



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

**ORDER**

Ref: IRDA/F&I/ORD/ 464.1/7B/F&A/RDL-31B/2010-11/66/2013-14

28<sup>th</sup> June, 2013

Mr. T.R. Ramachandran,  
Chief Executive Officer,  
Aviva Life Insurance Co. India Ltd.,  
Aviva Tower Sector Road,  
Opp: Golf Course, DLF Phase V,  
Sector 43,  
Gurgaon - 122 003.

**Levy of Penalty under Section 102 of the Insurance Act, 1938**

The Insurance Regulatory and Development Authority (herein after referred to as “the Authority”) issued a certificate of registration bearing No.122 to Aviva Life Insurance Co. India Ltd., (herein after referred to as “the insurer”) on 14<sup>th</sup> May 2002 to carry on business of Life Insurance in India in terms of Section 3 of the Insurance Act, 1938 (herein after referred to as “the Act”). The said certificate of registration is further renewed on 01<sup>st</sup> April 2013. In terms thereof the insurer was subject to the terms and conditions of the certificate of registration and was also required to abide by the provisions of the Insurance Act, 1938, the IRDA Act, 1999, particularly 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 14<sup>th</sup> July 2005 (herein after referred to as ‘the Guidelines’).

On review of the data filed with the Authority in accordance with IRDA circular no. IRDA/F&I/CIR/F&A/008/01/2010 dated 21<sup>st</sup> January 2010 / IRDA/F&I/CIR/DATA/091/06/2010 dated 11<sup>th</sup> June 2010 and IRDA/F&I/CIR/DATA/066/03/2012 dated 2<sup>nd</sup> March 2012 w.r.to the financial years 2009-10, 2010-11 and 2011-12, it was observed that the insurer has paid other payouts apart/over and above the permissible commission to Corporate Agents - Indusind Bank Ltd. (during the FY’s 2010-11 and 2011-12), Punjab & Sind Bank (during the FY 2011-12) and Anagram Stock Broking Ltd. (during the FY 2009-10), in the form of “Infrastructure

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arrangements and Advertisement & Publicity” in violation of Clause 21 of the Guidelines read with Sec 40A of the Act.

Details of the total payouts are as under:

**Corporate Agent - Indusind Bank**

**FY 2010-11**

₹ Crore

Particulars/premium type		First year Premium	Single Premium	Total
(i)	Premium generated	84.28	18.04	102.32
(ii)	Max Commission allowed* in %	40%	2%	
	Max Commission allowed* in Rs. crore	33.71	0.36	34.07
(iii)	Commission paid	12.02	0.36	12.38
(iv)	Total other payouts			37.97
	Total actual payouts			50.35
(v)	Excess paid by Insurer & received by Corporate Agent			16.28

**FY 2011-12**

₹ Crore

Particulars/premium type		First year Premium	Single Premium	2nd & 3rd year premium	Total
(i)	Premium generated	172.83	18.26	19.05	210.14
(ii)	Max Commission allowed* in %	40%	2%	7.50%	
	Max Commission allowed* in Rs. crore	69.13	0.37	1.43	70.93
(iii)	Commission paid	28.13	0.29	0.37	28.79
(iv)	Total other payouts				65.49
	Total actual payouts				94.28
(v)	Excess paid by Insurer & received by Corporate Agent				23.35

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**Corporate Agent - Punjab & Sind Bank**

**FY 2011-12**

₹ Crore

Particulars/premium type		First year Premium	Single Premium	2nd & 3rd year premium	4th year premium & onwards	Total
(i)	Premium generated	28.95	1.67	59.45	21.69	111.30
(ii)	Max Commission allowed* in %	40%	2%	7.50%	5%	
	Max Commission allowed* in Rs. crore	11.40	0.03	4.46	1.08	16.97
(iii)	Commission paid	5.38	0.03	2.04	0.73	8.18
(iv)	Total other payouts					13.99
	Total actual payouts					22.17
(v)	Excess paid by Insurer, received by Corporate Agent					5.19

**Corporate Agent - Anagram Stock Broking Ltd.**

**FY 2009-10**

₹ Crore

Particulars/premium type		First year Premium	Single Premium	2nd & 3rd year premium	4th year premium & onwards	Total
(i)	Premium generated	1.83	0.58	1.89	0.01	4.30
(ii)	Max Commission allowed* in %	40%	2%	7.50%	5%	
	Max Commission allowed* in Rs. crore	0.73	0.01	0.14	0.00	0.88
(iii)	Commission paid	0.08	0.00	0.03	0.00	0.12
(iv)	Total other payouts					2.50
	Total actual payouts					2.62
(v)	Excess paid by Insurer, received by Corporate Agent					1.74

\*in terms of Sec 40A (1) of Insurance Act, 1938

The Authority communicated the findings to the insurer on 27<sup>th</sup> May 2011, 30<sup>th</sup> November 2011, 22<sup>nd</sup> June 2012 and sought explanation. The insurer submitted its

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response vide letters dated 17<sup>th</sup> June 2011, 10<sup>th</sup> January 2012 and 9<sup>th</sup> July 2012. The Authority examined the responses of the insurer and issued Show Cause notice on 17<sup>th</sup> December 2012 for the violations observed in the financial years 2009-10 / 2010-11 and on 8<sup>th</sup> February 2013 for the violations observed in the financial year 2011-12. The insurer submitted reply in response to Show Cause notices on 11<sup>th</sup> January 2013 and 11<sup>th</sup> March 2013. Furthermore, the insurer's officials visited the Authority and presented their case personally on 16<sup>th</sup> January 2013.

The insurer contended that corporate agents - Anagram Stock Broking Ltd., Indusind Bank and Punjab & Sind Bank have a substantial number of branches across India and were willing to allow setting up service points at each such branch. The insurer employed significant number of employees for providing coordination and support for insurance sale conducted by corporate agents at their branch offices. The said offices were used for the purposes such as overseeing the sale of policies and verification of the application details at each service point, facilitating customer service, claims settlement, resolution of customer complaints, collection of renewal premium and general co-ordination. The insurer availed these services to ensure quality and hassle free services to customers. The insurer also availed the infrastructure facilities from Indusind Bank and Punjab & Sind Bank for display of information pertaining to Aviva Products. These arrangements were focused at promoting Aviva's brand image and involve the usage of physical space on premises owned/possessed by the corporate agent. Since the activities to be performed at each such branch were not directed to solicitation and procurement of insurance business and were in addition to rather than in substitution or replacement of the duties/obligations of the corporate agent, the access to branch network was provided in return for commercial rates. It was further mentioned that the insurer appraised the Authority about the Infrastructure agreements in its letters dated 25<sup>th</sup> February 2009, 2<sup>nd</sup> June 2009, 14<sup>th</sup> July 2010 and 10<sup>th</sup> July 2012.

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 its customers/policyholders as per various provisions under the Act, IRDA (Licensing of insurance Agents) Regulations 2000, the Regulations 2002, the Guidelines as indicated below:

- 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*

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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. 8 (1) (iii) of IRDA (Licensing of insurance agents) Regulations 2000, “every insurance 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”
- c. 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”
- d. 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”
- 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”.

However, if an insurance company intends to open new offices, it shall be governed by Sec 64VC (1) of the Act, which reads as “No insurer shall after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India without obtaining the prior permission of the Authority”. For the purposes of this section “place of business” includes a branch, sub-branch, inspectorate, organization office and any other office, by whatever name called. Whereas the insurer has not sought any approval of the Authority on this matters.

Insurer referring letters dated 25<sup>th</sup> February 2009, 2<sup>nd</sup> June 2009, 14<sup>th</sup> July 2010 and 10<sup>th</sup> July 2012 as advance intimation/ permission from the Authority for the infrastructure arrangements in the offices of corporate agents is not tenable. In this regard, the Authority

hereby reiterates its stand clarified vide circular no. GEN/CIR/018/May-04 dated 24<sup>th</sup> 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.

The Authority further called for invoice copies from the insurer, raised by the corporate agent-Indusind Bank for the payments corresponding to the infrastructure arrangements/advertisements. The details of the same are as indicated below:

**FY 2010-11**

Table 1

₹ Crore

	Infrastructure Agreement	Total	ST	Total incl. ST	% to total
1	Workstation costs @ Rs. 27199 / per station	4.78	0.49	5.28	13.90
2	Co-branded banners/hoardings @ Rs. 5440/per branch	0.94	0.10	1.03	2.72
3	Advertisement in vehicle finance division @ Rs. 5440/ per VFD	1.34	0.14	1.48	3.89
4	Advertisement on official website	0.95	0.10	1.05	2.77
5	Printing & distribution - monthly statement @ 36 / per statement	7.33	0.75	8.08	21.28
6	Printing & distribution - cheque book @ 272 / per book	15.39	1.58	16.97	44.70
	<b>Infrastructure &amp; Services Agreement</b>				
7	Workstation costs @ Rs. 27199 / per station	2.80	0.29	3.08	8.12
8	Visit to policyholder for cheque collection @ 113/per collection	0.28	0.03	0.31	0.80
9	Cheque Collection box @ 5440 / per box	0.56	0.06	0.62	1.64
10	Tele Calling @ Rs. 9/ per call	0.07	0.01	0.07	0.19
	<b>Total</b>	<b>34.43</b>	<b>3.55</b>	<b>37.97</b>	<b>100.00</b>

The summary of the above details are in table 2 below:

Table2

₹ Crore

Particulars	Total expenses	ST	Total incl. ST	%
Workstation costs	7.58	0.78	8.36	22.02
Advertisements - Standalone	25.00	2.58	27.58	72.63
Co-branded/Joint sale Advertisements	0.94	0.10	1.03	2.72
Others	0.91	0.09	1.00	2.63
<b>Total</b>	<b>34.43</b>	<b>3.55</b>	<b>37.97</b>	<b>100.00</b>

**FY 2011-12**

₹ Crore

Table 3

	Infrastructure Agreement	Total	ST	Total incl. ST	% to total
1	Workstation costs @ Rs. 27199 / per station	9.75	1.05	10.80	16.49
2	Co-branded banners/hoardings @ Rs. 5440/per branch	0.46	0.05	0.51	0.77
3	Standalone Advertisement in vehicle finance division @ Rs. 5440/ per VFD	0.65	0.07	0.72	1.10
4	Standalone Advertisement* on official website	1.62	0.17	1.80	2.75
5	Standalone Advertisement* - Printing & distribution in monthly statements @ 36 / per statement	3.60	0.39	3.98	6.08
6	Standalone Advertisement* - Printing & distribution in cheque books @ 272 / per book	32.49	3.50	35.99	54.95
	<b>Infrastructure &amp; Services Agreement</b>				
7	Workstation costs @ Rs. 27199 / per station	9.75	1.05	10.80	16.49
8	Visit to policyholder for cheque collection @ 113/per collection	0.30	0.03	0.33	0.50
9	Cheque Collection box @ 5440 / per box	0.49	0.05	0.54	0.83
10	Tele Calling @ Rs. 9/ per call	0.02	0.00	0.03	0.04
	<b>Grand total</b>	<b>59.12</b>	<b>6.36</b>	<b>65.49</b>	<b>100.00</b>

\*till September 2011, from October 2011 joint sale advertisements

The summary of the above details are in table 4 below:

Table 4

₹ Crore

Particulars	Total expenses	ST	Total incl. ST	%
Workstation costs	19.49	2.10	21.59	32.97
Advertisements - Standalone	24.11	2.59	26.70	40.77
Advertisements - Co-branded/Joint sale	14.72	1.58	16.30	24.89
Others	0.81	0.09	0.90	1.37
<b>Total</b>	<b>59.12</b>	<b>6.36</b>	<b>65.49</b>	<b>100.00</b>

ST = Service tax

As per clause 21 of Corporate Agents Guidelines "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

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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) as per the said clause. However, insurer has incurred/paid corporate agent considerable amounts towards standalone advertisements/Infrastructure arrangements.

It was also observed that the corporate agent - Indusind Bank in its annual reports for the financial year 2010-11 and 2011-12 has disclosed all the payouts including other payouts as fee received from sale of life insurance policies. This indicates that other payouts were nothing but disguised commission.

In view of the above, the Authority is of the considered view that insurer has violated the following provisions of the Guidelines and the Act w.r.to the payouts made to the corporate agent Indusind Bank:

1. Clause 21 of the Guidelines read with Sec 40A of the Act during the financial year 2010-11 and ;
2. Clause 21 of the Guidelines read with Sec 40A of the Act during the financial year 2011-12;

Similarly, the Authority had also called for invoice copies/other details from corporate agent - Punjab & Sind Bank for the payments corresponding to other than commission. The details of the same are as indicated below:

FY 2011-12

Table 5

₹ Crore

Particulars	Total expenses	ST	Total Incl ST	%
Infrastructure costs - workstations/space for advertisement etc.	8.16	0.84	9.00	65.12
Business promotion scheme - Distribution to staff of corporate agent	3.63	0.00	3.63	26.27
Others (due but not received by the corporate agent)	1.29	0.00	1.29	9.33
<b>Total</b>	<b>12.98</b>	<b>0.84</b>	<b>13.82</b>	<b>100.00</b>

ST = Service tax





It is evident from table 5 that the insurer has violated clause 21 of the Guidelines as the other payouts made to corporate agent are other than towards co-branded advertisements.

It was also observed that the corporate agent - Punjab & Sind Bank in its annual report for the financial year 2011-12 has disclosed all the payouts including other payouts as fee received from Bancassurance business. This indicates that other payouts were nothing but disguised commission.

In view of the above, the Authority is of the considered view that insurer has violated the following provisions of the Act and the Guidelines w.r.to the payouts made to the corporate agent Punjab & Sind Bank:

1. Clause 21 of the Guidelines read with Sec 40A of the Act during the financial year 2011-12.

In the case of corporate agent **Anagram Stock Broking Limited** also, it is observed that the total other payouts were towards infrastructure facilities which is in violation of clause 21 of the Guidelines. The infrastructure agreement was entered into between the insurer and the corporate agent in September 2008 and was terminated in September 2009, subsequently during the financial year 2009-10 corporate agency tie up was also terminated. This indicates nexus between premium generated by the corporate agent and the other payouts made by the insurer. During this period, considerable amounts were paid by the insurer to corporate agent apart from commission in the form of infrastructure arrangements, whereas Sec 40A (1) of the Insurance Act, 1938 restricts payment to any agent by way of remuneration or otherwise to a defined sum.

In view of the above, the Authority is of the considered view that insurer has violated the following provisions of the Act and the Guidelines w.r.to the payouts made to the corporate agent Anagram Stock Broking Ltd.:

1. Clause 21 of the Guidelines read with Sec 40A of the Act during the financial year 2009-10.

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Having regard to the facts of the case and the gravity of the violations committed by the insurer, the Authority in exercise of powers vested in it under section 102 of the Insurance Act, 1938 passes the following Order.

“The insurer is imposed a penalty of ₹ 20, 00,000 (Twenty Lakhs), being:


- (i) ₹10, 00,000 (₹ 5, 00,000 each for the financial year 2010-11 and 2011-12) for payouts made apart/over and above permissible commission limits in violation of clause 21 of Guidelines read with Sec 40A of the Act to Corporate agent Indusind Bank.
- (ii) ₹ 5, 00,000 for payouts made apart/over and above permissible commission in violation of clause 21 of Guidelines read with Sec 40A of the Act to Corporate agent Punjab & Sind Bank during the financial year 2011-12.
- (iii) ₹ 5, 00,000 for payouts made apart/over and above permissible commission in violation of clause 21 of Guidelines read with Sec 40A of the Act to Corporate agent Anagram Stock Broking Ltd. during the financial year 2009-10.

The penalty amount shall be debited to the Shareholders A/c”.

Further the insurer 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, 3<sup>rd</sup> Floor, Parishrama Bhavan, Basheer Bagh, Hyderabad - 500004.

Place: Hyderabad  
Date: 28<sup>th</sup> June, 2013

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