Policy Alert

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The Insurance Laws (Amendment) Act, 2022

To keep pace with the changing demands of the insurance sector, the Department of Financial Services, Government of India ("**DFS**") in consultation with the Insurance Regulatory and Development Authority of India ("**IRDAI**") and the industry have undertaken a comprehensive review of the legislative framework and proposed a spate of radical reforms to the Insurance Act, 1938 ("**Insurance Act**") and the Insurance Regulatory and Development Authority Act, 1999 ("**IRDA Act**") under the proposed Insurance Laws (Amendment) Act, 2022 ("**Amendment Act**"). Stakeholders are requested to provide comments by December 15, 2022. A summary of the proposed key changes is set out below:

Increased delegation of powers to the IRDAI

The Amendment Act defines 'class of insurance business' and 'sub-class'. The term 'class of insurance business' refers to life insurance business, general insurance business, health insurance business or re-insurance business, and the term 'sub-class' is defined to include fire, marine and miscellaneous sub-classes of general insurance business and personal accident and travel sub-classes of health insurance business. This appears to be an inclusive definition and there could be several new sub classes such as motor, credit insurance etc. Moreover, under the wide delegated authority given to the IRDAI to make regulations, it has been empowered to specify any part or segment of a class of insurance business as its 'sub-class'. The IRDAI is also empowered to enact regulations on registration, minimum paid-up capital and solvency margin requirements for such sub-classes of insurance business. We expect the IRDAI to use these extensive powers to aid the growth of innovative insurance companies and small players who can concentrate their efforts in smaller segments and introduce niche insurance products.

Omnibus/ Composite Insurance Registration

The Amendment Act introduces the concept of an omnibus single insurance registration. An applicant can now seek registration for one or more classes or sub-classes of insurance business (except those entities applying to exclusively undertake reinsurance business) – heralding the entry of mammoth insurers who will be able to undertake all classes of insurance business through one insurer. Apart from disrupting the market where most established Indian business houses already operate through two insurance companies, one to undertake life insurance business and another to carry on general insurance business (or standalone health insurance business), this change will also require a complete overhaul of the insurance regulatory framework. Today, different regulations are applicable to life insurers and general insurers in significant matters such as expenses of management, payment of commissions, solvency margin, schemes of amalgamation – these will need to change if they are to be made applicable to one insurer undertaking more than one class of insurance business. This proposal is also at odds with the recent exposure draft – IRDAI (Registration of Indian Insurance Companies) Regulations, 2022 which allows an applicant to apply for registration for only one class of insurance business.

Minimum Capital Requirements

The Insurance Act prescribes the minimum paid up equity capital requirement for undertaking life insurance, general insurance, health insurance and re-insurance business. The Amendment Act has removed the minimum paid up equity capital limits from the Act and empowers the IRDAI to prescribe such limits under the regulations. This move will provide greater authority and flexibility to the IRDAI, making it a nimble regulator who can dynamically respond to the needs of the market.

Incidental and Related Business and Distribution of Financial Products

Currently, an insurer can only exclusively undertake insurance business. The Amendment Act provides that an insurance company can also provide services related or incidental to insurance business and distribute other financial products. The terms 'related or incidental to insurance business' and 'financial products' have not been defined and more clarity will be needed on these aspects and more particularly the nature of the financial products. Distribution of financial products may require insurance companies to follow separate licensing regimes and lead to regulatory overlaps and conflicts. Additionally, to ensure the protection of policyholders' interests, the IRDAI will have to come up with detailed guidelines on operational matters such as the calculation of assets and liabilities for such other businesses undertaken by an insurance company. More importantly, the IRDAI will have to introduce certain measures such that the policyholders' fund is ring fenced from the liabilities arising out of such other businesses especially for life insurance companies. Further, the DFS and the IRDAI will have to take into consideration the implications of Section 41 of the Insurance Act, before permitting distribution of financial products by insurers. The regulator will need to ensure that additional services provided by an insurer do not act as an inducement to customer to procure insurance policies.

Captive Insurer

The Amendment Act introduces the concept of a 'captive insurer' defining it as an insurance company undertaking general insurance business or any of its sub-classes exclusively for its holding company, subsidiaries or associate companies. The concept of captive insurers, though prevalent globally, is novel for the Indian insurance industry. This move would be a welcome change for large Indian conglomerates who have been demanding the ability to service their own group's insurance needs.

Share Transfer

The Insurance Act requires that the IRDAI's approval is sought for a transfer of shares where the nominal value of the shares to be transferred exceeds 1% of the paid-up equity capital of the insurance company. The Amendment Act has increased this threshold to 5%, easing the way for small-ticket investment in the market.

Health Insurance Business

A new definition of 'health insurance businesses' has been proposed which uses the term 'medical and health expenses' instead of surgical or hospital expense benefits, broadening the present definition to possibly include expenses relating to diagnostics and preventive health check-ups.

Net Owned Funds

At present, foreign re-insurers' branches including Lloyd's India are required to have net owned funds of INR 5,000 crores for registration. The Amendment Act proposes to reduce this drastically to INR 500 crores, which one hopes would boost foreign reinsurers' interest in the Indian market, especially among smaller players. This was one of the long pending demands of interested global reinsurance players and will definitely attract new age reinsurers to participate in Indian reinsurance market.

Insurance Intermediary

The Amendment Act provides that the registration of an insurance intermediary (such as corporate agent, insurance brokers etc.) shall remain in force on payment of annual fee specified by the IRDAI, until suspended or cancelled. Currently, the registration of an insurance intermediary is only valid for 3 years and must be renewed after every 3 years.

Penalty

The Amendment Act has recast many penalty provisions of the Insurance Act. In case of a failure to (a) furnish any document, statement account, return or report to the IRDAI; (b) comply with the directions; (c) maintain solvency margin; (d) comply with the directions on the insurance treaties, a person shall be liable to a penalty of INR 1 lakh for each day during which the violation continues or INR 10 crores, whichever is less. This is a considerable increase from the present maximum penalty of INR 1 crore for these violations. Further, for any failure to comply with any provisions of the Insurance Act or the IRDA Act or rules or regulations for which a separate penalty has not been provided, the penalty shall be INR 1 lakh for each day during which violation continues or INR 1 crore, whichever is less. The penalty amounts have been increased and the stakeholders will have to take the same in consideration while designing and implementing compliance framework for insurers as well as insurance intermediaries.

Electronic Submission

The Amendment Act also proposes changes to enhance the ease of doing business by facilitating electronic submission of returns required to be submitted under the Insurance Act, the periodicity of which shall be prescribed by the IRDAI under separate regulations.

Investment Norms

Under the Amendment Act, it has been proposed that all requirements and restrictions in relation to investment of assets by insurers be introduced by the IRDAI by way of regulations. Currently, the requirements and restrictions in relation to the same have been prescribed under the Insurance Act as well as applicable regulations.

Observations

The proposed changes seek to alter the basic structure of the insurance landscape in India. The Indian insurance sector is currently highly restrictive, and the proposed reforms, if implemented, will facilitate entry of new players and make the sector more attractive for investments. While the proposals such as captive insurers and registration for sub-classes of insurance business are laudable, the proposals on single insurance registration and distribution of financial products by insurers require more clarity. We expect these changes to be the start of a far -reaching regulatory overhaul, under the wide powers now granted to the IRDAI and move towards a 'principle based' regulatory regime for the insurance industry.

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