April 2023

New Regulations on payment of commission and expenses of management

The Insurance Regulatory and Development Authority of India ("**IRDAI**") has, pursuant to notifications dated March 26, 2023, notified 3 (three) new regulations, i.e., (a) the IRDAI (Expenses of Management of Insurers transacting life insurance business) Regulations, 2023[1]; (b) the IRDAI (Expenses of Management of Insurers transacting General or Health Insurance Business) Regulations, 2023 (collectively, "**EOM Regulations**"); and (c) the IRDAI (Payment of Commission) Regulations, 2023 ("**Commission Regulations**"). These regulations have come into effect on April 1, 2023, and have replaced the IRDAI (Expenses of Management of Insurers transacting life insurance business) Regulations, 2016 and the IRDAI (Expenses of Management of Insurers transacting General or Health Insurance Business) Regulations, 2016 and the IRDAI (Payment of commission or remuneration or reward to insurance agents and insurance intermediaries) Regulations, 2016, respectively. The EOM Regulations will remain in force for a period of 3 (three) years while the Commission Regulations will be reviewed once every 3 (three) years.

These regulations are intended to provide insurers with greater flexibility to manage their expenses within overall limits as well as to facilitate development of new business models, products, strategies, etc., enable ease of compliance while fulfilling regulatory objectives and improve insurance penetration.

Summarized below are some key changes introduced under the Commission Regulations and the EOM Regulations:

1. **Commission Regulations**

   a) The product-wise limits on commission and remuneration payments to insurance agents and insurance intermediaries have now been omitted. Instead, insurers are now permitted to make such payments in accordance with their board approved policies[2] and subject to the overall cap on expenses of management ("**EOM**") prescribed under the applicable EOM Regulations.

   b) Further, the reward and incentive payments to insurance agents / intermediaries (which were previously permitted over and above commission paid to insurance agents and remuneration paid to insurance intermediaries) have now been subsumed within the purview of 'commission'.

2. **EOM Regulations**

   a) Under the EOM Regulations for general or health insurance Business, IRDAI has done away with separate EOM limits applicable for various segments (e.g., fire, marine, health, motor insurance). Further, EOM for insurers carrying on general insurance business and insurers exclusively carrying on health insurance

[1] IRDAI has also issued clarifications on April 5, 2023 in respect of the EOM Regulations for life insurance business.
[2] On March 31, 2023, IRDAI has also issued a guidance note with regard to the board policy on commission structure.

business has been capped to 30% and 35%, respectively, of gross premium written in India in a financial year.

b) Under the EOM Regulations for life insurance business, the EOM limits (as a percentage of premium) continue to be prescribed for various categories of products (e.g., pure risk products, group fund based policies, deferred annuity products) while higher limits have been prescribed for certain product categories.

c) Insurers reporting growth in the gross direct premium sourced from rural sector or other specified schemes (e.g., Pradhan Mantri Jeevan Jyoti Bima Yojana, Pradhan Mantri Suraksha Bima Yojana) will be allowed additional allowances within specified limits. Also, additional allowance of 5% of the EOM has also been allowed for Insurtech[3] and insurance awareness[4] expenses in order to widen customer reach.

d) In addition to having a board approved policy which would provide for matters such as allocation of EOM amongst various business segments, insurers are now required to formulate an annual business plan in advance specifying projections of capital requirements, quarterly solvency margins and EOM. The business plan needs to be approved by the board as well as monitored at regular intervals. In case the actual EOM of an insurer[5] exceeds the EOM levels projected under the business plan by 10% or more, no variable pay would be payable to key managerial personnel (i.e., chief executive officer, managing director, whole-time directors, etc.).

e) Further, expenses which exceed EOM limits would be charged to the insurer's profit & loss account (as opposed to the shareholders' account).

The new regulations are anticipated to provide a further impetus to achieving IRDAI's mission of 'Insurance for All' by 2047. While the industry sentiment on these new regulations seems to be positive, smaller insurance players have expressed concerns as they view these developments as being more favourable to larger insurers. Nonetheless, the changes in the regulatory framework from a product-level commission cap to an entity-level overall EOM cap and omission of segment specific limits (in case of general and health insurance businesses) would indeed afford increased flexibility to insurers in managing their expenses and structuring their commission payments and is also likely to enable insurers to be more responsive to market forces and bring in better product pricing for customers.

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[3] Expenses incurred towards technology enabled innovation in policy holder oriented insurance services that could result in new business models, applications, processes or products.

[4] Awareness creation by insurers through direct campaigns and/or supporting General Insurance Council / Life Insurance Council to educate customers and public at large in making right choices by being aware of insurance requirements and role of insurance agents / intermediaries (excluding insurance advertisements).

[5] This does not apply to insurers with business duration up to 5 years.

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