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Insurers may appeal against Sebi directive

Insurers may continue to sell the products after Irda's counter order; industry body to hold meeting today

N. Sundaresha Subramanian

Mumbai: Life insurance companies, caught in the crossfire of a bitter turf war, may continue to sell unit-linked insurance plans (Ulips) on Monday, ignoring an order by the capital market watchdog that's been countered by the insurance industry regulator.

Over to Sebi: Irda chairman J. Hari Narayan says the ball is in Sebi's court. Bharath Sai/Mint

Insurers, who have been told by the Insurance Regulatory and Development Authority (Irda) to continue business as usual, may move the courts or the Securities Appellate Tribunal (SAT) to protect themselves against potential legal action by the Securities and Exchange Board of India (Sebi). SAT hears appeals against Sebi decisions.

"The ball is in Sebi's court now," Irda chairman J. Hari Narayan told *Mint* on Saturday shortly after directing the insurers to ignore Sebi's order.

"We are evaluating all options," Sebi executive director K.N. Vaidhyanathan said on Sunday. Vaidhyanathan is in charge of the investment management department of Sebi that triggered the regulatory turf war by sending show cause notices to insurers in January over Ulips.

On Friday, Sebi barred 14 insurance firms from selling Ulips, saying the instruments had an investment component that required the insurers to register with it and seek its approval before marketing them to consumers.

Ulips are hybrid products. The premiums collected from Ulips are predominantly invested in equities and bonds while a portion of the fund is kept aside as insurance.

Ulips are a lucrative business for insurers. In 2008-09, 70.3 million Ulips, involving a premium of Rs90,645 crore, were in force. Between April 2009 and February this year, another 1.67 million policies, with a premium of Rs44,611 crore, were sold.

The 14 companies that face the Sebi ban had a combined equity base of Rs16,281 crore at the end of March 2009, according to Irda figures.

"Say, we are governed by the Indian government. If the US government tells me to do something, why should I do it? Similarly, We are governed by Irda. Irda has allowed us to sell Ulips. So, we will sell Ulips tomorrow (Monday)," said the chief marketing officer at a large bank-owned insurer.

According to him, a final decision on the legal recourse against the Sebi order will be taken collectively when the industry body, Life Insurance Council, meets on Monday morning.

“They (insurers) are governed by Irda. How can they violate the Irda directions to continue selling Ulips?” said Somasekhar Sundaresan, a partner at J Sagar Associates, a Mumbai-based law firm.

The issue is between the two regulators, he said. “However, if some companies think they need more clarity, they might move court or approach SAT. Any person aggrieved by a Sebi order can move SAT, which has full powers to stay the order,” he added.

Other options for insurers include seeking common relief through the Life Insurance Council or maintaining status quo and waiting for the next regulatory move.

Some experts say Irda is on shaky ground.

“The authority’s approach is not workable,” said Ashvin Parekh, who holds the position of national leader-global financial services at the consultancy Ernst and Young.

According to him, the Irda order on Saturday does not clearly state what sections of the Irda Act give the insurance regulator exclusive jurisdiction over Ulips.

“The Act gives them power to approve life insurance products. A Ulip, on the other hand, is a hybrid product, which clearly has an investment component in it. There is no reason why two regulators should not have control over the product,” Parekh said.

Sebi whole time member Prashant Saran, in his order on Friday, argued that Ulips are products which come under the definition of mutual funds/collective investment schemes and any entity raising money through such products cannot do so without registering itself with Sebi.

Although life insurance companies like to call it a turf war between regulators, their own product designs and distribution strategies, which are blatantly investor unfriendly, are at the root of the controversy, some experts say.

“It is a good initiative by Sebi. It has been necessitated because of the way these products were distributed as pure investment products riding on heavy commissions,” said Siddarth Shah, partner at Nishith Desai Associates, a law firm. “What could eventually emerge is a joint code of distribution which is approved by both the regulators.”

n.subramanian@livemint.com