

Co-insurance Agreement Is Brought Up to Date

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The Indian General Insurance Council (GIC) was set up to represent the collective interests of general insurers operating in India. The GIC's activities are overseen by an executive committee that comprises the chief executives of all Indian general insurers and members of the Insurance Regulatory Development Authority (IRDA), the market regulator.

One of the issues that the GIC has considered is the mechanics of co-insurance arrangements in the Indian market. The GIC formulated a Co-insurance Agreement in February 2002 with a view to regulating the transaction of co-insurance business in general and specifically with regard to:

- the placement of risks;
- the collection and distribution of premium;
- the administration of claims; and
- the apportionment of liability.

This agreement applied to the 10 licensed general insurers in existence at the time.

Since 2002 the IRDA has granted eight additional licences to new entrants to the non-life insurance market. The 2002 Co-insurance Agreement was consequently revised to incorporate these new entrants and to bring the arrangements up to date.

The main features of the 2008 Co-insurance Agreement as they apply to all 18 of the general insurers that have signed it are as follows:

- Business is to be placed with the lead insurer. When placing the business, the insured must specify in writing what percentages of the risk are to be carried by the lead insurer and other co-insurers.
- The lead insurer is responsible for sending a copy of the insured's allocation to the co-insurers along with the policy documentation.
- The risk allocation between insurers cannot be changed during the policy term without the written agreement of the insured and all insurers.
- The lead insurer is responsible for negotiating the premium, collecting the premium and accounting for any tax payable in respect of the premium or commission payable. Co-insurers' net share of the premium is to be sent to them within 21 days of receipt, less their share of a 1% policy administration charge that the lead insurer is entitled to deduct. Where more than one intermediary is involved in the placement, the lead insurer must remit co-insurers' shares on a gross basis.
- The lead insurer is responsible for handling claims, including their investigation, settlement and payment. Claims expenses and payments are in the first instance to be paid by the lead insurer and

then recovered from co-insurers according to their shares. However, where the claim payment is likely to exceed \$225,000, the lead insurer may make a cash call.

- In the absence of a specific agreement to the contrary, there is no requirement for the lead insurer to notify co-insurers of claims, except 'large claims'. This is not defined, but it appears from other references that claims in excess of \$225,000 may fall into this category. Where a large claim is notified, the lead insurer is to notify co-insurers immediately and advise them of progress and likely reserves as these become known.
- In all cases the lead insurer must handle the claim strictly in compliance with the policy terms and conditions. In particular, the lead insurer may not agree any *ex-gratia* settlement without the prior written consent of all co-insurers.
- The lead insurer is to decide on subrogation and, if pursued, must in the first instance bear the costs that result. If a recovery is effected, those costs will be deducted from the amount recovered. Co-insurers must contribute in their shares to any shortfall or in circumstances where the recovery has been unsuccessful.
- If the lead insurer rejects a claim, it must take all necessary steps to defend any challenge by the insured. The lead insurer first bears the defence costs and then recovers these from co-insurers.
- Finally, all subscribing insurers are expected to follow the Co-insurance Agreement in letter and spirit. Any dispute or difference between insurers is to be resolved by a three-member committee of the GIC. The majority verdict of the committee is final and binding.

For further information on this topic please contact Neeraj Tuli at Tuli & Co by telephone

+91 11 2464 0906, fax +91 2464 0904 or email n.tuli@tuli.biz

www.tuli.biz

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