Chief General Manager (Intermediaries), IRDAI, Sy. No. 115/1, Financial District, Nanakramguda, Hyderabad, 500032.
  - v. If the Insurance Broker feels aggrieved by the above decision of the Authority, an appeal may be preferred to the Securities Appellate Tribunal as per Section 110 of the Insurance Act, 1938.

Place: Hyderabad

Date: January 8, 2020



(Sujay Banarji)

Member (Distribution)