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Draft IPO rules for India's general insurers emphasise compliance, says lawyer

Sep 25 2012 Ajay Shamdasani

New draft initial public offering (IPO) rules for Indian general insurance companies have a strong compliance emphasis for both the insurance companies eyeing IPOs and the investment banks that assist them in going public, said a lawyer in the nation's capital. Her comments followed indications from the country's insurance regulator that general insurance companies with a 10-year track record in business could be allowed to go public.

"Once the draft becomes law, this will mean a greater focus by compliance officers and in-house counsel of insurance companies and merchant banks in ensuring that eligible insurers satisfy the Insurance Regulatory and Development Authority's (IRDA) criteria, including ensuring that a company's overall financial position and regulatory record are healthy and fully compliant," said Shailaja Lall, a partner with law firm Amarchand, Mangaldas, Shroff & Co. in New Delhi. She told Thomson Reuters that it was incumbent on compliance and legal staff to establish best practices to ensure that such criteria would be met going forward. "Several disclosures and information pertaining to the last five years, such as records of policyholder protection and pendency of policyholder complaints, claims outstanding, regulatory sanctions … have to be provided to the IRDA at the time of seeking approval," Lall added.

IRDA is expected to soon grant permission to general insurance providers seeking to go public, provided they have been in business for at least a decade. However, advance regulatory approval would also be required. The IRDA (Issuance of Capital by General Insurance Companies) Regulations (2012) will become effective upon publication in the official gazette. According to the draft guidelines, IRDA's approval for IPOs by general insurance companies will be valid for a year, following which, those seeking to go public would have to file draft "red herring" prospectuses with the capital markets regulator — the Securities and Exchange Board of India (SEBI) — within that year.
IRDA's draft guidelines clearly state that without specific prior approval from it, no general insurance company should approach SEBI for public issue of shares or for any subsequent issue, under the Issue of Capital and Disclosure Requirements (ICDR) regulations. The guidelines will also regulate divestment by promoters — both through capital issuance under the ICDR regulations or through equity divestment by one or more promoters through a public offer for sale under the ICDR regulations. The insurance regulator will also specify a 'lock-in period' for promoters from the date of share allotment.

Compliance challenges

Insurance is a sensitive sector in a developing nation like India. For that reason, IRDA has already imposed several information and disclosure requirements such as its "Corporate Governance Guidelines for Insurance Companies"

(2009).

Yet, there are also annual filings on compliance status and general information on the business of the general insurance companies, said Sahil Shah, a senior associate with law firm Nishith Desai Associates in Mumbai. "Compliance officers and in-house counsel were always saddled with a lot of responsibilities pertaining to such disclosures and providing information to the IRDA," he said.

Similarly, internal lawyers at general insurance needed to fully disclose a list of prescriptive risk factors under the regulations before going public, said Saionton Basu, a partner and co-head of the India group at Penningtons Solicitors in London.

India's insurance sector has gone through many changes, such as recent amendments to the Insurance Act (1938). Such changes have made the listing of insurance companies easier.

"The draft regulations issued are in furtherance of these amendments," said Shah. "They are an attempt to streamline the information required to be disclosed to the general public. The regulations are still in draft form and will come into force only when notified."

Timing of IRDA's action

Industry officials told Thomson Reuters that IRDA's move was long anticipated and would bring India's insurance companies and securities markets into line with other jurisdictions.

"IRDA last year notified norms of life insurance companies hitting the capital markets and accordingly coming out with norms for general insurance companies is a natural progression," said Basu.

The proposal was therefore a much awaited respite for general insurance companies to generate capital through IPOs and provide new exit opportunities to promoters of insurance companies, said Amarchand's Lall.

While such guidelines have been on regulators' drawing boards for quite some time, Nishith Desai's Shah said that both SEBI and IRDA would come out with separate guidelines for insurance companies. "These guidelines appear to be necessary considering the sensitivity of the sector. The business models of insurance companies are different than that of companies in other sectors and hence a separate set of guidelines was always expected," he said.

Additionally, the potential for a regulatory tussle between the two regulators has been avoided.

"It is interesting that the turf war between IRDA and SEBI has been settled, to some extent, through these regulations which make it clear that prior written approval of the IRDA will be needed before approaching SEBI for a public issue," said Penningtons Basu.

Looking ahead, IRDA requested that general insurance companies state their views on the draft guidelines by the end of this week.

IRDA did not return calls for comment.

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