



REGULATORY UPDATES

REPORT ON PUBLIC ISSUES BY GENERAL INSURANCE COMPANIES

The Insurance Regulatory and Development Authority ("IRDA") had in November, 2011 issued the IRDA (Issuance of Capital by Life Insurance Companies) Regulations, 2011 which allowed life insurance companies to list their shares on stock exchanges.

In this connection the Securities Exchange Board of India ("SEBI") had constituted a sub-group of the SEBI Committee on Disclosures and Accounting Standards ("SCODA"), which reviewed the disclosure requirements in offer documents and the continuous disclosure requirement under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**") and the standard listing agreement, and presented a [Report](#) on Public Issues by Insurance Companies. SCODA accepted the recommendations of the sub-group and advised the sub-group to identify additional disclosure requirement of General Insurance Companies.

The sub-group presented its recommendations to the SCODA on 20 January, 2012 which were accepted by the SCODA with the condition that the report should set out a separate disclosure for re-insurance risk and that the sub-group should provide a report setting out all the disclosures required to be made by general insurers proposing to list their shares. The sub-group has now presented the [Report](#) on Public Issues by General Insurance Companies.

Some of the key recommendations of the SCODA sub-group for general insurance companies are set out below.

- (a) Disclosure of industry specific risk factors: The sub-group recommended that the offer documents should contain some broad industry specific risk areas, including:
 - (i) claims arising out of catastrophic losses which could materially and adversely impact profitability or cash flow;
 - (ii) inability to obtain reinsurance on a timely basis resulting on bearing increased or reduced levels of underwriting commitments;
 - (iii) default by one or more reinsurers which could materially affect the financial condition and result of operations;
 - (iv) assumptions based on which the economic capital is calculated and disclosed may significantly vary from time to time among industry players; and
 - (v) exposure to recovery related risks including for mortgage foreclosure, risk of regulated tariff and increase in the claim liability of motor third party due to the judgments of courts.
- (b) Industry overview: As no insurer has yet made a public issue of shares, it was suggested that the non-life insurers must also disclose the broad parameters or overview of the insurance industry, such as the background of the sector, global insurance environment, the life and non life insurance industry outlook and analysis of trends in the sector.

- (c) Financial reports: The sub-group recommended that like for banking companies which follow separate formats for disclosing financial information, non-life insurers should be required to disclose financial information in formats prescribed by the IRDA.
- (d) Additional disclosures: While noting that different jurisdictions imposed specific disclosure related obligations, the sub-group recommended that disclosures with respect to, *inter alia*, gross premium along with geographic segmentation, cross selling, distribution network, the number of re-insurers with domestic and foreign break-up, type and details of arrangement of the general insurer with the reinsurers (proportional or non-proportional), age-wise outstanding reinsurance balances and details on Incurred but not reported (IBNR)/Incurred but not enough reported (IBNER) be provided by general insurers in their offer documents. In addition, it was suggested that a report of an independent actuary on the Economic Capital of the insurer should be made a part of the offer documents.
- (e) Continuous disclosure: The SCODA sub-group suggested that the critical portions of the clause 41 of the standard listing agreement which sets out the continuous disclosure requirements of a listed company be retained and the disclosures be classified between those filed with the exchange and those published generally. In addition, the sub-group suggested that the finalisation of the continuous disclosures requirements could be done after the insurance companies file their offer documents with the SEBI as it would assist in identification of the critical items for disclosure based on the materiality of the information provided in the offer documents.
- (f) Issues raised by the IRDA: Some of the key concerns of the IRDA and the recommendations of the sub-group in relation to them were the same as those identified by the sub-group in the Report on Public Issues by Insurance Companies, which are briefly set out below.
- (i) Advertisement: The sub-group noted that the IRDA requires all advertisements issued by insurance companies to be filed with the IRDA for their approval at least 30 days prior to their publication. In respect of advertisements required in connection with the listing, the sub-group recommended that the issue related advertisements be regulated as per the ICDR Regulations alone.
- (ii) Promoters: The IRDA informed the sub-group that under existing regulations, all shareholders, other than employees who acquire shares under an ESOP, are treated as promoters and suggested amending the definition of 'promoters'. Further, any transfer of more than one-percent shareholding by pre-IPO shareholders requires IRDA permission. The sub-group did not agree that the definition of promoters should be amended and further suggested that IRDA may issue separate guidelines for transfer of pre-IPO shareholding. [**Note**: The Insurance Act, 1938 ("**Insurance Act**") does not seem to draw a distinction between pre-IPO transfers in connection with approval of the IRDA for transfer of shareholding in excess 1%. The ambit and implication of such a change, if carried out by the IRDA will need to be observed.]
- (iii) The IRDA suggested that insurance companies should be allowed to raise capital only for certain specified purposes but the sub-group did not agree and instead suggested that the IRDA may issue separate regulations to deal with this aspect.
- (iv) The IRDA suggested that partly paid shares should not be allowed to be issued by insurers and the SCODA sub-group recommended that IRDA may impose restriction

in exercise of its regulatory powers. [Note: The Insurance Act prescribes restrictions on insurers issuing partly paid shares.]

- (g) Grievance redressal mechanism: The sub-group suggested that general insurers need to disclose in their offer documents, *inter alia*, a brief description of the grievance redressal mechanism, turnaround time for complaints, steps taken to minimize the complaints and trend analysis of the complaints.

The IRDA has not as yet issued regulations for general insurance companies to tap into the capital market but with the release of the above report on disclosures for public issues by general insurers it is expected that the IRDA will issue regulations surrounding public issues by general insurers shortly.

CLARIFICATIONS TO THE DISCLOSURE NORMS

In relation to the disclosure requirements applicable to life insurers, the IRDA has through a [Circular](#) dated 24 July, 2012 provided formats for disclosures and the application for seeking approval of the IRDA to the embedded value of the insurance company. The circular further requires the insurer to have the 'Embedded Value' report prepared by an independent actuary and peer reviewed by another independent actuary.

MODIFIED GUIDELINES ON ADVERTISEMENTS

The IRDA has recently through its [circular](#) dated 17 July, 2012 issued modifications to the Advertisement Guidelines [circular](#) dated 14 May, 2007 and allowed insurers to release Joint Sales Advertisements with their Corporate Agents or with a Micro Insurance Agents, without prior IRDA approval. All such Joint Sales Advertisements need to be filed separately with the IRDA, within 7 days from the date of their release.

DRAFT GUIDELINES ISSUED BY IRDA FOR COMMENTS

Draft Guidelines on Securities And Borrowing ("SLB") Scheme

Through circular dated 20 December, 2007 amended by way of circulars dated 31 October, 2008 and 6 January, 2010, the SEBI had operationalized the SLB scheme. The IRDA has issued draft [guidelines](#) to enable insurers to participate as lenders of securities in the SLB scheme and invited comments of all stakeholders by 18 August, 2012. These draft guidelines propose to allow insurers to lend up to 10% of their equity holding and the equities lent in the SLB scheme would not be treated as creating any encumbrance on such equity. The beneficial rights in such equities would continue to subsist. The draft guidelines further provide that an insurer will need to adopt a suitable risk management framework and amend its investment policy.

Draft Guidelines on Credit Defaults Swaps ("CDS")

The Reserve Bank of India ("RBI") had in the year 2011, issued guidelines on CDS on Corporate Bonds which included insurance companies as "Market Makers" and "Users", subject to IRDA approval. IRDA has issued draft [guidelines](#) proposing to allow insurers to participate in CDS on corporate bonds subject to specified conditions. These include that insurers would act as "Users" of CDS which would be permitted as a hedge to manage credit risk.

Exposure Draft on Micro Insurance (Modification) Regulations

IRDA issued an [Exposure Draft](#) on Micro Insurance (Modification), Regulations which propose a revamp of the current regulatory framework governing micro insurance sector in India. The draft proposes, *inter alia*, to change the methodology of reporting micro insurance figures and amend the current definition of Micro Insurance Agents to cover District Cooperative Banks, Regional Rural Banks, Primary Agriculture Co-operative Societies and Individual Agents with the focus on increasing insurance activities in the segment.

Draft guidelines in Reverse Repo/Repo in Government Securities and Corporate Debt Securities

The RBI had earlier issued notifications related to Repo in Corporate Debt Securities (Reserve Bank) Direction, 2010 which contemplated participation by insurers in Reverse Repo or Repo in government securities/corporate debt securities, subject to IRDA approval. In this connection IRDA has issued draft [guidelines](#) proposing to allow such participation by insurers subject to certain conditions. For life insurers, the exposure to reverse repo has to be limited to 10% of Controlled Funds and 10% of the fund size (all Segregated Funds SFINs taken together). Similarly, for non-life insurers the exposure to Reverse Repo and Repo transactions is proposed to be capped at 10%. In addition, a quarterly certificate needs to be issued by a Concurrent Auditor on Repo transactions specifically confirming that each such transaction was done in compliance of Insurance regulations. Reverse Repo and Repo transactions are not permitted between an insurer and its group companies.

IRDA ORDERS: PENALTIES LEVIED BY IRDA

The IRDA issued an [order](#) imposing a penalty of INR 500,000 on Bajaj Allianz Life Insurance Company Limited ("**Bajaj Allianz**") due to breach of the provisions of an IRDA [Circular](#) dated 27 October, 2010 with respect to enrolling new members into an existing group scheme under master policy was issued prior to 1 September, 2010, without revising the existing scheme.

On the recommendation of the Life Insurance Council and given that the expenses charged towards management by Edelweiss Tokio had exceeded the prescribed limits in the first five years of operations, the IRDA by way of an [order](#) clarified that the insurer would be deemed to be not in violation of the requirements of the Insurance Act for such 5 year period.

IRDA, by way of an [order](#) dated 3 August, 2012 deemed Edelweiss Tokio Life Insurance Company Limited as not in breach of the Insurance Act, on recommendations of the Life Insurance Council and as it was in excess of the prescribed limits of expenses of management under the Insurance Act in the first 5 years of commencement of its operations.

The IRDA issued an [order](#) dated 30 July, 2012 imposing a penalty of INR 3 million on ING Vysya Life Insurance Company Limited ("**ING Vysya**") for excessive payments made by ING Vysya to referrals and its corporate agents.

The IRDA has by way of a [circular](#) clarified that penalties imposed by the IRDA on insurers must only be debited to shareholders' account and not policyholders' accounts.

OTHER NEWS

[News reports](#) citing Mr. J. Hari Narayan, IRDA chairman, mention that IRDA is now considering relaxing the 10% cap placed on equity investments made by insurers.

A [News report](#) suggests that Manulife Financial Corp., Korea Life Insurance Co. and KB Financial Group Inc. are among firms that made second-round bids for ING's Asian insurance unit which could be valued at up to USD 7.3 billion.

Market [news](#) reports that Realtech Consulting, a Mumbai-based company, providing safety-management services to a multinational civil nuclear clientele, has been acquired by Lloyd's Register Group, the UK-based risk mitigation company.

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