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REGULATORY UPDATES

IRDA (ISSUANCE OF CAPITAL BY GENERAL INSURANCE COMPANIES) REGULATIONS, 2012 – EXPOSURE DRAFT

The Insurance Regulatory and Development Authority ("**IRDA**") issued an exposure draft on 18 September, 2012 on the regulations for public issuance of shares by general insurance companies, namely the IRDA (Issuance of Capital by General Insurance Companies) Regulations, 2012 ("**Draft Regulations**"). Some of the key points of the Draft Regulations have been highlighted below.

- **Scope**: The Draft Regulations propose to allow general insurers to raise funds through a public issue and Indian promoters to divest their shareholding to 26% as required under the Insurance Act, 1938 ("**Insurance Act**").

- **Approval**: A general insurer needs to apply to the IRDA in a prescribed format to obtain its approval prior to approaching the Securities Exchange Board of India ("**SEBI**") for issuance of shares (whether initial or subsequent) under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**"). The approval will be valid for a period of 1 (one) year, within which period, the insurer has to file the draft red herring prospectus with the SEBI.

- **Criteria for approval**: The criteria which the IRDA would consider while reviewing application seeking permission for public issuance. These include financial position of the insurer, track record of the insurer in complying with regulatory requirements and maintenance of solvency margin over the preceding six quarters.

  The IRDA may not grant its approval where in its opinion (i) the insurer is not compliant with the Insurance Act and the allied regulations; or (ii) the transaction is detrimental to policyholders; or (iii) the transaction may not be in the interest of the insurance business in the country.

- **Embedded Value**: As part of the application process, the general insurer is required to state the 'embedded value' determined by an independent actuary. However, currently no regulation prescribes the manner of computation of 'embedded value' for general insurance companies.

- **Extent of FII Stake**: The IRDA, while granting its approval under the Draft Regulations, may prescribe additional conditions to be met by the insurer, including the extent of dilution of promoter shareholding, the extent of participation by a class of foreign investors, minimum lock-in period notwithstanding the provisions of the ICDR Regulations and disclosures in addition to those prescribed under the ICDR Regulations. Under the current regulations, the cap on foreign investment does not include shares held by foreign institutional investors ("**FIIs**") and the Draft Regulations suggest that the IRDA may, on a case to case basis, cap the extent of total FII participation in a listed general insurance company.

- **Divestment by promoters**: Under the Insurance Act, Indian promoters holding more than 26% shareholding have to mandatorily divest their shareholding to 26% in a phased manner, as prescribed by the IRDA. The Draft Regulations propose to allow 'promoters' holding in excess of 26% (and not just 'Indian promoters') to divest their shareholding through an offer for sale process. Since the success of any such process would depend on a host of factors, it is not clear if the insurer/promoters would be in breach of their obligation should the offer for sale fail, for any reason. The Draft Regulations also suggest that the extent of divestment will be approved by the IRDA and consequently the manner of divestment through an offer for sale process may not be the only way in which the divestment may be done, which will need to be clarified by the IRDA.

- **Approval for transfer of shares**: Under the Insurance Act, certain transfers beyond specific shareholding limits require prior IRDA approval. These include where after the transfer, the shareholding of a transferee is likely to exceed 5% shareholding (or 2.5% in case the transferee company is a banking company or an investment company) or where the transfer exceeds 1% shareholding. The IRDA has also in the past clarified that in case of a rights issue, any renunciation of the right to participate in such offer will also be considered a transfer, which will lead to complications.

EXPOSURE DRAFT ON STANDARD PRODUCT FOR RURAL AND SOCIAL SECTOR

The IRDA issued an exposure draft on Composite Standard Product for Rural and Social Sector ("**Exposure Draft**") targeting insurance cover for the 'Below Poverty Line' population in India. The Exposure Draft, *inter alia*, proposes that every insurance company would undertake such percentage of life and general insurance business as may be prescribed by IRDA in the rural and social sector ("**RSS Sector**"). Some of the key recommendations provided in the Exposure Draft are as follows.

- **Standard product:** Both life and general insurance companies should offer a standard product, i.e., a product with defined options and levels to provide the flexibility to customers in order to cater to their individual needs. Further, no insurer would be allowed to market any other product which offers lower benefits with higher or lower premiums than those offered with standard product in the RSS Sector.

- **Linkage with government sponsored insurance schemes**: The standard product would supplement the existing or future government sponsored insurance schemes and not overlap with the benefits provided under such schemes.

- **Allotment of Sectors to insurers**: The Exposure Draft proposes a state wise allotment to 2 (two) life and general insurers who would be required to meet at least 75% of their rural and social obligation from the states allotted to them. The criterion for allotment is based on the market share that the insurer enjoys in a state.

- **Benefit options**: The Exposure Draft provides mandatory benefit options in standard products, i.e., (a) base plan with mandatory benefits of term life and personal accident cover and clinical illness; and (b) additional plans where the sum assured under the base plan would range between INR 40,000 and INR 200,000 for the term life cover.

IRDA ORDERS: PENALTIES IMPOSED BY IRDA

The IRDA issued an order imposing a penalty of INR 600,000 on SBI Life Insurance Company Limited ("**SBI Life**") following an onsite inspection in December, 2010 for violation of the Insurance Act and related regulations.

The key defaults made by SBI Life involved breach of the File & Use Guidelines, incomplete disclosure made to the policyholders in breach of the IRDA (Protection of Policyholders Interest) Regulations, 2002 and payments made to corporate agents in excess of prescribed limits. SBI Life was also penalised for settling death policy in favour of the master policyholder and not the actual beneficiary in violation of the Guidelines on Group Insurance Policies.

The IRDA also issued an order imposing a penalty of INR 2.2 million on Kotak Mahindra Old Mutual Life Insurance Company Limited following an onsite inspection in January, 2011. The key defaults include payments made to master policyholders of a group product instead of the actual beneficiary, breach of the File & Use Guidelines and repudiation of death claims for non submission of additional documents by the claimants.

NEWS REPORTS

News report suggests that Jammu and Kashmir Bank will sell close to 50 million shares it holds in Metlife India insurance Company, a joint venture with Metlife Inc. for an approximate amount of INR 19 million.

It is reported that the Government of India is all set to take a decision on crucial reforms for the insurance sector, *inter alia*, including increasing the 'Foreign Direct Investment' cap to 49%, relaxing investment norms and faster regulatory procedure for product approval. Currently, a bill is pending in Parliament which, inter alia, proposes to raise the cap on foreign investment to 49% but the Parliamentary Standing Committee on Finances recommended that the cap remain at 26%.

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