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INSURANCE REGULATION NEWSLETTER

(JULY TO DECEMBER 2022)

In this newsletter, we look at certain key regulatory and judicial developments during the second half of 2022 (July- December) for the insurance sector in India, including key regulatory and other measures notified by the Insurance Regulatory and Development Authority of India ("**IRDAI**").

Market Bulletin

Key market developments from July to December 2022 included the following:

- In September 2022, Medi Assist (India's largest health insurance third-party administrator) acquired Medvantage Insurance Third-Party Administrator for a reported deal value of INR 350 million (or ~ USD 4.2 million).
- In September 2022, Aviva plc (Aviva) acquired an additional 25% stake from Dabur Invest Corp in their joint venture, Aviva Life Insurance Company India Limited ("**ALICIL**"), for a reported deal value of INR 9.4 billion (or ~ USD 11.3 million). As a result of this acquisition, Aviva became the majority shareholder in ALICIL with 74% shareholding.
- In September 2022, Ageas Insurance International NV ("**Ageas**") increased its stake in its Indian insurance joint venture, Ageas Federal Life Insurance Company Limited ("**AFLIC**"), by acquiring an additional 25% stake from IDBI Bank, for a reported deal value of INR 5.8 billion (or ~ USD 70.5 million). As a result of this acquisition, Ageas became the majority shareholder of AFLIC with 74% shareholding.
- In September 2022, Axis Bank and HDFC Bank announced that they have entered into indicative and non-binding term sheets with Go Digit Life Insurance Limited for the acquisition of up to 9.94% by each bank.
- In October 2022, Abu Dhabi Investment Authority ("**ADIA**") acquired 9.99% in Aditya Birla Health Insurance Company Limited for an investment value of approximately USD 81 million. The balance shareholding is held by Aditya Birla Capital (45.91%) and Metropolitan Strategic Investments (Pty) Ltd (44.10%).

IRDAI proposed draft expenses of management regulations

In November 2022, the IRDAI issued two exposure drafts of revised regulations for expenses of management of life[1] and non-life insurance companies[2] in India ("**Draft EoM Regulations**"). Public comments were invited until December 15, 2022 and the Draft EoM Regulations are expected to be notified in final form by April 1, 2023.

For life insurance companies, some of the key changes proposed in the Draft EoM Regulations are as follows:

i. additional limits for permissible expenses: up to 5% of the overseas generated premium for head office expenses;[3] up to 15% of each of incremental annual premium from rural sector businesses and other notified government schemes; up to 15% of direct premium under the Pradhan Mantri Jeevan Jyoti Bima Yojana[4]; and up to 5% of aggregate permissible expenses in a financial year towards insurance awareness and technology-enabled innovation in insurance services[5]; and

ii. expense allowances increased for annuity policies (from half to three-fourth, of 1% of all annual paid annuities) and for paid-up policies (from one-twentieth to one-tenth, of 1% of average of aggregate sum assured of paid-up policies).[6]

On the other hand, for non-life insurance companies, the following key changes are proposed:

i. a single expense limit based on the gross premium of 30% for general insurance companies[7] and 35% for health insurance companies[8] (instead of separate limits based on segments and sub-segments); and

ii. additional limits for permissible expenses: up to 15% of each of incremental annual premium from rural sector businesses and other notified government schemes; and up to 15% of direct premium under the Pradhan Mantri Jeevan Jyoti Bima Yojana.[9]

Both life and non-life insurance companies would need to adopt a board-approved policy on expenses of management, which would need to include cost-effectiveness measures and stipulations for payment of commissions to agents and intermediaries.[10] In the case of life insurance companies, the policy must also include annual projections on required capital and solvency margins and require the board to regularly monitor business plan implementation.[11] In the case of non-life insurance companies, the policy must also include the manner of expense allocation and apportionment across business segments.[12]

IRDAI proposes draft regulations on payments of commission to insurance agents and insurance intermediaries

Earlier in August 2022, the IRDAI had issued draft regulations on payment of commission, remuneration and reward to insurance agents. The draft regulations released in August had proposed a composite overall limit for the various amounts (including rewards) paid by insurers to their agents and intermediaries. Life insurers were permitted to set up a composite overall limit for compensation and incentives paid to their intermediaries, provided their management expenses remain within 70% of the applicable limits. For life insurers whose management expenses exceeded 70%, specific composite limits were prescribed. On the other hand, for

1. Draft IRDAI (Expenses of Management of Insurers Transacting Life Insurance Business) Regulations, available at https://irdai.gov.in/document-detail?documentId=1623336; last accessed on March 24, 2023.
2. Draft IRDAI (Expenses of Management of Insurers Transacting General or Health Insurance Business) Regulations, 2022, available at https://irdai.gov.in/document-detail?documentId=1622976; last accessed on March 24, 2023.
3. Regulation 6 of the Draft IRDAI (Expenses of Management of Insurers Transacting Life Insurance Business) Regulations, 2022.
4. *Id.*
5. Regulation 7 of the Draft IRDAI (Expenses of Management of Insurers Transacting Life Insurance Business) Regulations, 2022.
6. Regulation 4 of the Draft IRDAI (Expenses of Management of Insurers Transacting Life Insurance Business) Regulations, 2022.
7. Regulation 3(1) of the Draft IRDAI (Expenses of Management of Insurers Transacting General or Health Insurance Business) Regulations, 2022.
8. Regulation 3(2) of the Draft IRDAI (Expenses of Management of Insurers Transacting General or Health Insurance Business) Regulations, 2022.
9. Regulation 4 of the Draft IRDAI (Expenses of Management of Insurers Transacting General or Health Insurance Business) Regulations, 2022.
10. Regulation 8 of the Draft IRDAI (Expenses of Management of Insurers Transacting Life Insurance Business) Regulations, 2022 and Regulation 5 of the Draft IRDAI (Expenses of Management of Insurers Transacting General or Health Insurance Business) Regulations, 2022.
11. Regulation 9 of the Draft IRDAI (Expenses of Management of Insurers Transacting Life Insurance Business) Regulations, 2022.
12. Regulation 6 of the Draft IRDAI (Expenses of Management of Insurers Transacting General or Health Insurance Business) Regulations, 2022.

general and health insurers, a composite overall limit of 20% of gross premium written in India was proposed.

However, after further consultations with industry representatives, the IRDAI issued a revised set of draft regulations regarding commissions in November 2022 ("**Revised Commission Regulations**").[13] Public comments were invited until December 13, 2022, and the Revised Commission Regulations are expected to be notified in final form by April 1, 2023.

Under the Revised Commission Regulations, the IRDAI has done away with the specific caps on commissions to agents and intermediaries that it had proposed in the draft regulations in August.

The other key changes proposed by the Revised Commission Regulations are as follows:

i. using a single term 'commission' for all compensation (including any rewards and other forms of incentives) paid by an insurer to an insurance agent or intermediary for soliciting or procuring or transacting insurance business;[14]

ii. for both life insurers and general insurance companies, the composite overall limit for compensation paid to their agents and intermediaries may be freely set by their board of directors,[15] provided their management expenses remain within the overall expense limit prescribed under the respective Draft EoM Regulations for life insurance companies[16] and general/ health insurance companies[17]; and

iii. returns of commission paid to insurance agents and other insurance intermediaries will need to be filed with the IRDAI within 45 days of the end of every financial year, after being approved by first - the audit committee and then the board of directors.[18]

All general insurance products brought within the 'use and file' regime; consolidation of norms related to 'use and file' of life insurance products

Continuing the gradual migration from the 'file and use' regime to the 'use and file' regime, the IRDAI, in October 2022, notified that all general insurance products in India may be introduced in the market without first waiting for its approval.[19] Under the 'use and file' regime, insurers can market their products within 15 days of obtaining a unique identification number and do not need to wait to first obtain the IRDAI's approval (which would be received on a post-facto basis). See our previous newsletter[20] for additional information regarding the 'use and file' regime.

The expansion of the 'use and file' regime is expected to further improve market access for Indian insurers and contribute to grow insurance penetration in India. Non-linked products and unit-linked products under the life insurance business[21], all general insurance products and all health insurance products[22] can now be filed under the 'use and file' regime. Only certain life insurance products (i.e., those that fall outside the list of specific life insurance products brought under the 'use and file' regime) are now required to be launched through the 'file and use' procedure, but hopefully, these would also be gradually migrated to 'use and file'.

Anti-money laundering/ countering of financial terrorism ("AML/ CFT") guidelines notified

The final AML/ CFT guidelines have been notified by the IRDAI, to take effect from November 1, 2022.[23] Our previous newsletter had discussed the draft AML/ CFT guidelines, which were issued in June 2022.[24] The notified guidelines differ from the draft guidelines in the following key respects:

13. Draft IRDAI (Payment of Commission) Regulations, 2022, available at: https://irdai.gov.in/document-detail?documentId=1622811; last accessed on March 24, 2023
14. Regulation 3(c) of the Draft IRDAI (Payment of Commission) Regulations, 2022.
15. Regulations 4 and 5 of the Draft IRDAI (Payment of Commission) Regulations, 2022.
16. Supra note 1.
17. Supra note 2.
18. Regulations 6 of the Draft IRDAI (Payment of Commission) Regulations, 2022.
19. Circular on *Product Filing Procedure (General Insurance)* dated October 13, 2022, available at https://irdai.gov.in/document-detail?documentId=1446504; last accessed on March 24, 2023.
20. https://induslaw.com/publications/pdf/alerts-2022/Induslaw_Insurance_Regulation_Quarterly_Newsletter.pdf
21. *Id.*
22. Circular on *Use and file procedure for all categories of products under health insurance business,* dated June 01, 2022, available at https://irdai.gov.in/document-detail?documentId=1295268; last accessed on March 24, 2023
23. IRDAI Master Guidelines (Anti Money Laundering/Counter Financing of Terrorism), 2022, dated August 1, 2022, available at https://irdai.gov.in/document-detail?documentId=1345417; last accessed on March 24, 2023.
24. Supra note 21.

i. annual compliance certificate to be submitted to the IRDAI, within 45 days of financial year-end;[26]

ii. more stringent internal policies/ programs on KYC and AML/ CFT – certain KYC-related exemptions in the draft guidelines have been excluded from the notified guidelines (like travel insurance, health insurance for less than one lakh were exempted in draft guidelines[27]) and insurance companies are now required to develop robust AML/ CFT programs to enhance the level of control over their intermediaries or representatives (e.g., inclusion of KYC compliance clauses in contracts with intermediaries/ representatives and supported by appropriate enforcement actions in case of non-compliance)[28]; and

iii. insurance companies to have focused training programs for their frontline staff, compliance staff, staff dealing with new customers and claims and staff dealing with audit functions.[29]

IRDAI revises regulations regarding issuance of 'other forms' of capital

In December 2022, the IRDAI revised its regulations regarding issuance of preference shares and subordinate debt (i.e., 'other forms' of capital) by Indian insurance companies. The original regulations for other forms of capital were issued in 2015, but this route was not utilized for raising capital by many insurance companies.

Key changes, from the original regulations, are as follows:

i. except for circumstances where insurance companies intend to pay dividend/ interest even when their solvency levels are below statutory levels, no prior approval is now required from the IRDAI to issue other forms of capital,[30] so long as the instrument is fully paid-up and the rate of dividend/ interest is determined by reference to a market-determined INR benchmark rate;[31]

ii. the cap on other forms of capital has been increased from 25% to 50% (of paid-up equity share capital and securities premium)[32]; and

iii. returns of allotment must now contain specific disclosures, including the details of the subscribers, purpose of issuance and copies of offer documents/ term sheets.[33]

These revised regulations are to remain in force for three years only, unless the IRDAI amends or reviews them earlier.

Continuation of rationalization of filing requirements

In September 2022, continuing the process of rationalizing filing requirements for Indian insurance companies, the IRDAI notified the following changes:

i. reduction in the number of business returns required to be filed by general and health insurers (eight returns instead of 17) and life insurers (three returns instead of 17);[34] and

ii. extension of the filing timeframe of periodic returns filed by health insurance companies (annual returns within 90 days instead of 60 days and quarterly returns within 20 days instead of five days).[35]

See our previous newsletter[36] for details regarding similar relaxations notified by the IRDAI before.

E-insurance policies – IRDAI proposes new regulations

Most insurance policies in India continue to be issued in physical form, except in a few cases (e.g., motor insurance, travel insurance and high-value life and health

25. Draft IRDAI Master Guidelines (Anti Money Laundering/Counter Financing of Terrorism), 2022, dated June 1, 2022, available at https://irdai.gov.in/document-detail?documentId=1295336; last accessed on March 24, 2023.
26. Paragraph 4.5 of the IRDAI Master Guidelines (Anti Money Laundering/Counter Financing of Terrorism), 2022, dated August 1, 2022.
27. Paragraph 26 of the Draft IRDAI Master Guidelines (Anti Money Laundering/Counter Financing of Terrorism), 2022.
28. Paragraphs 4.4 of the IRDAI Master Guidelines (Anti Money Laundering/Counter Financing of Terrorism), 2022, dated August 1, 2022.
29. Paragraphs 6 of the IRDAI Master Guidelines (Anti Money Laundering/Counter Financing of Terrorism), 2022, dated August 1, 2022.
30. Regulation 5 of the IRDAI (Other Forms of Capital) Regulations, 2022, available at https://irdai.gov.in/document-detail?documentId=1630370; last accessed on March 24, 2023.
31. Regulation 4 of the IRDAI (Other Forms of Capital) Regulations, 2022.
32. Regulation 14 of the IRDAI (Other Forms of Capital) Regulations, 2022.
33. Regulation 6 of the IRDAI (Other Forms of Capital) Regulations, 2022.
34. Circular no. IRDAI/ HLT/ CIR/ MSC/ 190/9/2022, dated September 13, 2022, available at https://irdai.gov.in/document-detail?documentId=1371028; last accessed on March 24, 2023.
35. Id.
36. Supra note 21.

insurance), where the IRDAI requires the policy to be issued in electronic form as well.[37] These 'e-insurance policies' are held by registered insurance repositories in India (such as NIR, CIRL, CAMS and Karvy) and can be accessed by policyholders through their e-insurance accounts maintained with such insurance repositories.[38]

In September 2022, the IRDAI notified draft regulations which would require all insurance policies to be issued exclusively in electronic-form, except in cases where the IRDAI determines that physical-form policies may be necessary on the grounds of policyholder interest or orderly growth of the Indian insurance industry.[39]

The draft regulations also require, amongst others, that insurers must set up electronic platforms for soliciting and servicing e-insurance policies in accordance with the existing guidelines[40] of the IRDAI in this regard.

Common directors may now be appointed by insurance companies and insurance intermediaries in certain cases

Common directors between insurance companies, on the one hand, and insurance intermediaries, on the other hand, are now permitted in certain cases without requiring the IRDAI's prior approval.[41]

With effect from September 2, 2022, an individual can be appointed as a director to the board of directors of both an insurance company and an insurance intermediary, subject to certain conditions, which include the satisfaction of 'fit and proper' criteria by common directors, a restriction on common directors serving as chief insurance executives or any other officers responsible for soliciting insurance, and a requirement that common directors recuse themselves from discussion and voting on matters that involve potential conflicts of interest.

Additionally, the appointing insurers are bound to ensure that necessary safeguards are in place to ensure that the appointment of the common directors does not result in any conflicts of interest or prejudice affecting policyholders.

Amendment to the master circular on investments

In August 2022, the IRDAI issued further amendments to its master circular on investments[42]. A summary of these amendments is as follows:

i. investments in exchange-traded funds ("**ETFs**") will be considered as 'approved investments' so long as at least 85% of the ETF's constituent equity securities satisfy the applicable dividend distribution criteria (i.e., the listed company must have paid at least 10% dividend in the last two consecutive years); previously, the dividend distribution criteria had to be satisfied by 100% of the ETF's constituent equity securities;

ii. increase in the exposure limit for investments in Gilt/ G-sec/ liquid/ debt/ income mutual funds from 3% to 5%, for life insurance companies with more than INR 2,500,000 million (or ~ USD 3,000 million) of investment assets;

iii. insurance companies can invest in additional tier 1 perpetual bonds (AT 1 Bonds) if the common equity tier 1 capital of the issuer bank is more than 9% of the total risk weighted assets of the bank at the time of issuance; and

iv. new investment limits introduced for REITs and INVITs, calculated (for a single REIT/ INVIT) as 20% of aggregate investment in debt instruments.[43]

37. Regulation 4(i) of the IRDAI (Issuance of e-Insurance Policies) Regulations, 2016.
38. The NSDL National Insurance Repository set up by NSDL Database Management Limited (NDML) in the year 2013. The CDSL Insurance Repository Limited (CIRL) was incorporated in 2011. Karvy Insurance Repository Limited (Karvy) was incorporated in 2011. The CAMS Insurance Repository Services Limited (CAMS) was incorporated in 2011.
39. Draft IRDAI (Issuance of e-Insurance Policies) Regulations, 2022, available at https://irdai.gov.in/document-detail?documentId=1411861; last accessed on March 24, 2023.
40. Guidelines on insurance e-commerce, dated March 9, 2017, available at https://irdai.gov.in/document-detail?documentId=384512; last accessed on March 24, 2023.
41. *Circular – Appointment or Continuation of Common Director(s) u/s 48A of Insurance Act, 1938* dated September 2, 2022, available at: https://irdai.gov.in/document-detail?documentId=1354361; last accessed on March 24, 2023.
42. *Circular- Amendments to investments master circular*, dated August 3, 2022, available at https://irdai.gov.in/document-detail?documentId=1346266; last accessed on March 24, 2023.
43. *Id.*

Indian insurance companies can join the RBI's account aggregator framework

The IRDAI, in November 2022, permitted Indian insurance companies and insurance repositories to join the RBI's 'account aggregator' framework as 'financial information providers' (or "**FIPs**").[44] Shortly before this, in August 2022, India's securities regulator, the Securities and Exchange Board of India, had also joined the account aggregator framework.

The account aggregator framework, introduced by the RBI in 2016, allows for the sharing of the financial information of individuals with their consent (financial information users or 'FIUs') with FIPs through data intermediaries known as account aggregators, who operate under a non-banking financial company license from the RBI.[45]

The IRDAI requires all insurance FIPs to disclose on their websites the names of the relevant account aggregators and to have appropriate agreements with them. This move should not only help reduce transaction costs in the insurance sector but also aid a wider implementation of the overall account aggregator framework.

Revised, consolidated regulations for registration of new insurance companies and transfers of shares

The IRDAI has consolidated and replaced its existing regulations and circulars governing the registration of insurance companies in India and the transfers of shares of Indian insurance companies. The consolidated regulations took effect from December 10, 2022.[46]

A summary of the key changes is set out below.

Registration of new insurance companies

i. Listed subsidiaries can now become promoters of insurance companies if they have a minimum net worth of INR 5 billion (or ~USD 6,08,48,300) and independent sources of funds (i.e., not financially dependent on the holding company) and if their holding company is not a subsidiary.[47] Previously, subsidiaries were not permitted to become promoters[48], so this limited relaxation should help provide structuring flexibility, particularly for large corporate groups with listed subsidiaries.

ii. The IRDAI now has an express power to specify new classes of insurance business, which may be undertaken by registered insurance companies (i.e., other than the existing classes of life, non-life/ general, health and reinsurance).[49]

iii. Foreign investors and promoters who had exited an earlier venture in the last two years are now eligible to apply for registering a new insurance company.[50]

iv. The name approval process where an applicant obtains the IRDAI's 'no objection' certificate ("**NOC**") before initiating the formal registration process has now been formalized and the R1 registration application needs to be submitted within 6 months of obtaining the NOC (extendable by a further 3 months by the IRDAI).[51]

v. The shareholding threshold for 'investor' has been raised from less than 10% to less than 25%. In other words, a person will be treated as a 'promoter' of an insurance company only if they hold 25% or more. The new regulations also provide that persons can hold more than 10% but less than 25% in only a maximum of two insurance companies of each class. For example, a person can hold up to 10% in multiple insurance companies but can only hold more than 10% and less than 25% in a maximum of two life insurers, two non-life insurers, two health insurers and two reinsurers.[52]

vi. For promoters that are constituted as special purpose vehicles (or SPVs), certain additional conditions have been prescribed, including the SPV being subject to the same paid-up capital requirements, investment limits, lock-in periods, regulatory approval for share

44. *Circular on Participation in the Account Aggregator Framework*, dated November 14, 2022, available at https://irdai.gov.in/document-detail?documentId=1580215; last accessed on March 24, 2023.

45. Master Direction- Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016, available at https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=10598; last accessed on March 24, 2023.

46. The date of publication of the gazette notification is December 10, 2022, available at https://egazette.nic.in, last accessed on March 24, 2023.

47. Regulation 2(h) of the IRDAI (Registration of Indian Companies) Regulations, 2022.

48. Regulation 2(g)(i) of the IRDAI (Registration of Indian Companies) Regulations, 2000.

49. Regulation 3(1) of the IRDAI (Registration of Indian Companies) Regulations, 2022.

50. Regulation 4 of the IRDAI (Registration of Indian Companies) Regulations, 2022.

51. Regulation 5(1) of the IRDAI (Registration of Indian Companies) Regulations, 2022.

52. Regulation 6(7) of the IRDAI (Registration of Indian Companies) Regulations, 2022.

transfers and other requirements that apply to the applicant insurance company and a restriction on issuance of convertible instruments, stock options and sweat equity shares. These conditions for SPV investments are similar to those imposed for Private Equity ("**PE**") funds in the specific guidelines for PE investments issued by the IRDAI in 2017.

vii. Paid-up capital requirements can now be satisfied at the time of completion of processing of form R2, but prior to approval of the form R2 by the IRDAI. Previously, these requirements had to be satisfied earlier, at the time of submitting the form R2 application.

viii. A fixed 5-year lock-in period will now apply to the shares of both promoters and investors, taking effect from the date of grant of the registration certificate (in form R3).[53] For subsequent changes to shareholding, separate lock-in periods have been prescribed (see para-12.3(i) below). Previously, the lock-in was imposed by the IRDAI at the time of registration but at its discretion and the period could be more or less than 5 years.

Ongoing Compliances

i. The 'fit and proper' criteria for promoters and investors need to be satisfied on an ongoing basis and the IRDAI can suspend or cancel an insurance company's registration in case of any non-compliance in this regard.

Transfer of shares of an insurance company

i. For subsequent changes to shareholding, specific lock-in periods have been prescribed, with the duration of the lock-in reducing depending on the period that the insurance company has been registered and longer lock-in periods imposed for promoters versus investors.

ii. Supporting valuation reports are now required to be submitted with applications for approval of share issuances/ transfers. These reports need to be issued by a category 1 merchant banker and must not be older than 30 days from the date of the transfer application.

Provisions related to PE investment in an insurance company

i. PE funds looking to invest into Indian insurance companies in the capacity of a 'promoter' now need to satisfy the following additional criteria: (i) the fund manager must have completed 10 years of operation and must have invested in the financial sector; and (ii) the PE fund (together with group entities) must have raised at least USD 500 million and must have at least USD 100 million of investible funds. These requirements will need to be read together with the specific guidelines for investments by PE funds issued by the IRDAI in 2017.

ii. The definition of eligible PE funds has been expanded to include investment funds registered with International Financial Services Centres Authority (IFSCA).

Broadening the 'open architecture' framework for corporate agents and IMFs

The IRDAI has again broadened the 'open architecture' framework, which allows insurance intermediaries in India to partner with multiple insurance companies for distributing insurance products. Following amendments notified by the IRDAI in December 2022,[54] a registered corporate agent can have arrangements with up to nine insurance companies of the relevant category (i.e., life, general or health) and a registered insurance marketing firm (or "**IMF**") can have arrangements with up to six life insurers, six general insurers and six health insurers. Earlier, corporate agents could tie up with up to only three insurers and IMFs could tie up with only two insurers. Further, in the case of a corporate agent (composite category), the individual applicable ceilings for each life, general and health can be relaxed provided the total number of such arrangements do not exceed twenty-seven at any point of time.[55]

53. Regulation 6(1) of the IRDAI (Registration of Indian Companies) Regulations, 2022.

54. IRDAI (Insurance Intermediaries) (Amendment) Regulations, 2022, available at https://irdai.gov.in/web/guest/document-detail?documentId=1629328; last accessed on March 24, 2023.

55. Regulation 3 of the IRDAI (Registration of Corporate Agents) Regulations, 2015.

IRDAI penalizes Max Life and Axis Bank in connection with 'undue gains' resulting from certain share transfers

In October 2022, through two separate orders, the IRDAI imposed penalties of INR 30 million (or ~USD 3,65,260) and INR 20 million (or ~USD 2,43,507), respectively, on Max Life Insurance Company Limited ("**Max Life**") and Axis Bank Limited ("**Axis Bank**"), in relation to certain 'undue monetary gains' made by Axis Bank from certain transactions involving the shares of Max Life. Axis Bank was a corporate agent of Max Life and also held shares in Max Life as a promoter.

The issue related to a three-stage share restructuring transaction, for which Max Life had sought the IRDAI's approval in November 2020. The first stage of that restructuring involved a swap of 20.57% of Max Life's shares held by Mitsui Sumitomo Insurance Company Private Limited with 21.87% of the shares of Max Financial Services Limited ("**MFSL**"). The second stage involved an acquisition of about 12% of Max Life's shares by Axis Bank and its group companies from MFSL and the third and final stage involved a transfer of about 5% of Max Life's shares from Mitsui Sumitomo International ("**MSI**") to MFSL.

The IRDAI approved the first stage of the restructuring in November 2020 and the second stage in February 2021. However, when considering its approval for the third stage, the IRDAI noted that before completing the second stage of the restructuring, Axis Bank had sold less than 1% of the shares of Max Life to MFSL and MSI at a price more than five times the price at which Axis Bank and its group companies acquired about 12% in Max Life in the second stage. Both sets of transactions took place in March 2021 and were only 10-11 days apart.

The IRDAI found that these transactions resulted in substantial 'undue gains' for Axis Bank, which violated the limits prescribed under the IRDAI's regulations for compensation payable by insurers to their intermediaries. These transactions were also found to be in violation of two directions issued by the IRDAI, including a direction issued in January 2021, when the IRDAI was considering its approval for the second stage of the restructuring, in which it had directed that the basis for determining the fair market value (FMV) of the shares of Max Life must be 'clear and uniformly followed' and reflected in the transaction documents. Max Life was also found to have misrepresented its compliance with the latter direction.

An interesting aspect of this order is that the IRDAI specifically disagreed with the argument that the share transfers did not involve any payment from Max Life (the insurer) to Axis Bank (the corporate agent) in connection with the solicitation or procurement of insurance. According to the IRDAI, these transactions were facilitated by Max Life and resulted in an undue transfer of substantial additional consideration to Axis Bank and also reflected misuse of Axis Bank's dual relationship as a shareholder and corporate agent of Max Life.

This order is relevant given that the IRDAI normally does not get involved in matters of valuation and it remains to be seen whether this will be relied upon as precedent, particularly where the transacting parties are not insurance intermediaries.

For further information on any insurance law or regulatory matter, please reach out to:

Rohit Ambast
Partner, INDUSLAW
Email: rohit.ambast@induslaw.com

OUR OFFICES

BENGALURU
101, 1st Floor, "Embassy Classic"# 11
Vittal Mallya Road
Bengaluru 560 001
T: +91 80 4072 6600
F: +91 80 4072 6666
E: bangalore@induslaw.com

HYDERABAD
204, Ashoka Capitol, Road No. 2
Banjarahills
Hyderabad 500 034
T: +91 40 4026 4624
F: +91 40 4004 0979
E: hyderabad@induslaw.com

CHENNAI
#11, Venkatraman Street, T Nagar,
Chennai - 600017 India
T: +91 44 4354 6600
F: +91 44 4354 6600
E: chennai@induslaw.com

DELHI & NCR
2nd Floor, Block D
The MIRA, Mathura Road, Ishwar Nagar
New Delhi 110 065
T: +91 11 4782 1000
F: +91 11 4782 1097
E: delhi@induslaw.com

9th Floor, Block-B
DLF Cyber Park
Udyog Vihar Phase - 3
Sector - 20
Gurugram 122 008
T: +91 12 4673 1000
E: gurugram@induslaw.com

MUMBAI
1502B, 15th Floor
Tower – 1C, One Indiabulls Centre
Senapati Bapat Marg, Lower Parel
Mumbai – 400013
T: +91 22 4920 7200
F: +91 22 4920 7299
E: mumbai@induslaw.com

#81-83, 8th Floor
A Wing, Mittal Court
Jamnalal Bajaj Marg
Nariman Point
Mumbai – 400021
T: +91 22 4007 4400
E: mumbai@induslaw.com