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Key Amendments to the Act

The Insurance (Amendment)Act,2015

The Insurance Bill received assent of President on March 20, 2015 and the Act is called as Insurance Laws (Amendment) Act, 2015 (herein referred to as "Act"). The amendment is aimed at providing Insurance Regulatory Development Authority ("IRDA") with the ability to discharge its functions with effectiveness and efficiency. It will deepen the reform process underway in the insurance sector. Hence, the Amendments are likely to infuse much needed capital in the cash-starved insurance sector.

Some of the Key Amendments in the Insurance Act.

1. Foreign Direct Investment

- The Act states that the maximum foreign investment permitted in the equity shares of an Indian Insurance Company shall be 49% (forty nine percent) compared to 26% (twenty six percent) earlier. (refer section 7 A(b) of the Act)
- Foreign investment would be under the automatic route up to 26% and under the government or approval route for any investment above 26% till 49%.
- The cap of 49% shall include direct and indirect foreign direct investment as well as foreign portfolio investment. Foreign portfolio investment has been defined to include investments by foreign institutional investors, qualified financial investors, foreign portfolio investors and non-resident investors.
- The Indian Insurance Company shall at all times ensure that its ownership and control is with Indian residents. Indian ownership is defined to mean more than 50% (fifty percent) of the equity share capital being held by Indian residents.
- The mechanism for calculation of indirect foreign investment continues to remain the same.
- Also the company bringing in capital would be required to obtain necessary licenses from the Insurance IRDA for undertaking insurance activities.

2. STRENTHENING OF INDUSTRY COUNCILS - Establishment of Life Insurance Council and the General Insurance Council. They will act as self-regulating bodies for the insurance sector.

3. CAPITAL MARKET - Allows PSU general insurers to raise funds from the capital market. The amended law will enable capital raising through new and innovative instruments under the regulatory supervision of IRDA.

4. HEALTH INSURANCE BUSINESS - 'Health insurance' has been recognised as an exclusive field of insurance business and carved out from the umbrella of general insurance. Health insurance business' has been defined to mean effecting of contracts which provide for sickness, medical, surgical or hospital expense benefits and includes in-patient, out-patient travel cover and personal accident cover. The minimum paid up equity share capital requirement for exclusively carrying on the business of health insurance is INR 1 billion (similar to life insurance or general insurance).

5. Consumer Welfare

- The amendments made to the Act will enable the interests of consumers to be better served through provisions like those enabling penalties on intermediaries / insurance companies for misconduct and disallowing multilevel marketing of insurance products in order to curtail the practice of mis-selling.
- The Act has also defined "multilevel marketing scheme" which means any scheme or programme or arrangement or plan (by whatever name called) for the purpose of soliciting and procuring insurance business through persons not authorised for the said purpose with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and includes enrolment of persons into a multilevel chain for the said purpose either directly or indirectly

- The Act prohibits insurers from appointing any principal agent, chief agent and special agent and transacts any insurance business in India through them or through any multi-level marketing scheme.

- The new Act has several provisions for levying higher penalties ranging from up to Rs.1 Crore to Rs. 25 Crore for various violations including mis-selling and misrepresentation by agents / insurance companies. With a view to serve the interest of the policy holders better, the period during which a policy can be repudiated on any ground, including mis-statement of facts etc., will be confined to three years from the commencement of the policy and no policy would be called in question on any ground after three years .

6. **Robust Appellate Process:** Appeals against the orders of IRDA are to be preferred to Securities Appel late Tribunal set up under the Se curities Exchange Board of India (SEBI) Act, 1992.

- **Empowerment of IRDA:** The Act will entrust responsibility of appointing insurance agents to insurers and provides for IRDA to regulate their eligibility, qualifications and other aspects. The Act provides for permanent registration of insurance companies as against the erstwhile requirement of renewal each year. IRDA has been granted the power to suspend or cancel the registration on breach of certain specified conditions.

8. Promoting Reinsurance Business in India:

The amended law enables foreign reinsurers to set up branches in India and defines 're-insurance' to mean "the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium", and thereby excludes the possibility of 100% ceding of risk to a re-insurer, which could lead to companies acting as front companies for other insurers. Further, it enables Lloyds and its members to operate in India through setting up of branches for the purpose of reinsurance business or as investors in an Indian Insurance Company within the 49% cap.

- Further, the Insurance agents have been included in the definition of 'insurance intermediaries'. Insurers are prohibited from paying any remuneration to any person other than an insurance agent or an intermediary for soliciting or procuring insurance business in India and outside of the prescribed manner. Also, insurance agents and intermediaries are required to ensure that they receive or contract to receive commission or remuneration in any form in respect of policies issued in India only in accordance with prescribed regulations. In case of contravention of any of the provisions framed, by an insurer, any insurance agent or intermediary or insurance intermediary who contravenes then such person shall without prejudice to the provisions of section 102 be liable to a penalty which may extend to Rs.1,00,000/- (Rupees One Lac Only) for each day during which the failure continues or Rs.1,00,00,000/- (Rupees One Crore Only) whichever is less.

9. Other Provisions:

- The requirement under the Act for insurance companies to deposit a specified amount with the RBI as a condition for registration has been removed. However, insurers will have to maintain a solvency margin as may be prescribed by IRDA.
- The Act also provides for absolute and conditional assignments of insurance policies. Any assignment which is not bonafide in public interest or for trading of insurance policy is not permitted.
- The Act also provides that life insurance policies will become unchallengeable after the expiry of three years from the date of the policy.

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