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# INSURANCE

## INSIGHT

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**IRDAI notifies Regulations on payment of commission**

The Insurance Regulatory and Development Authority of India on 23rd November 2022, notified the Insurance Regulatory and Development Authority of India (Payment of Commission) Regulations, 2022 which shall come into force from 1st April 2023. These Regulations shall be reviewed once every three years from the date of notification unless the review, repeal, or amendment is warranted earlier. The objectives of these Regulations include enhancement of responsiveness of the Regulation to market innovation, facilitate development of new business models for insurers, products, strategies, internal processes and to enable easy compliance with the Regulations while fulfilling the regulatory objectives, etc. The total amount of commission payable under life insurance products including health insurance products offered by life insurers shall not exceed the Expense of Management (EOM) limits specified under the Insurance Regulatory and Development Authority of India (Expenses of Management of Insurers transacting life insurance business) Regulations, 2022 as amended from time to time. All insurers, within 45 days of the expiration of each financial year, shall submit to the Authority the Board-approved returns on payment of commission by the insurer to the insurance agents or intermediaries or insurance intermediaries. The Authority may specify the formats for such information and data from time to time.

**IRDAI on reforms to permit the insurance companies to exceed the cap of 10%****investment in unlisted companies**

IRDAI has sent a proposal to the government to allow buying of more than 10% stake in unlisted firms by insurers, using over 10% of the monies lying in their shareholder's fund, policyholders fund, or funds maintained by a reinsurance company.

**IRDAI circular on cyber security**

On 15th November 2022 IRDAI circulated a circular Ref. No: IRDAI/GA&HR/CIR/MISC/230/11/2022 advising all Regulated Entities and Training Institutes to put in place a Board approved policy on the scrapping/disposal of out-of-date OS and IT Equipment. In this regard, a reference was made to the Guidelines on Information and Cyber Security for Insurers dated 07.04.2017 dealing with "Platform / Infrastructure Security" requiring organizations to configure IT infrastructure including servers, applications, network, and security devices to ensure security, reliability, and stability. As observed by MeitY vide D.O.No. 7(1)/2022-CSD dated 18.10.2022 (enclosed) that with increased digitization and online governance, cyber security has become an integral and important part of the Governance. The hackers/crackers exploit weaknesses such as ignorance or non-adherence to security procedures, flaws in processes, or vulnerabilities in technology (both hardware and software). Further, the use of out-of-date operating systems and IT equipment must be discontinued as it makes the IT system susceptible to cyber attacks.

**Waiver of exclusion clause**

The Hon'ble Supreme Court in *M/s. Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd. & Ors.* (Civil Appeal No. 8249 of 2022) has held that once it is proved that there is deficiency in service and insurer knowingly entered into a contract, it would be a conscious waiver of the exclusion clause.

Hon'ble Supreme Court held that non-compliance with the provisions of the IRDA Regulations, 2002, unilateral inclusion of the exclusion clause, execution of the contract, receiving premiums, repudiation even after having the knowledge that the contract for insurance was entered into for a basement shop amounts to unfair trade practice. Moreover, the exclusion clause is unfair as it goes against the very object of the contract, making it otherwise un-executable from its inception.

**Chartered accountant's appointment to verify the stocks statements of the insured – legal**

Hon'ble National Consumer Disputes Redressal Forum ("NCDRC") in *M/S Padmaja Laboratories Pvt. Ltd. v. UIL*, CC/ 89/2018, through its Judgment dated 23/11/2022 has held that the Insurance Act, 1938 does not impose any restriction upon the insurer for appointment of a second surveyor. The repudiation letter cannot be held as illegal only on the ground that the insurer took an opinion of Chartered Accountant on the Final Survey Report of the surveyor.

Hon'ble NCDRC held that in the circumstances of the case, there is no illegality in the settlement of

the claim for an amount other than that assessed by the surveyor. The settlement of the claim does not suffer from any illegality.

**Law of presumption on supply of T&C of policy**

Hon'ble National Consumer Disputes Redressal Forum ("NCDRC") in *Qamruz Zaman & Anr. v. Universal Sompo General Insurance*, FA/396/2015, through its judgment dated 14/11/2022, has held that it is hard to accept that a reasonable man of ordinary prudence would not take the normal care to know and understand the terms and conditions of insurance especially when insurance was being taken for the third successive year and that too for valuables like diamond and gold.

This is a case where complainant/insured had taken a plea that the terms and conditions were not supplied to him. The insurance company filed an affidavit deposing that two copies of policy were supplied to the bank. Hon'ble NCDRC presuming the fact to be true held that as per section 114 of the Indian Evidence Act, the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case; illustration (e) specifically says that the court may presume that judicial and official acts have been regularly performed. In the instant case there was nothing on record to bring out enough reason to presume otherwise. On the contrary there was on record un rebutted express affirmation on affidavit. The import of the affidavits filed by the

insurance company and the bank conveys that the insurance company sent two copies of the policy along with its terms and conditions to the bank and the bank in turn retained one copy and supplied the other one to the complainants.



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