



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

ORDER

Ref: IRDA/F&I/ORD/464.1/7A/F&A/RDL-31B/2010-11/138/2013-14

27<sup>th</sup> September, 2013

Mr. Vishal Jain,  
Chief Executive Officer,  
The Barclays Investments & Loans (India) Ltd.,  
Malavika Centre, Ground Floor,  
144-145, Kodambakkam High Road,  
Nungambakkam,  
Chennai - 600 034.

Levy of penalty u/s 102 of the Insurance Act, 1938

The Insurance Regulatory and Development Authority (herein after referred to as "the Authority") has granted license to The Barclays Investments & Loans (India) Ltd. (herein after referred to as "the Company"/"the Corporate Agent") bearing number 5006213 to act as a Corporate Agent of Max Life Insurance Co. Ltd. (hereinafter referred to as "the insurer"). In terms thereof, the Corporate Agent was subject to the terms and conditions of the license issued to it and was also required to abide by the relevant provisions of the Insurance Act, 1938, the Insurance Regulatory and Development Authority Act, 1999 (herein after referred to as "the IRDA Act, 1999"), 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 14<sup>th</sup> July 2005 (herein after referred to as "the Guidelines").

On review of the data submitted by the insurer to the Authority in accordance with IRDA circular no. IRDA/F&I/CIR/DATA/091/06/2010 dated 10<sup>th</sup> June 2010 vide letter dated 4<sup>th</sup> August 2010/ emails dated 22<sup>nd</sup> April 2013/2<sup>nd</sup> May 2013/ 6<sup>th</sup> May 2013, it was observed that the corporate agent has received payments from the insurer apart/over and above the permissible commission limits towards Infrastructure and facilities charges during the financial year 2008-09 and 2009-10. The Authority issued a show cause notice to the Corporate agent on 3<sup>rd</sup> July, 2013 for having violated Sec 40A (1) of the Insurance Act, 1938 read with clause 21 of the Guidelines during the financial year 2008-09 and 2009-10.

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Details of the total payouts are as under:

FY 2008-09

₹ Lakh

Particulars/type of premium and commission		New Business			Total
		Assurance - First Year Premium	Assurance -Single Premium	Deferred Annuity - First Year Premium	
(i)	Premium Collected	415.21	3.21	0.1	418.52
(ii)	Max. Commission allowed* %	40%	2%	7.50%	
	Max. Commission allowed* Rs. Lakh	166.08	0.06	0.01	166.16
(iii)	Commission Paid	122.88	0.02	0.01	122.91
(iv)	Other Payouts				500.00
	Total actual payouts				622.91
(v)	Excess paid by the Insurer & received by the Corporate Agent				456.75

FY 2009-10

₹ Lakh

Particulars/type of premium and commission		New Business			Renewal Premium		Total
		Assurance - First Year Premium	Assurance - Single Premium	Deferred Annuity- First Year Premium	Deferred Annuity - 2nd year & beyond	Assurance - 2nd & 3rd year premium	
(i)	Premium Collected	1391.09	0.95	1.92	1.00	163.68	1558.64
(ii)	Max Commission allowed* in %	40%	2%	7.50%	2%	7.50%	
	Max Commission allowed* Rs. Lakh	556.44	0.02	0.14	0.02	12.28	568.90
(iii)	Commission Paid	511.38	0.01	0.13	0.01	7.90	519.43
(iv)	Other Payouts						100.25
	Total actual payouts						619.68
(v)	Excess paid by the Insurer & received by the Corporate Agent						50.79

\*in terms of Sec 40A (1) of Insurance Act, 1938

*Handwritten signature/initials*

The Corporate agent in response to the Show Cause notice, submitted its reply vide letter dated 23<sup>rd</sup> July 2013. It is mentioned therein that as a pre-requisite to the engagement of the Company as its corporate agent, the insurer required the Company to make certain commitments which were duly documented in agreement dated 1.10.2008. The commitments are as below:

1. Create necessary infrastructure and facilities in the nature of demarcation of specific sections of its branch offices and make appropriate changes as specified by the Insurer.
2. Facilitate the presence of the Insurer's personnel within the dedicated sections of its branches from time to time.
3. Company set up adequate IT systems for the purposes of reportings and submission of data and documents to the insurer in relation to insurance proposals, the resolution of Insurance related queries, policy applications and surrender data, scanning of proposal related documents and collection of premia;
4. The Company establish and maintain a dedicated call centre for insurance related matters.
5. Company provide for insurance training related infrastructure;
6. Company allow and facilitate the placing of Insurer's corporate and marketing signage, logos and advertisements at its branches, as specified by the insurer.

It was also submitted that these amounts paid by the insurer to the Company are reflected in the books of accounts of the Company within the head of operating and administrative costs.

The payments @ ₹500 Lakh and ₹100.25 Lakh offered by the insurer towards the expenses of the underlying infrastructure, the insurer desired that the company put in place prior to and as a condition precedent to the company being contracted with and acting as a corporate agent of the Insurer, not be considered as a violation of Sec 40A (1) of the Act or Clause 21 of the Guidelines.

Corporate agent further mentioned during the personal hearing held on 7<sup>th</sup> August 2013, that the infrastructure support agreement was entered with the insurer 3 months before corporate agency started in January 2009; ₹500 Lakh and ₹100.25 Lakh was not linked to the business, as is evident from the fact that ₹500 Lakh was received in October 2008 and business started in January 2009. Corporate agent also mentioned that the Company had bona fide believed that the Insurer would have taken care of the regulatory concerns, Guidelines 2005, Sec 40A of the Act and other relevant provisions of the Act, Regulations/Circulars etc. The said contention of the corporate agent is not tenable as law is applicable to the insurer and the corporate agent as well. ✓



The prerequisites / all other conditions for licensing of corporate agents are laid down in the IRDA (Licensing of the corporate agents) Regulations 2002, which shall be applicable to any company (which is otherwise eligible under the said Regulations) for becoming a corporate agent. Even clause 1 of Guidelines 2005 lays down the area upon which an insurer should stress upon while selecting a corporate agent, as per the said clause *“The applicant for corporate agency should normally be a company whose principal business should be other than distribution of insurance products. Insurance distribution should be subsidiary activity. While selecting the Agent, stress should be placed on the availability of client base or access to data which would facilitate identification of prospects. The applicant could be any one of the entities indicated in Regulation 2(k) of IRDA (Licensing of corporate Agents) Regulations, 2002.”*

Further, the Authority is of the view that it is obligatory on the part of the corporate agent to provide pre/post sale services to prospects/policyholders / provide adequate support to the insurer either through IT or otherwise in terms of furnishing necessary information of the policyholders / ensure that specified persons/ CIE's are properly trained as indicated in following provisions of the Act, the Regulations 2002, the Guidelines:

- a. *As per Sec 64VB(4) of the Act, “where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within 24 hours of the collection excluding bank and postal holidays”.*
- b. *As per regulation on code of conduct i.e. 9(1) (e) of Regulations 2002, “Give adequate pre-sales and post-sales advice to the insured in respect of the insurance products”.*
- c. *As per regulation on code of conduct i.e. 9(1) (f) of Regulations 2002, “extend all possible help and co-operation to an insured in completion of all formalities and documentation in the event of a claim”.*
- d. *As per regulation on code of conduct i.e. 9 (2) (iii) of Regulations 2002, “every insurance agent shall, with a view to conserve the insurance business already procured through him, make every attempt to ensure remittance of the premiums by the policyholders within the stipulated time, by giving notice to the policyholder orally and in writing”.*
- e. *As per clause 20 of the Guidelines ; “Unless the Computer system used by the agent is directly linked to the insurer's computer system so that all particulars of the business transacted automatically captured in the insurer's system the agent shall provide to*

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*the insurer, a complete set of records in respect of the business sold by the agent, including completed proposal forms, copies of policies or certificates of insurance and a premium register with particulars of payment to the insurer, daily or at the most, on a weekly basis. Requirements of Sec 64VB shall be fully complied with”.*

- f. *As per regulation on code of conduct i.e. clause 9(1) (c) of the Regulations 2002, “Every corporate agent shall ensure that the corporate Insurance Executive and the specified persons are properly trained, skilled and knowledgeable in the insurance products they market.”*

In addition to the above, as per the following provisions of the Regulations 2002, it is obligatory on the part of the corporate agent to give adequate information to the prospects about the insurer / the insurance products of the insurer with whom it is tied up and also of it being corporate agent of the Insurer:

- a. *Regulation on code of conduct i.e. 9(2)(i)(a) of Regulations 2002, “identify itself and the insurance Company of whom he is a representative”.*
- b. *Regulation on code of conduct i.e. 9(2)(i)(c) of Regulations 2002, “disseminate the requisite information in respect of insurance products offered for sale by the insurer and take into account the needs of the prospect while recommending a specific insurance plan”.*

Clause 21 of Corporate Agents Guidelines reads as *“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) which again shall be shared and be reasonable. However, insurer has paid considerable amounts to the corporate agent towards infrastructure arrangements.

While first year premium/single premium (new business) to commission and other payouts ratio was analyzed for the financial years 2008-09 to 2011-12; it was observed that the other

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payouts were very heavy when premium generation was high (initial two years) and when premium came down (from the financial year 2010-11), other payouts were not made or incurred towards corporate agent by the insurer. This indicates that the other payouts had a positive correlation with the new business and cannot be deemed independent of business procured. Thus the total payouts made by the insurer and received by the corporate agent are in violation the limits prescribed in Sec 40A limits of the Act.

In view of the above, the following charges made against the corporate agent are found to have been established for the reasons mentioned there under:

The corporate agent has received payments apart/over and above permitted agency commission/remuneration during the financial year 2008-09 and 2009-10 in violation of Sec 40A (1) of the Act read with clause 21 of the Guidelines.

Having regard to the facts of the case and the gravity of the violations committed by the corporate agent, the Authority in exercise of the powers vested in it under Section 102 of the Insurance Act, 1938 passes the following order:

“₹5, 00,000 (Five Lakh) penalty be imposed upon the corporate agent for receiving payouts during the financial year 2008-09 and 2009-10 in violation of Sec 40A(1) of the Act, read with clause 21 of the Guidelines”

Further the corporate agent 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, 3<sup>rd</sup> Floor, Parishrama Bhavan, Basheer Bagh, Hyderabad - 500004. ✓

Place: Hyderabad  
Date: 23<sup>rd</sup> September, 2013

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