

# THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY (SHARING OF CONFIDENTIAL INFORMATION CONCERNING DOMESTIC OR FOREIGN ENTITY) REGULATIONS, 2012<sup>1</sup>

*In exercise of powers conferred by section 14 and section 26 of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) read with section 114 of the Insurance Act, 1938 (4 of 1938), the Authority in consultation with the Insurance Advisory Committee constituted under section 25 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), hereby makes the following regulations, namely:—*

**1. Short title and commencement.**—(1) These Regulations shall be called IRDA (Sharing of Confidential Information Concerning Domestic or Foreign Entity) Regulations, 2012.

(2) They shall come into force from the date<sup>2</sup> of their publication in the Official Gazette.

**2. Definitions.**—In these regulations, unless the context otherwise requires,—

- (a) 'Authority' shall mean Insurance Regulatory and Development Authority established under sub-section (i) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
- (b) (i) 'Confidential Information' with regard to a foreign entity shall mean information obtained from the foreign entity that cannot be made available in the public domain regarding which the concerned foreign entity has requested that secrecy be maintained either explicitly or under any agreement/MoU to which the both the foreign entity and the Authority are signatories;
- (ii) 'Confidential Information' with regard to domestic entity shall be as defined in applicable domestic laws.
- (c) 'Custodian of information' shall mean an officer designated as 'custodian of information' not below the rank of Joint Director of the Authority in whose custody the confidential information is kept under lock and key away from public view and without whose authority and approval, such information cannot be released or accessed;
- (d) 'Foreign entity' shall mean a foreign financial regulatory authority or any foreign financial entity;
- (e) 'Information' in the context of this regulation with regard to foreign entity shall mean information in any material form relating to a foreign authority being a foreign financial regulatory authority and/or information relating to any other foreign financial entity;

1. *Vide* Notification F. No. IRDA/Reg./2/60/2013, dated 11th January, 2013, published in the Gazette of India, Extra., Pt. III, Sec. 4, No. 21, dated 24th January, 2013.

2. Came into force on 24-1-2013.

- (f) 'Information' in the context of domestic entity shall be as defined in section 2(f) of The Right to Information Act, 2005 (22 of 2005);
- (g) 'Regulated Entity' shall mean any entity coming within the regulatory domain of the Authority or entity regulated by a foreign financial regulatory authority;
- (h) 'Requesting Entity' shall mean entity requesting information relating to a requested entity;
- (i) 'Requested Entity' shall mean the domestic or foreign entity whose information is subject of disclosure under these regulations;
- (j) All words and expressions used herein and not defined herein but defined in the Insurance Act, 1938 (4 of 1938), or in the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) shall have the meanings respectively assigned to them in those Acts.

**3. Disclosure of information.**—Disclosure of information under this section shall be subject to the following:—

- (i) Applications for disclosure of information under the Right to Information Act, 2005 (22 of 2005) shall be processed as enumerated under the said Act only.
- (ii) While considering request for disclosure of information under this section, regard shall be had to section 8(1)(a) of the Right to Information Act, 2005 (22 of 2005) which states as under:

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.

- (iii) Disclosure of information under this section (other than (i) above) can be considered only upon written request for such information by the requesting entity.
- (iv) Upon receiving the written request for information from the requesting entity by the Authority, the Authority shall notify the Requested Entity of the request and obtain the explicit prior consent of the Requested Entity.
- (v) Disclosure of information can be made only to assist the requesting authorities for the sole purpose of the lawful performance of their duties.
- (vi) Disclosure can be made only after obtaining written approval of the custodian of information as defined in 1 (c).
- (vii) Where it becomes necessary for the Authority to share confidential information provided by a foreign entity with local, regional, state or any law enforcement or regulatory authorities who have authority over the Regulated Entity, the Authority shall—
  - (a) Notify the Requested Authority promptly;

- (b) Obtain its prior consent; and
  - (c) Prior to passing on the information, ensure that each recipient agrees to maintain the confidential status of the information provided and has legal authority to do so.
- (viii) Where Confidential Information provided under this section is subject to a legally enforceable request, the Authority will notify the Requested Authority prior to complying with such demand. Where consent to passing on information is not given by the Requested Authority, the Authority shall use all reasonable legal means to resist such a demand or protect the confidentiality of the information.
- (ix) All employees and officials currently and previously employed by the Authority gaining access to confidential information relating to foreign entity/ domestic entity in the course of their duties while working with the Authority are bound by an obligation of professional secrecy. Any breach of such obligation will render them liable for action as per amended IRDA (Conditions of Service of Officers and Other Employees) Regulations, 2000 and IRDA Superannuation Fund and applicable domestic laws.

**4. Categorization of information sought.**—(i) *Information available in public domain:* The IRDA has laid down the prescription for disclosure of information. These disclosures include Returns required to be filed with the IRDA at periodic intervals including monthly, quarterly, half-yearly and annual. In addition, disclosures are also required to be made in the public domain at the prescribed intervals. Broadly, the information available in the public domain can be segregated into the following two categories:—

- (a) Information available on the IRDA website/IRDA publications;
- (b) Information available on the respective entity's website/ its publicity available documents or available with any other statutory/Public body.

In addition, once the insurance companies get listed, the disclosure made in the prospectus would also need to be compliant with the prescription of the market regulator, Securities and Exchange Board of India, besides meeting the periodic disclosure requirements as laid down in the listing Agreement.

The Authority has no concerns on sharing of information in the public domain, and would exercise either of the following two options in providing access to the said information:—

- (a) Provide information available in the public domain; and
- (b) Provide details of the website/other source of the information sought.

Thus, the applicant can be provided/guided to the source of the said information.

(ii) *Information not available in public domain:*

Information sought from the IRDA under the above head may broadly be classified into the following categories:—



**A. Information sought for carrying out statutory and regulatory purpose:**

- (a) Information sought under section 20 of the Insurance Act, 1938 (4 of 1938);
- (b) Information sought by Domestic regulators, including the financial sector regulators such as Reserve Bank of India, Securities & Exchange Board of India, PFRDA and other statutory regulators;
- (c) Information sought by International Supervisors and Agencies; and
- (d) Various public authorities/domestic bodies such as the Government of India/Judiciary/Law enforcement agencies in the lawful performance of their functions.

The information that can be sought under section 20 of Insurance Act, 1938 (4 of 1938) is non-commercial and largely in public domain. All requests under this provision shall be examined to ensure that no information that can affect competition or stability of the company or the industry as a whole is shared.

In cases of (b), (c) and (d) above, the requests for information would be individually examined to assess whether it is (a) shareable information; or (b) non-shareable information. The assessment on the shareability of the information not available in the public domain would be guided by the following broad considerations:—

- (a) Convincing reason for the request made - whether such reasons are to assist the lawful performance of the duties of such authorities
- (b) Nature of information sought (not proprietary)
- (c) Maintenance of confidentiality of the information sought
- (d) Reciprocity of the requests made.

**B. Information sought by other stakeholders—**

- (a) Information sought under Right to Information Act, 2005 (22 of 2005); and
- (b) Information sought by others, including public at large.

**5. Each case to be considered on merit.**—Each request for the information sought would be considered on merit and decision on sharing of information sought may be taken. This is particularly pertinent since there may be occasion when the information sought may be considered to be confidential for commercial or other reason, including access to information by the competitors.

However, the Authority reserves the right not to share any information which could possibly impact the stability of its regulated entity – insurance company/intermediary; or the insurance sector as a whole.