



No. IRDA/ENF/ORD/ONS/149/05/2021

Final order in the matter of
M/s Visista Insurance Broking Services Pvt Ltd

[Based on the reply of M/s Visista Insurance Broking Services Pvt Ltd (the broker) dated 05/08/2020, to the show-cause notice dated 15/05/2020 and submissions made during Hearing on 6th May 2021 at 11.30 AM (through Video Conferencing), taken by Member (Distribution)].

Background:

1. An on-site inspection of Visista Insurance Broking Services Pvt Ltd was conducted by the Authority during the period from 26th to 28th December 2018. The Inspection findings were communicated to the broker for their comments on 27/02/2019. The reply of the broker was received by their letter dated 20/03/2019. A show-cause notice was issued to the broker on 15/05/2020, to which the broker submitted its reply by its letter dated 05/08/2020. In its reply, the broker had requested for a personal hearing. Accordingly, a hearing was granted to the broker on 6-5-21 and the same was held through video conferencing.
2. On behalf of the broker, the personal hearing was attended by Mr. A. Srinivas Rao, Principal Officer; Binay Ranjan Dash, General Manager and Mr. V. Somaraju, Senior Manager Compliance. From the Authority, Mr Randip Singh Jagpal, CGM (intermediary); Mr. P.K. Maiti, GM (Enforcement) and Mr. Vikas Jain, AGM (Enforcement) attended the hearing

Charges, Submissions in reply thereof and Decisions:

3. Charge 1:

The insurance broker while making their application for renewal of their license on 8th November, 2017, stated under clause 8.3 of the application mentioned the name of one of their officials as Chief Executive Officer, who is overall in charge of the insurance broker. In addition, the broker also mentioned the name of another official as Principal Officer and also overall in charge. In view of the above, the broker was asked to submit a copy of the appointment letter in regard to the official whom they mentioned as CEO and also copy of the necessary Board Resolutions to that effect. The insurance broker failed to furnish the said information.

As per regulation 13(3), the broker is required to “inform the Authority in writing, if any information or particulars previously submitted to the Authority by them are found to be false or misleading”. However same was not done.

Hence there is a violation of regulation 13(3) of IRDAI (Insurance Brokers) Regulations 2018. Further, the broker failed to submit the board minute during the inspection. Hence, there is a violation of Circular No. IRDA/INSP/CIR/ONS/157/09/2018 dated 20th September, 2018 for non-submission of required documents as sought by the inspection team.

Submission of the Broker:

The broker submitted that there were some discussions to appoint as CEO the official whose name was mentioned as CEO in the renewal application but this did not materialise. Inadvertently, in the renewal application, the designation of the said official was mentioned as CEO and overall in charge. However, this was corrected in the organisation structure, where his responsibility is stated as overall in charge - business development & reports to principal officer. This was a clerical mistake which was corrected promptly and they had informed the Authority by their letter dated 05/12/2017. They also submitted the copy of their communication to the Authority.

The broker also submitted that the copies of the Board minutes could not be provided during inspection as their Company Secretary was out of town & returned later. The broker has furnished a copy of the minutes.

Decision: The broker should note that submission of necessary documents during Authority inspection, is the duty of the entity, to make the inspection effective. Further non submission of documents within the specified timeline may be construed as a deliberate attempt to restrict Authority’s inspection team from examining the functioning of the Broker. The Broker is cautioned for the lapse and advised that any recurrence of similar lapse will be viewed seriously in future.

4. Charge 2:

In order to verify whether the insurance broker is extending assistance to their clients at the time of claims, a sample of 10 claims identified from the claims reported during the year 2017-18 was shared with the insurance broker. From the documents furnished it is observed that the insurance broker is deficient in assisting the client in case of claim. There is no system in place to track a claim and also advice the clients on the required documents.

For the sample cases, the broker could not give any evidence to establish that they have “given prompt advice to the client of any requirements concerning the claim”; which is a requirement of Clause 7(c) of Schedule VIA (Code of conduct) under regulation 28, IRDA (Insurance Brokers) Regulations, 2013.

Submission of the Broker:

The broker submitted that there are efforts & follow up with the clients, many are documented and some are oral & verbal. They are having one dedicated claims handling team, comprising of two persons which is guided by one more senior person, with 30 years' experience in public sector insurance company. The clients are satisfied in general and have rewarded the broker with repeat appointments year after year. The clients in the sample cases, i.e. M/s. NCC, M/s. Koya Company, M/s.Gaja Engineering, M/s. Heritage Foods are satisfied too, have rewarded them year after year and they have not raised any grievances related to claims.

Decision:

The Broker could not provide any evidence to establish that in the sample claim cases identified, the broker has provided claim assistance to its clients in order to ensure compliance of Para 7 of Schedule I-Form H under Regulation 30 of IRDAI (Insurance Brokers) Regulations, 2018. The Broker is directed to maintain proper records in order to demonstrate compliance of said regulation. Any recurrence of similar lapse will be viewed seriously in future.

5. Charge 3:

The broker has opened an office in Sri City of Andhra Pradesh and the broker did not inform the Authority about this office. This is violation of Regulation 38(4)(i) of the IRDA (Insurance Brokers) Regulations, 2013.

Submission of the Broker:

The broker submitted that Sri City Andhra Pradesh is a special Economic Zone (SEZ) and Development Economic Zone (DEZ), located 55 kms from Chennai. Many business houses including Multi-National companies (MNC) have set up their manufacturing activities. There exists huge potential for insurance business too. However, they were not getting the qualified persons for recruitment in this area without which they cannot open a branch office. So they had rented one work station in Sri city's office, hired persons for services, these service persons collect information, documents, premium cheques etc. and provide other assistance, guidance and supervision from their qualified persons at Branch office, Chennai. The qualified persons at Branch office, Chennai visit regularly and solicit business there. They submitted that Sri city, Andhra Pradesh is not a Branch office. They also submitted if they get the qualified persons for the place, they will open the office there and will inform the authority.

Decision:

From the submission of the broker it is evident that they are performing all functions of the Broker, including solicitation, through their office at Sri City.

However, they did not intimate Authority because there is no Broker Qualified Person posted in that office. The broker's submission, that it is not a branch office, is not acceptable as the broker is soliciting business from the office and also providing services to its clients from there. Hence, the broker has violated the provisions of Regulation 38(4)(i) of the IRDA (Insurance Brokers) Regulations, 2013 which mandates the broker to inform to the Authority regarding opening of any new branch office. Therefore, by virtue of powers vested under Section 102 (b) of the Insurance Act, 1938, the Authority levies a penalty of Rs. 1,00,000/--(Rupees one Lakh only), for the said violation.

6. Charge 4:

i. The broker spent Rs.16,98,020/- and Rs.16,35,303/- towards Business Promotion Expenses during the years 2016-17 and 2017-18 respectively and the insurance broker spent an amount of Rs.11,13,210/- towards printing of brochures. The broker failed to submit the break-up of expenses, including name of the payee, nature of payment, copy of any agreement and the copies of the brochure.

ii. The broker had incurred Consultancy and Professional Expenses of Rs.25,99,918/- during the year 2017-18. But the broker failed to provide any agreement/letter of appointment and the details regarding nature of consultancy etc.

Hence, the broker violated the provisions of the Circular No. IRDA/INSP/CIR/ONS/157/09/2018 dated 20th September, 2018 for non-submission of required documents as sought by the inspection team.

Submission of the Broker:

The broker submitted that they had incurred the amounts on the business promotion and had shared the details of the expenses. The broker submitted that these risk inspection reports were kept along with each underwriting files & clients wise, so that the files are complete and holistic. This took some time to dig out the reports from separate underwriting files & client files. Hence, these reports could not be provided to the inspection team. However, they have provided the invoice copies during inspection.

Further, they submitted the copies of risk inspection reports. Post personal hearing the broker submitted the breakup of the expenses of Rs25.99 Lakh along with the risk inspection reports. But the broker did not submit any agreement as it was based on oral negotiations with the consultants.

Decision:

The broker should note that submission of necessary documents during Authority inspection, is the duty of the entity, to make the inspection effective. Further non submission of documents within the specified timeline may be construed as a

deliberate attempt to restrict Authority's inspection team from examining the functioning of the Broker. The Broker is cautioned for the lapse and advised that any recurrence of similar lapse will be viewed seriously in future.

7. Charge 5:

On examination of the Form 26AS of a director of the insurance broker, it is noticed that the said director has received an amount of Rs.65,46,639/- and Rs.24,00,328/- from an entity during the years 2016-17 and 2017-18 respectively under section 194C of the IT Act. Further, the said director has also received Rs.18,00,000/- each during the same period from another company under section 192 IT Act i.e. towards salary even while being a director and full-time employee of the broking company and had drawn a salary of Rs.7,02,000/- from the insurance broker.

The broker failed to furnish requisite document as requisitioned by the inspection team. Further submission of the broker did not bring any clarity on the issue on receiving multiple salaries by the referred shareholder and director. The submission of the broker in regard to "conflicts of interest" is not convincing. There is violation of clauses 1 and 2(j) of Schedule I-Form H under regulations 30 & 8(2) of the IRDAI (Insurance Brokers) Regulations, 2018 and non-submission of document which attracts action under clause 1(f) of Schedule II - Form Z under regulation 42 of the IRDAI (Insurance Brokers) Regulations, 2018.

Submission of the Broker:

The broker submitted that the payments to the said director and shareholder from an entity relates to various contract works for the year 2016-17 & 2017-18, which that director had been executing prior to becoming Director of the insurance Broker and continues to do so even now. The contract works and payments are drawn in individual capacity. They further submitted that there is no conflict of interest as the entity which made the payments is an independent entity, the promoters, ownership & control is different from Visista.

They further clarified that the said director was paid remuneration which was erroneously categorized as salary but it was a bonus that should have been categorized under the head bonus and salaries and they confirmed that they follow recognized standard of professional conduct.

Decision:

The broker should note that submission of necessary documents during Authority inspection, is the duty of the entity, to make the inspection effective. Further non submission of documents within the specified timeline may be construed as a deliberate attempt to restrict Authority's inspection team from examining the functioning of the Broker. The Broker is cautioned for the lapse and advised that any recurrence of similar lapse will be viewed seriously in future.

8. Charge 6:

From the perusal of sample cases, it was observed that proposal forms have not been obtained by the Broker. In the matter of “conduct in relation to furnishing of information”, every Insurance broker shall “ensure that the information provided by the client on the basis of which the risk is accepted by the insurer is made part of the proposal form and shared with the client and the insurer”.

Hence by not obtaining the proposal form, the broker has violated Clause 4(c) of SCHEDULE I – Form H (see regulation 30 & regulation 8(2)) of IRDAI (Insurance Brokers) Regulations, 2018.

Submission of the Broker:

The broker submitted that there were 14 Motor policies, where they had obtained the RC Book, previous insurance copy, prepared the RFQ (request for quotation), obtained the quotes, recommended for insurance along with RFQ (request for quotation). They submitted that this RFQ (request for quotations) contains all necessary information about the proposal and when submitted to client, becomes binding for all the information contained therein. This RFQ (request for quotations) works as substitute for proposal form. There was 1 individual Mediclaim policy, where they had adopted the similar procedure and there were 2 Fire policies, where they had adopted the similar procedure, there by this RFQ (request for quotations) works as substitute for proposal form. They further submitted that in regard to other 3 Engineering policies, there are RFQ (request for quotations), which are further detailed containing all the information. Further, there are quote comparison statements, recommendation letter with terms conditions, price etc. These RFQ (request for quotations) and the correspondence and recommendation letter acts as the proposal form & basis of contract. Later the broker also submitted one case showing the practice being followed and submitted the copies of documents under a group health policy.

Decision:

Clause 4(c) of SCHEDULE I – Form H of IRDAI (Insurance Brokers) Regulations, 2018 and Regulation 8(1) of IRDAI (Protection of Policyholder’s Interest) Regulations 2017 mandate usage of Proposal form. Hence submission of the Broker that the RFQ (request for quotations) acts as the proposal form is not acceptable. The Broker is cautioned for the lapse and advised that any recurrence of similar lapse will be viewed seriously in future.

9. Charge 7:

The renewal notices sent by Broker did not contain a warning about the duty of disclosure including the necessity to advise changes affecting the policy, which have occurred since the policy inception or the later renewal date and renewal notices did not contain a requirement for keeping a record (including copies of letters) of all information supplied to the insurer for the purpose of renewal of the contract.

The observation is on mandatory content of a renewal notice. All the sample cases identified were before the effective date of IRDAI (Insurance Brokers) Regulations, 2018. Hence there is violation of Clause No. 6 (b) & 6(c) of Schedule VI-A of Reg. No. 28 of IRDA (Insurance Brokers) Regulations, 2013.

Submission of the Broker:

The broker submitted that from the list taken as sample & stated in the report, there are 12 retail policies, where there are mails reminding for renewal, followed by oral, telephonic & personal conversation about the changes required during renewal. These changes are incorporated while inviting the terms & quotes from insurance companies and in other 10 corporate policies, there are renewal reminder seeking changes in assets & values (for Fire Policies & Burglary Policies), changes in the data (for Group Health policies), changes in terms & conditions (for Marine Policies), which are documented.

Further, the broker submitted that there is no central depository to store these renewal notices, these are kept in the underwriting files only. They also added that they are sending all renewals containing all necessary disclosures and warnings. In support of their submission, the broker, post personal hearing, furnished copies of few sample renewal notices sent during the month of April, 2021.

Decision: The submission of the broker is taken on record and the broker is advised to ensure the compliance to Clause 6 of Schedule I-form H under Regulation 30 of IRDAI (Insurance Brokers) Regulations, 2018, in letter and spirit.

Summary of Decisions:

10. The following is the summary of decisions in this order:

Charge No.	Brief Title of charge and the provisions violated	Decision
1	Charge: Not submitting correct organization structure to the authority. Provision: There is a violation of regulation 13(3) of IRDAI (Insurance Brokers) Regulations 2018.	Caution and Advisory
2	Charge: Not providing claims assistance to the customers Provision: Clause 7(c) of Schedule VIA (Code of conduct) under regulation 28, IRDA (Insurance Brokers) Regulations, 2013	Caution and Advisory
3	Charge: Not intimating to the Authority about opening of new office Provision: Regulation 38(4)(i) of the IRDA (Insurance Brokers) Regulations, 2013.	Penalty of Rs. 1 Lakh

4	Charge: Non submission of information Provision: Violation of Circular No. IRDA/INSP/CIR/ONS/157/09/2018 dated 20 th September, 2018.	Caution and Advisory
5	Charge: A full time director taking salary from other company Provision: Clauses 1 and 2(j) of Schedule I-Form H under regulations 30 & 8(2) of the IRDAI (Insurance Brokers) Regulations, 2018	Caution and Advisory
6	Charge: Proposal forms have not been obtained by the Broker. Provision: Clause 4(c) of SCHEDULE I – Form H (see regulation 30 & regulation 8(2)) of IRDAI (Insurance Brokers) Regulations, 2018	Caution and Advisory
7	Charge: Renewal notices sent by the broker did not contain mandatory warnings and disclosures Provision: Clause No. 6 (b) & 6(c) of Schedule VI-A of Reg. No. 28 of IRDA (Insurance Brokers) Regulations, 2013.	Advisory

Conclusion:

11. As directed under the respective charges, the penalty of Rs. One Lakh shall be remitted by the Insurance broker within a period of 45 days from the date of receipt of this Order through NEFT/ RTGS (details for which will be communicated separately). An intimation of remittance may be sent to Mr. Prabhat Kumar Maiti, General Manager (Enforcement) at the Insurance Regulatory and Development Authority of India, Sy. No. 115/1; Financial District; Nanakramguda; Gachibowli; Hyderabad – 500032.

12. The Broker shall confirm compliance in respect of the above decisions, within 21 days from the date of receipt of this order. The order shall be placed in the upcoming Board meeting and the broker shall submit a copy of the minutes of the discussion.

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

Date : 25th May, 2021
Place : Hyderabad

Sd/
(S.N. Rajeswari)
Member (Distribution)