

Regulatory Authority's Order on Licensed Distribution Upheld

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The Indian insurance rules and regulations make it clear that only licensed insurance agents or intermediaries can solicit or procure insurance business in India. The Delhi High Court recently considered this position in *Radiant Overseas Pvt Ltd v Insurance Regulatory and Development Authority of India*.¹

Radiant Overseas is an Indian company involved in the travel agency industry. It entered into an arrangement with an insurer in Ukraine to collect premiums and issue insurance certificates to Indian tourists travelling to Ukraine. As part of this arrangement Radiant Overseas was required to obtain permission from the Indian government. In 1998 Radiant Overseas applied to the Reserve Bank of India and the Department of Economic Affairs for their permission. This permission was granted on a case-by-case basis, as the insurance and the Ukrainian insurer writing the risk were both mandated by the Ukraine government. On this basis, Radiant Overseas was granted permission to transfer the insurance premiums overseas. This permission was granted in 1998, before the commencement of the new insurance regulatory regime in India, on a three-year basis which was renewable in 2001 (it is unclear from the facts of the case whether permission was expressly extended after 2001).

In December 2008 the Insurance Regulatory and Development Authority (IRDA) questioned the basis on which Radiant Overseas was issuing these insurance certificates. Radiant Overseas replied, asking the IRDA what permission it required. A writ petition was also filed at the Delhi High Court, which was disposed of on March 4 2009 by directing the IRDA to examine the representations made by Radiant Overseas in the writ petition.

Subsequently, on May 6 2009 the IRDA issued further notice, asking Radiant Overseas for an explanation of the basis on which it was marketing and selling insurance policies in India. A personal hearing was also granted.

On April 30 2010 the IRDA issued an order to Radiant Overseas to cease these activities. This order was challenged before the Delhi High Court. Radiant Overseas contended, among other things, that:

- it was only collecting premiums on behalf of an insurer; it was not itself issuing insurance certificates or settling claims;
- under the Foreign Exchange Management Act 1999 and the Current Account Transactions Rules 2000, only the insurance division of the government is competent to permit the remission of payments overseas; and

¹ MANU/DE/2410/2010.

- permission to operate had been obtained before the introduction of the new regulatory regime and therefore should be deemed to have been granted by the IRDA.

The IRDA responded that it was still necessary to obtain IRDA permission to carry out the distribution of insurance in India. In agreement with the IRDA, the Delhi High Court held that:

- Radiant Overseas had not denied that it was acting as the agent of a Ukrainian insurer; and
- in collecting premiums and delivering insurance certificates in India, it was carrying on insurance business in India on behalf of the Ukrainian company.

However, the judgment did not expressly comment on the legality of the arrangement between the insurer and Radiant Overseas, or on whether Radiant Overseas still held valid permission to remit premiums abroad.

Following scrutiny from the IRDA, this is one of several investigations that the IRDA has recently commenced into unlicensed entities that are distributing or otherwise involved in insurance in India. However, this case is of particular significance as it is one of the first challenges to an IRDA order.

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