



भारतीय बीमा विनियामक और विकास प्राधिकरण  
INSURANCE REGULATORY AND  
DEVELOPMENT AUTHORITY OF INDIA

031  
No. IRDA/ENF/ORD/ONS/ /02/2018

**Final Order in the matter of**  
**M/s. Sunrays Insurance Broking Services Ltd**

Based on reply to the Show Cause Notice dated 25<sup>th</sup> October 2017 and submissions made during Personal Hearing held on 10<sup>th</sup> January, 2018 at 02:30 p.m. chaired by Member (Non Life) at the office of Insurance Regulatory and Development Authority of India, Hyderabad.

**Background:-**

The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") carried out an onsite inspection of M/s. Sunrays Insurance Broking Services Ltd (hereinafter referred to as "the broker" or "the company") during 12<sup>th</sup> July to 14<sup>th</sup> July 2016. The Authority forwarded a copy of the Inspection Report to the broker seeking comments and the broker's comments were received vide their letter dated 28<sup>th</sup> October 2016. Upon examining the submissions made by the broker, the Authority issued Show Cause Notice on 25<sup>th</sup> October 2017 which was responded to by the broker vide letter dated 7<sup>th</sup> December 2017. As requested therein, a personal hearing was given to the Broker on 10<sup>th</sup> January 2018. Mr. S Dhanunjayam, Principal Officer and Mr. G Hanumantha Rao, Director, were present in the hearing on behalf of the Broker. On behalf of the Authority, Shri P. J. Joseph, Member (Non Life), Shri Randip Singh Jagpal, CGM (Intermediaries), Shri Prabhat Kumar Maiti, GM (Enforcement), Shri B.Raghavan, DGM (Enforcement), and Shri Udit Malhotra, Assistant (Enforcement) were present during the personal hearing.

The submissions made by the broker in their written reply to the Show Cause Notice and those made during the course of the personal hearing and the documents submitted by the Broker in reply to SCN and in evidence of their submissions in Personal Hearing have been considered by the Authority and accordingly the decision on the charge is detailed below.

**1. Charge No 1**

Based on analysis of some sample entries by the Inspection team, it was observed that the broker was accounting the brokerage on receipt (cash) basis which was further confirmed vide letter dated 14<sup>th</sup> July 2016 that the accounting of Broking commission was done on receipt basis only. This violates Regulation 29 (1) of IRDA (Insurance Brokers) Regulations, 2013 which mandates that Broker shall maintain account on accrual basis.

**Submissions of Broker:-**

*The Broker submitted that in the earlier years, due to the delay in or not at all getting the business/brokerage statements from the Insurers, it used to raise invoices whenever it received the payment from the Insurance companies. However, on noting the Regulation, it has changed the accounting practice to accrual method from 1<sup>st</sup> April 2017 onwards. Although it is facing some initial teething issues, it is maintaining the account on accrual basis adhering to Regulation 29 (1) of IRDA Insurance Brokers Regulations 2013.*

## Decision

The observation indicates that the Broker was accounting brokerage on Receipt (cash) basis in violation with the Regulation 29 (1) of IRDA (Insurance Brokers) Regulations, 2013 which mandates that Broker shall maintain account on accrual basis.

The Broker, in its submission, has also accepted that they were following the practice in their company in the past and also submitted that it used to raise invoices on receipt of payments from the Insurers. The Broker is warned for following a practice which is not in compliance to the extant regulatory provision. However, the Broker, in its reply to Show cause Notice and during the personal hearing has confirmed that the company has started accounting on accrual basis from 1<sup>st</sup> April 2017 onwards. Hence, while taking note of the confirmation the Authority directs the broker to comply with Regulation 34(1) IRDAI (Insurance Brokers) Regulations 2018.

### **2. Charge No 2**

It was observed that the insurance broker is not in the habit of obtaining written mandates from their clients. On examination of their records, it was found that except in two cases, the broker has not obtained any mandate from their client. It is a violation of Clause 2(h) of Code of Conduct under Schedule VIA read with Regulation 28 of the IRDA (Insurance Brokers) Regulations, 2013 which makes it incumbent upon the Broker to strictly obtain the written mandate from their clients.

### **Submissions of Broker:-**

*The Broker submitted that it is collecting mandates forms from most of the customers through emails as it treated emails from the customers as mandate. After the Inspection team's advice, it is insisting on customers to give proper mandate letters. The Broker confirmed that it is not violating the Clause 2(h) of Code of Conduct under Schedule VI A read with the Regulation 28 of the IRDA (Insurance Brokers) regulations, 2013.*

## Decision

The Broker has accepted the shortcomings on its part for failure to collect mandate letters from the clients. This is a violation of Clause 2(h) of Schedule VIA under Regulation 28 of IRDA (Insurance Brokers) Regulations, 2013. The Broker is cautioned for the violation. However, Broker's submission that currently it is insisting on customers to give proper mandate letters, is taken on record. Further, Broker is directed to ensure compliance to Clause 2(h) of the Code of Conduct contained in Schedule-I-Form H (Regulation 30 & Regulation 8(2)) of IRDAI (Insurance Brokers) Regulation 2018.

### **3. Charge No 3**

It was observed during financial years 2012-13, 2013-14 and 2014-15 that the insurance broker was using services of unqualified persons for the purpose of solicitation of insurance business. Also, on perusal of records and documents available with the insurance broker, it is noticed that the broker has used persons for the purpose of solicitation of insurance business who are not part of the employee list of the Broker.

Further, Broker did not maintain important documents pertaining to appointment of senior level people properly and the Designation name as well as the salary and allowances of the employees, especially of the senior cadre, are fixed arbitrarily.



The manner in which the actions were carried out by the broker for soliciting business by involving unqualified persons is, inter alia, as follows:

- a) Persons not possessing certificate of qualification
- b) Sharing of brokerage to some persons whom the broker has shown as their employees without providing proof to the inspection team about their possessing the qualification to solicit business.

Violation:

(a) Regulation 8(2)(xiv) of the IRDA(Insurance Brokers) Regulations, 2013 by using unqualified persons who have not fulfilled the requirements mentioned in Schedule-II of the regulations for solicitation

(b) Clause 3(b) of Schedule VI-A read with Regulation 28 of the IRDA(Insurance Brokers) Regulations, 2013 by using agents and canvassers for bringing the business.

**Submissions of Broker:**

*The Broker submitted that at all times the Company is having minimum 2 persons with the requisite qualification as mandated by the Regulations, to do the insurance broking business and it is using services of only qualified persons for solicitation of Insurance business. In certain cases, Assistants, under the advice of qualified persons, used to contact the customers for document submission or payments.*

*The broker also submitted that it never shared any Brokerage with unqualified persons and in a certain case; the incentive given to an employee was misconstrued as sharing of Brokerage. It submitted that it never violated the regulation 8 (2) (XIV) of IRDA (Insurance Brokers) Regulations, 2013 and never utilized the services of agents for canvassing for bringing the business.*

**Decision:**

**The Broker's approach has been lackadaisical towards employment of persons for solicitation of business and maintenance of documents related to appointment of senior level people. The Designation, name and the salary and allowances of the employees are fixed arbitrarily as per the requirements of the company which shows that services of the unqualified persons were used for the solicitation of the business.**

**The Broker's submission that Assistants used to contact the customers for payments or documents under the advice of qualified persons and incentive given to an employee was misconstrued as brokerage amount, is frivolous and simply seems a cover-up to the gross violations done by the Broker. It is clear from the observation that an employee of the Broker was promised a Brokerage for solicitation of certain amount of business. Terming it as an "incentive" by the Broker does not qualify an employee, not having requisite qualification, to solicit insurance business. The fact that Broker used services of unqualified persons was further strengthened by absence of pivotal documents regarding appointment of senior personnel and arbitrary fixation of designation and salary of the employees as per requirements of the Company. Hence there is a clear violation of Regulation 8(2) (xiv) of the IRDA (Insurance Brokers) Regulations, 2013 by using of unqualified persons by the Broker who have not fulfilled the requirements mentioned in Schedule-II of the regulations for solicitation and Clause 3(b) of Schedule VI-A read with Regulation 28 of the IRDA**



(Insurance Brokers) Regulations, 2013 by using agents and canvassers for bringing the business.

The Broker is warned for the said violation. Further, the Broker is directed to ensure strict compliance to Clause 2(I) of Regulation 8 and Para 3(b) of Schedule I- Form H (Regulation 30 & Regulation 8(2)) of IRDAI (Insurance Brokers) Regulations 2018.

#### **4. Charge No 4**

It was observed that the Broker did not have two qualified persons as mandated in the Regulations from the period 3<sup>rd</sup> June 2013 to 22<sup>nd</sup> January 2014 which was also confirmed on perusal of details of the Directors from the Ministry of Corporate Affairs (MCA) website. Further, though the appointment of one person as Principal Officer was approved by the Board only on 3<sup>rd</sup> June 2013, even prior to that date, he signed a letter as Principal Officer on 11<sup>th</sup> May 2013 addressed to another Broker.

The Broker could not provide any appointment letter issued to an employee and they have also confirmed in writing that they have formally not issued appointment letters.

Thus the Broker violated Regulation 8(2)(iii) of the IRDA(Insurance Brokers) Regulations, 2013 which mandates that Insurance Broker should have in employment a minimum of two persons who have the necessary qualifications as specified in Schedule II of the Regulations.

#### **Submissions of Broker:-**

*The Broker submitted that at all times; there were two qualified persons in the organization in adherence to the Regulations. During the respective period highlighted in the observation, Broker qualification certificate of one person was expired and other than him, another person along with the Director of the company was functioning as qualified person and hence it has not violated Regulation 8(2)(iii) of the IRDA (Insurance Brokers ) Regulations, 2013.*

#### **Decision:-**

The observation points to violation on the part of the Broker by their failure to have minimum two qualified persons during the period 3<sup>rd</sup> June 2013 to 22<sup>nd</sup> January 2014 which was confirmed by details of the Director of the Broking Company, as given on MCA website.

Non maintenance of appointment letters of senior personnel and a person signing as Principal Officer even before his appointment as PO further strengthens the charge regarding the shoddy functioning of the internal administration of the Broker.

The Broker in its submission has considered one of the directors as a Qualified person, but he has never worked as a full time employee of the company and the Broker could not produce any document in support of his qualification and therefore requirement of minimum two qualified persons was unfulfilled. This also indicates that there are no internal checks and controls in the company.

The above facts show that the broker violated Regulation 8(2)(iii) of the IRDA(Insurance Brokers) Regulations, 2013 which mandates that Insurance Broker should have in employment a minimum of two persons who have the necessary qualifications as specified in Schedule II of the Regulations. The Broker is warned for



**the said violation and directed to ensure compliance of Regulation 8(2)(c) of the IRDA (Insurance Brokers) Regulations, 2018.**

**5. Charge No 5:**

It was observed that the Broker had in place a rental agreement for a period of 11 months and that too the agreement was only in force at the time of filing application for licence and also at the time of renewal. During the interim there was no proper rental agreement in place.

Both the rental agreements had the validity of eleven months and the broker has not renewed the rental agreement after its expiry. It seems that the broker has entered in the rent agreement with the owner only at the time of start of the business and at the time of renewal of its license. It was also observed that the broker has paid the rent of Rs. 15000 per month during 2013-14 and 2014-15 without any rent agreement.

Further, the office space at Hyderabad has been used by the Promoter and Director of the company, for practice as a Chartered Accountant. During the course of inspection, he was attending to his clients at these premises. It is also seen from his visiting/business card, the address of the broking company is prominently mentioned as his office.

Further, the registered office of a company held by the promoters of the broking company is also same as Broker's registered office.

There is no arrangement for sharing of premises between these companies/associates of the broking company. In the absence of the same, it is construed that the premises is not exclusively used for insurance broking business.

The insurance broker as part of the equipment was required to have IT Software for their insurance broking activities. The insurance broker during the process of their application for licence confirmed vide their letter dated 18<sup>th</sup> January, 2012 that *"as they were waiting for the licence, they have not implemented IT system. Once they receive the licence, they will deploy the required IT system as per the guidelines of IRDA in force."*

The above letter was followed by another letter dated 13<sup>th</sup> February, 2012 of the insurance broker where they categorically confirmed that they had several discussions with their service provider for buying the software package from them.

However, during the inspection it was found that the insurance broker has no software in place for their broking activities. They have confirmed in their write-up furnished to the inspection team that their operations are at a very low pace, they could not afford the initial cost and the yearly regular maintenance of the software cost and hence they are preparing the accounts in tally software.

Further, one of the Directors and Shareholders of the insurance broker has been shown as key management personnel in charge of Finance & Accounts. However, apart from being a shareholder and director of the company the said director does not hold any functional area in the broking company. It was gathered that the said director is one of the authorized persons to operate their bank accounts. The statements showing salaries paid to various employees of the company also do not carry that director's name.

All the above instances point to absence of minimum necessary infrastructure to function as a Broker which is violation of Regulation 8(2)(ii) of the IRDA(Insurance Brokers) Regulations, 2013.





### **Submissions of Broker:-**

*The Broker submitted that it is having Proper infrastructure facilities in place to function as Broker. With regard to the one of the placement of infrastructure, i.e., office premises, the rental agreement was expired on 04-07-2013. Since then, it was trying to contact the land lady, who was residing at London and whenever, it is contacting, she is informing that she would sign the rent agreement, whenever she comes to India. On that pretext, the Broker paid monthly rent to her. In spite of Broker's repeated requests, she never turned to India for 2 years due to her age factor, and finally came to India on 07-08-2015. Immediately, the Broker obtained rent agreement for a period of 11 months. Due to this actual fact, there was a gap of two years without lease deed.*

*It also submitted that it had five directors at the time of inspection. Out of five directors, one of the major promoters who is also a qualified chartered accountant is looking after the affairs of the broking company. Since, he is a practicing chartered accountant, and he is also looking after the broking affairs of the company, sometimes, his clients came there to clear their doubts. It doesn't mean that, the premises were used for other purposes in addition to broking business. However, since then, the promoter has not at all utilized the broking premises even for discussion of their CA matters.*

*The Broker has been utilizing hardware and software as per guidelines of the BAP module. At the time of inspection, due to misunderstanding, it submitted wrong information, though it is having full fledged IT software along with IT known person.*

*With regard to the operation of the Bank Accounts, the major shareholder and Promoter of the Broking Company, is looking after the financial affairs of the Broking Company as per Board's Resolution but she is not taking any salary from the company and hence her name was not there in the salary list.*

*Also the company held by the Promoters of the Broker is a non operating company since 2013 and there are no employees/staff placed in the office. The Registered office of this company was wrongly informed to ROC and it will change the address immediately.*

### **Decision:-**

**The observation pertains to different instances of omissions and commissions noticed in relation to the functioning of the Broker. The Broker had rental agreement for the premises at the time of filing application and renewal of License only and during the interim period, no rental agreement was in place and the rent was paid arbitrarily. The premises of the office were also used for running other companies owned by the Promoters of the Broker.**

**The submission of the Broker, that the address of the respective company was wrongly informed to the Registrar of Companies (ROC) seems frivolous as it is difficult to understand how the address of a company can be wrongly informed to ROC which didn't come to the notice of the broker till the time of Inspection.**

**Having proper software is an essential pre-requisite for running a Broking Company. However, till this date the broker is not having any software in place and is still giving commitment of being in negotiation with some vendors (which was stated by the Broker at the time of Inspection also).**



The Broker, has designated a Director as Key management personnel of Finance and Accounts and authorized that person to operate bank accounts even though the respective person neither holds any functional position in the Broker nor is an employee. This indicates a totally non-serious attitude of the Broker towards their profession as a critical department such as Finance & Accounts is handed over to a person who is not even aware of day-to-day functioning of the Broker. The Broker, in its submission, has simply given the excuse of Board Resolution for handing over the said responsibility to the respective person but hasn't submitted on what grounds such resolution was passed.

It is inevitably expected of a broker that he must function in a professional manner. But the different instances as mentioned above speaking of the omissions and commissions on the part of the broker indicate that the broker is not functioning in a professional manner. Hence the broker is warned for the above and is directed to ensure compliance to

i) Regulation 8(2)(b) of the IRDAI (Insurance Brokers) Regulations, 2018, by having necessary infrastructure, such as, adequate office space, equipment, trained manpower and IT infrastructure to effectively discharge its activities.

ii) Clause 1 of Schedule I - Form H of IRDAI (Insurance Brokers) Regulations, 2018 by functioning in a professional manner.

#### **6. Charge No 6:**

In the case of change of principal officer it is necessary to obtain approval of the Authority before appointing any person as principal officer. In this case, the insurance broker vide letter dated 3<sup>rd</sup> June, 2013 has informed the Authority of appointing a person as their Principal Officer. However, the insurance broker could not provide to the inspection team copy of the approval taken from the Authority.

It is pertinent to note that though the appointment of the Principal Officer was approved by the board only on 3<sup>rd</sup> June, 2013, he signed as Principal Officer on a letter dated 11<sup>th</sup> May, 2013 addressed to another broker. It establishes that the company functioned without a Principal Officer for a certain period of time.

Similarly, in case of opening/closing of a branch an insurance broker is required to inform the Authority of such opening/closing of a branch. In this connection, the insurance broker entered into a rental agreement for their branch at Bhimavaram. As per the rental agreement, the insurance broker was required to deposit a rental advance of Rs.20,000/- and the same is refundable. Monthly rent of the premise was Rs.10,000/-.

However, the insurance broker deposited a rental advance of Rs.1,00,000/- which is still showing as advance. In addition, the insurance broker incurred an expenditure of Rs.45,500/- towards travelling expenses, Rs.15,000/- towards Pooja Expenses and Rs.39,500/- towards Furniture & Fixture.

It may be seen from the payment voucher, the payment towards the above expenses was paid on 7<sup>th</sup> July, 2014 whereas the rental agreement was dated 1<sup>st</sup> August, 2014. Further, an amount of Rs.9,389/- was earned as a brokerage from Bhimavaram.

The officials of the insurance broker have informed to the inspection team that they could not start their operations from their Bhimavaram branch and as such the branch is closed. They further informed that the rental advance of Rs.1,00,000/- is yet to be received.



The insurance broker has failed to inform the Authority both the opening of the branch and its subsequent closure.

In addition to the above, an insurance broker is required to furnish the information pertaining to the list of qualified persons to the Authority as and when there is a change. It can be seen from the year-wise list provided by the insurance broker, the number increased from two qualified persons to three from Financial Year 2012-13 to 2013-14 and the same was not informed to the Authority. Similarly, appointment of a person has also not been informed to the Authority.

The Broker, by not taking prior approval from the Authority for appointment of new Principal officer, has violated Regulation 38(3)(i) of the IRDA(Insurance Brokers) Regulations, 2013 which mandates that *"an insurance broker shall have to take prior approval of the Authority in case of change of principal officer"*.

Also there is violation of Regulation 38(4)(i) of the IRDA(Insurance Brokers) Regulations, 2013 which envisages that *"an insurance broker shall inform to the Authority as and when there is a change/addition to the information already furnished to the Authority in case of any opening/closing of branch"* as the Broker did not inform the Authority about opening/closure of Branch at Bhimavaram.

The Broker did not inform about appointments in the company to the Authority which is a gross violation of Regulation 38(4)(ii) of the IRDA(Insurance Brokers) Regulations, 2013 which mandates that *"an insurance broker shall furnish to the Authority list of qualified persons as and when there is change in the information already furnished"*.

#### **Submissions of Broker:-**

*The Broker submitted that due to sudden Resignation of former Principal officer , appointment of new Principal officer was done in haste and hence it did not take approval from the Authority.*

*With regard to opening of the branch, the Broker submitted that it wanted to open a branch at Bhimavaram and had taken a decision in a short period and paid a rental advance of Rs. 1,00,000/- and also incurred some misc expenditure towards purchase of furniture. On the same day it got a premium of Rs. 9,389. This was on account of friends reference and subsequently it came to understand that it is not viable and immediately closed the office and requested the land lord to repay the rental advance. He agreed to return back the amount. This entire process was done within one week time. In view of the situation, it had not informed about the opening and closing of branch to IRDA. The purchased furniture has been brought to Hyderabad registered office. The Broker also submitted that the appointment of officials in the company was well in advance intimated to IRDA.*

#### **Decision:-**

**Prior approval for appointment of Principal officer was not taken by the broker, from the Authority which is a clear violation of Regulation 38(3)(i) of the IRDA(Insurance Brokers) Regulations, 2013 which mandates that *"an insurance broker shall have to take prior approval of the Authority in case of change of principal officer"*.**

**The submission of the Broker, that the appointment of new PO was done in hurry, doesn't grant liberty to the Broker to violate the Regulations. Regarding signing of a letter by person in the capacity of Principal Officer even before his appointment, the Broker submitted that it was done in haste. It is surprising that a person designated to be appointed as a Principal Officer of a company doesn't have such basic knowledge**





and it appears that the Broker's submission is an attempt to cover-up the absence of internal controls and checks.

The logic provided by the Broker regarding failure to inform the Authority regarding opening and closure of Branch office at Bhimavaram doesn't seem convincing. Apparently, the decision to open and close the office in such a short interval and also soliciting some business from it points towards violation of Regulation 38(4)(i) of the IRDA(Insurance Brokers) Regulations, 2013 which envisages that "*an insurance broker shall inform to the Authority as and when there is a change/addition to the information already furnished to the Authority in case of any opening/closing of branch*".

With regard to failure to inform the Authority regarding recruitment of qualified persons, the Broker could not provide any documentary evidence in support of its submission which shows that there was a violation of Regulation 38(4)(ii) of the IRDA(Insurance Brokers) Regulations, 2013 which mandates that "*an insurance broker shall furnish to the Authority list of qualified persons as and when there is change in the information already furnished*".

Hence the Broker is warned for the above violations and directed to ensure compliance to Regulations 13(3), 40(1), 40(3)(a), 40(4)(a) and 40(4)(b) of the IRDA (Insurance Brokers) Regulations, 2018.

#### **7. Charge No 7:**

It was observed that the insurance broker has at the time of filing of application for licence and also at the time of renewal submitted that one of the shareholders and directors of the company, is a key management personnel responsible for Finance & Accounts of the insurance broker whereas, it is found that she is not even an employee of the company. This can be evidenced from the salary details of the employees provided by the insurance broker.

Similarly in another case, the insurance broker in their renewal application submitted that he is key management personnel in charge of Administration. However, it is found that he is designated as Vice President (Marketing) and soliciting the insurance business.

Further, the insurance broker in their revised application dated 18<sup>th</sup> January, 2012, which was filed along with their letter dated 18<sup>th</sup> January, 2012 furnished the particulars of key management personnel. However, on perusal of the salary statements of the employees, their names were not present.

Similarly, the insurance broker in their renewal application mentioned one person as one of the employees responsible for soliciting and procuring insurance business. However, he is not an employee of the insurance broker and is a practicing chartered accountant based in Pune.

In addition to the above, the insurance broker vide their letter dated 25<sup>th</sup> July, 2013 informed the Authority on appointments made for various positions for the development of their business.

It is also submitted by the insurance broker in the said letter about some three persons. One person has been mentioned to be an insurance professional and a member of Insurance Institute of India, Mumbai and about the other two it is mentioned that they are having working knowledge of more than 10 years in the insurance field.



However, on perusal of the salary statements furnished by the insurance broker, it is found that the name of one of the persons is missing. Similarly, in regard to the other two, there is lacuna like one person is shown as Manager(Accounts) and in the case of the other, it is found that he was designated as Messenger in the year 2013-14 and which was changed to Assistant(Accounts) in the year 2014-15.

The above instances indicate that the Broker has been time and again furnishing false information about the existence of employees or their position in the company which is a violation of Regulation 41 (1) (d) of the IRDA (Insurance Brokers) Regulations, 2013 which prescribes that the insurance broker shall not furnish wrong or false information or conceal any material facts at the time of filing their application or during the validity of licence.

#### **Submissions of Broker:-**

The Broker submitted that it never furnished any wrong information to the Authority either intentionally or unintentionally. In the initial period of company starting the operations, there were some lapses and the Broker has now corrected them and proceeding as per the requirements of the Authority.

#### **Decision:-**

**The observation pertains to different instances where the Broker has furnished incorrect information to the Authority or concealed some important information from the Authority.**

**Broker's reply that there were some lapses in the initial starting phase, is in a way covert submission that vital information was concealed and false information was furnished to the Authority and points towards clear violation on the part of the Broker. However considering that the broker has taken corrective action, the Authority warns the broker that any recurrence of such lapse will attract action under Regulation 49 (1) (d) of the IRDA (Insurance Brokers) Regulations, 2018.**

#### **8. Charge No 8:**

The insurance broker does not have proper internal controls and systems commensurate with their size, nature and complexity of their business.

It is found that the insurance broker is paying salaries to some of their employees in cash. For the year 2014-15, from July, 2014 to February, 2015 the insurance broker has paid an amount of Rs.9,65,000/- towards salaries in cash.

In the case of the person who is designated as Vice President, the salary is being paid in cash and his monthly salary is Rs.50,000/-.

Similarly, the insurance broker has paid Rs.11,70,000/- (after deducting tax) to one person towards salary (Rs.4,50,000/- in the month of May 2014, Rs.4,50,000/- in the month of June 2014 and Rs.2,70,000/- in the month of July 2014). As per the appointment letter, that person was appointed as Vice-President (Administration) and his date of joining was 2<sup>nd</sup> April, 2014. However, as per the salary statement furnished by the insurance broker, his designation was Manager (Marketing). The salary was paid on 22<sup>nd</sup> May, 2014 and immediately on 3<sup>rd</sup> June, 2014 followed by 5<sup>th</sup> July, 2014.



On enquiry, the insurance broker informed that they were planning to apply for Composite Broking License and appointed him as reinsurance specialist. Subsequently, they dropped the idea of applying for composite licence and his services were terminated.

A copy of the Journal Voucher shows that an amount of Rs.1,00,000/- was paid as salary to an associate of the insurance broker.

The insurance broker during the renewal of their licence submitted that an amount of Rs.30,00,000/- was paid to a company towards an advance for purchase of flat. The Authority while renewing their licence vide letter dated 11<sup>th</sup> September, 2015 advised the insurance broker to submit copy of the sale deed after completion of formalities. However, on enquiry from the insurance broker, it has been revealed that there was no agreement for payment of advance to that company and the deal could not materialize. Subsequently, the insurance broker has recovered an amount of Rs.28,50,000/- from that company. Out of the Rs.28,50,000/- an amount of Rs.18,50,000/- was received in the form of cash. However, on perusal of copy of Receipt given by that company dated 15<sup>th</sup> May, 2013, an amount of Rs.15,00,000/- was given to them as hand loan.

Only an amount of Rs.16,00,000/- was received as advance towards commercial flat venture developing for a space of 1500 sft. No further details were provided.

The insurance broker has no system of issuing appointment letters to their employees, even for senior functionaries like Principal Officer, Executive Director and Vice Presidents. They have confirmed that they do not have practice of issuing appointment letters. In the absence of such, there is no evidence that they are full time employees of the insurance broker.

It is also important to note that their erstwhile Principal Officer submitted a resignation letter dated nil informing the broking company owing to stoppage of his honorarium for three months @ Rs15,000/- per month. He was subsequently relieved on 3<sup>rd</sup> June, 2013 and another person was appointed as Director and Principal Officer and he was paid honorarium instead of salary.

Further, the inspection team collected a copy of the document received from Royal Insurance Corporation of Bhutan Ltd (RICB), Thimphu, Bhutan dated 10<sup>th</sup> July, 2013 appointing M/s. Sunrays Insurance Broking Services Ltd as their brokers for placing facultative business through the insurance broker and also informed the insurance broker that they have started underwriting inward business from overseas reinsurers and RIBL will support the insurance broker in their placement of risks if the terms and conditions meet their requirements. The insurance broker accepted the appointment and agreed to be the broker for RIBL in placing their outward business and at the same time willing to offer business to RIBL. It may be mentioned here that the insurance broker is licensed as a Direct Broker for General Insurance Category only and they are not authorized/licensed to accept or place any reinsurance broking business. This shows that the insurance broker has little/no idea about the regulations governing the insurance brokers and their role and limitations as an insurance broker.

Another evidence to corroborate this fact was a letter written to another broker requesting them to en-list as a co-broker/Third Party Service Provider. In response to the same, the insurance broker furnished the required details to that broker vide letter dated 11<sup>th</sup> May, 2013. Further, it is important to note that as stated in the said correspondence the name of the person who was Vice President-General broking business never figured in the employees list.

In the above correspondence, the insurance broker not only misrepresented to the other broker, but also failed to understand the provisions governing co-broking. Further, they have



also shown their interest to provide services as third party service providers to the other broker. This is also not permitted under the regulations.

Thus there is a clear violation of Regulation 31(1) of the IRDA (Insurance Brokers) Regulations, 2013 which envisages that *"every insurance broker shall ensure that a proper system of internal audit is in place and that their internal controls and systems are adequate for the size, nature and complexity of its business."*

Further by attempting to undertake Reinsurance broking business, the broker overstepped the role and function which they were ordained to perform as Direct broker under Regulation 4 of the IRDA (Insurance Brokers) Regulations, 2013 which defines the functions of a direct and Reinsurance Broker.

#### **Submissions of Broker:**

The Broker submitted that it is having internal controls and systems in place presently. In the initial stages of the company starting business of insurance broking, due to the ignorance of the Regulations, it did not meticulously adhere to the Regulations which is not intentional. The Broker also assured that henceforth it shall adhere to the regulations scrupulously and also issue all the appointment letters properly.

With regard to entering into reinsurance business, the Broker submitted that it entered into an agreement without the prior approval of IRDA and on knowing the fact, it withdrew from the agreement.

With regard to the broker services, as third party service provider, it misunderstood the concept and accepted the offer. When the Broker realized that it is not as per IRDA Regulations, it dropped the proposal.

#### **Decision:-**

**The observation pertains to different lapses on the part of the Broker such as different designations given to a same employee at the same time, payment of honorarium instead of salary to its Principal officer, payment of salary to an associate of the Broker, dubious agreement regarding purchase of flat, non-issuance of appointment letters on appointment of senior personnel, undertaking the business of Reinsurance Broking when it is not licensed to do so, misrepresentation to other Broker regarding co-broking agreement. This indicates that *the Broker is not having adequate internal controls and systems commensurate with the size, nature and complexity of its business. This is a clear violation on the part of the Broker of the Regulation 31(1) of the IRDA (Insurance Brokers) Regulations, 2013.***

**The Broker by undertaking to accept the role of Reinsurance Broker, even though it was not licensed to do so, overstepped the role and function which they were licensed to perform as direct broker under Regulation 4 of the IRDA (Insurance Brokers) Regulations, 2013 which defines the functions of a direct and Reinsurance Broker.**

**The Broker's submission that in the initial phase of the business, it ignored the compliance of the Regulations is itself an indirect admission to violations committed by the Broker and stating that it withdrew from the respective Agreements when it came to know of violations is not acceptable as by enrolling themselves as a registered broker they are mandated to abide by all regulatory requirements. The broker is warned for the violations committed by them and is directed to ensure**



compliance of Regulation 4 (Schedule I-Form A) and Regulation 31(1) of the IRDAI (Insurance Brokers) Regulations, 2018.

**9. Charge No 9:**

No BAP returns are filed by the Broker as on the date of inspection, despite the warning issued by the Authority vide its letter Dt.11.9.15 for not filing online returns.

This is violation of the provisions of Authority's circular Ref No. : IRDA/BROKER/MISC/CIR/23210/2014 dated 21<sup>st</sup> October 2014 which specifies the timelines for filing the returns by the Broker.

**Submissions of Broker:-**

*With regard to the filing of Returns through BAP, the Broker submitted that as the portal itself was not functioning properly, it had faced many problems and the same were brought several times to the authority's notice seeking guidance. After getting the guidance, it was able to upload the returns. But by that time, deadline was exceeded. Therefore, it was not able to file the returns in time. Now, it is fully equipped with the relevant hardware and software and it has filed online returns. The Broker has also assured that henceforth, it will never deviate from the Regulatory deadline for submission of return.*

**Decision:-**

The Broker's submission that the deadline for filing returns was over when it filed the returns after getting guidance from the Authority, seems a lame excuse to cover up lapse on its part. However, it has assured that henceforth, it will file the returns in time. Hence the Broker is warned for the lapse committed on their part and directed to ensure that online BAP returns are filed in time with the Authority.

**10. Summary of Decisions:**

The following is the summary of decisions in this order:

Charge No.	Brief Title of charge and the provisions violated	Decision
1	<b>Charge:</b> Accounting of Brokerage on receipt Basis <b>Provision:</b> Regulation 29 (1) of IRDA ( Insurance Brokers) Regulations, 2013	Warning and Direction
2	<b>Charge:</b> Failure to obtain written mandate <b>Provision:</b> Clause 2(h) of Code of Conduct under Schedule VIA read with Regulation 28 of the IRDA (Insurance Brokers) Regulations, 2013	Caution and Direction
3	<b>Charge:</b> Using unqualified person for solicitation <b>Provision:</b> Regulation 8(2)(xiv) of the IRDA(Insurance Brokers) Regulations, 2013 and Clause 3(b) of Schedule VI-A read with Regulation 28 of the IRDA(Insurance Brokers) Regulations, 2013 by using agents and canvassers for bringing the business.	Warning and Direction



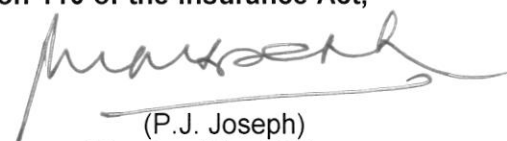
4	<p><b>Charge:</b> Non compliance with minimum qualified person requirement</p> <p><b>Provision:</b> Regulation 8(2)(iii) of the IRDA(Insurance Brokers) Regulations, 2013</p>	Warning and Direction
5	<p><b>Charge:</b> Failure to have proper infrastructure</p> <p><b>Provision:</b> Regulation 8(2)(ii) of the IRDA(Insurance Brokers) Regulations, 2013</p>	Warning and Direction
6	<p><b>Charge:</b> Disclosure to the Authority</p> <p><b>Provision:</b> Regulation 38(3)(i) , 38(4)(i) and 38(4)(ii) of the IRDA(Insurance Brokers) Regulations, 2013</p>	Warning and Direction
7	<p><b>Charge:</b> Furnishing of false information to Authority</p> <p><b>Provision:</b> Regulation 41 (1) (d) of the IRDA (Insurance Brokers) Regulations, 2013</p>	Warning
8	<p><b>Charge:</b> Lack of proper internal controls and systems</p> <p><b>Provision:</b> Regulation 31(1) and Regulation 4 of the IRDA(Insurance Brokers) Regulations, 2013</p>	Warning and Direction
9	<p><b>Charge:</b> Non filing of BAP Returns</p> <p><b>Provision:</b> Provisions of Authority's circular Ref No. : IRDA/BROKER/MISC/CIR/23210/2014 dated 21st October 2014.</p>	Warning

#### 11. Conclusion:

The Broking firm shall confirm compliance in respect of all the directions referred to in paras 1 to 9 of this order, within 21 days from the date of receipt of this order.

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

Place: Hyderabad  
Date: 16-02-2018

  
(P.J. Joseph)  
Member (Non Life)

