Ref: IRDA/Enf/Ord/ons/088/04/2017

Final order in the matter of M/s TATA AIA Life Insurance Company Ltd

This order is issued on the basis of the reply of TATA AIA Life Insurance Company Ltd, to the Show Cause Notice, by its letter dated 21/12/2016, and submissions made during Personal Hearing on 29th March, 2017 at 02.30 PM, taken by Member (F&I) at the office of Insurance Regulatory and Development Authority of India, 3rd Floor, Parishram Bhavan, Basheerbagh, Hyderabad.

Background:

The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") carried out an onsite inspection of TATA AIA Life Insurance Company Ltd (hereinafter called the insurer) during 16/09/2013 to 25/09/2013.The inspection was intended to check the compliance of the insurer to Insurance Act, 1938, IRDA Act, 1999 and the Rules, Regulations, Circulars, Guidelines and other directions issued there under by the Authority. The inspection covered the activities of the insurer related to the period of two financial years 2011-12 and 2012-13.

The Inspection findings were communicated to the insurer for their comments on 22/11/2013. The insurer submitted its comments to the Authority vide its letter dated 12/12/2013. A show cause notice was issued to the insurer by the Authority on 20/02/2017. The insurer submitted its reply to the authority by its letter dated 14/03/2017. In its reply to the show cause notice, the insurer had requested for the personal hearing. The personal hearing of the insurer was conducted on 29/03/2017 at IRDAI office, 3rd Floor, Parishram Bhavan, Basheer Bagh, Hyderabad.

On behalf of TATA AIA Life Insurance Company Ltd, the personal hearing was attended by Mr Naveen Tahilyani, MD & CEO; Mr. Subhash Pillai, Chief Financial Officer; Mr. S. Swaminanathan, Chief Legal and Compliance; Yusuf Pachmariwala, Head Operations; Mr. Sanjay Arora, SVP Internal Audit; Mr. Bharat Kalsi, Head Strategy and Mr. Heerak Basu, Appointed Actuary. On behalf of the Authority Ms VR Iyer, Member (F&I); Ms. Mamta Suri, Chief General Manager, F&A; Mr PK Maiti, General Manager, Enforcement; Mr. Gautam Kumar, Deputy General Manager, Life; Mr. Pankaj Kumar Tiwari, Deputy General Manager, Actuarial; Mr. Prasad Rao Kalayru, Deputy General Manager, Investment; Mr Vikas Jain, Assistant General Manager, Enforcement and Mr. Santosh Mishra, Assistant General Manager, Actuarial were also present.

The submissions made by the insurer in their written reply to the Show Cause Notice, the documents submitted by the insurer in support of the reply, submission made during personal hearing and documents submitted post personal hearing have been considered by the Authority and accordingly the decisions thereon are detailed below

Charges, Submissions in reply thereof and Decisions:

1. **Charge 1:** In case of 'counterfeit currency notes' submitted at various operating offices of the insurer, it was observed that the insurer is not in a position to identify the persons who tendered the counterfeit notes and only the Banks are identifying the counterfeit notes and returning them to the insurer. Adequate system was not put in place by the insurer for identifying the counterfeit notes being tendered at different offices of the insurer.

Violations: The insurer violated Para 2(g) of IRDA AML circular dated 16/06/2010 and rule 3(1) (C) of PMLA rule by relying completely on the bank and not having suitable mechanism to counterfeit currency notes, which mandates all financial Institution to Report to FIU-IND and should have suitable mechanism to identify 'counterfeit currency notes'.

Response of the insurer: The insurer submitted that it have installed cash counting machines in the branches and these machines have the facility of detecting counterfeit currency. Further, the cash management services have been outsourced to CMS Securitas Ltd. and as per the contract, the cashiers is trained amongst other activities to also detect counterfeit notes, if any, deposited at the counter. Further, if any counterfeit note is identified and impounded by the bank at the time of cash deposit, a certificate to this effect is provided by the Bank and the loss is reimbursed by the vendor. Thus the risk of loss is mitigated. Further they submitted that they have trained all their employees in this regard and strengthened the system to identify the counterfeit currency notes.

Decision: In view of the submission of the insurer that they have trained their employees in this regard and installed the machines in all the branches and strengthened the system; the charge is not pressed; however the insurer is advised to ensure that all the branches are having robust system to identify the counterfeit currency so as to ensure compliance of sub-section IV of section 3.1.13 of IRDA circular on AML/CFT Guidelines for Life Insurers dated 28/09/2015.

2. **Charge 2:** In respect of policy no.C202924227, the date of receipt of last requirement from the claimant was 10th August, 2011 and the claim was settled on 24th October, 2011 but no penal interest was paid to the claimant as required under Regulation 8(5) of Protection of Policyholders Interests Regulations, 2002.

Violation: The insurer has thus violated Para 8(5) of protection of policy holders' interest regulations, 2002, by not paying the penal interest for the delay in the settlement of the claims.

Response of the insurer: The insurer submitted that it pays penal interest to claimants in cases of delay. In this above mentioned case, the payment of penal interest was

inadvertently missed and consequently the same was paid on 26th November 2013 and they further submitted that they have further strengthened the system and there is no delayed settlement of claim in the current financial year.

Decision: Authority considers the submission of the insurer that the case mentioned in the inspection observation was a one-off incidence and they have already paid the penal interest in that case. Also considering further submission that they have strengthened the system and that there is no delayed settlement of claims in the current year, the charge is not pressed.

3. **Charge 3:** It was observed in the sample cases examined that the insurer had paid full Surrender value for Top Up premiums within three years from the date of the collection of that Premium. This is in violation to the terms and condition of the Product 'TATA AIA Life Invest Assure II', where three year lock in period for Top Up premium is provided. Therefore, the insurer has violated F & U Guidelines.

Violation: The insurer thus violated the terms and conditions of the product filed under File and Use by paying the top up premium before the lock in period.

Response of the insurer: The insurer submitted that Clause 8.3 of ULIP Guidelines prescribing the lock in period of 3 years for the top up premium pertains to the partial withdrawal and further referred to the Regulation 23(d) of IRDA (Linked Insurance Products) Regulations, 2013 which provides the exception of Complete surrender where the top up premium may be withdrawn during the period of lock in period and during the personal hearing it submitted that it was not practicable to hold back the top up premium with them after full surrender of the policy.

Decision: Clause 8.3 of ULIP Guidelines 2005, as clarified vide circular dated 03/05/2010 required that the Lock in period for top-up premium was applicable irrespective of whether the withdrawal is due to partial withdrawal or otherwise. Hence the Insurer's action was not in compliance to the prevailing provision and the insurer is warned for the said no compliance.

Considering the submission of practical difficulty in applying the lock-in period in case of complete surrender and also considering that the provision was subsequently revised vide the Regulation 23(d) of IRDA (Linked Insurance Products) Regulations, 2013, allowing the withdrawal of top up premium during lock- in period, in case of full surrender, the insurer is not pressed with any further charge but the insurer is directed to abide by the terms and conditions of the product, as filed and approved under File and Use Guidelines.

4. **Charge 4:** It was observed that the insurer had paid differential rates of commissions to various categories of agents in deviation of the provisions of File & Use of product "Mahalife Gold" (UIN-110N029V01).

Violation: The differential commission rate was not approved under the F & U and the insurer had violated the provisions of File and Use by paying commission at differential rates various intermediaries.

Insurer's Response: the insurer submitted that the payment made to various agents are within the limits of commission set out in F&U document for the product and within the overall regulatory limits and had not breached any regulations. It further submitted that the criteria of differential commission has been objectively placed and transparently communicate to all the agents as part of the agency agreement and there were no complaints from any of the agents for being paid on a differential basis. It further submitted that 90% surplus under the above policies (participating) belongs to the policyholders and the lower commission paid to agents also ensure higher benefits to the policyholders. It further submitted that the differentiation was based on the recognition of the merit and level of quality of procuring and continued policy servicing. It also submitted that it interpreted the scales of the commission filed under file and use to be the maximum commission payable to the agents.

Decision: The commission rate filed in the File and use was a fixed percentage of premiums. The Insurer had not filed any objective criteria for applying differential commission rates to be paid to different categories of agents under File and Use. Hence the payment of commission on a differential basis to various categories of agents, without prior approval, is construed as a violation of File and Use guidelines. The insurer is warned for the said violation.

Considering that the insurer did not pay the commission beyond the limit as approved under File and Use, further charge is not pressed and the insurer is directed to comply with the terms and conditions as filed and approved under File and Use, in all respects.

5. Charge 5: On the examination of premium collection procedure adopted by the insurer it was observed that the insurer receiving the daily premium collection. During any calendar month premiums received with respect to non-linked policies were transferred to shareholders' fund. Only at the end of the each month, after receipt of actuarial liability requirements and in case of deficit, funds are transferred from shareholders' fund to respective policy holders' fund. Thus, any income derived on such premium receipts during any calendar month are credited to the shareholders' without any part of the same being allocated to policyholders. The process adopted by the insurer violates the section 49 of the insurance act 1938, which provides that no part of the policy holders fund shall be utilised by the shareholders.

Violation: The insurer was found to violate of 10 (2) and (3) and section 11(1), 1(A) and 1(B) of the insurance Act, 1938 and IRDA (preparation of Financial statements and Auditors' report of insurance companies) Regulations, 2002.

Response: The insurer submitted that in regard to the participating policies, the shareholders had injected substantial amounts of capital between 2001-02 and 2005-06 to enhance the participating policyholders' interest. Thus any notional interest loss attributable to the premiums would be more than compensated by the interest earned on shareholders' injections, thus, ensuring that the policyholders' are adequately safeguarded. It further submitted that since august, 2014, the daily cash flows are being segregated into 3 segments named participating life, participating pension and other than participating segments and the process of daily segregation of cash flows of other than participating segment has been further refined from January 2017 to segregate daily cash flows into shareholders fund, non participating life and non participating pension funds, thereby leading to clear demarcation of cash flows to shareholders and policyholders funds. It submitted that it has taken the correction action in this regard.

Decision: In view of the submission of the insurer that it has taken corrective action, the charge is not pressed. However, the insurer is directed to ensure the clear demarcation of the funds and immediately transfer the premium to the policy holders' funds, on receipt.

6. **Charge 6:** On the examination of PARA 7 SOP on investment cash flows version 3.3(Ref No. INV/BO/2012/001) it was observed that the insurer preparing daily cash flows from the data obtained from different system in excel formats are uploaded into MFUND system of the insurer. The procedure adopted by the insurer is a deviation from Para A (2) of Investment risk management systems & processes (Annexure III to investment guidelines dated 22.08.2008) which provides that the all systems must be seamlessly integrated without manual intervention.

Violation: The insurer has thus violated the provisions of Para A (2) of Investment risk management systems & processes (Annexure III to investment guidelines dated 22.08.2008) which provides that the all systems must be seamlessly integrated without manual intervention.

Insurer's Response: The insurer submitted that the M Fund system has certain limitations due to which seamless integration could not be done. Now they are in the process of switching to the SAP based Financial Asset Management system (FAM) which is more stable and the entire process of preparing daily cash flows will be automated, with no manual intervention. This new system is under parallel run and would go live by May, 2017.

Decision: In view of the submission of the insurer that this was due to the limitation with the M Fund and they are switching to much more stable and integrated system, the charge is not pressed. The insurer is advised to ensure the compliance to the Investment guidelines in this regard by having the seamless integration of all the systems.

1. 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	**Charge**: Not having suitable mechanism to counterfeit currency notes **Provision**: Para 2(g) of IRDA AML circular dated 16/06/2010 and rule 3(1) (C) of PMLA rule	Advisory
2	**Charge**: Delay in settlement of claim **Provision**: Para 8(5) of protection of policy holders' interest regulations, 2002	Charge dropped
3	**Charge**: Withdrawal of top up premium within lock in period under full surrender **Provision**: Terms and conditions of the product as filed under F&U	Warning and Direction
4	**Charge**: payment of differential rates of commission different from F&U **Provision**: File and Use	Warning and direction
5	**Charge**: transfer of the premium to policyholders' account **Provision**: 10 (2) and (3) and section 11(1), 1(A) and 1(B) of the insurance Act, 1938 and IRDA (preparation of Financial statements and Auditors' report of insurance companies) Regulations, 2002.	Direction
6	**Charge**: investment system not seamlessly integrated **Provision**: Para A (2) of Investment risk management systems & processes (Annexure III to investment guidelines dated 22.08.2008)	Advisory

(i) ***Further:***

a) The 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.

b) If the 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.

Place: Hyderabad
Date: 17th April, 2017

Iyer

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