INDUSLAW
THOUGHT LEADERSHIP ... APPLIED

Insurance Regulation Quarterly Newsletter

(April to June 2022)

In this newsletter, we look at certain key regulatory and judicial developments, from the recently concluded quarter, for the insurance sector in India, including key regulatory and other measures notified by the Insurance Regulatory and Development Authority of India (IRDAI).

Market bulletin

Key market developments from the preceding quarter included the following:

- Life Insurance Corporation (LIC) completes its USD 2.6 billion initial public offering; the largest in India till date and 11th largest globally for an insurer.
- New IRDAI chairperson, Debasish Panda, promises 'light touch' 'principles-based' regulation and tech-based supervision.
- IRDAI's objection to Piramal's acquisition of Reliance Nippon Life reinforces restriction on cross holdings within the same class of insurance business.
- Mahindra Insurance Brokers and BigHaat, an agri-digital platform, announce partnership, to allow the platform's customers to buy health and motor insurance online.

Liberalization of the FDI limit to 74% yet to result in significant inflow of foreign capital

Since the Foreign Direct Investment ("FDI") limit for Indian insurance companies was increased from 49% to 74% with effect from August 19, 2021[1], only two foreign insurers (Generali and Ageas) have agreed to increase their shareholding in their Indian insurance joint ventures to 74%[2]. The liberalization of the FDI limit, together with the removal of the 'Indian ownership and control' requirements in June 2021, was expected to bring in significant inflows of foreign capital and improve insurance penetration levels in India, but lukewarm market conditions, fears of a global recession, uncertainty over valuation and other economic factors appear to have delayed that outcome.

1. Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2021.
2. Based on recent public reports, Generali's acquisition of up to 74% in Future Generali India Insurance Company Limited has completed, while Ageas's acquisition of up to 74% in Ageas Federal Life Insurance Company Limited is pending the IRDAI's approval.

Surety insurance – market awaits the launch of the first surety products

The Surety Insurance Guidelines[3], which were issued earlier this year in January and came into effect in April, permit general/ non-life insurers to underwrite specific categories of surety contracts, comprising contract bonds – which can include bid bonds, performance bonds, advance payment bonds and retention money – and customs, tax, and court bonds, but excluding any financial guarantees. The guidelines impose, amongst others, a per-contract cap of 30% and an annual premium cap of 10% of total gross written premium (subject to a maximum of INR 5 billion (or ~ USD 63.05 million)).

These guidelines are expected to help improve risk management for the infrastructure sector in India, but as of date, based on the filed products database available on the IRDAI website, general insurers in India are yet to introduce any surety insurance products in the market. It will be interesting to examine the terms of the first products, since contracts of insurance, by nature, are quite similar to contracts of indemnity, but with some special features, while the Surety Insurance Guidelines specify that surety insurance contracts will be in the nature of contracts of guarantee. A related point here is whether there may be overlaps between the financial intermediation roles played by banks and non-banking financial companies (NBFCs), on the one hand, and the underwriting of surety insurance contracts by general insurers, on the other hand.

'File and use' gradually making way for 'Use and file'

With effect from June 10, 2022, life insurers in India can launch specific categories of life insurance products and modify current insurance products without first waiting for the IRDAI's approval, under the 'use and file' procedure, which was first introduced in July 2019, but for health and general insurance products only.[4]

Unlike the prevailing 'file and use' procedure, which requires new or modified insurance products to be first filed with and approved by the IRDAI (approval is deemed to be given if the IRDAI has no comments or questions within 30 days), the 'use and file' procedure, as its name suggests, involves a post-facto approval of products, after being launched in the market. Under the new procedure, insurers need to adopt a product management and pricing policy and constitute a product management board committee (PMC), which will be responsible to review and approve products. Products approved by the PMC can be launched by insurers in the market, within 15 days of generating, through the IRDAI's website, a unique identification number.

The gradual migration from the 'file and use' to 'use and file' regime reflects, in our view, the increased maturity of the insurance sector in India and should help reduce the IRDAI's supervisory burden while increasing ease of market access for insurers.

Rationalisation and relaxation of certain filing requirements

The IRDAI recently rationalized the filing requirements for life insurance companies, substantially reducing the number of returns required to be filed (four offline returns now instead of forty, and five online returns now instead of eight) and consolidating three separate certification requirements into one.[5]

3. The IRDAI (Surety Insurance Contracts) Guidelines, 2022 (Surety Insurance Guidelines).
4. Circular no. IRDAI/ACTL/CIR/MISC/115/06/2022, dated June 10, 2022.
5. The following returns have been discontinued: (a) monthly returns/ statements relating to OTP-based proposal consent grievances, renewal premium and policy pay-outs, sale of Saral Jeevan Bima and Saral Pension standard-form insurance products, National Centre for Financial Education (NCFE) trainings, new business premium on fund-based products, and launched products; (b) fortnightly return relating to closed branches; (c) quarterly returns/ statements relating to micro-insurance products offered and international business reporting under place of business; and (d) annual returns/ statements relating to agents/ intermediaries trained in unit-linked insurance plan (ULIP), outsourcing and international business reporting under place of business. Annual certifications relating to distance marketing compliance, compliance on advertisements and form KMP-2 have been consolidated. Data on state-wise business claims (form HIR-19) now needs to be filed annually (instead of quarterly), and data on performance of government-sponsored insurance schemes (form HIR-14), in-house settled claims (form HIR-15), TPA-wise settled claims (form HIR-16) and state-wise modes of policy issuance (form HIR-17) now needs to be filed annually (instead of half-yearly).

A similar rationalization of returns has been done for health insurance companies, who can now file various returns annually instead of quarterly or half-yearly.[6]

Respite for insurers in relation to government-sponsored insurance schemes

The central government has increased the rates of premium under two key government-sponsored insurance schemes for the very first time, with the increase taking effect from June 01, 2022.[7] The annual premium under the Pradhan Mantri Jeevan Jyoti Bima Yojana (or PMJJBY) is now INR 436 (or ~ USD 5.45) (instead of INR 330 (or ~ USD 4.12)) and the annual premium under the Pradhan Mantri Suraksha Bima Yojana (or PMSBY) is now INR 20 (or ~ USD 0.25) (instead of INR 12 (or ~ USD 0.15)). The PMJJBY is a key government-sponsored insurance scheme, which was launched in May 2015, and provides life cover of INR 200,000 (or ~ USD 2,502.81) for individuals in the 18-50 age group for a relatively modest annual premium of INR 330 (or ~ USD 4.12). On the other hand, PMSBY, which was launched in the same year, provides for a cover against accidental death and disability (both full and partial) of INR 200,000 (or ~ USD 2,502.81) for individuals in the age group of 18-70 for a minimal annual premium of INR 20 (or ~ USD 0.25). The increase is reportedly attributed to the high ratio of the amounts of claims paid and premiums collected, which was making the two schemes economically unviable for insurers.

To provide further respite to life insurers, the IRDAI, in May 2022, relaxed the solvency requirements in relation to the PMJJBY, by reducing the second factor for calculating the required solvency margin from 0.10% to 0.05%[8].

Further extension of relaxation for crop insurance

Since 2017, the IRDAI has provided for insurers offering crop insurance, two key relaxations: (a) a reduction from 0.7% to 0.5%[9] to both factors required for calculating the solvency margin; and (b) an increase from 180 days to 365 days for the period of admissibility of premium dues.[10] These relaxations have been extended by the IRDAI for the financial year 2022-2023 as well.

IRDAI comprehensively reviews current norms related to anti-money laundering/counter financing of terrorism (AML/CFT)

On June 1, 2022, the IRDAI issued draft guidelines on anti-money laundering[11], inviting comments and suggestions from stakeholders until June 30, 2022. The guidelines intend to consolidate all current the AML/CFT related circulars issued by the IRDAI and introduce comprehensive AML norms for all insurers (except re-insurers). The guidelines require insurance companies, to, amongst others: (a) develop extensive customer due diligence policies; (b) adopt additional KYC norms; (c) conduct periodic AML/ CFT risk assessments; (d) monitor selection process of intermediaries /representatives; and (v) conduct high-level awareness programmes for employees and agents.

The guidelines provide for an enhanced role of senior management in the implementation of AML/ CFT norms. Although the guidelines will be issued in final form only after completion of the stakeholder consultation and regulatory review processes, insurers should consider proactively assessing their existing AML/CFT policies and protocols and measuring those against the proposed requirements.

6. Data on state-wise business claims (form HIR-19) now needs to be filed annually (instead of quarterly), and data on performance of government-sponsored insurance schemes (form HIR-14), in-house settled claims (form HIR-15), TPA-wise settled claims (form HIR-16) and state-wise modes of policy issuance (form HIR-17) now needs to be filed annually (instead of half-yearly).
7. File no. FI-12011 /2/201,5-Ins.II., dated June 01, 2022.
8. Circular no. IRDAI/ACT/CIR/SLM/106/5/2022, dated May 31,2022.
9. Circular no. IRDA/ACT/CIR/SLM/066/03/2017 dated March 28, 2017.
10. Circular no. IRDAI/ACTL/CIR/SLM/122/06/2022, dated June 13, 2022.
11. Draft IRDAI Master Guidelines (Anti Money Laundering/Counter Financing of Terrorism), 2022.

Construction/ interpretation of insurance contracts – highly technical reading should be avoided

The Supreme Court has observed that insurance companies, while settling claims, should not adopt a highly technical reading of the terms of the insurance contract. This observation was made in *Gurmel Singh v. National Insurance Co.,* which involved the rejection of an insurance claim relating to a stolen truck on the grounds of the claimant's failure to produce the vehicle's certificate of registration. The Supreme Court found that the rejection of the claim by the insurer constituted 'deficiency of service' since it was based on a highly technical reading of the insurance contract and the claimant could not have produced the original certificate (which was stolen with the truck) or a duplicate certificate (which the relevant road transport authority had refused to issue).

This is an interesting decision, considering that there is a well-established principle under Indian law that insurance contracts must be strictly construed or interpreted and only in cases of ambiguity must construction or interpretation be made in favor of the insured (i.e., the *contra preferentum* rule).[12] And unless this decision is distinguished on facts, courts in future cases may need to balance and harmonize the reasoning adopted in *Gurmel Singh* against the settled rule of strict construction.

Acting in a representative capacity may constitute 'solicitation'

In the matter of *'In re Deinon Risk Services Private Limited',*[13] the IRDAI held that acting as a representative of an insurance intermediary while corresponding with prospects in India to offer insurance will be considered as 'solicitation' and will be unlawful unless undertaken through a valid registration. In this case, the Indian company, Deinon Risk Services Private Limited, had corresponded with persons in India to offer aviation re-insurance business and had represented that it was acting for Deinon & M/s PIIQ Risk Partners, a foreign insurance broker. The IRDAI found that the company was soliciting insurance without registration and imposed a penalty of INR 1,000,000 (or ~ USD 12,515).

This case again illustrates the risks of becoming involved with the sale or servicing of insurance products without fully appreciating the registration and licensing triggers under Indian insurance law. Given the broad definition of the term 'solicitation' (approaching a client with a view to convince that client to purchase an insurance or re-insurance policy), participants in the insurance sector who are not registered as an insurer or intermediary should carefully consider the nature and scope of their business activities.

12. *Haris Marine Products v. Export Credit Guarantee Corporation Limited, 2022 SCC OnLine SC 509.*
13. Order no. IRDAI/INT/ORD/MISC/103/05/2022, dated May 23, 2022.

OUR OFFICES

BENGALURU
101, 1st Floor, "Embassy Classic"# 11
Vittal Mallya Road
Bengaluru 560 001
T: +91 80 4072 6600
F: +91 80 4072 6666
E: bangalore@induslaw.com

HYDERABAD
204, Ashoka Capitol, Road No. 2
Banjarahills
Hyderabad 500 034
T: +91 40 4026 4624
F: +91 40 4004 0979
E: hyderabad@induslaw.com

CHENNAI
No. 11, Venkatraman Street
T Nagar
Chennai 600017
T: +91 44 4354 6600
E: chennai@induslaw.com

DELHI
2nd Floor, Block D
The MIRA, Mathura Road, Ishwar Nagar
New Delhi 110 065
T: +91 11 4782 1000
F: +91 11 4782 1097
E: delhi@induslaw.com

MUMBAI
1502B, 15th Floor
Tower – 1C, One Indiabulls Centre
Senapati Bapat Marg, Lower Parel
Mumbai – 400013
T: +91 22 4920 7200
F: +91 22 4920 7299
E: mumbai@induslaw.com