भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA

Ref: IRDA/ Life /GDL/MISC/186/10/2015 **October 28, 2015**

All the Life Insurers

Re: Applicability of provisions of Sec 45 of Insurance Act 1938 in various scenarios

After amendment to Section 45 of Insurance Act 1938 , we have been receiving queries from the Life Insurers with regard to the application of new provisions in various scenarios that can arise during the course of life insurance policies in general and more specifically the approach to be taken for refunding premium , once the insurer takes the decision of repudiating a policy on the ground of misrepresentation or suppression of the material fact made by the policyholder / life Assured to effect or continue a Life insurance policy.

The queries raised with regard to various scenarios and the view taken by Authority is as follows:

Q1: In case of delayed intimation by the claimant i.e. where death of the life assured has occurred within 3 years of effecting the policy, but death claim intimation is given late by the claimant (whereby the period of 3 years from the date of effecting/revival of the policy is over). In such cases, since the period of 3 years will be over, whether the insurer has the option to call the policy in question?

Answer: The Insurer has only 3 years window for calling a policy in question on the ground of misrepresentation or suppression of a material fact not amounting to fraud, from the date of issuance of Policy or date of commencement of risk or date of revival of policy or date of rider of the policy, whichever is later. It is regardless of whether claim has arisen or not and when it is intimated. Once this period of 3 years is over, the policy cannot be called in question.

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Q2: Whether the period of 3 years within which a policy can be called in question by the insurer is to be interpreted as date of effecting the policy till the date of death of the life assured (or) date of effecting the policy till the date of repudiation (if any) by the insurer.

Answer: The 3 years period is not necessarily connected with death claim arising under the policy and is counted from the date of issuance of policy or commencement of risk or revival or rider whichever is later. A Policy can be called in question within 3 years even if there is no death claim.

Q3: In case of ULIP polices, whether to refund the entire amount of premium received or pay only the fund value + refund of risk premium.

Answer:

a) In case the policy is called in question within 3 years from the date of issuance on the ground of misrepresentation or suppression of a material fact not amounting to fraud :

   The premiums collected under the policy up to the date of repudiation are to be refunded. It has no relevance to the fund value.

b) In case the policy is called in question within 3 years from the date of last revival for the statements made at the time of revival :

   Fund Value as on preceding day to the date of last revival + the entire premium collected for revival and thereafter would be refunded.

Q4: In case of a policy which has run for more than 3 years and acquired paid up value results in claim within 3 years from the date of last revival and it is found that there was suppression of material facts at the time of issuance of policy, whether premiums collected under the policy since inception is to be refunded.

Answer: As the time of 3 years has already elapsed from the date of inception/ issuance of policy, there is no scope of calling the policy in question as per amended Sec 45.

Q5: However in the above case, if it is found that there was suppression of material facts at the time of revival, then the revival is treated null and void. Whether the premium collected under the policy since inception should be refunded ?

Answer: The revival of a policy is treated as a fresh contract and if the policy (revival) is called in question within 3 years of such revival, the premium collected from date of revival of the policy to the date of repudiation is to be refunded along with all the admissible benefits accrued as on the preceding day to the date of such revival.

Q6: In case of Money Back plans, where one or more Survival Benefits (SB) are paid and the policy results in claim within 3 years from the date of subsequent/ last revival and it is found that there was suppression of material facts at the time of issuance of policy, whether the SB already paid should be recovered from the premium amount refundable.

Answer: In the given scenario, 3 years period to call has already elapsed from the date of issuance of policy, hence, there is no scope to call the policy in question.

Q7: In the above case if there was suppression of material facts at the time of revival and revival is treated as null and void then whether to refund the premiums collected under the policy since inception after deducting the SB amount paid or to just refund the premium collected for revival of the policy and not recover the SB paid prior to revival, but recover the SB paid after such revival, if any.

Answer: The revival of a policy is treated as a fresh contract and if the policy (revival) is called in question within 3 years of such revival, all the premiums collected from such revival of the policy to the date of repudiation along with all the admissible benefits accrued as on the preceding day to the date of such revival (after adjusting the SB amount paid, if any) are to be refunded.

Q8: In the Act there is no mention of claims arising within 3 years of Reinstatement of Surrendered policies.

Answer: Reinstatement of surrendered policy can be treated at par with the revival of the policy. Further it is clarified that calling a revival or reinstatement or reinstatement of surrendered policy in question will only arise if any misstatement /

suppression of material facts is made at the time of revival or reinstatement of surrendered policy.

Q9: Where the Date of issuance of Policy and date of Commencement of Risk are different, how the refundable premium would be calculated.

Answer: If the Policy is called in question within 3 years of date of issuance or date of commencement of risk, whichever is later and the insurer takes a decision to repudiate the policy, the premiums collected from the date of issuance till the date of repudiation shall be refunded.

Q 10: if a policy is revived/ reinstated by collecting arrears of premium with interest and without obtaining a Declaration of Good Health/Medical, can it be repudiated within 3 years?

Answer: No. Since the policy is revived without taking any document/ statement from the policyholder, there is no scope for repudiation within 3 years of such revival.

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MEMBER (LIFE)