Client Update
India's Insurance Sector Finally Opens Up but Uncertainty Persists

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On December 26, 2014, the President of India (the "President") promulgated the Insurance Laws (Amendment) Ordinance, 2014 ("Insurance Ordinance"), which became effective on the same day. The Insurance Ordinance increases the equity shareholding limit of foreign investors in Indian insurance firms from the previous 26% to 49%. This is one of the first big-ticket reforms announced by the Narendra Modi led political alliance, after forming the government in India mid-last year. The previous 26% cap has been an embargo on foreign investors and insurance companies looking to scale up their local operations.

Under Indian law, when the parliament is not in session, the President is empowered to promulgate ordinances to make any legislation effective, on being satisfied that circumstances exist which render such action necessary. An ordinance has the same effect as any law passed by the parliament but is required to be presented before the parliament once it reassembles, which it now will in February, 2015. If an ordinance is not approved by the parliament, it ceases to operate after six weeks from its reassembly. There are some instances where ordinances have been promulgated multiple times to keep them effective if parliamentary approval is not forthcoming.

KEY AMENDMENTS

Following are some of the key changes introduced by the Insurance Ordinance:

- Increase in the cap of foreign investment from 26% to 49%. The 49% limit includes all forms of foreign investments, including those held by foreign portfolio investors (registered international investors investing in the securities markets of India).
- While the shareholding cap has been increased, 'control' of the investee company must remain with Indian residents. 'Control' has been defined in line with the definition of 'control' under the Foreign Direct Investment

Policy[1] to include the *'right to appoint majority of directors or to control management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.'*

- Specific authorization to issue other forms of capital instruments such as preference shares, warrants and partly paid-up equity shares to foreign investors (which will form part of the 49% cap). The (Indian) Insurance Act, 1938, permitted issuance of only fully-paid equity shares by Indian insurance companies. This change should go a long way in providing increased flexibility in deal structuring.
- Foreign re-insurers are now allowed to engage in re-insurance business in India directly through branch offices or through local presence in India post-registration with the Insurance Regulatory and Development Authority (the regulator for the insurance sector). Prior to this change, General Insurance Corporation of India (a state-owned corporation) was the sole reinsurer in India.

CONCLUSION

The introduction of the Insurance Ordinance to give effect to the long-overdue reforms is a welcome step for the Indian insurance sector. It is expected that this liberalization will bring an enhanced flow of foreign capital and international expertise, and result in accelerated development of the Indian insurance industry through increased access to international insurance products, distribution channels and international best practices.

However, since the Insurance Ordinance has not been ratified by the parliament, and given that it is only valid for a short period, foreign investors would be wise to stay on the sidelines for now but begin planning either their entry into the Indian market or scaling up their presence through further investments.

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Please note that this firm is 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.

Please do not hesitate to contact us with any questions.

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1 RBI/2013-14/255 - A.P. (DIR Series) Circular No. 44 dated September 13, 2013 and Press Note No. 4 (2013 Series), Department of Industrial Policy & Promotion, Government of India.