

# Amalgamations and transfers in insurance sector

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## Amalgamations for insurers

## Amalgamations for insurance intermediaries

In recent years, the Indian insurance sector has been abuzz with the news of new players looking to acquire stakes in insurers and insurance intermediaries. While such restructuring generally involves a complicated process in itself, the approval requirements stipulated by the Insurance Regulatory and Development Authority of India (IRDAI) further lengthen this process.

### Amalgamations for insurers

In terms of insurers, the Insurance Act 1938 provides for the manner in which insurers may carry out amalgamations and transfers of insurance business. Sections 35, 36 and 37 of the Insurance Act prescribe the procedure for obtaining IRDAI approval for amalgamations and transfers of insurance business as set out below.

First, the parties must prepare a scheme which:

- sets out the agreement under which the transfer or amalgamation will be effected; and
- contains other necessary provisions to give effect to the scheme.

Two months before applying to the IRDAI for approval, a notice of intention must be sent to the IRDAI, along with:

- a statement regarding the nature of the transaction;
- the reasons thereof; and
- four certified copies of the following documents:
  - a draft of the agreement or deed under the amalgamation or transfer;
  - balance sheets in respect of the insurance business of each insurer;
  - a report on the proposed amalgamation or transfer prepared by an independent actuary who has never been professionally connected with any of the concerned parties in the preceding five years;
  - actuarial reports and abstracts in respect of the insurance business of each insurer; and
  - any other reports on which the scheme of amalgamation or transfer has been founded.

The approval process is as follows:

- During the two-month pendency period, the above documents must be kept open for inspection by the members and policyholders at the insurers' principal and branch offices.
- On receipt of an application, the IRDAI will issue a notice of the application, which must be provided to the insurers' policyholders. Following this, a statement regarding the terms and nature of the amalgamation or transfer will be published in such manner and for such period as directed by the IRDAI.
- After hearing the directors and considering the objections of policyholders and any other relevant persons, and once it is satisfied that no substantial objection to the arrangement has been established, the IRDAI may approve the scheme and make any necessary consequential orders to give effect to it.
- Once the scheme has been approved by the IRDAI, the insurance business may be transferred

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to or amalgamated or merged with the other insurer's insurance business.

- Once the amalgamation or transfer has been effected, the insurer carrying out the amalgamated business or the insurer to which the business has been transferred must provide the IRDAI with duplicate copies of the following documents within three months:
  - a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected; and
  - a declaration signed by the chair and principal officer that to the best of their knowledge, every payment to any person in relation to the amalgamation or transfer was fully set out in the scheme and no other payments are to be made.

In brief, the Insurance Act sets out the manner by which IRDAI approval may be sought, the documents required and the pre and post-approval actions which the parties must take.

In addition, pursuant to the powers conferred under Section 37A of the Insurance Act, the IRDAI can prepare a scheme of amalgamation for insurers where it believes that such an amalgamation is:

- in the public's best interest;
- in the interest of policyholders in order to ensure proper management; or
- in the interest of the insurance business of the country as a whole.

Notably, a transfer or amalgamation done without IRDAI approval is grounds for suspension of the insurer's IRDAI-issued certificate.

### **Amalgamations for insurance intermediaries**

While an organised procedure for regulating the amalgamation or transfer of an insurer's business has been set out, the regulations governing the amalgamation or transfer of an insurance intermediary's business remain scattered and, in some cases, non-existent.

For instance, although Regulation 8(d) of the IRDAI (Insurance Web Aggregators) Regulations 2017 is titled "Transfer of Ownership", the regulations do not envisage exhaustive provisions governing the amalgamation or transfer of an undertaking. Rather, they merely stipulate the conditions for approval of a transfer of ownership of a web aggregator's shares to another individual or entity, particularly in relation to:

- beneficial ownership;
- the cap on foreign investments; and
- the cap on shareholding of Indian investors.

Notably, the IRDAI (Registration of Corporate Agents) Regulations 2015 and the IRDAI (Insurance Surveyors and Loss Assessors) Regulations 2015 (as amended) have no express provisions governing share transfers. As a result of the fragmented regulatory framework governing insurance intermediaries, there is no uniform guidance for insurance intermediaries on the process of amalgamating or transferring business.

However, a welcome change in this regard has been introduced under Regulation 41 of the IRDAI (Insurance Brokers) Regulations 2018 (Brokers Regulations), titled "Amalgamation and Transfer of Business". This regulation prescribes that IRDAI approval must be obtained for every amalgamation or transfer of business scheme of an insurance broker before it can be implemented. In this regard, Regulation 41 of the Brokers Regulations further clarifies that such approval is required irrespective of whether:

- the transferor continues to act as an insurance broker following the transfer of business; or
- the transfer of business results in the voluntary surrender of transferor's certificate of registration.

The process for obtaining IRDAI approval is stipulated under Schedule II, Form Y of the Brokers Regulations in the following terms:

- Every proposal for a scheme of amalgamation or transfer must be jointly submitted by the

insurance broker and insurance intermediary to the IRDAI, along with the following documents:

- a draft of the agreement or deed under which the transfer of business is proposed to be effected;
  - a synopsis of the proposed transaction and the terms on which such transaction has been contemplated;
  - audited balance sheets and the parties' un-audited financial statements from the last quarter;
  - a report on compliance with applicable laws, including but not limited to, the Competition Act 2002 and employment laws;
  - a report on the manner in which policyholders' interests will be protected;
  - an undertaking from the transferor that it will cease to undertake insurance broking activity in the line(s) of insurance proposed to be transferred under the scheme; and
  - any other undertaking as required by the IRDAI.
- The IRDAI must approve the scheme as expeditiously as possible following receipt of the application if it is satisfied that the scheme complies with all applicable laws and regulations and is in the best interests of the policyholders.
  - Once the scheme has been approved, the transfer of business will come into effect from the date specified by the IRDAI in its final approval.

The Brokers Regulations prescribe the manner in which IRDAI approval may be sought, including the documents needed. These regulations also confer discretionary power on the IRDAI to issue directions with respect to the amalgamation process based on:

- the facts and circumstances of each case;
- its regulatory objectives;
- policyholders' interests; and
- growth in the insurance sector.

However, the Brokers Regulations do not specify the post-approval actions or the manner in which an insurance broker may contest an IRDAI decision regarding its application for approval. Nevertheless, while the stipulations in the Brokers Regulations may not be exhaustive, they clarify the process of amalgamating and transferring insurance brokers' business.

Even with the amendments introduced to the Brokers Regulations, the ambiguity regarding the process of amalgamation and transfer of business with respect to other insurance intermediaries persists. Therefore, there is a growing need for the extant regulations governing the specific forms of insurance intermediaries to be amended and for the norms on amalgamation to be spelled out, thereby dispelling uncertainty and providing a defined process for market players.

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