

Ref:IRDAI/F&I/ORD/MISC/64/04/2024

## Final Order

### In the matter of Edelweiss Tokio Life Insurance Company Ltd

[Based on the Show Cause Notice (SCN) dated 18<sup>th</sup> January, 2024 to the said insurer, reply received to the SCN dated 6<sup>th</sup> February, 2024 from the insurer, and subsequent submissions made by the insurer during personal hearing held at the office of the Insurance Regulatory and Development Authority of India (Authority), Financial District, Nanakramguda, Hyderabad, on 04<sup>th</sup> March, 2024, presided by Member (Life) and Member (F&I).]

### Background

1. The Authority has granted Certificate of Registration (CoR) bearing No.147 to Edelweiss Tokio Life Insurance Company Ltd., (hereinafter referred as ETLIC or the insurer) to carry on life insurance business.
2. While processing and analysing the monthly submissions of the ETLIC with regard to the shareholding pattern (October to December, 2021 reports), it was observed that the net worth as at 31.12.2021 included share application money of ₹200 crore (Rupees Two hundred crore) received in December 2021 without prior approval of the Authority. From the submissions made by the insurer through the various communications (from 05<sup>th</sup> May, 2022 to 27<sup>th</sup> May,2022), it was noted that 20,00,00,000 (twenty crores) additional equity shares of ETLIC amounting to ₹200 crore (Rupees Two hundred crore) through rights issue were subscribed by the Indian Promoter M/s. Edelweiss Financial Services Limited (EFSL) and allotted in January 2022. The said infusion of capital increased the Indian promoter's i.e., EFSL shareholding by 15% from 51% to 66%.
3. Meanwhile the insurer vide letter ETLIC/IRDAI/2023-24/609 dt.13<sup>th</sup> Sep 2023 requested for reclassification of the status of shareholders, i.e., M/s.Tokio Marine & Nichido Fire Insurance Company Ltd., (TM) from foreign promoter to foreign direct investor. While processing the insurer's request for reclassification of its shareholders the Authority noted the following: -
  - i. The Joint Venture Agreement dated 28, November 2009 entered between EFSL and TM has expired in November 2021.
  - ii. In spite of the Authority's concern vide emails dt.21<sup>st</sup> April 22 and 13<sup>th</sup> May 2022, the insurer has again issued Rights shares in the month of

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September 2022 and resulted in further change of shareholding with regard to infusion of capital ₹250 crore (Rupees Two hundred and Fifty crore) to EFSL and increased the shareholding of EFSL by 9.1% from 66 to 75.1%.

4. On examination of the submissions made by the insurer, the Authority has issued SCN to the insurer on 18<sup>th</sup> January 2024 which was responded by the insurer vide their letter ETLICL/IRDAI/2023-24/636 dt.06.02.2024 with a request of personal hearing.
5. On the insurer's request, a personal hearing was granted to the insurer by a panel of Member (Life) and Member (F&I). It was held at the office of the Authority on 04<sup>th</sup> March 2024. Mr. Sumit Rai, MD & CEO, Mr. Subhrajit Mukhopadhyay, Executive Director and Mr. Ankur Chadha, Chief Legal & Compliance Officer, attended the hearing on behalf of the insurer. On behalf of the Authority, Mr. Manoj Kumar, GM (F&I) Mr. Sanjay Mohan Sharma, DGM (F&I) and Mr. B.S. Venkatesh, AGM (F&I) were also present during the hearing.

### **Show Cause Notice (SCN), Reply and Hearing on Charge 1**

6. While processing insurer's application dated 13<sup>th</sup> September, 2023 with regard to reclassification of its foreign promoter M/s. Tokio Marine & Nichido Fire Insurance Co. Ltd (TM) as a foreign investor, the following change in shareholding pattern of the insurer was observed: -

7. In	BAP filing for the quarter ending	Name of Share holders	No. of shares	% of shares	Paid up equity (₹ in lakh)	% change in shareholding from the previous Qtr.
	31.12.2021	EFSL	237,431,552	51%	23,743.16	--
		TM	228,120,511	49%	22,812.05	---
	31.03.2022	EFSL	437,431,552	66%	43,743.16	+ 15%
		TM	228,120,511	34%	22,812.05	-15%
	31.12.2022	EFSL	687,431,552	75.1%	68,743.10	+9.1%
		TM	228,120,511	24.9%	22,812.05	- 9.1%

Jan 2022, the insurer has offered rights issue to its existing shareholders, to which only one of the shareholders, i.e, M/s. EFSL has subscribed the issue. Consequent upon subscribing for the rights issue by EFSL, there was (i) infusion of capital of ₹200 crore (Rupees Two Hundred Crore) and (ii) increased the shareholding of M/s. EFSL by 15% from the existing 51% to 66% in the insurance company.

8. In Sep 2022, the insurer has once again offered rights issue to its existing shareholders, to which only one of the shareholders, i.e, M/s. EFSL has subscribed the issue. Consequent upon subscribing for the rights issue by EFSL, there was (i) infusion of capital of ₹250 crore (Rupees Two Hundred Fifty Crore) and (ii) increased the shareholding of M/s. EFSL by 9.1% from the existing 66% to 75.1% in the insurance company.
9. In its reply letter dated 6<sup>th</sup> February 2024 to the SCN as well as during the personal hearing on 4<sup>th</sup> March 2024, the Insurer submitted that pursuant to discussions with the Authority during the months of April & May 2022, it was their understanding that

their submissions in the matter have been considered and it is construed that the prior approval of the Authority is not required for issue of shares on rights basis. The insurer further submitted that post submissions dated 27<sup>th</sup> May 2022, there was no communication from the Authority in the matter and therefore matter was considered to be closed.

10. In reply to the SCN, the insurer submitted that *“the process of rights issues under the Companies Act, 2013 made them practically difficult to approach the Authority for prior approval in the events the subscription to the rights issue resulted in change in shareholding pattern. On the contrary, approaching the Authority for approval once the issue process has been initiated could result in potential non-compliance of the Companies Act, 2013.”*
11. The insurer’s reply was not acceptable as the share application money of ₹200 crore and ₹250 crore were received on 18<sup>th</sup> December, 2021 and on 26<sup>th</sup> September 2022 respectively and the equity shares against the share application money of ₹200 crore and ₹250 crore were allotted on 27<sup>th</sup> January, 2022 and on 27<sup>th</sup> September, 2022 respectively. It is clear that the shares allotment had taken place after 37 days from the receipt of share application money in case of issuance rights shares of ₹200 crore. whereas, in case of issuance of rights shares of ₹250 crore, share allotment had been completed immediately the next day i.e. 27<sup>th</sup> September, 2022.
12. Thus, the Insurer could have anticipated well in advance on both the occasions that shareholding pattern would change because of TM would not subscribe the right issue and that the entire share application money of ₹200 crore and ₹250 crore for the proposed rights issues would be paid by the EFSL only. Accordingly, the insurer should have approached the Authority to seek approval for issuance of equity shares to EFSL.
13. The insurer was not able to provide satisfactory justification for not adhering to and complying with the Regulation 6(10) of IRDAI (Registration of Indian Insurance Companies) Regulations 2022 (erstwhile Regulation – Reg.3 (a) of IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015) read with the provisions of Section 6A (4) (b) of Insurance Act, 1938.
14. In this regard, it may be noted that as per Section 6A (4) (b) of Insurance Act, 1938 read with Regulation 6(10) of IRDAI (Registration of Indian Insurance Companies) Regulations 2022 (erstwhile Regulation – Reg.3 (a) of IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015), the insurer shall not register any such transfer of shares or issue of equity capital of an insurance company, which would result in change in shareholding, where
  - (i) after the transfer, the total paid-up holding of the transferee in the shares of the insurance company is likely to exceed five percent of its paid-up capital, without the prior approval of the Authority.OR
  - (ii) where the Nominal value of shares intended to be transferred by an individual, firm, group, constituents of a group, or body corporate under same



management, jointly or severally exceeds one percent of the paid-up equity capital of the insurance company without the prior approval of the Authority.

15. Considering the records available and submissions made by the insurer, it is noted that vide rights issue in January 2022, of ₹200 Crore, the shareholding of the EFSL has increased from 51% to 66%. Further vide rights issue in September 2022, of ₹250 Crore, the shareholding of the EFSL has further increased to 75.1%. Further, it is noted that for both the rights issue and resultant transfer of shares in favour of EFSL to the extent of 75.1%, no prior approval of the Authority has been obtained by the insurer.
16. Hence, from the submissions made by the insurer and the documents available on record of the Authority, it is evident that the insurer, by not obtaining prior approval from the Authority for the change in shareholding, has violated Regulation 6(10) of IRDAI (Registration of Indian Insurance Companies) Regulations 2022 (Erstwhile Regulation – Reg.3 (a) of IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015) read with the provisions of Section 6A (4) (b) of Insurance Act, 1938, for change in shareholding pattern.
17. The change in shareholding of one of the shareholders, i.e., M/s.EFSL by 24.1% from the existing 51% to 75.1% in the insurance through issuance of rights shares, without prior approval of the Authority is violation of Regulation 6(10) of IRDAI (Registration of Indian Insurance Companies) Regulations 2022 (Erstwhile Regulation – Reg.3 (a) of IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015) read with the provisions of Section 6A (4) (b) of Insurance Act, 1938. Therefore, in exercise of the powers vested under Section 102 of the Insurance Act, 1938, the Authority imposes a penalty of ₹20 Lakh (Twenty Lakh only) on Edelweiss Tokio Life Insurance Company Ltd.

### **Show Cause Notice (SCN), Reply and Hearing on Charge 2**

18. As per Section 26 of the Insurance Act, 1938, whenever any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 3 to accompany an application by an insurer for registration, the insurer shall forthwith furnish to the Authority full particulars of such alteration.
19. In this regard, it was observed that the Joint Venture Agreement dated 28th November, 2009 entered between (i) M/s.EFSL and (ii) M/s.TM has expired during November 2021.
20. The insurer vide email dated 04th Nov, 2023 has stated that an email dated 09th December, 2021 was sent to the Authority stating the following- *"In the Board meeting, it was also noted that the JV agreement between Edelweiss and Tokio marine, the shareholders of the company has expired"*. The insurer also said that the discussion is on for revised mutual agreement.
21. The insurer further stated that the agreement for the period of twelve years was already a part of the submissions made at the time of the registration of insurance company and hence envisaged at the inception itself and requested the Authority that this alteration was as a consequence of the said agreement only.



22. The submission made by the insurer was considered given that the agreement was made for twelve years only. However, the insurer is advised to update the Authority of any such alterations that are material in nature.


23. **Summary of Decisions:** The following is the summary of the decision in this order:


Charge No.	Short title of the charge and the provision violated	Decision
1.	The insurer has carried out changes in Shareholding pattern without obtaining prior approval of the Authority  Regulation 6(10) of IRDAI (Registration of Indian Insurance Companies) Regulations 2022 (Erstwhile Regulation – Reg.3 (a) of IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015) read with the provisions of Section 6A (4) (b) of Insurance Act, 1938	₹20 Lakh
2.	The insurer has not submitted the details of expiry of the Joint Venture Agreement dated 28 <sup>th</sup> November, 2009 entered between (i) M/s. EFSL and (ii) M/s.TM was expired during November 2021.  As per Section 26 of Insurance Act, 1938 - Alterations in the particulars furnished with application for registration to be reported.	Advisory

24. The penalty amount of ₹20 Lakh (Twenty Lakh only) levied under the Charge 1 of this order, shall be remitted through NEFT/RTGS (details for which will be communicated separately) within a period of 45 days from the date of receipt of this Order. An intimation of remittance may be sent to Shri Manoj Kumar, 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@irdai.gov.in).

25. A copy of this order shall be placed before next Board meeting and within 15 days of the said meeting, the insurer shall submit a copy of the minutes of discussion to the Authority.

26. If the insurer feels aggrieved by any of the decisions in this order, an appeal may be preferred to the Securities Appellate Tribunal, Mumbai as per the provisions of Section 110 of the Insurance Act, 1938.

  
(Rajay Kumar Sinha)  
Member (F&I)

  
(B.C. Patnaik)  
Member (Life)

Place: Hyderabad  
Date: 04.04.2024