KHAITAN &CO
Advocates since 1911

UPDATE

ERGO
Analysing developments impacting business

IRDA CLARIFIES IMPLEMENTATION OF COMPULSORY PERSONAL ACCIDENT (CPA) INSURANCE FOR OWNER DRIVERS

30 October 2018

Introduction

The Insurance Regulatory Development Authority of India (IRDAI) has issued a circular ref. IRDAI/NL/CIR//MOTP/170/10/2018 dated 9 October 2018 (Revised Circular) providing certain clarifications regarding the implementation of Compulsory Personal Accident (CPA) insurance for owner drivers. The Revised Circular has been issued in light of complaints and communications received from various stakeholders regarding certain aspects of implementation of CPA insurance for owner drivers, the background to which is elucidated below.

- **Background**

  - **Supreme Court Order dated 20 July 2018 in Writ Petition(s)(Civil) No(s). 295/2012 (SC Order)**

With the intent of providing compensation by way of third-party insurance cover to victims of accidents, including those who have died and their legal representatives, the Supreme Court Committee on Road Safety, held detailed discussions with, *inter alia*, the IRDAI, in a meeting dated 26 March 2018.

Pursuant to the aforesaid meeting, it was decided to make it mandatory for all General Insurance Companies (GICs) to issue a three-year third-party insurance cover for new cars and five-year third-party insurance cover for new two wheelers. As per the SC Order, this third-party insurance may be taken as a separate product. The SC order also left it up to the insurance companies to deal with 'comprehensive insurance policies' (which includes own damage cover, third party risk cover, personal accident cover for owner-driver, etc) on a separate footing. Further, the SC Order clearly specified that it would be up to the owner of the vehicle to decide which policy should be taken, except that the third-party insurance is mandatory as per the Motor Vehicles Act, 1988.

  - **IRDAI circular dated 28 August 2018 (Ref No IRDAI/NL/CIR/MOT/ 137/08/2018) (Circular dated 28 August 2018)**

To comply with the SC Order, the IRDAI published the Circular dated 28 August 2018, by which all GICs were given certain directions in respect of motor third party insurance covers for new cars and new two-wheelers with effect from 1 September 2018.

The Circular dated 28 August 2018 stated that after the introduction of the long term motor third party insurance for new cars and new two-wheelers, an insured may be given the following two options:

*"Long-term Package cover offering **both Motor Third Party Insurance and Own Damage insurance for three years or five years** as the case may be; or*
*A bundled cover with a **three-year or five-year term (as applicable) for the third-party** component and **a one-year term for the Own Damage.**"*

- **Madras High Court order dated 26 October 2018 in Civil Miscellaneous Appeal No 1428 of 2017 (Madras HC Order)**

With a view to protect the owner of a vehicle who sustains bodily injury or dies in a motor accident due to his or her own negligence, and further to provide adequate compensation to the owner of the vehicle or his or her family members, the Madras HC Order recently directed the IRDAI to, *inter alia*, enhance the CPA cover, i.e. the Capital Sum Insured (CSI), from the existing INR 1,00,000 to at least not less than INR 15,00,000. Further, the HC Order clarified that before enhancing the premium under the CPA cover, IRDAI shall consult all stake holders. It is pertinent to note that General Regulation (GR) 36 of the India Motor Tariff (IMT) mandates GICs carrying on motor insurance business to provide CPA cover for owner-drivers.

- **IRDAI circular dated 20 September 2018 (Ref No IRDAI/NL/CIR/MOTP/158/09/2018) (Circular dated 20 September 2018)**

To comply with the Madras HC Order, the IRDAI published the Circular dated 20 September 2018 which directed, *inter alia*, that a minimum CSI of INR 15,00,000 shall be provided under CPA cover for owner-driver under Liability Only, under Section III of Package Policies to all classes of vehicles and Bundled Covers wherever applicable at the premium rate of INR 750per annum for annual policy.

➢ **Impact and Issues**

The directions issued in the Circulars dated 28 August 2018 and 20 September 2018, gave rise to, *inter alia*, the following issues:

- The mandatory nature of the SC Order is limited to the extent of third-party insurance only, and does not make it mandatory to obtain a CPA cover for five years;
- By way of the Circular dated 20 September 2018, on the premise of mandatory third-party risk cover, the insurance premium has been worked out and optional covers such as own damage and personal accident covers have been made mandatory;
- Insurers were offering owner-drivers only long-term CPA policy along with long-term third-party policy, and were not giving the option of one-year CPA cover;
- The Circular dated 20 September 2018 created conflict in the matter of CPA, when the SC Order left the comprehensive cover an optional insurance cover, except third party risk cover;
- The enhancement of premium to INR 750 per annum for all classes of vehicles for CPA may not be justified as two-wheelers are of relatively lower in price as compared to other category vehicles;
- The same level of insurance premium against accidents both for a two-wheeler and a high-end passenger car is discriminatory in nature;
- The Circular dated 20 September 2018 has directed to fix a premium of INR 750 per annum for CPA; however, in practice the same may lead to unfair competition among insurance companies, who may indulge in variable premium offers to customers;

- The Circular dated 20 September 2018 almost coincides with the implementation of the SC Order, resulting in significant price impact for the customer; and
- The IRDAI had not consulted various relevant stakeholders, before issuing the Circular dated 20 September 2018.

➢ **Clarification issued by Revised Circular**

In view of the various complaints received by stakeholders, the Revised Circular pointed out that insurers were offering only the long term CPA policy for new cars and new two-wheelers along with the mandatory long-term third-party policy. However, it was clarified that it was the choice of the owner driver to opt for a one-year CPA cover or long-term CPA cover and insurers should not impose upon owner-drivers the long-term package policy or long-term CPA cover. Accordingly, all insurers were directed to ensure that they necessarily offer the choice of one year CPA cover to an owner driver.

Comment

By clarifying that owner drivers are entitled to choose a CPA cover of one year and that the long term CPA cover is not mandatory, the Revised Circular has provided significant relief to the stakeholders. However, several other issues pertaining to the IRDAI circulars, including the ones stated above, are yet to be addressed. In this regard, it is crucial for stakeholders to be aware that as per the court orders, IRDAI is required to have consultation with all stakeholders. As such, in case IRDAI fails to do so before finalising the structure for enhancing the premium for getting compensation under the CPA cover, the stakeholders may challenge any issues arising thereon before the courts. It is pertinent to note that neither the Motor Vehicles Act, 1988 nor any other statute mandates a CPA cover for five years. As such, considering the scope of insurance cover requirement in the present legal frame work in motor vehicle law, the best way forward may be to put in place an appropriate legislation for CPA in the central motor vehicle law.

- *Sameer Sah (Associate Partner), Manavendra Mishra (Principal Associate) and Saasha Malpani (Associate)*

For any queries please contact: editors@khaitanco.com

Mumbai
One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi
Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru
Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata
Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com