INSURANCE - INDIA

Significant overhaul of file and use procedure for general insurance products

March 15 2016 | Contributed by Tuli & Co

AUTHOR

Celia Jenkins

Introduction

Until recently, the Insurance Regulatory and Development Authority of India (IRDAI) Guidelines on File and Use Requirements for General Insurance Products of September 28 2006 governed the procedures and processes for introducing, modifying and withdrawing general insurance products. As a matter of law and practice, proposed products had to be filed with the IRDAI in the specified manner and, once IRDAI approval was obtained, the product could be distributed.

The procedures and processes have now significantly changed with the introduction of the IRDAI's revised Guidelines on Product Filing Procedures for General Insurance Products, which were introduced on February 18 2016 following an exposure draft of the guidelines issued by the IRDAI for comments a couple of months earlier. The revised guidelines will come into force on April 1 2016 and will thus apply to all new general insurance products filed on or after April 1 2016.

Overview

The revised guidelines apply to all general insurance products except health, personal injury and travel insurance products which are governed by the Insurance Regulatory and Development Authority (Health Insurance) Regulations 2013 and the accompanying guidelines. For products governed by the erstwhile Tariff Advisory Committee, the revised guidelines clarify that the standard wordings will continue to apply and the tariff will not be abridged beyond the options specifically permitted.

Per the revised guidelines, all general insurance products are meant to be classified as retail products or commercial products. 'Retail products' are broadly defined as those issued to individual customers (and their families) and 'commercial products' are defined as those issued to entities other than individuals, such as firms, companies or trusts.

The revised guidelines do not require products approved under the previous file and use guidelines to be re-filed, but if insurers wish to continue offering those products, they will need to classify them as retail products or commercial products and file a list of those products (duly certified by the chief executive officer (CEO) and appointed actuary) with the IRDAI within 60 days of issuance of the revised guidelines. Insurers may also choose to withdraw any of their existing products by following the procedure set out in the revised guidelines.

The revised guidelines set out detailed guiding principles for product design and rating, including as follows:

- The product should be a genuine insurance product covering an insurable risk with a real risk transfer.
- All products should go through appropriate due diligence to ensure compliance with the regulations.
- Products should be fair and non-discriminatory to all stakeholders and should meet the policyholders' reasonable expectations. Insurance product design should ensure "transparency and clarity in wordings, terms, coverage, exclusions and conditions in order to devise a fair and balanced risk transfer mechanism through insurance".
- Products must be need based so that "unnecessary and superfluous coverage [is] not added and the necessary ones are not excluded".
- All product literature must be in simple language and technical terminology should be sufficiently clarified so that it can be understood by a layperson.
- If insurers intend to introduce products used in foreign jurisdictions, those products must be examined and modified in terms of the local regulatory requirements and Indian policyholder requirements.
- Insurers must use similar wording across products to describe the same cover or similar requirements (eg, clauses on renewal, basis of insurance, due diligence, cancellation, arbitration and claims reporting).

Filing procedures

In terms of procedures for introducing products, the revised guidelines specify that retail products must be filed under the file and use procedure set out thereunder. In general, insurers cannot market a product unless the IRDAI has provided written confirmation that its contents have been noted and a unique identification number (UIN) has been allotted for the product. The file and use procedure appears to be aimed at establishing timely procedures.

Commercial products must be filed under the file and use procedure set out under the revised guidelines. This procedure is meant to be a self-governing process under which the insurer's product management committee will play a pivotal role. Generally, once a product is scrutinised, reviewed and recommended by the product management committee (without any exceptions to the insurer's board-approved underwriting policy) and accepted by the insurer, the product documents will be uploaded onto the IRDAI's website and a UIN will be allotted. The insurer can market the product thereafter. The revised guidelines clarify that the IRDAI may check the documentation in detail and if it finds that the product is not in the interests of the policyholders or in conformance with the regulations, it may direct that the product be suspended, withdrawn or even filed under the file and use procedure.

Product management committee

One of the most significant changes introduced by the revised guidelines is the role of the product management committee. All insurers must form a product management committee, which must be constituted of high-level officers of the insurer, such as:

- the appointed actuary;
- the chief underwriting officer;
- the chief financial officer;
- the chief marketing officer;
- the chief risk officer;
- the compliance officer; and
- the head reinsurance.

The product management committee must be a self-governing body, to ensure "quality product design, filing with complete compliance of the regulatory requirements and performance review". The revised guidelines clarify that the insurer's CEO will be responsible for ensuring that a robust due-diligence process is in place to "mitigate risks of new and current products". Further, as a part of "good corporate governance", the board of directors must oversee the activities of the product management committee.

Form D

One other significant change is the revised requirements pertaining to the certification by the insurer's lawyer of the terms and conditions for each product. The revised guidelines provide that Form D must be certified and signed by a lawyer domiciled in India who is:

- employed by the insurer, has at least three years of experience in the Indian insurance/legal service and is entrusted with the sole/main responsibility of developing insurance products; or
- working for a reputed law firm or an independent practitioner, with at least three years of experience in the Indian insurance/legal service and who is "well versed with insurance policy wordings".

Once three years have elapsed since the issuance of the revised guidelines, Form D must be provided for all products by an employee of the insurer who fulfils the requirements set out in the guidelines.

Comment

Press reports indicate that the time-bound file and use procedure and the self-regulated file and use procedure have been positively received within the industry. The revised guidelines are definitely a significant step towards a self-regulated regime where insurers will be required to carry out their own internal due diligence and certification, with significantly increased responsibility on the management of the insurer.

For further information on this topic please contact Celia Jenkins at Tuli & Co by telephone (+91 11 4593 4000) or email (Celia.Jenkins@tuli.co.in). The Tuli & Co website can be accessed at www.tuli.biz.
