



**COUNTRY
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India

INSURANCE & REINSURANCE

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This country-specific Q&A provides an overview of insurance & reinsurance laws and regulations applicable in India.

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INDIA

INSURANCE & REINSURANCE



1. How is the writing of insurance contracts regulated in your 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 procedures issued by the IRDAI.

Until recently, products across all lines of insurance business had to be filed under a “*File and Use*” procedure (where the product required the IRDAI’s prior approval before it could be launched) and a few products (such as commercial products in general insurance) could be filed under a “*Use and File*” procedure, (where the product can be launched immediately after insurer’s internal committees approval subject to certain condition such as submission of quarterly report to the IRDAI, completion of Use and File documents etc).

Following a series of recent circulars issued by the IRDAI recently, insurers are now, permitted to offer a majority of their insurance products under the “*Use and File*” procedure, where insurers can launch their insurance products through self-certification.

Additionally, in terms of the content of insurance contracts, the IRDAI has issued additional guidance for various forms of insurance products, including:

- The IRDAI (Protection of Policyholders’ Interests) Regulations 2017 (Policyholders Regulations) which prescribe certain terms that must be incorporated into all life insurance, general insurance and health insurance policies.
- The Policyholders Regulations also set out norms on the classification of exclusions and policy conditions that must be followed on policy contracts. In addition, all conditions precedent and warranties must be stated in express terms in the policy documentation.
- A number of regulations and guidelines issued by the IRDAI specify that, broadly, product literature must be in “*simple language*” and

“*easily understandable to the public at large*”, and technical terms used in the policy wording must be clarified to the insured.

- Specific regulations/guidelines for certain forms of insurance contract such as life, health, trade credit and surety.
- General Insurers are still required to follow the wordings issued by the *erstwhile* Tariff Advisory Committee for various forms of property and engineering insurance contracts.
- The IRDAI has over the last few years issued various standard forms of insurance contracts for various lines of insurance business including standard products for fire and allied perils for dwellings, small and micro businesses, personal accident, domestic travel, individual health insurance, non-linked non-participating individual pure risk life insurance, and individual immediate annuity.

Recently, the IRDAI has also introduced model products for persons with disabilities, persons afflicted with HIV/AIDS, and those with mental illness where the IRDAI has made it mandatory for every general and stand-alone health insurer to offer their respective products to foregoing categories. Further, there are extraneous rules that impact policy terms. For example, the Insurance Act 1938 (Insurance Act) 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 has issued specific regulations/guidelines/circulars which govern the establishment, licensing and functioning of life insurers, general insurers, health insurers, Indian reinsurers and branch offices of foreign reinsurers, including:

- i. The IRDAI (Registration of Indian Insurance Companies) Regulations 2022 (Registration Regulations) which regulate the establishment

of primary insurance companies and Indian reinsurers.

- ii. The IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations 2015 (Branch Office Regulations) which regulate branch offices of foreign reinsurers to be established in India;
- iii. The IRDAI's "Guidelines on Issuance of File Reference Numbers to Cross Border Reinsurers" of 3 January 2023 (CBR Guidelines) which regulate the registration of cross border reinsurers (CBRs).
- iv. The IRDAI (Lloyd's India) Regulations 2016 (Lloyd's India Regulations) which regulate syndicates of reinsurers operating through service companies set up in India under the Lloyd's India branch.

In addition, the IFSCA (Registration of Insurance Business) Regulations 2021 (IIO Regulations) and IFSCA (Operations of International Financial Services Centres Insurance Offices) Guidelines 2021 (IIO Guidelines) govern setting up of an IFSC Insurance Offices (IIO) in International Financial Service Centres (IFSC) in India. The regulator for these entities is the International Financial Services Centres Authority (IFSCA).

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

Yes, the registration and functioning of insurance intermediaries (which include insurance brokers, corporate agents, web aggregators, IMFs, TPAs and surveyors and loss assessors) are governed by the specific regulations issued by the IRDAI for the specific forms of insurance intermediary. Each of these regulations contain a specific code of conduct prescribed by the IRDAI to be adhered to by that form of insurance intermediary.

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission? What are the key criteria for authorisation?

Yes, all entities writing insurance business or reinsuring Indian risks are required to register with the IRDAI, including:

- i. Indian insurance companies are required to apply for registration with the IRDAI to carry out one of, life insurance, general insurance, health insurance or reinsurance business, under the Registration Regulations. This is a 3

stage application process which requires a staged-wise filing of detailed information and documentation with the IRDAI.

- ii. Branch offices of foreign reinsurers are required to apply for registration with the IRDAI to carry out reinsurance of Indian risks under the Branch Office Regulations. These entities are established in India as branch offices of overseas reinsurers. This is also a 3 stage application process which requires a staged-wise filing of detailed information and documentation with the IRDAI.
- iii. Syndicates of reinsurers that seek to operate through service companies under the Lloyd's India branch are required to follow the application procedure set out under the Lloyd's India Regulations.
- iv. Overseas Reinsurers who do not wish to establish a presence in India but seek to participate on the reinsurance of Indian risks can do so from their overseas offices by registering with the IRDAI as CBRs in accordance with the single staged procedure set out under the CBR Guidelines.

In addition, IIOs are required to apply to the IFSCA for registration under the procedures set out under the IIO Regulations, in order to establish unincorporated insurance or reinsurance branch offices in GIFT City.

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

Any direct or indirect foreign investment in an Indian insurance company or Indian reinsurer is restricted to 74% of the paid-up equity capital.

For insurance intermediaries, 100% foreign direct investment limit is permitted.

Pursuant to the increases in permitted foreign investment in the insurance sector, the IRDAI has withdrawn the requirements for insurers and insurance intermediaries to be Indian-owned and controlled.

6. Is it possible to insure or reinsure risks in your jurisdiction 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).

Further, 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.

Non-admitted insurers who are listed with the IRDAI as CBRs, in accordance with the CBR Guidelines, can participate in the reinsurance of Indian risks in accordance with the procedures and norms set out under the IRDAI (Re-insurance) Regulations 2018 (Reinsurance Regulations).

7. Is a branch of an overseas insurer, insurance broker and/or other types of market intermediary in your jurisdiction subject to a similar regulatory framework as a locally incorporated entity?

Apart from CBRs who are primarily only required to obtain a registration with the IRDAI, branch offices of foreign reinsurers established under the Branch Office Regulations and syndicates of Lloyd's established and operating under the Lloyd's India Regulations are required to follow a number of regulations and other guidance issued by the IRDAI which apply to primary insurance companies and Indian Reinsurers.

The present Indian insurance framework is silent on any mechanism for overseas insurance intermediaries like insurance brokers for setting up a branch office in India. An insurance intermediary who wants to carry out its business in India can only do so by incorporating a company under the Indian laws and obtaining the requisite license from the IRDAI.

IIOs established in GIFT City are required to follow the various regulations and other guidance issued by the IFSCA which has recently extended a number of regulations issued by the IRDAI to IIOs.

8. Are there any restrictions/substance limitations on branches established by overseas insurers?

A branch office of foreign reinsurer and Lloyd's India's service company is permitted to undertake reinsurance business in India after obtaining prior approval from the IRDAI and an IIO is permitted to undertake

insurance/reinsurance business only after obtaining prior approval from the IFSCA, in accordance with the applicable regulations.

Further, the IRDAI and the IFSCA has set out certain minimum requirements that are required to be maintained by a branch office of foreign reinsurer and an IIO respectively, in terms of minimum capital, net owned funds, minimum retention, and solvency margin.

9. What penalty is available for those who operate in your jurisdiction without appropriate permission?

A person carrying out insurance business in India without valid registration could face a penalty of up to INR 25 crores (c. US\$ 3,020,782) and imprisonment for a term of up to ten years.

A person acting as an insurance intermediary (including an insurance broker) without being registered could face a penalty of up to INR 10 lakh (c. US\$ 12,083). 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\$ 120,827).

10. How rigorous is the supervisory and enforcement environment? What are the key areas of its focus?

The insurance industry is highly regulated in India. The IRDAI has suo motu powers for undertaking inspections, conducting enquiries and investigations (including the audit) of insurers, reinsurers (including branch offices of foreign reinsurers), insurance intermediaries and other organizations connected with insurance business.

The maximum penalty for non-compliance with the applicable regulations or directions issued by the IRDAI is INR 1 crore (c. US\$ 120,827).

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

The solvency of insurers, Indian reinsurers, branch offices of foreign reinsurers and service companies representing syndicates of Lloyd's India is required to be calculated in accordance with the applicable regulations issued by the IRDAI. Insurers and reinsurers are required to maintain, at all times, a solvency margin of assets over liabilities of not less than 50 per cent of the capital requirements for that insurer/reinsurer. The required solvency margin is calculated based on mathematical reserves and the sum at risk. The IRDAI periodically

specifies the factors that are to be considered in the calculation of the required solvency margin.

In addition, an IIO is required to maintain solvency margin as specified by its home country regulatory/supervisory authority. IIOs are required to file quarterly certificates which affirm that the required assets, liabilities and solvency margin has been maintained by the parent entity/head office.

12. What are the minimum capital requirements?

An insurer/Indian reinsurer is required to have a minimum paid up equity share capital of INR 100 crore (c. US\$ 12,200,000) and INR 200 crore respectively (c. US\$ 24,400,000). 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 crore (c. US\$ 610,000,000) and is further required to infuse a minimum assigned capital of INR 100 crore (c. US\$ 12,200,000) into the branch office. Syndicates of Lloyd's India are required to maintain an assigned capital of INR 5 crore (c. US\$ 610,000) through their service companies set up in India.

An IIO is required to maintain US\$ 1.5 million (c. INR 12 crore) as assigned capital in any freely convertible foreign currency and is also required to maintain a minimum amount of INR 1000 crore (c. US\$ 122,000,000) as net owned funds, which may be demonstrated in any freely convertible foreign currency and which is required to be maintained at all times during the subsistence and validity of the certificate of registration.

Further, the minimum capital requirement for brokers is in the following terms:

Direct brokers – INR 75 lakh (c. US\$ 92,000);

Reinsurance brokers – INR 4 crore (c. US\$ 490,000);

Composite brokers – INR 5 crore (c. US\$ 610,000).

The Central Government has recently issued the Insurance Laws (Amendment) Bill 2022 which proposes to remove the minimum paid-up equity capital requirements for insurance companies and specifies that the determination of minimum paid-up equity capital will be in accordance with the regulations specified by the IRDAI considering the “*size and scale of operations, class or sub-class of insurance business and the category or type of insurer*”. Additionally, the minimum net owned funds requirement for registering a branch office of foreign reinsurer in India is proposed to be reduced from

INR 5,000 crore (c. US\$ 610,000,000) to INR 500 crore (c. US\$ 61,000,000).

The IRDAI has also issued an exposure draft on the IRDAI (Re-Insurance) (Amendment) Regulations 2022 (Reinsurance Exposure Draft), which proposes to reduce the minimum assigned capital requirement from INR 100 crore (c. US\$ 12,200,000) to INR 50 crore (c. US\$ 6,100,000) in respect of opening of a new branch office of foreign reinsurer in India.

If these proposed drafts are brought into force in their present form, then the present prescribed capital requirements could change significantly.

13. Is there a policyholder protection scheme in your jurisdiction?

The Policyholders Regulations issued by the IRDAI are the primary regulations on the protection of policyholders' interests.

The Policyholders Regulations prescribe the practices that are required to be undertaken by the insurers and insurance intermediaries at the point of sale of the insurance policy to ensure that the policyholder understands the terms of the policy properly.

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

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.

14. How are groups supervised if at all?

To avoid conflicts of interest, ordinarily, two entities from the same group are not permitted to undertake the same line of insurance business.

There are some restrictions on insurance companies and insurance intermediaries operating in the same group, where the IRDAI has discretion (in some cases) to determine the scope of 'group':

- an Indian corporate group can have an insurance company and an insurance broker or a corporate agent within the same group, subject to certain conditions being fulfilled;
- typically, within a group, the IRDAI will grant

one certificate of registration to only one entity for insurance intermediation, unless a case on merits and with no conflict of interest is made before the IRDAI;

- a web aggregator cannot be a related party of an insurance company;
- there is no express restriction on insurance companies and surveyors operating in the same group, but the IRDAI is likely to view this as an inherent conflict of interest;
- there is no express restriction on insurance companies and TPAs operating in the same group; and
- an insurance agent or insurance intermediary is not permitted to be a director of an insurance company.

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

All directors and key managerial personnel of insurers, reinsurance entities and insurance intermediaries are required to be compliant with the fit and proper criteria stipulated by the IRDAI under the respective regulations/guidelines and their appointment has to be either pre-approved by or notified *post facto* to the IRDAI.

16. To what extent might senior managers be held personally liable for regulatory breaches in your jurisdiction?

The IRDAI has been given extensive power under the rules and regulations to investigate and examine the conduct of the key managerial personnel. For instance, §105A of the Insurance Act stipulates that where any offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

17. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licenses and authorisations)?

Indian insurance companies, Indian reinsurers, branch offices of foreign reinsurers and insurance intermediaries

are required to have at least one physical office in India in order to be considered for registration. This minimum requirement is to be maintained by each of these entities during the course of operations in India. In addition, Indian insurance companies and insurance intermediaries are required to have adequate branch office presence across India which is commensurate with their proposed plans for distribution of insurance products across various states/cities in India. In addition, one of the IRDAI's considerations while considering the application for registering any of these entities is whether the applicant has adequate infrastructure and facilities to carry out the business.

IIOs are established in unincorporated form but are required to have a physical office in GIFT City.

CBRs are not required to have a physical office presence in India.

18. Are there restrictions on outsourcing services, third party risk management and/or operational resilience requirements relating to the business?

The outsourcing of activities by Indian insurers/reinsurers, branch offices of foreign reinsurers and service companies set up under Lloyd's India, is subject to the restrictions and compliances prescribed under applicable law, in relation to, inter alia, confidentiality and security requirements, due diligence of vendors and reporting of agreements and payouts. Broadly, these entities are prohibited from outsourcing their core functions (including underwriting, claim decisions and investments) to third party service providers. Further, the IRDAI's "*Guidelines for Corporate Governance for insurers in India*" (CG Guidelines) provides that the outsourcing arrangements of insurance companies should be in accordance with the Board approved outsourcing policy of the company and should have the approval of the designated committee of key managerial personnel. Further, every outsourcing contract is required to have explicit safeguards with regard to confidentiality and ownership of insurance company's data and all outsourcing arrangements of insurance companies are required to be annually reviewed and reported to the Board.

19. Are there restrictions on the types of assets which insurers or reinsurers can invest in or capital requirements which may influence the type of investments

held?

Yes, there are restrictions on the types of assets in which insurers or reinsurers can invest. Investments made by insurers and reinsurers are governed by:

- the Insurance Act;
- the IRDAI (Investment) Regulations 2016 (Investment Regulations);
- the Investments – Master Circular – IRDAI (Investment) Regulations 2016 version 3 of 27 October 2022; and various circulars issued by the IRDAI.

The Insurance Act mandates that insurers and reinsurers are required to invest at least a certain percentage of their controlled fund in government securities and the balance in approved investments as set out under the Investment Regulations. In addition, the Investment Regulations contain the following:

- exposure/prudential norms which limit the investments that can be made by insurers or reinsurers based per investee company, group and industry.
- a prohibition on investing more than 5 per cent of the company's assets in entities belonging to the promoters.
- a prohibition on investing the funds of policyholders, directly or indirectly, outside India.

20. Are there requirements or regulatory expectations regarding the management of an insurer's reinsurance risk, including any restrictions on the level / type of reinsurance utilised?

The Insurance Act requires all cedants to cede 4% of the sum insured as mandatory cession to the Indian reinsurance company and, thereafter, the Reinsurance Regulations require all cedants to seek best terms for their reinsurance placements by following the specified "order of preference".

A cedant is required to first offer its facultative and treaty surpluses to Indian reinsurance companies transacting reinsurance business during the immediate past three continuous financial years, and thereafter to other Indian reinsurance companies and branch offices of foreign reinsurers. The cedant may then proceed to offer the surplus to IIOs and CBRs, who meet the required credit rating criteria, followed by other IIOs, and then other CBRs and Indian insurance companies (only for facultative placements).

Although the order of preference does not apply to Indian insurance companies transacting life insurance business, the Reinsurance Regulations require them to endeavour to utilise the Indian domestic capacity before offering reinsurance placements to CBRs. Life insurance companies are also required to obtain the prior approval of the IRDAI before entering into reinsurance arrangements with their promoter company, or associate or group companies, except where the arrangements are on commercially competitive terms and an arm's-length basis.

While the terms and conditions of a reinsurance agreements are not regulated, every Indian insurer is required to submit their annual Board approved reinsurance programme along with the retention policy with the IRDAI. In relation to reinsurers, the Reinsurance Regulations require every Indian reinsurer and branch offices of foreign reinsurers to file their Board approved underwriting policy with the IRDAI.

21. How are sales of insurance supervised or controlled?

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

Recently, the IRDAI has notified new norms on payment of commission to insurance agents and insurance intermediaries where the total amount of commission permitted to be paid by insurers is required to be within the allowable limits within the expenses of management of the insurer as specified under the IRDAI (Expenses of Management of Insurers transacting General or Health Insurance business) Regulations 2023 (for general and health insurers) and the IRDAI (Expenses of Management of Insurers transacting Life Insurance business) Regulations 2023 (for life insurers). Further, insurers are required to have a Board approved written policy on payment of commission to insurance agents and insurance intermediaries.

22. To what extent is it possible to actively market the sale of insurance into your jurisdiction on a cross border basis and are there specific or additional rules pertaining to distance selling or online sales of insurance?

In order to solicit and service insurance products in India,

an entity must be licensed as an insurance intermediary with the IRDAI and such solicitation and procurement of insurance may only be undertaken in accordance with the regulatory framework applicable to the entity. In addition, insurers and insurance intermediaries are also permitted to sell and service insurance policies through recognized distance marketing modes per the “Guidelines on Distance Marketing of Insurance Products” and through an Insurance Self-Network Platforms (ISNP) in accordance with the “Guidelines on insurance e-commerce”.

While the present RBI framework permits a person resident in India to take or obtain a general (including health) insurance policy issued by an overseas non-admitted insurer, if the premium payments are within the overall limits prescribed by the RBI, the present statutory and regulatory framework remains silent on the manner in which such overseas insurance may be sold or serviced, or whether any Indian entity may assist such overseas insurer in servicing such insurance policy.

23. Are insurers in your jurisdiction subject to additional requirements or duties in respect of consumers? Are consumer policies subject to restrictions, including any pricing restrictions? If so briefly describe the range of protections offered to consumer policyholders

Generally, all insurance policies are required to incorporate various customer protections including but not limited to the following:

- The policy shall clearly specify the grounds for the cancellation of the policy, such as misrepresentation, non-disclosure of material facts, fraud or non co-operation of the insured.
- The policy shall give details of the insurer’s grievance redressal mechanism to enable policyholders to raise complaints against the insurers.
- The policy shall give details of the Insurance Ombudsman, who is appointed by the Insurance Council to address complaints by the insured against the insurer, in relation to the settlement of claims.

The Policyholders Regulations provide for strict timelines for the assessment of a claim. In the event a claim is not settled within the stipulated timelines, the insurer is liable to pay interest at 2% above the bank rate from the date of receipt of the last relevant and necessary document received from the policyholder till the date of

actual payment of the claim.

Further, the Policyholders 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, the policyholder has an option of approaching the consumer courts to seek redressal of their disputes with the insurers.

24. Is there a legal or regulatory resolution regime applicable to insurers in your jurisdiction?

Under the regulatory framework, appeals from orders issued and decisions made by the IRDAI may be referred before the Securities Appellate Tribunal (SAT). In this regard, procedural rules for filing appeals from the IRDAI orders or decisions with the SAT have also been notified.

The IRDAI has also established a grievance redressal cell which looks into the complaints/grievances from policyholders. This cell takes up the grievances with the respective insurers for redressal. Additionally, office of Insurance Ombudsman, which has been constituted under the Insurance Ombudsman Rules 2017, is an alternate grievance redressal platform which has been setup with an aim to resolve grievances of aggrieved policyholders against insurers and insurance intermediaries in a speedy and cost-effective manner.

Apart from the regulatory framework of the IRDAI, insurance disputes are generally adjudicated in arbitration, commercial courts and consumer forums.

25. Are the courts adept at handling complex commercial claims?

The Indian courts can hear commercial claims. In 2015, the Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts Act 2015 (Commercial Courts Act), was introduced which carves out special benches in all existing civil courts which will adjudicate commercial matters exclusively. The commercial courts are also established at district levels in all jurisdictions, including territories where the High Courts have original civil jurisdiction. By providing for exclusive fora, the Commercial Courts Act has expedited the litigation process for commercial disputes. Commercial disputes are referred to the commercial court having the requisite territorial and pecuniary jurisdiction. The pecuniary jurisdiction of commercial courts is INR 300,000 and above. Insurance and

reinsurance disputes are categorized as commercial disputes and are adjudicated by the commercial courts.

The amendment to the Commercial Courts Act in 2018 has mandated mediation for parties before filing a commercial suit except where a party seeks urgent interim relief. The legislation is meant to speed up the adjudication process. There was a conflict of opinions of various High Courts on the issue as to whether the pre-suit mediation was directory or mandatory. The Supreme Court has in 2022 clarified that this is mandatory.

26. Is alternative dispute resolution well established in your jurisdictions?

The Indian jurisdiction recognises arbitration, mediation and conciliation as means of alternative dispute resolution.

The Indian Arbitration and Conciliation Act 1996 (ACA) governs arbitration in India and it is based on the UNCITRAL model law. An arbitration seated in India between two Indian parties is a domestic arbitration, while an arbitration (even if seated in India) involving at least one foreign party is an International Commercial Arbitration (ICA).

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 (provided it is not an even number), the place of arbitration and the procedure to be followed by the tribunal. The principle of party autonomy has been confirmed by the Supreme Court in a number of cases.

An arbitration agreement, as per the ACA, needs to be in writing and should 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. In fact, it is not necessary for an arbitration agreement to be incorporated into an insurance/reinsurance contract at all. An arbitration agreement can come into existence if it is contained in a subsequent exchange of letters, telex, telegrams or other means of telecommunication which provides a record of the agreement. A three-judge bench of the Supreme Court while examining the 'group of companies' doctrine, which enables non-signatories to be bound by the arbitration agreement, has referred the question of its correctness and application to a larger bench. Further, in relation to domestic arbitration, the ACA bars intervention of 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, a party can also seek the court's assistance for recording evidence. With a view to strengthen institutional arbitration in India, the 2019 amendment contemplates appointment of arbitrators by arbitral institutions. However, this provision is yet to be notified for it to come into effect.

Increasingly, arbitration is a preferred mechanism for settlement of commercial disputes in this jurisdiction. Arbitrations are required to be completed strictly within the prescribed timelines. Pleadings are to be completed within six months, whereafter the award shall be made within twelve months. This period can be extended by another six months upon the consent of the parties, but any further extensions can only be granted by a court. These timelines, however, do not strictly apply to an ICA. Additionally, the parties can also choose to conduct arbitration proceedings in a fast-track manner, with the award being issued within six months.

Additionally, a cost regime for granting costs of the arbitration proceedings to a successful party has also been set out in the ACA. The ACA also prescribes the model fee to be paid to an arbitrator. The Supreme Court in 2022 clarified that, subject to party autonomy, the highest fee payable to an arbitrator will be INR 3,000,000. This ceiling is applicable to each individual arbitrator, and not the arbitral tribunal. A sole arbitrator shall be paid twenty-five per cent over and above this amount.

An arbitration award is final and binding on the parties and the courts generally refrain from interfering in arbitrations or arbitration awards and uphold the sanctity of the arbitration agreement and arbitration awards. A party can challenge the jurisdiction of the tribunal before the tribunal itself and if the tribunal decides it has jurisdiction, then the arbitration continues. The recourse provided against an arbitration award is on specified limited grounds provided in the ACA. Notably, once a challenge is disposed, any subsequent appeal(s) is also limited in scope and once the time for challenging the award has expired, the award can be enforced in the same manner as if it were a decree of the court.

27. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process

The present Indian insurance framework is silent on any mechanism of transfer of books of a reinsurer to an Indian branch office.

28. What are the primary challenges to new market entrants? Are regulators supportive (or not) of new market entrants?

Recently, the IRDAI has taken several steps towards amending the existing regulatory framework with the objectives of promoting the ease of doing business in India and increasing insurance penetration across India. In this regard, the IRDAI has conducted several sessions with market players to identify steps for the healthy growth of the insurance industry, improving claim settlement timelines, speedy redressal of grievances, policyholder welfare, rationalising the regulatory framework, and potentially reducing the compliance burden and has identified various areas in the existing legal/regulatory architecture for internal review. The following are some of the steps already taken by the IRDAI to ease the compliance requirements of insurers and reinsurers and facilitate new entities to enter the Indian insurance industry:

- By way of various circulars, the IRDAI has relaxed various filing and reporting requirements for insurers and branch offices of foreign reinsurers.
- Major changes have been brought about in the product filing procedure where insurance companies are now permitted to launch most of their insurance products through self-certification.
- The limits on commission payable to insurance intermediaries by insurance companies have been lifted by way of recently notified the IRDAI (Payment of Commission) Regulations 2023. Further, the management of general and health insurance companies' overall expenses are now subject to overarching limits, which replaced specific limits on expenses that were previously permitted to be incurred on various lines of insurance business.
- The IRDAI has launched a single window NOC Portal to expedite the process for registration of insurance companies.
- The IRDAI has also proposed to amend the existing norms relating to "*order of preference*" while placing reinsurance business, where the branch offices of foreign reinsurers and IIOs are placed in the highest category along with the Indian reinsurance companies.

Further, press reports indicate that other steps aimed at achieving the same objectives may be expected in the coming months.

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

With the significant increase in e-commerce transactions over the years, the IRDAI has recognised the sale and servicing of insurance products online and the issuance of e-insurance policies. The insurance sector is continuously adapting to various technological advancements such as AI, data analytics and digital marketing, vis-à-vis claims, underwriting, policyholder communication/grievance management, digilockers for maintenance of records and data and various data security and protection measures. The IRDAI has also issued specific norms on, inter alia, information asset management, data security, application security, endpoint security, cloud security and incident management, which are required to be complied with by insurers and reinsurers.

With growing trends in digitisation, especially after the pandemic, the IRDAI has further issued and relaxed norms including on issuance of e-insurance policies, including "*Video Based Identification Process (VBIP)*" for simplifying customer identity verification electronically for insurers under the IRDAI's anti money laundering framework.

Indian Insurers are also utilising applications, artificial intelligence, telematics and Internet of Things (IoT) and other insurtech products and transforming the manner of distribution of insurance business in India.

The IRDAI has also introduced the IRDAI (Regulatory Sandbox) Regulations 2022 (Sandbox Regulations) updating the earlier sandbox guidance which aim to create a regulatory sandbox environment to test new business models, processes, proposals, and applications, with the goal of balancing the orderly development of the insurance sector and the protection of policyholders' interests. In the past few years, the IRDAI has approved various proposals under the Sandbox Regulations, including wellness and fitness trackers through wearable devices, claims and collision estimation by using AI, digital wallets and specialized insurance products.

30. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there additional requirements that need to be met?

The IRDAI has over the past few years been issuing a

series of norms that indicate a shift towards the digitalization of various stages in the insurance sales and servicing process:

- With the significant increase in e-commerce transactions over recent years, the IRDAI has recognised the sale and servicing of insurance products online as well as the issuance of e-insurance policies. The IRDAI's "*Guidelines on Insurance e-commerce*" lays down provisions for setting up insurance self-network platforms by insurers and insurance intermediaries, for undertaking the sale and servicing of insurance activities in India.
- The IRDAI has issued "*Guidelines on Information and Cyber Security for Insurers*" (Cybersecurity Guidelines) to stipulate the norms on, inter alia, information asset management, data security, application security, endpoint security, cloud security and incident management, which are required to be complied with by insurers and reinsurers. Recently, the IRDAI has extended the applicability of the Cybersecurity Guidelines to insurance intermediaries also.
- The IRDAI has recently issued guidance on the participation of Indian insurance companies and insurance repositories in the RBI's account aggregator framework which is a digital platform for sharing financial information such as information in relation to insurance policies by insurance companies and insurance repositories with customers and other financial information users. Under this framework, insurance companies and insurance repositories are required to adopt "technical specifications" and information technology framework to ensure a secure flow of data.
- Under its anti-money laundering framework, the IRDAI provides "*Video-Based Identification Process*" (which is an online/face-to-face in-person verification through video process) as one of the methods to perform customer identity verification.
- In addition, the IRDAI has proposed that every policyholder is mandatorily required to have an electronic insurance account and subject to prescribed exemptions, every insurer is required to issue policies in electronic form.

In addition to the above, in the Indian insurance market, many insurers have made efforts at updating their business methods by utilizing various forms of insurtech and have collaborated with various tech companies to develop websites and mobile applications to facilitate

the sale and servicing of insurance policies online which includes digitising customer verification, underwriting, premium payment and claims-processing functions, and to automate the policy-issuance and claims-settlement processes. Apart from these, insurers are also exploring such insurtech solutions for tracking user's health, cargo, theft, hijack attempts, etc.

31. To what extent is insurers' use of customer data subject to rules or regulation?

The Policyholders Regulations requires insurers to maintain all policyholder data as confidential, unless it is necessary to disclose such information to statutory authorities, due to the operation of law. Further, privacy law in India is being reviewed over the past few years by the Parliament with the draft bill "*The Digital Personal Data Protection Bill 2022*" being the most recent version which is currently pending in the legislature. However, as the draft bill now stands, there will not be much change in the abovementioned position, even if it becomes the law.

32. To what extent are there additional restrictions or requirements on sharing customer data overseas/on a cross-border basis?

The regulator's expectation in India is that all insurers shall maintain complete confidentiality of policyholders' data. Further, data pertaining to all policies issued and all claims made in India has to be held in data centres located and maintained in India.

33. To what extent are insurers subject to ESG regulation or oversight? Are there regulations/requirements, including in connection with managing climate change and climate change related financial risks specific to insurers? If so, briefly describe the range of measures imposed.

Insurers have a statutory obligation to undertake a certain amount of insurance business in rural and social sectors in accordance with applicable regulatory norms. Recently, the IRDAI has constituted a committee to suggest and develop "*affordable, accessible and comprehensive cover for rural population, on benefit based / parametric structure*" and suggest on "*women centric distribution channel to focus on reaching untapped/rural areas*".

Further, the company law framework also requires companies whose net worth is more than INR 500 crore (c. US\$ 61,000,000), or turnover is more than INR 1000 crore (c. US\$ 122,000,000) or net profit is more than INR 5 crore (c. US\$ 610,000), to undertake CSR activities, and insurers who fall within this category will be required to undertake CSR activities in the prescribed manner. Recently, the IRDAI has also issued a circular to encourage insurers to invest in Sovereign Green Bonds (SGBs) issued by the Indian Government with an objective to reduce the carbon intensity of the economy. The IRDAI has specified that the investment in SGBs by insurers shall be treated as investment in infrastructure.

34. Is there a legal or regulatory framework in respect of diversity and inclusion to which (re)insurers in your jurisdiction are subject?

For insurance companies, the CG Guidelines read with the requirements under the company law framework, requires every insurance company to have at least one woman director on its Board.

35. Over the next five years what type of business do you see taking a market lead?

The following lines of insurance businesses may potentially be of significance over the next few years:

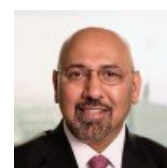
- With the impact of Covid-19 pandemic, there has been a rise in sales of life and health insurance over the past few years and this is likely to continue.
- Purchase of third-party motor insurance is a mandatory requirement under the Indian law, and with year-on-year increase in the sale of automobiles, the sales of motor insurance policies will also correspondingly rise in significance.
- With the recent introduction of surety insurance contracts in Indian insurance market, as an alternative to bank guarantees, these insurance policies may grow in popularity in the coming years.
- Recently, several insurers have been launching cyber insurance focussed on individual retail customers and these policies are likely to be of significance in the coming years.

With regard to claims, while the focus used to be on more traditional lines of insurance (such as catastrophe, life, health and motor insurance), over the past decade or so the Indian insurance market has evolved and liability products such as PI, D&O, cyber policies and EPL have come to the forefront. There is familiarity and demand for these products and consequently significant claims activity. Among liability products, the past five years show there has been a steady upward trend in claims made under PI policies, and this remains the busiest claims area, followed closely by D&O.

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