

January 2024

This newsletter captures the key regulatory developments in the insurance sector between October - December 2023.

## Issuance of Bima Vahak Guidelines, 2023

In furtherance of the vision of the Insurance Regulatory and Development Authority of India (“**IRDAI**”) to achieve insurance for all by 2047, IRDAI has issued the Bima Vahak Guidelines, 2023 (“**BV Guidelines**”) in order to (a) establish a women centric dedicated distribution channel which focuses on enhancing insurance inclusion and creating awareness in every village / Gram Panchayat and (b) identify and develop local resources who appreciate local needs and enjoy trust and confidence of the local population.<sup>1</sup> The BV Guidelines will become effective with launch of Bima Vistaar.<sup>2</sup> Insurers may either directly appoint Individual Bima Vahaks or engage Corporate Bima Vahaks (which may in turn appoint individuals as Bima Vahaks) for sale and servicing of Bima Vistaar and other specified insurance products using electronic communication devices. Bima Vahaks may also assist with filling of proposal forms, compliance with KYC requirements, issuance of policies, claims servicing and settlement. Insurers remain responsible for actions and conduct of the Bima Vahaks they engage and are required to put in place infrastructure and processes to enable seamless interface with all Bima Vahaks for providing necessary support services for their scope of activities. Bima Vahaks are to be deployed in each Gram Panchayat by December 31, 2024. Insurers.

## Modifications to Trade Credit Insurance Guidelines, 2021

IRDAI had issued IRDAI (Trade Credit Insurance) Guidelines, 2021 (“**TCI Guidelines**”) in September 2021 which set out the regulatory framework to facilitate trade credit insurance covers to suppliers as well as to banks, financial institutions and factoring companies.<sup>3</sup> The TCI Guidelines also permitted single invoice covers through bill discounting / factoring on invoice discounting platforms such as Trade Receivable Discounting System (“**TReDS**”). However, the TCI Guidelines restricted providing covers for reverse factoring arrangements.<sup>4</sup> Following the Reserve Bank of India’s decision to permit insurance facility for TReDS transactions to aid financiers in hedging against default risk, IRDAI has modified the TCI Guidelines to allow financiers to obtain trade credit insurance covers in respect of “reverse factoring” transactions on TReDS.

<sup>1</sup> Circular dated October 9, 2023. IRDAI/LIFE/CIR/GDL/174/10/2023.

<sup>2</sup> Bima Vistaar is a comprehensive insurance product expected to be rolled out in due course.

<sup>3</sup> Circular dated October 9, 2023. IRDAI/NL/CIR/GDL/176/10/2023.

<sup>4</sup> Reverse factoring arrangements refer to arrangements between a borrower and a financier wherein the borrower receives finance for purchase of trade receivables, goods or services.

## **Amendment to Master Guidelines on Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT), 2022**

IRDAI has amended the Master Guidelines on Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) 2022 (“**AML Guidelines**”)<sup>5</sup>. The AML Guidelines require insurers to undertake measures in order to prevent and impede money laundering and terrorist financing (“**ML/TF**”) including by way of implementing policies and internal controls, undertaking customer due diligence (“**CDD**”), monitoring transactions and complying with reporting and record keeping obligations. Some of the key amendments are as below:

1. In case of variance in IRDAI’s CDD or AML/CFT standards and those applicable in the host country of foreign branches or majority-owned subsidiaries of regulated entities, such branches / subsidiaries have been mandated to adopt the more stringent of the two. If the host country does not permit proper implementation of AML/CFT measures, financial groups must apply additional measures to manage ML / TF risks and inform IRDAI;
2. Financial groups must implement group-wide programs to combat ML / TF across all branches and majority-owned subsidiaries including (a) policies for sharing information required for CDD and ML/TF risk management, (b) group-level compliance, audit and AML/CFT functions of customer, account and transaction information from branches and subsidiaries, and (iii) safeguards for confidentiality and use of information;
3. For existing customers (particularly, high risk clients), insurers must conduct necessary CDD with KYC such that the information collected is kept up-to-date;
4. Before making pay-outs, insurers are required to conduct necessary CDD to also identify the beneficial owners of the beneficiary including by conducting enhanced due diligence (“**EDD**”) if the insurer determines that the beneficiary presents a higher risk. For life insurance policies, additional CDD measures are also to be conducted on the beneficiary as soon as such beneficiary is identified;
5. In cases, where an insurer suspects ML/ TF and believes that carrying out CDD process would alert the customer, a Suspicious Transaction Report (STR) should instead be filed with the Financial Intelligence Unit - India (FIU-IND);
6. Insurers have been directed to establish ongoing risk management procedures for identifying and applying EDD measures on an ongoing basis to family members and associates of Politically Exposed Persons (“**PEPs**”) as well. Further, reasonable measures should be taken to ascertain source of wealth / funds of customers and beneficial owners identified as PEPs; and
7. Insurers are required to conduct ML/TF risk assessment before launching or using new products, practices and technologies.

## **Mandating inbuilt coverage under IMT-29 in a private car policy**

Pursuant to the Hon’ble Madras High Court’s directions, the IRDAI has mandated all general insurers carrying on motor insurance business to compulsorily provide cover to the employees travelling in employer’s vehicle (including paid driver, if applicable) under IMT-29 of the Indian Motor Tariff 2002.<sup>6</sup> Such cover is to be provided as an inbuilt coverage under the Compulsory Motor Third Party Liability Section of Private Car Package / Bundled Policies and under standalone policies insuring Compulsory Motor Third Party Liability. Further, no additional premium should be charged.

<sup>5</sup> Circular dated October 10, 2023. IRDAI/IID/CIR/MISC/177/10/2023.

<sup>6</sup> Circular dated October 18, 2023. IRDAI/NL/CIR/MOTOR/178/10/2023-24.

## **Amendment to International Financial Services Centres Authority (Investment by IFSC Insurance Office) Regulations, 2023**

These regulations have been amended to permit an International Financial Service Centre Insurance Office (“**IIO**”) to invest: (a) its assets in India through the regulatory framework specified by the Reserve Bank of India or Securities and Exchange Board of India; and (b) its retained premium in domestic tariff areas for compliance with the IRDAI (Re-insurance) Regulations, 2018 and in such cases, certain stipulations relating to exposure to bonds, equity, property and infrastructure assets would not apply.<sup>7</sup>

Separately, please [click here](#) to refer to the Frequently Asked Questions on IIO (*updated as on December 13, 2023*).

## **Amendment of arbitration clause in general insurance policies**

Based on a comprehensive review of the arbitration clause across general insurance business lines undertaken on reference by the Hon’ble Supreme Court of India, IRDAI has issued the following directions as regards the arbitration clause in general insurance policies<sup>8</sup>:

1. all policies issued under the retail lines of business will not have any arbitration clause since there are alternative forums of Insurers’ grievances system, Insurance Ombudsman and Consumer Courts in addition to Civil Courts;
2. all policies issued / renewed under commercial lines of business would be deemed to include a revised arbitration clause which states that parties can agree and enter into a separate arbitration agreement to settle policy related disputes and such arbitration would be conducted in accordance with the Arbitration and Conciliation Act, 1996; and
3. arbitration clauses in existing policies would remain valid until the term of the policy unless a policyholder specifically requests replacement with the above stipulated provision.

## **Participation in Account Aggregator (“AA”) framework as Financial Information User (“FIU”)**

IRDAI has advised<sup>9</sup> that FIUs<sup>10</sup> from the insurance sector:

1. are expected to adopt the technical specifications published by Reserve Bank Information Technology Private Limited.
2. must not use or disclose ‘financial information’ (e.g., insurance policies) provided by a ‘financial information provider’ (e.g., banks, NBFCs, insurance companies, insurance repository), except as specified in the customer’s consent (which is to be obtained by the AA in a standardized form);
3. must prominently disclose on their websites the names of the AAs through which the information is obtained;
4. should obtain and use financial information that is required to perform functions specified in its regulatory instructions;
5. are encouraged to make AA related applications multilingual; and
6. should abide by the code of conduct as specified under relevant IRDAI’s regulatory framework, including in respect of customer grievance redressal.

<sup>7</sup> Notification dated October 25, 2023. IFSCA/2023-24/GN/REG042.

<sup>8</sup> Circular dated October 27, 2023. IRDAI/NL/CIR/MISC/188/10/2023.

<sup>9</sup> Circular dated November 9, 2023. IRDAI/I&AT/CIR/MISC/194/11/2023.

<sup>10</sup> Under Reserve Bank of India’s Master Direction – Non-Banking Financial Company – Account Aggregator (Reserve Bank) Directions, 2016, ‘FIU’ means an entity registered with and regulated by any financial sector regulator.

## Discontinuation of filing of returns under Insurance Brokers Regulations

The filing of the following returns and certificates by insurers and insurance brokers under the IRDAI (Insurance Brokers) Regulations, 2018 is discontinued<sup>11</sup>:

1. return and certificate (duly certified by the insurance broker's auditor) confirming that the insurance broker has received remuneration for direct insurance business within the prescribed limits;
2. certificate endorsed by Principal Officer and CFO (or equivalent) of the insurance broker confirming that the remuneration and other payments received from the insurer are within the prescribed limits; and
3. certificate signed by the CEO and CFO of the insurer, separately for each broker, if the remuneration and other payments made to the broker exceed the prescribed limits.

The above filing requirements have been discontinued pursuant to notification of the IRDAI (Payment of Commission) Regulations, 2023.

## IRDAI's Exposure Draft on Expenses of Management ("EOM") Regulations

IRDAI has released an Exposure Draft of the IRDAI (Expenses of Management, including Commission, of Insurers) Regulations, 2023<sup>12</sup> ("**Draft EOM Regulations**") based on recommendations of its Regulation Review Committee for enhancing ease of doing business by moving towards principles-based regime. The Draft EOM Regulations proposes to primarily consolidate and repeal recently re-enacted regulations governing payment of commissions and EOM of life and non-life insurers.<sup>13</sup> Please [click here](#) to read the JSA Prism of April 12, 2023, for our analysis of these regulations.

### Insurance Practice

JSA is a trusted advisor to leading insurers, reinsurers, brokers, underwriters and consultants on complex transactions, disputes, financing and regulatory and commercial matters. The team with domain-expertise in the sector has an unparalleled ability to assist insurance companies in their Indian operations. JSA has been keenly involved in advising private players both in life and non-life insurance sectors on diverse matters relating to: (a) Regulatory approvals; (b) Compliance requirements; (c) M&A transactions; (d) corporate and regulatory issues; (e) Litigation relating to insurance claims.

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<sup>11</sup> Circular dated November 24, 2023. IRDAI/INT/CIR/IB/206/11/2023.

<sup>12</sup> Exposure draft dated November 14, 2023. Ref. No.: 446.1/8/EoM-PA/F&A - Life/2023-24

<sup>13</sup> IRDAI (Expenses of Management of Insurers transacting General or Health Insurance Business) Regulations, 2023, IRDAI (Expenses of Management of Insurers transacting Life Insurance Business) Regulations, 2023 and IRDAI (Payment of Commission) Regulations, 2023.

		
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