No. IRDA/ENF/ORD/ONS/253/12/2016

**Final Order in the matter of**
**M/s HDFC Ergo General Insurance Company Limited**

**Based on reply to the Show Cause Notice dated 27th June, 2016 and submissions made during Personal Hearing on 9th August, 2016, at 11:30 am taken by Member (F&I) at the office of Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad.**

The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") carried out an onsite inspection of M/s HDFC Ergo General Insurance Company Limited (hereinafter referred to as "Insurer") from 29th October, 2012 to 7th November, 2012. The Authority forwarded the copy of the Inspection Report to the Insurer seeking comments and the insurer's comments were received vide their letter dated 19th June, 2013. Upon examining the submissions made by the Insurer, the Authority issued Show Cause Notice on 27th June, 2016 which was responded to by the Insurer vide letter dated 13th July, 2016. As requested therein, a personal hearing was given to the Insurer on 9th August, 2016. Mr. Ritesh Kumar, MD & CEO; Mr. Mukesh Kumar, ED and Mr. Samir Shah, CFO were present in the hearing on behalf of the General Insurer. On behalf of the Authority, Mrs V. R.Iyer, Member (F&I), Shri Suresh Mathur, HOD (Non Life), Shri Prabhat Kumar Maiti, GM (Enforcement), and Shri B.Raghavan, DGM (Enforcement) were present during the personal hearing.

The submissions made by the Insurer in their written reply to the Show Cause Notice and also those made during the course of the personal hearing and the decisions thereon are detailed below.

1. **Charge No.1:**

The insurer issued public notice in newspapers on relocation of its offices. Apart from this, individual communications were sent to the policyholders, but the individual communications were not sent with an adequate notice period of minimum 2 months.

Violation of Guidelines prescribed under Authority's Circular No. 041/IRDA/BOO/Dec-06 dated 28thDecember, 2006.

**Submissions of Insurer:** The Company has taken note of the Authority's observation. It is further submitted that since the customer servicing function of the company is centralized at Mumbai, no inconvenience was caused to any policyholders. Currently the Company is complying with the regulatory requirements with respect to the relocation of its offices.


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**Decision:**

The sample communications in relation to relocation of 4 offices show that the intimations were sent to insured after the opening of offices and Public notice on relocation of Cochin office was given only one day before opening. Thus the insurer violated the guidelines prescribed under circular no. 041/IRDA/BOO/Dec-06 dated 28thDecember, 2006. In this connection, it is advised that the insurer must understand and appreciate that their failure to give notice of their relocation and with sufficient time in advance has the potential to cause great inconvenience to their customers. Hence they are directed to ensure in future that adequate and proper notice is given to the customers in case of any relocation of their offices as per Regulation 12(c) of IRDAI (Places of Business) Regulations, 2015. The insurer is further informed that any recurrence of this failure will be viewed more seriously.

2. **Charge No.2:**

As per IRDA Investment Guidelines 2008, Annexure III Para A (General), the insurer shall clearly specify the employee dealing guidelines to be adhered. Although the insurer has included these guidelines in its investment policy documents but the same are not being followed regarding submission of declaration by the investment department personnel.

**Submissions of Insurer**: The insurer has confirmed that their Concurrent Auditors have examined on quarterly basis the status of implementation of Employee Dealing Guidelines and that the Auditors have confirmed in their reports that the said Guidelines have been implemented. The insurer has also submitted a copy of the relevant extract of the Auditor's report dated 30-6-16.

**Decision**:

The submissions made by the insurer and the documentary proof submitted by them to the effect that the company has implemented the Employee Dealing Guidelines in relation to their Investment department personnel are accepted and the charge is not pressed further.

3. **Charge No.3:**

For the outsourced activities where significant amount of fees has been paid, no records were maintained by insurer.

Insurer has not complied with Outsourcing Guidelines, which states that the Board of insurer has to review performance of all third party service providers every year. The reply of the insurer is very generic and they have also not provided any proof that they are having adequate review mechanism over the third party service providers. Insurer has violated para 9.1 & 9.3 of Outsourcing Guidelines Circular No. IRDA/Life/CIR/GLD/013/02/2011.

**Submissions of Insurer:**

The Insurer submitted that they have followed the outsourcing guidelines in letter and spirit and also regularly reported the information in our financial statements in addition to the reportings as required in the outsourcing guidelines itself. They do have in place an outsourcing policy duly approved by the Board and the policy is reviewed by the Risk Management Committee of the

Board, in addition to the review by the Management of the Company at departmental in-charge levels. It would be untrue to presume or infer that the Insurer breached Para 9.1 and 9.3 of the guidelines. The checks and review have also been exercised at the level of making payments to ensure that the terms of the contract / agreement executed are fully complied. They have also exercised checks and control at the level of performance of the activity outsourced.

**Decision:**

Insurer has not submitted any convincing proof to the effect that they maintain proper documentation for all the pay outs and that Board reviews the performance of the service providers. Further, when the insurer was aware in advance of the inspection to be carried out by the Authority, the insurer should have taken care to arrange the documents for inspection. Even during the time when the process of inspection was in progress, the insurer could have made efforts to produce the documents; none of these actions was carried out by the insurer. This shows a lax attitude on the part of the insurer towards the inspection process and to justify their inaction, the insurer is making a general statement that all voucher files along with respective supporting documents are stored by the Company at the external location managed by an outsourced agency and retrieved on request basis as and when required. For such a lax attitude on the part of the insurer, the Authority warns the insurer and directs the insurer to fully comply with the Outsourcing guidelines contained in Circular No. IRDA/Life/CIR/GLD/013/02/2011.

**4. Charge No. 4 :**

The insurer is paying huge amount in the name of signage agreement to auto dealers by entering into an agreement. The average rent per month is Rs. 50,000/-.

From the Public Disclosures of the insurer, it was noted that there was drastic increase towards expenses of advertisement and publicity in last three financial years. It was informed by the insurer that they are paying signage charges to motor dealers situated at various locations in India.

In addition to payments to motor manufacturer (HMIL) insurer is also paying the signage amount to the motor dealers. On sample basis signage charges paid and invoices raised for signage charges with the insurer are examined on sample basis.

The insurer is not commenting on the specific instances brought to their notice but submitting a vague statement which proves that the insurer is making payment for business procured through un-licensed person and thereby violating Authority's circular IRDA/CIR/011/2003, dated 27-03-03

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**Submissions of Insurer**

The Company submitted that the payments were made in line with the agreed values as per the terms & conditions of the Agreement. The Company further submitted that in some cases, money has been deducted for non-compliance to agreed procedures and availability/uptime of the signage. Payments were made on a monthly basis and adjustments were carried out on a quarterly basis in case of any non-compliance.

Whatever advertisements and publicity the Company has undertaken is well within the IRDA advertisement regulations and the guidelines in addition to the contents of the file and use of the product guidelines as our product have been approved based on our submission made therein and we have only implemented what has been approved by the IRDA. The IRDA circular dated 27th March'2003 has two principles i.e., (i) the company should launch the products while complying with the file and use circular of 26th February'2001 (ii) should distribute the products through licensed persons empowered to solicit and procure insurance business. They submitted that they have complied with both the objectives.

Hence the Company submits that there is no violation of the Authority's circular IRDA/CIR/011/2003, dated 27-03-03 and accordingly requests the Authority not to press the above charge.

**Decision:**

The detailed explanation furnished by the insurer during personal hearing with the background for the said payments etc. is accepted and the charge is not pressed. However, the insurer's attention is drawn to the various provisions of law which prohibit soliciting business by unlicenced entities. The insurer is advised that they must not directly or indirectly abet such an activity of procuring business through unauthorized entities.

**5. Charge No.5:**

The reinsurance and coinsurance balances which are outstanding for more three months and also without confirmation of outstanding balance from the counterparty, that are not of readily realizable nature are taken into account for the purpose of arriving at solvency margin.

Insurer has to attach zero value to reinsurance balances due for more than 3 months and insurer can't consider the net receivable for the said purpose. Hence the insurer has violated Clause 2(h) of Schedule I (Valuation of Assets) under Regulation 3 of IRDA (ALSM) Regulations, 2000 and IRDA Circular No.12/IRDA /F&A/CIR/May-09.

**Submissions of Insurer:**

The Company submits that the paragraph 3 and paragraph 4 of the circular 12/IRDA/F&A/CIR/MAY-09 dated May 26, 2009 state that the amounts receivable for more than 90 days under Schedule 12 pertaining to Advances and other assets under sub head "due from other entity carrying on Insurance business" including reinsurance need to be valued at zero while calculating Available Solvency Margin (ASM) of the Company. Accordingly, as required under the above circular, the Company had arrived at entity wise balances (including reinsurance) and reported in its Financial statements all such receivables as "due from other entity carrying on Insurance business" under Schedule 12 pertaining to Advances and other assets.

For the purpose of ASM calculation, the Company considered same balances and valued the amount receivable for more than 90 days at zero. Hence, the Company submits that it complied with the said Regulations and circular.

However, w.e.f. 1st April, 2016, the company has started to calculate the solvency based on the revised Solvency Regulations.

**Decision:**

Insurer's corrective action in the form of their following the IRDAI (ALSM- General Insurance) Regulations, 2016 is taken note of. However, the insurer is advised to ensure full compliance with the said Regulation and related circulars issued from time to time.

**6. Charge Nos.6, 8, 9 and 12 :**

**Charge No. 6:**

Insurer had eight corporate agents on its books, out of which five are group company(s) / related party(s) of the insurer. The insurer had given online access to entities viz Motor dealers / Financiers / DSAs / LGs and mapped them with licensed entity i.e. C.A., HDFC Bank Ltd. Hence it is evident that the insurer procured and solicited the business through unlicensed entities. Given the fact that there are only 91 specified persons authorized to solicit and procure and the volume of business sourced through C.A., HDFC Bank Ltd. is substantial and constitute close to 50% of insurer's business, it is obvious that business was sourced through unauthorized persons. The sales model adopted by the insurer is in contravention of Authority's circulars/guidelines.

It is noticed that HDFC Bank Ltd. has 91 Specified Persons, who are authorized to solicit and procure insurance business. Contrary to the number of CIE/SP available for the above C.A., the insurer had allotted 1283 multiple online access to its policy administration system to these C.As. It is clear that the said online access were used by other than authorized persons (SPs) of the C.A. Thus, the persons other than authorized SPs of the CA were soliciting and procuring insurance business

The insurer has violated Authority's circular IRDA/CIR/011/2003, dated 27-03-2003, Regulation 9(2) (ii) (a) of IRDA (Licensing of C.A) Regulation, 2002 and clause 8 & 17 of Corporate Agents guidelines dated 14/07/2005.

**Submissions of Insurer :**

Just because there is online access request, of the Corporate Agent/s, accepted by the company to enable the corporate agent and the customers to interact with each other through the market touch points where the customers moves/ goes to satisfy his needs of vehicle service etc, does not mean that the company has authorized un licensed persons to solicit insurance business.

They further submitted that they have 6 numbers of corporate agents and 1000 SPs as of today.

The charge also says that they have 5 corporate agents who belong to our group entity. They submitted that these entities are legally recognized as "person" defined in Corporate Agent Regulations 2002 and only IRDA has granted license to them and therefore have complied with the Regulatory norms. Neither they, nor the Company have violated Reg. 9 (2) (ii) (a) of IRDA (Corporate Agency Regulation) because business has been solicited/procured by the Agency through its authorized and legally recognized persons whereas administrative assistance only has been sought to render the effective services to the customers. There has been no complaint of the customers on the mode of soliciting business by the said corporate agents.

The policy of the Company and the corporate agents stated in the charge have not been in violation of the Code of Conduct specified for the Corporate Agents and it has not been even against the provisions of IRDA Regulation 2002 relating to Protection of Policyholders interest with regard to sales and policy servicing matters.

Clause 8 of the Corporate Agency guidelines has not been violated. It was only the persons specified in the said Clause who were involved in supervising the sale of insurance and they were qualified to hold the agency license (including the certificate of Specified Persons) and they only have carried out the responsibility of soliciting the insurance business within the framework of Insurance Regulations and various IRDA circulars / guidelines.

The Clause 17 of the Corporate Agency Regulations have also not been violated as there were no sub-agents – introducers – referrals etc. employed / deployed by the corporate agency / company and the sales was through authorized persons only though other employees of the corporate agency – its sister company organization etc. provided reference but none of them were rewarded on the basis of success of sale.

Neither the company nor the corporate agent has violated circular no. IRDA/CIR/011/2003 dated 27.03.2003 because the concern of violation shown in the charge itself does not by itself establish that the company launched new products without complying with the provisions of IRDA Circulars/ Guidelines.

If the customer approaches any of the group companies from where he has taken the loan or where he satisfies his banking needs and enquires about the insurance, should not be taken as the agent / our company has permitted such companies / bank to solicit the insurance business. If they are licensed entity on their own merit it should not be presumed otherwise just because it's a group company of the insurer and / or related to the licensed corporate agent. The business has to grow and any developmental effort made by the licensed IRDA entity should not be taken on the negative side of the compliance. It is only the pre-determined – simple and small ticket products which could be discussed and further procured by the authorized persons.

Further, during the personal hearing, the insurer submitted that currently there are 1000 SPs.

**Charge No.8 :**

It was observed that there was an individual agent of the insurer, having IRDA license no. 8704314 valid for three years from 15-07-2011. Insurer had allotted four online access user IDs and different intermediary codes to that individual agent, and registered address for all the IDs is same. In the first year of agency, the said agent had sourced premium of Rs. 425.92 lakhs and earned commission of Rs.41.15 lakhs. From the top 20 motor policies / underwriting base documents for the year 2011-12, it was observed that six of them were sourced / booked under the intermediary codes of the referred agent. It is evident from the above that insurer had sourced the business through unlicensed entities from different locations in India by using services of DSAs / LGs and booked the same under licensed agent and Insurer had generated multiple intermediary codes / online access codes for the agent.

The insurer's subsequent submission does not hold any substance as they didn't comment on the creation of multiple intermediary codes / online access codes for the agent. Hence it is

evident that unlicensed entities had solicited the business and the ID of an Individual Agent was used to show him as the procurer of business.

The insurer has violated Authority's circular IRDA/CIR/011/2003, dated 27-03-2003.

**Submissions of Insurer:**

The listed policies have been sourced by the referred agent as an individual agent of the Company. The business has been generated by the Agent and commission has been paid to the agent accordingly.

For the Policy no: 2311200196996700 (CN number as per table is 2300643307, whereas the actual CN number is 2301130626), indicating that the said business has been generated by the Agent himself.

For the CN number 2300643307 mentioned for the first case, policy number 2311200076514800000 the policy has been generated by HDFC Bank and commission has been paid to the Corporate Agent accordingly.

**Charge No. 9 :**

Insurer had generated 4741 online user IDs for intermediaries out of which 541 online access codes are allotted to an individual agent having IRDA License no. 1203785. The address for all the access codes mentioned in the Company's records is same. Most of the online access codes are in the name of M/s. Thomas Cook located in different cities in India. All these 541 codes are mapped in policy administration system with the referred individual agent. It was noticed that there was difference in both the financial years between commission amount payable / paid to that agent.

It was also evident from the premium register of the said individual agent for the period 2010-11 and 2011-12 that the business of all LOBs was sourced from different locations / entities all over India and booked under licensed agent code. It is also noticed that no stand alone Third Party Liability policy was sourced / booked under this intermediary. Thus, insurer had not provided true picture in the note given to the Authority about allotment of multiple code / online user IDs to that individual agent.

Insurer has given misleading information to Authority & inspecting officials. The discrepancy in disclosures and contradiction in submission of data to the Authority with different versions shows lack of internal controls.

The insurer has not submitted its response on observations at (a) to (b) and (d) to (g). Further, the Insurer has not produced copy of a single motor TP issued by the referred agent. Insurer has procured business through unlicensed entities and has not submitted any proof to refute the inspection observation. The insurer had generated multiple intermediary codes / online access codes for the agent. These online access codes were created for the use of persons other than the licensed agent mapped them with licensed entity. The policy holders, therefore, are put into inconvenience in recognizing the real intermediary name / intermediary code and contact details.

Insurer has violated

- Authority's circular IRDA/CIR/011/2003, dated 27-03-2003 and Authority circular no. IRDA/ CAD/ CIR/ AGN/ 137/ 08/ 2010, dated 25-08-2010.
- Clause 6 of Corporate Governance Guidelines (circular no. IRDA/F&I/Cir/F&A/014/01/2010).
- Licensed agent has violated Regulation 8 'Code of Conduct' of IRDA (Licensing of Insurance Agents) Regulations, 2000

**Submissions of Insurer :**

For violation of Authority's circular IRDA/CIR/011/2003, dated 27-03-2003, their genuine concerns and explanation are given in their reply submitted under charges: 4, 6, 7 (e), 7 (d) and requested that the same may be considered for having complied with the provisions. Regarding circular 25.08.2010, which is about disclosure of agency details on the policy document/s, they stated that the agency code / particulars pertain to the agent doing business with them. The disclosure is in the interest of the policy holders and they have complied with the same.

For violation of Clause 6 of Corporate Governance Guidelines (circular no. IRDA/F&I/Cir/F&A/014/01/2010), they submitted that the online access provided by the Company to the individual agent and to the offices / person of the company is a facility provided as an administrative convenience to assist the agent and company employees to extend services to the customers they interact through this access and enable the agent to perform his functions effectively. The online access and the codes state in the observation are not an instrument of soliciting insurance business and no such person (who is not an agent) has been given remuneration for soliciting the insurance business

For violation of Regulation 8 'Code of Conduct' of IRDA (Licensing of Insurance Agents) Regulations, 2000, they submitted that clause 8 of the code of conduct of individual agents specify as to what an agent has to do and what he has not to do. Since the agent in question represents the insurer, a view has to be taken as envisaged in the individual agency regulations 2000 that such an agent represents the insurer who needs to connect his customers to the insurer (his offices and various other persons) who are further supposed to effectively render all pre and after sales services to the customers. It is for these reasons that specific duties and functions of the individual agent are not provided in the regulations as are done for insurance brokers/ corporate agents etc.

**Charge No.12 :**

On examining motor total loss claim cases data of period 2009-10 and 2010-11, it was observed from the policy copies and base underwriting documents that the said business was sourced through other than licensed entities / DSAs/ LGs / Motor Dealers.

Further, on examining the Motor Dealer Matrix, available with insurer, it is observed that;

a) Insurer had created intermediary codes for 12088 motor dealers and also given them dealer code starting with DLxxxxxx, in the column heading for intermediary name the dealer name was

appearing. Further, 4218 intermediary codes were created for DSTs and given DST codes starting with DTxxxxxx.

b) On the basis of intermediary codes, data for intermediary details viz name / period of validity / business sourced by these entities was called for. It is pertinent to note that in this data against the specific intermediary code the name is appearing as HDFC ERGO GENERAL INSURANCE CO. LTD. (DIRECT) and not as per Motor dealer matrix data. e.g: for intermediary code 21035383 name as per Dealer Matrix data name is REKHA MANDHANA, but as per another data format called shows the name against said intermediary as HDFC ERGO GENERAL INSURANCE CO. LTD. (DIRECT).

c) It is evident from the above that insurer had created intermediary codes for unlicensed entity viz motor dealers / DSAs / LGs and showing their details in particular name differently in various data called for examination.

Insurer has sourced business through unlicensed entities and booked under direct channel / licensed intermediary code in contravention of the guidelines. Insurer has violated Authority's circular IRDA/CIR/011/2003, dated 27-03-2003.

**Submissions of insurer:**

The company submitted that:

(a) the DSA/LG/DL codes stated in their internal administrative documents / statements have been generated to facilitate and understand the location where the customers usually visits for satisfying their needs of vehicle services. We as a company directly and through our agents remain available at such places to guide the customers for his insurance needs.
(b) Allocation of internal codes is basically to keep proper records and to find out the various sources where the business emanates so that the company can harness it through its agency force and through its employees and consequently follow the claims experience of the business emanating from such places. It should not be inferred that the business is solicited by persons other than licensed / authorized entities.
(c) The places where the motor dealers are located represent the insurance market place as well and it is natural that the company through: its agents – employees by establishing the access codes etc. would like to benefit to underwrite business. It is only the availability of the customers and the information at dealer's place which is used by our authorized person, agents in the process of explaining the insured about the insurance products etc.

**Combined Decision for charges 6, 8 and 9 and 12:**

**Regarding furnishing varying figures in relation to the commission to the agent, the explanation furnished by the insurer is accepted.**

**In regard to allotting many online access codes to an individual agent, the insurer's explanation does not hold any substance as they didn't comment on the creation of multiple intermediary codes / online access codes for the agent. As an individual agent cannot solicit business simultaneously at different geographical locations across the country, it is evident that unlicensed entities are involved in solicitation of business. Thus, by creating multiple access codes, the insurer has violated Authority's circular IRDA/CIR/011/2003, dated 27-03-2003. Also the said circular does not allow any exception to any product in the name of pre-underwritten product.**

**In case of Corporate Agent, the number of 1000 SPs which the insurer claims to be available with them is as on date; however, on the date of inspection, they had only 91 SPs and considering the presence of just 91 SPs, the amount of business procured is clearly disproportionate. The Regulations and guidelines clearly lay down that only persons authorized must solicit business. In this background, the explanations put forward by the insurer to justify their action are not acceptable. Hence it is clear that the insurer used unlicensed entities to procure business. This is violation of Authority's circular No.IRDA/CIR/011/2003, dated 27-03-2003.**

**The Insurer's submission that they did not violate circular no. IRDA/CIR/011/2003 dated 27.03.2003, is not correct because the concern is not that the company launched new products without complying with the provisions of IRDA Circulars/ Guidelines, but the concern is that they have solicited business through unlicensed person.**

**For the violations committed by the insurer by using unlicensed entities as outlined in the above mentioned charges, a penalty of an amount of Rs. 5,00,000 (Rupees Five Lakh only) is levied on the insurer under section 102(b) of the Insurance Act, 1938. The insurer is further directed to discontinue the practice of issuing intermediary codes to any entity/individual that is not qualified to solicit insurance business.**

7. **Charge No.7**

It was observed from the data provided for Form 26Q (TDS data) that in addition to commission insurer had paid to C.A., HDFC Bank Ltd. an amount of Rs. 30 Crs. and Rs.11 Crs. for the financial year 2010-11 and 2011-12 respectively. The insurer had also paid other than commission to its group entities / related parties Corporate Agents under the garb of business promotion.

**Violation of :**

a) Circular no. IRDA/Cir/003/2003 dated 30th January, 2003 and circular ref.no.IRDA/Life/Cir/Misc/110/07/2010 dated 12th July, 2010.
b) Regulation 6, 11(1, 13 & 14) & 12(c) of IRDA (Sharing of Database for Distribution of Insurance Products) Regulations, 2010 read with Circular: No. IRDA/Life/Misc./Cir /125/08/2010, dated 5-8-2010 & No. IRDA/Life/Cir/Misc/126/08/ 2010, dated 9-8-2010.
c) Section 31(B)(2) of Insurance Act, 1938 by not reporting the payments to the Authority as required by the Act.
d) Authority circular no. 011/IRDA/Brok-Comm/Aug.08, dated 25-08-2008 by paying additional amounts to Corporate Agent in addition to commission.
e) Reg.9 (2)(ii)(a) of IRDA Licensing of Corporate Agents Regulations,2002 and IRDA circular ref. IRDA/Cir/011/2003, dated 27.03.2003
f) Clause 21 of Corporate Agents guidelines dated 14/07/2005 and para 8.4 of Outsourcing guidelines dated 1st Feb, 2011.

**Submissions of Insurer**:

The Insurer already submitted all the details of other payments made to the corporate agents in which we have proved that the payments made to the agents is towards the commission but was shown under 26 Q erroneously under section 194H instead of 194D. It is also proved

therein that other payments made to HDFC Bank were for custodial charges including cheque drop box charges and not as commissions.

HDFC Financial services / HDFC Sales Pvt. Ltd and HDFC Securities were paid certain amounts, (before they became Corporate Agents) for lead generation as they were engaged for tele-caller services as per IRDA Circular / Guidelines. It should therefore not be treated as a violation of the stated circulars and section 40A (3) of the Insurance Act (this section is already omitted and made redundant by the Amendments passed in March'2015.

They further confirm again to the Authority that no payments have been made to Corporate Agents for promotional items.

They also confirm that payments made to various vendors including outsourcing entities is well within the terms of the contracts and for the services availed by the company and its distribution channels. No specific rule has been violated in this regard.

It is confirmed that the company has reported to the Authority all the payments it has made to corporate agents as required under Section 31 (B) (2) of the Insurance Act. The company has not violated earlier provisions of 31 (B) (2) of the Insurance Act. Moreover this provision is no more existing in the Amended Act as on 31st March'2015.

**Decision: The submissions made by the insurer that other payments made to HDFC Bank were for custodial charges including cheque drop box charges and not as commissions and the same is made in the capacity of a Bank, are taken on record. In view of the insurer's categorical assertions on various counts as above, the charge is not pressed.**

**8. <u>Charge No. 10</u>:**

M/s. Aarvi General Insurance Services Pvt. Ltd., Third Party Assessor (TPA) code SS001056, is one of the agencies who were said to be rendering motor vehicle pre-inspection services to the insurer. The Company has not entered into any written agreement with any of the pre-inspection service providers including M/s. Aarvi. It is pertinent to mention that as per Outsourcing guidelines, pre-inspection of motor vehicles is an activity supporting to core activity i.e. Underwriting. As per outsourcing guidelines, Outsourcing Contracts shall be governed by written contracts and activities of this nature shall be outsourced with due reporting to the Authority.

Insurer has not informed whether the vendor was a licensed surveyor. Subsequently vendor became a corporate agent of IRDA. Insurer has also violated Outsourcing guidelines by allowing a licensed entity to act as vendor.

On examining, it is observed that there is no company registered as 'Aarvi General Insurance Services P Ltd'. Further there is another firm named 'Aarvi Insurance Brokers Pvt Ltd' which has two directors Pradeep Kantilal Shah & Sunanda Pradeep Shah.

Insurer has not disclosed details of Outsourcing payments of vendor 'Aarvi' in the HLY statement (Apr-Sep12 & Oct-Mar13) filed with Authority.

Insurer in its reply informed that the pre risk inspection job is assigned to empanelled surveyors and risk assessors, as such no agreement in this regard is entered by company. Insurer is

misguiding the Authority by stating that a surveyor/risk assessor is utilized for the risk inspection service, whereas the vendor is a corporate agent.

Insurer has violated para 4, 8.4, 9.9 & 11.2 of Outsourcing Guidelines dated 01.02.2011 and clause 21 of Corporate Agents guidelines dated 14/07/2005

**Submissions of insurer**:

The vendor in this case is M/s Aarvi General Insurance Services P Ltd. The entity was assigned pre risk inspection work. The entity was not a registered surveyor.

M/s Aarvi General Insurance Services P Ltd became a corporate agent of the Company in November 2012 and became a broker with effect from May 26, 2014. Before it became Aarvi Insurance Brokers Pvt. Ltd., the corporate agency was surrendered.

Pre-inspection of the vehicles is carried out when there is a break in the insurance. It is a measure to minimize the claims during the policy period. This function does not come within the ambit of outsourcing guidelines. They further submitted that as per their understanding there is no contract between the insured and insurer during this period and the entity which does pre-inspection of such vehicles is not required to be IRDA licensed entity because this is a value added services which insurer like to extend to its loyal customers when there is break in insurance. Pre-inspection has no direct or indirect connection with the solicitation of business and Insurer exercises the prudence to know in advance to ensure that it does not incur claims liability of losses which would have taken place to the vehicle during the break in the insurance. Pre-inspection of this nature is not specifically provided by the IRDA in any of the functions it has notified for agents – brokers – surveyors etc.

There would be several other reasons for such services to be rendered to ensure that the trust of the customers in the insurance market is sustained and the losses of uninsured vehicles during the uninsured period are not passed on to other insured persons and this saves the cost of insurance for all the stakeholders.

The reporting requirements are basically governed by Para 11 of outsourcing guidelines and are required to be furnished in Form A of Annexure II of the said guidelines. Since the activity is not a part of the outsourcing guidelines and it is also not a regulated activity. They further submitted that the outsourcing guidelines are not applicable with regard to pre-inspection activity and hence there is no violation of the said guidelines. Providing online access for the purpose of pre-inspection is necessary for uploading the photos / report of the vehicle inspected and it should not be taken as a violation.

Regarding Clause 21 of the Corporate Agency guidelines, it is submitted that the same has not been violated by the insurer because the vendor has not performed the functions of an agency for which it has been paid. The Company would like to submit that the entity becoming of Corporate Agent of the Company in November 2012, it has not entrusted any pre insurance risk inspection activity to Aarvi General Insurance Services Pvt Ltd. The Company wishes to state that it has not entered into any outsourcing agreements with any of its' licensed intermediaries for any outsourcing activities.

**Decision:**

**"Pre-inspection" as explained in the reply to the Show-cause-notice, is "to know in advance to ensure that it does not incur claims liability of losses which would have taken place to the vehicle during the break in the insurance" is clearly a part of the underwriting procedure. "Underwriting", is listed as a core activity as per para 2.1 of Outsourcing Guidelines dated 01/02/2011. Also insurer's submission that "pre-inspection has no direct or indirect connection with the solicitation of business" is not acceptable as the purpose is to extend cover to vehicle depending on the claim history during the break in the insurance. Hence the submissions made by the insurer to substantiate the tenability of their actions are not convincing. Thus the various guidelines on outsourcing contained in Circular No. IRDA /Life/CIR/GLD/013/02/2011 dated 1-2-2011 have been violated by the insurer. For this violation, a penalty of Rs. 5,00,000 (Rupees Five lakh only) is levied on the insurer, under section 102(b) of the Insurance Act, 1938. The Insurer is further directed to comply with the guidelines on outsourcing contained in Circular No. IRDA /Life/CIR/GLD/013/02/2011 dated 1-2-2011 as amended from time to time.**

**9. Charge No.11:**

From the policy numbers furnished by the insurer for which pre-inspection service was provided by M/s. Aarvi, it was found that all the policies are Motor Package Policies and no Motor Third Party Liability only cover was given for these policies. In this regard the insurer furnished incorrect note (dated 12-11-2012) to the Authority about not uploading of the data of pre-inspection of vehicles on the system as the pre-inspection was done for vehicle to be covered under Motor Third Party Liability only cover and payments for the same made to M/s. Aarvi.

M/s. Aarvi apart from rendering services as TPA to insurer is also engaged in solicitation and procurement of insurance business before obtaining corporate agent license and the sourced insurance business was booked under the agent with License No. 1203785.

Insurer had paid remuneration to M/s. Aarvi for soliciting and procuring of insurance business and / or towards premium portion of Motor TP Liability section of Motor Package Policy, booked under the codes of the agent with License No. 1203785.

The insurer has generated the intermediary code in the combined name of the agent with License No. 1203785 and M/s Aarvi. Agent code in Quotation is of vendor/corporate agent and in policy document it is of individual agent.

From the observations of inspection team, it is noted that top individual agent of the insurer and one of the highest paid vendors of the insurer have a business relation. Around 97% of motor policies solicited by the top individual agent, risk inspection is done by a vendor whose contact details are of the same individual agent and who also has corporate agency license.
The payments to vendor by insurer are made without any records, which clearly indicate of additional payouts.

Data on standalone motor TP policies given to inspection team and insurer reply is different.

All above reveal that insurer has procured business through unlicensed entities, made additional payouts, lacks internal control mechanism on payouts without any written contract, not

disclosing the payment information in the outsourcing statements, Outsourcing of core jobs without reporting to Authority, Outsourcing the risk inspection job to a licensed corporate agent and informing as if assigned to a licensed surveyor/risk assessor and releasing payment without proper invoices/records/uploading risk inspection report into the policy administration system.

**Violation of** :

(1) Authority's circular IRDA/CIR/011/2003, dated 27-03-2003.
(2) Clause 21 of Corporate Agents guidelines dated 14/07/2005.
(3) Circular no. 011/IRDA/Brok-Comm/Aug.08, dated 25-08-2008.
(4) Point 8.4 of Outsourcing guidelines dated 1st February, 2011.

**Submissions of insurer**:

The Company avails pre-inspection services from M/s. Aarvi General Insurance Services Pvt. Ltd. for all types of policies (Package as well as Third Party Liability only)

The difference is in the process of uploading of the pre-inspection reports. The reports of package policies are stored/uploaded in the system for future reference for claims processing to verify old damages, whereas, the reports in respect of Third Party Liability only are not stored/uploaded as the purposes here is to verify the existence of the vehicle.

Wherever there was pre inspection done, documents exist. However, wherever there is standalone policy, no documents were uploaded as there was no need.

We were not aware that M/s. Aarvi was a corporate agent and we came to know only subsequently. The agent also said that he did not transact any business.

We confirm that the pre inspection of vehicles was done for all vehicles for TP insurance.

**Decision**:

**The insurer has generated the intermediary code in the combined name of the agent with License No. 1203785 and M/s Aarvi. Agent code in Quotation is of vendor/corporate agent and in policy document it is of individual agent.**

**Further, it is noted that top individual agent of the insurer and one of the highest paid vendors of the insurer have a business relation. For around 97% of motor policies solicited by the top individual agent, risk inspection is done by a vendor whose contact details are of the same individual agent and who also has corporate agency license.**

**The payments to vendor by insurer are made without any records, which clearly indicate additional payouts.**

**Data on standalone motor TP policies given to inspection team and insurer reply is different.**

**All above reveal that the insurer, has procured business through unlicensed entities, made additional payouts, lacks internal control mechanism on payouts without any written contract, is not disclosing the payment information in the outsourcing**

**statements, is outsourcing core jobs without reporting to Authority, and is outsourcing the risk inspection job to a licensed corporate agent and informing as if assigned to a licensed surveyor/risk assessor and releasing payment without proper invoices/records/uploading risk inspection report into the policy administration system.**

**Further, the insurer has confirmed that pre inspection of vehicles was done for all vehicles for TP insurance. Such a submission on the part of the insurer is not tenable as new vehicles do not require any inspection and vehicles which are already insured with them and seek renewal of insurance do not require pre-inspection.**

**All the above facts show that the insurer has violated**

1) **Authority's circular IRDA/CIR/011/2003, dated 27-03-2003.**
(2) **Clause 21 of Corporate Agents guidelines dated 14/07/2005.**
(3) **Circular no. 011/IRDA/Brok-Comm/Aug.08, dated 25-08-2008.**
(4) **Point 8.4/5 of Outsourcing guidelines dated 1st February, 2011.**

**The Insurer is already penalized (under other charges) for violation of Authority's circular IRDA/CIR/011/2003, dated 27-03-2003 and for Outsourcing guidelines dated 1st February, 2011. For the residual violations under this charge, a consolidated penalty of Rs.5,00,000 (Rupees Five Lakh only) is levied on the insurer under Section 102(b) of the Insurance Act, 1938. The Insurer is further directed to comply the all the regulation quoted above.**

10. Charge No.13:

It was observed from the sample policies examined that the insurer had allowed discounts up to 91.00% under Engineering, up to 87.50% under Fire and up to 97% under Misc. segments on the base rates filed, deviating from the Authority's F & U guidelines. Insurer has violated Circular No. 021/IRDA/F&U/Sep. 06, dated 28-9-2006 to be read with IRDA/NL/CIR/F&U/003/01/2011 dated 06-01-2011.

Submissions of Insurer:

The Company has not violated the file & use guidelines because as per the provisions of Para 18 of file & use guidelines, the risk was co-insured and the Company was a follower co-insurer. The Company followed the terms agreed upon by the lead insurer. The pricing offered by the lead insurer was accepted by the Company in line with the market practice on coinsurance business.

In view of the above, the subject being the core underwriting issue dealt by the lead insurer and followed by us as co-insurer may please be considered appropriate to drop the charge

Decision:

**Taking note of the submission of the insurer, the charge is not pressed. However it is imperative that the rate filed by the insurer is commensurate with the risk they are ready to accept. Any discount over and above the filed rate shall have an unexpected adverse impact on the loss ratio and hence on solvency position. Therefore, it is expected that the insurer should participate as a follower in a co-insurance arrangement only if the rate**

**quoted by the lead insurer is sound based on the risk bearing capacity of the follower or it is filed and approved by the authority.**

11. **Charge No.14** :

The following irregularities were observed from the Underwriting Notes and Email correspondence related to underwriting.

| Policy no. | Premium as per Statement UW-5 | Premium shown on Policy copy |
|---|---|---|
| 2999200151331600 | 81663091 | 116032732 |
| MR10000003000101 | 64994262 | 63653472 |
| 2999200098892800 | 21939613 | 21284490 |
| 2999200184995000 | 20414344 | 31998162 |

Insurer clarified that the premium in statement UW-5 is inclusive of endorsement premium. If so, insurance premium on policy document should be less than the UW-5 statement premium. Further co-insurance share of premium cannot be more than 100% of policy premium. Insurer has given incomplete and misleading information

Insurer has violated Clause 6 of Annexure II of Corporate Governance Guidelines contained in circular No.IRDA/F&A/ CIR/025/2009-10, dated 5-8-2009.

**Submissions of insurer:**

The Company would like to submit that it had provided complete information and there is no intention of misleading the Authority. With regard to item no 4, the Company would like to reiterate that the premium shown under column 'premium as per the policy copy' is 100% premium inclusive of service tax. The premium shown as per UW5 is our share of premium including endorsements and excluding service tax. The calculation in respect to policy number 2999200184995000 is as under:

| **Particulars** | **Premium (Rs.)** |
|---|---|
| 100% premium incl. service tax @ 10.3% | 3,19,98,162 |
| 100% premium excl. service tax @10.3% | 2,90,10,121 |
| Our share (70%) excl. service tax (A) | 2,03,07,085 |
| Our share of endorsement excl. service tax (B) | 1,07,259 |
| Premium as per UW5 excl. service tax ( A+B) | 2,04,14,344 |

**Decision:**

**Considering the submission and reconciliation between UW-5 and policy premium, submitted post show cause notice, charge is not pressed. However the insurer is directed to comply with Para 6 of the guidelines contained in Circular No. IRDA/F&A/GDL/CG/100/05/2016 dated 18th May 2016 and thereby adopting appropriate internal controls to ensure that the risk management and compliance policies are observed.**

12. **Charge No.15 & 16**:

**Charge No. 15:**

The insurer is not furnishing a copy of proposal to the insured within 30 days of acceptance of risk. This is a violation of Regulation 4(1) of IRDA (Protection of Policyholders' Interests) Regulations 2002

Sample of 550 policy numbers from various LOBs were selected and policy copies / base underwriting documents were called for. On going through the soft copies of data submitted, it was observed that the insurer had furnished policy copies for all the samples but base underwriting documents viz proposal form / cover note etc. for various LOBs were not submitted for close to 120 policies which comes to 22% of the samples selected. Thus, it is clear that insurer do not have base underwriting documents / proposal forms for these 120 policies. This is violation Regulation 4(1) of IRDA (Protection of Policyholders' Interests) Regulations 2002 and clause 6 of Corporate Governance guidelines contained in Circular No. IRDA/F&A, CIR/025/2009-10, dated 5-8-2009, for not having proper internal control.

**Submissions of Insurer:**

- Quotation is provided from Point of Sale system, based on information shared verbally by the prospect. Post consent from the prospect, policy is issued from the PoS application.
- For policies sold over telephone, the transcript is sent to the policyholder along with the policy copy.
- For polices sold on Point of Sale system, the information shared verbally by the prospect is converted into policy and shared in form of a policy schedule.

**Charge No.16:**

**Procedure where Proposal form is not used** - The insurer is recording the information obtained orally or in writing. However, no confirmation or communication of the same within a period of 15 days thereof with the proposer though such information is incorporated in the policy. This is a violation of Regulation 4(4) of IRDA PPI Regulations, 2002.

**Submissions of Insurer:**

The Company submitted that policies are sold through POS system and over telephone mode. As regards the policies sold through POS system, the information shared verbally by the prospect is converted into policy and shared in form of a policy schedule. Here there is an interface with the prospect in person and information are gathered directly from the prospect by way of personal interactions and post consent from the prospect, policy is issued from the POS application. As regards the policies sold over telephone,

the information provided by the prospects are recorded by way of transcripts and they same are shared with the policyholder along with the policy copy.

However, the regulation under reference further provides that, ".....onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of cover....."

They submitted confirmation of not having abdicated the onus of proof and have not brought under dispute any matter which would be in violation of this regulation.

**Decision on charge 15 & 16:**

**While taking note of the submissions made by the insurer, the Authority advises the insurer to strictly abide by Regulation 4(1) and 4(4) of IRDA (Protection of Policyholders' Interests) Regulations 2002. The insurer is further directed to maintain properly all base underwriting documents and make available at the time of inspection by the Authority.**

13. **Charge No. 17**:

The LOB wise statements of claims paid, closed and repudiated furnished by the insurer was examined. The insurer has not recorded the reasons for claims closed without payment.

It is very essential on the part of the insurer to maintain record of the reasons in regard to all claims viz. whether repudiated or closed without payment. By failing to maintain the said record in regard to the claims which have been closed without payment,the insurer has violated Section 39 of Insurance Rules, 1939 and Clause 6 of Corporate Governance guidelines contained in circular no. IRDA/F&I/Cir/F&A/014/01/2010.

**Submissions of insurer**:

Claims are usually closed without payment, when the insured does not show any interest in pursuing the claim. Further, where the claimant has reported through multiple channels like toll free, e-mail etc. leading to creation of duplicate claim records such claims are closed without recording the reason. However, as pointed out by the Authority, we shall start forthwith recording the appropriate reason in regard to cases which are closed without payment.

**Decision**:

**It is very essential on the part of the insurer to maintain record of the reasons in regard to all claims viz. whether repudiated or closed without payment. In this connection, the insurer's assurance that they will record the reasons even for those claims which are closed without payment is taken note of and the charge is not pressed. However the insurer is advised to ensure compliance of section 14(b) of Insurance Act 1938 in this regard.**

**14. Charge No. 18:**

The insurer is issuing Motor Vehicle Insurance Proposal Form cum Cover note to the insured. The following discrepancies were observed in wordings of the cover note of insurer:

The title of cover note is not as per Form 52 of Central Motor Vehicle Rule 1989.
The proposers' signatures are obtained on the covernote issued by the insurer.
The separate column for data to be filled in by HDFC Bank Ltd. is created in the cover note viz., BDR Code, LG Code, Location, Lead No., LOS No., Branch / DSA No. etc.

Thus, the covernote format used by the insurer was in deviation of Authority's File and Use guidelines.

The insurer has violated General Regulation 22 of erstwhile Indian motor tariff, which mandates that Cover Notes insuring Motor Vehicles are to be issued only in Form 52 in terms of Rule 142 Sub-Rule (1) of the Central Motor Vehicles Rules 1989.

**Submissions of Insurer**:

- The Proposal form cum cover note format forms part of the standard document submitted to the Authority for all our filed add-on's under Motor.
- The format of same includes all components specified in the Form 52 in terms of Rule 142 Sub-Rule (1) of the Central Motor Vehicles Rules 1989. Samples of the form along with the approved add on endorsement docket containing the form had also been shared with the IRDA inspection team in October-November 2012.
- By virtue of the clearance received from the Authority on the filed add-ons, it was implied that clearance of the 'proposal cum cover note' format was also granted.
- As regards the additional columns for HDFC Bank Limited, it is submitted that, these are the additional fields included for tracking of the business origin. For the purpose, the stipulations under Rule 142 Sub-Rule (1) of the Central Motor Vehicles Rules 1989 are considered as minimum requirements.
- We are therefore of the view that said format is not in contravention with Form 52 in terms of Rule 142 Sub-Rule (1) of the Central Motor Vehicles Rules 1989 or Authority's file & use guidelines.

It is also pertinent to note that tariffs have been withdrawn from the market and file & use guidelines permit the additional information to be sought as also to provide additional coverages than the minimum stated in the cover note format. By creating a separate column in the format, the Company has only enhanced the value for the benefit of the customers as the customer would easily identify the concerned branch and the responsible persons servicing the customers through the said branch. There is no specific part of the file & use guidelines

dated 28.09.2006 and circulars thereafter which prohibit that additional value added information cannot be made part of the Form 52 when it is considered necessary for providing coverage and protection to the customer.

**Decision:**

**While the submissions made by the insurer including the reasons for deviating from the format prescribed in Rule 142 (1) of the Central Motor Vehicles Rules 1989 are taken note of, the insurer is advised that they must ensure that the formats and forms statutorily prescribed are not tampered with or modified. If they intend to seek or provide additional information, they should do so by a different method and not modify the format.**

**15. Charge No.19:**

There are some differences in the add-on covers specified between Cover Note and the policy copy against the said cover note. Insurer had been marketing hydrostatic cover for Motor Package policies without prior approval of the Authority and thereby contravened guidelines on F & U requirements for general insurance product. Further in a sample of policies examined, premium is charged for the Hydrostatic Risk but the same was not shown in the policy documents.

The insurer had collected excess amount from the insured, but instead of refunding the amount insurer had shown the amount equal to which was received against the cover note. The Insurer had also charged more than the actual premium and had not given risk coverage particulars for additional premium in OD section.

**Violation of** :

(a) Para 2 of Authority circular No. 021/IRDA/F&U/SEP-06 dated 28-09-2006 to be read with circular no. IRDA/NL/CIR/F&U/003/01/2011 dated 06-01-2011 by allowing add on cover not approved by Authority/ making changes to erstwhile tariff wordings.

(b) Hydrostatic Risk and add-on risk towards which additional premium is collected is not shown in the policy documents, which is in contravention of Regulation 7 (f), (j), (m) and (p) of IRDA (Protection of Policy Holders Interests) Regulations, 2002.

**Submissions of insurer:**

- Hydrostatic cover is not a specified exclusion in the erstwhile Indian Motor tariff therefore same is considered as "in-built" cover. As a consequence, we are not charging additional premium for granting this cover.
- In the specific case of Underwriting of policy no. 2311200158741900 the add-on cover sold is only in respect of "Zero depreciation" and due to reasons explained above, have included "Hydrostatic cover" as part of the additional coverage but without charging additional premium.
- In respect of observations made under policies (2311200196996700, 2311200224019400, 2311200138972900, 2311200195136000, 2311200224109300

and 2311200172283100), the additional premium charged does not refer to "add-ons" but rather surcharges for risk aggravating factors.

- Based on the above, the Company is not in contravention of para 2 of Authority circular no. 021/IRDA/F&U/SEP-06 dated 28-09-2006 to be read with circular no. IRDA/NL/CIR/F&U/003/01/2011 dated 06-01-2011 on guidelines on F & U requirements for general insurance product OR violation of Regulation 7 (f), (j), (m) and (p) of IRDA (Protection of Policy Holders Interest) Regulation, 2002.

Due to previous limitations in the policy schedule template design, complete details of endorsements like add-on covers could not be displayed separately in the space provided for list of endorsements along with the clause number & premium collected against the same. We have since rectified this & a new policy schedule now displays all details pertaining to individual benefits/add-ons as opted by the Insured in the premium computation sectionitself.

We would like to highlight that there is no excess premium collected from the client. The premium collected was displayed in the policy schedule separately under the heading "List of Endorsements" but was not reflected separately in the premium computation table. As mentioned above, this was due to limitations in the earlier policy design template which have now been corrected.

**Decision:**

**The submissions made by the insurer are taken on record. In view of insurer's categorical submission that rectification in the form of revised policy template having been put in place and that no excess premium was charged, the charge is not pressed. However, the insurer is advised to be careful to ensure that there is no lacuna (either intentional or unintentional) in the system and implementation which has the potential to put the customers in a totally inconvenient and disadvantageous position.**

**16. Charge No. 20:**

Insurer entered into agreement with motor manufacturer M/s. Hyundai Motor India Ltd. (HMIL). The agreement is valid from 15-12-2008 to 14-12-2011. As per agreement HMIL should provide access to HMIL dealers. The insurer had paid HMIL an amount of Rs. 2.37 Crs and Rs. 2.18 Crs. for the period 2010-11 and 2011-12 respectively. The said amount was paid on monthly basis against the "Joint Sales Promotions". As per annexure to the invoice, it was noted that an amount of Rs.75000/- was paid per month per dealer for providing access to dealers of HMIL. Thus, the facilitation charges were paid under the accounting head of joint sale promotion. The arrangement is apparently in line with referral arrangement. However, the route of joint sale promotion was chosen by the insurer to avoid obtaining approval of the Authority for referral arrangement.

Insurer has violated Regulation 3 & 11 (13 & 14) of IRDA (Sharing of Database) Regulations, 2010.

**Submissions of Insurer**:

HMIL is an automobile manufacturer and operates through a dealer network across the country. The insurer, along with 5 other insurance companies is on the preferred list of insurers recommended by HMIL to its dealer network, in case the dealers wish to engage in the business of insurance by becoming an insurance agent.

The insurer with a view to increase its premium income engaged in promotion activities in which the endeavor was to attract dealerships to become its agents. These promotions were organized by HMIL and the insurer had reimbursed the expenses. Since HMIL by itself is not engaged in the business of insurance, there is no question of these payments being remuneration of any kind for sourcing business.

Insurer submitted that regarding Regulation 11 (13&14) of the Sharing of Database Regulation, they have already explained their perspective in reply given under Charge 7(b).

Regarding Regulation 3 of IRDA (Sharing of Database) – they submitted that it relates to an application to be filed for seeking approval of the Authority for referral arrangements and it is not applicable to us because our joint promotions with said dealer was not a referral arrangement.

The agreement has been examined by the inspection team and it was clear that it is not a sharing of database / referral arrangements as envisaged in the said Regulation.

The payments have been made as per agreement and as per the proper invoices and this has been done for general promotion and sale of the insurance with an objective to facilitate customers for hassle free services.

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**Decision:**

**Considering the submission of the Insurer no charge is pressed.**

17. **Charge No.21:**

It was observed from the top 10 outstanding and top 10 settled claims that claim provisioning in Motor TP cases is not adequate and sufficient.

Insurer had submitted system generated claim documents and not submitted original claim file in absence of which MACT Court petition / summons, date of receipt of the same could not be verified. It was also observed that though the date of receipt of petition / summons is available with insurer in advance, the registration of claim was delayed in the system. The delay was ranging between 10 months to 26 months. The procedure followed by the insurer with delay in registration of claims will make impact on the true provisioning of Motor TP claims and consequences on the financials.

The gap between the claim provisions made and the actual amount of claim settled is wide. e.g. in claim no. C23001107090600000001, the difference as high as Rs.55.50 lakhs.

**Violation of:**

In most cases, insurer has revised the provisioning only just before claim payment. As such, proper provisioning was not done by insurer thereby violating

**(a) Point 2(ii) (b) under Schedule II-B of IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations, 2000**

**(b) Clause 6 of Annexure II of Corporate Governance Guidelines circular No.IRDA/F&A/ CIR/025/2009-10, dated 5-8-2009**

**Submissions of Insurer:**

The above provision provides how the reserves are to be computed for outstanding claims and in this regard we have to state that:
(i) Where the amounts of outstanding claims were certain and known, they have been provided in full.
(ii) Where the amounts of outstanding claims were not certain and could not be known exactly, they were estimated on reasonable basis on case by case method and provided for. The due effect of allowance for changes in the settlement pattern / average claim amount – inflation – expenses were taken into consideration.

The provisions made for the claim reserves have been analysed by Actuarial department while calculating the Incurred But not Reported (IBNR) amount and also audited by the statutory auditors during the course of audit.
Timely revisions have been made into this reserves based on the results of the investigations and advises of the advocate concerned in addition to departmental reviews.
The delay in certain cases for registration of the claims is for valid reasons such as ascertaining the policy whether it belongs to our Company or not, whether there is a liability of the Company, or whether there is any technical ground based on which motor accident tribunal does not recognize the accident, or whether the accident is genuine or a fraud, ascertaining the possibility of disability, authenticity of information of accident etc. It is necessary to do so because the company is expected to consider the relevant factors whilst creating a provision in the books of account.

In view of the above, it is submitted that the Company is following laid down processes whilst creating a provision as envisaged in the regulations and also by general principles of transacting motor/ third party insurance business.

The objective of ensuring appropriate Internal controls, timely identification and assessment of risk pertaining to the business of the Company, compliance of applicable laws, protection of the policy holders interest, adequate return on investment, since inception the Company has in place following Board committees, with defined terms of reference viz. Audit and Compliance Committee, Risk Management Committee, Policyholder's Protection Committee, Investment Committee etc. Further the Company has an independent Internal Audit and Risk Management department to assess the effectiveness of the processes and internal controls operating in the Company.

**Decision:**

**It is found that in most cases, insurer had revised the provisioning only just before claim payment. As such, proper provisioning was not done by insurer. A perusal of the observations under charge 21 and the submissions made by the insurer indicates that for whatever reason there has been under provisioning which is a violation of Point 2(ii) (b) under Schedule II-B of IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations, 2000. When a clear procedure for making sufficient provisioning has been made in the Regulation, it is not open to the insurer to deviate from the said procedure resulting in insurer's actions impacting on their solvency margins. Considering the submission that timely revisions have been made into this reserves based on the results of the investigations and advises of the advocate concerned in addition to departmental reviews, no charge is being pressed. However insurer is directed to ensure that the valuation of liability is in compliance with Regulation 5 (in accordance with schedule II) of IRDAI (ALSM of GI Business) Regulations 2016.**

**Further, the insurer's failure to make available to the inspection the original claim files and the reasons for delay in the registration of claims indicates absence of proper internal control and system. Hence, the insurer directed to comply with para 6 of IRDAI Guidelines dated 18th May 2016 and thereby adopting appropriate internal controls to ensure that the risk management and compliance policies are observed.**

18. **Charge No. 22**:

It was observed from F & U (of Home Suraksha Plus / Home Credit Assure policy) documents viz. proposal form, policy schedule, policy wordings, claim form that in none of these documents it was clearly mentioned that in case more than one person is covered the sum insured will be shared amongst the person(s) covered equally and loss will be paid accordingly. This point was only dealt with in the underwriting guideline for Home Credit Assure, which was not disclosed to the policy holders.

**Violation of**

(1) Regulation 7 (1) (e) and (j) of IRDA (Protection of Policy Holders' Interests) Regulation, 2002.

(2) Point no. 2, 3(iii) and 3(vii) of Authority circular no. 021/IRDA/F&U/Sep. 06 dated 28-09-2006 containing guidelines on "File and Use" requirements for General Insurance products read with circular no. IRDA/NL/CIR/F&U/003/01/2011 dated 06-01-2011.

**Submission of Insurer**:

The insurer submitted that their submissions may be accepted as against the general observations that they have violated these provisions.

The Regulation 7 and its stated parts above only require that the policy document issued by the insurer should incorporate the matters such as: sum insured, policy terms and conditions and warranties, which have definitely provided in the policy / contract

documents in addition to the prospectus shared with the customer in advance before accepting the risk. The insured has not raised any dispute on the policy or at the time of claims and it should not be inferred that we have apparently violated this provision.

They submitted regarding Paragraph 3 (iii) of F&U guidelines that they firmly believe that they have issued a genuine insurance product having an insurable risk. The product is not an Alternate Risk Transfer or a financial guarantee in any form and we have hence not violated this provision.

Regarding Clause VII of paragraph 3 of above guidelines they confirmed that the terms and conditions of the insurance cover provided has been fair between us and the insured and there has been no disclaimer or a dispute by the insured as the cover has been properly drawn and consented by the insured himself. In our view there has been no violation by the company of this provision of F&U guidelines.

**Decision:**

**The insurer's submission that they have taken remedial action and have started the practice of informing the policyholders about the detailed conditions etc. of the policy is taken note of. However the Regulations relating to Protection of Policyholders' interests mandate that the policy must contain details, inter alia, like Sums Insured and the terms, conditions and warranties etc. This makes it very necessary on the part of the insurer to divulge these details on the policy. However, the policy documents examined by the inspection do not indicate anything to enlighten the policyholder about these details. For this lapse, the insurer is warned and directed to be careful in order to ensure that all relevant details are incorporated in the policy and divulged to the prospects.**

19. **Charge No. 23**:

a. In policy numbers CSP0000015000100 and CSP0000002000101, the insurer had given premium discount of 84% and 96.91% respectively. It is pertinent to note that in both the cases the insured is Group Company / related party of the insurer. This rate of discount on premium is more than that filed with the Authority.
b. For the policy numbers 2999200178721700 and 2999200074818800, the insurer had given discount of underwriting 40% and 80% respectively though the claim experience of policies was negative i.e. 100% and 407% respectively.

**Violation of:**

Authority's Circular No. 021/IRDA/F&U/Sep. 06 dated 28-09-2006 for guidelines on "File and Use" requirements for General Insurance products to be read with Circular no. IRDA/NL/CIR/F&U/003/01/2011 dated 06-01-2011.

**Submissions of Insurer:**

We only request that our submission made earlier may please be reconsidered and accepted as true and fair statements of the facts. We would like to once again submit that the rate of premium charged under the product was in

accordance with the underwriting guidelines approved by the Board and was within the limits as filed with the Authority and the Company has not given any undue advantage to the group company.

During personal hearing, Insurer submitted that in few cases though claim history is not favorable, discount is considered on noting the risk mitigation factors implemented by the insured after happening of claim.

**Decision**:

***Considering Insurer's submissions that the rates, discounts/loadings are as per the rates filed / approved by the Authority, charge is not being pressed. However, the insurer is directed that the final premium applied in any policy should be based on the objective criteria as per Board approved underwriting policy and the rates approved by the Authority under File and Use procedure in order to ensure compliance to the guidelines prescribed in Authority's Circular no. IRDAI/NL/GDL/F&U/030/02/2016 dated 18/02/2016.***

**Summary:**

**In conclusion, as directed under the respective charges, the penalty of *Rs.15,00,000 (Rupees Fifteen lakh only)* shall be remitted by the General Insurer by debiting shareholders' account within a period of 15 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. P.K.Maiti, General Manager (Enforcement) at the Insurance Regulatory and Development Authority of India, 3rd Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad -500 004.**

***Further***

a) **The General Insurer shall confirm compliance in respect of all the directions referred to in this Order, within 21 days from the date of receipt of this order. Timelines, if any as applicable shall also be communicated to the Authority.**
b) **The Order shall be placed before the Audit committee of the General Insurer and also in the next immediate Board meeting and to provide a copy of the minutes of the discussion.**
c) **If the General Insurer 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.**

(V.R. Iyer)
Member (F&I)

Place: Hyderabad
Date: 21 December, 2016