

## IRDAI NOTIFIES MINIMUM INFORMATION FOR INSURERS, INTERMEDIARIES AND INSURANCE INTERMEDIARIES

### Introduction

On November 23, 2020, the Insurance Regulatory and Development Authority of India (“**IRDAI**”) exercising its power under Sections 33(7) and 114A(2)(j) of the Insurance Act, 1938 (“**Act**”) read with Sections 14 and 26 of Insurance Regulatory and Development Authority Act of India, 1999 (“**IRDAI Act**”) notified the IRDAI (Minimum Information Required for Investigation and Inspection) Regulations, 2020 (“**Notification**”) <sup>1</sup>. The Notification will come into force from May 24, 2021.

The objective of the Notification is to specify the minimum information required to be maintained by insurer, intermediary or insurance intermediary, so as to enable the investigating officer to discharge its functions under Section 33 of the Act.

### Background

Section 33(1) of the Act empowers IRDAI, if it considers expedient to do so, to direct an investigating officer to investigate the affairs of any insurer or intermediary or insurance intermediary and to submit its report on the investigation made.

Section 33(2) of the Act empowers the investigating officer to cause an inspection to be made of the books of account of any insurer or intermediary or insurance intermediary. Section 33(3) of the Act specifies that it shall be the duty of the “manager”, “managing director” and “other officer” of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, to furnish all such “books of account”, “registers”, “other documents” and the “database” in its custody, and all such information, as may be sought by the investigating officer.



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<sup>1</sup> F. No. IRDAI/Reg/3/169/2020:CG-AP-E-24112020-223292, E-Gazette of India, published on November, 24, 2020.

The investigating officer shall make a report of the investigation and submit the same to the IRDAI<sup>2</sup>. Upon receipt of the report from the investigating officer, the IRDAI, after giving opportunity to give representation, may order in writing:

- Require the insurer to take action in respect of any matter arising out of the inspection report;
- Cancel the registration of insurer or intermediary or insurance intermediary, as the case maybe; and
- Issue direction for winding up the insurer or intermediary or insurance intermediary, as the case maybe.

For the purposes of Section 33 of the Act, the expression “insurer” includes, in the case of an insurer incorporated in India:

- all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and
- all its branches whether situated in India or outside India.

### Scope of the Notification

The Notification defines ‘Minimum Information’ to mean the information specified under the Notification that insurers or intermediaries or insurance intermediaries are required to maintain<sup>3</sup>.

The Notification is divided into 3 (three) parts:

- Part I stipulates the provisions that are applicable to all insurers;
- Part II stipulates the provisions applicable to the intermediaries and insurance intermediaries; and
- Part III stipulates the general provisions applicable to the insurers, intermediaries and insurance intermediaries.

### Part I – Provisions applicable to all Insurers

As per Regulation 4, every insurer is required to maintain all records, information, data, documents, books or registers required to be maintained by it, under the extant provisions of the Act, Rules, Regulations, Guidelines, Circulars or Directors (“**Applicable Law**”) at its principal place of business in India. Additionally, the insurer is required to maintain all such information applicable to it as stipulated under Regulations (5) to (16) of the Notification.

However, in case where it is not convenient or practicable for the insurer to maintain any document or information at its principal place of business, the insurer may maintain such document or information at any branch or other office. Provided however, that such branch or office maintains only that information or document which are relevant and applicable to its working.

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<sup>2</sup> Section 33(5) of the Act.

<sup>3</sup> Regulation 3(e) of the Notification.

Regulation 4 further provides that any insurer which is carrying only the reinsurance business, shall be deemed to have complied with the Notification, provided that the information is readily available from its records. The said Regulation implies that in case of reinsurance business, the requirement of maintaining the records at principal place of business may be circumvented in case the reinsurer is able to readily provide the required information.

Regulation 5 to Regulation 16 of the Notification stipulates the Minimum Information required to maintained by the insurers.

#### Regulation 5

It mandates the insurers to maintain the following information in respect of each class or sub-class of its insurance business:

- a) Record of all proposals for insurance received;
- b) Record of cover-notes issued;
- c) Record of policies, serially numbered, listing all policies issued, entered in a chronological order;
- d) Record of documents in respect of group insurance business;
- e) Record of documents with respect to the reinsurer, if applicable;
- f) Record of premiums showing, according to chronological order of receipt of premiums received;
- g) Record of endorsements;
- h) Record of bank guarantees and deposits; and
- i) Record of all claims intimated.

#### Regulation 6

It mandates the insurer to maintain the following information for the business of the insurer as a whole:

- a) Record of insurance agents, giving details in respect of each agent;
- b) Record of all insurance intermediaries tied up or otherwise with the insurer giving in respect of each insurance intermediary, specified person, broker qualified person, telemarketer, authorized verifier;
- c) Record of insurance agents and insurance intermediaries;
- d) Record of all salaried field workers;
- e) Record of employees including employees on contract basis, excluding salaried field workers;
- f) Record of appointment letters issued to all agents, consultants, members of the staff along with changes therein;
- g) Record of duplicate copies of appointment letters, if issued, to the agents, consultants and members of the staff along with changes, therein;
- h) Cash book and disbursement book with supporting documents;
- i) Record of investments; and
- j) Record of other assets;

#### Regulation 7

It mandates that every insurer shall maintain record of agreements entered with third parties for solicitation or servicing of insurance business, training etc. and all information related to such agreements.

#### Regulation 8

It mandates that every insurer shall obtain and maintain receipt for every payment made and issue receipt for every payment received.

#### Regulation 9

It mandates that every insurer shall maintain record in respect of any payment made to an employee or other person on account of travelling expenses

#### Regulation 10

It mandates that every office of an insurer shall maintain proper records of attendance.

#### Regulation 11

It mandates that every office of an insurer issuing any documents used for evidencing of the assumption of risk shall ensure that such documents maintained in the manner specified therein.

#### Regulation 12

It mandates that every insurer shall retain all the documents relating to claims settled, including copies of survey, investigation or loss assessment reports.

#### Regulation 13

It mandates that every insurer shall maintain a record setting out all details pertaining to reinsurance arrangements.

#### Regulation 14

It mandates that every insurer shall maintain a record setting out all details pertaining to coinsurance arrangements and agreements.

#### Regulation 15

It mandates that every insurer shall maintain ledgers of all such accounts required under the Notification.

#### Regulation 16

It mandates that every insurer shall maintain the records with respect to the organization and its activities including correspondences with Government and Tax Authorities.

### **Part II - Provisions applicable to Intermediaries and Insurance Intermediaries**

As per Regulation 17, every intermediary and insurance intermediary is required to maintain all records, information, data, documents, books or registers required to be maintained by it, under the Applicable Law at its principal place of business in India. Additionally, the intermediary and insurance intermediary is required to maintain all such information applicable to it as stipulated under Regulations (18) to (21) of the Notification.

### Regulation 18

It mandates that every insurance intermediary shall maintain the following records:

- a) Record of all employees;
- b) Record of policies solicited with respect to new business;
- c) Record of policies solicited with respect to renewal business;
- d) Record of claims, if serviced and processed through the insurance intermediary;
- e) Record of claims, surveyed by the insurance intermediary;
- f) Record of claims, in case the claim is serviced and processed through third party administrators;
- g) Record of details of solicitation with respect to reinsurance business;
- h) Record of claims with respect to the reinsurance business solicited; and
- i) Record of grievances and complaints

### Regulation 19

It mandates that every intermediary or insurance intermediary shall maintain all agreements entered with third parties for solicitation or servicing of insurance business or training or for any other purpose and all other information related to such agreements as stipulated under the Notification.

### Regulation 20

It mandates that every intermediary or insurance intermediary shall obtain and maintain receipt for every payment made and issue receipt for every payment received.

### Regulation 21

It mandates that every intermediary or insurance intermediary shall maintain records with respect to the organization and its activities including correspondences with Government and Tax Authorities.

## **Part III - Common Provisions applicable to Insurers, Intermediaries & Insurance Intermediaries**

The insurer, intermediary, and insurance intermediary have to maintain all the relevant information and documentation with respect to the specific functions carried on by it<sup>4</sup>. The information can be maintained in physical or electronic form<sup>5</sup>. The information shall have to be reconciled with audited financials or other applicable laws<sup>6</sup>. The insurer, intermediary, and insurance intermediary shall have to implement an “appropriate policy” on maintenance of records and destruction of old records<sup>7</sup>. The records are to be maintained for a minimum of 10 years from the date of last transaction of the respective records.<sup>8</sup>

### **Our View**

The Notification is an important step towards ensuring that the insurers, intermediaries, and insurance intermediaries retain relevant records to enable effective enquiry in case of any

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<sup>4</sup> Regulation 22 of the Notification.

<sup>5</sup> Regulation 23 of the Notification.

<sup>6</sup> *Id.*

<sup>7</sup> Regulation 24 of the Notification.

<sup>8</sup> *Id.*

investigation. The Notification attempts to bridge the gap that was making the investigations suffer due to lack of information and supporting documents being made available to investigating officers for conducting enquiries. The Notification will usher in a new era of transparency and accountability in this field of operations and the policy makers have taken a positive step by permitting the entities to maintain records in electronic formats. Having said so, no doubt the Notification bestows huge responsibility upon the entities in ensuring compliances with the Minimum Information and they may be required to review the existing policies and get the same redrafted to ensure compliance.

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