



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
India: Insurance & Reinsurance

This country-specific Q&A gives a pragmatic overview of the law and practice of insurance & reinsurance law in the India.

It addresses topics such as **contract regulation, licensing, penalties, policyholder protection, alternative dispute resolution** as well as personal insight and opinion as to the future of the insurance market over the next five years.

This Q&A is part of the global guide to Insurance & Reinsurance. For a full list of jurisdictional Insurance & Reinsurance Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/insurance-reinsurance>



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1. **How is the writing of insurance contracts regulated in the jurisdiction?**

All insurance contracts are required to be filed with the Insurance Development and Regulatory Authority of India (IRDAI), ie, the Indian Insurance Regulator, in accordance with the applicable product filing guidelines issued by the IRDAI.

Insurers are permitted to market group health insurance products and commercial general insurance products without the prior approval of the IRDAI, subject to compliance with applicable laws. However, life insurance products, retail general insurance products and individual health insurance products can only be offered if the

terms and conditions of these products have been approved by the IRDAI.


Further, there are extraneous rules that impact policy terms. For example, the Insurance Act 1938 gives the policyholder a right to override contrary policy terms in favour of Indian law and jurisdiction, and Indian policyholders cannot be stopped from approaching the Consumer Courts.

2. Are types of insurers regulated differently (i.e. life companies, reinsurers)?

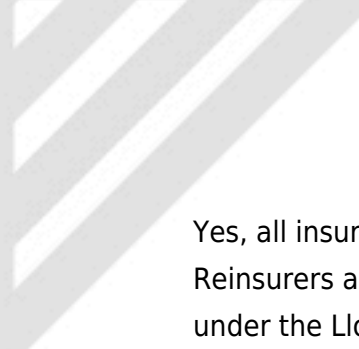
Yes, the IRDAI issues specific regulations/guidelines/circulars which govern the establishment, licensing and functioning of life insurers, general insurers, health insurers, Indian reinsurers and foreign reinsurers, including branch offices of foreign reinsurers set up in India under the IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations 2015 (Branch Offices of Foreign Reinsurers) and syndicates of reinsurers operating through service companies set up in India under the IRDAI (Lloyd's India) Regulations 2016 (Syndicates of Lloyd's India).

3. Are insurance brokers and other types of market intermediary subject to regulation?

Yes, all insurance intermediaries (including insurance brokers) are subject to the regulations issued by the IRDAI. Insurance intermediaries are required to be licensed/registered in accordance with the applicable regulations for that form of intermediary and are required to comply with, inter alia, the specific code of conduct prescribed by the IRDAI. Only licensed/registered insurance intermediaries are permitted to distribute insurance products for Indian insurers.



Is authorisation or a licence required and if so, how long does it take on average to obtain such permission?



Yes, all insurers, insurance intermediaries, Indian reinsurers, Branch Offices of Foreign Reinsurers and syndicates of reinsurers operating through service companies set up under the Lloyd's India branch, are required to be registered in accordance with the applicable regulations issued by the IRDAI.

Broadly, for most of these entities the registration process is divided into stages. The timelines for obtaining registration are not expressly specified under the applicable regulations and therefore, vary on a case to case basis and depending on the form of entity being registered.

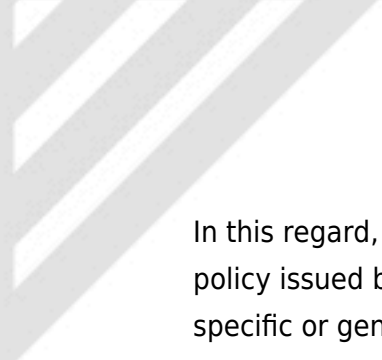
5. Are there restrictions over who owns or controls insurers (including restrictions on foreign ownership)?

Any direct or indirect foreign investment in an insurer or insurance intermediary is restricted to 49% of paid up equity capital. Further, under Indian law, all insurers and insurance intermediaries are required to be Indian-owned and controlled at all times. 'Indian control' is defined to mean control by resident Indian citizens or Indian companies, which are owned and controlled by resident Indian citizens. The term 'Indian ownership' has been defined to mean more than 50% of the equity capital beneficially owned by resident Indian citizens or Indian companies, which are owned and controlled by resident Indian citizens.

6. Is it possible to insure risks without a licence or authorisation? (i.e. on a non-admitted basis)?

Non-admitted insurers are not permitted to directly insure property situated in India or any ship or other vessel or aircraft registered in India.

However, a person resident in India is permitted to take or continue to hold a health insurance policy issued by an insurer outside India provided the aggregate remittance does not exceed the limits prescribed by the Reserve Bank of India (RBI).



In this regard, a person resident in India may take or continue to hold a life insurance policy issued by an insurer outside India, provided that the policy is held under a specific or general permission of the RBI. Similarly, a person resident in India may take or continue to hold a general insurance policy issued by an insurer outside India, provided that the policy is held under a specific or general permission of the Central Government.

Non-admitted insurers who are listed with IRDAI as Cross Border Reinsurers can reinsure risks in India in accordance with the IRDAI's regulations on the reinsurance of life and general insurance business and subject to compliance with the order of preference for cessions. Further, the IRDAI has recently issued "Draft Insurance Regulatory Authority of India (Reinsurance) Regulations 2018" (Reinsurance Exposure Draft) that will apply to both life insurers and general insurers and proposes to revise the norms to be followed for reinsurance placements, and also proposes a revised order of preference of cessions for reinsurance placements by Indian insurers.

In addition to the above, foreign reinsurers are now allowed to access the Indian market and are permitted to set up branch offices in India or operate through service companies set up in India under the IRDAI (Lloyd's India) Regulations 2016 (Lloyd's India).

7. What penalty is available for those who operate without appropriate permission?

A person carrying out direct insurance business in India without valid registration is liable to a penalty of up to INR 25 crores (c. US\$ 3,852,500) and imprisonment for a term up to ten years.

A person acting as an insurance intermediary (including an insurance broker) without being registered is liable to a penalty of up to INR 10 lakh (c. US\$ 15,410). In addition, the appointment of an unlicensed person to act as an insurance intermediary is punishable with a penalty of up to INR 1 crore (c. US\$ 154,100).

8. How rigorous is the supervisory and enforcement environment?

The insurance regulatory regime is highly regulated in India. The IRDAI has suo motu powers for undertaking inspection, conducting enquiries and investigations (including audit) of insurers, reinsurers, insurance intermediaries and other organizations who provide services within the insurance market.

Further, by way of the Insurance Laws (Amendment) Act 2015, the maximum penalty for non-compliance of the applicable regulations or directions issued by the IRDAI has been significantly increased from INR 5 lakh (c. US\$ 7,705) to INR 1 crore (c. US\$ 154,100).

9. How is the solvency of insurers (and reinsurers where relevant) supervised?

The solvency of insurers, Indian reinsurers, Branch Offices of Foreign Reinsurers and syndicates of reinsurers operating through service companies set up under the Lloyd's India branch is required to be calculated in accordance with the applicable regulations issued by the IRDAI. The respective entities are required to file a periodical statement of solvency with the IRDAI in accordance with the format prescribed under the applicable regulations.

10. What are the minimum capital requirements?

An insurer/Indian reinsurer is required to have a minimum paid up equity share capital of INR 100 crores (c. US\$ 15,410,000).

A foreign reinsurer seeking to set up a branch office in India is required to have a minimum net owned fund of INR 5,000 crores (c. US\$ 770,500,000) and is further required to infuse a minimum assigned capital of INR 100 crores (c. US\$ 15,410,000) into the branch office.

Syndicates of Lloyd's India are required to maintain a minimum assigned capital of INR

5 crores (c. US\$ 770,500) through their service companies set up in India.

The minimum capital requirement for brokers is in the following terms:

- Direct brokers - INR 75 lakh (c.US\$ 115, 575);
- Reinsurance brokers - INR 4 crore (c.US\$ 616,400);
- Composite brokers - INR 5 crore (c.US\$ 770500).

11. **Is there a policyholder protection scheme?**

The IRDAI has recently issued the IRDAI (Protection of Policyholders' Interests) Regulations 2017 (Policyholders' Regulations) which superseded the IRDAI (Protection of Policyholders' interest) Regulations 2002 and are the primary regulations on the protection of policyholders in India.

The Policyholders' Regulations prescribe the practices that are required to be undertaken by the insurers, insurance intermediaries or any other distribution channel at the point of sale of the insurance policy to ensure that the policyholder understands the terms of the policy properly.

In addition to the above, the Policyholders' Regulations prescribe the claims procedure that is required to be followed by the insurers to ensure expeditious processing of claims. Insurers are required to pay interest at the rate of 2% above the prevalent bank rate, in cases where there is delayed payment of the claim amount or any other amount due under the policy.

Insurers are also required to put in place proper grievance redressal procedures and mechanisms in accordance with the applicable provisions for the resolution of grievances of the policyholders.

12. **How are groups supervised, if at all?**

To avoid conflict of interest, ordinarily, two entities of the same group are not permitted to undertake the same line of insurance business. Furthermore, usually only one entity in a group will be granted a license/certificate of registration to act as an insurance intermediary.

The IRDAI does not currently regulate the group entities of insurers or insurance intermediaries. However there are some restrictions, where the IRDAI has discretion (in some cases) to determine the scope of a group:

- An Indian corporate group can have an insurer and an insurance broker in the same group, subject to certain conditions being fulfilled.
- Insurance brokers and corporate agents are not permitted in the same group.
- Web aggregators and telemarketers cannot be related parties (under Accounting Standard 18 and/or the Companies Act 2013) of an insurer.
- On his or her appointment, surveyors are required to inform interested parties regarding any conflict of interest that may prejudicially affect the interested parties.
- There is no express restriction on insurers and third party administrators (TPAs) operating in the same group.
- Insurers and insurance agents/insurance intermediaries are not permitted to have directors in common.
- Per the IRDAI (Outsourcing of Activities by Indian Insurers) Regulations 2017, group entities of insurers or insurance intermediaries registered with the IRDAI shall ordinarily not be engaged for outsourcing any of the activities of an insurer.

13. **Do senior managers have to meet fit and proper requirements and/or be approved?**

All directors and key managerial personnel of insurers and insurance intermediaries are required to be compliant with the fit and proper criteria stipulated by the IRDAI under the respective regulations.

14. **Are there restrictions on outsourcing parts of the business?**

The outsourcing of business by Indian insurers/reinsurers, Branch Offices of Foreign Reinsurers and service companies set up under Lloyd's India, is subject to the restrictions prescribed under the applicable law. IRDAI recently issued the IRDAI (Outsourcing of activities by Indian Insurers) Regulations 2017 to revise the existing guidelines and prescribe revised norms applicable to insurers vis-à-vis arrangements with third party service providers regarding such activities which an insurer is required to ordinarily perform itself. These regulations also expressly set out the list of core activities that an insurer is prohibited from outsourcing to third party service providers.

The IRDAI also recently issued the IRDAI (Insurance Brokers) Regulations 2018 (Brokers Regulations) to replace the IRDA (Insurance Brokers) Regulations 2013. The new regulations set out express norms with respect to the outsourcing of activities by insurance brokers in India. Insurance brokers are now expressly prohibited from outsourcing their functions listed in the Brokers Regulations to third party service providers. In addition, insurance brokers are also prohibited from outsourcing risk management and claims consultancy services, unless the insurance broker does not undertake this activity at all.

15. **How are sales of insurance supervised or controlled?**

Insurers are permitted to place insurance business either through their sales executives or through licensed insurance intermediaries. Insurers are prohibited from engaging unlicensed persons for soliciting and procuring insurance business or providing introductions or leads to insurers.

Payment of commission/remuneration to insurance intermediaries is required to be in accordance with the limits prescribed by the IRDAI. Insurers are also expressly permitted to pay "rewards" to insurance intermediaries in accordance with the limits prescribed under the applicable regulations.

16. Are consumer policies subject to restrictions? If so, briefly describe the range of protections offered to consumer policyholders.

Insurance policies are structured to incorporate comprehensive mechanisms for customer protections that they are required to include by law. Insurance policies typically include details of the Insurance Ombudsman, who are appointed to address complaints by the insured against the insurer, in relation to the settlement of claims.

The IRDAI requires insurers to formulate a grievance redressal policy and file it with the IRDAI. Insurer is required to provide the details of the grievance redressal mechanism within the policy. Policyholders who have complaints against insurers are first required to approach the grievance or customer complaints Department of the insurer.

Insurers are required to necessarily form part of the Integrated Grievance Management System (IGMS) put in place by the IRDAI to facilitate the registering/ tracking of complaint on-line by the policyholders.

In cases of delay or no response relating to policies and claims, the IRDAI can take up matters with the insurers to ensure speedy resolution. Only policyholders, claimants or the insured can approach the IRDAI for assistance and advocates, agents and other third parties are not allowed to approach the IRDAI.

IRDAI Regulations provide, amongst other obligations, that insurers follow certain practices at the point of sale of the insurance policy to ensure that the insured can understand the terms of the policy properly.

In addition to the above, as a consumer, while there are no exclusive procedures or judicial venues for resolution of insurance or reinsurance disputes, insurance policies are contracts of indemnity and parties can approach a civil court (or arbitration) to claim for a breach of contract in accordance with the appropriate territorial jurisdiction.

The Consumer Protection Act, 1986 lists insurance as a service. As an alternate remedy, the insured can opt for a summary procedure and approach the consumer

courts, which are empowered to provide compensation for any deficiency of service by the insurer in servicing a claim.

17. **Are the courts adept at handling complex commercial claims?**

Indian litigation is slow and time consuming. This is attributed to the number of reported pending cases in courts across in India, which is presently close to 31 million. In fact, the Supreme Court and Parliament have begun the process of clearing this huge backlog. The Supreme Court has issued directions to all courts across India to conclude trials within 5 years as a starting point.

In addition, the Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts Act 2015 ('Commercial Courts Act'), has been introduced which carves out special benches in all existing civil courts which will adjudicate commercial matters exclusively. There are fixed schedules that all commercial civil disputes need to follow and the legislation is meant to speed up the adjudication process. The Commercial Courts have jurisdiction over disputes having a value of circa US\$153,400. There is a proposal to reduce this figure to circa US\$4,600. Commercial Courts hear complex matters including insurance and reinsurance disputes on a routine basis.

The government has, in recent times, proposed an amendment to the Commercial Courts Act which provides for constitution of commercial courts at the District level and Commercial Appellate Division at the District level to hear appeals from disputes decided by commercial courts below the District level. This mechanism is proposed to ensure that complex commercial claims of a low pecuniary value can be heard and expeditiously decided at the District level itself.

The Civil Courts have a three-tier hierarchy. The hierarchy structure of the Courts is usually as follows (in ascending order): District, State, and National which comprises circa 600 District Courts, 24 High Courts and the Supreme Court of India (the highest court in India). Among the 24 High Courts, four are termed charter High Courts (i.e. Delhi, Bombay, Madras and Calcutta High Court) which have original jurisdiction to accept and hear matters which fall above certain pecuniary thresholds, exempting the District Courts from hearing these matters due to higher pecuniary limits. The rest of

the District Courts have unlimited pecuniary jurisdiction, so do the competent courts of first instance to hear any insurance dispute falling under the territorial jurisdiction.

18. **Is alternative dispute resolution well established in the jurisdiction?**

The Indian jurisdiction recognises arbitration, mediation and conciliation as means of alternative dispute resolution. Arbitration clauses are enforceable and most courts will enforce the arbitration clause or agreement unless the existence of the arbitration clause or agreement is in itself disputed. The Supreme Court of India has also carved out 7 categories of dispute which are considered non-arbitrable. In addition, disputes involving serious allegations of fraud are also considered to be non-arbitrable. The Indian Arbitration and Conciliation Act 1996 (ACA) is based on the UNCITRAL model law. The ACA preserves party autonomy in relation to most aspects of arbitration, such as the freedom to agree upon the qualification, nationality, number of arbitrators, the place of arbitration and the procedure to be followed by the Tribunal. The principle of party autonomy has been consistently confirmed by the Supreme Court in various decisions, including the Constitutional Bench decision in *Bharat Aluminium Co v Kaiser* (2012).

An arbitration agreement, as per the ACA, needs to be in writing and should be signed by the parties to reflect the intention of the parties to submit their dispute(s) to arbitration. There is no prescribed form required for the purpose of an arbitration agreement.. An arbitration agreement can also come into existence if it is contained in a subsequent exchange of letters, telex, telegrams or other means of telecommunication, including communication through electronic means which provide a record of the agreement. An arbitration agreement can also be incorporated by reference. The ACA contemplates arbitration not only between parties who are signatories to the arbitration agreement, but also those 'claiming through or under' the signatories to the arbitration agreement.

Furthermore, in relation to domestic arbitration, the ACA bars intervention by the courts except for some specific instances where the courts are allowed to intervene – for example, for interim relief, reference to arbitration when an action has been

instituted before the court, for the appointment of arbitrators, where parties have failed to nominate arbitrators within the stipulated time frame and providing assistance in recording of evidence before the arbitral tribunal.

As far as foreign seated arbitration is concerned, the Indian Courts subsequent to the judgment of the Constitutional Bench of the Supreme Court of India in *Bharat Aluminium Co. v Kaiser* have consistently declined to intervene. The ACA was amended in the year 2015 and the scope for the Indian Courts to intervene in foreign seated arbitrations stands curtailed save in cases where a party seeks interim relief or in the appointment of arbitrators.

In recent times there has been an attempt to encourage institutional arbitration and the government has proposed changes to the ACA including establishment of a corporate body being the Arbitration Council of India to promote institutional arbitration in the country.

19. What are the primary challenges to new market entrants?

The IRDAI has notified the IRDAI (Branch Offices of Foreign Reinsurers (excluding Lloyd's) Regulations 2015 and the IRDAI (Lloyd's India) Regulations 2016, thereby permitting foreign reinsurers to set up in India. However, at the same time, the IRDAI has mandated Indian insurers follow the order of preference for cessions while placing reinsurance business. Under the order of preference of cessions, the General Insurance Corporation of India, ie, the Indian reinsurer, has been granted the first right to refusal. This is a concern for foreign reinsurance players who have entered India or are considering an entry into India. In this regard, please note that IRDAI has released the Reinsurance Exposure Draft which proposes to revise the order of preference of cession and describe the new hierarchy between various entities with which an insurer can place its reinsurance business.

Indian insurers and insurance intermediaries are required to be Indian owned and controlled at all times. While the IRDAI has issued specific guidelines prescribing benchmarks for Indian ownership and control, the exact nature and scope of "Indian owned and controlled" is subjective and thus varies on a case by case basis. Lack of

clarity on some of these points creates a challenge for foreign players who are seeking to invest and participate in the management of Indian insurance companies and insurance intermediaries.

Furthermore, with significant and frequent changes having taken place in the last few years in the insurance regulatory space, the insurance market is in a state of flux. This state of flux, combined with the complex insurance regulatory framework, also poses a challenge for new players seeking to enter the Indian insurance market.

20. **To what extent is the market being challenged by digital innovation?**

With the significant increase in e-commerce transactions over recent years, the IRDAI has recognised the sale of insurance products online. The IRDAI has also recognized web aggregators (entities engaged exclusively in solicitation and procurement of insurance products online) as insurance intermediaries and has issued specific regulations for the licensing of these entities.

In addition, the IRDAI has also recognised the issuance of e-insurance policies.

The IRDAI has also issued the “Guidelines on Insurance e-commerce” of 9th March 2017 (E-commerce Guidelines) which laid down provisions for setting up Insurance Self-Network Platforms (ISNP) by insurers and insurance intermediaries for undertaking insurance e-commerce activities in India.

Recently, IRDAI issued the Brokers Regulations which states that a broker can solicit insurance products online and by telemarketing and distance marketing in line with the provisions specified for web aggregators under the applicable laws.

21. **Over the next five years what type of business do you see taking**



a market lead?

There has been a consistent increase over the last few years in the issuance of policies to cover cyber security risks, directors and officer's liability, errors and omissions liability and employment practices liability (including liability arising from sexual harassment claims). These forms of insurance are anticipated to grow further and take market lead over the next five years.