



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

Ref: IRDA/Life/OIR/SBI Life/12-10/293 (3)

20<sup>th</sup> February, 2015

Mr Arijit Basu,  
Managing Director and CEO,  
SBI Life insurance Co. Ltd  
Natraj, M.V. Road,  
Western Express Highway Junction,  
Andheri (East),  
**Mumbai – 400 069**

Dear Sir,

**Re: Representation of SBI Life insurance Co. Ltd dated 23<sup>rd</sup> April, 2014 under Section 34 (2) against Directions dated 11<sup>th</sup> March, 2014 issued under Section 34 (1) of the Insurance Act, 1938**

Reference is invited to your Company's letter Ref. No: SBIL/13/2014-15 dated 23<sup>rd</sup> April, 2014 forwarding the application seeking the cancellation / modification / review of the Directions Ref No. IRDA/Life/ORD/Misc/083/03/2014 dated 11<sup>th</sup> March, 2014 issued by the Authority under Section 34 (1) (b) of Insurance Act, 1938.

**Background:** The Authority carried out an onsite inspection of the above Insurer during 20.12.2010 to 24.12.2010. The following is the substance of the inspection observation on the practice adopted by the Life Insurer in selling a group insurance policy by name, '*SBI Life - DhanaRaksha plus Limited Premium Payment Term*'.

1. SBI Life - DhanaRaksha plus Limited Premium Payment Term

(2 years), a group product approved by the Authority under F&U was offered as a **single premium** product by receiving second year's premium in advance along with first year premium by offering a discount of 4% on the advance premium (i.e., 2<sup>nd</sup> year premium in this case).

2. Since, the commission to intermediaries on single premium policies is restricted to 2% by Insurance Act, 1938; Insurer has resorted to limited premium paying term (2 yr.) under the product which 'technically' facilitates making higher rate of commissions to intermediaries. On examination of intermediary wise business procurement details, it was observed that 99.99% of the premium procured under the product is sourced by SBI Group and the commissions are paid at 40% and 7.5% on 1<sup>st</sup> and 2<sup>nd</sup> year premiums respectively.

From the Inspection observation it is observed by the Authority that when a policy holder was prepared to pay both the year's premium upfront, the Life Insurer should have offered single premium version of the policy which was available with the Life insurer. 93% (Rs.3.48 Crores) of Second year's premium in 2008-09, 94% (Rs.218.8 Crores) in the year 2009-10 and 97% (Rs.403.39 Crores) in 2010-11 was received upfront along with the First Year Premium. Therefore, it was concluded that the large scale sale of two year limited premium payment term as single premium payment policy has only facilitated higher commission payments to the intermediaries involved, who are again predominantly SBI and its associate Banks (SBI, being the Promoter of SBI Life).

After due process, the Order Ref: IRDA/Life/ORD/Misc/215/09/2012 dated 18<sup>th</sup> September, 2012 was issued by the Authority imposing a penalty of Rs 5 lacs for violation of the File and Use Guidelines and provisions of Regulation (3) of IRDA (Protection of Policyholders' Interests) Regulations, 2002. It was clarified in the said order, that without prejudice to the penal action taken, the Authority reserves the right to examine issuance of suitable directions to the Life Insurer under Section 34 (1) (b) of the Act, to identify the



members / beneficiaries as the case may be, of the group insurance schemes and apportion the excess commission paid to Corporate Agents, over and above the eligible 2% of commission on the product sold under the guise of Single Premium policies and refund the same to the Members / Beneficiaries of Group Schemes by debiting the same to the Shareholders' Account. The Notice for this purpose under Section 34 of Insurance Act was issued vide letter Ref.No. IRDA/Life/OIR/SBI Life/12-10/293(2) dated 30<sup>th</sup> April 2013.

On considering the submissions made vide your Company's letter dated 03<sup>rd</sup> June, 2013 in response to the Notice dated 30<sup>th</sup> April, 2013 issued under Section 34 of the Act and also based on the submissions in the personal hearing dated 04<sup>th</sup> December, 2013, the Authority under Section 34 of the Act issued Order Ref No. IRDA/Life/ORD/Misc/083/03/2014 dated 11<sup>th</sup> March, 2014 directing your company to distribute the excess commission of Rs 275,29,48,437 to members / beneficiaries as the case may be, of each of the Master Policies issued during the years 2008-09, 2009-10, 2010-11. A representation dated 23<sup>rd</sup> April, 2014 under Section 34 (2) of the Insurance Act, 1938 was preferred by your company to the Authority. As sought by your company a personal hearing was also accorded on 20<sup>th</sup> October, 2014 which was attended by the CEO and other team members of your company.

The submissions made in the representation dated 23<sup>rd</sup> April, 2014 and those which were made during the personal hearing were given a careful consideration as stated hereunder.

- i) It was submitted in the representation that the Life Insurer (SBI Life) has neither conducted its business in a manner which is detrimental to itself (i.e., SBI Life) or detrimental to the interests of the policy holders.
  - a. The above submissions are not acceptable in the back drop of the life insurer having a Single Premium version of the product with same features. From the large scale collection of two regular annual premiums upfront along with the first year premium, it is observed that if the policyholders are in a position to pay two



annual premiums in advance, they should have been offered the single premium version of the product which is beneficial to the prospects / policyholders. Therefore, it is concluded that the large scale of collection of two regular premiums upfront along with the first year premium is detrimental to the interests of the policy holders.

ii) It was submitted by the Life Insurer that it has intimated to the Authority about receiving the future premiums in advance and that it has disclosed the receipt of advance premiums in its Annual Reports and Audited Balance Sheets pertaining to Financial Years 2008-09, 2009-10 and 2010-11.

a. In this regard, it is clarified that mis-sale of policies with no informed choice cannot be justified on the ground that Authority has been intimated about the feature which allows acceptance of advance premiums. Also the disclosure in the annual reports and financial statements cannot be the basis for exoneration, as the figures disclosed will comprise of premiums received on account of various plans, not limiting to the premiums from the plan under question alone. Further, the onsite inspection carried out by the Authority revealed that there was no informed choice to the customers, which is a matter of grave concern from the perspective of policyholders' interests.

iii) The product was approved by the Authority, which allowed a 40% commission on the first year premium and a 7.50% commission on the second year premium; hence it was submitted that no excess commission was paid to the Corporate Agents.

a. The above submissions of the life insurer that the commission payments made are as per the approved File and Use rates hence shall not be considered as excess payments is a misinterpretation of the directions issued by IRDA. It was



categorically mentioned by the Authority in the directions that the large scale collection of two years' premiums facilitated higher commission payout. The issue highlighted in the direction is the manner in which the policies were sold by the life insurer with no informed choice to the members of group insurance that only facilitated the higher commission payments to the Corporate Agents.

- iv) With regard to the submissions made by the Life Insurer that the said product was never marketed as a single premium product, but the customer was given an option to pay the second year premium in advance and that advance premiums were kept in a separate account which was adjusted against the outstanding premium for the 2<sup>nd</sup> year on the policy anniversary date, in accordance with the approved File & Use, the same are not acceptable on the ground that the issue under examination is with regard to the manner in which the policies are sold with no informed choice to Members of Group Insurance Policies.
  
- v) The Life Insurer submitted that it has already been adequately penalised by the Authority under Section 102 of the Act for the same alleged error, which has been paid. This submission is not acceptable as the directions issued by the Authority are not to be seen as a second penalty. Firstly there is an explicit violation of the Regulations / Guidelines issued by IRDA for which penalty under Section 102 is imposed. Secondly there is the element of making good the loss to the policyholders, for which direction is issued. The Life Insurer may also note that the Authority, while imposing the penalty, expressly reserved the right to issue suitable directions under Section 34 of the Act.
  
- vi) It was represented by the Life Insurer that the policyholders remitted the second year premium in advance in anticipation of 4% discount offered.



These submissions are not acceptable in the back drop of the life insurer's submission that the premium was advanced by SBI along with the loan and that the rate of interest on loans sanctioned by the Banks will be much higher than the 4% discount offered by the Life Insurer on the advance premiums received.

vii) The Life Insurer's submissions that the receipt of advance premiums in respect of 93% cases in the year 2008-09, 94% in 2009-10 and 97% in 2011, while in the rest of the cases the policyholders paid premiums in two separate instalments is an indication of the availability of an informed choice to all the policyholders are not acceptable as the collection of two years' premium upfront from a majority of policyholders (Members of Group Insurance) does not indicate that informed choice was available and it is concluded that the manner in which the policies are offered is detrimental to the interests of the policy holders.

viii) It was further submitted by the Life Insurer that there was an inbuilt loading of 18% of the Single Premium defined in the File and Use as "Administrative Cost" and that this administrative charges in the SP Product coupled with the discount of 4% offered by the company on the second premium paid by the customer upfront would eventually not negatively impact the customer. It was also contended that that the premium payable under Dhanaraksha LPPT product when compared with Single Premium product with similar features of other insurers was a much cheaper one. In this regard, it is clarified that the life insurer collected the entire regular premium payable under the LPPT Version of the policy at the outset as if the policy is a single premium policy. Had the same LPPT version of the policy been sold as single premium policy, the Single Premium chargeable would have been 151.8% of **one** regular premium (whereas the life insurer collected second year's premiums upfront along with the first year regular premium). As the



entire regular premium was collected at the outset, it is concluded that the expense for determination of Single and Regular Premiums under LPPT version of the product shall be the same. Therefore, the submissions of the life insurer that it has assumed 18% of the SP as the Administrative Cost in the SP version of the product, do not hold good. Accordingly, the excess premium collected under LPPT version of the policy is estimated and the methodology was also explained to the officials of the Life Insurer in person, during their visit to the office of the Authority, Hyderabad on 12<sup>th</sup> November, 2013. Therefore, the matter under examination is the estimated higher premiums collected to facilitate higher commissions to the Corporate Agents towards this product under this questionable practice. Hence, it is considered that the submissions of the life insurer deserve no consideration.

- ix) The submissions of the life insurer that the Authority does not have the powers under Section 34 (1) (b) of the Act to issue directions as the nature of directions contemplated in the section are preventive and prospective nature are not acceptable on the grounds, that Section 34 enables the Authority to issue directions to prevent the affairs of any insurer being conducted in a manner detrimental to the interests of the policyholders, which includes a corrective action to eliminate the detrimental action of the life insurer. The directions are issued to prevent continuation of financial loss and hardship already caused by the actions of the Life Insurer.
- x) The Life Insurer contended that the directions did not record reasons as to how the directions achieve the objectives stated in Section 34 (1) (b) of the Act. In this regard it is clarified that in the directions issued, three violations were stated by the Authority and it was also categorically concluded that these violations are detrimental to the interests of members of Group Insurance.



- xi) The contention of the Life Insurer that it is not elaborated by the Authority either in the Notice issued under Section 34 or in the Directions issued under Section 34 as to how the issuance of directions are necessary to prevent the affairs of the company from being conducted in a manner detrimental to the interests of policyholders. The life insurer further alleged that the Authority proceeded on an erroneous assumption that the excess commission paid by the company to its corporate agents have been charged to the members / beneficiaries. These submissions of the Life Insurer lack the logic of the prudent business principles. It is the fundamentals of the business of life insurance that any expense / outgo would be loaded in the costs (read premiums). Therefore the views of the insurer are not acceptable.
- xii) The Life Insurer represented that the Authority's direction to debit from the shareholders' account is in effect a direction issued to the shareholders of the life insurer under the guise of a direction issued to the Life Insurer. In this regard, it is clarified that the approach of your company to distance itself from the shareholders fund is not acceptable. The directions in fact are issued to your company itself which is a juristic entity and which is responsible for complying with the directions of the Authority and to make good the said amount out of the shareholder's account which is part of the insurance company.

All other points forming part of this representation are also examined now and no new mitigating factors are found.

In the light of the above, the Authority did not find any mitigating factors to consider either in the submissions made in the personal hearing or in the representation preferred under Section 34 (2) of the Act and therefore the representation preferred under Section 34 (2) of the Act is rejected and accordingly disposed of. Your company is hereby directed to immediately





implement the directions Ref No. IRDA/Life/ORD/Misc/083/03/2014 dated 11<sup>th</sup> March, 2014 of the Authority and submit a compliance report within forty five days from the date of this letter.

Yours faithfully

A handwritten signature in black ink, appearing to read 'T S Vijayan', written over a horizontal line.

**(T S Vijayan)**  
**CHAIRMAN**