

**FORMAT FOR SUGGESTIONS ON
DRAFT IRDA (PPHI) REGULATIONS 2014**

Change suggested by		Macrofinance Group, NIPFP		
Date		19 January 2015		
Note	<ul style="list-style-type: none"> ❖ It is suggested that ONE Page may be used for one change. ❖ This will enable us to group all the suggestions and take a decision on the changes suggested 			
Page No	Regulations / Annexure	Regulation and Sub-Regulation No./ Para Number	Suggested change	Reasons for change
	Overall process		Improve process of notifying regulations	<p>The Government of India set up the FSLRC in March 2011 to review, rewrite and harmonise financial sector legislations, rules and regulations In its recommendations, the</p> <p>FSLRC proposed that the draft Indian Financial Code (IFC), an umbrella legislation, to replace the bulk of existing financial laws in the country and improve the ease of doing business in the country. The draft IFC is based on a common set of principles for the governance of financial sector regulatory institutions in tune with contemporary requirements of the sector.</p> <p>Pursuant to the FSDC resolution dated October 24, 2013, IRDA agreed to implement the non-legislative recommendations of FSLRC. Subsequently, the then Finance Minister had also released a Handbook on adoption of governance enhancing and non-legislative elements of the draft Indian Financial Code. Chapter 4 of this Handbook provides for the procedure to</p>

			<p>be adopted by IRDA in framing regulations. It requires that every draft regulation be approved by the Board of IRDA before it is published for public comments; draft regulations must be accompanied with a detailed statement of objectives of the regulations, the problem or market failure it attempts to solve and costs and benefits of the proposed regulation. It is observed that none of these procedures were complied with while publishing the present draft IRDA (Protection of Policyholders' Interests) Regulations.</p> <p>The draft IRDA (Protection of Policyholders' Interests) Regulations, 2014, were probably not approved by the Board of IRDA before they were published. The exposure draft clearly states that based on deliberations of the Standing Advisory Committee for Consumer Affairs, this draft was published. Further, the draft regulations are not accompanied by any detailed statement of objectives. It is unclear what market failure is being sought to be addressed by these regulations. IRDA has also not conducted any cost benefit analysis of the draft regulations.</p> <p>Therefore, it is submitted that proper procedure has not been followed by IRDA in issuing these draft regulations.</p>
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31	Annexure IV	Sub-section 2.a	Rephrase to say, "A contract term which is contained in a insurance product document approved by IRDA under the File and Use Guidelines, relevant to the insurance product issued by IRDA from time to time, will not be deemed to be an unfair term." Another way of providing this exception is to add it under 2.k.	Sub-section 2.a of Annexure-IV says, "A contract term which is not contained in the insurance product documents approved by IRDA under the File and Use Guidelines relevant to the insurance product issued by IRDA from time to time shall be deemed to be an unfair term. Such an unfair term is void ab initio." This is confusing, because it can be read as saying that every term of a contract that has not been approved by IRDA is unfair. If the intent is to create a safe harbour for terms that are in the IRDA-approved contracts, such an exception may be given by the wording given in the earlier column.
31		Sub-section 2.e	Give an illustrative list of unfair terms in these regulations.	Perhaps a list should be given in these regulations, so that there is some clarity on what kinds of terms would be considered unfair.
33		Sub-section 3.e	This sub-section seems incomplete.	
33		Sub-section 4.b.iv	Exceptions to access to personal information must be given in these regulations.	This sub-section says, "...ensure that consumers can obtain reasonable access to their personal information, subject to any exceptions that may be specified by IRDA;" It is important to specify this through these regulations, and not leave it to a later regulation.
34		Sub-section 5.c	Instead of saying that IRDA may specify, it would be better to link this to Section 5 of the main text of this exposure draft, where the disclosure requirements are given.	

35		Sub-section 5.f	These requirements around continuing disclosures should be in this regulation, and not left to a subsequent regulation. At present, there is nothing specific about continuing disclosures in the exposure draft.	Section 5 of the main text provides detail on initial disclosures, but there is no corresponding section on continuing disclosures. The principles in Annexure-IV are not enough to secure adequate continuing disclosures.
35		Section 6	It would be better to specify in the regulation which services can only be provided with advice. This can be achieved by linking this to Section 5.1 of the main text of this exposure draft, which gives each consumer a right to receive advice before purchasing an insurance policy. IRDA should consider doing a cost-benefit analysis on such a blanket requirement. Some types of insurance policies (say, accident insurance), and those bought on certain platforms (say, web-based portals), may be exempt from this right.	Section 101 of the draft Indian Financial Code mandates the regulator to make regulations about which services can be given only with advice. While, in this exposure draft by IRDA, this question has been side-stepped, and the decision has been left to the service provider/advisor.
36		Sub-section 6.e	This categorisation must be done in this regulation itself, because as per draft Indian Financial Code, the suitability requirement applies only when an insurance advisor is dealing with a retail advisor	In the absence of the classification of retail consumers, the requirement will apply to a broader set of consumers.
6		Section 5.1	Need to ensure	There is inconsistency

and 35			consistency across the main text and the annexure.	between this section in Annexure-IV and Section 5.1 in the main text of this exposure draft. While the suitability requirement in Annexure-IV only applies to insurance advisors, in Section 5.1 in the main text it applies to insurers, insurance agents and insurance intermediary.
36		Section 7.b	The circumstances in which a benefit is not considered conflicted remuneration, and the nature, type and structure of benefits permitted should be given in this regulation itself.	The principles-based definition of conflicted remuneration may not be adequate to give clarity to insurance service providers.
31-36	Annexure IV	Overall comment	The IRDA needs to design more detailed regulations given its stated objective, the market failure it seeks to address, and provide a rationale for how it expects the regulation to address the problem.	Several examples of detailed regulations on each of these issues can be found by studying regulations drafted in other jurisdictions. As an example, COBS 3 of the Financial Conduct Authority Handbook provides detailed definitions of client characterisation. Further, COBS 9 of the Financial Conduct Authority Handbook provides detailed guidance on all aspects of suitability in the sale of financial products. This includes details of obligations on financial firms for assessing suitability (COBS 9.2 of the Handbook 3) and further guidance on how to assess suitability (COBS 9.3 of the Handbook).
26	Annexure II		The regulations should provide for either appointment of lawyers or legally trained persons, in these positions. Moreover, IRDA	This requires the nodal or grievance officer to consider relevant insurance laws and regulations as well as previous decisions of Courts or ombudsmen in deciding complaints. This would

			<p>should assist all insurers to develop a common manual to be followed internally by these nodal or grievance officers to harmonise the application of insurance laws and regulations across the board.</p>	<p>require an understanding of insurance laws, experience in dispute resolution and usage of legal precedents. However, the regulations do not provide for any eligibility criteria for nodal or grievance officers - they do not need any legal training under these regulations. Non-lawyers or persons without any legal training are unlikely to be able to perform the tasks required by the draft regulations.</p>
27	Annexure III		<p>The regulatory policy should focus on minimising conflict of interests between the nodal or grievance officers and genuine claimants by creating a Chinese wall between the insurer and the nodal or grievance officers. This will ensure maximum neutrality in deciding claims.</p>	<p>The present grievance redress mechanism focuses only on a time bound process for resolution of complaints. It neglects the fact that there are incentive misalignments for the nodal or grievance officers dealing with such complaints. Currently, there is no separation of these officers from the insurer. In other words, they are employees of the insurer. In the absence of such separation, a nodal or grievance officer (being an employee of the insurer) has every perverse incentive to try to reject a genuine claim and favour his own employer, the insurer. This incentive misalignment problem is not addressed merely by requiring the nodal or grievance officer to examine a complaint 'fairly'.</p>
27	Annexure III		<p>Correct the drafting errors</p>	<p>Annexure III uses the term 'respondents' without defining it. It is unclear if the respondent is the insurer or officers of the insurer. Consequently, it is unclear if the 'Compliant Forwarding' procedure mentioned can be used to harrass a genuine</p>

				complainant.
	Penalties		The regulations should clearly state the penalties that may be imposed if there are violations.	The exposure draft is silent on the penalties to be imposed if the rights and protections of consumers are violated by insurance service providers/advisors. or example, details of eligibility, calculation of compensation, payment of compensation for the Financial Services Compensation Scheme are provided in the Financial Conduct Authority Handbook
	Standard form		<p>The illustration below provides an example of the kind and manner of disclosure that should be made mandatory.</p> <ul style="list-style-type: none"> • Your investment: Rs 1 lakh a year for 10 years • Your total premium in 10 years will be Rs 10 lakh • Your total costs at the end of 10 years will total: Rs XX lakh • Your return will work out to xx% per year <p>The sales process should get the investor to enter the exact numbers as are understood by the investor in a form that becomes part of the documents collected by the insurance company. These numbers will reflect what the investor has understood the policy</p>	<p>While the regulations emphasise the rights of customers, there is not enough clarity on how this will be brought about. In the context of the current insurance market, the manner of communication of the benefits of policies is often mis-leading. Returns are calculated and communicated as a function of a number that is not the invested amount. For example, returns of 11% advertised are not returns per annum on the invested amount, but 11% of the sum assured.</p> <p>This is clearly mis-leading investors. Returns being pegged to numbers that are not the invested amounts should be prohibited. The regulations should, therefore, require each insurance policy to disclose its costs and benefits in a clear manner in the product brochure and in the sales process. The internal rate of return of each policy needs to be displayed in bold on the brochure. IRDA has asked for</p>

			<p>premium to be each year, for how many years, what the costs are and what the returns will be. This will facilitate comparison with other investment products in the market. It will also allow for an evaluation of whether due process in the sale of the insurance product was not followed in the event of a dispute between the consumer and the insurance company.</p>	<p>the micro-insurance plans to disclose the internal rate of return but not the traditional plans. It is likely that the rural customer is less able to understand concepts such as IRR than the urban and semi-urban investor whom the traditional plans target.</p>
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