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INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
NOTIFICATION
HYDERABAD, THE _____, 2010**

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY (ACQUISITION OF DATABASE FOR DISTRIBUTION OF INSURANCE PRODUCTS) REGULATIONS, 2010

F.No. IRDA/Reg/____/2010 dated _____, 2010.- 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**

Short title and commencement

1. (1) These regulations may be called the Insurance Regulatory and Development Authority (Acquisition of Database for Distribution of Insurance Products) Regulations, 2010.

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

Definitions

2. 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 the Indian insurance company 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.
- i) "Referral Arrangement" means the arrangement between a referral company and an insurance company in terms of an agreement entered into in connection with the 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 as such by the Authority under sub-regulation (3) of regulation 6.
- 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 herein and not defined but defined in the Insurance Act, 1938 (4 of 1938), or in the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) or in any Rules or Regulations made thereunder shall have the meanings respectively assigned to them in those Acts or Rules or Regulations.

CHAPTER II

APPROVAL OF A REFERRAL COMPANY

Application of a referral company

3. The application seeking grant of approval of the referral company shall be made to the Authority in Form-A by the insurance company, accompanied by such fees and in such manner as specified in Schedule I by the Authority.

Application to conform to the requirements

4. An application which is not complete in all respects shall be liable to be rejected:
 Provided that, before rejecting any such application, the applicant shall be given an opportunity to complete such formalities within such time as may be specified in Schedule I by the Authority.

Furnishing information

5. The Authority may require the insurance company to furnish such further information or clarification as may be required by it.

Eligibility criteria for approval of the referral company

6. (1) For the grant of approval of the referral company, the conditions including but not limited to the following are required to be fulfilled:-

- (a) the referral company is a company formed and registered under the Companies Act, 1956 (1 of 1956);
- (b) 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;
- (c) the referral company does not carry out the sale or promotion of insurance products in its premises or elsewhere at all times;
- (d) the referral company has a networth of Rs.50 lakhs and a turnover of at least Rs.1 crore for the last three consecutive years.
- (e) the referral company has a database of its customers acquired through its business;
- (f) the referral company by itself or through its subsidiary, associate or group company(s) is not licensed/registered as an insurance agent, corporate agent, micro insurance agent or a broker under the Regulations framed by the Authority;
- (g) the referral company undertakes to 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.
- (h) the referral company by itself or through its subsidiary, associate or group company(s) has not entered into a referral arrangement with another Indian insurance company carrying out the same class of insurance business.
- (i) the company shall not be 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.
- (j) The company shall not be bound by any confidentiality agreement with the customers, on the matter of sharing their personal and financial databases.
- (k) The company shall not have total income from its referral business with an insurance company or any other organization more than 10% of its total income in any year of the agreement.
- (l) The company shall, at no time, acquire databases with the express purpose of selling it to insurance companies or any other organizations.

(2) While considering the application, the Authority may, if it so desires, verify the information furnished by the insurance company and the eligibility of the referral company, by physical verification of the documents submitted, the database and office space and also inspect the availability of 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 3 years from the date of grant of approval.

Procedure where approval is not granted

7. (1) Where an application made by an insurance company to the Authority, seeking grant of approval of the referral company does not satisfy the eligibility criteria laid down in regulation 6, the Authority may reject the application.

(2) The decision of the Authority along with the reasons to be recorded in writing shall be communicated to the insurance company within a period of 14 days from the date of the decision.

CHAPTER III**REGISTRATION OF A REFERRAL COMPANY****Procedure for registration of a referral company**

8. (1) The insurance company shall register the referral company that has been approved by the Authority under regulation 6 in the IRDA Portal,

(2) The insurance company shall enter into an agreement in Form B with the referral company and within 15 days from the date of entering into such an agreement, file the agreement in the electronic form through the IRDA Portal;

Terms and Conditions to be complied with

9. The registration of the referral company shall be subject to the following conditions, namely:-

- (a) the referral company has not entered into a referral arrangement with another Indian insurance company carrying out the same class of insurance business
- (b) the insurance company and the referral company bring to the notice of the Authority, any material change in the information or particulars previously furnished to the Authority which has a bearing on the approval granted by it, forthwith but not later than fifteen days from the date of occurrence of such change;
- (c) the referral company undertakes to furnish such information and submit its records as are relevant to the referral arrangement, to the Authority and the insurance company as and when required by it;
- (d) the referral company undertakes to comply with all the provisions of the Act, the Insurance Regulatory and Development Act, 1999 (41 of 1999), the regulations framed thereunder and such other directions or guidelines issued by the Authority from time to time.

Restrictions on the business activities of the referral company

10. The referral company that has been approved by the Authority and registered with the insurance company, shall not by itself or through its subsidiary, associate or group company(s) –

- (a) carry out the sale of insurance products in its premises or elsewhere at all times;
- (b) undertake any insurance related activities except activities in the nature of sharing of 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 insurance company for providing the database of its customers, over and above the remuneration as outlined in sub-regulation (5) of regulation 12;
- (f) receive any payment for providing the database of its customers from a person other than an insurance company;
- (g) be licensed/registered as an insurance agent, corporate agent, micro insurance agent or a broker under the Regulations framed by the Authority;
- (h) enter into a referral arrangement with more than one insurer in the same class of business of insurance.

CHAPTER IV DUTIES AND OBLIGATIONS

Obligations of a Referral Company

- 11.** (1) A referral company shall receive remuneration only from the insurance company and that also for providing the database of its customers.
- (2) A referral company shall take all reasonable steps and exercise due diligence to ensure that the distribution of its data under the referral arrangement is not contrary to any of the provisions of the Act, the Insurance Regulatory and Development Authority Act, 1999, the rules or regulations made thereunder;
- (3) A referral company 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;
- (4) A referral company shall enter into an agreement with only one life and/or one general insurance company;
- (5) A referral company shall submit to the Authority and the insurance company, reports of its activities under the referral arrangement, whenever called upon to do so and its compliance 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;
- (6) A referral company shall along with its employees (whatever their designation may be) ensure that the referral company complies 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.

Obligations of the Insurance Company

12. (1) An insurance company shall maintain a record of each referral arrangement that includes all the payments made to the referral company along with the calculation basis of such payments;
- (2) An insurance company shall submit to the Authority reports of its activities as relevant for the purpose of these regulations, whenever called upon to do so;
- (2) An insurance company shall inform the Authority about any modification in the information uploaded in the IRDA portal at the time of registration which shall be permitted subject to the prior approval of the Authority.
- (3) An insurance company shall upload any modification to the information or particulars previously furnished to the Authority which has a bearing on the approval granted by it to the referral company, forthwith but not later than fifteen days from the date of occurrence of such change;
- (4) An insurance company shall pay remuneration to the referral company for acquiring its database which shall form part of and within the overall commission limits as provided for in section 40A of the Act; and in no case shall exceed 25% of the commission, applicable as per the Insurance Act, 1938, Regulations and guidelines made thereunder.
- (5) No fee or remuneration by any name is payable for the database of the same prospect more than once. No fee or remuneration by any name is payable on any type of renewal or sale of new policy to the existing customer of the insurer.
- (6) No payment shall be made by any insurer in advance to any organization or person for any type of referral arrangement, database, lead, by whatever name the process is called.
- (7) An insurance company shall not make any other payment as remuneration or otherwise towards incidental costs including maintenance of the database, infrastructure, training, entertainment, development, communication, advertisements, sales promotion etc of the referral company.
- (8) An insurer shall not pay any remuneration towards acquisition of any database after the date of termination of the referral arrangement.
- (9) An insurance company 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 issued by the Authority from time to time;
- (10) An insurance company shall forthwith terminate the referral arrangement entered into prior to the coming into effect of these regulations that is not in conformity with the provisions of these regulations. Such an arrangement shall however be allowed to continue subject to the same being suitably modified or amended in terms of these regulations within a period of three months from the date of notification of these regulations subject to the prior approval of the Authority.

(11) Notwithstanding the terms of the referral arrangement entered into with the referral company, the insurance company shall forthwith terminate the registration of the referral company upon being directed to do so by the Authority.

CHAPTER V

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for action in case of default by the insurance company

13. An insurance company 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 relating to the referral arrangement as required under these regulations,
- (c) fails to comply with any of the obligations under these regulations,
- (d) violates the conditions of registration,
- (e) breaches the referral agreement; and
- (f) 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 action as provided under sub-section (4) of section 3 and section 5E of the Act in the manner as specified in Chapter V of the IRDA (Registration of Indian Insurance Companies) Regulations 2000.

Action against the referral company

14. The Authority may cancel the approval granted to a referral company that fails to exercise due diligence or fails to comply with any of the obligations under these regulations or act in accordance with the restrictions imposed upon it, 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.

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 insurance company 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.

Power of the Authority to issue clarifications

15. 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 clarifications or guidelines.

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