Linklaters

Insurance Update

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This newsletter is produced by Linklaters' insurance lawyers and is intended to keep you up to date with current issues in international insurance law, regulation and practice.

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FSB discontinues annual identification of global systemically important insurers

The Financial Stability Board (the "**FSB**") has published a press release in which it announces that it has decided to discontinue its annual identification of global systemically important insurers ("**G-SIIs**"). Going forward, the FSB says that it will use assessments available through the International Association of Insurance Supervisors' (the "**IAIS**") Holistic Framework to inform its considerations of systemic risk in the insurance sector.

The IAIS' Holistic Framework was developed specifically with the aim of assessing and mitigating the potential build-up of systemic risk in the global insurance sector (see our previous report). Implementation of the framework started at the beginning of 2020. While the IAIS was developing the Holistic Framework, it suggested that the framework should remove the need for the FSB and national authorities to identify G-SIIs on an annual basis (a process which began in 2013). Its development resulted in the suspension by the FSB of its annual identification of G-SIIs, pending a subsequent review.

Confirming that it will discontinue its annual G-SII identification process, in its press release the FSB also indicates that, should the circumstances so warrant, it may publicly express its views on whether any individual insurer is systemically important in the global context and the appropriate application of the Holistic Framework supervisory policy measures that it considers necessary to address such systemic importance.

The FSB says that it will, each year from 2023, publish a list of insurers that (according to member authorities' assessment and self-reporting) are subject to resolution planning and resolvability assessments consistent with the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions (the "**KAs**"). The FSB may publicly express its views on the appropriateness and sufficiency of the scope of insurers that are subject to the KAs, based on whether an insurer could be systemically significant or critical if it fails.

In November 2025, the FSB will review its experiences with the process of assessing and mitigating systemic risk based on the Holistic Framework. In

light of this review, the FSB says that it may, in consultation with the IAIS, decide to adjust its process, including possibly reinstating an updated G-SII identification process if deemed necessary.

Commenting on the FSB's decision to discontinue G-SII identification, Vicky Saporta, IAIS Executive Committee Chair, said: "Reflecting on the three years since its adoption, FSB and IAIS members agree that the Holistic Framework provides a more effective basis for assessing and mitigating systemic risk in the insurance sector than G-SII identification."

Separately, the FSB has published its annual report on the implementation of resolution reforms, in which it highlights the importance of ensuring the continued effective application of the KAs to insurers. The FSB also says that its work in 2023 in the insurance sector will focus on the identification of critical functions that need to be maintained in resolution and on exploring resolvability issues related to group and conglomerate structures.

IAIS consults on methodology used to calculate individual insurers' systemic risk scores

As part of its efforts to continue to enhance its Holistic Framework for the mitigation of systemic risk in the global insurance sector, the IAIS has launched a consultation seeking input on the individual insurer monitoring ("**IIM**") assessment methodology that is used to calculate individual insurers' systemic risk scores.

No substantial changes are proposed as part of the IIM assessment methodology review. However, the IAIS suggests that there is room for further refinements to the methodology, for instance regarding the granularity and consistency of reporting of certain indicators. The development of additional ancillary indicators is also being considered. The IAIS' consultation outlines specific areas where stakeholder feedback is particularly sought.

Comments should be provided by 6 February 2023.

IAIS report on diversity, equity and inclusion in the insurance sector and planned future work

The IAIS has published a stocktake report giving insight into the actions IAIS member supervisors, other international organisations and the insurance industry are taking to advance diversity, equity and inclusion ("**DEI**") in the insurance sector.

The IAIS has compiled the report with a view to identifying areas where it could do further work in this area. It says that it intends to maintain its focus on DEI with two new projects in 2023 and that it will invite industry and other stakeholder input as it takes forward the planned work.

IAIS publishes 2023-2024 Roadmap

The IAIS has published its 2023-2024 Roadmap, which outlines the IAIS' work programme for the next two years.

In the Roadmap, amongst other things the IAIS indicates that it will issue a public consultation on the Insurance Capital Standard (the "**ICS**") as a prescribed capital requirement and will undertake an ICS impact assessment. It will also begin an assessment of whether the Aggregation Method provides comparable outcomes to the ICS.

The IAIS says that it will also continue to respond to emerging and accelerating risks, challenges and opportunities facing the insurance sector including: climate-related risks; cyber risk; operational resilience; digital innovation; diversity, equity and inclusion; financial inclusion and issues around conduct and culture.

UK future regulatory framework: The Edinburgh Reforms

The UK government has released a package of reforms to financial services regulation. Dubbed the "Edinburgh Reforms", the measures build on the government's vision for an open, sustainable, and technologically-advanced financial services sector.

There are 30 announcements which relate to reforms at various stages of development. Together with the Financial Services and Markets Bill, they will set the UK regulatory agenda not only for 2023 but for many years to come.

We highlight some of the key points from the perspective of the insurance sector below. Our summary note provides further information and covers points of significance to other areas of the financial services industry (e.g. reform of the bank ring-fencing, short selling and consumer credit regimes). Our experts also held a discussion about how these reforms will shape the future regulatory agenda – watch a recording here.

Plan for the "lift and shift" of regulatory obligations

The Financial Services and Markets Bill hands very broad powers to the government and the regulators to shape future regulatory policy and rework the rules the UK has inherited from the EU. This includes repealing EU-derived laws and replacing them with regulator-set rules. A policy statement now provides more detail on what this "lift and shift" process will look like. Linklaters is one of the members of an industry engagement group set up by HM Treasury to provide insight and advice to the government on issues across the programme.

The government explains that it will deliver the programme by splitting retained EU law into "tranches". The first tranche includes the recent review into Solvency II (as well as reviews into wholesale markets, listing rules and securitisation rules). Work is underway on the first tranche and the government has already set out its final package for reform of the UK's version of the Solvency II framework (see our client alert). The second tranche will include the remaining outcomes from the Solvency II review, and rules on Packaged Retail and Insurance based Investment Products

("**PRIIPs**") and the Insurance Mediation and Insurance Distribution Directives (alongside those on payments, short selling and bank capital requirements). The government expects to move "swiftly" through the implementation programme and make significant progress on both tranche 1 and 2 by the end of 2023.

For more on the government's plans to "lift and shift" financial services rules, please see our client alert.

Replacing PRIIPs rules

The government plans to revoke the UK regime for PRIIPs and replace it with an alternative retail disclosure framework. The government's consultation (which closes on 3 March 2023) notes that the current rules are unnecessarily prescriptive and can present information in unhelpful or misleading ways. It believes that broad-based comparability between different types of products is not appropriate.

Under the new regime, the Financial Conduct Authority (the "**FCA**") will determine the format and presentation requirements for disclosure. The FCA has published a discussion paper which aims to seek views from industry and consumers to help it design the new disclosure regime. It is seeking input on when and in what format information can be delivered to consumers to ensure that what is provided is useful and supports the experience of buying a product. It is also considering who should have responsibility for producing disclosure. Comments are requested by 7 March 2023.

Read more about the government's plans here. See our financial insights blog for more on the FCA discussion paper.

SMCR to be reviewed

The government has announced that it will start a review into reforming the Senior Managers and Certification Regime (the "**SMCR**") in Q1 2023. This will begin with a government-led call for evidence on the legislative framework of the SMCR. The aim will be to collate feedback on the effectiveness, scope and proportionality of the regime as well as views on potential improvements and reforms. Meanwhile, the FCA and the Prudential Regulation Authority (the "**PRA**") will open their own reviews into the regulatory aspects of the framework.

Read our financial insights blog for more.

UK PRA sets out supervisory priorities for 2023

The UK's PRA has published a "Dear CEO" letter providing an update on the PRA's priorities for the supervision of life and general insurers in 2023. These include:

> <u>Financial resilience</u>: In the light of a potentially greater exposure to credit and concentration risk, the PRA expects life insurers to stress test their capital planning against prolonged adverse credit scenarios robustly. The PRA expects general insurers to factor general and social inflation

risk drivers into their underlying pricing, reserving, business planning, and capital modelling.

> Risk management: Firms should take proactive steps to assess the adequacy of their risk management and control frameworks (including their capital models). The PRA cautions that firms should be able to respond to market and credit risk conditions different from those that prevailed for a long time, e.g. novel risks, changes in risk correlations and increases in distressed assets. It expects firms to assess their credit and counterparty credit risk management capabilities in light of widening credit spreads, rating downgrades, and defaults. Firms should also test the resilience of liquidity sources to market dysfunction and to re-evaluate potential liquidity demands created by the use of derivatives for risk management.

> Implementing financial reforms: In relation to Solvency II reform, the PRA says that, over the course of 2023, it will seek to engage with affected firms on the technical details of reforms, in advance of formal consultation. It will also engage with the life insurance sector on the extent to which the stress testing framework may need to adapt.

> Reinsurance risk: The PRA is paying close attention to whether the continued high level of longevity reinsurance and the emergence of the more complex 'funded reinsurance' in the UK life market reduce the protection UK policyholders should have, beyond the risk tolerance. In particular, it sees the potential for offshored counterparty concentration risk to arise from rapidly growing levels of reinsurance.

> Operational resilience: The PRA continues to maintain its focus on operational risk and resilience, a large part of which will be the continued assessment of firms against its operational resilience rules as set out in Supervisory Statement SS1/21.

> Ease of exit for insurers: During 2023, the PRA will consult on requirements for insurers to prepare exit plans (to a level of detail commensurate with the size and impact of the insurer) so that it can provide more specific expectations. In the meantime, it expects firms to begin considering how they might exit the market if the need arose, what the obstacles might be, and how they might be overcome.

PRA finalises changes in approach to ISPVs

The PRA has finalised a number of changes to the way that it authorises and supervises insurance special purpose vehicles ("**ISPVs**"), having consulted in this area in July 2022. ISPVs are used in insurance linked securities structures, through which (re)insurers transfer risks from their balance sheets to capital market participants.

The changes on which the PRA consulted related to its approach to supervising the activities of ISPVs operating short tail, wholesale, general insurance structures in the UK and would not, according to the PRA, create any additional requirements. The proposals are described in our previous

report. They relate to matters such as the legal opinion expectation for non-English law governed contracts, the number of Senior Management Function holders needed for an ISPV and the PRA's approach to multiple cedants ceding risk to a single cell via a single contract.

The PRA describes the responses received to its consultation in a policy statement and sets out its feedback to those responses. According to the PRA, respondents generally welcomed its proposals. The policy statement also provides a summary of the changes that it has made from the draft version of its revised policy, with the amendments marked in an updated version of Supervisory Statement (SS) 8/17, 'Authorisation and supervision of insurance special purpose vehicles'.

The policy in SS8/17 took effect from 23 December 2022. The PRA says that it will continue to interact with various stakeholders to assess what further changes may be required to the ISPV regime.

UK PRA statement on the recalculation of the Transitional Measure on Technical Provisions

The UK's PRA has published a statement providing an update on its approach to the recalculation of the transitional measure on technical provisions (the "**TMTP**"). The TMTP mitigates changes to the calculation of technical provisions which were introduced by the Solvency II Directive (2009/138/EC). The Solvency II Directive allows for a recalculation of the TMTP every 24 months, or more frequently where the risk profile of the firm has materially changed.

In its statement, the PRA says that it has been monitoring market conditions since the previous biennial TMTP recalculation in December 2021. The PRA also considers whether changes in market conditions since previous recalculation points can reasonably be considered to have been sustained. In the PRA's view, movements in risk free rates during the second half of 2022 meet the threshold for a material change in market conditions as set out in its Supervisory Statement (SS6/16) on the TMTP, potentially leading to a change in risk profile for firms.

The PRA indicates that it would be willing to accept applications from firms to recalculate TMTP as at 30 December 2022. In any application, the PRA expects firms to be able to demonstrate that a material change in risk profile has occurred. To expedite the application process, the PRA would expect applications at this time to use firms' existing TMTP calculation methodologies.

UK FCA consults on protections for insurance customers in financial difficulty

The UK's FCA is consulting on a proposal to update its existing guidance, introduced during the Covid-19 pandemic, to support insurance customers in financial difficulty. The intention is for the guidance to reduce the impact of financial difficulty on customers, help them maintain an appropriate level of

insurance they can afford, and reduce the risk of customers losing appropriate insurance cover that is important to them.

In November 2020, the FCA introduced finalised guidance for insurance and premium finance firms to support customers in financial difficulty due to the coronavirus pandemic. The FCA is now proposing that the insurance aspects of the Covid-19 guidance should be replaced with guidance extended to apply to all customers in financial difficulty, rather than just those in financial difficulty due to the pandemic. It intends to consider the premium finance aspects of its Covid-19 guidance separately.

Amongst other things, the updated guidance would provide that, where a firm has identified a customer in financial difficulty (for any reason, not just related to Covid-19), it should consider what options it can offer when acting to deliver good outcomes and provide the customer with support that is appropriate given the characteristics of the customer. Specific actions that the FCA says firms should consider in these circumstances include:

- reassessing the risk profile of the customer (which could result in the customer being offered a lower premium);
- considering whether there are other products the firm can offer that would provide appropriate cover at a price the customer can afford and revising the cover accordingly;
- adjusting cover to take account of the financial change in the customer's circumstances;
- working with customers to avoid the need to cancel cover that is important to them; and
- where any of the above actions results in a customer's policy being adjusted or cancelled, firms should consider whether it is appropriate to require the customer to pay all the contractual fees or charges associated with the changes.

The FCA also proposes that firms should take reasonable steps to make customers aware of, and help them understand, the support available in the event they experience financial difficulty, and also to allow those customers to easily contact the firm.

The FCA's guidance would apply to all firms subject to ICOBS and relates to both retail and commercial customers of non-investment insurance policies. It would sit in the FCA's Handbook, within ICOBS 2.

Comments on the FCA's proposals are invited by 11 March 2023. The FCA has indicated that it plans on publishing a final Policy Statement in Q2 2023. If the guidance is made, the FCA intends to bring it into force on 31 July 2023.

You can access our Financial Regulation Insights blog post on this development here.

UK FCA "Dear CEO" letter to life insurers on cost of living

The UK's FCA has published a "Dear CEO" letter that it has sent to life insurers setting out its expectations of them in relation to the rising cost of living.

In its letter, the FCA highlights that it is important that life insurers meet the standards it expects to support customers, including those in financial difficulty. Consistent with the Consumer Duty, which comes into force from the end of July 2023, the FCA also expects that life insurers consider how they act to deliver good outcomes via their customer propositions in the changing economic environment.

Expectations that the FCA discusses in its letter include those relating to: protection products; pensions, long-term savings and retirement income; customer value; customer support; scams; and operational resilience.

The FCA asks that firms consider the content of its letter and act to ensure they are well placed to support their customers now. It says that it will continue to monitor and scrutinise firms using its supervisory and enforcement powers where necessary.

FCA proposes rule "clarifications" for UK Consumer Duty

With the introduction of the Consumer Duty for new and existing products and services around six months away (eighteen months for closed products and services), clarifications are still being sought on the low-level implications for firms – including insurers. In December, the FCA published its latest quarterly consultation paper (CP22/26), which proposed further changes to its rules where there is disconnect with the final policy the regulator consulted on.

Among the changes, the FCA is proposing to remove the Handbook Glossary-defined term 'distribute' from its 'closed product' definition (under which a product cannot be considered as 'closed' if it is still being distributed). The reason for this change is that the defined term 'distribute' is broad and wider in scope than its ordinary meaning. The FCA is keen to ensure that in the context of the Consumer Duty specifically, it has its ordinary meaning – the result of which will mean that products and services should be treated as closed where they are neither marketed or sold to new customers, nor available for renewal by existing customers.

The consultation paper closed for comments on 9 January. The FCA will follow up on its confirmed approach in due course, and is expected to make further announcements ahead of the arrival of the Consumer Duty in July. For further information and latest updates, see our Consumer Duty webpage.

UK FCA findings from general insurance pricing multi-firm review

The UK's FCA has published the findings from a multi-firm review that it has conducted assessing how firms have satisfied themselves that they comply with its home and motor insurance pricing rules.

The new rules, which came into effect on 1 January 2022, were designed to promote competition and ensure that firms offer fair value products, including by ending 'price walking' by ensuring that consumers renewing their home and motor insurance pay no more than they would as a new customer, when using the same distribution channel. For more on the FCA's pricing rules see here and here.

Overall, the FCA found evidence that most firms in its multi-firm review had taken appropriate action to comply with its pricing rules. The FCA found that larger firms in the market (mainly insurers) were generally able to show that they had taken appropriate actions to comply, including putting in place an appropriate governance framework for ongoing monitoring and compliance with its pricing rules. By contrast, the FCA says that many of the smaller firms in the market had few or no records to show how they had complied with its pricing rules. However, the FCA did not identify any issues regarding firms' compliance with the incentives rules or firms' judgements regarding potentially reportable breaches of its pricing rules.

The FCA asks firms to consider its findings, examples of good practice that it has provided and areas for improvement in the context of its pricing rules, and to address any shortcomings. It will continue to monitor firms' compliance with its pricing rules.

UK: Relaxation of certain product governance rules for GI and pure protection products distributed overseas

As part of its quarterly consultation paper, CP22/26, the UK's FCA is proposing changes to certain rules in chapter 4 of its Product Intervention and Product Governance sourcebook ("**PROD 4**") to remove some of the regulatory burden for firms manufacturing general insurance and pure protection products for non-UK customers.

Under the FCA's insurance pricing rules (see above article) relevant manufacturers must obtain specified information from distributors in order to assess whether their products are providing fair value. The FCA has heard evidence that, since those rules were introduced, manufacturers have experienced difficulties with overseas firms, who are reluctant to provide information when requested by UK manufacturers and distributors. Without this information from distributors, the FCA says that the resulting value assessment will be incomplete and potentially inaccurate, as well as leaving manufacturers unable to comply with its rules or facing increased compliance costs.

The FCA's proposals are intended to address these issues through a relaxation of certain of the PROD requirements which apply to the manufacture and distribution of non-investment insurance products that are

distributed to customers based outside of the UK (including legacy non-investment insurance products). Further information is provided at chapter 7 of CP22/26, with the proposed amendments themselves set out at Appendix 7.

UK: Insurance and pensions regulation – ten things to look out for in 2023

2023 is shaping up to be a year of major regulatory change in both the insurance and pensions sectors. We discuss ten things to look out for in insurance and pensions regulation this year on our Financial Regulation Insights blog – access it here.

EIOPA discussion paper on prudential treatment of sustainability risks

The European Insurance and Occupational Pensions Authority ("**EIOPA**") has published a discussion paper as part of its work to assess the potential for a dedicated prudential treatment, within the Solvency II framework, of assets and activities associated substantially with environmental or social objectives.

EIOPA says that, as long-term investors and society's risk managers, insurance undertakings have a central role in driving sustainable finance. As sustainability risks can have material implications on the investment and underwriting activities of insurance undertakings, EIOPA considers it important to ensure that Solvency II reflects those risks appropriately.

Driven by these considerations and also by its anticipated mandate to produce a report in this area (as contained in the European Commission's current proposals for reform of the Solvency II Directive), EIOPA is therefore taking a step-by-step approach to assessing whether a prudential treatment of sustainability risks would be warranted. The discussion paper, which is the first step in this process, outlines the intended scope, methodologies and data sources for this assessment exercise and focuses on three distinct areas of analysis:

- Assets and transition risk exposures: This first area concerns insurers' investments and proposes ways to assess how risks stemming from the transition to a less carbon-intensive economy could potentially impact prudential risks related to stocks, bonds and real estate.
- Underwriting risk and climate change adaptation: The second area of analysis focuses on non-life insurance and examines the potential effect of climate-related adaptation measures on underwriting risk and related loss exposures from a prudential perspective.
- Social risks and objectives: The third area discusses how social risks or harm to social objectives could translate into prudential risks and assesses their corresponding prudential treatment in the requirements on governance and risk management, as well as reporting and disclosure.

EIOPA is now seeking comments, by 5 March 2023, from stakeholders on the approaches presented. It will consider the feedback received to develop further the proposed methodologies for the analysis intended and says that it will, at a later stage, consult publicly on empirical findings and potential policy implications.

EIOPA launches dashboard on insurance protection gap for natural catastrophes

EIOPA has published a dashboard which depicts the insurance protection gap for natural catastrophes across Europe.

In light of climate change, EIOPA is concerned that affordability and insurability of natural catastrophes insurance coverage is likely to become an increasing concern. According to EIOPA, currently only a quarter of the total losses caused by extreme weather and climate-related events across Europe are insured. This, it says, shows that there is an insurance protection gap in Europe.

The aim of the dashboard is to present the drivers of a climate-related insurance protection gap in order to identify measures that will help in decreasing society's losses in the event of natural catastrophes. It brings together data on economic and insured losses, risk estimations, as well as insurance coverage from 30 European countries.

EIOPA supervisory statement on inflation

EIOPA has published a supervisory statement which addresses inflation-related issues.

In the light of the higher rates of inflation that have recently been experienced globally, in its statement EIOPA highlights that the most immediate impact of inflation on insurance business is the increase on cost of claims (claims inflation) due to the increase on prices of the services, goods and expenses incurred in servicing insurance obligations. However, EIOPA also believes that several other elements should be considered, such as future monetary policy reactions and their impacts on the valuation of technical provisions, the impact on capital requirements and capital management tools, the impact on risk management policies, on modelling choices and on consumer behaviour. While inflation may affect both life and non-life business, EIOPA says that, due to its nature, long-tail non-life business is expected to suffer the most severe impact.

The supervisory statement explores the above issues and describes EIOPA's expectations of (re)insurance undertakings in relation to them. EIOPA says that national competent authorities are expected to monitor undertakings' assessment of the impact of inflation and any measures taken as a follow-up as part of the regular supervisory review process.

DORA is published in the Official Journal

The Digital Operational Resilience Act ("**DORA**") and Amending Directive were published in the Official Journal of the EU on 27 December 2022 and came into force on 16 January 2023.

DORA will require practically all financial entities in the EU (including insurers) to apply uniform standards for managing information and communications technology risks. It will apply from 17 January 2025.

Read our earlier client briefing note for more on DORA. Click here to view a recent webinar at which our panel of experts discussed DORA.

India proposes amendments to the Insurance Act, 1938

The Government of India, in consultation with the Insurance Regulatory and Development Authority of India ("**IRDAI**"), has issued the Insurance Laws (Amendment) Bill, 2022 (the "**Bill**") proposing various amendments to the Insurance Act, 1938 (the "**Act**"). The proposed amendments are the consequence of an exhaustive review of the insurance sector framework by the Government of India, the IRDAI and various stakeholders, as well as solicited public feedback. Some of the key changes proposed are as follows:

> *Higher threshold for approval of share transfers:* Under the existing regime, prior IRDAI approval is required for any share transfer where the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one percent of the paid-up equity capital of the insurer. This threshold is proposed to be relaxed to five percent of the paid-up equity capital of the insurer. This would bring the requirements applying to the insurance industry in line with the Reserve Bank of India's requirements for banks. The relaxation would assist in the execution of smaller transactions.

> *Composite license:* Insurers would be able to apply for a composite registration for one or more classes or sub-classes of insurance business. The IRDAI would make specific provisions for insurers to carry on insurance business of one or more classes or sub-classes, to ensure the protection of policyholders' interests and prudent risk management. The solvency margin would also be different for different classes and sub-classes of insurance business of an insurer. Reinsurers would not be eligible for registration of any other class or sub-class of insurance business.

> *Minimum paid-up capital based on business type:* The Bill would abolish the statutory minimum paid-up equity capital requirement for each class of insurance. The IRDAI instead proposes that the minimum paid-up capital required to be maintained by an insurer should be prescribed on a case-by-case basis, taking into account the size and scale of its operations, class or sub-class of insurance business and the category or type of insurer.

> *Reduced minimum net-owned-funds:* The net-owned-funds requirement for foreign reinsurers setting up branches in India is proposed to be

reduced from INR 5,000 crore to INR 500 crore. This relaxation could facilitate the entry of foreign reinsurers setting up branches in India.

> *Differential solvency margin:* It is proposed that the IRDAI will set out different solvency margins for the classes and sub-classes of particular insurers and abolish the current prescribed limit of 150%.

> *New categories of insurance businesses:* The IRDAI would be empowered to designate any part or segment of a class of insurance business as a sub-class other than those currently prescribed under the Act. The IRDAI would also be able to specify different types or categories of insurers based on certain criteria such as area of operation, level of risk or premium and channel of distribution.

> *Distribution of other financial products*: Insurers would be allowed to provide services related or incidental to insurance business, and to distribute other financial products as specified by and subject to the regulations prescribed by the IRDAI.

> *Prohibition of common directors and officers:* The existing regime restricts the managing director or other officers of life insurers from being appointed as the managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company. The Bill would extend this requirement to all insurers and also prohibit insurers from having common directors with another insurer carrying on the same class or sub-class of insurance business, except in the case of directors nominated by the Central Government. However, certain exemptions would apply, e.g. for the purpose of facilitating the amalgamation or the transfer of business of one insurer to another.

India: Goods and service tax related investigations against insurers

The goods and services tax ("**GST**") authority in India has initiated investigations against 16 insurance companies for incorrectly claiming input tax credits. The GST authority has published a press release noting that the insurance companies had claimed input tax credit on the basis of false invoices issued by several insurance intermediaries for providing advertising and marketing services, despite no such services actually being provided by the intermediaries.

Under the existing regulations, the IRDAI imposes specific limits for commissions payable to corporate agents by an insurer. However, the GST authority has alleged that the insurers were paying commissions over the permissible limit on the basis of invoices issued by the intermediaries for providing the non-existent services; non-banking financial institutions acting as corporate agents for the insurers are also said to have raised false invoices on the intermediaries. As a result of the lack of provision of any actual services, the input tax credit claimed by the insurance companies was not permissible under GST laws.

This has become a critical issue for various insurance companies in India at the moment as they come under greater scrutiny from the GST authority.

India: IRDAI notifies various exposure drafts

The IRDAI had previously issued various exposure drafts to amend or replace certain regulations in place in the insurance sector (see our previous article, here). The following exposure drafts have now been notified by the Government of India and are effective from the date of notification:

Regulations for issuance of other forms of capital and registration of insurance companies

The IRDAI has issued the IRDAI (Other Forms of Capital) Regulations, 2022 and the IRDAI (Registration of Indian Insurance Companies) Regulations, 2022 (the "**Registration Regulations**"), which will be in force for a period of three years (unless replaced or reviewed earlier). These are generally in line with the exposure drafts issued by the IRDAI previously. Certain additional key amendments introduced by the Registration Regulations are set out below:

- All investors may collectively invest up to (but not including) 50% of the paid-up share capital of the insurer. This restriction is not applicable in the case of an insurer which is listed on any stock exchange in India.
- An investor investing in excess of 10% of the paid up capital of the insurer has the right to nominate a director to the board of the insurer.

Regulations for insurance intermediaries

The IRDAI has issued the IRDAI (Insurance Intermediaries) (Amendment) Regulations, 2022 (the "**Intermediary Regulations**"). The Intermediary Regulations are generally in line with the exposure draft on the regulations issued previously. Some additional key amendments are set out below:

- Corporate agents for general insurance companies are not allowed to solicit, procure and service retail lines of general insurance products and commercial lines of such insurers where the total sum insured for these products exceeds INR 50,000,000 per risk for all insurances combined.
- Corporate agents for composite insurers may have arrangements with insurers in excess of the ceilings statutorily prescribed, provided that the total number of arrangements with life, general and health insurers should not exceed 27.

For further information on the above items relating to India, which have been provided by TT&A, please contact Kunal Thakore, Partner (tel. +91 22 6613 6961), Deepa Christopher, Partner (tel. +91 22 6613 6943) or Gayatri Chadha, Managing Associate (tel. +91 22 6613 6986) at TT&A.

Recent Deals

Our recent deal experience in the sector (details of which we are able to disclose) includes:

- Advising Weerts Group and Ethias, Belgium’s fourth largest insurer, on the entering of a new partner in their joint venture investing in logistics real estate in Western Europe.
- Advising New York Life Insurance Company on an additional ₹1.96bn investment into a 49/51% real estate joint venture with the Max Group.
- Advising a German reinsurer on the tax aspects of the structuring and establishment of a 50/50 joint venture.

Duncan Barber
Partner, UK
Tel: (+44) 207456 3356
Mob: (+44) 7979537346
duncan.barber@linklaters.com

Thomas Broichhausen
Partner, Germany
Tel: (+49) 894 1808 119
Mob: (+49) 1622430007
thomas.broichhausen@linklaters.com

Sutthipong Koohasaneh
Partner, Thailand
Tel: (+66) 2305 8060
Mob: (+66) 818357809
sutthipong.koohasaneh@linklaters.com

Wolfgang Krauel
Partner, Germany
Tel: (+49) 894 1808 326
Mob: (+49) 1736553927
wolfgang.krauel@linklaters.com

Sophie Mathur
Partner, Singapore – South East Asia
Tel: (+65) 6692 5703
Mob: (+65) 96573882
sophie.mathur@linklaters.com

Matthew Middleditch
Partner, Hong Kong SAR
Tel: (+852) 2901 5352
Mob: (+852) 90176779
matthew.middleditch@linklaters.com

Karen Phang
Partner, Indonesia – South East Asia
Tel: (+65) 6692 5749
Mob: (+62) 81187 14693
karen.phang@linklaters.com

Dan Schuster-Woldan
Partner, UK
Tel: (+44) 207456 5466
Mob: (+44) 7720430320
dan.schuster-woldan@linklaters.com

Tracy Whiriskey
Partner, Japan
Tel: (+81) 36212 1222
Mob: (+81) 8098873956
tracy.whiriskey@linklaters.com

Benjamin Wilkinson
Managing Associate, UK
Tel: (+44) 20 7456 5653
Mob: (+44) 7768 718684
benjamin.wilkinson@linklaters.com

Christopher Yip
Partner, Hong Kong SAR
Tel: (+852) 2901 5137
Mob: (+852) 61144041
christopher.yip@linklaters.com

For general enquiries please contact

Linklaters LLP, One Silk Street, London EC2Y 8HQ
Tel: +44 20 7456 2000
Fax: +44 20 7456 2222

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Author: Tim Brown

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