



बीमा विनियामक और विकास प्राधिकरण
**INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY**

ORDER

Ref: IRDA/F&I/ORD/ 464.1/7A/F&A/RDL-31B/2010-11/118/2013-14

20th August, 2013

Mr. Gorkanath Agarwal,
Chief Executive Officer,
Future Generali India Life Insurance Company Limited,
6th Floor, Tower 3, India Bulls Finance Centre,
Senapati Bapat Marg,
Elphinstone (W),
Mumbai - 400 013.

Levy of Penalty under Section 102 of the Insurance Act, 1938

The Insurance Regulatory and Development Authority (herein after referred to as "the Authority") issued a certificate of registration bearing No.133 to Future Generali Life Insurance Co. India Ltd., (herein after referred to as "the insurer") on 4th September 2007 to carry on business of Life Insurance in India in terms of Section 3 of the Insurance Act, 1938 (herein after referred to as "the Act"). The said certificate of registration is further renewed on 01st April 2013. In terms thereof the insurer was subject to the terms and conditions of the certificate of registration and was also required to abide by the provisions of the Insurance Act, 1938, the IRDA Act, 1999, particularly the Insurance Regulatory and Development Authority (Licensing of Corporate Agents) Regulations, 2002 (herein after referred to as 'the Regulations') and other directions issued by the Authority from time to time by way of circulars and/or guidelines particularly, Circular no. 017/IRDA/Circular/CA Guidelines/2005 dated 14th July 2005 (herein after referred to as 'the Guidelines').

On review of the data filed with the Authority for the financial years 2009-10 and 2010-11 in accordance with IRDA circular no. IRDA/F&I/CIR/DATA/091/06/2010 dated 11th June 2010 it was observed that the insurer has paid other payouts apart/over and above the permissible commission to Corporate Agents – M/s Sena Life Care Pvt. Ltd. and Vinayak Assurance Services during the FY 2009-10, in the form of "printing and advertisements".

Details of the total payouts are as under:

Corporate agent – M/s Sena Life Care Pvt. Ltd.

₹ Lakh

Particulars/premium type		First year Premium	Single Premium	2nd & 3rd year premium	Total
(i)	Premium generated	33.56	0.00	0.00	33.56
(ii)	Max Commission allowed* in %	40%	2%	7.50%	
Max Commission allowed* in Rs. Lakh		13.43	0.00	0.00	13.43
(iii)	Commission paid	12.38	0.00	0.00	12.38
(iv)	Total other payouts				6.92
Total actual payouts					19.30
(v)	Excess paid by Insurer & received by Corporate Agent				5.88

Corporate agent – Vinayak Assurance Services

₹ Lakh

Particulars/premium type		First year Premium	Single Premium	2nd & 3rd year premium	Total
(i)	Premium generated	16.93	0.00	0.00	16.93
(ii)	Max Commission allowed* in %	40%	2%	7.50%	
Max Commission allowed* in Rs. Lakh		6.77	0.00	0.00	6.77
(iii)	Commission paid	6.08	0.00	0.00	6.08
(iv)	Total other payouts				3.12
Total actual payouts					9.20
(v)	Excess paid by Insurer & received by Corporate Agent				2.43

*as per Sec 40A of Insurance Act, 1938

The Authority communicated the findings to the insurer on 29th November 2010 and sought explanation. The insurer submitted its response vide letter dated 10th December 2010. The Authority examined the response of the insurer and issued Show Cause notice on 17th December 2012 for the violations observed in the financial year 2009-10. The insurer submitted reply in response to Show Cause notice on 15th February 2013.

The insurer contended that they engaged in separate agreements with corporate agents – M/s Sena Life Care Pvt. Ltd. and Vinayak Assurance Services for providing services pertaining to

printing, advertisement and such other services during the financial year 2009-10. The company was availing the services of the said entities in their capacity as the service provider through valid agreements and no payments were made to them over and above the prescribed limits in their engagement with the company as corporate agents. The company had severed its relationships with the said corporate agents during the year 2010-11 and has not made any payment to these corporate agents thereafter. The said excess payments made to the said entities, if quantified, is nominal amount as compared to the total business of the company for the financial year under question and as such a lenient view from the Authority is solicited. The Insurer further requested the Authority to provide them with an opportunity to present their case personally.

The Authority vide email dated 21st March 2013/ 5th April 2013 called for agreement copies/ invoice copies raised by the corporate agents/ amounts paid to the said entities bifurcated into nature of the payouts etc. Insurer submitted the details vide its reply letters dated 25th March 2013/email dated 9th April 2013.

On examination of the aforementioned letters and the enclosed agreement copies/ invoice copies, the following is observed:

- a. As per the nature wise payouts detailed in the reply letter, the total other payouts made to corporate agent Sena Life Care Pvt. Ltd. during the financial year 2009-10 was ₹4.78 Lakh towards car rental, printing expenses and marketing expenses. Further ₹2.89 Lakh was paid towards marketing and printing expenses during the financial year 2010-11. In case of Vinayak Assurance Services ₹5.41 Lakh was paid towards Service fee and Marketing fee, reimbursement for stationary charges during the financial year 2009-10 and there was no payment during the financial year 2010-11. This indicates that insurer has revised the details upon seeking further clarifications and even if the revised figures are considered, the total payouts shall cross the permissible caps u/s 40A of Insurance Act, 1938.
- b. The nature of the other payouts actually made is not in conformity with the explicit services agreed into between the parties as laid down in the agreement copies.
- c. The invoice copies submitted by the insurer pertaining to Vinayak Assurance Services are totaling ₹1.86 Lakh only as against ₹5.41 Lakh actually paid (indicated at point a above). As per insurer the invoices and relevant documents are managed by a third

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party document management vendor. The vendor has reported some of the vouchers as non-traceable, however, the vendor has been instructed to trace the vouchers as early as possible. In case of Sena Life Carte Pvt. Ltd. Insurer has submitted vouchers totaling ₹4.78 Lakh. This means that Insurer has not submitted all the invoice copies to substantiate the payouts made to corporate agents.

- d. Agreement for the services with Sena Life Care Pvt. Ltd. is dated 18th September 2009, whereas corporate agency commenced from 26th September 2009. Thus both the agreements started hand in hand, whereas insurer in letter dated 10th December 2011 has indicated that the services were availed prior to the entity becoming corporate agent of the insurer.

As per the request of the Insurer, the Authority called the Insurer for personal hearing on 27th June, 2013.

Insurer mentioned during the personal hearing that they regret for the differences observed in the initial reporting Vis-a-Vis as reported in response to Authority's Show cause notice. Insurer also indicated that they could not submit the invoice copies pertaining to the total payouts made to the corporate agents as the same were still not traceable with the third party vendor. Insurer confirmed that the tie-ups have been severed with the said entities during the financial year 2010-11 and no payments were made any further. Insurer further requested for condoning the excess payouts made to the corporate agents during the financial year 2009-10 considering the fact that the insurer was in its nascent stages during the concerned period and such payouts were stopped from the financial year 2010-11 itself after severing relationships with the said 2 entities.

As per clause 21 of Corporate Agents Guidelines "Insurer shall not pay any amount other than the permitted agency commission, whether as administration charge or reimbursement of expenses or profit commission or in any other form to corporate agent. This does not prevent insurer from sharing expenses of co-branded sales literature with the corporate agent. Such expenses, however, should be reasonable and should not in any way linked with the success in sale or premium earned by the corporate agent". Thus an insurer cannot pay to the corporate agent or incur expenses towards corporate agents other than towards co-branding advertisements (apart from permitted agency commission) as per the said clause.

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In view of the above, the Authority is of the considered view that insurer has violated the Clause 21 of the Guidelines read with Sec 40A of the Act during the financial year 2009-10 w.r.to the payouts made to the corporate agents M/s Sena Life Care Pvt. Ltd. and Vinayak Assurance Services.

Having regard to the facts of the case and the gravity of the violations committed by the insurer, the Authority in exercise of powers vested in it under section 102 of the Insurance Act, 1938 passes the following Order.

"The insurer is imposed a penalty of ₹2, 00,000 (Two Lakhs), being:


- (i) ₹1, 00,000 for payouts made apart/over and above permissible commission limits in violation of clause 21 of Guidelines read with Sec 40A of the Act to Corporate agent M/s Sena Life Care Pvt. Ltd. during the financial year 2009-10.
- (ii) ₹1, 00,000 for payouts made apart/over and above permissible commission limits in violation of clause 21 of Guidelines read with Sec 40A of the Act to Corporate agent Vinayak Assurance Services during the financial year 2009-10.

The penalty amount shall be debited to the Shareholders A/c".

Further the insurer is directed to strictly adhere to the Insurance Act, 1938, Regulations made there under, Guidelines and Circulars issued in this regard from time to time.

The penalty amount shall be paid within a period of 15 days from the date of receipt of this order through a Cross Demand Draft in favour of "Insurance Regulatory and Development Authority" payable at Hyderabad, which may be sent to Mr. R.K.Sharma, Deputy Director (F&A) at the Insurance Regulatory and Development Authority, 3rd Floor, Parishrama Bhavan, Basheer Bagh, Hyderabad – 500004.

Place: Hyderabad
Date: 20th August, 2013


(R.K.Nair)
Member (F&I)
