Insurance Alcove

June 26, 2019

KEY NOTES (GENERAL INSURER) | CORPORATE AGENCY AND REMUNERATION / COMMISSION

I. Arrangements with insurance corporate agents: The IRDAI is empowered to license intermediaries, such as insurance corporate agents for 3 years at a time.[1] The principal set of regulations for corporate agency licensing, code of conduct, material inclusions in corporate agency agreements and the IRDAI's oversight of insurance corporate agency arrangements is the IRDAI (Registration of Corporate Agents) Regulations, 2015 ("**CA Regulations**").[2] Significant compliance provisions include:

a. *Types of corporate agents*[3]: There are four types, depending on the class of insurance they are licensed to distribution – (i) corporate agent (life), (ii) corporate agent (general)[4], (iii) corporate agent (health), and (iv) corporate agent (composite).
b. *No forced distribution / exclusivity*: An insurer cannot require a corporate agent to insurer all of their clients with such insurer.[5] A corporate agent is prohibited from promising to an insurer, and an insurer is prohibited from compelling the corporate agent to distribute a particular insurer's products.
c. *No forced bundling*: Where insurance is sold as an ancillary product along with the principal business product (e.g. insurance along with a loan), the corporate agent, it shareholder or its associates should not compel the principal product customer to buy the insurance product through it.
d. *No signing fee or incentives*: Insurers cannot pay corporate agents a signing fee or any charges except permitted by IRDAI regulations. Also, insurers cannot pay incentives (cash or non-cash) to officers or employees of corporate agents.[6] The code of conduct for corporate agents prohibits corporate agents form paying or allowing the payment of any fee, commission, incentive for sale, introduction, lead generation, referring or finding any person entity.[7]
e. *Prescriptions for Agreements*: Corporate agency agreements must be for a minimum term of 1 year. Once executed, these agreements should be disclosed to the IRDAI within 30 days. Corporate agents can terminate agreements only after informing the IRDAI and providing it reasons.
f. *Termination of* Agreements: Once terminated, corporate agents should continue to service policies for the earlier of: (i) 6 months or (ii) expiry of all policies, and after that make suitable transition arrangements with the insurer. If the insurer seeks to terminate, it also needs to provide reasons to the IRDAI, and then take up servicing policies.[8]
g. *Disclosures to Customers*: If a corporate agent has tied-up with more than one class insurer (e.g. two general insurers), the corporate agent needs to disclose to customers the scale of commission on each insurance product, the fact that the corporate agent has other tie-ups, and policy details such as coverage, term, premium payment and terms and any other information the customer seeks.
h. C*orporate Agent's Policy*: Insurance corporate agents are required to put in place a policy which is approved by their board of directors for addressing, *inter alia*, the manner of soliciting and servicing insurance products, and the process of adopting the open architecture policy going forward.[9]

II. Regulation of Remuneration, Commission and Reward[10]: Only insurance agents and insurance intermediaries such as insurance corporate agents are permitted to receive remuneration, commission or reward for soliciting, procuring and servicing insurance products.[11] The IRDAI regulates[12] commission, remuneration and reward and prescribe caps under the IRDAI (Payment of Commission or Remuneration or Reward to Insurance Agents and Insurance Intermediaries) Regulations, 2016 ("**Commission Regulations**").

a. *Monetary Caps*: Schedule III of the Commission Regulations (see **Annexure I** hereto) provides

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IFLR1000: Tier 1 for Private Equity and Project Development: Telecommunications Networks.
2020, 2019, 2018, 2017, 2014

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FT Innovative Lawyers Asia Pacific 2019 Awards: NDA ranked 2nd in the Most Innovative Law Firm category (Asia-Pacific Headquartered)

RSG-Financial Times: India's Most Innovative Law Firm
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the remuneration caps for general insurance (non-motor) policies, Schedule IV of the Commission Regulations (see **Annexure II** hereto) provides the caps for motor policies, and Schedule II of the Commission Regulations (see **Annexure III** hereto) provides the caps for health insurance policies.[13]

b. *Reward Cap*: Rewards[14] payable to insurance intermediaries or agents are capped at 30% of the commission or remuneration so paid. They are to be calculated separately for health insurance and non-health general insurance policies. Reward cannot be linked to each and every policy solicited.[15]

c. *Others Restrictions*: Insurers cannot (i) pay both commission to an agent and remuneration to an intermediary for the same policy and (ii) pay commission or remuneration to agents / intermediaries for policies procured directly by the insurer.[16]

d. *Insurer's Remuneration Policy*: Insurers are required to have in place a Board-approved policy for payment of remuneration[17], commission[18] and reward[19] to insurance agents and insurance intermediaries. One of the key components of the policy is that it should provide for the manner and conditions regarding payment of remuneration to insurance intermediaries.

ANNEXURE I

REMUNERATION CAPS FOR GENERAL INSURANCE (NON-MOTOR) POLICIES[20]

S. No.	Line of business (other than motor)	Maximum commission payable to insurance agent	Maximum remuneration payable to insurance intermediary
1	Fire- Retail	15%	16.5%
2	Fire- Commercial (Risks with S.I. < Rs. 2,500 Crores)	10%	11.5%
3	Fire- Commercial (Risks with S.I. > Rs. 2,500 Crores)	5%	6.25%
4	Marine- Cargo	15%	16.5%
5	Marine- Hull	10%	11.5%
6	Miscellaneous- Retail	15%	16.5%
7	Miscellaneous- Commercial/Group	10%	12.5%
8	Miscellaneous- Commercial/ (Engineering Risks with S.I. > Rs. 2,500 Crores	5%	6.25%

ANNEXURE II

REMUNERATION CAPS FOR GENERAL INSURANCE (MOTOR) POLICIES[21]

Part A[22]

Maximum Commission / Remuneration as percentage of premium allowed for motor insurance policies

S. No.	Year	Maximum Commission / remuneration payable			
		Motor (Comprehensive)		Motor (Standalone-TP)	
		Other than two-wheeler	Two-wheeler	Other than two-wheeler	Two-wheeler
1	Certificate of registration – 1st to 3rd year	15% (OD portion) + (Nil-TP portion)	17.5% (OD portion) + (Nil-TP portion	2.5%	2.5%
2	Certificate of registration – 4th year onwards	15% (OD portion) + 2.5% (TP portion	17.5% (OD portion) + 2.5% (TP portion	2.5%	2.5%

Part B

Distribution Fees received by Motor Insurance Service Providers ("MISP")[23]

If the MISP is sponsored directly by an insurer, the MISP will receive distribution fees directly.[24] However, if the MISP is sponsored by an insurance intermediary, then it shall receive distribution fees through an insurance intermediary. The following table sets out the maximum distribution fees payable to the MISP.

Vehicle	Maximum Distribution Fees payable to MISP	Maximum Remuneration & Reward payable to insurance intermediary by insurer[25]
Two-wheeler automotive vehicle	22.5% of the OD portion of the automotive vehicle	22.5% of the OD portion of the automotive vehicle
Other than two-wheeler automotive vehicle	19.5% of the OD portion of the automotive vehicle	19.5% of the OD portion of the automotive vehicle

Subsequently, the General Insurance Council clarified that (i) commission / remuneration on TP portion of premium would be available from the 4th year onwards (i.e. from the 3rd renewal) and would be 2.5% (for both standalone and package cover) under the MISP Guidelines; and (ii) the reward of 30% of commission / remuneration under other than health segment would be allowed on TP portion of both standalone and package motor insurance policies sold through an MISP[26] The IRDAI has clarified that, for annual motor TP (both standalone TP and TP portion of package), the distribution fee inclusive of reward will be 2.5%+30% reward i.e. 3.25%.[27]

Part C

Commission, Remuneration, Reward and Distribution Fees for Long Term Motor Insurance Policies[28]

S. No.	Types of Long Term Motor Insurance Policies	Max Commission / remuneration payable	Maximum rewards	Distribution Fees for MISP
1	5 years long term standalone motor third party insurance policy for new two-wheelers	Nil	Nil	Nil
2	3 years long term standalone motor third party insurance policy for new private car	Nil	Nil	Nil
3	5 years long term motor package insurance policy ("**LTMPIP**") for a new two-wheeler	1) 1st year of 5 years LTMPIP – 17.5% (OD portion) + (Nil-TP Portion) 2) 2nd year of 5 years LTMPIP – 10% (OD portion) + (Nil-TP Portion) 3) 3rd year of 5 years LTMPIP – 10% (OD portion) + (Nil-TP Portion) 4) 4th year of 5 years LTMPIP – 5% (OD portion) + (Nil-TP Portion) 5) 5th year of 5 years LTMPIP – 5% (OD portion) + (Nil-TP Portion)	30% of commission / remuneration per policy	1) 1st year of 5 years LTMPIP – 22.5% (OD portion) + (Nil-TP Portion) 2) 2nd year of 5 years LTMPIP – 13% (OD portion) + (Nil-TP Portion) 3) 3rd year of 5 years LTMPIP – 13% (OD portion) + (Nil-TP Portion) 4) 4th year of 5 years LTMPIP – 6.5% (OD portion) + (Nil-TP Portion) 5) 5th year of 5 years LTMPIP – 6.5% (OD portion) + (Nil-TP Portion)
4	3 years LTMPIP for a new private car	1) 1st year of 3 years LTMPIP – 15% (OD portion) + (Nil-TP Portion) 2) 2nd year of 3 years LTMPIP – 10% (OD portion) + (Nil-TP Portion)	30% of commission / remuneration per policy	1) 1st year of 3 years LTMPIP – 19.5% (OD portion) + (Nil-TP Portion) 2) 2nd year of 3 years LTMPIP – 13% (OD portion) + (Nil-TP Portion)

		3) 3rd year of 3 years LTMPIP – 5% (OD portion) + (Nil-TP Portion)		3) 3rd year of 3 years LTMPIP – 6.5% (OD portion) + (Nil-TP Portion)
5	Bundled cover with 1 year term for own damage and 5 years motor third party insurance policy for new two-wheelers	Bundled cover – 17.5% (OD portion) + (Nil-TP portion)	30% of commission / remuneration per policy	Bundled cover – 22.5% (OD portion) + (Nil-TP Portion)
6	Bundled cover with 1 year term for own damage and 3 years motor third party insurance policy for new private car	Bundled cover – 15% (OD portion) + (Nil-TP portion)	30% of commission / remuneration per policy	Bundled cover – 19.5% (OD portion) + (Nil-TP Portion)

ANNEXURE III

REMUNERATION CAPS[29] FOR HEALTH INSURANCE POLICIES[30]

S. No.	Line of Business	Maximum Commission/ remuneration payable
1	Health-individual[31]	15%
2	Health-group (employer-employee only) - Annual	7.5%
3	Health-Group (Non-employer-employee groups – not formed solely for availing insurance as defined in the IRDA Group Guidelines dated July 14, 2005) – Annual	15%
4	Health – Group (credit linked up to 5 years)	15%
5	Health – Government Scheme	As specified in the relevant government scheme / notifications

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You can direct your queries or comments to the authors

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[1] Section 42D of the Insurance Act, 1938.

[2] The CA Regulation were preceded by exposure drafts which appeared to encourage open architecture insurance distribution. Open architecture was first mooted in respect of banks and non-banking financial companies such that they would act for more than one insurance company through the bancassurance model (i.e. by registering as either a bancassurance corporate agent or a bancassurance broker). On 23 November 2011, the IRDAI published an exposure draft of the IRDA (Licensing of Bancassurance Agents) Regulations, 2011; and on 9 October 2012, the IRDAI published the exposure draft of the IRDA (Licensing of Bancassurance Entities) Regulations, 2012. While both of these sets of exposure drafts indicated IRDAI's policy movement towards discouraging / prohibiting exclusive insurer-insurance intermediary tie-ups, these were not finally notified given stakeholder feedback at the time.

[3] Each type of corporate agent can tie-up with a maximum of three insurers of that particular class.

[4] General insurance corporate agents are also subject to a total sum insured cap of INR 5 Crores per risk for all insurance combined.

[5] Regulation 21(iii) of the CA Regulations.

[6] Regulations 23(g) and (h) of the CA Regulations.

[7] Paragraph II(ii)(p) of Schedule IIII to the CA Regulations.

[8] Regulation 23 of the CA Regulations.

[9] Regulation 20 of the CA Regulations.

[10] Regulation 7 requires all insurers to submit a return of all such payments made within 45 days from the end of the relevant financial year. This needs to be reviewed by the insurer's audit committee and approved by its board, as well as signed by its CEO and Compliance Officer.

[11] Section 40(1) of the Insurance Act, 1938.

[12] Pursuant to Section 31B of the Insurance Act, 1938

[13] Regulation 5 of the Commission Regulations.

[14] Regulation 6(c) prohibits providing any reward to an insurance intermediary which earns more than 50% of its total revenue from non-insurance activities (e.g. a bank).

[15] Regulation 6(e) of the Commission Regulations.

[16] Regulation 4 of the Commission Regulations.

[17] Regulation 2(e) defines 'remuneration' as the compensation paid by an insurer and received by an insurance intermediary for soliciting and procuring an insurance policy.

[18] Regulation 2(c) defines 'commission' as compensation paid to and received by an insurance agent from an insurer for soliciting and procuring an insurance policy.

[19] Regulation 2(f) defines 'reward' as amount paid (directly or indirectly) as an incentive (by whatever name called by the insurer) to: (i) an insurance agent towards benefits such as gratuity, term insurance cover, various group insurance covers, telephone charges, office allowances, sales promotion gift items, competition prizes and such other items; (ii) an insurance intermediary towards services such as risk analysis, gap analysis, plan design, predictive modelling, data management, infrastructure, advertisement and such other items including any additional incentives by whatever name called.

[20] As per Schedule III of the Commission Regulations.

[21] As per Schedule IV of the Commission Regulations.

[22] Revised pursuant to the second amendment to the Commission Regulations notified on October 10, 2017.

[23] As per Paragraph 15(5) of the IRDAI's Guidelines on Motor Insurance Service Provider dated August 31, 2017.

[24] The MISP Guidelines prohibit the MISP or any of its associate companies from receiving (directly or indirectly) from the insurer (and from the insurer making such payment) any fees, charges, infrastructure expenses, advertising expenses, documentation charges, legal fees, advisory fees, or any other payment by whatever name called, except for permitted fees (i.e. distribution fees under the MISP Guidelines).

[25] The MISP Guidelines prohibit an insurer from paying both remuneration & reward and distribution fees on the same motor insurance policy.

[26] IRDAI circular IRDA/ INT/ CIR/ MISP/ 142/ 09/ 2018 dated September 4, 2018.

[27] As per an email dated December 7, 2017 from the Secretary General of the General Insurance Council, referred to in IRDAI circular IRDA/ INT/ CIR/ MISP/ 142/ 09/ 2018 dated September 4, 2018.

[28] Notified by IRDAI on August 29, 2018 pursuant to IRDA/ INT/ CIR/ Comm/ 139/ 08/ 2018. Long term insurance policies were required to be issued by al general insurance companies (i.e. 3 year third party insurance cover for new cards and 5 year third party insurance cover for new two-wheelers) pursuant to the Supreme Court's judgement in Write Petition No. 295 of 2012 – *S. Rajaseekaran v. Union of India and Others.*

[29] As per Schedule II of the Commission Regulations.

[30] Applies to health insurance policies issued by general insurers and standalone health insurers.

[31] Includes annual premium, 3 years single premium and 3 years regular premium.
