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Insurance 2.0 | Big Bang Insurance Reforms

INTRODUCTION

The Ministry of Finance, through an office memorandum dated 26 November 2024, has invited public comments on proposed amendments to the Insurance Act, 1938 (Insurance Act), Life Insurance Corporation Act, 1956 (LIC Act), and Insurance Regulatory and Development Authority Act, 1999 (IRDA Act). Key changes include:

- increasing foreign investment in Indian insurers to 100%,
- introducing a composite license regime for life and non-life insurance under a single license, and
- creating a regulatory framework for Managing General Agents (MGAs).

Comments are invited until 10 December 2024. We welcome your collaboration as we prepare our submissions to the Insurance Regulatory and Development Authority of India (IRDAI).

OVERVIEW OF SIGNIFICANT CHANGES

1. Changes to the Insurance Act

- 1.1. **100% Foreign investment in insurers:** Foreign investment in the sector is proposed to be increased to 100%. Detailed operational guidelines in this regard are awaited from IRDAI. Further, operational rules and regulations under Indian foreign exchange laws will also have to be amended for the change to take effect.
- 1.2. **IRDAI approval for change in shareholding:** Under the current regime, IRDAI approval is necessary if the shares intended to be transferred by a group exceed 1% of the insurer's paid-up capital. This is now proposed to be increased to 5%.
- 1.3. **Composite licenses:** Provisions of the Insurance Act that were specific to life, general or health insurers are proposed to be amended to enable insurers to carry on multiple classes of insurance business under a single license. Therefore, a composite licensing regime appears to be

on the horizon, although the amendments do not expressly refer to a composite license. IRDAI is expected to prescribe detailed guidelines for such composite insurers.

- 1.4. **Managing General Agents:** Several countries permit MGAs to operate, however, Indian insurance regulations did not permit them. The proposed amendments contemplate permission for MGAs to operate in India. In addition to distribution of products (which other forms of intermediaries are permitted to do), MGAs are permitted to underwrite policies, determine product pricing, process claims and manage customer relationships. IRDAI is expected to come up with detailed operational guidelines in respect of MGAs.
- 1.5. **Capitalization:**
 - While no changes to the minimum capital requirements applicable to standalone life and non-life insurers are contemplated, the Insurance Act states that IRDAI will prescribe the minimum paid up capital for insurers carrying on multiple classes of insurance businesses, which will not be less than the sum of minimum capital requirements for each stand-alone class of business.
 - The net owned funds requirements applicable to foreign re-insurers operating in India through a branch office is proposed to be reduced to INR 1000,00,00,000 (~ USD 118 million).
 - IRDAI is proposed to be authorized to reduce the minimum capital requirements for any class of insurers servicing underserved or special segments (which will be identified in due course) to INR 50,00,00,000 (~ USD 6 million).
- 1.6. **Common officers:**
 - While managing directors and other officers of life insurance companies were not permitted to be managing

directors or officers of other life insurance companies, banks or investment companies, it is now proposed that managing directors of all classes of insurers should not be permitted to become managing directors or officers of other insurers, banks or investment companies.

- Similarly, it is being proposed that insurers carrying on a particular class of insurance business are not permitted to have common directors with another insurer carrying on the same class of insurance business.

1.7. **Mergers involving insurers:** Insurers were hitherto permitted to only merge with other insurers and *vice versa*. As an example, IRDAI declined to approve the merger between HDFC Life Insurance and Max Life Insurance due to the involvement of a non-insurance intermediate entity. The proposed amendments will enable IRDAI to approve mergers between insurers and companies not engaged in the insurance business.

1.8. **Other businesses:** Proposed amendments will enable insurers to also engage in: (a) guarantee and indemnity business; (b) managing, selling and realizing property that comes into its possession in satisfaction of claims; (c) employment benefits funds and pension funds; (d) business that are ancillary to the above; and (e) other businesses which Government of India may specify. So far, insurers were required to exclusively engage in insurance business.

1.9. **Expansion in scope of health insurance business:** Health insurance is proposed to be broadened to include personal accident and travel insurance cover. Standalone health insurers will likely now be able to offer these products to their customers.

1.10. **Enhanced regulatory powers for IRDAI:** IRDAI's powers to issue directions to insurance intermediaries are proposed to be enhanced. It is proposed to be clarified that IRDAI has the power to disgorge wrongful gains made or losses averted in contravention of the Insurance Act and

regulations made under it. Further, an insurer or intermediary making false statements or furnishing false documents is proposed to be made liable for a minimum penalty of INR 1,00,00,000 (~USD 118,000) and a maximum penalty of INR 5,00,00,000 (~USD 590,000).

1.11. **Insurance co-operative societies:** While the cap on foreign investments in such societies is proposed to be retained at 26%, the requirement that such societies engage exclusively in life, general or health insurance business is proposed to be done away with. The minimum paid-up capital requirement of INR 100,00,00,000 (~ USD 12 million) for such societies is also proposed to be done away with.

1.12. **Other aspects:**

- The regime applicable to actual reporting, investments, and rural and social sectors is proposed to be simplified and rationalized. IRDAI is expected to issue detailed operational guidelines on these matters as well subsequently.
- The restriction that a person can act as an insurance agent for only one life, one health and one general insurer is also proposed to be done away with.
- Changes have also been proposed to the composition of life insurance council and general insurance council.
- Various other operational and compliance requirements are proposed to be amended. We are not discussing these changes in this update for brevity.

2. **Amendments to LIC Act and IRDA Act:**

Changes to these statutes are largely in respect of procedural and administrative matters, and we are not discussing these changes in this update for brevity.

COMMENTS

- These amendments will have to be approved by both houses of Indian parliament and consented to by the President of India. Thereafter, the amendments will have to be published in the gazette of the Government of India for them to take effect. IRDAI will then have to prescribe amendments to its regulations in order to introduce operational requirements for effecting the changes.
- The Foreign Exchange Management Act (Non-Debt Instruments) Rules, 2019 will also have to be amended to reflect the

increase in foreign investment to 100% for this change to be effective.

- The changes proposed are certainly welcome and will go a long way in providing the insurance sector better access to foreign capital, and eventually increasing insurance penetration in line with IRDAI's mission of 'insurance for all' by 2024. Detailed procedural rules that will be framed by IRDAI must strike the right balance between rigorous oversight and enabling entrepreneurial agility, and must not impede creativity.

- *Aravind Venugopal (Partner)*

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