IRDAI's Remuneration Guidelines for Insurer's NEDs and KMPs

2 August 2023

Introduction

On 30 June 2023, the IRDAI issued the "*Guidelines on Remuneration of Non-Executive Directors and Key Managerial Persons of Insurers*" ("**Remuneration Guidelines**") for private sector Insurers (other than branch of foreign reinsurers), which expressly replace and supersede the IRDAI (Remuneration of Non-Executive Directors of Private Sector Insurers) Guidelines 2016 and the IRDAI (Remuneration of Chief Executive Officer/ Whole-time Director/ Managing Director of Insurers) Guidelines 2016, both issued on 5 August 2016 (collectively, "**Erstwhile Guidelines**").

The Remuneration Guidelines follow the same structure as proposed in the IRDAI's exposure draft of 3 May 2023, and provide separate guidance in relation to an Insurer's: (i) Non-Executive Directors[1], and (ii) Key Managerial Persons[2] by way of 2 separate annexures.

Key Changes

The primary changes under the Remuneration Guidelines are as follows:

In relation to Non-Executive Directors (NEDs):

1. ***Maximum Remuneration and Eligible Benefits***: The NED Guidelines increase the maximum remuneration payable to NEDs from Rs.10 lakh per annum prescribed earlier to Rs. 20 lakh per annum[3]. Further, the NED Guidelines now expressly state that NEDs are not eligible to receive any equity-linked benefits[4].

2. ***Maximum Age***: As a new stipulation, the NED Guidelines now specify the upper

1 IRDAI (Remuneration of Non-Executive Directors of Insurers) Guidelines 2023 ("**NED Guidelines**").

2 IRDAI (Remuneration of Key Managerial Persons of Insurers) Guidelines 2023 ("**KMP Guidelines**").

3 ¶3(iii) of the NED Guidelines.

4 ¶3(iv) of the NED Guidelines.

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age limit for NEDs (including the Chairperson) as 75 years[5]. In the event a Chairperson/NED has already attained the age of 75 years (on the date of issuance of the Remuneration Guidelines), the Insurer is required to appoint a new incumbent, to replace such Chairperson/NED within one year[6].

3. ***Tenure of Independent Directors***: The NED Guidelines now specify that the maximum tenure for an Independent Director's service shall be 5 consecutive years, which can be extended to up to 10 consecutive years, by way of passing a special resolution for the re-appointment[7].

In relation to Key Managerial Persons (KMPs):

4. ***Applicability***: While the Erstwhile Guidelines were only applicable to the remuneration of certain specific KMPs, ie, CEO/MD/WTDs, the new guidance now extends to all KMPs[8] of an Insurer. This will now include any functional heads of the Insurer, such as its Chief Financial Officer, Chief Risk Officer, Appointed Actuary, etc.

5. ***Composition of Annual Remuneration***: The annual remuneration of KMPs is required to be divided into fixed pay (such as allowances, perquisites and retirement benefits) and variable pay (such as incentives, bonus and share linked instruments). In this regard, the KMP Guidelines specify that variable pay should be at least 50% of fixed pay, up to a maximum limit of 300% of fixed pay for the corresponding period[9].

6. ***Composition of Variable Pay***: The Erstwhile Guidelines permitted Insurers to determine the composition of variable pay (between cash and "stock" linked instruments or both). The KMP Guidelines now require a minimum composition of variable pay to be offered as non-cash instruments (including share linked instruments). In this regard, where a KMP's variable pay component is up to 200% of his/her fixed pay, a minimum 50% of such variable pay should be paid through

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5 ¶5(i) of the NED Guidelines.

6 Proviso clause of ¶5(i) of the NED Guidelines.

7 ¶5(ii) of the NED Guidelines.

8 The KMP Guidelines refer to the definition of "Key Managerial Persons (KMPs)", as set out under the IRDAI (Registration of Indian Insurance Companies) Regulations 2022, as follows:

> *"Key Management Person" shall include members of the core management team of an insurer or applicant including <u>all whole-time directors or Managing Directors or Chief Executive Officer</u> and the functional heads one level below the Managing Director or Chief Executive Officer, including the Chief Financial Officer, Appointed Actuary, Chief Investment Officer, Chief Risk Officer, Chief Compliance Officer and the Company Secretary."*

9 ¶6(iii) of the KMP Guidelines.

non-cash instruments. However, if the variable pay is more than 200% of his/her fixed pay, then at least 70% of it should be through non-cash instruments[10].

7. ***Deferral Arrangement***: The KMP Guidelines[11] now require at least 50% of the variable pay to be paid based on a deferral arrangement, ie, over a period of *at least* three years (or more). Under such arrangement, the first vesting of the relevant instrument or deferred amount shall be after one year from the commencement of such deferral period. Further, such vesting is required to be spread out in at least yearly intervals, on a pro-rated basis for each such interval.

8. ***ESOPs***: While the Erstwhile Guidelines expressly excluded Employee Stock Option Plans ("**ESOPs**") from the computation of the total remuneration of CEO/MD/WTDs, the KMP Guidelines now include ESOPs and other share-linked instruments[12] within the scope of the KMP's annual remuneration. In this regard, the KMP Guidelines provide that ESOPs of up to 1% of Insurer's paid-up capital can be granted in a year, and total number of ESOPs issued/ granted/ vested/ outstanding by an Insurer cannot exceed a maximum limit of 5% of its paid-up capital, at any point of time[13].

9. ***Age and Tenure***: As a new development, the KMP Guidelines provide that the post of MD/CEO/WTD cannot be held by the same person for more than 15 years (subject to any statutory approvals that may be required)[14]. Such an individual may be re-appointed after a cooling-off period of at least one year. The upper age limit for an MD/CEO/WTD is 70 years, however, Insurers are permitted to determine a lower retirement age in accordance with their internal policies[15].

Concluding Remarks

The changes brought in by way of the Remuneration Guidelines appear to expand the ambit of its predecessor and set out detailed norms on the remuneration that Insurers may pay to their core management. Insurers are required to formulate and complete the process of framing/reviewing its updated Board approved remuneration policy, within 3 months of issuance of these Remuneration Guidelines. It remains to be seen the

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10 ¶6(ii) of the KMP Guidelines.

11 ¶6(iv) of the KMP Guidelines.

12 ¶2(iii) of the KMP Guidelines defines "*share linked instruments*" in the following terms:

> *""Share linked instruments" means (i) employee stock option schemes;(ii) employee stock purchase schemes; and (iii) stock appreciation rights schemes, for the purpose of these guidelines."*

13 ¶6(vi) of the KMP Guidelines.

14 ¶8(i) of the KMP Guidelines.

15 ¶8(ii) of the KMP Guidelines.

impact that these changes may have on the functioning of existing Insurers.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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