

THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY (SHARING OF DATABASE FOR DISTRIBUTION OF INSURANCE PRODUCTS) REGULATIONS, 2010¹

In exercise of the powers conferred by clause (zd) of sub-section (2) of section 114A of the Insurance Act, 1938 (4 of 1938) read with sub-section (1) of section 14 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Authority in consultation with the Insurance Advisory Committee, hereby makes the following regulations, namely:—

CHAPTER I PRELIMINARY

1. Short title and commencement.—(1) These regulations may be called the Insurance Regulatory and Development Authority (Sharing of Database for Distribution of Insurance Products) Regulations, 2010.

(2) They shall come into force on the date² of their publication in the Official Gazette.

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

- (a) "Act" means the Insurance Act, 1938 (4 of 1938);
- (b) "agreement" for the purpose of these regulations means an agreement entered into between a referral company and an insurer registered under section 3 of the Act;
- (c) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
- (d) "corporate agent" means a person as defined in the IRDA (Licensing of Corporate Agents) Regulations, 2002;
- (e) "insurance agent" means an insurance agent as defined in sub-section (10) of section 2 of the Act;
- (f) "insurance broker" means a person as defined in clause (i) of regulation 2 of IRDA (Licensing of Insurance Brokers) Regulations, 2002;
- (g) "IRDA Portal" means the portal maintained by the Authority for the purpose of registering the referral company;
- (h) "micro insurance agent" shall have the meaning as assigned to it in clause (f) of regulation 2 of the IRDA (Micro Insurance) Regulations, 2005;

1. *Vide* Notification F. No. IRDA/Reg./1/51/2010, dated 1st July, 2010, published in the Gazette of India, Extra., Pt. III, Sec. 4, dated 6th July, 2010.

2. Came into force on 6-7-2010.

- (i) "referral arrangement" means the arrangement between a referral company and an insurer in terms of an agreement entered into for the purpose of sharing of the database of the customers of the referral company but does not include the soliciting or sale, directly or through an agent, corporate agent or an insurance intermediary including a micro, insurance agent of an insurance product;
- (j) "referral company" means a company formed and registered under the Companies Act, 1956 (1 of 1956) and approved by the Authority under sub-regulation (3) of regulation 6 except as otherwise permitted in these regulations;
- (k) "Register" for the purpose of these regulations refers to the process of registration as outlined in regulation 8;
- (l) All words and expressions used and not defined in these regulations but defined in the Insurance Act, 1938 (4 of 1938), the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) or in any of the regulations made thereunder shall have the meanings respectively assigned to them in those Acts or Regulations.

CHAPTER II

APPROVAL OF A REFERRAL COMPANY

3. Application of a referral company.—The application seeking grant of approval of the referral company shall be made by an insurer to the Authority, accompanied by a fee of rupees ten thousand paid by way of a bank draft in favour of "Insurance Regulatory and Development Authority" payable at Hyderabad and containing such information as specified in Form A in Schedule I.

4. Application to conform to the requirements.—An application which is not complete in all respects shall be liable to be rejected:

Provided that, before rejecting any such application, the insurer shall be given an opportunity to complete such formalities within a period of thirty days from the date of receipt of communication from the Authority.

5. Furnishing information.—The Authority may require the insurer to furnish such further information or clarification as may be required by it.

6. Eligibility criteria for approval of the referral company.—(1) For the grant of approval of the referral company, the insurer shall ensure the fulfilment of the conditions including but not limited to the following:—

- (a) The referral company is a company formed and registered under the Companies Act, 1956 (1 of 1956) unless otherwise provided under sub-regulation (b) of regulation 6 of these regulations;
- (b) The referral company is not in any of the businesses of extending loans and advances, accepting deposits, trading in securities on its own account or on the accounts of the customers:

Provided that any bank including a Regional Rural Bank or a co-operative bank that is not eligible for grant of corporate agency license under the relevant eligibility criteria stipulated by the Reserve Bank of India may be approved as a referral company, subject to such

conditions as may be imposed by the Authority and the Reserve Bank of India:

Provided further that any other department or organization of the Government may also be approved as a referral company subject to such conditions as may be imposed by the Authority;

- (c) The referral company is engaged in a business that has no linkage, direct or indirect, with the transaction or distribution of the business of insurance;
- (d) The referral company does not carry out the sale or promotion of insurance products in its premises or elsewhere at all times;
- (e) The referral company, has a minimum net worth of rupees fifty lakhs and a minimum turnover of rupees one crore during the previous three consecutive years;
- (f) The referral company has a database of its customers acquired through its business:

Provided that a company whose main business is acquisition and sale of client data shall not be eligible to be a referral company;

- (g) The referral company does not have an existing referral arrangement with an insurer carrying out the same class of insurance business;
- (h) The referral company is not bound by any confidentiality agreement in the matter of sharing the personal and financial databases of its customers.

(2) While considering the application, the Authority may, if it so desires, verify the information furnished by the insurer including the supporting documents and the available database and also inspect the premises and infrastructure of the referral company and for this purpose, appoint an officer of the Authority.

(3) The Authority may, after considering the application with reference to the matters specified in sub-regulations (1) and (2) of regulation 6, grant approval to the referral company which shall be valid for a period of three years from the date of grant of such approval.

7. Procedure where approval is not granted.—(1) The Authority may reject the application made by an insurer to the Authority seeking grant of approval of the referral company if it does not satisfy the eligibility criteria laid down in regulation 6 of these regulations, or if the grant of such approval is not found to be in public interest.

(2) The decision of the Authority along with the reasons to be recorded in writing shall be communicated to the insurer within a period of fourteen days from the date of the decision.

CHAPTER III

REGISTRATION OF A REFERRAL COMPANY

8. Procedure for registration of a referral company.—(1) The insurer shall register the referral company that has been approved by the Authority under regulation 6 in the IRDA Portal.

(2) The insurer shall enter into an agreement with the referral company approved by the Authority which shall necessarily include details relating to though not limited to the following:—

- (a) Agreed price of the database to be shared
- (b) Terms of payment including time-frame and mode
- (c) The right of the insurer to inspect/audit the referral company
- (d) Onus of complying with the regulatory and other legal requirements on both the parties to the agreement
- (e) Identifying the different data elements to be shared (*viz.* name of customer, contact details).

(3) The agreement shall be valid for a period of three years from the date of grant of approval by the Authority and within fifteen days from the date of entering into such an agreement, the insurer shall file the agreement in electronic form through the IRDA Portal.

(4) Notwithstanding the terms of the referral agreement entered into with the referral company, the Authority may direct the insurer to forthwith terminate the registration of the referral company if the same is not found to be in public interest.

9. Restrictions on the business activities of the referral company.—The referral company that has been approved by the Authority and registered with the insurer shall not:

- (a) carry out the sale of insurance products in its premises or elsewhere, at all times;
- (b) undertake any insurance related activity except activities in the nature of sharing of the database of its customers for the sale or distribution of insurance products;
- (c) create a database of its customer groups by specifically soliciting or scouting prospective policyholders, for the sale or distribution of the insurance products;
- (d) provide details of its customers without their prior consent or provide details of any person/firm/company with whom they have not had any recorded business transaction;
- (e) receive any payment from the insurer for providing the database of its customers, over and above the remuneration as outlined in sub-regulation (7) of regulation 11;
- (f) receive any payment for providing the database of its customers from a person involved in insurance related activity other than an insurer;
- (g) be licensed/registered as an insurance agent, corporate agent, micro insurance agent or a broker under the relevant regulations framed by the Authority;
- (h) enter into a referral arrangement with more than one life and/or one general insurance company and/or one stand alone health insurance company;

Reg. 11]

- (i) earn more than 10% of its total income from the referral business with an insurer or any other organization not involved in any insurance related activity, at any time during the tenure of the referral arrangement;
- (j) acquire at any time, databases with the express purpose of selling it to insurers or any other organization not involved in any insurance related activity.

CHAPTER IV

DUTIES AND OBLIGATIONS

10. Obligations of a Referral Company.—(1) A referral company shall ensure that it maintains the specified net worth and turnover at all times during the tenure of the referral arrangement.

(2) A referral company shall maintain the records and the reports of its activities under the referral arrangement, in the manner specified in the agreement entered into between the insurer and the referral company.

(3) A referral company shall along with its employees (whatever their designation may be) comply with all the provisions of the Act, the Insurance Regulatory and Development Act, 1999 (41 of 1999), the rules and regulations framed thereunder and such other directions issued by the Authority from time-to-time.

11. Obligations of the Insurer.—(1) An insurer shall ensure that the referral company with which it has entered into a referral arrangement is compliant with all the provisions of these regulations, the Act, the Insurance Regulatory and Development Act, 1999 (41 of 1999), the rules and regulations framed thereunder and such other directions issued by the Authority from time-to-time.

(2) An insurer shall maintain a record of every referral agreement entered into by it, the total business generated by it under the referral agreement and the total amount payable by it including all the payments made to the referral company, along with the calculation basis of such payments.

(3) An insurer shall maintain separate records for each batch of referral data obtained from each referral company, the details of the policies sold out of the references thus obtained and the information regarding the payments made by it under the head 'referral', in Form B as specified in Schedule I.

(4) An insurer shall submit to the Authority, the records referred to in sub-regulations (2) and (3) of regulation 11 and the reports of its activities as relevant for the purpose of these regulations, whenever called upon to do so.

(5) An insurer shall bring to the notice of the Authority, any change in the information or particulars previously furnished that has a bearing on the approval granted by the Authority or the modification, if any, in the information that has been uploaded in the IRDA Portal at the time of registration not later than fifteen days from the date of occurrence of such change.

(6) An insurer shall upload the duly approved modification to the information or particulars previously furnished to the Authority not later than fifteen days from the date of grant of such approval.

(7) An insurer shall pay, such fees or remuneration, by whatever name called, to the referral company for such database that is converted into sales, which shall not exceed twenty-five per cent. of the commission payable or actually paid, whichever is lower, on the first year premium of the first policy sold on the basis of the lead obtained from the referral company. The fees or remuneration and expenses shall form part of and be within the overall limits on the commission and expenses as provided for in sections 40B and 40C of the Act and the relevant rules and regulations made thereunder. However no fees or remuneration, by whatever name called, shall be paid by the insurer to a referral company in respect of the policies that are sold without relying upon the data shared by it:

Provided that in the case of life insurance policies procured, where the premium is payable in other-than-yearly mode, the referral fee shall be paid only to the extent of the first year premium instalment/s and that have been received by the insurer:

Provided further that in case of long-term policies under general insurance, the referral fee shall be paid only to the extent of the premium instalment/s in the first year of the policy and that have been received by the insurer.

(8) An insurer shall not pay any fees or remuneration, by whatever name called, for such database converted into sales more than once during the tenure of the referral arrangement.

(9) An insurer shall not pay any fees or remuneration, by whatever name called, on any type of renewal premium/policy payable from the second year and the subsequent years or for the sale of a new policy to the existing customer of the insurer.

(10) An insurer shall not, in respect of any database or lead, by whatever name called, make any payment in advance to any referral company.

(11) An insurer shall not pay the referral company fees or remuneration, by whatever name called, towards the costs incidental to the referral activities including maintenance of the database, infrastructure, training, entertainment, development, communication, advertisements, sales, promotion etc.

(12) An insurer shall not pay any remuneration towards acquisition of any database after the termination of the referral agreement.

(13) An insurer shall ensure that all the transactions in terms of the referral arrangement are in accordance with the provisions of the Act, the Insurance Regulatory and Development Act, 1999 (41 of 1999), the rules and regulations framed thereunder and such other directions as issued by the Authority from time-to-time.

(14) Every insurer shall forthwith terminate all the referral arrangements entered into prior to the coming into effect of these regulations that are not in conformity with the provisions of these regulations. Such arrangements shall however be allowed to continue subject to them being suitably modified or amended in terms of these regulations, within a period of six months from the date of notification of these regulations, and after obtaining the prior approval of the Authority.

(15) The insurer shall nominate one of its senior officials who reports to the board of directors of the insurer, as a compliance officer, who shall be responsible for the verification and due diligence pertaining to the proposed and existing referral companies and shall also be authorised to sign the referral agreements. The compliance officer shall also be responsible for reporting all matters pertaining to the referral agreements to the Authority.

(16) The insurer shall be responsible for the acts of omission or commission of its employees or the persons whose services have been availed or procured by it towards the referral arrangement.

CHAPTER V

PROCEDURE FOR ACTION IN CASE OF DEFAULT

12. Liability for action in case of default by the insurance company.—An insurer that,—

- (a) fails to exercise due diligence in relation to the referral arrangement entered into with the referral company;
- (b) fails to furnish any information or furnishes wrong information to the Authority relating to the referral arrangement as required under these regulations;
- (c) fails to comply with any of the obligations specified under these regulations;
- (d) violates the conditions of its registration; or
- (e) fails to comply with any of the provisions of the Act, the Insurance Regulatory and Development Act, 1999 (41 of 1999), the rules and regulations framed thereunder and such other directions issued by the Authority from time-to-time shall be liable for any of the actions as provided for under the provisions of the Act, the Insurance Regulatory and Development Act, 1999 (41 of 1999), and the relevant Regulations made thereunder:

Provided that no such action shall be initiated by the Authority and order passed thereafter without giving an opportunity of hearing to the insurer.

13. Action against the referral company.—The Authority may cancel the approval granted to a referral company or take any other action as deemed appropriate under the provisions of the Act in case the referral company fails to exercise due diligence or comply with any of the obligations under these regulations or act in accordance with the restrictions imposed upon it or acts contrary to the provisions of the Act, the Insurance Regulatory and Development Act, 1999 (41 of 1999), the rules and regulations framed thereunder and such other directions as issued by the Authority from time-to-time:

Provided that no such action shall be initiated by the Authority and order passed thereafter without giving an opportunity of hearing to the referral company:

Provided further that an insurer shall not be permitted to enter into a referral arrangement with such a referral company for a period of three years from the date of the Authority passing such an order.

14. Power of the Authority to issue clarifications.—In order to remove any difficulties in respect of the application or interpretation of any of the provisions of these regulations, the Authority may issue appropriate clarifications or guidelines.

SCHEDULE I

FORM A

(See regulation 3)

APPLICATION FOR APPROVAL OF THE REFERRAL COMPANY

Details of the Insurer

1. Name:
2. Registration Number:
3. Date of Registration:
4. Class of Business Pursued:
5. Particulars of remittance of fee:

Details of the proposed referral company

1. Name:
2. Complete address:
3. Details of registration including number, date, etc.:
4. Nature of its business:
5. Date of commencement of business:
6. Net worth as at the end of the financial year during the last three financial years:
7. Turnover in each of the last three consecutive financial years:
8. List of other group/associate companies, if any.:
9. Nature of the business of the other group/associate companies:
10. Whether the company has any linkage, direct or indirect, with transaction or distribution of the business of insurance along with details, if any:
11. Whether the company carries out the sale or promotion of insurance products in its premises sale or promotion of insurance products in its premises along with details, if any:
12. Whether the company has a referral arrangement with another insurer in the same class of insurance business along with details, if any:
13. Whether the company has a database of its customers acquired in the course of its core business along with details, if any:
14. The number of clients in the database of the company as on the date of application:
15. Geographical area covered under the database:
16. Whether the company is bound by any confidentiality/privacy/non-disclosure agreements with its customers/clients whose data is proposed to be shared with the insurer along with details if any:
17. In case the proposed referral company is a bank, whether the bank is not eligible to be a corporate agent under the eligibility criteria stipulated by the Reserve Bank of India:
18. Any other relevant information required to be disclosed:

I, the undersigned solemnly declare that the facts/details furnished in this application form on behalf of the insurer, are true to the best of my knowledge and that necessary due diligence has been carried out in respect of the details submitted in this form.

Place.....

Date.....

.....
Signature of the Compliance Officer of the Insurer with seal

Supporting Documents to be enclosed to the application:

1. Demand Draft
2. Memorandum of Association and Articles of Association
3. Audited accounts of the company for the last three financial years
4. Certificate issued by the Registrar of Companies
5. Particulars of Registration with Relevant Authority (in case of banks which are not companies)

For FORMS

Please visit IRDA website (www.irda.gov.in)
