

## **India – General Insurance Products – Policy Wording: Clarity and Transparency**

Insurance industry is undergoing sweeping reforms in India, thanks to the initiatives introduced and encouraged by the Insurance Regulatory and Development Authority of India (IRDAI). They are substantial and far-reaching in nature. One of the areas where reforms are expected to have visibility and significant influence is giving freedom to insurers to develop their own insurance policy wordings which hitherto were largely dictated by erstwhile tariffs, market agreements and reinsurer wordings etc. Free policy wording may be a matter of celebration for free-wording absolutists. While it is a welcome development, left handled casually or negligently, it may create trust deficit among insurance customers when predictability is sacrificed for the alluring objective of free-wording. If the policy language is ambiguous and prone to different interpretations, it may also result in avoidable and costly litigation in the area of claims settlement and unintended outcomes.

Insurance business runs mostly on trust, of which transparency and predictability are vital elements. This is where insurance policy wording assumes significance. Policy wording needs to be clear, unambiguous and transparent reflecting the promises made by the insurer. While none can vouch for consistent and uniform interpretations, it is certainly possible to reduce the scope of ambiguity with proper efforts and considerable forethought.

### **Need for Clarity:**

Insurance is a contract between the Insurer and the Insured. It is subject to compliance with the requisites of a contract as defined under Indian Contract Act 1872. These are Offer and Acceptance, Consideration, Legal capacity to contract, Consensus ad idem and Legality of the object etc. A contract of insurance needs to also comply with other essentials like Insurable interest, Utmost Good Faith (Uberrima Fides), Indemnity, Subrogation and Proximate cause etc. Further, Insurance laws and regulations from time to time also influence the policy wording construction. Insurance Regulatory and Development Authority of India (IRDAI) mandates that insurance policies have to be in compliance with Protection of Policyholders' Interests Regulations and also Guidelines On "product Filing Procedures For General Insurance Products" some of which are given below.

- The product should be a genuine insurance product covering an insurable risk with a real risk transfer. "Alternate risk transfer" or "Financial guarantee" business in any form shall not be accepted including indirect insurance products such as insurance derivatives.
- Products should be need based so that unnecessary and superfluous coverage is not added and the necessary ones are not excluded. Suitability and affordability should be kept in mind.
- The design of insurance product should take care of 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.

- All literatures and documents relating to the product should be in simple language and should follow a similar sequence of presentation as far as possible, for easy understanding by the public and all technical terms should be sufficiently clarified for understanding by laymen. Words with ambiguity or with different meanings shall be defined, which shall carry the same meaning in any document of that particular product. The documents must maintain consistency.
- Insurers introducing the insurance products used in foreign jurisdictions shall not copy the product characteristics in the same form but examine the local requirements and modify the features / policy wording in accordance with the Indian policyholder requirements and local laws which are more familiar to them. The terms used must be in accordance with standard words used in the existing tariff products.
- Insurers should use similar wordings (such as clauses on renewal of insurance, basis of insurance, due diligence, cancellation, arbitration, claim reporting etc) for describing the same cover or the same requirement across all their products.
- The terms and conditions of cover shall be fair between the insurer and the insured. The conditions and warranties should be reasonable and capable of compliance and in conformity with various laws, regulations, guidelines and circulars. The exclusions should not limit cover to an extent that the value and intent of insurance is lost.
- There should be no effort to mislead the prospect or policyholder to assume that the product is offering protection that it really does not, or that it offers such protection subject to limitations and conditions that are not easily apparent in any document.
- CEO / Designated Officer of an insurance company needs to certify the following besides some other matters:
  - The rates, terms and conditions of the products filed have been determined in compliance with the Insurance Act, 1938, IRDA Act, 1999 and the Regulations and guidelines issued there under, including the Guidelines on "Product Filing Procedures for General Insurance Products".
  - The Prospectus, sales literature, policy and endorsement documents, and the rates, terms and conditions of the product have been prepared on technically sound basis and on terms that are fair between the insurer and the client and are set out in language that is clear and unambiguous.

(Guidelines on Product Filing Procedures for General Insurance Products can be accessed on IRDAI web site.)

In case any product does not meet with the criteria specified, IRDAI has a right to question terms and issue directions.

- If, at any time it appears to Authority that a product being offered by an insurer is not appropriate for any reason or does not carry rates, terms and conditions that are fair between the parties or the documents used with the product are in any way not satisfactory, notwithstanding the fact that Authority may have had no subsisting queries in respect of that product when it was originally filed, it may express its concerns and call upon the insurer to answer the concerns with regard to that product, within the time specified by Authority.
- If the insurer is not able to satisfy the Authority in the matters referred above, insurer may be required to suspend the sale of that product until it is modified in a manner acceptable to Authority or withdraw the product from the market. Where a product is withdrawn from the market under this provision, the insurer shall neither use the same name for any other product nor use the same product in any other name.

### **Interpretation of Insurance Policy:**

As regards the issue of interpretation of policy, it is well known that the rule of *Contra Proferentem* is applicable to insurance contracts. "*verba chartarum fortius accipiuntur contra proferentem*" means that ambiguity in the wording of the policy is to be resolved against the party who prepared it. When the terms of the policy are clear, one cannot seek the benefit of the *contra proferentem* rule particularly in commercial insurance contracts.

Hon'ble Supreme court in "Bajaj Allianz General Insurance Co. Ltd vs The State of Madhya Pradesh" has stated that the court must interpret the words in which the contract is expressed by the parties and not embark upon making a new contract for the parties. A reasonable construction must therefore be given to each clause in order to give effect to the plain and obvious intention of the parties as ascertainable from the whole instrument. The liability of the insurer cannot extend to more than what is covered by the insurance policy. In order to determine whether the claim falls within the limits specified by the policy, it is necessary to exactly define the policy that is covered and to identify the occurrence of a stated event or the accident prior to the expiry of the policy.

Copy of the judgment can be accessed [here](#).

On the other hand, if the language of the policy is unclear, insurer is likely to receive unfavourable judicial verdicts. In "Haris Marine Products vs ECGC Ltd.", the Hon'ble Supreme Court has stated that "In the event that a contract contained an ambiguous term, which could be interpreted in more than one way, the well-recognized rule of *contra proferentem* must be made available to the appellant, i.e., it must be interpreted against the drafter of the contract (the respondent herein) who is deemed to be aware of the consequences of imprecise drafting".

Copy of the judgment can be accessed [here](#).

Whilst on this subject, it is pertinent to note some of the observations of The Hon'ble Supreme Court in "Texto Marketing Pvt. Ltd. vs Tata AIG General Insurance Co. Ltd":

“Adhesion contracts are otherwise called Standard-Form Contracts. Contracts of Insurance are one such category of contracts. These contracts are prepared by the insurer having a standard format upon which a consumer is made to sign. He has very little option or choice to negotiate the terms of the contract, except to sign on the dotted lines. The insurer who, being the dominant party dictates its own terms, leaving it upon the consumer, either to take it or leave it. Such contracts are obviously one sided, grossly in favour of the insurer due to the weak bargaining power of the consumer”

“Though, a contract of insurance is a voluntary act on the part of the consumer, the obvious intendment is to cover any contingency that might happen in future. A premium is paid obviously for that purpose, as there is a legitimate expectation of reimbursement when an act of God happens.

Therefore, an insurer is expected to keep that objective in mind, and that too from the point of view of the consumer, to cover the risk, as against a plausible repudiation”.

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“Before we part with this case, we would like to extend a word of caution to all the insurance companies on the mandatory compliance of Clause (3) and (4) of the IRDA Regulation, 2002. Any non-compliance on the part of the insurance companies would take away their right to plead repudiation of contract by placing reliance upon any of the terms and conditions included thereunder”.

Copy of the judgement can be accessed [here](#).

In the current insurance market, customers have more trust in the insurer than in the policy wording. This means more trust in relationship than contract construction. But, as insurance spreads wider and technology takes over many operations and personal interaction becomes less and less, the need for clear and transparent wordings gets more pronounced. where the language is understandable and outcomes anticipatable.

### **What can Insurers do?**

The following is an indicative list of suggestions, to make policy wording clear, transparent and the interpretation outcomes reasonably predictable, if they are not already followed.

- Use simple and clear language in proper font with page numbers and short paragraphs without complex sentences.
- At the beginning of the document, there must be an advice to the insured to read carefully the entire policy including any special terms and conditions or endorsements carefully to understand rights, duties and what is covered and what is not covered.
- While developing the policy wording, it is a good idea to run it through some claim case scenarios – some kind of simulations. If there is any case law, lessons can be drawn from them.
- Headings of various provisions should be appropriate and suitably reflect the intended meaning. They should be bold. Their purpose is to give clarity and not create confusion.

- Ideally all the policy documents may follow the same flow – Contact details, schedule, operating clause, primary coverage, endorsements, exclusions, general and specific conditions, claims notifications and grievance redressal etc. (Matters that need to be stated in the policy document are listed in the IRDAI - Protection of Policyholders' Interests Regulations, 2017)
- All exclusions must preferably be listed in one place. As far as possible, coverage carveouts should be avoided, like “loss does not include”, etc.
- There shall not be any incongruities/inconsistencies in the policy wording.
- Incorporation of summary of key provisions along with the policy wording may be considered. At present it is not the practice with the Indian insurers to provide summary of the coverage along with the policy document.
- All the updated policy wordings must be made available on the insurer web site.
- Feedback gathered from the customers and lessons learnt from claims experience can go as inputs for the amendments or updating the policy wordings.
- Insurers may be given the freedom to co-brand some products with intermediaries subject to requisite stipulations. This would be an incentive for the insurance brokers to utilise and apply knowledge acquired globally with verifiable data where possible.
- While working on policy wordings, it is better to involve knowledgeable resources from claims and sales functions also so that in the event of claim they are on the same page as underwriters and there is no difference in understanding. For major intermediary or customer briefings, it is advisable to ensure the presence of underwriters and claims resources along with sales people.
- It will be a good idea for The General Insurance Council in India to create a body like Insurance Services Office (ISO) in USA for various functions including developing an indicative standard wording.
- Coverage should not be illusory, and unintelligible and unimplementable conditions or warranties shall not be imposed.
- Enhanced use of technology in the entire policy administration including policy document verification.

Informed buying is as much important as informed selling. Insureds shall ensure that proposal forms are filled in completely and correctly for proper underwriting and issuance of policy by the insurers. Further, upon issuance of policy, they need to verify that the policy issued contains coverage sought by them and as stated by the insurer at the time of binding the cover. If there are discrepancies they have to be taken up with the insurer.

Insuretech firms also have a significant role in this area. As an example, from the point of view of insureds, it is interesting to note, the stated benefits of a technology product, called “Exdion Policy Check”:

- *“Using a list of 31 questions which encompasses everything from coverage to limits and deductibles, it searches for errors and omissions, and makes sure the policy matches what was requested from the client.”*

- The technology identifies nuances such as variations in named insureds, premiums and deductibles as well as inconsistencies between limits and sub-limits listed on the policy.
- Machine learning is used to understand different templates and designs of document; natural language processing to comprehend the insurance language used; and AI to extract, read, check, interpret and compare all of the information”

There is absolutely no doubt that robustness of the contract is paramount and it cannot be sacrificed at the altar of simplicity. But this need not make insurance policies complicated documents impossible to read and understand. Insurance contract is not and cannot be a “PAY ALL – EVERY TIME” contract. There are bound to be coverage restrictions, exclusions, conditions and warranties. But it should not create illusory coverage either by ignorance or design.

In the liberalised insurance sector, the burden is more on the insurer to structure a clear and transparent contract mirroring the intentions of both insurer and insured. Policy wording is just one but important part of the commitment to the customer.

**Clarity in policy wording, integrity in intent and transparency in actions are critical for reducing avoidable litigation and building trust.** This paves the way to viable and durable business development.

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Disclaimer: The information contained and ideas expressed in this article represent only a general overview of subjects covered. It is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. Insurance buyers should consult their insurance and legal advisors regarding specific coverage and/or legal issues.

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