Insurance - India

Insurance Laws (Amendment) Ordinance 2014: law, limbo or window of opportunity?

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The long-awaited increase in permitted foreign holdings in an Indian insurance company from 26% to 49% is now law. However, rather than becoming law through the usual legislative process, it became law through an unusual and temporary device: an ordinance. This places an unwelcome question mark over the resilience of this otherwise welcome reform.

Background

The journey to the ordinance was as follows:

- 1991 – the government embarked on its policy of liberalisation.
- 1993-94 – the Malhotra Committee was set up to suggest reforms to the then-nationalised insurance sector. It recommended allowing private competition and permitting foreign investment in Indian insurers, subject to a cap on foreign ownership.
- 1999-2000 – the Insurance Regulatory and Development Authority (IRDA) was formed to regulate the insurance industry and develop the insurance market. Foreign investment in an Indian insurer was capped at 26%.
- 2004 – the Indian National Congress (INC)-led coalition government proposed raising the foreign investment cap from 26% to 49%, but was thwarted by strong opposition.
- 2008 – the INC-led coalition government introduced the Insurance Laws (Amendment) Bill 2008. It contained a number of reforms, including raising the foreign investment cap to 49%.
- 2013 – the INC-led coalition government created the framework for an increase to 49% once the Insurance Laws (Amendment) Bill was passed by Parliament; however, the bill was not passed.
- July-August 2014 – the Bharatiya Janata Party-led government sought to pass the Insurance Laws (Amendment) Bill that it had opposed when in opposition, but in turn ran into opposition – including from the INC. A parliamentary select committee was formed to review the bill.
- December 2014 – the select committee suggested amendments, but the Insurance Laws (Amendment) Bill was not passed in the winter session of Parliament, which ended on December 23 2014.

Ordinance passed

Citing the urgency of implementing insurance reforms, the government decided to bypass the parliamentary logjam by using the ordinance route to pass the Insurance Laws (Amendment) Bill. The Constitution permits the president to pass emergency temporary laws when Parliament is not in session. The day after Parliament rose at the end of the winter session, the cabinet recommended that the president pass the bill through an ordinance.

On December 26 2014 the president formally assented to the cabinet's recommendation and the Insurance Laws (Amendment) Ordinance 2014 came into effect.

Main features

The ordinance is virtually the same as the Insurance Laws (Amendment) Bill, as amended by the 2014 select committee. Therefore, the following changes to the existing law are now in force:

- The cap on foreign investment has been lifted from 26% to 49%. However, an Indian insurer must still be 'controlled' by Indian citizens. The definition of 'control' borrows from the Companies Act 2013 and is defined as the right to appoint a majority of the directors, control management and control policy decisions.

- Foreign companies are permitted to open branches to write reinsurance business in India.
- Lloyd's is permitted to access the Indian market as the branch of a foreign reinsurer.
- The Securities Appellate Tribunal may now hear appeals against the orders or decisions of the IRDA.
- A fine of up to Rs250 million may now be imposed for carrying on insurance business without registration. Fines for other breaches of the statutory and regulatory framework have also been significantly increased.

Validity

Unless the validity of the ordinance is confirmed by Parliament within six weeks of its next sitting, the ordinance will cease to operate – although acts under the ordinance while it was effective remain valid and effective. Accordingly, the next sitting of Parliament is in February 2015 and (unless adopted by Parliament) the ordinance will cease to have effect at the earlier of:

- the expiry of six weeks from the reassembly of Parliament;
- the passing of resolutions disapproving the passing of the ordinance by both houses of Parliament; or
- the withdrawal of the ordinance by the president.

Comment

The mechanism by which the reforms have been introduced places an unwelcome question mark over the resilience of these otherwise welcome reforms. It will be interesting to see how many insurers and other interested parties take advantage of the window of opportunity made available by the ordinance, how many will have to increase their Indian shareholdings because existing Indian joint venture arrangements require it and how many will continue to wait until a more permanent environment emerges.

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