The Insurance Regulatory and Development Authority of India issues draft regulations for registration and operations of branch offices of foreign reinsurers (excluding Lloyd’s)

Executive summary

The Insurance Laws (Amendment) Act, 2015 permitted foreign reinsurers to set-up branch offices in India. In order to give effect to this amendment, the Insurance Regulatory and Development Authority of India (IRDA) on 7 April 2015, issued the IRDA [Branch Offices of Foreign Reinsurers (excluding Lloyd’s)] Regulations, 2015 (Regulations).

The Regulations, which are in a draft state, have been placed on the website of the IRDA for public comments (to be provided in the prescribed format until 30 April 2015).

The Regulations outline the procedure for seeking registration from the IRDA in a two staged process, and lay out the operational guidelines with respect to conduct of business by the branch office of the foreign reinsurers (excluding Lloyd’s) in India.

This alert summarizes the key features of the Regulations issued by the IRDA.
Background

► The Insurance Laws (Amendment) Act, 2015 permitted foreign reinsurers to set up branch offices in India. In order to give effect to this amendment, the Insurance Regulatory and Development Authority of India (IRDA) on 7 April 2015, issued the IRDA [Branch Offices of Foreign Reinsurers (excluding Lloyd’s)] Regulations, 2015 (Regulations).

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► The Regulations outline the procedure for seeking registration from the IRDA in a two staged process, and lay out the operational guidelines with respect to conduct of business by the branch office of the foreign reinsurers (excluding Lloyd’s) in India.

This alert highlights the key features of the draft Regulations.

Applicability and scope

► The draft Regulations are applicable to a foreign reinsurance company engaged in reinsurance business (except Lloyd’s) desirous of setting-up a branch office in India.

Registration process: stage 1 - requisition for registration

► Procedure: An applicant desirous of undertaking reinsurance business through a branch in India will have to make an application for registration in Form IRDA/Rein/R1 accompanied by the prescribed documents.

► Eligibility criteria: The foreign reinsurer applicant will have to comply with the following criteria:

► Obtain prior approval or in-principle clearance from the home country regulator

► Operate in a national regulatory environment and not in an ‘offshore insurance market’

► Maintain net-owned fund of minimum INR 50 billion at any time

3 Prescribed documents include:
(a) certified copy of memorandum and articles of association or corresponding document which details the manner of formation and conduct of business
(b) name, address and occupation of person in charge of operations in India
(c) statement indicating subscription to the assigned capital as may be prescribed by the IRDA from time-to-time
(d) certified copy of annual report for the last five years preceding date of requisition of registration application
(e) certificate of good standing and repute from the home country regulator
(f) letter of comfort from the head office of the applicant supported by the resolution from its Board of Directors
(g) any other requirement that may be specified by the IRDA

4 ‘Offshore Insurance market’ means those jurisdictions with which the Government of India has not signed a Double Taxation Avoidance Agreement.
► Possess minimum credit rating of at least BBB+ for the last 5 years from Standard and Poor or any other internationally renowned credit rating agency

► Be in the reinsurance business for at least 10 years

► Comply with the solvency margin as stipulated by the home regulator

► Infuse minimum capital of INR 0.5 billion into the branch office

► Ineligible applicants: The following foreign reinsurers will be regarded as ineligible applicants:

► Prior rejection of requisition of application/ application by the IRDA at any time during the last 5 financial years on date of requisition for registration application

► Cancellation/ withdrawal of certificate of registration by IRDA

► Criteria evaluated by IRDA: The IRDA shall consider the following criteria while considering the applicant’s requisition for registration:

► General track record of conduct and performance of each of the promoters in the fields of business/ profession they are engaged in

► Record of conduct and performance of the directors and persons in management of the promoters and the applicant

► Planned infrastructure of the applicant company, including branches in rural areas to effectively carry out insurance business

► Rejection of application for requisition:

► The IRDA can reject the application and the order for rejection shall be communicated within 30 days of rejection to the applicant

► An aggrieved applicant can file an application for reconsideration to the Securities Appellate Tribunal within 30 days of communication of the rejection order by the IRDA

► An applicant who’s requisition for registration has been rejected by the IRDA can approach the IRDA with a fresh registration application only after a period of 3 years from date of rejection

Registration process: stage 2 - application for registration

► Procedure: An applicant whose requisition has been accepted may make an application in Form IRDA/Reins/R2

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5 Clause 7 (i) of the Regulations states that an applicant who’s requisition for registration has been rejected by IRDA at any time during the preceding 5 financial years shall be regarded as an ‘ineligible applicant’. As against this, Clause 11 of the Regulations states that an applicant who’s requisition for registration application has been rejected may approach IRDA with a fresh request for registration application after a period of 3 years. The said clauses appear to incongruous.
accompanied by the prescribed documents

Criteria evaluated by the Chairman of the IRDA: The Chairman shall take into account for grant of certificate, all matters relating to carrying on the business of reinsurance by the branch of the foreign reinsurer. The specific criteria considered include:

- Record of conduct and performance of the directors and persons in management of the foreign reinsurer
- Planned infrastructure of the branch office of the foreign reinsurer
- Proposed underwriting skills that will be transferred to the branch office and capability of the branch in respect of underwriting
- Financial condition and soundness of the general character of management of the applicant
- Likelihood of adequacy of volume of business and earning prospects of the applicant
- Duly certified board resolution in support of commitment given in letter of comfort

Where the requisition for registration is approved by the IRDA, the foreign insurer would be required to file an application for grant of registration certificate in Form IRDA/Reins/R2.

The Chairman of IRDA after conducting verification (i.e. record of conduct and performance of directors and persons in management of foreign insurer, planned infrastructure of the branch office, proposed underwriting skills transferred to the branch office, etc) of all the necessary documentary evidence, may grant a certificate of registration.

Where the Chairman of IRDA is not satisfied and believes that the disclosures are not true, he may reject the application. No fresh application shall be made within 3 years from the date of rejection.

Grant of certificate of registration: An applicant to whom the certificate for registration is granted, shall commence reinsurance business within 12 months from the date of registration. This period can be extended to maximum 18 months with prior approval from Chairman of IRDA.

6 Prescribed documents include:
(a) evidence of having assigned capital of minimum INR 0.5 billion
(b) affidavit by the principal officer and the person authorized by the Board of Directors of the applicant certifying that the requirements of assigned capital have been satisfied
(c) receipt evidencing payment of fees of INR 50,000
(d) certificate from a practicing Chartered Accountant or Company Secretary certifying the requirements of registration fees, assigned capital, etc have been satisfied
(e) other information required by IRDA during stage of processing the application
Fees

► Annual fees: A branch office of the foreign reinsurer to whom a certificate for registration is granted shall pay an annual fee by 31 December of the preceding financial year. The fee shall be higher of INR 0.5 million or 1/20th of the total premium in respect of facultative reinsurance accepted in India.

► Late fees on failure to deposit annual fees: Annual fees plus additional fees by way of penalty of:
  - 2 percent of the fees if paid within 30 days from the scheduled date
  - 10 percent if paid before the end of financial year

Operations of branch offices of foreign reinsurers

The foreign reinsurer granted the certificate of registration will have to comply with the following minimum key requirements:

► Geographical scope: Branch office of the foreign reinsurer shall transact reinsurance business in India and outside India subject to the underwriting policy laid down

► Assigned capital: The branch office would have to maintain the minimum capital requirement prevalent at the time of registration plus 1/10th of 1 percent of gross reinsurance premium underwritten. The amount shall remain invested in Government securities or in such other investments as may be specified in the Regulations

► Appointment of key personnel: The branch office to appoint key management personnel with prior approval from the IRDA

► Reinsurance and retrocession: The branch of the foreign reinsurer shall be subject to the same reinsurance regulations as applicable to Indian insurer and reinsurer. Further, the branch office of the foreign reinsurer shall have a minimum retention of 50 percent of the business written in India

► Right of first refusal:
  (a) Every Indian insurer, in order of priority, shall first offer an opportunity to the India Reinsurer to participate in its facultative and treaty surpluses
  (b) It shall next offer an opportunity to Indian insurers, branch office of foreign reinsurers or Lloyd’s office in India to participate in its facultative and treaty surpluses
  (c) Next it shall offer the offices of foreign reinsurers set-up in Special Economic Zone to participate in its facultative and treaty surpluses
  (d) The balance of the Indian insurers facultative and treaty surpluses shall then be offered to overseas reinsurers

► Solvency margin: The branch office of foreign reinsurer shall prepare and submit statement of assets, liabilities and solvency margin requirements in the manner prescribed by IRDA

► Repatriation of surplus: The surplus generated by the operations of the branch offices of foreign reinsurer shall be repatriated transferred to the Head office only with prior approval of IRDA. In addition the repatriation of surplus shall comply with the other requirement of RBI/ FEMA if any
Other issues: The branch office of the foreign reinsurer shall immediately report to IRDA any regulatory or supervisory action taken by the home country regulator with full details and the penalty, any administrative action, if any imposed and the remedial steps taken by the company to prevent its reoccurrence.

Comments

The draft Regulations have been currently kept for inviting comments from the insurance sector and public until 30 April 2015.

Once notified by the IRDA, a separate enabling regime for setting up branch office by foreign reinsurers should be available thus giving a fillip to the reinsurance market in India.
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