Parliament Settles Unit-linked Insurance Policy Dispute

October 12 2010

The controversy between the Securities and Exchange Board of India (SEBI) and the Insurance Regulatory and Development Authority (IRDA) over which body should govern unit-linked insurance policies (ULIPs) has been a source of industry concern for months (for further details please see "Turf Wars: who regulates insurance products?" and "Turf Wars II: moving towards a super regulator"). However, the issue has finally been resolved in favour of the IRDA, with both houses of Parliament passing the Securities and Insurance Laws (Amendment and Validation) Bill 2010.

With a petition admitted before the Supreme Court and listed for hearing in early July 2010, the government was forced to intervene. The president issued the Securities and Insurance Laws (Amendment and Validation) Ordinance on June 18 2010, as the parliamentary session was not due to start until the end of the following month. It was subsequently passed in the lower house on July 27 2010 and by the upper house on August 4 2010. The bill amends a number of statutes, including:

- the Insurance Act 1938;
- the Reserve Bank of India Act 1934;
- the Securities and Exchange Board of India Act 1992; and
- the Securities Contracts (Regulation) Act 1956.

The amendments resolved the dispute by clarifying that ULIPs fall within the definition of 'life insurance business', for which the IRDA is the sole regulator. An insurance policy with an investment component is not a security and therefore cannot be regulated by the SEBI. In addition, the bill provides for a mechanism for the resolution of future disputes between regulators. It adds a new chapter to the Reserve Bank of India Act, establishing a joint committee to regulate disputes over whether: (i) instruments involving derivatives, life insurance or other securities are hybrid or composite instruments (or any other form of instrument); and (ii) such instruments fall within the jurisdiction of the Reserve Bank of India, the SEBI, the IRDA or the Pension Fund Regulatory and Development Authority.

The joint committee is chaired by the union finance minister. The vice chair will be the governor of the Reserve Bank of India - primarily a concession to appease the bank, which resisted the plan. In addition, there will be five *ex officio* members: the secretaries of the Department of Economic Affairs and the Department of Financial Services, and the chairs of the IRDA, the SEBI and the pensions regulator. The committee has been given broad powers to decide its own operational terms. It must issue decisions within three months, with such decisions being binding on the Reserve Bank of India and the three regulators.

In anticipation of a Supreme Court ruling or the issuance of a bill or ordinance, the IRDA issued a host of new guidance on ULIPs:

- A circular was issued on May 3 2010 which, among other things, bars life insurers from selling ULIPs without life cover.
- The Treatment of Discontinued Linked Insurance Policies 2010, which was issued on July 1 2010, primarily provides for a standardised approach to the lapse, surrender or revival of ULIPs, as well as a ceiling on surrender charges. Significantly, these regulations provide that when ULIPs lapse, the policy can no longer be continued without risk cover. Previously, some ULIPs included conditions whereby the policy could be continued without risk cover, and to the extent of the existing investment in the funds, only once the policy had lapsed.
- A guidance note of June 28 2010 specifies structural changes for ULIPs, including:
  - an extension of the lock-in period from three to five years;
  - a uniform regular premium;
  - a minimum premium payment term of five years;
  - minimum mortality rates; and
  - a minimum guaranteed return of 4.5% a year on pension products.

All ULIPs sold by life insurers from September 1 2010 must comply with these new regulatory norms.

The enactment of the bill and the issuance of a wealth of IRDA guidance have effectively laid the ULIP jurisdiction issue to rest. Recent press reports indicate that ULIP sales have improved and that insurers are looking to introduce new ULIPs based on the new norms. Most life insurers had either one or two ULIPs approved by the IRDA under the new regime by September 1 2010.

Of more lasting effect will be the joint committee, which is a clear initial step towards the creation of a super-regulator. This concept has been debated for some time and was mooted by the finance minister in his 2009-2010 budget speech. While discussing the bill in the upper house, the minister suggested that the committee was an *ad hoc* arrangement until the Financial Stability Development Council could be established. It is likely to be only a matter of time before the council is established, with authority to govern disputes not only between regulators, but also on jurisdictional issues beyond the sectors covered under the bill.

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