PHOENIX LEGAL

INSURANCE NEWSLETTER - NOVEMBER, 2012

REGULATORY UPDATES

THE INSURANCE AMENDMENT BILL

The Government of India issued a press release on 4 October, 2012 stating that the Union Cabinet had approved certain amendments in the Insurance Law (Amendment) Bill, 2008 ("**Insurance Bill**") which is currently pending in the Upper House of Parliament. These amendments aim to remove some of the redundant provisions and incorporate new provisions in the insurance regulations and to provide the Insurance Regulatory and Development Authority ("**IRDA**") with greater flexibility to discharge its functions.

The key amendments proposed in the Insurance Bill are set out below.

- **FDI amendment in insurance sector**: Under the Insurance Act, 1938 ("**Insurance Act**"), foreign investment in the insurance sector is permitted up to 26%. The Insurance Bill proposes to increase the foreign investment cap to 49%.

- **No mandatory divestment by promoters**: The Insurance Bill proposes to do away with the requirement on Indian promoters to mandatorily divest their shareholding in an insurance company to 26%.

- **Foreign reinsurers**: The Insurance Bill proposes to permit foreign reinsurers to operate and provide reinsurance business in India by setting up a branch office for this purpose. Further, the prohibition under the Insurance Act on insurers to invest policyholders funds outside India would also apply to foreign reinsurers.

- **Lloyd's included as a 'Foreign company'**: The Insurance Bill amends the definition of the term 'foreign company' as "a company or body established under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom)". The term 'foreign company' has the meaning given to it under the Income Tax Act, 1961. The amendment is intended to allow Lloyd's, which is registered as a society, to participate in an Indian insurance joint venture company in addition to undertaking reinsurance business.

- **Standalone health insurance companies**: The Insurance Bill recognises stand alone health insurance companies as a separate category of insurers. Currently, under the Insurance Act, health insurance companies would need to register themselves under the general insurance category. Such standalone health insurance companies would under the Insurance Bill be subject to a minimum capital requirement of INR 500 million as against the existing minimum capital requirement of INR 1 billion for general insurance companies. Further, the definition of 'health insurance business' has been amended to cover sickness benefits on account of domestic or international travel.

- **Separate motor vehicle insurance legislation**: To address the concerns surrounding the obligatory underwriting of third party risk on motor vehicles, a separate legislation is proposed to be enacted on motor vehicle insurance and compensation.

- **Issuance of capital by public sector general insurance companies and General Insurance Corporation ("GIC")**: Public sector general insurance companies and GIC will be permitted to raise capital from the markets provided that 51% shareholding remains with the Government at all times.

- **Modified commissions for intermediaries**: The current statutory ceilings on commissions payable to intermediaries is proposed to be done away with and instead will be specified by the IRDA in regulations to be framed. Further, both insurance companies and intermediaries will be made liable for a breach of such regulations and be subject to high penalties.

MASTER CIRCULAR ON PREPARATION OF FINANCIAL STATEMENTS BY GENERAL INSURANCE BUSINESS

The IRDA issued a master circular on Preparation of Financial Statements by General Insurance Business dated 5 October, 2012 to enable insurers to streamline the process of preparation of financial statements. The master circular consolidates and supersedes all circulars issued by IRDA up to 30 September, 2012 regarding preparation of financial statement.

IRDA (LICENSING OF BANCASSURANCE ENTITIES) REGULATIONS, 2012 – EXPOSURE DRAFT

The IRDA, in consultation with the Insurance Advisory Committee, issued an exposure draft dated 9 October, 2012 on the regulations for licensing of bancassurance entities, namely the IRDA (Licensing of Bancassurance Entities) Regulation, 2012 ("**Bancassurance Regulations**"). The Bancassurance Regulations propose to regulate the issue and renewal of licenses for bancassurance agents, being institutions including Non – Banking Finance Companies ("**NBFC**") who can accept deposits from the public.

IRDA ORDERS

CHANGE IN SHAREHOLDING OF MET LIFE/REGULATORY ISSUES TO SUBSCRIBE TO CAPITAL

The IRDA has issued an order dated 5 October, 2012 approving the induction of Punjab National Bank ("**PNB**") in Metlife India Insurance Company Limited ("**Metlife India**"). Some of key points of the order are highlighted below.

- **Section 34 Directions**: The IRDA has issued the order under Section 34 of the Insurance Act which provides the IRDA the power to issue directions to an insurer if it is satisfied that such directions are necessary to ensure that affairs of the insurer are not conducted in a manner detrimental to the interests of the policy-holders/public.

- **Solvency Issues**: Metlife India was facing capital constraint and was unable to raise the capital from the existing shareholders. It had, accordingly, proposed to issue 30% shares to PNB for consideration other than cash, which was rejected by the IRDA given that, *inter alia*, the INR 8.82 billion issuance would not have been supported by corresponding tangible assets.

- **NBFC/FDI Issues**: One of the shareholders, Faridabad Investment Company Limited ("**FCIL**"), is an NBFC which was not allowed by the Reserve Bank of India ("**RBI**") to make further investments in Metlife India since FCIL had not received permission of the RBI to invest in Metlife India and had already exceeded the investment ceiling prescribed under NBFC regulations. In addition, any issuance with one of the shareholder not participating would have resulted in the foreign shareholding exceeding 26%, i.e., the cap on foreign investment in an Indian insurance company.

- **Revised Proposal:** A revised proposal was filed by Metlife India whereby Metlife India proposed that 30% of its shares held by FCIL would be transferred to PNB for a notional value of INR 1 and Metlife India would have the rights to use the PNB brand name.

- **Conditions**: The IRDA has mandated a lock-in period of 5 years from the date of such transfer on PNB and directed Metlife India to ensure compliance with the Insurance Act and allied regulations.

PENALTY IMPOSED BY THE IRDA

The IRDA issued an order on 5 October, 2012 imposing a penalty of INR 7.6 million on Metlife India following an onsite inspection in January, 2011 for violation of the Insurance Act and allied regulations. The key defaults made by Metlife India involved violation of Regulation 7(c) of the IRDA (Registration of Indian Insurance Companies), 2000 for hosting investment system and primary data centre outside India; soliciting and procuring of insurance business through non licensed entities; several instances of wrongful payments made to corporate agents in violation of the Guidelines on Licensing of Corporate Agent, 2005 and settlement of claims in favour of the master policy holder instead of the beneficiaries under a group insurance policy in violation of the Guidelines on Group Insurance Policies, 2005.

NEWS REPORTS

A News report suggests that ING is looking to exit ING Vysya Life Insurance Company Limited, its Indian life insurance joint venture, where Exide Industries, currently holding a 50% stake, is looking to purchase ING's 26% shares in the life insurance outfit and the proposal is currently pending IRDA approval. The intended exit is reportedly as part of ING's endeavour to exit from its non-banking businesses, such as insurance and asset management in Asia.

News reports indicate that Syndicate Bank is planning to enter into life insurance business by setting up a joint venture with an existing insurer and is awaiting formal consents from the IRDA and the Reserve Bank of India. The move is in line with Syndicate Bank's strategy to expand in the fee-based income sector.

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