

Ref: IRDAI/HLT/MISC/ORD/312/12/2021

Order in the matter of M/S Go Digit General Insurance Limited

Based on the

- a. Show Cause Notice (SCN) dated 24th August 2021 issued on observed deficiencies in complying with the provisions of Insurance Act, 1938 by M/s. Go Digit General Insurance (Go Digit/Insurer).
- b. Response to the SCN made by the insurer in their written replies vide letter dated 20th September 2021 forwarded by email on 20th September 2021.
- c. Submissions made during Personal Hearing chaired by Ms T.L. Alamelu, Member (Non-Life), on 7th October 2021 at 11.30 hrs. through Video Conference by WebEx.

Background

1. M/s Go Digit General Insurer (Insurer) filed the modification of the existing product “Digit Group Total Protect Policy” under Use & File Procedure vide e-mails dated 30th June 2021 and 6th July 2021.
2. UIN: GODPAGP22103V032122 was allotted vide our e-mail dated 7th July 2021.
3. While allotting the UIN it was categorically mentioned that the Authority reserved the right to examine the product launched under Use and File category and may take such action as deemed fit or may issue such directions as considered necessary, which shall be binding on such Insurer in accordance with Clause III (12) of Chapter IV of Consolidated Guidelines of Product Filing in Health Insurance Business vide Ref: IRDAI/HLT/REG/CIR/194/07/2020 dated 22nd July, 2020.
4. On examining the modified version of the product it was noticed that the insurer added/incorporated one additional section by name “Major Illness Plus Cover”.
5. Under this cover, the insurance company proposed to give insurance coverage to 82 (eighty-two) major illnesses. Further, under this section the policy holder/insured is entitled to two benefits in the event of triggering of the covered contingent event. One of the benefits is payment of Sum Insured on diagnosis and /or surgical procedure of the major illness, inter-alia, subject to the terms and conditions of the policy contract.
6. The second benefit is payment of the following additional benefit as mentioned at Clause (e) of Section 29.

“Where we have admitted a claim for Major illness and / or Surgical Procedure under this Section and You do not survive till the end of Policy Period owing to the same Major Illness and / or Surgical Procedure for which the Claim was admitted, Your nominee/ legal heir will be entitled to receive an additional benefit amount, as mentioned in the Policy Schedule/ Certificate of Insurance.”

7. On the analysis of the clauses, it was observed that primarily, providing the additional benefit amount to the nominees/legal heir of the policyholder, on the policyholder not surviving till the end of policy period, falls within the definition of Life Insurance business as specified in Section 2(11) of the Insurance Act, 1938.
8. The insurer has been issued the Certificate of Registration to do General and Health Insurance Business only by the Authority. As per the provisions of Sec 3 (1) of Insurance Act, 1938 no insurer, inter alia, shall carry on any class of insurance business in India unless, it has obtained from the Authority a Certificate of Registration for the particular class of insurance business.
9. As the proposed additional benefit under the above quoted clause (e) of the proposed section 29 of the modified product is not allowed to be offered by a General Insurance Company, the insurer was advised vide e-mail dated 16th August 2021 to immediately withdraw the said clause and send an Action Taken Report.
10. The insurer was also advised vide e-mail dated 17.08.2021 to make necessary changes deleting the said clause (e) in all the documents viz., UnF Form, Technical Note, Underwriting Manual, Rate Chart etc., as applicable and resubmit the same.
11. In response, the insurer, vide e-mail dated 19th August 2021 opined that *‘the advisory has been issued summarily without giving an opportunity of being heard, and without providing the basis on which such advisory was issued’*. The insurer has also requested the Authority to withdraw the said ‘advisory’ within seven days from the receipt of their e- mail. Further, the insurer also requested the Authority to provide with any and all materials and information on the basis of which the advisory has been arrived at.
12. As the insurer did not carry out the necessary corrections by removing the said clause (e) under Section 29, a Show Cause Notice dated 24.08.2021 through e-mail (on 24.08.2021) was issued to the insurer calling for an explanation as to why the company be not directed to withdraw the product invoking the provisions of clause 8 of Chapter II, clause no. III (12) and III (14) of Chapter IV of Consolidated Guidelines on Product Filing in Health Insurance Business Ref: IRDAI/HLT/REG/CIR/194/07/2020 dated 22nd July, 2020 read with Regulation 4(a) of IRDAI (Health Insurance) Regulations, 2016.
13. It was specified to the insurer that the above referred benefit was made part of Section 2.2 of Form – IRDAI – UnF HLTGRP and is also part of Page 36 of the policy wordings, Page 25 of Technical Note, Page 14 of Internal Tariff.

14. It is also mentioned in the Show Cause Notice that as per the provisions of Sec 3 (1) of Insurance Act, 1938 no insurer, inter-alia, shall carry on any class of insurance business in India unless; it has obtained from the Authority a Certificate of Registration for the particular class of insurance business.
15. The insurer's response to the SCN was submitted vide letter dated 20th September 2021 forwarded by e-mail on 20th September 2021 and with request for a personal hearing.
16. The personal hearing was held on 7th October 2021 at 11.30 hrs. through Video Conference by WebEx and was chaired by Ms T.L. Alamelu, Member (Non-Life).
17. The insurer was represented by Mr Vijay Kumar, CEO & Principal Officer, Mr Sameer Bakshi, Group General Counsel, Mr M. Rajeev Singh, Chief Underwriting Officer & Chief Risk Officer, Mr Adarsh Agarwal, Appointed Actuary and Ms Rasika Kuber, Head Legal & Compliance. On behalf of the Authority Mr D.V.S. Ramesh, General Manager(Health), Mr P.G. Kumara Vaidyalingam, DGM(Health)-OSD and Mr M. Israel, Manager(Health)-OSD were present in the personal hearing.
18. The findings on submissions made by the insurer on the issues raised in the SCN and the decisions thereon are as under:

Charge:

19. As mentioned above, under Section 3(1) of the Insurance Act, no insurer shall carry on any class of insurance business in India unless it has obtained a Certificate of Registration from the Authority for the particular class of business. The additional benefit offered by the insurer under clause (e) of Section 29 of the filed product (UIN : GODPAGP22103V032122) attracts the provisions of Section 3(4)(f) of Insurance Act, 1938.

Gist of insurer's submissions

20. In the reply dated 20th September 2021 and during the personal hearing on 7th October 2021, the insurer, inter alia, submitted the following:
 - a. The insurer requested that the Show Cause Notice and the communications issued by the Authority be withdrawn forthwith.
 - b. The insurer considered that the benefit offered under clause (e) of the proposed Section 29 does not fall under life insurance business, but under miscellaneous insurance business, defined under Section 2(13B) of the Insurance Act, 1938.
 - c. The insurer interpreted that the Benefit offered under Section 29(e) of the Product cannot be considered as life insurance benefit as the insurer is not offering principally or wholly any life insurance cover/ benefit as envisaged in Section 2(13B) of the Act. The Benefit offered under Section 29(e) of the Product is an ancillary benefit being offered along

with 'health insurance benefit' and the same cannot be considered as a principal benefit (i.e. life insurance benefit) being offered under the Product. Therefore, unless the contract of insurance is wholly or principally one which answers the description of "life insurance" it is one for miscellaneous insurance and therefore 'general insurance'.

- d. The insurer mentioned that the benefit is quite distinct from effecting contracts whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, which is defined as 'life insurance business'. The insurer also mentioned that, *Life insurance cover is linked to death due to any reason and not death on account of certain specified illnesses.*
- e. The insurer also submitted that the definition under Section 2(6C) of the Act does not limit the scope of 'health insurance business' to only contracts providing for benefits upon diagnosis of the sickness/ illness. There is also no other provision in the statute which restricts the interpretation of the term 'sickness benefits' to only such a limited category. The aforesaid provision clearly does not restrict in its ambit payment of benefits in the event the insured unfortunately succumbs to the same illness/ sickness.
- f. The insurer submitted that the Benefit in the Product is purely conditional upon the insured contracting the covered illness or undergoing the specified surgery during the policy period. In no other circumstances, will the benefit be paid by it and therefore, it cannot be said that the Benefit is contingent upon the life of the insured or that it is offering life insurance product in violation of Section 3(1) or Section 2(11) of the Act.
- g. The insurer has stated that the Authority did not prescribe any regulation prohibiting general insurers from offering any ancillary insurance benefits. The proviso to Regulation 3(b) of HIR, 2016 states that life insurers may not offer indemnity based health products.
- h. The insurer has quoted the example of Pradhan Mantri Garib Kalyan Yojana, which is implemented by one of the public sector general insurers for the benefit of healthcare workers. The cover provided under the scheme includes benefits payable for loss of life due to Covid-19, and accidental loss of life on account of Covid-19 related duty.
- i. The insurer also quoted Workmen Compensation Policies, Public liability policies, clinical trial policies etc., stating that financial liability arising out of bodily injury (including death) is covered in all such policies.
- j. The insurer also submitted that the Benefit offered is not an aberration from what is already permitted by the Authority. The Benefit in question, in fact, offers an additional benefit to its customers and does not seek to deprive or take away any benefit. The Benefit is therefore, consumer friendly and in the interests of policyholders. Any restriction on the insurer to offer the Benefit would grossly violate its rights to carry on health insurance business on the basis of registration duly obtained from the Authority under the Act.

Decision of the Authority:

21. The request of the insurer to withdraw the Show Cause Notice forthwith without invoking any of the provisions of the Act or the regulations notified thereunder is not acceptable and the same is subject to the decision of the Authority to be arrived on the basis of the reply of the insurer and records available with the Authority. Insurer shall note that it is obligatory to furnish the appropriate responses first before requesting to withdraw the Show Cause Notice.
22. On examining the submissions made by the insurer, the following are the observations of the Authority:
- a. The insurer is liable to make the payment of additional benefit to the nominees/legal heirs of the policyholder, on policyholder not surviving till the end of policy period once the claim is admitted for major illness / surgical procedure. However, providing the death benefit cover or the assurance of payment of money on death of the policyholder itself falls within the definition of Life Insurance business which is defined in Section 2(11) of Insurance Act, 1938, as it is contingent on human life, though limited to the major illnesses named in the policy.
 - b. The submissions of the insurer that the additional benefit offered cannot be considered as life insurance benefit as the insurer is not offering principally or wholly any life insurance benefit as envisaged in Section 2 (13 B) of the Act, which defines "Miscellaneous Insurance Business", are not acceptable. The word '*principally*' means that as a matter of principle what is covered under Sub Section (6A), Sub Section (11) and Sub Section (13A) is not allowed to be transacted under the definition of 'Miscellaneous Insurance Business'. Sub-section (11) of the Insurance Act provides the definition of "life insurance business".
 - c. It may be noted that life insurance business in Section 2 (11) is clearly defined as the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life. The words "*except death by accident only*" which are part of the definition of life insurance business, mean, all other deaths come under the purview of life insurance definition. Hence, except death by accident only, effecting of contracts of insurance assured on all deaths shall be covered by life insurance companies only and not by companies that are registered to do general or health insurance business by the Authority.
 - d. On the contention of the insurer that Section 2 (6C) of the Act does not limit the scope of health insurance business, it is clarified that the definition provided in Section 2 (6C) of the Act is quite clear in that it covers only health i.e. sickness or medical benefits, travel and accident benefits, as under:

"health insurance business" means the effecting of contracts which provide for sickness benefits or medical, surgical or

hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover;

- e. Under sickness benefits, the objective is providing financial relief to the insured patient who suffered an ailment / disease. The fixed benefit health policies are also offered in order to let the insured patient use the benefit amount for prolonged treatment and/or maintain the same quality of life prior to contracting the illness.
- f. It is also observed that the payment of additional benefit to the nominee/legal heir of the policyholder, on policyholder not surviving the policy period on contracting the named major illness / surgical procedure, cannot be portrayed as sickness benefit or medical benefits for the purposes under Sub-section 6C of the Act, for the following reasons;
 - 1. the company is already assuring to pay the defined benefit to the nominees/legal heirs of the policyholder, on the policyholder contracting the defined major illness. The contraction of defined major illness by the policyholder itself is a sickness benefit
 - 2. the payment of defined additional benefit to the nominees/legal heirs of the policyholder, on policyholder dying subsequently thereafter during policy year is only a death benefit, the death being squarely attributable to the major illness contracted.
- g. As per the provisions of Sec 3(1) of Insurance Act, 1938 no insurer, inter alia, shall carry on any class of insurance business in India unless, it has obtained from the Authority a Certificate of Registration for the particular class of insurance business. Accordingly, M/s Go Digit General Insurance Company Ltd. i.e. the insurer which has been registered for General and Health Insurance Business cannot offer a benefit which squarely falls under life insurance business as defined under the Insurance Act. By covering the contingency of death and giving death benefits under the contract of insurance, the insurer has violated the Section 3(1) of the Insurance Act by carrying on business in class of insurance in which the insurer has not been granted Certificate of Registration by the Authority i.e. life insurance business, thereby attracting the provisions of Sec 3(4)(f) of the Act.
- h. With respect to the submission of the insurer on Regulation 3(b) of IRDAI (Health Insurance) Regulations, 2016, insurer is advised to note that when the Act provisions are very clear there is no case for the Authority to specify further in the sub-ordinate regulations. The provisions of the Act are paramount and are binding.
- i. On the submissions of the insurer on Pradhan Mantri Garib Kalyan Yojana, it is clarified that as per Clause (II) of Chapter IV of Consolidated Guidelines on product filing in health insurance business (Ref. IRDAI/HLT/REG/CIR/194/07/2020 dated 22.7.2020), insurance products offered by General and Health insurers for schemes sponsored

by the State and Central Governments shall adhere to the conditions of the scheme as laid down by the respective Government.

- j. With respect to submissions on Workmen Compensation Act, it is clarified that the Workmen Compensation Policies are given as per the provisions of Workmen's Compensation Act and are applicable to those workmen working in industries as specified in the Act.
- k. With reference to submissions on Public liability policies, it is clarified that in terms of Section 4 (1) of Public Liability Insurance Act, 1991, every owner, inter alia, shall take out one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under sub-section (1) of section 3.
- l. In respect of accidental death policies also, the death claim is payable only if the death is solely and directly attributable to the accident.
- m. In respect of motor third party liability also the death due to accident of the vehicle covered is only admissible. Hence, there is no merit in the submissions of the insurer.
- n. The insurer's claim that the additional benefit being offered in the product squarely falls within the ambit of "health insurance business" and it is permitted to carry on this business is therefore found not tenable.
- o. Therefore, the submission of the insurer is not valid in including the life insurance element under clause "e" of the proposed Section 29 and the same is not accepted.

23. In light of the above, it is observed that there is no merit to consider in the submissions of the insurer.

24. The insurer had filed Digit Group Total Protect Policy in 2019, which was last modified in Sept 2020 and UIN GODPAGP21491V022021 was allotted.

25. The latest filing in 2021 is a modification of this existing product with an additional optional cover as Section 29 of the modified product, named "Major Illness Plus Cover" which was allotted the UIN GODPAGP22103V032122. The incorporation of life insurance benefits in the proposed section 29 of the modified product is in violation of Section 3(1) of Insurance Act, 1938 attracting the provisions of Section 3(4)(f) of the Act. Since Section 29 of the modified product and the filed product are inseparable, the Authority is constrained to direct the insurer, M/S Go Digit General Insurance to discontinue offering the product with UIN GODPAGP22103V032122. However, since the earlier product with all the features but without the additional section 29 (UIN GODPAGP21491V022021) was in the market and being sold by the insurer, M/S Go Digit may continue selling the product (UIN GODPAGP21491V022021) to cater to the targeted segment without losing the market.

26. In view of this, and as per the provisions of clause 8 of Chapter II, clause no. III (12) and III (14) of Chapter IV of Consolidated Guidelines on Product Filing in Health Insurance Business Ref: IRDAI/HLT/REG/CIR/194/07/2020 dated 22nd

July, 2020 read with Regulation 4(a) of IRDAI(Health Insurance) Regulations, 2016, the Authority directs the insurer, M/s Go Digit General Insurance Limited to discontinue the product "*DIGIT Group Total Protect Policy*" allotted UIN GODPAGP22103V032122 which is not compliant with Section 3(1) of Insurance Act, 1938 with immediate effect.

27. The insurer is also directed to withdraw all the advertisements regarding the product from all media.
28. The Insurer is directed to furnish an action taken report within fifteen days from the date of this order.
29. Notwithstanding the direction issued to the insurer for discontinuance of the product "*Digit Group Total Protect Policy*", the Authority reserves the right to take further action for violation of the Act provisions.
30. The insurer is directed to place this order in the immediate board meeting and send the certified copy of minutes to Authority.
31. If the insurer feels aggrieved by the decision of the Authority, an appeal may be preferred to the Securities Appellate Tribunal as per Section 110 of the Insurance Act, 1938

Place : Hyderabad
Date : 30th December, 2021

Sd/-
Member (Non-Life)