IRDA v PFRDA: is another turf war brewing?

22 November 2011

In 2010 the Insurance Regulatory and Development Authority (IRDA) and the Securities Exchange Board of India (SEBI) clashed over which of them had responsibility for the regulation of unit-linked insurance products (ULIPs). SEBI took the view that a ULIP without life cover is essentially a plain mutual fund; therefore, ULIPs should be regulated by SEBI, which is responsible for the regulation of mutual funds. The IRDA saw no regulatory overlap and was adamant that ULIPs are insurance instruments and therefore within its regulatory ambit. The very public spat between the two regulators was finally settled when Parliament passed the Securities and Insurance Laws (Amendment and Validation) Bill 2010. This gave the IRDA responsibility for regulating ULIPs.

Since the start of 2011 a number of press reports have suggested that another turf war may be brewing, this time between the IRDA and the Pension Fund Regulatory and Development Authority (PFRDA). Under the existing insurance rules and regulations, pension and general annuity products can be distributed only by Indian life insurers, all of which are regulated by the IRDA. The PFRDA's mandate is to manage pension plans in the public sector and the 'unorganised' sector (eg, self-employed workers, casual workers and domestic staff).

According to press reports, the PFRDA chairman feels that annuity products should be sold by pension fund managers, which are established and regulated by the PFRDA, rather than by insurers. The IRDA chairman has responded in the press that under Indian law as it presently stands, all pension schemes must be regulated by the IRDA, with the PFRDA's remit limited to pension schemes, such as the National Pension Scheme. The National Pension Scheme is administered and regulated by the PFRDA and accumulates savings with the goal of providing a regular monthly annuity payment to government employees and those in the unorganised sector after retirement. Even then, the conversion of the accumulated savings into a monthly income stream must be carried out by a life insurer regulated by the IRDA.

This logic is echoed in draft guidelines issued by the IRDA in August 2011 concerning the form and content of pension products. Among other things, the draft guidelines scrap the 4.5% guaranteed return provision and require all pension products to comply with various objectives. The draft has not yet been finalised, but if finalised in its present form, it will operate similarly to the guidelines issued for ULIPs and therefore, to some extent, will mandate the wording of pension products.

Article

In turn, the PFRDA has invited 'expressions of interest' from life insurers to be registered as annuity service providers. When their applications are approved, these life insurers will be entitled to provide annuities directly to members of the National Pension Scheme and other schemes administered by the PFRDA. The PFRDA has sole discretion with respect to the approval of applications, and it is well known that the pricing of annuities is likely to be an important criterion for selection. However, insurers can quote a price for an annuity only after an annuity product has been approved by the IRDA under its 'file and use' procedure - an insurer therefore cannot quote a price to the PFRDA unless the IRDA has approved it.

Whether in reaction to this or not, the IRDA has recently started to question whether it is appropriate for insurers to be considering setting up as annuity service providers to schemes regulated by the PFRDA. The IRDA is said to believe that life insurers are not allowed to act as intermediaries of third parties.

Recent press reports suggest that the government is aware of the potential for the present exchanges to escalate, as they did with SEBI, and that there has been a reference to the Financial Stability and Development Council (FSDC), an institutional dispute resolution body established after the SEBI-IRDA disagreement. The FSDC has not yet confirmed its involvement and there is no news about the scope of the reference to it (if indeed there has been any reference at all). If it is involved or does become involved, it will be interesting to see whether it too will lean the IRDA's way, given that many life insurers are keen to operate as annuity service providers and pension fund managers.

For further information on this topic please contact Tuli & Co by telephone
+91 11 2464 0906, fax +91 2464 0904 or email lawyers@tuli.biz

www.tuli.biz

Originally edited by, and first published on, www.internationallawoffice.com