No.IRDA/ENF/ORD/ONS/162/09/2015

ORDER

In the matter of
M/s ICICI Lombard General Insurance Company Limited

Based on reply to the Show Cause Notice dated 31st March, 2015, and submissions made during Personal Hearing chaired by Ms Vijayalakshmi R. Iyer, Member (F&I), on 10th August, 2015 in the office of Insurance Regulatory and Development Authority of India, 3rd Floor, Parisrama Bhavan, Basheer Bagh, Hyderabad.

The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") carried out a focused onsite inspection of M/s ICICI Lombard General Insurance Company Limited ((hereinafter referred to as "the General Insurer") from 24th to 28th February, 2014 in regard to specified Government sponsored insurance schemes viz. Rajiv Gandhi Shilpi Swasthya Bima Yojana (RGSSBY), Weather Based Crop Insurance Scheme (WBICS), Shetkari Aapghat Bima Yojana (SABY) and Panjikrit Kishan Durghatana Bima Yojana (PKDBY) which had been serviced by the insurer The Authority forwarded a copy of the Inspection Report to the General Insurer seeking comments of the general insurer on the same. Upon examining the submissions made by the general Insurer vide letter dated 30th April, 201, the Authority issued a Show Cause Notice on 31st March, 2015 which was responded to by the General Insurer vide letter dated 28th April, 2015. As requested therein, a personal hearing was given to the general Insurer on 10th August, 2015. Shri Bhargav Dasgupta, MD & CEO, Shri Lokanath Kar, Head (Legal), Shri Sanjay Datta, Chief (Underwriting) – Reinsurance & Claim, Shri Vishu Arora, AVP (Legal) were present in the hearing on behalf of the general insurer. On behalf of the Authority, Shri Lalit Kumar, FA&HOD (Enforcement), Shri Suresh Mathur, Sr. JD (NL), Ms Yegnapriya Bharath, JD (Health), Shri P.K.Maiti, JD (Enforcement) and Shri B.Raghavan, DD (Enforcement) were present during the personal hearing.

The submissions made by the general insurer in their written reply to the Show Cause Notice as also those made during the course of the personal hearing have been taken into account. The findings on the explanations offered by the general insurer to the issues raised in the Show Cause Notice and the decisions thereon are detailed below.

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Charge No.1

Concern/Violation:

As per the MoU relating to this scheme, the responsibility of identification of beneficiary eligible to be enrolled in the Scheme & collection of beneficiary's share of premium lies upon the insurer. However, in some cases beneficiaries were enrolled soon after receipt of enrolment forms and without waiting for full receipt of their share of premium.

The above facts show that the insurer did not collect the beneficiary's share of premium in each and every case and thereby violated the provisions of Section 64VB of the Insurance Act, 1938 which requires that no risk be assumed until the premium payable is received or is guaranteed to be paid and also contravened the terms of MOU with the DC- Handicrafts.

Submissions of the Insurer:

The Scheme envisaged that the insurer shall identify eligible beneficiaries (all crafts persons, whether male or female, between the age group of 18-60 years as per clause 2 of the Scheme) with the help of designated NGOs and Societies and enrol them for availing benefits of the Scheme.

The Scheme contemplated extending health insurance coverage to the families of handicraft persons who usually belong to the lower strata of the Indian societies. Affordability of some segment of handicraft workers for the beneficiary share of the premium has sometimes remained questionable. During enrolment of 11,445 khadi workers under 62 registered societies in the State of Rajasthan during policy year 2009-10, the Company was requested not to collect the beneficiary share of the premium from the said 11,445 khadi workers under an assurance that the beneficiary share of the premium shall be borne by either the Govt. of Rajasthan or Union of India as a request to this effect was already made to the Hon'ble Minister of Finance, Union of India. In view of the said assurance, the Company extended the coverage to the said 11,445 beneficiaries considering the fact that the policy being a Government policy, deferment of premium is allowed under the Insurance Rules, 1939.

It is submitted that Rule 59 of Insurance Rules 1939 provides an exception to the requirement of receipt of premium in advance under various circumstances. Clause (a) of Rule 59 of Insurance Rules 1939 provides as under:

Policies issued to Government and semi – Government bodies:

"the risk may be covered on such policies on the strength of an undertaking by the proposer to pay the premium within 30 days of the date of intimation of premium or within such further period as the controller may fix in any particular case".

In view of the above, it is submitted that the Company has not violated the requirements Section 64 VB of the Insurance Act, 1938 by not collecting the beneficiary share of premium from each and every khadi worker during the course of their enrolment.

After the bad experience, the insurer did not resort to this practice any more. They have put in place processes in terms of IT and other controls to cover only eligible/entitled beneficiaries under similar schemes.

Decision: It was observed that the scheme was implemented by the insurer since 2007-08 in the country. As per the scheme the portion of the Government of India's share of premium is paid on the basis of targeted numbers of share of beneficiaries and further installments based on the numbers of beneficiaries enrolled. The identification and enrolment of artisans is the responsibility of ILGICL in terms of clause 8 of the first MOU. Further, the Group Health Policy issued in 2007-08 to Development Commissioner(Handicrafts) also inserted a special condition(ix) that the Insured persons are Handicraft artisans certified by field office of the office of Development Commissioner(Handicrafts) that those covered under the scheme are artisans. The clause 30 of MOU recognized that all aspects related to the scheme, RGSSBY shall be subject to the Insurance, Act, 1938, amendments thereto and the instructions issued by the IRDA. However, while passing the endorsements and thereby extending the coverage to the beneficiaries under the Policy, ILGICL did not ensure that each of the beneficiaries had paid its share of premium without adhering to the said condition in the MoU. Accordingly, in the first year policy, there was a deficit of Rs. 7.59 Lacs towards beneficiary shares out of Rs. 583.56 Lacs of total eligible premium, in the 2nd and 3rd year policies, there was a deficit of Rs. 782.21 Lacs and Rs. 353.66 Lacs out of total eligible premium of Rs. 17011.77 Lacs and Rs. 7936.86 Lacs respectively. Thus, the insurer did not collect the beneficiary share of premium in each and every case and thereby violated the provisions of Section 64VB of the Insurance Act, 1938.

The insurer defended the violation on the following grounds:

1. Insurer received a request from the Khadi and Village Industries Board, to enroll its members (Khadi workers, who earn their livelihood through Khadi artefacts).
2. KVIB also requested not to collect the share of premium from such Khadi workers keeping in view their poor financial condition.
3. KVIB had informed that they have represented to the State Government and the State Government has represented to the Central Government to include such Khadi workers in the Scheme.

4. KVIB shall remit the part of the premium due from such Khadi workers once it receives the same from the Government.
5. Thus, under the circumstances and relying upon the assurances from KVIB, the Company at the given point of time considered it appropriate to enroll such Khadi workers under the Scheme without collecting their share of the premium from them.

To strengthen their arguments the insurer has submitted various copies of communications received from the KVIB. The same were examined and it is observed that the documents only speak about the coverage of weaver workers under the scheme meant for the artisans. There is no mention of waiver of beneficiary's share at any point of time. Even the Government of India's share which was already appropriated by the insurers was refunded back, with penal interest of 10%, as the weavers were not entitled to be covered under this scheme. As per the data on claims paid furnished by the insurer, 313 claims pertaining to 11, 445 enrolled members were paid. These claims were paid without receiving the beneficiary share of premium which amounts to non compliance with provisions of 64 VB of Insurance Act, 1938.

Further the inspection team also attached some annexure which indicate that there was indeed a request from the KVIB for coverage of Khadi Weavers under the scheme and the insurer has agreed to cover them under the RGSSBY which is meant for artisans. Even if these weavers were agreed to be covered under the artisan's scheme, the beneficiary share of premium was still required to be collected. Hence not collecting the beneficiary's share and coverage of non-entitled persons was not based on solid reasons. In addition, Clause 4 of the agreement dated 5-4-07 between the DC and the Insurer specifies that coverage should have started only after receipt in full of beneficiary share of premium.

As far as the applicability of Rule 59 of Insurance Rules is concerned, it is observed from the written and oral submissions that there was as such no undertaking given by the Government or any organization to pay the balance premium. The balance premium was never received at all. Thus, in view of the presence of these factors, the insurer's failure to collect beneficiary share of premium before granting coverage is a clear violation of Section 64VB of Insurance Act 1938 and accordingly for the said violation, a penalty of Rs.5 lakh is imposed on the insurer under Section 102(b) of the Insurance Act 1938.

Charge No.2

Concern/Violation:

The insurer is not issuing certificate of insurance to the beneficiaries of the group covered under RGSSBY policies. Instead, the insurer has been issuing health cards to the individual beneficiaries covered under the scheme of RGSSBY.

Violation of C-7 of Circular 015/IRDA/Life/Circular/GI Guidelines/2005 dated 14th July 2005 which mandates issue of Certificate of Insurance containing information on the schedule of benefits, the premium charged and important terms and conditions of the insurance contract, procedure to be followed to register a claim with the insurer including the full address of the office of the insurer where the claim should be registered.

Submissions of the Insurer:

Of late, there has been continuous effort in the Insurance industry to reduce paper work and verbose conditions. Issuance of different types of 'easy to carry' and damage proof plastic cards (either simple or bio-metric cards) in lieu of detailed policy certificates has been considered an effective innovation in this regard. A simple plastic card issued as a policy certificate represents and establishes existence of an insurance cover for all purposes and fulfils all the content requirements of a policy certificate, but in an abridged form.

As per the group guidelines the policy is issued to the group administrator, which in this case is the Ministry of Textiles. The beneficiaries are issued health cards in lieu of policy certificates with details of the coverage, exclusion, process for intimating the claim and other terms and conditions under the Scheme.

The insurer also distributed a booklet containing every detail with respect to the policy and the scheme to the beneficiaries of the schemes.

Decision:

The submission of the insurer is accepted and the charge is not pressed.

Charge No.3.

Concern/Violation:: The primary and essential details of the beneficiary to establish the identity and eligibility under the scheme were not collected in the enrolment forms. The insufficiency of beneficiary's details in enrolment forms and the forms were not properly verified by the office of the Development Commissioner (Handicrafts), indicates failure at operational level of the office of the insurer in checking the data in the forms and lack of scrutiny in accepting proposals at underwriting stage. Thus the insurer failed to records all relevant information which is required for proper underwriting which may be treated as violation of Para 3(ix) of Circular No.21/IRDA/F&U/Sep.06 dated 28-9-06, Regulation 4 of IRDA (Protection of Policyholders' Interest) Regulation 2002 and Para 6 of Annexure II of Corporate Governance Guidelines reference No.IRDA /F&A/CIR/025/2009-10 dt. 5-8-2009

Submissions of the insurer

The insurer relied upon the representations of KVIB about the eligibility of Khadi workers to be enrolled for grant of insurance. However, the insurer has taken necessary learning from that experience and has now improved the processes and procedures over the method of implementation of the scheme.

The above submissions apart, the insurer accepted the classification error and informed the Ministry of Textiles, Govt. of India and the premium received was refunded back as per the terms of MOU. In the light of the above facts, the insurer submits that they did not commit any violation.

Charge No.4:

Concern/Violation : In letter dated 21st May, 2013 to IRDA, the insurer confirmed that the enrolment forms of 11445 Khadi workers were duly endorsed by the office of the Development commissioner, Handicrafts before the health insurance coverage was extended to the beneficiaries.

In its letter dated 21st March, 2013 to IRDA, the insurer in response to the allegation that the circular of the textile ministry`s handicraft division that every fresh RGSSBY enrolment should be certified by the respective Development commissioner of handicraft to ensure authenticity, was ignored replied as follows.

"As required under the MOU, the company had enrolled the beneficiaries after identifying them and enquiring about their profession and livelihood. Consequent to the enrolment, all the enrolment forms were submitted with the office of the Development commissioner of Handicraft. The Development Commissioner of Handicraft, after verifying the forms had recommended the Ministry of Textiles, Govt of India to release the Govt share of premium in favour of the company. The company would emphatically submit that the process required the Ministry of Textiles, Govt of India to release the premium to the company only after receipt of confirmation from the office of the Development Commissioner of Handicraft about enrolments.

Under such circumstances, it is wrong to suggest that the verification process was not observed. It is submitted that the company had observed all the processes required from insurers under the scheme."

The examination of sample enrolment forms out of 11445 Khadi workers established that the office of the Development commissioner, Handicrafts has not endorsed these enrolment forms and the same were not signed by the designated Government officer. The eligibility of enrolled members was attested by respective Khadi societies and not by the Regional Directors/Asst directors concerned in the field offices of the office of the

Development commissioner (Handicrafts). The insurer, therefore, submitted wrong information to IRDAI in the above letter.

Violation: The submission made by the insurer to the Authority was wrong. Furnishing wrong information to the Authority attracts action under Section 102 (a) of Insurance Act, 1938.

Submissions of the Insurer:

The field office of DC (Handicrafts) was the entity responsible for verification of the enrolment forms deposited with it before such forms were handed over back to insurers for issue of Health cards. Any enrolment form received back by the insurer from the DC (Handicrafts) can be believed/construed to have been duly verified/approved.Counter signature by the Field office on the enrolment forms was not mandated under the scheme.

The Central govt. Premium was promptly released in regard to all such enrolments. Under the above circumstances, the insurer has every right to presume that the said forms were endorsed/approved by the concerned field office.

Hence the company's response vide their letter dt. 21-3-13 that all forms were verified by the Field Office was statement of facts and reasonable belief. At no point, the insurer has furnished wrong information to the Authority.

Decision on Charges 3 and 4 :

The Scheme envisaged certain responsibilities to be fulfilled by different entities viz. the Insurer, the Office of Development Commissioner for Handicrafts, the NGOs, and Societies etc. to make the scheme successful. However the observation envisaged the Insurer's role as an underwriter of the risks it undertakes. The insurer is responsible for ascertaining the genuineness of the persons to be covered under the scheme. It was found that the enrolment forms were not verified and certified by the Regional Directors/Asst Directors concerned in the field offices of the office of the Development commissioner (Handicrafts) as required by the order of Office of DC (Handicrafts) issued from time to time. No documentary proof was furnished in this regard. However, the insurer in response to an earlier reference from the IRDAI has submitted at that time that they got the certifications done from the competent authorities.

Further, the matter of wrongful enrolment was brought to the notice of the Ministry of Textiles who decided that the beneficiaries were not eligible under the scheme and hence the company ultimately refunded the premium charged to the Government with penal interest of 10%.

From the above, it is clear that the insurer has failed to carry out the responsibility cast upon them as per the MOU, entered with Government of India, and for which they refunded back the premium and paid the penal interest. Thus, under the circumstances, the

charge is not pressed; however, the general insurer is warned to be careful to ensure that not only the provisions of law but the terms and conditions of any agreement entered by them are complied without fail. Further, the insurer is directed that they should ensure furnishing correct information to the Authority.

Charge No.5

Concern/Violation:

The weather insurance covering the Non Loanee farmers in the above policy was sourced through insurance intermediaries including insurance brokers. In this process, the insurance agents and insurance brokers acted as guide and facilitator for the Non Loanee farmers.

The business premium of weather insurance for Rabi 2009-10 was sourced through 38 insurance agents and two insurance brokers. The license details of these agents were verified through IRDA Agency Licensing portal.

It was noticed that there are inconsistencies in information furnished by the insurer relating to the number of intermediaries involved in procuring business. (Inspection report mentions a figure of 38 agents and 2 brokers whereas insurer had furnished to IRDA on the basis of a report of an independent inspection agency appointed by the insurer the figure of 12 agents).

It is further observed that there are inconsistent submissions in respect of amount of premium collected by the insurer, the number of Loanee & Non loanee farmers covered in Sriganganagar Dist of Rajasthan. The inconsistencies are that the No. of farmers as per Inspection report is 7446 but as per insurer's letter dated 21-5-2013 it is 7119. Similarly, the premium as per Inspection Report is Rs.6.42 crores but as per insurer's letter dated 21-5-13, it is Rs.5.82 crores.

Violation of Clause 6 under annexure 2 of Guidelines Circular No. IRDA/F&A/CIR/025/2009-10, dated 5-8-2009.on Corporate Governance as there is laxity of maintenance of correct data, due to imperfect mechanism and processes in the functioning of the insurer.

Submission of the Insurer: The insurer has accepted the difference in figures submitted by them but have submitted their explanation for the variation as follows:

Difference in figures of Agents of Brokers:

The figures of 38 agents and 2 brokers furnished to the Inspection team were those deployed by the insurer for enrolment of the beneficiaries in the whole of the State of Rajasthan. However, the figure of 12 mentioned in the Investigation report of M/s. Tarun

Kumar & Associates denotes 10 agents and 2 brokers deployed by the insurer for investigating the beneficiaries enrolled by the company in the Dist. Of Sriganganagar for Rabi 2009-10

Difference between the figures of premium furnished by the insurer to Inspection team and to the Authority earlier

The insurer has submitted that both the figures are correct because the figure of 6.42 crores includes service tax chargeable on the premium of Rs.5.82 crores.

Difference between the figure of 7119 and 7447 denoting number of beneficiaries

The insurer has submitted that the difference of 328 beneficiaries is due to a reconciliation carried out by the company in 2013 which comprised of 66 of Gram and 264 of Mustard out of the total beneficiaries of 37148 covered under WBCIS scheme during 2009-10 Rabi.

Decision: In view of the submissions made by the insurer the charge is not pressed further.

Charge No.6

Concern/Violation:

The data in sample certificates revealed that the basic details such as Khasra No, land details, total land, total cultivated land particulars were not collected in all cases nor did any documentary evidence regarding farmers' insurable interest in cultivating the land/crop (e.g. ownership/tenancy/ cultivation rights) proposed for insurance. The certificates issued by insurance agents have not captured the complete data regarding land survey number etc. Further, the insurance agent details such as name of the agent, Code of the agent were blank. The certificates issued were also without agent signature.

Thus, at the issuance of certificate stage, the necessary particulars were not obtained in the certificate and adequate checks and due diligence was not carried out on the identification of the cultivated land used by the beneficiary farmers who were covered under this scheme. The errors in issuing certificate, therefore, left scope for lack of proper identification of beneficiary farmers after the claims occurred. On examining the other policies and cover notes issued in the other districts of Jaipur, Rajasthan, similar issues of insufficient information in important fields of certificates were observed.

Charge No.7

Concern/Violation: The sample claims disbursed to the beneficiary farmers after the instructions of the Government were verified in the insurers IT system. It was found that the cheques were issued in favour of the beneficiary. However, the documents in support

of establishing the identity of beneficiary farmers before disbursement of those claims were not verifiable in the system. The key findings in this regard are as follows.

- It was found from the certificate of weather insurance that the proposals were accepted with insufficient data. This resulted in investigations by insurer at the time of claim settlement. Otherwise, the claims under weather insurance are automated and WBCIS is based on a natural event.

- The data in sample certificate of weather insurance established that the ILGICL underwriting did not attach importance to Khasra Numbers as a material fact that would serve as identification of risk insured and influences the insurer in the assessment and acceptance of the proposal.

- The insurer did not scrutinize the proposal forms for completeness and adequacy at the time of acceptance of risk and the omission and commission was not detected at the stage of underwriting itself. The insurer failed to comply with due diligence at this stage.

- The lapses occurred at scrutiny at operations level and underwriting level. The operations and underwriting checks and controls failed to meet the standard of prudence that insurer should observe for entire underwriting control as stated in clause 4.1 and 4.2 of the filing of product.

The insurer has underwritten the risk without capturing vital fields in the proposal form. This is violation of para 3(ix) of Circular No.21/IRDA/F&U/Sep.06 dated 28-9-06.This resulted in delays in settlement of claims which was otherwise avoidable. Thereby the insurer has violated Regulation 9(5) of IRDA Protection of Policyholders' Interests Regulation. Further, the absence of proper internal controls, Insurer violated Clause 6 under annexure 2 of Guidelines Circular No. IRDA/F&A/ CIR/025/2009-10, dated 5-8-2009.on Corporate Governance.

Submissions of the Insurer:

The present observations pertain to WBCIS scheme implemented in Rajasthan in 2009-10. The scheme did not prescribe any standard form, document or testimonial to be obtained from farmers before enrolling them. The company enrolled 7447 farmers in Dist. Of Sriganganagar. Since majority of farmers were tenant farmers, the insurer entrusted the work of identifying interested farmers with intermediaries. In view of the fact that the premium and sum insured with respect to crops, districts, weather stations and nature of coverage being defined in the notification, all that the Company was required to do at the time of enrolment was to collect beneficiary details and the unit area details from the beneficiaries other than the proposed crop, locality of the land and the details of the beneficiary. The company itself designed the forms and standard cover note. Since there

was shortage of time, insurer accepted the proposals with whatever data was provided under good faith.

The Company had a practice of capturing the enrolment form numbers with the name of the agent who has carried out the enrolment through such forms and accordingly the commission was being paid to the agent for such enrolments. Even though the enrolment form has not captured the details of the agents, the same was established on the basis of cover note number as issued to the agents from time to time, the Company has not received any complaint from any of the agents with respect to settlement of their commission relating to such enrolments.

With regard to the dispute raised by the investigator the Company all by itself had carried out an investigation on the claims triggered in Sriganganagar after noticing disproportionately high claim incidence in wheat crop (under weather station IMD Sriganganagar for Rabi 2009-10 Season) in comparison to any other district of Rajasthan for that year. The investigation report received by the Company created doubt on availability of the enrolled beneficiaries in the addresses provided. Under such circumstances, the Company withheld disbursement of the claim to all such beneficiaries.

Meanwhile, the Government of Rajasthan received multiple complaints from different farmers including one from the President of an association of farmers namely Kisan Sangharsh Samithi, Sriganganagar with a list of 2090 farmers of Sriganganagar alleging arbitrariness and non settlement of claims due to the farmers of Sriganganagar. The list included the name of the farmers who had cultivated under IMD Sriganganagar during that season. The Government of Rajasthan forwarded the complaint to the Company seeking necessary explanation. The Company, while informed the Government about the findings of investigation, it had also offered the Government to refund the premium received from the farmers if the Government so advices. The Government evaluated the complaints of the farmers and directed the Company to settle all the claims of Sriganganagar and necessary publication in local newspaper to this effect. Accordingly, the Company settled all the claims and made a publication in the local newspaper on November 17, 2010 to this effect.

Under the above circumstances, it is submitted that the Company consulted the Government of Rajasthan and has sought their advice having confronted with an issue and has acted in accordance with and under the directions of the Government for settlement of the claims. It is submitted that the Company at the time of settlement of all such claims had handed over the claim cheques (drawn in favour of the beneficiaries) to the agents for further distribution amongst the beneficiaries. Many of the concerned agents had organized public functions to distribute such cheques amongst the beneficiaries. 3801 cheques disbursed to the claimants, 3783 have been encashed and only 17 cheques have become stale.

As far as the underwriting process is concerned, it is submitted that the practice followed by the Company is that the underwriting for the purpose of pricing of similar products is done centrally and similarly for the claims administration. However for the sake of time and efficiency, the data entry exercise is carried out for the details available in the enrolment forms regionally. Once the necessary details are fed into the system, the analytics and claim administration is carried out centrally in conformity with the filed product and applicable processes.

Similar to learning of the Government, the Company has also translated its learning from implementing the Scheme during the Pilot phase through appropriate modification and development of practices and processes.

Decision on Charges 6 and 7:

The investigation conducted by ICICI Lombard at the time of claims settlement found most of the non-loanee farmers non-existent at the addresses given. Under WBCIS the claims settlement is automated for the eligible farmers. However, due to the failure to identify the beneficiaries the insurer resorted to investigation which resulted in delays in claims settlement. Due to non-existence of beneficiaries at the addresses given their claims were not paid but on insistence from the State Government the payments were made to the farmers by Cheque. The cheques towards settlement of the claims were handed over to the Agents for disbursement. Regarding failure to mention critical details in the enrolment form, the insurer is definitely at fault and it shows a lax attitude on their part towards enrolment of beneficiaries at the time of underwriting. In view of this the insurer is directed to ensure proper underwriting to avoid such occurrences.

Charge No.8

Concern/Violation:

File & Use of Group Personal Accident Insurance: The product Group Personal Accident Insurance Policy was filed with IRDA on 28th March, 2002. The initial policy was issued on pilot basis for three months. Thereafter, the policy was given for a period of one year. The following issues were noticed in regard to the policy:

The insurer has excluded some benefits available under the product as approved by the Authority. Similarly, the insurer has added certain exclusions which were not in the interest of the policyholders. The details are as below:

a) With respect to exclusions i, ii & iii in the product, it was observed that insurer has excluded from the policy the benefit available in approved product as under: "However, amounts relating to carriage of dead body, children's education grant would be payable in addition, if applicable".

b) They have added a new exclusion by way of point (xii), a new exclusion viz. "payment of compensation in respect of Death or disablement resulting directly or indirectly when the insured is self-exposing to needless peril (except in an attempt to save human life)" has been added by the insurer.
c) In addition to the above, the insurer had added to the product three new exclusions (ix, x and xi) which were detrimental to the interests of the policyholders.

Violation of para 2 read with para 6 of Circular Ref: 1RDA/Gen/FUP/ver1.0/Dec 2000 dated 6th December, 2000 as the modifications made by the insurer make the product different from the approved version of the product.

Submissions of the Insurer:

The Govt. Of Maharashtra had indicated the broad parameters of the Personal Accident Insurance Scheme for their farmers. However, the parameters did not require the benefits available in the product as approved by the Authority. Hence the said benefits were taken out of the cover offered to the Government.

The company has not included any additional exclusions in the policy issued under SABY over and above the exclusions forming part of the approved Group Personal Accident product of the Company. The additions demonstrated in the present observation are merely:

a. explanation of approved exclusions, or
b. simplification of expression, or
c. removal of optional covers not sought for, or
d. harmonious and orderly arrangement of exclusions

One exclusion viz. "Death or disablement resulting directly or indirectly, caused by, contributed to or aggravated or prolonged by self exposure to needless peril (except in an attempt to save human life) was filed by the company with the Authority on 5-4-2004 and the Authority vide their letter dt. 5-2-2008 had asked the insurer not to use the exclusion any further. Hence in the interim period viz. between April 2004 to February 2008 the Personal accident policy issued by the insurer carried the exclusion.

Decision: The issue involved is huge repudiation of claims under the scheme. An investigation into the claims repudiation by the Government of Maharshtra indicated that the second most reason for repudiation was the exclusion related to "exposure to needless peril" which was added by the ICICI Lombard over and above the F&U product conditions. Had the insurer adhered to the policy conditions the litigations could have been avoided. The insurer continued with the exclusion till the Authority directed the Insurer not to use the said exclusion in February 2008. Thereby the insurer deviated from provisions of para 2 read with para 6 of Circular Ref: 1RDA/Gen/FUP/ver1.0/Dec 2000 dated 6th December, 2000. The insurer is strictly warned to be careful in future to follow the File & Use guidelines as amended from time to time.

Charge No.9

Concern/Violation :

The Panjikrit Kisan Durghatana Bima Yojana is a Group Personal Accident Insurance cover for farmers of the state of Uttar Pradesh aged between 12 to 70 years , whose name appear in the Khatauni records of the state as the owner of the agriculture land. It covered 2.5 crore farmers for a Sum Insured of Rs.1 lakh each.

It was observed that in MOU dated 16th Sep, 2006, the clause 15 contained the condition, "`ICICI Lombard shall at its option, get the claim verified on receiving the verification report, it shall process the same and convey the admissibility or otherwise of the claim and, if found admissible, release the payment within 60 days of receiving the claim form and document from the CFO".

The said clause in MOU is not in line with the provisions of Regulation 9(5) & (6) of IRDA (Protection of Policyholders' Interests) Regulations, 2002 which stipulates the time lines less than what is inserted in the MOU. Since the claims data furnished and sample claim documents provided by insurer do not contain the date of acceptance of the offer by insured, the actual claims attracting the above clause could not be verified.

Violation of Regulation 9(5) and (6) of IRDA (Protection of Policyholders interests) regulations.

Submissions of the insurer:

Regulation 9(5) & (6) of IRDA (Policyholder's Interests) Regulations, 2002 states that

> "(5) On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.
>
> (6) Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it."

The requirement as expressed above prescribes that the offer of settlement or decision of rejection of a claim should be communicated to the insured within 30 days on receipt of survey report. It is pertinent to mention here that the time consumed for conducting the survey has not been considered in the above stated period of 30 days.

Clause 15 of the Memorandum of Understanding (MOU) entered by the Company with the Govt. of Uttar Pradesh dated September 16, 2006 provides a period of 60 days (from the date of receipt of the claim documents) for assessment of the claim which includes the time period required for conducting the verification of the claim and payment of the claim. The period of 60 days, as mentioned in the MOU, does not contravene the Regulation 9(5) & (6) of IRDA (Policyholder's Interests) Regulations, 2002.

Further, the modalities and claim procedure towards the scheme were laid down by the Govt. of UP itself and time lines were also prescribed by them only, A time limit of 30 days was initially set by the Govt in 2004-05 but on the basis of experience of manipulation and fraud claims, gained during 2004-05 and 2005-06, the UP Govt. revised the time limit to 60 days.

Decision:

Though the time limit was 30 days only in 2004-05 and 2005-06, the govt after experiencing manipulated claims and undesirable practices insisted for and revised the turn around time to 60 days. Secondly, since the condition is mutually agreed between the Govt. and the insurer, and considering that this is a govt initiated scheme, Insurer's submission is accepted and the charge is not pressed.

Charge No.10

Concern/Violation

The insurer offered the Group Personal Accident Insurance Policy in the year 2004-05 and Group Janata Personal Accident Insurance Policy in the years 2006-07, 2007-08 and 2008-09. The product Group Personal Accident Insurance Policy was filed with IRDAI on 28th March, 2002. The product Group Janata Personal Accident Insurance Policy was filed with IRDAI on 15th March, 2002. It was observed that apart from the exclusions in the product filed with IRDAI, the insurer has added other exclusions to the Group JPA Insurance Policy, which were not approved by the IRDAI. The exclusions were:

(iv) (f) Self exposure to needless peril (except in an attempt to save human life)
(ix) Payment of compensation in case of intimation beyond 30 days of occurrence of accident
(x) Death or injury or disease to those serving in Military during war or warlike operations.
(xi) Death or injury or disease due to acts of terrorism

(xii) Death, injury etc. due to participation in sports, adventurous activities, underwater activity etc.

Violation: Various modifications to the policy wordings by the insurer made the product different from the originally filed one. Thereby the insurer violated Para 2 to be read with para 6 of Circular Ref: 1RDA/Gen/FUP/ver1.0/Dec 2000 dated 6th December, 2000 , Para 2(vii), 8 and 11 of Circular No.021/IRDA/F&U/ Sep.06 dt. 28-9-2006.

Submissions of the insurer:

It is submitted that no new exclusions were included but they were merely:

a. explanation of approved exclusions, or
b. simplification of expression, or
c. removal of optional covers not sought for, or
d. harmonious and orderly arrangement of exclusions

The explanations in regard to exclusions as at (iv) and (ix) are as under:

(iv): It is submitted that Group Personal Accident cover was extended to the Government of UP for the year 2004 -05. Thereafter Janata Personal Accident cover was given for the period 2006-07, 2007-08 and 2008-09. The Company had amended the Group Personal Accident Product vide its letter dated April 5, 2004 and included the exclusion of "self exposure to needless peril". The Authority vide its letter dated February 5, 2008 directed the Company to delete the exclusion of "self exposure to needless peril" from the policy condition. Since the said exclusion was effective during the subsistence of the first policy (which was a Group Personal Insurance Policy), the policy contains the said exclusion. It is submitted that the exclusion of "self exposure to needless peril" was not included in Janta Personal Accident cover and was not mentioned in the policies issued to the Government of UP. However due to an inadvertent error the exclusions mentioned in the MOU of 2004-05 were erroneously pasted in the MOU of 2006-07. The error was subsequently rectified in the MOU of 2008-09.

(ix): It is submitted that the limitation of 30 days was agreed upon by the Government of UP and accordingly the same was incorporated in the exclusion to give effect to the same. In view of the above, it is submitted that no material change has been made to the exclusion conditions of the PKDBY policy. The insurer submitted during personal hearing that consequent to the inspection in 2007 they had instituted an independent committee under Justice Palshikar and had settled the claims repudiated earlier under the clause in accordance with an advice received from the Authority.

Decision: The exclusion as at (ix) added by the insurer is indeed a violation as it is detrimental to the interests of the policyholders. Similarly, the exclusion as at (iv) viz "exposure to needless peril except in an attempt to save a human life" in the Janata

Personal Accident Policy was not filed with the Authority which resulted in modifying the policy wordings which made the product different from the originally filed one. Thus, the Authority is of the view that the insurer has not complied with Para 2 read with para 6 of Circular Ref: 1RDA/Gen/FUP/ver1.0/Dec 2000 dated 6th December, 2000 which requires the insurer to file fresh insurance products or any changes to the already approved products, Para 8 and 11 of Circular No.021/IRDA/F&U/ Sep.06 dt. 28-9-2006 as the said exclusion was neither filed and nor approved by the Authority and Para 2(vii) of Circular No.021/IRDA/F&U/ Sep.06 dt. 28-9-2006 which provides that the terms and conditions of cover shall be fair between the insurers and insured. The Authority imposes a penalty of Rs.5 lakh on the insurer under section 102(b) of the Insurance Act, 1938.

Charge No.11

Concern/Violation

The insurer was asked to furnish the data on claims paid and number of claims repudiated month wise and year wise to find out the trends in repudiation of claims. It was observed that about 37 percent of claims were repudiated. The insurer was asked to submit the data on claims repudiated with reasons for repudiation. The claims data provided do not contain the details for claim repudiation. In the absence of the exact reasons communicated to the claimants in the data, the reason wise analysis of claims repudiation could not be undertaken.

Submissions of the Insurer:

It is submitted that the required data pertained to a period from 2004 to 2008, during which time, most of the processes pertaining to recording and storage of data in the Company was manual. Under such circumstances, retrieval of the data for the purpose of submitting the same to the inspecting officials was a challenge for the company. However, it is submitted that the Company has furnished the claim repudiation data as available in the records of the Company to the inspecting officials vide CD no. XIV. It is requested that column 'S' of spreadsheet 'PKBY Closure' in excel file titled as 'Data Submission Final' may kindly be referred for the same.

Charge No.12

Concern/Violation

The data and documents were not fully provided by the insurer in time during inspection. The insurer till the last day of inspection failed to furnish the following information/ or provided part information:

- List of Cluster Coordinators with Code Nos. And their area of operation and the Name of the Cluster Coordinator for enrolment of 11445 beneficiaries enrolled out of 30207 beneficiaries in Rajasthan in 2009-10. Current position of the Cluster Coordinator.
- The details of Agents/Intermediaries involved in RGSSBY policies, SABY, PKDBY with license details, payment of commission particulars and copies of Form 16
- A list of all the enrolled separately in respect of each of the MoU (in soft copy) along with other details such as Category (BPL/NE or Others), date of enrolment, beneficiary share, Related Policy No. as well as Endorsement No.
- A consolidated statement in respect of each of the MoU certifying as to how the premium under each Endorsement passed and/or separate policies issued was apportioned between the share of govt. and share of beneficiaries.

Submissions of insurer:

It is submitted that the required data pertained to a period from 2006 onwards. During initial days of implementation of the RGSSBY Scheme, the Company was in the process of learning the nuances of the Scheme in order to develop systems and processes for capturing necessary data, establishing stable workflows and recognizing finer risks inherent to the Scheme. As a result of which the data pertaining to the initial period of the policy were not maintained as orderly as it was towards the later period of the Scheme. However, complying to the requirement of the inspecting officials (on the entire period of the Scheme), the Company had furnished the data that could be arranged instantly. The company furnished the readily available data to the Inspection Team. The company put its best effort to gather all relevant information and documents despite challenges of retrieval of details on old policies and within the constrained timelines.

Further, the insurer submitted that that over a period they have extensively worked upon their processes on documentation, storage and retrieval of their documents so as to avoide in convenience to the Authority.

Decision on Charges 11 and 12

For smooth conduct of the inspection, it is expected that the insurer shall furnish all information and documents sought by the Inspection team. The insurer submitted that retrieving of the records was difficult and hence they could not furnish the information and documents on time to the inspection team. In view of the submissions made by the insurer and taking note of their commitment to relook at their processes on documentation, storage and retrieval, the charge is not pressed further.

Summary: The penalty amount of Rs.10 lakh shall be paid through Demand Draft drawn in favour of Insurance Regulatory and Development Authority of India payable at Hyderabad within 15 days from the receipt of this Order. The Demand Draft is required to be forwarded to Sh. Lalit Kumar, FA and HoD (Enforcement). The insurer is required to ensure compliance with the above directions under intimation to the Authority.

Place: Hyderabad
Date: 3rd September, 2015

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