

## Delhi High Court: Indian insurance laws do not apply abroad

26 June 2012

In November 2010 the Delhi High Court held in *Radiant Overseas Pvt Ltd v Insurance Regulatory and Development Authority*<sup>1</sup> that an entity which collects premiums and issues insurance certificates on behalf of overseas insurers but which is not registered with the Insurance Regulatory and Development Authority is contravening the insurance statutory and regulatory framework (for further details please see “[Regulatory authority's order on licensed distribution upheld](#)”).

### Facts

Radiant Overseas is an Indian company involved in the travel agency industry. In 1998 it received permission from the Reserve Bank of India and the Department of Economic Affairs (although it is unclear whether this permission was formally extended beyond 2001) to collect insurance premiums and issue insurance certificates to Indian tourists travelling to Ukraine on behalf of an Ukrainian insurer. The Ukrainian insurer on whose behalf Radiant Overseas was acting had an exclusive licence to issue mandatory medical insurance to all foreigners visiting Ukraine.

In 2008 the Insurance Regulatory and Development Authority questioned the basis on which Radiant Overseas was operating on behalf of the Ukrainian insurer, particularly as it was not registered with the authority. An inquiry followed and, in April 2010, the authority held that as Radiant Overseas collects premiums, issues insurance certificates and remits premium amounts overseas to the Ukrainian insurer, it is engaged in the business of insurance. Since it is prohibited to conduct insurance business in India without being licensed by the authority, Radiant Overseas was held to be in violation of the statutory norms and directed to cease its 'insurance' operations. A writ petition was filed with the Delhi High Court, where a single judge bench agreed with the authority's stance.

### Decision

However, a division bench of the Delhi High Court recently overturned the previous judgment, holding that:

- the Insurance Act 1938 contains no specific provisions regarding medical or accident insurance for Indians while travelling overseas;
- the Foreign Exchange Management (Insurance) Regulations 2000 prohibit Indian residents from obtaining life or general insurance policies from overseas insurers, but this prohibition does not extend to medical

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<sup>1</sup> MANU/DE/2410/2010.

or accident insurance during the period of stay/travel overseas. The regulations, therefore, clearly establish that there is no prohibition on Indians dealing with overseas insurers when overseas; and

- there is no indication of the legislature's intention to give extraterritorial operation to insurance laws. Thus, Indian laws cannot be held to apply to insurance businesses outside India.

Based on this, the court held that:

*“The business of foreign insurance companies of covering risks incurred outside India, cannot be said to be insurance business in India (within the meaning of the Insurance Act), even if premium for such insurance is paid in/from India and insurance policy is issued in India. The essence of the business/contract of insurance is the coverage of risk and if the policies issued by the foreign insurer do not cover the risk as long as the insured remains in India, mere issuance thereof cannot be said to be carrying on insurance business in India...Without the contract being operative and enforceable in India, mere ministerial act of issuance of the contract in India cannot be said to be amounting to carrying on insurance business in India.”*

The court also observed that if the Indian government believes it necessary to regulate this activity, it may develop appropriate laws or regulations in this regard.

#### **Comment**

It is unclear whether this decision will be appealed before the Supreme Court. As the judgment was published only recently, follow-up regulations (if any) will likely take a while to be introduced. However, there have been no immediate reactions to indicate that any such regulations are imminent.

**For further information on this topic please contact Tuli & Co**

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