MATURITY A MUST — INDIAN INSURANCE REGULATOR APPROVES REGULATIONS FOR PUBLIC OFFERINGS BY LIFE INSURANCE COMPANIES

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To Our Clients and Friends:

The insurance market in India has seen rapid growth and development since 1999, when it was opened up to private investment after two and a half decades as a nationalized industry. Foreign companies have taken advantage of the opportunities presented by this market, but their participation has been limited by Indian regulation. Recently, however, there has been some deal activity in the sector with Mitsui Sumitomo picking up New York Life's stake in the Max New York Life Insurance joint venture. In addition, on December 1, 2011, the Insurance Regulatory and Development Authority of India ("IRDA") notified the IRDA (Issuance of Capital by Life Insurance Companies) Regulations, 2011 (the "Regulations") which allow life insurance companies in India to go public. Public offerings will be subject to regulation by both IRDA and the Securities and Exchange Board of India ("SEBI"). IRDA will determine if the company meets the qualification requirements of going public and SEBI will evaluate whether disclosure in the issuer's draft red herring prospectus ("DRHP") meets the requirements of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (the "ICDR Regulations"). With foreign direct investment in the sector still limited to 26%, insurers may soon look to the equity markets to raise capital.

The key points of these Regulations are as follows:

ELIGIBILITY

- Only life insurers that have completed ten years of operations in India will be eligible to go public. In addition, a company will need to have an embedded value that is at least twice its paid-up equity capital (including share premium). The company must submit to IRDA an embedded value report prepared by an independent actuarial expert and peer reviewed by another independent actuary.

- In determining whether to allow a life insurance company to go public, IRDA will also consider, among other things, the prospective issuer's overall financial position, its regulatory record, the proposal to go public, the capital structure of the issuer post-offering and the purpose for which the offering will be made.

- IRDA will specifically consider parameters such as the length of time which the company has been in business, its history of regulatory compliance, maintenance of the prescribed regulatory solvency margin during periods immediately prior to application, compliance with disclosure requirements set by IRDA, compliance with the corporate governance guidelines issued by IRDA and the issuer's record of policyholder protection.

APPROVAL

- IRDA's approval may be conditional and it may require:
    - a limit on the degree to which a promoter may reduce or dilute its shareholding;
    - a maximum limit in subscription by any class of foreign investors (current rules allow a maximum of 26% to be held by foreign investors);
    - a minimum lock-up period for the promoters (during which time they may not sell their shares); and
    - additional disclosure in the DRHP in addition to the disclosure mandated by the ICDR Regulations.
- Companies may not approach SEBI for a public issue of shares or a subsequent issue without the specific approval of IRDA.
- IRDA approval will be valid for a period of one year from the date of issuance; prospective issuers must file their DRHP with SEBI within this period.

DISCLOSURE

- In addition to the ICDR Regulations disclosure requirements, life insurance companies will have to disclose a record of their policyholder protection and the pendency of policyholder complaints in the last five years.

CONCLUSION

The Regulations are a significant step in India's nascent private life insurance sector after a period of little progress due to the global slowdown and local regulatory changes. In particular, industry participants have been frustrated that the bill proposed in 2008 to increase the cap on the percentage of equity foreign investors are allowed to hold in Indian insurance companies from 26% to 49% is still on hold in the Parliament. However, India is still seen as an attractive market for insurance companies for several reasons including its current low market penetration, large population, rapidly-growing economy and rising middle class. In this context, the clarity regarding the roles of IRDA and SEBI in insurance capital markets provided by the Regulations is a very helpful and welcome development.

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Please note that we are not qualified to advise on Indian law. This update is based on information that has been published in the press and from other sources in the public domain.