April 2024

This newsletter captures the key regulatory developments in the insurance sector between January 2024 – March 2024. The Insurance Regulatory and Development Authority of India ("**IRDAI**") has introduced various measures to promote ease of doing business, and to ensure protection of the interests of the policyholders.

Submission of advance reinsurance programme

To ensure compliance with the provisions of the IRDAI (Re-Insurance) Regulations, 2018, the IRDAI has reiterated that every insurer is required to submit the advance reinsurance programme at least 45 (forty-five) days before the commencement of a financial year. A certificate confirming the information in the programme must be duly signed by the CEO and CFO of the insurer.[1]

Denotification of arbitration clause in risk contracts

Further to the October 27, 2023[2] notification issued by the IRDAI providing directions as regards the arbitration clause in general insurance policies, the IRDAI has clarified that risk contracts such as fire, motor, engineering, workmen's compensation, and other classes of insurance business must be governed by the aforementioned notification.[3]

For a detailed analysis of the notification, refer to our Insurance Newsletter dated January 17, 2024.

Regulations on Expenses of Management ("EoM") consolidated

To promote a favorable business environment and empower Boards of insurance companies in taking operational decisions with sufficient flexibility, the IRDAI has issued the IRDAI (EoM, including Commission of Insurers) Regulations, 2024 ("**EOM Regulations**")[4]. They are applicable to insurers transacting life insurance business, general insurance business or health insurance business in India. The EOM Regulations repeal and consolidate 3 (three) regulations.[5]

[1] Circular dated January 5, 2024. IRDAI/REIN/CIR/RISF/4/1/2024.
[2] Circular dated October 27, 2023. IRDAI/NL/CIR/MISC/188/10/2023.
[3] Notification dated January 22, 2024. F. No. IRDAI/Gen Insurance/Tariff/1/195/2024.
[4] Notification dated January 22, 2024. F. No. IRDAI/Reg/2/196/2024.
[5] The repealed notifications are IRDAI (EoM of Insurers transacting General or Health Insurance Business) Regulations 2023; IRDAI (EoM of Insurers Transacting Life Insurance Business) Regulations 2023; and IRDAI (Payment of Commission) Regulations 2023.

Obligatory cession for the financial year 2024-25

In line with Section 101A of the Insurance Act, 1938 ("**Act**"), insurers are required to reinsure with Indian re-insurers a specified percentage of the sum assured on each policy ("**Mandatory Cessions**"). To facilitate this, IRDAI has released a notification prescribing Mandatory Cessions applicable to Indian re-insurers and other applicable insurers.[6] The Mandatory Cession of the sum insured on each general insurance policy to be reinsured with the Indian re-insurer(s) is set at 4% of insurance attaching during the financial year beginning from April 1, 2024 to March 31, 2025, except for terrorism premium and premium ceded to nuclear pool (which will be NIL).

The percentage of commission on obligatory cession for different classes of business are as follows:

1. minimum 5% for motor TP and oil & energy insurance;
2. minimum 10% for group health insurance;
3. minimum 7.50% for crop insurance;
4. average terms for aviation insurance; and
5. minimum 15% for all other classes of insurance business.

Commission over and above these limits can be as mutually agreed between Indian re-insurer(s) and the ceding insurer. Further, the Indian re-insurer will share the profit commission, on 50:50 basis, with the ceding insurer based on the performance and surplus of the total obligatory portfolio of the ceding insurer.

Investments in Infrastructure Debt Fund ("IDF") - Non-Banking Financial Company ("NBFCs")

To encourage insurers to participate in the financing of the infrastructure sector, the Reserve Bank of India ("**RBI**") has done away with the requirement of case to case approval for an investment in an IDF. Pursuant to this relaxation, insurers are allowed to make investments in IDF-NBFCs, which will be reckoned as infrastructure investments, subject to the following conditions:

1. the IDF-NBFC must be registered with RBI;
2. debt securities must have residual tenure of not less than 5 (five) years;
3. it must have a minimum credit rating of AA or its equivalent by a credit rating agency registered with SEBI to be eligible for approved investments; and
4. exposure norms as per Note 3 of Regulation 9 of IRDAI (Investment) Regulations, 2016 will be applicable.

New regulations on registration, capital structure and transfer of shares of insurers

To promote ease of doing business, IRDAI has issued the IRDAI (Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers) Regulations, 2024[7], ("**RCTA Regulations**"). The RCTA Regulations repeal 7 (seven) regulations[8] and streamlines the process of registration and amalgamation of insurers. Some of the key provisions are as follows:

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[6] Notification dated February 16, 2024. F. No IRDAI/RI/3/197/2024.
[7] Notification dated March 20, 2024. F. No. IRDAI/Reg/6/200/2024.
[8] The repealed regulations are IRDAI (Registration of Indian Insurance Companies) Regulations, 2022; IRDAI (Other Forms of Capital) Regulations, 2022; IRDAI (Manner of Assessment of Compensation to Shareholders or Members on Amalgamation) Regulations, 2021; IRDAI (Issuance of Capital by Indian Insurance Companies transacting other than Life Insurance business) Regulations, 2015; IRDAI (Issuance of Capital by Indian Insurance Companies transacting Life Insurance business) Regulations, 2015; IRDAI (Scheme of

1. **Registration of insurer**: under the RCTA Regulations, an applicant may make a requisition for registration for any one of the following classes of business of insurance: (a) Life insurance business; (b) General insurance business; (c) Health insurance business; and (d) Reinsurance business. On receiving the application, the Competent Authority (Chairperson, or a member determined by the Chairperson) issues the certificate of registration. The certificate of registration becomes invalid if the applicant does not commence insurance business within 12 (twelve) months from the grant of such certificate;
2. **Capital structure**: the amount of minimum paid-up equity capital for each type of business is detailed. It also details the lock-in period for issuers not having their shares listed on any stock exchange recognized in India. Further, the investment limits, lock-in period and other share issuing related requirement are also prescribed under the RCTA Regulations.
3. **Transfer of shares**: the RCTA Regulations detail the manner of obtaining prior approval of IRDAI for certain transfer of shares. An application for transfer of shares is required to be accompanied by a declaration from the proposed shareholder and a certificate from Category-I Merchant Banker registered under SEBI, certifying the fair value per share of the insurer. Any transfer of shares executed beyond the stipulated threshold limits without prior approval of the IRDAI will attract regulatory action; and
4. **Amalgamation and transfer of insurance business**: any transfer or amalgamation of insurance business must be in accordance with a scheme prepared under the Act and approved by the IRDAI in accordance with the RCTA Regulations. The RCTA Regulations lists the factors on which applications can be examined, and the final approval be given by IRDAI.

Effective discharge of actuarial, finance and investment functions of reinsurance business

The IRDAI has issued the IRDAI (Actuarial, Finance and Investment Functions of Insurers) Regulations, 2024.[9] They are applicable to all insurers, including reinsurers. They prescribe management practices for actuarial, finance and investment functions and conditions for loan and advances by insurance companies in India. Pursuant to these regulations, insurers are required to formulate policies for actuarial, finance and investment functions, such as bonus distribution philosophy, asset-liability management, investment and risk management. These regulations repeal 9 (nine) regulations.[10]

Promoting prudent practices in risk management related to outsourcing activities by insurers

To safeguard the interest of policyholders and offer guidelines to insurers while outsourcing certain activities, the IRDAI has issued the IRDAI (Protection of Policyholders' Interests and Allied Matters of Insurers) Regulations, 2024.[11] These regulations consolidate 8 (eight) regulations[12] into a unified structure, focusing on several key objectives that

Amalgamation and Transfer of Life Insurance Business) Regulations, 2013; and IRDAI (Scheme of Amalgamation and Transfer of General Insurance Business) Regulations, 2011.

[9] Notification dated March 20, 2024. F. No. IRDAI/Reg/10/204/2024.

[10] The repealed regulations are IRDAI (Actuarial Report and Abstract for Life Insurance Business) Regulations, 2016; Insurance Regulatory and Development Authority (Distributions of Surplus) Regulations, 2002; IRDAI (Assets, Liabilities and Solvency Margin of Life Insurance Business) Regulations, 2016; IRDAI (Assets, Liabilities and Solvency Margin of General Insurance Business) Regulations, 2016; IRDAI (Appointed Actuary) Regulations, 2022; IRDAI (Investment) Regulations, 2016; IRDAI (Preparation of Financial Statements and Auditors' Report of Insurance Companies) Regulations, 2002; IRDAI (Inspection and Fee for Supply of Copies of Returns) Regulations, 2015; and IRDAI (Loans or Temporary Advances to Full Time Employees of the Insurers) Regulations, 2016.

[11] Notification dated March 20, 2024. F. No. IRDAI/Reg/11/205/2024.

[12] The IRDAI (Manner of Receipt of Premium) Regulations, 2002; IRDAI (Places of Business) Regulations, 2015; IRDAI (Fee for registering cancellation or change of nomination) Regulations 2015; IRDAI (Fee for granting written acknowledgement of receipt of Notice of Assignment or Transfer) Regulations, 2015; IRDAI (Issuance of e-Insurance Policies) Regulations, 2016; IRDAI (Outsourcing of Activities

ensure fair treatment of prospects during solicitation and sale of insurance policies as well as protects the interests of policyholders throughout their engagement with insurers and distribution channels. Some of the broad obligations of the insurers/ distribution channels are as follows:

1. provide the customer information sheet along with the policy document in the specified manner;
2. inform clearly and explicitly to the policyholder about the availability of the free look period;
3. ensure that the prospect or the policyholders are provided with necessary information about various services and widely disseminate information about all the services that may be availed, along with the procedure for availing such services including the turnaround times;
4. have a system, including IT systems, and a procedure for receiving, registering and disposing of grievances in each of its offices;
5. include their registered name along with their trade name or monogram or logo visible prominently while publishing their advertisements. All distribution channels must publish advertisements only as soliciting insurance products offered by insurers and not give any impression in the advertisement, as if the products are offered by them directly. No insurer or distribution channel will publish or cause to publish any misleading advertisement; and
6. have in place appropriate arrangements to ensure that the policyholder's liabilities that arise out of foreign operations are adequately ring-fenced to protect the Indian policyholder.

IRDAI (Insurance Products) Regulations, 2024 ("Product Regulations")

The Product Regulations[13] are issued to facilitate the development of innovative insurance products and offer a swift response to the evolving market demands. They are applicable to insurers who have been granted certificate of registration to transact the business of life insurance or general insurance or health insurance. It encourages the development of products for different segments/strata of the society while protecting the interests of policyholders and maintaining regulatory compliance. It lays down the principles to be followed by an insurer in product design and development cycle of insurance products. These regulations repeal 6 (six) regulations[14].

Framework for insurers, defining the roles and responsibilities of the Board and management

Highlighting the importance of governance in the functioning of an insurance company, IRDAI released the IRDAI (Corporate Governance for Insurers) Regulations, 2024.[15] These regulations prioritise meeting the expectations of all stakeholders, especially policyholders, while ensuring the adoption of prudent governance principles and practices. Some of the key provisions are as follows:

1. the Board must ensure that in case the number of independent directors falls below the minimum specified number, the insurer must promptly intimate the IRDAI;
2. all insurers must ensure an optimum composition of independent directors and non-executive directors, subject to a minimum of 3 (three) independent directors, where insurers having foreign investment will also comply with the Indian Insurance Companies (Foreign Investment) Rules, 2015;

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by Indian Insurers) Regulations, 2017; IRDAI (Protection of Policyholders' Interests) Regulations, 2017 and IRDAI (Insurance Advertisements and Disclosure) Regulations, 2021.These 8 regulations have been repealed.

[13] Notification dated March 20, 2024. F. No. IRDAI/Reg/8/202/2024.

[14] The repealed regulations are IRDAI (Micro Insurance) Regulations, 2015; IRDAI (Minimum Limits for Annuities and other benefits) Regulations, 2015; IRDAI (Acquisition of Surrender and Paid-up values) Regulations, 2015; IRDAI (Health Insurance) Regulations, 2016; IRDAI (Unit Linked Insurance Products) Regulations, 2019; and IRDAI (Non-Linked Insurance Products) Regulations, 2019.

[15] Notification dated March 20, 2024. F. No. IRDAI/Reg/7/201/2024.

3. insurers are required to ensure sound remuneration policy as part of their corporate governance framework and formulate a comprehensive Board approved remuneration policy in accordance with the framework specified by the competent authority for chairperson of the Board, non-executive directors and key management persons;
4. the Board is responsible for formulating the overall strategy and direction to the insurer, as well as overseeing its overall management;
5. the Board is required to constitute the prescribed committees such as Risk Management Committee, Policyholder Protection, Grievance Redressal and Claims Monitoring Committee, Investment Committee, With Profits Committee, and any other committees as prescribed under the Companies Act, 2013;
6. the Board is required to establish a comprehensive Environment, Social and Governance ("**ESG**") framework to facilitate climate risk management, keeping in view their size, nature and complexity of operations;
7. the Chief Compliance Officer ("**CCO**") will be responsible for monitoring continuing compliance and for submitting returns, reports as well as applications for approvals to the IRDAI. Insurers are required to make disclosures relating to, amongst others, the composition of its Board, meetings of Board and its committees, details of attendance of meetings by directors and members of Committees, details of remuneration paid to all directors; and
8. insurers are required to appoint a managing director/ chief executive officer and CCO. The regulations also describe the duties and responsibilities of their functions.

IRDAI (Rural, Social Sector and Motor Third Party Obligations) Regulations, 2024

To ensure easy accessibility of insurance products to all, the IRDAI has issued the IRDAI (Rural, Social Sector and Motor Third Party Obligations) Regulations, 2024.[16] These regulations stipulate a minimum requirement of rural and social sector insurances, such as life insurance, general insurance, health insurance and motor insurance, that insurers must underwrite. The scope of social sector has been extended to cover cardholders and beneficiaries under various schemes.

Framework for establishment, governance and functioning of the Bima Sugam - Insurance Electronic Marketplace

IRDAI has issued the IRDAI (Bima Sugam - Insurance Electronic Marketplace) Regulations, 2024[17] to enable the functioning of the 'Bima Sugam - Insurance Electronic Marketplace' and the company formed for this purpose. These regulations offer a one stop shop for insurance consumers, insurers, intermediaries/ insurance intermediaries and agents. "Bima Sugam - Insurance Electronic Marketplace," is a resilient Digital Public Infrastructure built on open standards and interoperable platforms. Its primary objective is to facilitate seamless integration with various services, including but not limited to the purchase, sale, and servicing of insurance policies, settlement of insurance claims, grievance redressal, and other related matters, as permitted by the IRDAI. The regulations provide the regulatory framework for establishment, governance and functioning of the marketplace.

Frequently Asked Questions ("FAQs") on International Financial Services Centres Insurance Intermediary Offices ("IIIOs")

FAQs on IIIOs are updated as on January 10, 2024. *Read more*

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[16] Notification dated March 20, 2024. F. No. IRDAI/Reg/4/198/2024.
[17] Notification dated March 20, 2024. F. No. IRDAI/Reg/5/199/2024.

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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