

Insurance Broking and its Compliances

Insurance Brokers Association of India (“IBAI”) is the sole representative body of licensed Insurance Brokers recognised by the Insurance Regulatory and Development Authority of India (IRDAI). The Insurance Brokers shall have the word ‘Insurance Broker’/ ‘Insurance Brokers’/ ‘Insurance Broking’ in the name to reflect their line of activity and to enable the public to differentiate Insurance Brokers registered with the Authority from other non-registered Insurance related entities.



CS Gopi Chitaliya, ACS

Associate Company Secretary and Lawyer
Mumbai
chitaliyagopi@gmail.com

INTRODUCTION

An Insurance Broker acts as a middlemen between Insurance Companies and people who are in search of purchasing insurance policies. They are experts who help people in buying the suitable insurance policies as per their needs and requirements. The Insurance Brokers also suggest and guide people about the nitty-gritties of the policies which are beyond the understanding of the layman.

Insurance Brokers are regulated by Insurance Regulatory and Development Authority of India (“IRDAI/Authority”) and provides advice-giving services to their clients on the matters related to Insurance.

Insurance Brokers Association of India (“IBAI”) is the sole representative body of licensed Insurance Brokers recognised by the Insurance Regulatory and Development Authority of India (IRDAI).

The Insurance Brokers shall have the word ‘Insurance Broker’/ ‘Insurance Brokers’/ ‘Insurance Broking’ in the name to reflect their line of activity and to enable the public to differentiate Insurance Brokers registered with the Authority from other non-registered Insurance related entities.

CATEGORIES OF INSURANCE BROKERS

There are five categories of Insurance Broker which are:

- (i) Direct Broker (Life),
- (ii) Direct Broker (General),

- (iii) Direct Broker (Life & General),
- (iv) Reinsurance Broker and
- (v) Composite Broker.

NUMBER OF INSURANCE BROKERS

As per Annual Report published by IRDAI for the Financial Year 2022-23, the number of registered Brokers is 708 as on March 31, 2022. Out of this, the valid brokers stood at 562 and remaining 146 are not in force as on March 31, 2022. The 562 valid brokers comprise of 494 Direct Brokers, 63 Composite Brokers and five Reinsurance Brokers.

Total 76 new Certificate of Registrations (CoR) were issued during the period from April 01, 2021 to March 31, 2022 out of which 74 were Direct Insurance Brokers, one Composite Insurance Broker and one Reinsurance Broker. During the period, 166 Insurance Broker registrations were renewed.

INSURANCE BROKING COMPLIANCES

1. Capital Requirement for Insurance Brokers

Respective Insurance Broker is required to have a minimum paid-up capital of:

- i. In Case Of Direct Broker- Rs. 75 Lakhs;
- ii. In Case Of Reinsurance Broker- Rs. 4 Crore;
- iii. In Case Of Composite Broker- Rs. 5 Crore.

2. Net-Worth Requirements for Insurance Brokers

The net-worth of an Insurance Broker shall at no time during the period of certificate of registration fall below:

- i. Rupees Fifty Lakh for Direct Broker;
- ii. 50% of the minimum capital requirements or contribution or equivalent specified under Regulation 19(1) for Reinsurance / Composite Broker.

3. Deposit Requirements for Insurance Brokers

Every Insurance Broker shall before the commencement of their business, deposit and keep deposited with any scheduled bank a sum equivalent to:

- i. Rupees ten lakhs for Direct Broker;
- ii. 10% of the minimum capital/ contribution specified under Regulation 19(1) for Reinsurance / Composite Broker in fixed deposit, which shall not be released to them without the prior written permission of the Authority.

4. Compliances of Various Laws

The Insurance Broker shall comply with IRDAI (Insurance Brokers) Regulations, 2018, Insurance Regulatory and Development Authority Act, 1999, Companies Act, 2013 or applicable act as per its constitution and, Circulars, Guidelines and any other instructions issued thereunder from time to time by the Authority.

5. Maintenance of Professional Indemnity (PI) Insurance

| Category of insurance broker | Limit of indemnity |
|------------------------------|--|
| Direct Broker | Two times remuneration received at the end of every financial year subject to a minimum limit of rupees one crore and at least Rs 50 crore, if twice the remuneration limit is equal to or more than Rs 50 crore. |
| Reinsurance Broker | Two times remuneration received at the end of every financial year subject to a minimum limit of rupees four crore and at least Rs 75 crore, if twice the remuneration limit is equal to or more than Rs 75 crore. |
| Composite Broker | Two times remuneration received at the end of every financial year subject to a minimum limit of rupees five crore and at least Rs 100 crore, if twice the remuneration limit is equal to or more than Rs 100 crore. |

Under Professional Indemnity Insurance it is to be noted that the un-insured excess in respect of each claim shall not exceed five percent of the capital employed by the insurance broker in the business and the AOA: AOY limit shall be 1:1.

Further, the retroactive date shall begin from the date of grant of license/ certificate of registration.

6. Filing of Returns With IRDAI

- i. Every Insurance Broker shall on or before 15th of April / July/ October / January each year furnish to the Authority quarterly return.
- ii. Every Insurance Broker shall before 31st October and 30th April each year furnish to the Authority the certificates duly certified by the Auditor along with half yearly return. (Certificate under No 1-A,1-B,1-C,1-E, 1-F)

iii. Insurance Brokers shall file periodical returns, without fail within the time specified, as per the formats/ returns prescribed under Authority's Business Analytical Project. Any failure to comply with this regulation without sufficient reason beyond 15 days shall attract penal action as specified under these regulations.

iv. Any false or wrong certification or concealment of facts in the certificates submitted to Authority shall attract penal action as specified under these regulations.

7. Appointment of Compliance Officer

- i. In case of Reinsurance and Composite Brokers it is mandatory that the Insurance Broker shall have internal audit systems and designate a Compliance Officer who is an employee of the insurance broker.
- ii. It is mandatory for an Insurance Broker who in a financial year earns more than rupees five crore remuneration (including reward) to have a designated Compliance Officer who will be responsible for the internal controls and systems.

Company Secretary can also act as Compliance Officer of Insurance Broking Company,

8. Reinsurance / Composite Brokers Sharing of Brokerage With A Foreign Broker for The Placement of Risks

The Reinsurance/Composite Brokers registered with the Authority shall not share more than 50% of the remuneration with the foreign Insurance Broker for the services obtained from them.

9. Remuneration and Reward to be Received By an Insurance Broker from an Insurer

- i. For Direct Insurance Business:

The payment of remuneration and/or reward to an Insurance Broker by an Insurer shall be governed by the below three regulations notified by IRDAI vide Notification dated March 26, 2023:

- a. IRDAI (Payment of Commission) regulation, 2023;
- b. IRDAI (Expenses of Management [EOM] of Insurers transacting general or health insurance business) Regulations, 2023; and
- c. IRDAI (Expenses of Management [EOM] of Insurers transacting life insurance business) Regulations, 2023 which has come into force with effect from April 1, 2023.

- ii. For Reinsurance business–

As per market practices prevalent from time to time.

The settlement of accounts by Insurers in respect of remuneration of Insurance Brokers shall be done on a monthly basis and it must be ensured that there is no cross settlement of outstanding balances.

10. Risk Management Services: Insurance Broker Compliance

- i. Insurance Brokers can charge client fees in lieu of its service to the client for Risk Management Service or other identical services which is not a percentage of premium or claim amount, as per the regulations and the Broker may undertake the activity for commercial risks only upon a written confirmation from the client.
- ii. The Insurance Brokers are not permitted to receive remuneration and reward under IRDAI Regulations 2016 and fees for the same Risk Management Services.

11. Claim Consultancy

Insurance Brokers may undertake claims consultancy only for commercial lines of General Insurance Business, subject to certain conditions:

- i. For claims not exceeding Rs.10 crore the Insurance Broker may undertake claims consultancy provided such claim does not emanate from a policy, which has been placed by the same Insurance Broker.
- ii. Insurance Broker shall inform the Authority within 30 days of acceptance of such claims consultancy by providing details.
- iii. For claims exceeding Rs. 10 crores the Insurance Broker may undertake claims consultancy with the prior approval of the Authority.

12. Board Approved Policies

The Insurance Brokers shall have the following policies:

- i. Outsourcing Policy,
- ii. Conflict Management Policy,
- iii. Policy for Comparison and Distribution of Insurance Products,
- iv. Grievance Redressal Policy,
- v. Cyber Security Policy,
- vi. Corporate Social Responsibility Policy if applicable,
- vii. Business Continuity Policy,
- viii. Anti-Money Laundering Policy,

The Insurance Brokers are not permitted to receive remuneration and reward under IRDAI Regulations 2016 and fees for the same Risk Management Services.

- ix. Anti-Bribery and Anti-Corruption Policy,
- x. Prevention of Sexual Harassment Policy,
- xi. Any other policy to comply with provision of law.

13. Code of Conduct for Insurance Brokers

- i. Every Insurance Broker shall abide by the Code of Conduct as specified in Schedule I –Form H of Broker Regulations.
- ii. In case of a Composite Broker or a Reinsurance broker, he shall abide by the additional Code of Conduct specified in Schedule I – Form I of these regulations.

14. Internal Control and System

It is the responsibility of the Insurance Broker to ensure in place a proper internal audit system and that it is adequate for the business. In case of Reinsurance and Composite Brokers the Insurance Brokers must mandatorily have industrial audit systems.

15. Segregation of Insurance Money

- i. The provisions of Section 64VB of the Act shall continue to determine the question of assumption of risk by an Insurer.
- ii. In the case of reinsurance contracts, a fiduciary account need to be maintained to hold Reinsurance money. In these circumstances the money collected by the registered insurance broker shall be dealt with in the manner specified in Schedule II – Form U of Broker regulations.

16. Insurance Broker Compliance With Respect to Maintenance of Books of Account, Records, etc.

The Insurance Broker is required to maintain the following for each financial year:

- i. A balance sheet or statement of affairs at the culmination of each accounting period and Profit and loss account.
- ii. A statement on cash or fund flow- direct method.
- iii. Any additional statement on the business of broking as per the need of the authority.

17. Ceiling on Business from Single Client

The business of the Insurance Broker shall be carried in such a manner that, not more than 50 percent of the remuneration shall emanate from any one client in a financial year.

18. Aggregate Holdings of Equity Shares or Contribution or Equivalent In The Insurance Broker By The Indian Promoter, Investor, Indian Investor And Foreign Investor As The Case May Be

Foreign Investors, including portfolio investors, shall not exceed such percent of limits as prescribed by Central Government.

19. Outsourcing of Activities By Insurance Broker

- i. An Insurance Broker can outsource the activities as given in Schedule II - Form X of Broker Regulation based on a Board approved policy.
- ii. IRDAI do not allow core activities to be outsourced.

20. Validity of Certificate of Registration

A Certificate of Registration once issued shall be valid for a period of three years from the date of issue, unless the same is suspended or cancelled.

21. Disclosures to the Authority

An Insurance Broker shall disclose to the Authority on their own any material change which has a bearing on their certificate of registration within 30 days of such change.

22. Co-Broking Agreement

- i. Two or more registered insurance brokers can jointly handle the broking of insurance requirements of any client with the written consent of the client.
- ii. Such a situation the registered insurance brokers shall enter into Terms of Business Agreement for providing insurance broking services to the specified client and the Agreement shall include, amongst other things, the manner defining the duties and responsibilities of each registered insurance broker, the manner of sharing of remuneration or fee among themselves, the reason for providing insurance broking services jointly IRDAI do not allow core activities to be outsourced.

23. Appointment of Principal Officer and Broker Qualified Person

- i. "Principal Officer" means - an officer in an executive role designated as such for the purpose of performing the duties and responsibilities as specified in Broker regulations to carry out



the functions of an Insurance Broker and who shall be the Chief Executive Officer or a Whole time Director or Managing Director, Managing Partner or a Managing Trustee or such individual appointed / engaged exclusively to carry out the functions of an insurance broker.

- ii. "Broker Qualified Person" means an individual who is an employee or Director of the Insurance Broker engaged in solicitation and procurement of Insurance Business and who has undergone training and passed the examination specified for them.

CONCLUSION

As per the Insurance Regulatory and Development Authority of India (IRDAI), India will be the sixth-largest insurance market within a decade, leapfrogging Germany, Canada, Italy and South Korea. Insurance market in India is expected to reach US\$ 222 billion by 2026.

REFERENCES:

- i. IRDAI (Insurance Broker) Regulations, 2018
- ii. India Brand Equity Foundation (IBEF) (<https://www.ibef.org/industry/insurance-sector-india/infographic>)
- iii. Annual Report published by IRDAI