# India: The Insurance Laws (Amendment) Bill 2022

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### *Introduction*

Following a comprehensive review of the insurance legislative framework in India by the Finance Ministry, in consultation with the IRDAI and other stakeholders in the industry, the Government of India has issued a draft Bill titled "*The Insurance Laws (Amendment) Bill, 2022*" ("**Draft Bill**") on 29 November 2022.

The Draft Bill proposes significant amendments to the Insurance Act 1938 ("**Insurance Act**") and the Insurance Regulatory and Development Authority Act 1999 ("**IRDA Act**"), which are stated to primarily focus on "*enhancing the financial security of the policyholders, promoting policyholders' interests, improving returns to the policyholders, facilitating entry of more players in insurance market leading to economic growth and employment generation, enhancing efficiencies of the insurance industry - operational as well as financial, and enabling ease of doing business*".

The Draft Bill proposes various changes such as opening up the IRDAI registration to various classes, sub-classes and types of Insurers with minimum capital requirements based on the form of business (as maybe specified by the IRDAI), allowing Insurers to additionally perform services that are incidental or related to insurance business as well as distribution of other financial products as maybe specified by the IRDAI. Further, certain amendments have been proposed in line with the changes made to other legislations such as the Companies Act 2013 and changes discussed by the IRDAI in relation to various regulations.

### Proposed Changes

A brief summary of the key changes proposed in the Draft Bill are set out below:

1. The Draft Bill proposes to allow the IRDAI to specify any part of an existing class of insurance business as its "*sub-class*", similar to the distinctions prevalent at present under general insurance business (such as fire, marine and miscellaneous insurance business) and under health insurance business (such as personal accident and travel). Further, it is proposed that the IRDAI, by notification, may specify different types or categories of Insurers (including in the nature of captive insurers[1]) based on such criteria as their area of operation, level of risk or premium and channel of distribution.
2. The Draft Bill proposes to introduce various new definitions under the Insurance Act such as of "captive insurer", "class of insurance business"[2], "sub class" of an existing class of insurance business, "principal officer"[3], "personal accident insurance business", "travel insurance business" and "premium" as well as revise various existing definitions such as of "Indian Insurance Company" [4], "Insurer"[5] and "health insurance business"[6]. The definition of "insurance intermediary" is proposed to be moved from the IRDA Act to the Insurance Act, and while it remains inclusive, it sees deletions of certain categories which were expressly set out earlier, such as surveyors and loss assessors, insurance consultants and TPAs. Broadly, the definitional changes vary from clarificatory to substantial, and may potentially have long term implications on the form and manner of carrying on insurance business and product distribution in India.
3. The Draft Bill proposes to include "*Central Government or a State Government or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013*;" and "*a statutory body established by an Act of Parliament to carry on insurance business;*" in the list of entities at 2C of the Insurance Act, which are not prohibited from carrying on insurance business[7]. While body corporates incorporated overseas also forms a part of this list at present, the same is proposed to be: (i) replaced

with Foreign Reinsurance Branches (**FRBs**) and Lloyd's India or its members, which are established for "*exclusively undertaking re-insurance business*" in India, and (ii) prohibited from carrying on any class of insurance business except reinsurance business.

4. The Draft Bill indicates that an application to the IRDAI for registration may be made for multiple classes (or sub-classes) of insurance business. In this regard, the Draft Bill states that the application may be made for "*one or more classes or sub-classes of insurance business by any category or type of insurer*" but clarifies that an entity either applying for or carrying on reinsurance business is not eligible to apply for registration of any other class of insurance business.
5. The Draft Bill proposes to allow Insurers to "*provide services related or incidental to insurance business and may also distribute other financial products as specified by and subject to regulations*". While presently Insurers are only permitted to carry on insurance business in accordance with their registration with the IRDAI, the proposed change could see Insurers being permitted to also offer various services ancillary to their insurance products and distribute financial products such as mutual funds, loans etc.
6. Presently, the minimum paid up equity share capital required to carry on any class of insurance business and reinsurance business in India is Rs.100 crores and Rs.200 crores, respectively. The Draft Bill proposes to remove the minimum capital requirements and specifies that the determination of minimum paid-up equity capital will be in accordance with the regulations specified by the IRDAI considering the "*size and scale of operations, class or sub-class of insurance business and the category or type of insurer*".
7. Further, the minimum net owned funds requirement for registering FRBs and Lloyd's India branches is proposed to be reduced from Rs.5000 crores to Rs.500 crores.
8. Presently, for transfer of an Insurer's shares exceeding 1% of its paid-up equity capital, prior approval of the IRDAI is required to be obtained. This threshold is proposed to be relaxed to 5%.
9. Under the Draft Bill, it is proposed that an Insurer carrying on business of more than one class or sub-class of insurance business shall be required to maintain separate accounts of all receipts and payments under each such class or sub-class.
10. The Draft Bill proposes to bring major reforms to investment related provisions under the chapter on "*Investment, Loans and Management*" of the Insurance Act. For investment of assets by Insurers, the following conditions are proposed:
    a. Every Insurer is required to "*earmark, invest and at all times keep earmarked and invested*" its assets in such manner that the value of invested assets is not less than the value of its liabilities.
    b. Such "*earmarked assets*" shall be required to be free from any "*encumbrance, charge, hypothecation or lien*".
    c. As an additional condition, it is proposed that an Insurer cannot invest more than 5% of its earmarked assets in a company or other body corporate which is owned or controlled by its promoters.
    d. The restrictions and conditions for making investments will be specified by the IRDAI through regulations.
    e. Various conditions set out under 27A, 27B, 27C, 27D and 31 of the Insurance Act are proposed to be repealed. Instead, it is proposed that investment (of the whole or any part) of the Insurer's assets shall subject to "*such time, manner, limitations, restrictions and other conditions as the Authority may specify by regulations.*"
11. The Draft Bill proposes that the final audited accounts and actuarial report must be submitted with the IRDAI in electronic form within a period and manner specified by the IRDAI. Presently, Insurers are required to submit these documents in physical form "*within six months from the end of the period to which they refer*".
12. The Draft Bill proposes to insert a new provision under the Insurance Act, namely, "*Appointment of Actuary by insurer*" stipulating that the IRDAI shall define the duties, powers, qualifications and experience, necessary for appointment of an actuary by an Insurer, through its regulations.
13. The present norms under 13 of the Insurance Act requiring an investigation by an actuary of the financial condition of an Insurer and preparation of an abstract, only apply to Insurers carrying on life insurance business. The same is proposed to be extended to all Insurers.
14. The Draft Bill proposes to replace §31B of the Insurance Act, which prohibits payments by an Insurer to an insurance intermediary in excess of the limits specified by the IRDAI. The proposed provision does not refer to any fixed limits or sums, and instead provides the IRDAI with wide powers to specify the same: "*The Authority shall have the power to specify by regulations, the remuneration, whether by way of commission or otherwise, that an insurer may pay to any person in respect of insurance business transacted by him*".
15. The Draft Bill proposes to expressly set out that in case of any contravention of the limits on 'expenses of management' as specified under the regulations, the IRDAI may, after giving such Insurer an opportunity of being heard: (i) issue a warning to the Insurer, or (ii) issue directions to the Insurer, "*including to charge the whole or part of such excess to the shareholders' account*", or (iii) make restrictions on the business of Insurer.
16. The Draft Bill proposes to amend §42D of the Insurance Act which deals with "*Issue of registration to intermediary or insurance intermediary*", in the following manner:
    a. Presently, the Insurance Act specifies that the registration of an insurance intermediary shall be valid only for a period of 3 years from the date of registration, and that an application for renewal for another period of 3 years shall be made at least 30 days before expiry of such registration. The

Draft Bill proposes to replace the above provision and state that a registration shall remain in force on payment of the annual fee specified *"until such registration is suspended or cancelled in accordance with the regulations*".

b. Upon rejection of any registration application, the IRDAI shall record the reasons for its decision and shall furnish a copy thereof to the applicant, who shall be provided a reasonable opportunity of being heard.

c. The Draft Bill proposes specific conditions in which the IRDAI may suspend or cancel the registration of an insurance intermediary and adds that such decision may be revoked by the IRDAI if it is: "*satisfied that the grounds on which the certificate of registration was suspended no longer subsist...*".

17. 64VA of the Insurance Act requires Insurers to maintain assets in excess of their liabilities, and in this regard, §64VA(3) stipulates that the IRDAI may specify a "*Control Level of Solvency*" which shall be the excess margin (of assets over liabilities) which if breached can cause the IRDAI to ask the Insurer to take remedial measures. This is presently at 150%. The Draft Bill now proposes to insert the following proviso at §64VA(3) which may potentially allow the IRDAI to set different solvency margins for different Insurers, based on the classes and sub-classes of insurance business carried on by them:

    "*Provided that in specifying the solvency margin, consideration may be given to the different classes and sub-classes of insurance business of an insurer"*
18. The Draft Bill proposes to remove the detailed disqualification criteria for appointment of insurance agents by the Insurers, as presently specified under §42 of the Insurance Act, and instead replace it with the eligibility qualifications, code of conduct and other requirements as may be specified by the IRDAI.
19. The existing prohibition on a managing director or other officers being common amongst two or more Life Insurers under 32A of the Insurance Act is proposed to be extended to all Insurers: "*A managing director or other officer of an insurer carrying on life insurance business shall not be a managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company...*"
20. The Draft Bill proposes to increase the retirement age of whole-time members of the IRDAI from 62 years to 65 years.
21. The powers of the IRDAI to issue directions under §34 of the Insurance Act (in public interest or to prevent the affairs of such registered entity being conducted in a manner detrimental to the interests of the policyholders or its own interests) are proposed to be widened. In this regard, express references to "insurance intermediaries" are proposed to be added wherever references to "*Insurers*" are presently contained. Further, the proposed explanation under §34 states that: "*For the removal of doubts, it is hereby clarified that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention*."
22. The penalty under §102 of the Insurance Act for violations such as non-compliance with the IRDAI's directions, failure to maintain solvency margin, and furnishing of documents, statements, accounts etc to the IRDAI is presently Rs.1 lakh per day of continued non-compliance or Rs.1 crore, whichever is less. The per day penalty is proposed to be revised to "*not exceeding*" Rs.1 lakh and the maximum penalty is proposed to be increased to Rs.10 crores.
23. For any failure to comply with any provisions of the Insurance Act or the IRDA Act for which no separate penalty is prescribed, the Draft Bill proposes the introduction of §102A to the Insurance Act, which shall allow a maximum penalty of Rs.1 crore and a per day penalty not exceeding Rs.1 lakh.
24. Further, the Draft Bill also proposes a penalty if any person "*makes a statement, or furnishes any document, statement, account, report or return which is false and which he either knows or believes to be false or does not believe to be true*" under a newly proposed §103A. Such penalty shall not be exceeding Rs.5 crores "*for each such failure*".
25. While the IRDA Act makes it clear that the IRDAI may delegate its powers to the Chairperson or any other member or officer of the IRDAI, the Draft Bill proposes to exclude the following powers from the ambit of such delegation: (i) power to make regulations and (ii) power to register an Insurer.

### *Concluding Remarks*

The Draft Bill proposes to introduce various significant changes to the existing insurance statutory framework in India. The changes appear to have followed from various long-standing views expressed by various stakeholders in the industry, and if notified as proposed presently, may have significant impact on various registration and operational matters for the Indian insurance market.

The Government of India had invited comments from the general public on the proposed amendments by mid-December 2022. It remains to be seen whether the Draft Bill will be notified in the present form, or if any additional changes will be introduced in view of the comments received from stakeholders across various forums.

#### Footnotes

**1. The new §2(4B) states ""captive insurer" means an insurer carrying on the class of general insurance business or any of its sub-classes exclusively for its holding company or its subsidiary company or its associate company...".**

2. The definition inserted at §2(5A) states ""class of insurance business" refers to the class of life insurance or the class of general insurance business or the class of health insurance business or the class of re-insurance business;".

3. The proposed insertion at §2(14A) states ""principal officer" means an officer of an insurer, authorized as such for the purposes of the Act;".

4. The proposed change at §2(7A) states ""Indian insurance company" means any insurer who is a company, formed and registered

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5. The proposed §2(9) states ""insurer" means a person who carries on insurance business;". While insurance business is not separately defined, we note that the proposed definition of "class of insurance business" includes life, general, health insurance business or re-insurance business.

6. The definition sees a removal of personal accident insurance from its ambit, and the updated §2(6C) states ""health insurance business" means effecting contracts of insurance that provide sickness benefits or pay for medical and health expenses;".

7. While "insurance business" is not separately defined, we note that the proposed definition of "class of insurance business" includes life, general, health insurance business or re-insurance business.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*


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