# THE INSURANCE LAWS (AMENDMENT) ORDINANCE 2014: LAW, LIMBO OR A WINDOW OF OPPORTUNITY?

7 January 2014

The long awaited increase in foreign holdings in an Indian insurance company from 26% to 49% is at long last law but, rather than becoming law through the usual legislative process, it has become law through an unusual and temporary device: an ordinance. That places an unwelcome question mark over the resilience of this otherwise welcome reform.

## The Journey to the Ordinance: 1991 -2014

- 1991: The government's embarks on its policy of liberalisation.

- 1993-94: The Malhotra Committee is set up by the government to suggest reforms to the then nationalised insurance sector. It recommends allowing private competition, and permitting foreign investment in Indian Insurers subject to a cap on foreign ownership.

- 1999-2000: The Insurance Regulatory & Development Authority of India (IRDA) is formed to regulate the insurance industry and to develop the insurance market. Foreign investment in an Indian Insurer is capped at 26%.

- 2004: The Congress coalition government proposes raising the foreign investment cap from 26% to 49%, but meets strong opposition.

- 2008: The Insurance Laws Amendment Bill 2008 is introduced by the Congress coalition government. It contains a number of reforms, including raising the foreign investment cap to 49%.

- 2013: The Congress coalition government creates the framework for an increase to 49% once the Insurance Bill is passed by parliament, but the bill is not passed.

- July-August 2014: A BJP led government seeks to pass the Insurance Bill that it had opposed when in opposition, but in turn runs in to opposition, including from the Congress party. A parliamentary select committee is formed review the Insurance Bill.

- December 2014: The select committee suggests amendments, but the Insurance Bill is not passed in the winter session of parliament, which ended on 23 December 2014.

## The Passing of the Ordinance: 26 December 2014

Citing the urgency of implementing insurance reforms, the government decided to bypass the parliamentary logjam by using the ordinance route to pass the Insurance Bill. The Indian Constitution permits the President of India to pass emergency temporary laws when parliament is not in session. The day after parliament rose at the end of the winter session, the cabinet recommended that the President pass the Insurance Bill through the ordinance route.

On 26 December 2014, the President formally assented to the cabinet's recommendation and the Insurance Laws (Amendment) Ordinance 2014 came into effect.

## The Main Features of the Insurance Laws (Amendment) Ordinance 2014

The Ordinance is virtually the entire Insurance Bill as amended by the Select Committee, and the following main changes to the existing law are now in force:

- The cap on foreign investment has been lifted from 26% to 49%. However, an Indian Insurer must still be "controlled" by Indians. The definition of "control" borrows from the Companies Act 2013, and is defined as the right to appoint a majority of the directors, to control management, and to control policy decisions.

- Foreign companies are permitted to open branches to write reinsurance business in India.

- Lloyd's is permitted to access the Indian market as the branch of a foreign Reinsurer.

- The Securities Appellate Tribunal may now hear appeals against the orders or decisions of the IRDA.

- A fine of up to Rs.250m/c. $3.9m may now be imposed for carrying on insurance business without registration. Fines for other breaches of the statutory and regulatory framework have also been significantly increased.

## Impact of the Ordinance

Unless the validity of the Ordinance is confirmed by parliament within 6 weeks of its next sitting, the ordinance will cease to operate - although acts under the ordinance while it was effective remain valid and effective. Accordingly, the next sitting of parliament is in February 2015 and (unless adopted by parliament) the Ordinance will cease to have effect at the earlier of the expiry of 6 weeks from the reassembly of parliament, resolutions disapproving the Ordinance being passed by both houses of parliament, or the President withdrawing it.

As we said at the outset, the mechanism by which the reforms have been introduced places an unwelcome question mark over the resilience of these otherwise welcome reforms. It will be interesting to see how many take advantage of the window of opportunity made available by the Ordinance, how many have to proceed to increase their Indian shareholdings because existing Indian joint venture arrangements say so, and how many will continue to wait until a more permanent environment emerges.

For further information on this topic please contact Tuli & Co

*Tel +91 11 4593 4000, fax +91 11 4593 4001 or email lawyers@tuli.biz*

*www.tuli.biz*

Article