Article

Changing times for overseas reinsurers in India

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Introduction

Under the current legislative structure, overseas non-admitted insurers and reinsurers are not permitted to write direct business in India. The Insurance Regulatory and Development Authority (IRDA) has also not notified procedural norms for the establishment of reinsurance companies in India. The only reinsurer established in India at present is the state-owned General Insurance Corporation (GIC).

However, the Indian insurance regulatory framework acknowledges that Indian insurers are likely to seek reinsurance protection, and that in doing so, they may source such protection from overseas non-admitted reinsurers, provided that the reinsurance arrangement does not result in the Indian insurer ‘fronting’ for reinsurers. The overriding objective is to maximise retentions within India.

The IRDA (Life Insurance - Reinsurance) Regulations 2000 and the IRDA (General Insurance - Reinsurance) Regulations 2000 deal with procedural and other requirements for both treaty and facultative reinsurance arrangements for life and general insurance business, respectively. In particular, there is a mandatory cession to the GIC (presently pegged at 10%), but otherwise insurers can place their reinsurance business outside India with any reinsurer that has enjoyed Standard & Poor’s BBB rating (or equivalent) for at least the five preceding years. The GIC organises domestic reinsurance pools for fire, marine hull and other classes, and only the surplus over the domestic pool can be placed overseas. Furthermore, no more than 10% of the total premium ceded outside India may be placed with one reinsurer, except in the case of specialised insurance.

Over the course of the last few months, two events occurred that will have a significant impact on overseas reinsurers’ plans for carrying out reinsurance business in India.

Standing Committee report

First, despite murmurs that the Insurance (Amendment) Bill 2008 would shortly be introduced by Parliament, in early December 2011 reports in the Indian press indicated that the Parliament’s Standing Committee on Finance, headed by Yashwant Sinha had rejected the present version. The version under consideration, among other things, proposed an increase to the foreign direct investment cap on insurance investments in Indian insurance companies from 26% to 49%. The contents of the committee’s report have not been made public, so it is unclear whether the proposed amendments on the reinsurance front have also been rejected. The last version of the bill available in the public domain had proposed to allow reinsurers to conduct business in India through branch offices, rather than having to form an Indian joint venture company, and to recognise Lloyds as a branch of a foreign reinsurer. Reports of the standing committee are not binding on the Indian Cabinet, but in the absence of a parliamentary majority, it appears that the present government will find it difficult to get the bill through Parliament in its original form. In any event, it appears unlikely that the bill will be introduced in Parliament in the near future.

Circular on cross-border reinsurers

The above events appear to be the most probable cause for the second recent legislative change that will affect overseas reinsurers in terms of Indian reinsurance business. In a circular dated January 6 2012 (which comes into effect on April 1 2012), the IRDA has asked all 'cross-border reinsurers' (ie, reinsurers that do not have a physical presence in India and that carry out reinsurance business with Indian insurers) to file an application for registration with the IRDA. The application for registration requires cross-border reinsurers to provide detailed information of their:

- registration overseas;
- ownership and management;
- financial position; and
- existing relationships with Indian insurers.

Applications for registration of cross-border reinsurers are to be filed with the IRDA through the Indian insurer with which the cross-border reinsurer writes (or wishes to write) reinsurance business. Applications are to be filed by March 31 each year, commencing in 2012.

Following this direction from the IRDA, Indian insurers will now be bound to ensure that all cross-border reinsurers are registered and meet the IRDA's requirements, as specified from time to time. In this context, a cross-border reinsurer's past performance in claims settlement shall be one of the criteria to be considered before placing reinsurance business with it. Further, any cross-border reinsurer which is not registered with the IRDA by March 31 of a particular year can participate only in facultative reinsurance during that year.

Comment

The IRDA has not specifically set out background information or reasons for the introduction of these directions. Before the introduction of this guidance, Indian insurers were required to file treaty copies and information on facultative arrangements during the course of the financial year, so information on existing arrangements was periodically provided to the IRDA. However, given these new changes, and the short timeframe in which to implement them, several major overseas reinsurers are rapidly gathering the information needed to file with the IRDA in order to be able to continue their reinsurance arrangements (particularly treaty arrangements) with Indian insurers.

It is still early days, but the new regulatory guidance is anticipated to have a major impact on reinsurance business in India. While in late 2010 and early 2011 there was some belief that 2012 could be the year in which reinsurance business in India would be streamlined through the passing of the bill, it was not anticipated that the 'regulatory reforms' would take the form in which they stand today.

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