

# Insurance regulatory round-up: 2017

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## Introduction

There were a number of interesting developments in the Indian insurance industry in 2017, including:

- a rapid increase in the number of insurers;
- significant transactions in existing players;
- new forms of online commerce;
- the addition of new categories of insurance intermediary;
- diversity in the products on offer; and
- evolving business processes.

From a regulatory perspective, 2017 also saw a continued overhaul of the existing insurance regulatory framework, with a slew of new regulations being introduced and existing guidance being amended and updated.

This update provides an overview of some of the key regulatory changes introduced in 2017.

## E-commerce Guidelines

The Insurance Regulatory and Development Authority (IRDAI) issued the Guidelines on Insurance E-commerce (the E-commerce Guidelines) on March 9 2017, regulating the establishment of insurance self-network platforms (ISNPs) by insurers and insurance intermediaries (other than insurance agents) to sell and service insurance policies.

The E-commerce Guidelines set out the manner and procedures for granting permission to establish an ISNP in order to undertake insurance e-commerce activities in India. The salient features of the E-commerce Guidelines are as follows:

- 'ISNP' is defined as an electronic platform (website or mobile app) used for the sale or servicing of insurance policies. The procedure for granting permission to establish an ISNP is stipulated in the guidelines. Such permission is to be co-terminus with the expiry of the certificate of registration in the case of insurance intermediaries and indefinite (until revoked) in the case of insurers.
- ISNPs must be registered, and only permitted entities will be allowed to sell insurance products online. Existing insurers and insurance intermediaries that have already set up their own ISNPs or insurance portals for selling and servicing insurance products are permitted to continue operating their platforms or portals, provided that they comply with the

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requirements under the E-commerce Guidelines within three months and obtain necessary permissions from the IRDAI.

- All products must be sold in electronic form, in accordance with the IRDAI (Issuance of E-insurance Policies) Regulations 2016, as amended.
- The E-commerce Guidelines recognise the payment of premiums through e-wallets; however, cashbacks, promotional incentives and discounts (to the extent not permitted by the IRDAI) are expressly prohibited in the code of conduct.
- ISNPs are prohibited from accepting "redirected internet traffic/references from other than market participants".
- Market participants must ensure that Section 64VB(1) of the Insurance Act 1938 is met at all times.
- Only the fees, charges or payments – by whatever name called – allowed under the IRDAI (Payment of Commission, Remuneration or Reward to Insurance Agent or Insurance Intermediaries) Regulations of December 14 2016 can be paid or shared between market participants in order to use an ISNP.
- Further, an annual review of the controls, systems and procedures in place is prescribed in order to review the operations of registered ISNPs, and any material adverse findings must be reported to the IRDAI.

With increased market awareness and rising availability and access to online forms of commerce, the IRDAI has stated that the E-commerce Guidelines have been issued as part of its developmental mandate and to promote e-commerce in the insurance space.

### **Cybersecurity Guidelines**

On October 13 2016 the IRDAI issued a circular to all insurers regarding the formulation of a comprehensive information and cybersecurity framework. After considering the response from various stakeholders and expert committee sub-groups, the IRDAI issued the Guidelines on Information and Cybersecurity for Insurers (the Cybersecurity Guidelines) on April 7 2017.

The requirements regarding maintenance of records under the IRDAI (Maintenance of Insurance Records) Regulations 2015 was limited in scope to maintenance of policy data and claims data. However, the Cybersecurity Guidelines are wider in scope and apply to all data created, received or maintained by insurers – regardless of its location or form – in the course of carrying out their designated duties and functions.

In accordance with the Cybersecurity Guidelines, all insurers must, among other things:

- formulate a cybersecurity policy;
- appoint a chief information security officer (CISO); and
- constitute an information security committee.

Insurers that have been in business for less than three years are exempted from designating a fulltime CISO, whose responsibility may be assumed by another officer who reports to the board.

The Cybersecurity Guidelines stipulate that if policyholder information is shared with intermediaries and other regulated entities, insurers must ensure that adequate mechanisms are in place to prevent leakage of personal and confidential policyholder information and that information is shared only on a need-to-know basis.

Norms for data confidentiality, integrity and availability have also been introduced, along with contractual requirements which must be put in place before engaging with third parties (including reinsurers).

The Cybersecurity Guidelines also prescribe norms to secure information that is processed, transmitted and stored in the cloud. A business justification for considering the hosting of data and systems on the cloud is required, and such data must be classified as highly confidential, confidential, public or internal. Electronic maintenance records of core business data must be hosted in India.

Insurers must also ensure that an independent assurance audit takes place annually with respect to its information and cybersecurity policies. A copy of the executive summary of the audit report, along with an actions-taken note, must be submitted to the IRDAI within 30 days of completion of the audit.

Further, by way of an October 12 2017 clarificatory circular on the Cybersecurity Guidelines, the IRDAI subsequently included reinsurers (including foreign reinsurers' branches) within the ambit of the guidelines.

The Cybersecurity Guidelines place a strong emphasis on protecting and securing policyholders' personal data, as well as the critical systems of insurance sector participants, from the harm associated with exposure of insurance data.

### **Web Aggregators Regulations**

The erstwhile 2013 regulations were overhauled by way of the IRDAI (Insurance Web Aggregators) Regulations (Web Aggregator Regulations), issued on April 25 2017. The highlights of the Web Aggregator Regulations are as follows:

- Web aggregators must now have a minimum capital of Rs2.5 million (previously Rs1 million).
- The new regulations expressly stipulate that the sale of insurance products online must be done in accordance with the E-commerce Guidelines.
- The provision stipulating payment of a fixed flat fee for the display of insurance products on the web aggregator's designated website must be subject to an overall ceiling, as specified under the rewards portion of the IRDAI (Payment of Commission, Remuneration or Reward to Insurance Agent or Insurance Intermediaries) Regulations.
- Web aggregators can now undertake outsourcing activities only through telemarketing and distance marketing.
- The Web Aggregator Regulations now allow unit linked insurance plans to be sold on the web aggregator's platform.
- With regard to commission, a new provision has been included which stipulates that the web aggregator will not be denied remuneration on the grounds that insurance policies being sourced through it are direct online sales of insurance policies by the insurers (except in the case of zero commission products).
- Web aggregators must comply with the revised provisions relating to paid-up equity capital and net-worth requirements stipulated within one year of the date of issuance of the regulations and with other requirements within six months.
- It is now clarified that renewal commission is payable on annual insurance policies such as motor insurance, health insurance and other similar policies, provided that the insurance policies are renewed without any break.

While the Web Aggregator Regulations do not drastically change the regulatory framework, and mainly aim to address some of the ambiguities that existed in the erstwhile framework, industry experts are largely hopeful that they will bring about greater participation of web aggregators in the overall sale of insurance products in India.

### **Outsourcing Regulations**

The IRDAI (Outsourcing of Activities by Indian Insurers) Regulations (Outsourcing Regulations), notified on May 5 2017, supersede the earlier Guidelines on Outsourcing of Activities by Insurance Companies of February 1 2011. They seek to ensure that insurers follow prudent risk-management practices with regard to outsourcing in order to prevent systemic issues and protect the interests of policyholders.

The key highlights include the following:

- The definition of 'outsourcing' remains largely the same, but now specifically excludes "Legal services, Banking Services, Courier services, medical examination, forensic analysis" and other services which are generally not expected to be carried out internally by insurers.
- Insurers must now have an outsourcing policy and constitute an outsourcing committee

formed of key management persons, to perform the functions stipulated under Regulation 8 of the Outsourcing Regulations.

- The IRDAI has defined core activities that are prohibited from being outsourced, while the list of non-core activities has been removed.
- In cases where an insurer outsources its activities to service providers outside India, all original policyholder records must continue to be maintained in India.
- All outsourcing arrangements assessed as 'material' based on the detailed parameters are subject to due diligence in accordance with Regulation 10 of the Outsourcing Regulations.
- Where an insurer outsources any activity to a related party or group entity, the Outsourcing Regulations require the insurer to:
  - conduct complete due diligence;
  - ensure that the pricing for such outsourcing arrangements is consistent with accepted arm's-length principles; and
  - report consideration amounts and payments made to the IRDAI.
- If any of the outsourcing service providers become a related party or a group entity of either the insurer or insurance intermediaries, the insurer must report this fact to the IRDAI within 30 days.

As the Outsourcing Regulations apply to outsourcing arrangements entered into by an insurer and outsourcing service providers located both within and outside India, these modifications will undoubtedly lead to a review of existing outsourcing arrangements and insurers' reporting methodology.

### **Compulsory linkage of Aadhaar and PAN/Form 60**

The year also saw the government mandate the linkage of Aadhaar (a 12-digit random number issued by the Unique Identification Authority of India) and permanent account numbers (PAN) or Form 60 in order to obtain financial services, including insurance per the Notification on Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, published in the *Gazette* on June 1 2017.

By way of its November 8 2017 circular, the IRDAI clarified that Aadhaar and PAN or a Form 60 are mandatory for all life, general and standalone health insurers – this includes the linkage of Aadhaar numbers to already existing policies.

On December 18 2017 the deadline for submitting the requisite information was extended to March 31 2018 (or six months from the date of commencement of an account-based relationship), following notification of the PML (Maintenance of Record) (Seventh Amendment) Rules 2017.

### **Policyholder Regulations**

The IRDAI (Protection of Policyholders' Interests) Regulations 2017 (Policyholder Regulations), notified in the *e-Gazette* issued on June 30 2017, revised the regulatory framework for protecting and addressing the concerns of the policyholders. The Policyholder Regulations seek to:

- ensure that the interests of policyholders are protected;
- ensure that insurers, along with distributions channels, surveyors and other regulated entities, are fulfilling their obligations towards policyholders; and
- provide a policyholder-centric governance with an emphasis on grievance redressal.

The Policyholder Regulations provide for certain general principles to be followed by insurers:

- Insurers must cooperate with all distribution channels set out under the provisions and maintain absolute confidentiality as to client data.
- The liability for breach of obligations under the Policyholder Regulations can now be imposed on the distribution channels or surveyors as well.

The Policyholder Regulations revise the definition of 'prospectus' to mean a document issued by the insurer to "sell or promote the insurance products" in a physical format, electronic format or any other format.

Further, matters now expressly required to be stated in a life insurance policy include:

- the date of commencement of risk;
- the date on which the survival benefit is payable;
- the policy conditions for conversion of the policy into a paid-up policy; and
- any foreclosure, non-forfeiture and discontinuance provisions in the case of linked policies.

The Policyholder Regulations also impose timelines for settling life insurance claims, with applicable interest in the case of delay. Death claims must be settled within 30 days of receipt of all relevant papers and required clarifications. Where investigation is warranted, the same must be completed within 90 days and the claim must be settled 30 days thereafter. In respect of maturity, survival benefit claims and annuities, the claims must be settled on or before the due date. Further, amounts due for free look cancellation, surrender, withdrawal, requests for refund of proposal deposit or refund of outstanding proposal deposit, if any, must be paid within 15 days of receipt of the request or the last necessary document. Failure to adhere to the timelines provided will result in an interest rate 2% above the bank rate, which will apply from the payment due date or receipt of last necessary document.

Finally, insurers must strictly follow the grievance redressal procedure as prescribed in the Annexure I of the Policyholder Regulations; however, the turnaround periods as stipulated in the erstwhile circular have now been omitted. Complaints must be responded to within 30 days, as per Rule 14(3) of the Ombudsman Rules 2017.

### **MISP Guidelines**

On August 31 2017 the IRDAI notified the Guidelines on Motor Insurance Service Provider (MISP Guidelines) based on the report submitted by the committee on motor dealer pay-outs on motor insurance business. The guidelines are aimed at identifying and regulating the role of automobile dealers in distributing and servicing motor insurance products.

Automobile dealers distributing motor insurance were required to become MISPs from November 1 2017 in order to be eligible to sell insurance to customers. 'MISP' has been defined to mean an automobile dealer appointed by an insurer or an insurance intermediary to distribute or service motor insurance policies of automobiles sold through such automobile dealer. Accordingly, automotive dealers having an insurance intermediary licence could not distribute or service motor insurance policies until they surrendered the existing insurance intermediary licence.

Insurers and insurance intermediaries that seek to enter into an arrangement with an MISP must enter into a written agreement with the MISP. Further, the insurer or insurance intermediary engaging with the MISP must upload the MISP's relevant data on the Insurance Information Bureau portal, including details of the persons designated to engage with the MISP.

The MISP Guidelines also prescribe the maximum distribution fees that can be paid to the MISP for soliciting insurance business by the insurer or insurance intermediary engaging the MISP. No other form of payment – by whatever name called – can be received by such MISP either directly or indirectly.

As per the MISP Guidelines, liability for any MISP activities will lie jointly with the MISP and the insurer or insurance intermediary. The insurer or insurance intermediary must conduct an annual review of controls, systems, procedures and safeguards put in place by the MISP, which are to be placed before the board or sub-committee for observations. Further, the insurer, insurance intermediary and MISP must establish a system for grievance redressal for policyholders in line with the Policyholder Regulations.

The MISP Guidelines' recognition of the already existing practices of solicitation and servicing of insurance by dealerships serves to legitimise the distribution of insurance through these automobile dealerships and bring them within regulatory supervision.

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