



Ref.No: IRDA/ENF/ORD/ONS/ 23 /02 /2016

**Final Order in the matter of M/s The Oriental Insurance Co Limited**

**Based on reply to the Show Cause Notice dated 7<sup>th</sup> August, 2015 and submissions made during Personal Hearing on 16<sup>th</sup> November, 2015 at 11:30 am taken by Member (F&I) at the office of Insurance Regulatory and Development Authority of India , 3<sup>rd</sup> Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad.**

The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") carried out an onsite inspection of M/s **The Oriental Insurance Co Limited** (hereinafter referred to as "the General Insurer") from 13<sup>th</sup> to 17<sup>th</sup> & 27<sup>th</sup> to 29<sup>th</sup> of September, 2010. The Authority forwarded the copy of the Inspection Report to the Insurer seeking comments on the same under the cover letter dated 16<sup>th</sup> November, 2010. Upon examining the submissions made by the Insurer vide letter dated 10<sup>th</sup> & 23<sup>rd</sup> December, 2010 the Authority issued Show Cause Notice on 7<sup>th</sup> August, 2015 which was responded to by the Insurer vide letter dated 22<sup>nd</sup> September, 2015. As requested therein, a personal hearing was given to the Insurer on 16<sup>th</sup> November, 2015. Dr.A.K.Saxena, CMD, Mr.B.N.Prasad, General Manager, Mr.Amitesh Sinha, General Manager, Mr.Atul Sahai, General Manager, Dr.Y.P.Sabharwal, Actuary were present in the hearing on behalf of the General Insurer. On behalf of the Authority, Mrs.V.R.Iyer, Member (F&I), Mr.Lalit Kumar, FA & HOD (Enforcement), Mr.Suresh Mathur, Sr.JD (Non-life), Mr.Prabhat Kumar Maiti, JD (Enforcement) and Mr. K.Sridhar, Sr.AD (Enforcement) were present during the personal hearing.

The submissions made by the Insurer in their written reply to the inspection observations, Show Cause Notice and 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.

**1. Charge**

**a) Insurer instead of using its own portal has entered into an agreement to use the portal of Hero Corporate Services Ltd (HCSL) who is also a corporate agent of**

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another general insurer. Insurer agreed to pay one time upfront payment of Rs.30 lacs and monthly subscription fees on the basis of usage of the portal. The Insurer was paying 33% service charges on the premium amount directly to HCSL.

Further, it is also observed from sample MOU copies that no entity/motor dealer with which insurer has entered into agreement is a licensed entity by the Authority, still the insurance commission and infrastructure charges are paid to the dealers by the regional offices in the range of 10% to 30%.

The inspection team observed that the insurer was not only paying agency commission to the agent, but also to the motor dealer as well as to the manufacturer on the same business. Such payments were observed in the case of M/s. Chevrolet Sales India Ltd.

In addition, the insurer has also entered into service agreement with M/s. Magma CF Services Pvt. Ltd., Kolkata, by which M/s. India Autoinsure Solutions Pvt. Ltd. (a corporate agent of the insurer) is offering motor and general insurance related services. Vide para 4(a) of the above agreement the insurer had agreed to pay 37% and 27% for private and commercial vehicles respectively in addition to 10% corporate agent agency commission.

Further on examining the documents it is also noted that insurer has outsourced core activities to motor dealers, payments were made to dealers as a % to premium, amounts paid to motor dealers were under commission head, payouts to Dena bank was towards marketing of products, charged different rates to similar risks sourced through different dealers of the same manufacturer and negotiated service charges payable to dealers based on the discounts offered to customers.

**b) Insurer entered into agreements with various motor manufacturers / dealers and payments are made as a percentage of Motor O.D Premium over and above the commissions' payable to the intermediaries.**

Payments are being made from the respective regional offices where the entities are located and details of the same are not available at the H.O. As per the provisions of the agreement the payment is fixed at 33% of the Motor O.D Premium.

Apart from the Automobile Dealers / Manufacturers, it is observed that the insurer has entered into agreement with some banks including Dena Bank to whom the payments are made under the head "Infrastructure Expenses". It is noticed that the rate of "infrastructure expenses" agreed for payment to motor dealers is indirectly proportional to the "Discount offered on IMT to the client". It is also noticed that

though the motor dealers are not licensed as insurance agents, they are under obligation to collect the premiums and maintain a C.D account with the insurer etc.

**Violation of.**

- a) Violation of Point 3(ix), 8 & 11 of F&U guidelines dated 28/09/2006 and circular no.048/IRDA/De-tariff/Dec-07 dated 18<sup>th</sup> Dec, 2007.
- b) Circular ref.no.IRDA/CIR/011/2003 dated 27-03-2003.
- c) Commission circular ref.no.011/IRDA/Brok-comm/Aug-08, dated 25-08-2008 and para 30 of F&U guidelines dated 28/09/2006.
- d) Regulation 3 of IRDA (Licensing of Corporate Agent) Regulation, 2002 and clause 21 of IRDA circular ref. 017/IRDA/Circular/CA guidelines/2005 dated 14.07.2005 by entering into additional relationship with tied corporate agent of another general insurer.
- e) Regulation 7 (C) of IRDA (Registration of Companies) Regulations, 2000.

Submission of insurer:

a) The MOU entered with HCSL is for using the services of the company like portal, business promotion and other related activities. One time payment of Rs.30 lacs plus service tax was towards entry fee. They also undertake activities like sales promotion which increase the sale of our Motor Package policies. The payment of 33% of OD premium is towards the services rendered by them, mainly use of their portal and sales promotion campaigns undertaken by them. M/s HCSL is neither our agent nor our broker and hence there is no violation of the commission guidelines.

The payments made to General Motors (Chevrolet) are infrastructure expenses and not commission since they are not our agents/brokers. This is being paid to them for rendering various services in connection with usage of their space, use of their manpower, stationary services etc. as well as promotion schemes which increase sale of our Motor Package policies.

The infrastructure charges being paid to dealers are in lieu of various services rendered by them like providing space, use of their manpower, usage of their stationary as well as promotion schemes which increase sale of our Motor package policies. We would like to confirm that the commission/brokerage is paid to the licensed agents or brokers only within the prescribed limits by IRDA.

MAGMA: The MOU is entered with M/s Magma C.F.Services Private Limited, Kolkata, and infrastructure payments are in lieu of various services rendered by

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them. This business is booked through M/s A to Z Brokerage and they receive brokerage as per IRDA norms. The discrepancy found in the MOU by inspecting team of IRDA is noted which was through an over sight and we are in the process of rectifying the mistake.

**b)** It is a fact that Oriental Insurance has entered into various Pan India MOUs with automobile manufacturers and financiers. However, kindly be noted that the agency commission / brokerage is paid to the licensed intermediary only and at the rate prescribed by IRDA. The infrastructure payments made at various levels i.e manufacturers or dealer or financiers are in lieu of various services rendered by them like providing space, using their infrastructure, usage of their man power and more importantly for promotion campaign undertaken by them. This is a market practice followed in Motor business and we are not an exception. According to us the payment of infrastructure expenses does not violate any circular or instructions of IRDA and the same is as per market practice.

**Decision:**

- a)** On examining the available documents and submissions of insurer with reference to infrastructure payouts to motor dealers, it is noted that
- Insurer in the letter dated 4/11/2009 addressed to Honda Motor Cycle & Scooter India Pvt Ltd has stated that it would train the dealers on the policies and methods of canvassing for the same and will provide the renewal customers list.
  - Insurer has linked reimbursement of expenses to motor dealers with the discount allowed to customer and was paid as a percentage of motor OD premium, but not as 'per policy' basis or a lumpsum payment on a periodical basis or on the basis of the nature of services offered.
  - Insurer utilized the services of M/s Hero Corporate Services, who is also a corporate agent of M/s National Insurance.
  - Insurer letter dated 10/10/2009 to Bajaj Auto stated that insurer will pay charges @40% towards the services offered and no commission will be paid on business procured.
  - Insurer placed a maximum cap of 50% towards discount, commission and procurement expenses. In case if there is no agent and lesser discount to customer, more payout was made under infrastructure head to the dealer without exceeding the total 50% cap.

Thus from all above, it is evident that insurer has violated the Authority guidelines and solicited business from motor dealers without being licensed and payments were made under the head of infrastructure and also entered into an additional relationship with licensed entity of another insurer. **Decision is at point no.2 of the Order.**

Further, insurer is also advised to

1. Review the outsourcing agreements terms and services to ensure compliance with the Outsourcing Guidelines issued by the Authority vide circular dated 1<sup>st</sup> February, 2011.
2. To ensure compliance to circular no.011/IRDA/Brok-Comm/Aug.-08, dated 25-8-2008 on 'Limits on payment of commission' which clearly directs a general insurer not to make a payment of any kind, including "administration or servicing charges" to the agent in respect of the business in respect of which he is paid agency commission.
3. Not to enter into additional relationships with licensed entities in compliance to para 8.4/5 of Outsourcing guidelines dated 1/2/2011.

b) It is also noted from the available documents that the insurer has deviated from the discount structure filed with Authority under F&U guidelines dated 28/09/2006 on rating of motor risks.

- In various available documents, it was observed that insurer was referring to erstwhile tariff premium but not to the revised premium after detariffing.
- Maximum discount on motor OD premium agreed by insurer varied from dealer to dealer of the same manufacturer and the discount varied depending on the infrastructure expenses payable to dealer and commission payout. Thus insurer allowed discounts as per agreement terms with dealers but not based on the risk factors.
- As per clause 4 of the tripartite agreement of insurer with Magma & corporate agent, insurer agreed to charge IMT 2002 rates without allowing any discount.

Thus insurer has violated the F&U guidelines dated 28/09/2006 by not following the rating and discount structure filed with the Authority. **In view of the violation** of the guidelines on solicitation, the Authority in exercise of the powers vested under Section 102 (b) of the Act **imposes a penalty of Rs.5 lakhs.**



c) Authority notes from the submission of insurer that

- Commission beyond the prescribed limits was not paid to licensed entities.
- Outsourcing expenses were not paid to licensed entities
- Agency commission was not paid to any motor dealer or any entity which was not a licensed entity.

Taking note of the submission, no charge is pressed on observation relating to additional payouts to licensed entities.

**2. Charge:**

It is observed from the CVC compliant no.Conf/1257/07-62761 and investigation report dated 23/12/2009 of the insurer's vigilance department, that there were 6-7 companies that dealt in Multi Level Marketing (MLM) for a period of over nine years.

These companies pay commission plus bonus to their sales officers for marketing three different group products of the insurer viz., Personal Accident Policy, Janata Personal Accident Policy and Nagrik Suraksha Policy.

The business procured by these companies is booked under the agency of an Individual agent.

**Violation of Authority guidelines given vide circular ref.no.IRDA/CIR/ 011/2003 dated 27-03-2003.**

Submission of the insurer:

Five companies were providing business entailing group policies such JPA, NSY and PA to our Ahmednagar Branch office under our Pune RO. The business procurement is done by way of selling the cards by these companies which entitle the card holder with many other benefits, thus it is the marketing of cards and insurance policies are only incidental.

The commission paid to the Agency in which this business is procured is strictly as per IRDA norms and the agents are authorized operators as per the stipulation of Agency Regulations.

**Decision:**

Insurer procured group policy business through 11 companies and on examining the data, it is observed that

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- For the group business booked under M/s Life Line Life Care Insurance Services Pvt Ltd and M/s Navjeevan Life Care Insurance Services, commission was released to individual licensed agents of the insurer.
- In the certificate of insurance issued by insurer to members of the group policy, MLM firm emblem was printed on the schedule, MLM firm counter signed on the document along with insurer and also the chain of the marketing firm code nos were mentioned in the policy schedule.

Thus from insurer submission and available documents, it is evident that insurer has accepted group business through multi level marketing firms and the business was booked in the account of licensed agents.

**In view of the violation** of the guidelines on solicitation of business observed at point no.1 and 2, the Authority in exercise of the powers vested under Section 102 (b) of the Act **imposes a penalty of Rs.5 lakhs.**

**3. Charge:**

- a) On examining the Certificates of Insurance issued for the Oversees Medclaim Policy issued by Karvat group policyholder, insurer has not specified the Insurance premium and service tax but has only stated the full amount paid by group member to Karvat towards insurance and other membership charges. This may mislead the Insured person to believe the amount stated in COI to be the premium paid to OIC.
- b) It is observed that the insurer paid additional amounts to the Group Organizer towards the infrastructure costs in addition to the normal commission to the Agent.
- c) In the Karavat group policy, no pre-numbered certificate forms are supplied by the Insurer to the group organizer.
- d) No surprise inspection is conducted nor a certificate from the Auditors is obtained annually by the insurer. During last 4 policy years the insurer has inspected the Group Organizers office only once.
- e) On examining an internal mail, it is observed that Infrastructure Expenses were paid to the agents vide Ch. No. 513803 dated 31.02.2008 amounting to Rs. 13,10,430/-

**Violation of point C (4,7,8 & 11) of Authority Guidelines on Group Insurance Policies issued vide circular Ref. 015/IRDA/Life/Circular/GI Guidelines/2005 dated 14-07-2005 and Authority circular no.11/IRDA/Brok-comm/Aug-08 dated 25<sup>th</sup> Aug, 2008.**

**Submission of insurer:**

- a) As group organizer sells the Trawelltag to their customers and offers insurance as, an add-on benefit free of cost, there is no violation of the guideline. However, it is confirmed that from 17.11.2010 the insurance premium amount is only mentioned on the COI.
- b) The additional payout to group organizer is one time payment and to meet the expenses of printing the terms, conditions and clauses of the OMP Policy to be attached to each and every document. It may be appreciated that otherwise this expenditure is to be borne by the company and since it is incurred by M/s Karvat Travels the same is reimbursed to them.
- c) Adequate safeguards with regard to the operation of the insurance were taken by the Company while entering into the tie up. The only deviation is that instead of the Company supplying the stationery, the responsibility was passed on to the Group Manager.
- d) It is confirmed that periodical inspections are undertaken by the underwriting office. However, records of such inspections was not maintained.
- e) Observation on payout to group organizer is already replied under para 'b' above.

**Decision:**

- a) Since insurer confirmed of taking note of the inspection observation and started issuing certificates of insurance clearly mentioning the premium amount to group members, no charge is pressed.
- b) Insurer accepted of making additional payment to group organizer cum agent towards various expenses. Insurer has violated the group guideline which clearly mandates an insurer not to make any payment whether as management expenses or documentation expenses or profit commission or bulk discount or payment of any other description, to the agent or corporate agent or group organizer or group manager.

**In view of the violation** of the group guidelines on payouts to group organizer, the Authority in exercise of the powers vested under Section 102 (b) of the Act **imposes a penalty of Rs.5 lakhs.**

- c) Insurer reply is silent on not issuing pre-numbered certificate copies to the group organizer. Insurer is advised to supply stationery with in-built security features and in pre-numbered lots to the group organizer/manager. Further, as advised at point C8 of group guidelines circular Ref. 015/IRDA/Life/Circular/GI



Guidelines/2005 dated 14-07-2005, insurer to independently check the utilization and full accounting of the certificate forms by the staff of the insurer everytime before furnishing a fresh lot of forms, either by personal verification or based on a certificate by the auditor of the agent.

- d) Insurer is advised to conduct a surprise inspection of the books and records of the group organizer or manager at least once a year to ensure total compliance with group guidelines or shall collect a certificate of such compliance from the auditors of the group organizer or manager, at least once a year.

**4. Charge:**

It is observed that M/s. Karvat Travels Pvt Ltd., have claimed that they have paid various claims to the insured persons due to the delay in payment by TPA/OIC and sought reimbursement of Rs. 24 Lakhs approximately from Heritage TPA.

**Violation** of Clause C-7 of Group Insurance Guidelines, 2005 and Clause 6 of Annexure II of IRDA Guidelines on Corporate Governance Circular no. IRDA/F&A/Cir/025/2009-10 dated 05/08/2009.

Submission of the insurer

In case of reimbursement claims various grievances were received by group organizer due to delayed settlement. To maintain the client, Karvat Travels settled the claim directly to the party after cross verifying the claim status from the Heritage website and after thorough scrutiny. The action of the group manager is pro-client and has resulted in reduction of the grievances and cannot be considered as 'claim payment' but as a stop gap pacification of their aggrieved client. In case the claim was not payable for any reasons there would have been no reimbursement to the group organizer and the reimbursement would be only to the extent of the approved claim or what was already paid to the client, which ever was less. We also confirm that all claims reimbursed to the group organizer instead to insured member were paid by group organizer to the original claimant.

Decision:

Insurer has deviated from the group guideline by reimbursing the claim payments to group organizer. As per the group guidelines, a group organizer can only facilitate

in registering and claim settlement and it is the responsibility of the insurer to ensure that the claim payment is made in the name of insured member.

**In view of the violation of the Group insurance guidelines on claim settlement practices**, the Authority in exercise of the powers vested under Section 102 (b) of the Act imposes a penalty of Rs.5 lakhs.

**In conclusion, as directed under the respective charges, the penalty of Rs.20 lakh (Rupees Twenty Lakh only) shall be debited to the shareholders' account of the general insurer and the amount shall be remitted to Insurance Regulatory and Development Authority of India within a period of 15 days from the date of receipt of this Order. The penalty shall be remitted through the NEFT as per details being intimated to the insurer as per a separate e-mail. The transfer shall be made under intimation to Mr.Lalit Kumar, FA & HOD-Enforcement.**

Further,

- a) The General Insurer shall confirm compliance in respect of all the directions referred to in this Order, within 15 days from the date of issuance of this order. Timelines, if any as applicable shall also be communicated to the Authority.
- b) The Order shall be placed before the Audit committee of the insurer and also in the next immediate Board meeting and to provide a copy of the minutes of the discussion.
- c) If the general insurer feels aggrieved by any of the decisions in this order, an appeal may be preferred to Securities Appellate Tribunal as per Section.110 of the Insurance Act, 1938.

Place: Hyderabad  
Date: 08/02/2016

  
(V R IYER)  
Member (F&I)