July 2023

This newsletter captures the key regulatory developments in the insurance sector between April 2023 - June 2023.

New Information and Cyber Security Guidelines

The Insurance Regulatory and Development Authority of India ("**IRDAI**") released the IRDAI Information and Cyber Security Guidelines, 2023[1] (the "**Cyber Security Guidelines**") to bolster the defence and related governance mechanisms within the insurance industry, equipping it to effectively deal with the emerging cyber threats. The Cyber Security Guidelines are applicable to all insurers including foreign reinsurance branches and insurance intermediaries covering brokers, corporate agents, web aggregators, third party administrators, insurance marketing firms ("**IMFs**"), insurance repositories, insurance self-network platforms, corporate surveyors, motor insurance service provider ("**MISPs**"), common service centres, and the Insurance Information Bureau of India ("**Regulated Entities**"). In terms of the Cyber Security Guidelines, the Regulated Entities are required to, *inter alia*, (a) create an organization structure for governance, implementation, and monitoring of information security, (b) ensure that employees, contractors, and third parties follow the guidelines for the acceptable use of all the information assets, (c) manage risks and implement controls to prevent financial loss, loss of customer confidence and/ or loss of operating licenses, and (d) have adequate security domain policies in place to give effect to the guidelines. The Regulated Entities that have already completed their security audit for the financial year ("**FY**") 2022-23 can ensure compliance with the Cyber Security Guidelines from the next fiscal year.

Per the Cyber Security Guidelines, the Regulated Entities are required to mandatorily report cyber incidents to Cert-In within 6 (six) hours of noticing or being brought to notice about such incidents with a copy to the IRDAI and other concerned regulators/ authorities. IRDAI has further directed[2] that the notification to IRDAI be made in the prescribed format within 24 (twenty-four) hours of the aforesaid intimation.

Master Circular on Registration of Indian Insurance Company, 2023[3]

In accordance with the provisions of the IRDAI (Registration of Indian Insurance Companies) Regulations, 2022 "**Registration Regulations**"), the IRDAI has issued the Registration of Indian Insurance Company, 2023 ("**Master Circular**") to specify the various forms as referred to in the Registration Regulations and provide clarifications on

[1] IRDAI Notification, bearing reference no. IRDAI/GA&HR/GDL/MISC/ 88/04/2023, dated April 24, 2023. The Cyber Security Guidelines supersede IRDAI Circulars on this subject dated April 7, 2017, December 29, 2020, September 2, 2022 and October 11, 2022.
[2] IRDAI Circular, bearing reference no. IRDAI/GA&HR/CIR/MISC/128/06/2023, dated June 13, 2023.
[3] IRDAI Circular, bearing reference no. IRDAI/F&I/CIR/RIC/90/4/2023, dated April 24, 2023.

various provisions of the Registration Regulations. Further, the Master Circular has repealed the following circulars/ guidelines:

a) IRDAI (Investment by Private Equity Funds in Indian Insurance Companies) Guidelines 2017;

b) IRDAI (Listed Indian Insurance Companies) Guidelines, 2016;

c) Circular dated July 22, 2020 on transfer of shares of the insurance companies; and

d) Circular dated September 27, 2018 on details of equity holding pattern of insurance companies.

The Master Circular is effective for a period of 3 (three) years from April 24, 2023, unless reviewed and/ or extended earlier.

Reduction in solvency requirement applicable for surety insurance bonds

The IRDAI Circular on 'Modification of Surety Insurance Guidelines'[4] read with the IRDAI Press Note on 'Measures towards developing Surety Insurance Bonds market'[5], has modified the solvency requirement applicable for surety insurance bonds from the control level of 1.875 (one point eight seven five) times to 1.5 (one point five) times. Further, the prevailing 30% exposure limit applicable on each contract underwritten by an insurer, has been done away with. These revisions aim to expand the surety insurance market by increasing availability of such products and allowing more insurers to meet the rising demand across sectors, particularly increasing liquidity of contractors and providing strong boost especially to the infrastructure sector.

Development of insurance products in line with the laws on surrogacy and assisted reproductive technology[6]

IRDAI has directed insurers to comply with the provisions of and develop and make available health and life insurance coverage products for surrogate mothers and oocyte donor in compliance with the provisions of the Surrogacy (Regulation) Act, 2021, the Assisted Reproductive Technology (Regulation) Act 2021 and the rules made thereunder.

Discontinuation of facility of re-payment of loan taken against an insurance policy through a credit card[7]

All the life insurance companies have been instructed to stop accepting credit cards as a mode of re-payment of loans granted against insurance policies. This decision impacts policyholders who typically use credit cards to repay loans taken against their insurance policies.

Repealing of redundant circulars, guidelines, and clarifications[8]

To reduce complexity in compliance requirements and streamline the regulatory framework, the IRDAI has repealed 70 (seventy) circulars/ guidelines/ clarifications pertaining to brokers, agency distribution, surveyors, IMFs, web aggregators and MISPs, including, *inter alia*, the following:

a) Claim consultancy by insurance brokers dated December 7, 2011;

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[4] IRDAI Circular, bearing reference no. IRDAI/NL/CIR/SIC/104/5/2023, dated May 15, 2023.
[5] IRDAI Press Note dated May 16, 2023.
[6] IRDAI Circular, bearing reference no. IRDAI/HLT/CIR/PR0/01/05/2023, dated May 10, 2023 read with IRDAI Circular, bearing reference no. IRDAI/LIFE/CIR/PRO/138/6/2023, dated June 26, 2023.
[7] IRDAI Circular, bearing reference no. IRDAI/LIFE/CIR/MISC/99/5/2023 dated May 4, 2023.
[8] IRDAI Circular, bearing reference no. IRDAI/INT/CIR/MISC/129/6/2023, dated June 14, 2023.

b) Circular regarding broking business dated October 11, 2013;

c) Sale of insurance products through online and/ or by tele-marketing mode dated August 12, 2014;

d) Guidelines on Indian owned and controlled insurance intermediaries dated November 20, 2015;

e) Brokers regulations 2018 – clarification dated February 23, 2018;

f) Guidelines pertaining to corporate agents dated December 7, 2011;

g) Guidelines on appointment of insurance agents, 2015 dated March 17, 2015 and April 1, 2015;

h) Categorisation and upgradation of surveyors dated October 17, 2013;

i) Clarifications on IRDAI (Registration of Insurance Marketing Firm) Regulations, 2015 dated February 3, 2016; and

j) Clarification on outsourcing activities undertaken by insurance web aggregators and remuneration payable dated June 12, 2018.

Monitoring of investments in Alternative Investment Fund ("AIF")[9]

While insurers are permitted to invest in Category I and Category II AlFs as a part of 'other investments', in order to closely monitor the exposure of insurers to AIFs, IRDAI has prescribed the following additional requirements:

a) quarterly declaration of the net asset values of the AlFs;

b) submission of a quarterly return for investments in AIFs in the prescribed format within 15 (fifteen) days from the end of each quarter; and

c) approval of the board of directors or the investment committee for rollover of investments in AIFs.

Guidelines on remuneration of directors and key managerial persons ("KMPs") of insurers[10]

The IRDAI has issued the below mentioned guidelines to ensure: (a) effective governance of compensation, (b) alignment of remuneration with prudent risk taking, (c) effective supervisory oversight and stakeholder engagement, and (d) safety of interest of the policyholders and other stakeholders.

Insurance Regulatory and Development Authority of India (Remuneration of Non-Executive Directors of Insurers) Guidelines, 2023

These guidelines are applicable for remuneration payable to non-executive directors of private sector insurers from FY 2023-24. The insurers are required to complete the process of framing/ reviewing the remuneration policy based on these guidelines within 3 (three) months of the issuance of the guidelines. Some of the key provisions are as follows:

a) The total remuneration for each non-executive director cannot exceed INR 20,00,000 (Indian Rupees Twenty Lakh) per annum. If the chairperson of the company is a non-executive director, the remuneration may be decided by the board of directors of the insurer, and the remuneration policy is required to specify the details of the remuneration and incentives paid to him/her. Sitting fee and reimbursement of expenses (in compliance with the provisions of the Companies Act, 2013) to the non-executive directors for their participation in board and other meetings can be paid in addition to the aforementioned director's remuneration.

b) The non-executive directors are not eligible for any equity-linked benefits.

[9] IRDAI Circular, bearing reference no. IRDAI/F&I/CIR/INV/139/06/2023, dated June 28, 2023.
[10] IRDAI Circular, bearing reference no. IRDAI/F&A/GDL/MISC/141/6/2023, dated June 30, 2023.

c) The maximum age limit for the non-executive directors, including the chairperson of the board of directors, is 75 (seventy five) years. In case the chairperson/ non-executive director has already attained the said age as on the date of issuance of the guidelines, insurers are required to appoint a new person in place of such chairperson/ non-executive director within a period of 1 (one) year.

d) An independent director cannot hold office for more than 2 (two) consecutive terms, beyond a period of 10 (ten) years. After completion of 10 (ten) years, such an independent director will be eligible for re-appointment only after a cooling-off period of at least 3 (three) years.

Insurance Regulatory and Development Authority of India (Remuneration of Key Managerial Persons of Insurers) Guidelines, 2023

These guidelines are applicable for remuneration payable to KMPs of private sector insurers from FY 2023-24. The insurers are required to complete the process of framing/ reviewing the remuneration policy based on these guidelines within 3 (three) months of the issuance of the guidelines. Some of the key provisions are as follows:

a) The annual remuneration of a KMP for a particular FY is required to comprise of fixed pay (including monetary and non-monetary perquisites) and variable pay.

b) Variable pay is required to be in the form of cash and/ or share linked instruments and subject to malus and claw-back provisions.

c) Variable pay is required to be at least 50% (fifty per cent) of the fixed pay for the corresponding period but cannot exceed 300% (three hundred per cent) of the fixed pay. Where variable pay is up to 200% (two hundred per cent) of the fixed pay, a minimum of 50% (fifty per cent) of the variable pay is required to be paid *via* non-cash instruments. This limit will be enhanced to 70% (seventy per cent), in case the variable pay is more than 200% (two hundred per cent) of the fixed pay.

d) At least 50% (fifty per cent) of the variable pay is required to be paid under deferral arrangements, with a minimum deferral period of 3 (three) years to be payable in the manner set out in the regulations. No deferment of variable pay is required for an amount of up to INR 25,00,000 (Indian Rupees Twenty Five Lakh) per annum.

e) Issuance of employee stock options ("**ESOPs**") is required to be in accordance with the guidelines.

f) Insurers are restricted from issuing/ granting sweat equity shares to KMPs.

g) The maximum age limit for managing director and chief executive officer or whole-time director is 70 (seventy) years.

h) The tenure of the managing director and chief executive officer or whole-time director is required to be in accordance with the guidelines.

i) A promoter/ shareholder (other than an employee who becomes a shareholder by virtue of shares received through ESOPs) is restricted from holding a whole-time position in the insurer.

The above guidelines do not apply to foreign reinsurance branches operating in India and replace and supersede: (i) the Insurance Regulatory and Development Authority of India (Remuneration of Non-Executive Directors of Private Sector Insurers) Guidelines, 2016, and (ii) the Insurance Regulatory and Development Authority of India (Remuneration of Chief Executive Officer/ Whole-time Director/ Managing Director of Insurers) Guidelines, 2016.

Regulations pertaining to International Financial Service Centre Insurance Offices ("IIOs")

The International Financial Services Centres Authority ("**IFSCA**") has issued the below mentioned regulations in relation to the operations of IIOs.

International Financial Services Centres Authority (Re-insurance) Regulations, 2023 ("Re-insurance Regulations")[11]

The Re-insurance Regulations provide the framework for oversight and control of inward and outward arrangement of re-insurance business by IIOs. Some of the key provisions of the Re-insurance Regulations are as follows:

a) IIOs are required to develop and document its re-insurance strategy and re-insurance programme for effective underwriting and risk management and to ensure sufficient resources to meet the business obligations.

b) An IIO, ceding or retroceding the risk is required to *inter-alia* clearly document the risk concentration levels and the cession or retrocession limits as per its risk appetite.

c) IIOs are required to ensure that any contract classified as a re-insurance contract meets the risk transfer requirements for a particular accounting year and protects the ceding insurer or retrocessionaire from adverse financial impact arising from the underlying insurance business ceded.

d) IIOs are required to formulate a segment-wise retention policy duly approved by its board of directors maximising the retention commensurate with its financial strength and quality of risk, without fronting the re-insurance arrangements.

e) IIOs are required to furnish (in prescribed form) the information related to inward and outward re-insurance arrangements with the IFSCA.

Reporting requirements for life, general, health and re-insurance business

With the objective to specify capital and solvency requirements for IIOs which are undertaking life, general, health or re-insurance business (as applicable), the IFSCA has released the following regulations:

a) International Financial Services Centres Authority (Assets, Liabilities, and Solvency Margin of General, Health and Re-insurance business) Regulations, 2023.[12]

b) International Financial Services Centres Authority (Assets, Liabilities, Solvency Margin and Abstract of Actuarial Report for Life Insurance Business) Regulations, 2023.[13]

The above regulations, *inter alia*, require IIOs to submit: (i) statements of admissible assets, amount of liabilities and solvency margin in the prescribed forms; and (ii) the annual actuarial report, and the valuation of assets and liabilities along with the computation of solvency margin, to the IFSCA.

Regulatory Framework applicable to insurance business carried out by IIOs and IIOs[14]

The International Financial Services Centres Authority (Management Control, Administrative Control and Market Conduct of insurance business) Regulations, 2023 ("**Business Regulations**") provide a regulatory framework related to management and administrative controls, policyholders' interest protection, sharing of data, fair advertisements, and market conduct of insurance business carried out by IIOs or International Insurance Intermediary Offices ("**IIIOs**'). Under the Business Regulations, IIOs are required to endeavour to prevent any entity from exercising direct or indirect control over it, through acquisition of significant ownership or interest, through portfolio transfers, leading to change in the shareholding pattern. The Business Regulations impose certain requirements on an IIO in case there is any proposed change in the shareholding or management control. An IIO is also required to take prior approval from

[11] IFSCA Notification, bearing reference no. IFSCA/2022-23/GN/REG036, dated April 11, 2023.
[12] IFSCA Notification, bearing reference no. IFSCA/2022-23/GN/REG038, dated April 19, 2023.
[13] IFSCA Notification, bearing reference no. IFSCA/2022-23/GN/REG039, dated April 19, 2023.
[14] IFSCA Notification, bearing reference no. IFSCA/2022-23/GN/REG035, dated April 26, 2023.

the IFSCA in case of a merger, amalgamation, or transfer involving the IIO, and adhere to certain prescribed requirements. IIOs are also required to formulate policies for:

a) allocation of direct expenses and apportionment of indirect expenses of management under respective insurance segments;

b) payment of commission to insurance agents, intermediaries, and insurance intermediaries; and

c) procedures to be followed for opening and closing of a place of business.

IIOs and IIIOs are also required to provide for a policy for protection of interest of the policyholders.

Private Equity Practice

While the regulatory landscape in India continues to evolve promoting the ease of doing business, the microeconomic factors and global trends have been uncertain, thereby impacting investments in India. With the decline in funding due to the 'funding winter', the valuation of start-ups have corrected and has led to market consolidation by acquiring start-ups with high capital burn out.

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17 Practices and
24 Ranked Lawyers

16 Practices and
11 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
39 Ranked Partners
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Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year

Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices

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11 winning Deals in IBLJ Deals of the Year

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10 A List Lawyers in IBLJ Top 100 Lawyer List

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Equity Market Deal of the Year (Premium) 2022

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