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JSA Annual Insurance Law Compendium
January – December 2023

This Compendium consolidates all key developments pertaining to the insurance sector which are circulated as JSA Prisms and Newsletters during the calendar period from January 2023 till December 2023.

Submission of reinsurance returns by life insurers

The Insurance Regulatory and Development Authority of India ("**IRDAI**")[1] dispensed the following reporting formats, returns and statements by life insurers:

1. Form 1.1(annual filing): Summary of reinsurance treaties;
2. Form LR-2 (annual filing): Particulars of Surplus Treaty;
3. Form LR-4 (annual filing): Particulars of Quota Share Treaty;
4. Form LR-6 (annual filing): Particulars of Excess of Loss cover/Catastrophe Treaty;
5. Form LR-9 (annual filing): Data Uploading Format for Reinsurance Rate data;
6. Statement 1 (quarterly submission): Statement of Reinsurance Statistics;
7. Statement 2 (annual submission): Reinsurance Details – Inforce;
8. Statement 3: (annual submission) Reinsurance Details – Withdrawn; and
9. Life insurers must continue filing the remaining returns in the existing formats until further instructions.

Modifications permitted to withdrawn products of life insurers

To provide additional benefits and enhanced flexibility while ensuring that existing policyholders are not adversely impacted, IRDAI permitted the following options in respect of withdrawn products (which were closed for new business and have existing policies in insurer's books), of life insurers,[2] subject to certain conditions[3]:

1. adding riders: companies can offer new riders to the existing policyholders of withdrawn products;
2. flexible payments: option to change the premium paying mode can also be provided;
3. lower interest rates: reduction in interest rates for policy revivals and policy loans is permitted; and
4. more payment options: policyholders can choose how often they receive certain benefits from their policies with income benefit payments.

Insurance Sector: Key Takeaways

Ahead of announcing the Union Budget for the financial year 2023-24 ("Budget") on February 1, 2023, the Government of India tabled the Economic Survey 2022-23 on January 31, 2023, which summarizes key initiatives taken by the Government and regulators in various sectors, assesses the growth and presents its outlook for various sectors including the Indian insurance market. The Budget also identified the financial sector as a priority and made a few key announcements which are bound to impact on the insurance sector as well. The Indian insurance sector is at an inflexion point and is expected to be one of the main drivers of global insurance industry growth over the next decade. Further regulatory changes to facilitate ease of doing business coupled with greater operational flexibility sought to be provided by the regulator would provide a further impetus to the fast-growing Indian insurance market which is poised to become the sixth largest by 2032. For a detailed analysis, please refer to the JSA Prism of February 3, 2023.

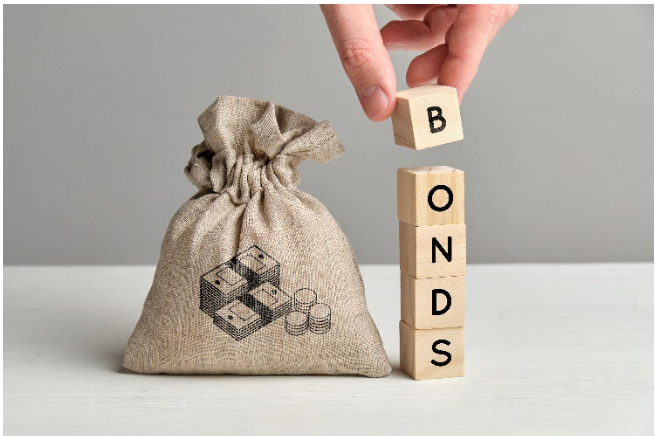
[1] Circular dated January 3, 2023.
[2] Circular dated August 31, 2023.
[3] Circular dated September 1, 2023.

Circular on appointment of an appointed actuary

In relation to the IRDAI (Appointed Actuary) Regulations, 2022 ("**Actuary Regulations**"), the following key changes were introduced by IRDAI[4] ("**Circular**"):

1. under the Actuary Regulations, an insurer / reinsurer is required to obtain IRDAI's approval for the appointment of appointed actuary. In this regard, the format for the application for the said appointment is prescribed, *viz*. Form IRDAI-AA-2 (an application for appointment of appointed actuary) which must be submitted along with the extract of the board resolution and a copy of the appointment letter. Also, the insurer/reinsurer must annually submit the renewed valid 'Certificate of Practice' issued by the Institute of Actuaries of India and make a separate written application (along with the annexed form) seeking relaxation of eligibility conditions (if any) for appointment of the actuary.
2. as per the Actuary Regulations, life insurers must have at least 2 (two) actuaries and general/standalone health insurers and reinsurers must have at least 1 (one) actuary in addition to the appointed actuary for pricing and valuation purposes. IRDAI directed that the above requirements must be complied: (a) by life insurers by December 31, 2023; and (b) by general, stand-alone health insurers and reinsurers,[5] on or before December 31, 2024.
3. the Circular also permits existing appointed actuaries who are: (a) appointed on relaxation of eligibility condition in respect of subject specialization for a limited period or (b) appointed with support of a mentor actuary for a limited period, to continue to work as appointed Actuary beyond such limited period subject to such appointed actuary complying with the Actuary Regulations. The insurer must inform IRDAI within 30 (thirty) days before expiry of such limited period along with a fresh Form IRDAI-AA-2

Classification of Sovereign Green Bonds ("SGBs")



In order to de-concentrate and diversify the infrastructure investment portfolio of insurers and to facilitate their participation in environmental, social and governance initiatives and sustainable development and preventing environment degradation, insurers are encouraged to consider investing in SGBs. Consequently, investment in SGBs will be treated as 'investment in infrastructure' and will be classified as Central Government securities.[6]

Clarification on Investment Regulations

In relation to IRDAI (Investment) Regulations, 2016 and IRDAI Investments - Master Circular dated October 27, 2022, IRDAI issued the following clarifications:[7]

1. shares issued to insurance companies pursuant to a demerger in the resulting company would be classified as "Approved investment" or "Other Investment" for the initial 2 (two) financial years. For the purposes of the classification, the prescribed dividend criteria[8] applicable to the demerged company must be considered;

[4] Circular dated January 10, 2023.
[5] This requirement does not apply to new insurers/reinsurers for a period of 2 (two) years from the date of issuance of certificate of registration.
[6] Circular dated January 13, 2023.
[7] Circulars dated January 19, 2023 and January 31, 2023.
[8] For shares of a company to qualify as "approved investment", the following dividend criteria applies: (a) in case of preference shares, dividends should have been paid on its equity shares; and (b) in case of equity shares of any listed company, at least 10% dividends have been paid, in each case, for at least 2 (two) of immediately preceding 3 (three) consecutive years.

2. with regard to the restriction on investments in mutual funds applicable to insurers (i.e., whereby insurers are restricted from investing, in a single mutual fund, more than 20% of its total investments in mutual funds), it was clarified that the 20% threshold limit will include investments in exchange traded funds;

3. with regard to the restrictions on investment by insurers in Alternative Investment Funds ("**AIFs**") where rights attached to units are varied, it is clarified that insurers are not permitted to invest in any schemes of AIFs that have adopted a priority distribution model which may lead to disproportionate share of losses when compared to other investors in the same class.

Profit related commission to non-executive director(s)

On September 2, 2022, IRDAI had introduced a deemed approval mechanism for appointment/continuation of common director(s) under section 48A of Insurance Act, 1938 ("**Insurance Act**") (i.e., appointment or continuation of a common director representing an insurance agent or intermediary on the board of an insurance company) and directed insurers to not pay any remuneration to non-executive directors (other than sitting fees), without prior approval of IRDAI.

To further ease the process, insurers are permitted to pay profit related commission to non-executive director(s), including the non-executive director(s) appointed under section 48A of the Insurance Act, under the deemed approval mechanism, subject to the following conditions:[9]

1. the insurer must report positive profit after tax for the relevant period;

2. board approved for such payment under a resolution;

3. the profit related commission payment to each non-executive director is within limits specified in IRDAI's Guidelines on remuneration of non-executive directors and managing director/ chief executive officer/ whole-time directors of insurers;

4. payment related disclosures are made in the financial statements for the respective financial year; and

5. compliance with other applicable laws.

Treatment of inward co-insurance while reporting motor third party obligations

Where the insurer undertakes co-insurance arrangement as a part of risk sharing program, the inward co-insurance must not be considered for the purpose of reckoning compliance under the provisions of Section 32D of the Insurance Act and the IRDAI (Obligation of Insurer in Respect of Motor Third Party Insurance Business) Regulations, 2015, which requires insurers carrying on general insurance business to underwrite the prescribed minimum percentage of insurance business in third party risks of motor vehicles.[10]

Amendment of Master Guidelines Anti-Money Laundering/ Counter Financing of Terrorism (AML/CFT), 2022 ("AML Guidelines")

On March 20, 2023, the AML Guidelines were amended[11] in line with the Prevention of Money-Laundering (Maintenance of Records) Amendment Rules, 2023 ("**PML Rules**"). Pursuant to the amendment, the definition of "Politically Exposed Persons" ("**PEPs**") in the Master Guidelines was aligned with the definition of PEPs under the PML

[9] Circular dated January 30, 2023.
[10] Circular dated February 20, 2023.
[11] Circular dated March 20, 2023.

Rules[12]. The AML Guidelines stipulated certain obligations for insurers vis-à-vis PEPs in terms of proposals of PEPs requiring examination by senior management, enhanced due diligence requirements, etc. These requirements are required to be adhered to, in view of the above revised definition. Further, insurers are also required to adhere to other amendments notified under the PML Rules.

Amendment to Master Guidelines on AML/CFT, 2022

IRDAI amended the Master Guidelines on Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) 2022 ("**AML Guidelines**")[13]. 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 (i) policies for sharing information required for CDD and ML/TF risk management, (ii) 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.

New Regulations on payment of commission and expenses of management

Pursuant to notifications dated March 26, 2023, IRDAI notified 3 (three) new regulations, i.e., (a) the IRDAI (Expenses of Management of Insurers transacting life insurance business) Regulations, 2023; (b) the IRDAI (Expenses of Management of Insurers transacting General or Health Insurance Business) Regulations, 2023 ((a) and (b) are collectively referred to as "**EOM Regulations**"); and (c) the IRDAI (Payment of Commission) Regulations, 2023 ("**Commission**

[12] 'Politically Exposed Persons' is defined to mean individuals who have been entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials.

[13] Circular dated October 10, 2023. IRDAI/IID/CIR/MISC/177/10/2023.

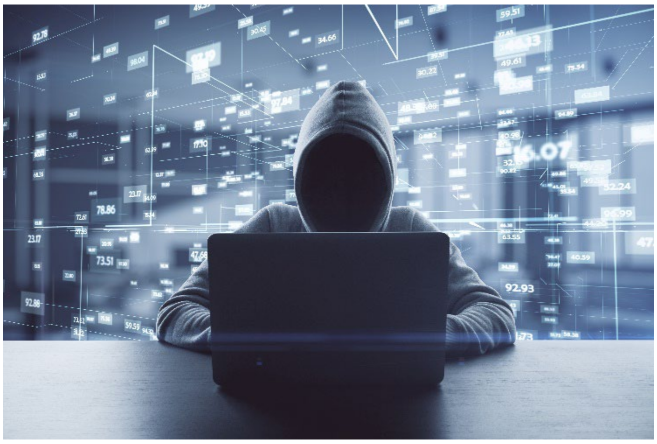
Regulations"). These regulations came to effect from April 1, 2023, and replaced the IRDAI (Expenses of Management of Insurers transacting life insurance business) Regulations, 2016 and the IRDAI (Expenses of Management of Insurers transacting General or Health Insurance Business) Regulations, 2016 and the IRDAI (Payment of Commission or Remuneration or Reward to Insurance Agents and Insurance Intermediaries) Regulations, 2016, respectively. Among other changes, product-level commission caps as well as segment specific limits on expenses of management (in case of general and health insurance businesses) have been done away with. These changes 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. For a detailed analysis, please refer to the JSA Prism of April 12, 2023.

Further, following the notification of EOM Regulations and Commission Regulations, the payment of distribution fees to the Motor Insurance Service Provider ("**MISP**") by the insurer or insurance intermediary will be in accordance with the board approved policy for payment of commission of the insurer.

"Use and File" Procedure for Products

The existing 'use and file' procedure is modified for the purpose of enabling dynamism as well as speed to market insurance products.[14] Instead of filing the documents with IRDAI, the documents to be submitted under 'use and file' are required to be submitted to the Product Management Committee, which is responsible for the final approval of the product. However, IRDAI may request documents in respect of a few products identified on a monthly basis from amongst life insurers, general insurers and health insurers for examination as per the prescribed procedure.

New Information and Cyber Security Guidelines



The IRDAI released the IRDAI Information and Cyber Security Guidelines, 2023[15] (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, 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

[14] Circular dated March 31, 2023.
[15] 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.

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 further directed[16] 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[17]

In accordance with the provisions of the IRDAI (Registration of Indian Insurance Companies) Regulations, 2022 "**Registration Regulations**"), the IRDAI 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 various provisions of the Registration Regulations. Further, the Master Circular repealed the following circulars/ guidelines:

1. IRDAI (Investment by Private Equity Funds in Indian Insurance Companies) Guidelines 2017;
2. IRDAI (Listed Indian Insurance Companies) Guidelines, 2016;
3. Circular dated July 22, 2020, on transfer of shares of the insurance companies; and
4. Circular dated September 27, 2018, on details of equity holding pattern of insurance companies.
5. 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'[18] read with the IRDAI Press Note on 'Measures towards developing Surety Insurance Bonds market'[19], 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, is 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[20]

IRDAI directed insurers to comply with the provisions 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.

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[16] IRDAI Circular, bearing reference no. IRDAI/GA&HR/CIR/MISC/128/06/2023, dated June 13, 2023.
[17] IRDAI Circular, bearing reference no. IRDAI/F&I/CIR/RIC/90/4/2023, dated April 24, 2023.
[18] IRDAI Circular, bearing reference no. IRDAI/NL/CIR/SIC/104/5/2023, dated May 15, 2023.
[19] IRDAI Press Note dated May 16, 2023.
[20] 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.

Discontinuation of facility of re-payment of loan taken against an insurance policy through a credit card[21]

All the life insurance companies are 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[22]

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

1. claim consultancy by insurance brokers dated December 7, 2011;
2. circular regarding broking business dated October 11, 2013;
3. sale of insurance products through online and/ or by tele-marketing mode dated August 12, 2014;
4. guidelines on Indian owned and controlled insurance intermediaries dated November 20, 2015;
5. brokers regulations 2018 – clarification dated February 23, 2018;
6. guidelines pertaining to corporate agents dated December 7, 2011;
7. guidelines on appointment of insurance agents, 2015 dated March 17, 2015 and April 1, 2015;
8. categorisation and upgradation of surveyors dated October 17, 2013;
9. clarifications on IRDAI (Registration of Insurance Marketing Firm) Regulations, 2015 dated February 3, 2016; and
10. clarification on outsourcing activities undertaken by insurance web aggregators and remuneration payable dated June 12, 2018.

Monitoring of investments in AIF[23]

In order to closely monitor the exposure of insurers to AIFs, IRDAI prescribed the following additional requirements:

1. quarterly declaration of the net asset values of the AIFs;
2. submission of a quarterly return for investments in AIFs in the prescribed format within 15 (fifteen) days from the end of each quarter; and
3. 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[24]

The IRDAI issued the guidelines to ensure: (to whom these Guidelines are being applicable)

1. effective governance of compensation,
2. alignment of remuneration with prudent risk taking,
3. effective supervisory oversight and stakeholder engagement, and
4. safety of interest of the policyholders and other stakeholders.

IRDAI (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

[21] IRDAI Circular, bearing reference no. IRDAI/LIFE/CIR/MISC/99/5/2023 dated May 4, 2023.
[22] IRDAI Circular, bearing reference no. IRDAI/INT/CIR/MISC/129/6/2023, dated June 14, 2023.
[23] IRDAI Circular, bearing reference no. IRDAI/F&I/CIR/INV/139/06/2023, dated June 28, 2023.
[24] IRDAI Circular, bearing reference no. IRDAI/F&A/GDL/MISC/141/6/2023, dated June 30, 2023.

3 (three) months of the issuance of the guidelines. Some of the key provisions are as follows:

1. 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.
2. The non-executive directors are not eligible for any equity-linked benefits.
3. 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.
4. 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.

IRDAI (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:

1. 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.
2. Variable pay is required to be in the form of cash and/ or share linked instruments and subject to malus and claw-back provisions.
3. 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.
4. 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.
5. Issuance of employee stock options ("**ESOPs**") is required to be in accordance with the guidelines.
6. Insurers are restricted from issuing/ granting sweat equity shares to KMPs.
7. The maximum age limit for managing director and chief executive officer or whole-time director is 70 (seventy) years.
8. The tenure of the managing director and chief executive officer or whole-time director is required to be in accordance with the guidelines.
9. 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: (a) the IRDAI (Remuneration of Non-Executive Directors of Private Sector Insurers) Guidelines, 2016, and (b) the IRDAI (Remuneration of Chief Executive Officer/ Whole-time Director/ Managing Director of Insurers) Guidelines, 2016.

Indian Risk Based Capital (Ind-RBC) framework – new newsletter start

The IRDAI released the framework for the Indian insurance industry regarding the development and implementation of the Ind-RBC.[25] The framework acts as a catalyst for insurers in optimizing capital utilization. First Quantitative Impact Study ("**QIS1**") is initiated, which will comprehensively evaluate the potential impact on the capital and overall solvency of the insurers.

Technical guidance was issued[26], applying to all life insurers, general insurers, standalone health insurers, reinsurers, branches of foreign reinsurers and Lloyds India, with the aim of promoting ease of doing business and to provide instructions to the insurance industry in quantifying and assessing the risks in the QIS1. These directions will ensure a streamlined progression and entrust the insurers with the responsibility of submitting the outcomes of the QIS1 within a prescribed timeframe. The insurers will submit the results of QIS1 by November 30, 2023.

Issuance of Bima Vahak Guidelines, 2023

In furtherance of the vision of the IRDAI to achieve insurance for all by 2047, the IRDAI issued the Bima Vahak Guidelines, 2023 ("**BV Guidelines**") in order to (i) establish a women centric dedicated distribution channel which focuses on enhancing insurance inclusion and creating awareness in every village / Gram Panchayat and (ii) identify and develop local resources who appreciate local needs and enjoy trust and confidence of the local population.[27] The BV Guidelines will become effective with launch of Bima Vistaar.[28] 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.

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.[29] 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.[30] Following the Reserve Bank of India's decision to permit insurance facility for TReDS transactions to aid financiers in hedging against default risk, IRDAI modified the TCI Guidelines to allow financiers to obtain trade credit insurance covers in respect of "reverse factoring" transactions on TReDS.

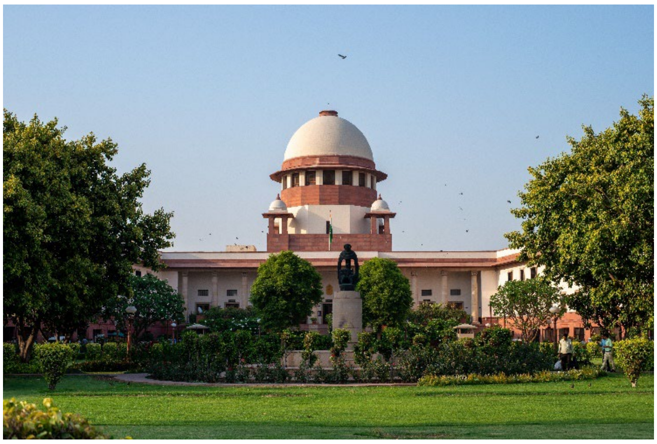
Mandating inbuilt coverage under IMT-29 in a private car policy

Pursuant to the Hon'ble Madras High Court's directions, the IRDAI 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)

[25] Press Release dated August 10, 2023.
[26] Circular dated August 10, 2023.
[27] Circular dated October 9, 2023. IRDAI/LIFE/CIR/GDL/174/10/2023.
[28] Bima Vistaar is a comprehensive insurance product expected to be rolled out in due course.
[29] Circular dated October 9, 2023. IRDAI/NL/CIR/GDL/176/10/2023.
[30] 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.

under IMT-29 of the Indian Motor Tariff 2002.[31] 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.

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 issued the following directions as regards the arbitration clause in general insurance policies[32]:

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 advised[33] that FIUs[34] :

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.

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

[31] Circular dated October 18, 2023. IRDAI/NL/CIR/MOTOR/178/10/2023-24.
[32] Circular dated October 27, 2023. IRDAI/NL/CIR/MISC/188/10/2023.
[33] Circular dated November 9, 2023. IRDAI/I&AT/CIR/MISC/194/11/2023.

[34] 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.

(Insurance Brokers) Regulations, 2018 is discontinued[35]:

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 released an Exposure Draft of the IRDAI (Expenses of Management, including Commission, of Insurers) Regulations, 2023[36] ("**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.[37] Please *click here* to read the JSA Prism of April 12, 2023, for detailed analysis of these regulations proposed to be repealed by Draft EOM Regulations.

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

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

Investments by IIO

The IFSCA notified the IFSCA (Investment by International Financial Service Centre Insurance Office) Regulations, 2022 ("**IFSCA Investment Regulations**") which aims to create a regulatory framework and formulate processes related to investment of assets by an IIO.[38] With the notification of the IFSCA Investment Regulations, the IRDAI (Investment) Regulations, 2016 and Master Circular/Guidelines issued thereunder would cease to apply to an International Financial Services Centre ("**IFSC**").

The IFSCA Investment Regulations apply to:

1. an IIO incorporated in an IFSC, which must undertake investment of assets in accordance with these regulations;
2. an IIO not incorporated in an IFSC, which may either elect to follow norms related to investment of assets as applicable to its parent entity or as specified under these regulations; and
3. An IRDAI registered IIO established as a branch of foreign insurer or Lloyd's India, which may either elect to follow norms related to investment of assets as applicable to its parent entity or as specified under these regulations.

Under the new regulations, among other stipulations: (a) IIOs are required to have a board approved investment policy which provides for situations of breaches, action plans to address breaches, etc., (b) IIOs are restricted from investing more than 5% of its earmarked assets by value in entities owned or controlled by promoters; (c) investments by IIO should only be made in assets rated as 'Investment Grade' under Insurance Capital Standards – Rating Categories

[35] Circular dated November 24, 2023. IRDAI/INT/CIR/IB/206/11/2023.
[36] Exposure draft dated November 14, 2023. Ref. No.: 446.1/8/EoM-PA/F&A - Life/2023-24
[37] 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.
[38] Notification dated January 12, 2023.

by international rating agencies recognized by the International Association of Insurance Supervisors.

IFSCA (Re-insurance) Regulations, 2023 ("Re-insurance Regulations")[39]

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:

1. IIOs are required to develop and document their re-insurance strategy and re-insurance programme for effective underwriting and risk management and to ensure sufficient resources to meet the business obligations.
2. 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.
3. 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.
4. 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.
5. 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 released the following regulations:

1. IFSCA (Assets, Liabilities, and Solvency Margin of General, Health and Re-insurance business) Regulations, 2023.[40]
2. IFSCA (Assets, Liabilities, Solvency Margin and Abstract of Actuarial Report for Life Insurance Business) Regulations, 2023.[41]

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[42]

The IFSCA (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 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:

1. allocation of direct expenses and apportionment of indirect expenses of management under respective insurance segments;

[39] IFSCA Notification, bearing reference no. IFSCA/2022-23/GN/REG036, dated April 11, 2023.
[40] IFSCA Notification, bearing reference no. IFSCA/2022-23/GN/REG038, dated April 19, 2023.
[41] IFSCA Notification, bearing reference no. IFSCA/2022-23/GN/REG039, dated April 19, 2023.
[42] IFSCA Notification, bearing reference no. IFSCA/2022-23/GN/REG035, dated April 26, 2023.

2. payment of commission to insurance agents, intermediaries, and insurance intermediaries; and
3. 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.

Amendments to re-insurance regulations

IRDAI issued the IRDAI (Re-insurance) (Amendment) Regulations, 2023 amending the IRDAI (Re-insurance) Regulations, 2018 ("**Regulations**") to harmonize the provisions of various regulations applicable to Indian insurers and Indian re-insurers, including Foreign Re-insurance Branches ("**FRBs**") and IIOs. This will enhance ease of doing business and encourage more re-insurers to set up business in India. Some of the key amendments are as follows:

1. the Regulations will be reviewed once every 3 (three) years unless a review, repeal or amendment is warranted[43];
2. every Indian re-insurer including FRBs must maintain a minimum retention within India of 50% of Indian re-insurance business underwritten. Any retrocession to an IIO up to 20% of Indian re-insurance business underwritten will be reckoned towards the required minimum retention of 50%[44];
3. every Indian insurer must submit to the IRDAI, within 90 (ninety) days of the commencement of financial year, a certification from the Chief Executive Officer confirming that all treaties associated with the re-insurance programme for the FY have been received in original, duly stamped and signed (or digitally signed), from all parties to the treaty[45].
4. every Indian insurer will file its board approved final re-insurance programme within 45 (forty-five) days (this was earlier 30 (thirty) days) from the commencement of the financial year[46];
5. it is no longer essential to submit soft copies of each re-insurance contract, as these must be maintained by every Indian insurer for the period specified in the relevant extant regulations and must be made available to the IRDAI for inspection[47]; and
6. reinsurance placements with any international pool or risk sharing arrangement having cross border re-insurer(s) as members, participants or administrators will also require prior approval[48].

The revamped landscape for the reinsurance market[49] makes changes to other regulations, such as the minimum capital requirement for FRBs was lowered from INR 100,00,00,000 (Indian Rupees one hundred crores) to INR 50,00,00,000 (Indian Rupees fifty crores), with the provision to repatriate any excess assigned capital.

The regulatory framework for IIOs were aligned with IFSC Authority regulations with the intent to remove dual compliance, thereby promoting a seamless integration of these entities into the larger financial ecosystem.

IFSCA (Investment by IFSC Insurance Office) (Amendment) Regulations, 2023

These regulations have been amended to permit an IIO to invest: (i) its assets in India through the regulatory framework specified by the Reserve Bank of India or Securities and Exchange Board of India; and (ii) 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.[50]

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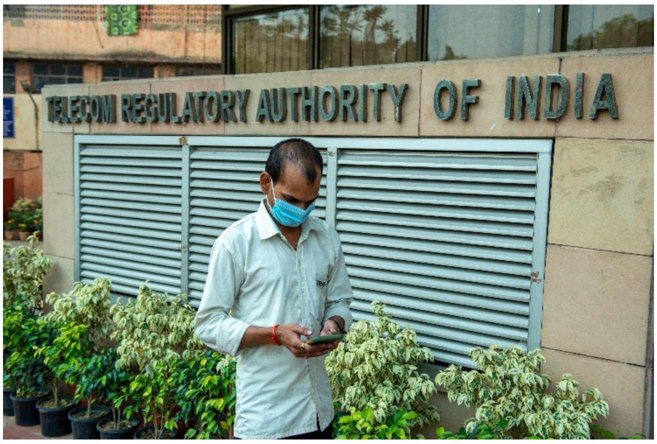
[43] Regulation 1(4) of the IRDAI (Re-insurance) Regulations, 2018.
[44] Regulation 3 (2) (C) of the IRDAI (Re-insurance) Regulations, 2018.
[45] Regulation 3 (3) (A) (e) of the IRDAI (Re-insurance) Regulations, 2018.
[46] Regulation 3 (3) (A) (c) of the IRDAI (Re-insurance) Regulations, 2018.
[47] Regulation 3 (5) of the IRDAI (Re-insurance) Regulations, 2018.
[48] Regulation 4 (2) of the IRDAI (Re-insurance) Regulations, 2018.
[49] Press Release dated August 24, 2023.
[50] Notification dated October 25, 2023. IFSCA/2023-24/GN/REG042.

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

Guidelines for charging income-tax on life insurance policies

Section 10 (10D) of the Income-tax Act, 1961 ("**IT Act**") provides for income-tax exemption on any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, subject to certain exclusions. The Finance Act, 2023 made certain amendments to Section 10(10D) of the IT Act. To streamline and clarify the tax treatment of sums received under life insurance policies, the Ministry of Finance introduced example-based guidelines under Section 10 (10D) of the IT Act.[51] These apply to life insurance policies (other than unit linked insurance policies) issued on or after April 1, 2023.

Directions from Telecom Regulatory Authority of India ("TRAI") for curbing the menace of unsolicited commercial communication



TRAI issued directions[52] which need to be implemented by the principal entities (senders of commercial communication) in coordination with their telemarketers/ service providers, regarding the verification of headers and message templates. Directions have been issued to ensure that only whitelisted URLs/ Apks/ OTT links/ Call back numbers are allowed in the content template. All access providers develop and employ the digital consent acquisition facility for creating a unified platform to register customers consent digitally across all service providers and principal entities.

[51] Circular dated August 16, 2023.

[52] Circular dated September 15, 2023.

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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