

INSURANCE INSIGHT

Arbitrary appointment of 2nd surveyor impermissible

NCDRC on relevance of insurer's officer's assessment

IRDAI on "Insurance for all"

Guidelines on Internationally registered Insurer's setting-up liaison office in India

Exposure Draft to amend Regulations on re-insurance business



Insurance company cannot arbitrarily appoint 2nd surveyor

Hon'ble National Consumer Disputes Redressal Forum ("NCDRC") in the matter of Kamalraj Paliwal v. National Insurance co., (RP 1607/2017) through its Judgment dated 12/10/2022 has deprecated the practice of arbitrary appointment of 2nd surveyor by insurance companies.

Hon'ble NCDRC held that insurance company is the dominant party when it comes to the settlement of claims and it is very often in a position to dominate the will of the insured. It further held that mere execution of the discharge voucher would not always deprive the insured from preferring a claim for deficiency in service.

Hon'ble NCDRC while appreciating the factual controversy noted that the appointment of 2nd surveyor was made without assigning any reasons for the same. The insurance company offered the settlement on the basis of the loss assessed by the 2nd surveyor while arbitrarily deducting the value of salvage as assessed by the 1st surveyor. Hon'ble NCDRC observed that such an approach is not permissible.

NCDRC has reiterated the settled law that while the insurer is not prohibited from appointing a second or another surveyor for fresh assessment of loss, appointment of surveyors one after another so as to get a tailor-made report to the satisfaction of the insurer is impermissible unless cogent and satisfactory reasons for not accepting the report of the first surveyor are provided under section 64-UM of the Insurance Act, 1938.

Insurer's plea contrary to its officer's own assessment prior to issue of the policy not tenable

Hon'ble National Consumer Disputes Redressal Forum ("NCDRC") through its Judgment dated 17/10/2022 in the matter of Bajaj Allianz Insurance Co. v. Dr. Kumar Bhandari bearing FA No. 401/2013 has held that applying the retrofitting technology/ measure to an earthquake damaged building does not amount to improvement of the structure.

This is a case where due to major earthquake, the entire building at Sikkim got damaged. The insurance company offered only Rs. 3 Lakh against the claim of Rs. 42 Lakh for reasons that retrofitting amounted to improvement which is not permissible. The State Commission allowed the claim relying upon expert opinion that retrofitting does not amount to improvement.

Hon'ble NCDRC confirmed the dictum while holding that insurance company is not allowed to take plea of pre-existing defects/poor quality of building structure when their engineers or officers themselves pre-inspected the building before issuing the insurance policy.

The Judgment re-affirms the settled principle that good faith is the essence of insurance/indemnity. Insurance company cannot take hyper technical pleas only to find a way to excuse its liability. The court will not remain silent to such defences. The Judgment is well in tune with the IRDAI objective of taking insurance policies to the remotest consumer of this country.

IRDAI constituted a committee to achieve its objective of "Insurance for all"

IRDAI through circular dated 20/10/2022 constituted a committee of 24 members to achieve the ultimate objective of Insurance for all. This committee is constituted to facilitate availability of affordable, simple and comprehensive insurance coverage to the untapped areas and rural population in India.

This is a welcome step, as observed by IRDAI, to make full use of technological developments such as Artificial Intelligence (AI)/ Machine Learning (ML) to create a digital platform to reach the last mile. The end aim is to extend insurance coverages to untapped areas while leveraging digital transformation.

IRDAI issued guidelines on setting-up and closure of liaison office in India by an insurance company registered outside India

IRDAI has issued Guidelines to ensure hassle-free setting-up and closing of liaison office in India by insurance company registered outside India. These Guidelines define the liaison office as "a place of office which act as a channel of communication between the principal place of business or Head Office (HO) of an Overseas Insurer and entities in India but which does not undertake any commercial/ trading/ soliciting/ industrial activity, directly or indirectly, and maintains itself out of foreign remittances received from the Overseas Insurer through normal banking channels".

Only those overseas insurance companies which have a financially sound and profit making track record during the immediately preceding three financial years in the home country along with net worth of not less than USD 65 million are eligible to open a liaison office in India.

The validity of an approval granted shall be for a period of three years. An Overseas Insurer may request the Authority for extension of the approval for another one year.

The overseas Insurer can close the liaison office in India by submitting form IRDA-FIC-2 at least two months before the date of expiry of the validity of the approval.

These guidelines are welcome step to invite overseas insurance companies and concerned stakeholders to inject investment in Indian insurance industry through liaison office route involving less compliance burden to operate in India.

IRDAI issued Exposure Draft to amend various regulations pertaining to re-insurance business

Recently, IRDAI has issued Exposure Draft to amend the (i) Insurance Regulatory and Development Authority of India (Re-insurance) Regulations, 2018, (ii) Insurance Regulatory and Development Authority of India (Registration and Operations of Branch Offices of Foreign Re-insurers other than Lloyd's) Regulations, 2015, (iii) Insurance Regulatory and Development Authority of India (Lloyd's India) Regulations, 2016.

The objective of these amendments is to harmonize the provisions of various regulations applicable to insurance companies and reinsurers including Foreign Reinsurance Branches (FRBs) and Lloyd's to enhance Ease of Doing Business.

IRDAI constituted committee for universalisation of health insurance in the country

IRDAI through Circular dated 21/10/2022 has constituted 15 members consultative committee for a period of 2 years. The aim of this committee is to identify challenges in carrying out health insurance business smoothly while identifying concerns relating to policy holders and to make necessary recommendations to address the said concerns. The broader idea of the committee is to achieve the goal of universalisation of health insurance in the country.





E 10 SF Defence Colony
New Delhi - 110024



asp@sinhapartners.com
www.sinhapartners.com



+91 11 41 046 911
+91 11 40 536 008