

**NOTIFICATION
DATED 20-5-2011**

**IRDA (SCHEME OF AMALGAMATION AND TRANSFER OF GENERAL
INSURANCE BUSINESS) REGULATIONS, 2011**

In exercise of the powers conferred by clause (zc) of sub-section (2) of section 114A of the Insurance Act, 1938 (4 of 1938) read with sections 6A, 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) in consultation with the Insurance Advisory Committee, hereby makes the following regulations namely :

1. Short title and commencement

1. These regulations may be called the Insurance Regulatory and Development Authority (Scheme of Amalgamation and Transfer of General Insurance Business) Regulations, 2011.
2. They shall come into force on the date of their publication in the official Gazette.
3. These Regulations shall apply to all general insurance companies other than wholly owned Government companies which fall within the purview of General Insurance Business (Nationalization) Act, 1972.

Definitions

2. In these regulations, unless the context otherwise requires:

- a. 'Act' means the Insurance Act, 1938 (4 of 1938);
- b. 'Authority' means Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999;
- c. 'application' means application submitted to the Authority along with proposed Scheme as defined hereunder;
- d. 'appointed date' means the date appointed for purposes of giving effect to the scheme of amalgamation and transfer of general insurance business;
- e. 'merged entity' means the resultant Indian Insurance Company consequent upon the implementation of the Scheme;
- f. 'Scheme' means scheme of amalgamation and transfer formulated under sections 391-394 of the Companies Act, 1956 and not governed by section 37A of the Insurance Act, 1938;
- g. 'transacting parties' means the transferor company and the transferee company which are 'Indian Insurance Company' as defined in section 2(7)A of the Insurance Act, 1938;
- h. 'transferor insurer' means the company or companies, which would transfer the undertaking of general insurance business under the Scheme of amalgamation and transfer;
- i. 'transferee insurer' means the company, which would acquire the undertaking of general insurance business under the Scheme of amalgamation and transfer.

3. Application to be submitted to the Authority

1. Every proposal for implementation of the Scheme under these Regulations shall be submitted by the transacting parties to the Authority along with the draft proposed Scheme containing related information as indicated in the Annexure to these Regulations.
2. Every Scheme under these regulations shall be implemented only after final approval of the Authority:

Provided that no Scheme under these regulations shall be approved if in the opinion of the Authority (i) the available solvency margin of the merged entity will be lower than the required minimum regulatory level or (ii) the Scheme is not compliant with any other applicable laws and regulations or (iii) the Scheme is not in the best interests of the policyholders or (iv) is not conducive to the orderly growth of the insurance sector.

4. Notice of Intention

1. Every application for implementation of the Scheme shall be preceded by a notice of the intention to make the application at least one month before the date of application, together with a statement of the nature of the amalgamation and transfer, along with the reasons therefor to the Authority and certified copies, four in number, of each of the following documents shall be furnished to the Authority:
 - (a) a draft of the agreement or deed under which it is proposed to effect the amalgamation and transfer;
 - (b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation and transfer, prepared in the form as indicated in the IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002;
 - (c) Financial Condition Report; IBNR Report; and Solvency Statement prepared in conformity with the requirements of relevant regulations and Circulars issued by the Authority, including Assets, Liabilities and Solvency Margin Regulations, Circular No. IRDA/ACTL/CIR/MISC/081 /05/2010 dated 13th May, 2010; and Circular on furnishing of IBNR Reports;
 - (d) a report on the proposed amalgamation and transfer, prepared by an independent actuary who has not been professionally connected with any of the parties concerned in the amalgamation and transfer at any time in the three years preceding the date on which he signs his report;
 - (e) a synopsis/executive summary of the proposed transaction, and the terms on which such transaction has been contemplated;
 - (f) a report on the manner in which the interest of the policyholders will be protected; anda report on compliance with the applicable laws, including but not restricted to, the Competition Act, 2002 and the employment laws.
2. The balance sheets, reports and abstracts referred to in clauses (b) , (c) and (d) shall be prepared as at the appointed date, on a proforma basis. These shall be (i) audited financial statements most proximate to the appointed date and (ii) latest quarter's unaudited financial statements.

Consideration of proposed Scheme by the Authority and granting 'in-principle' approval

5. The Authority may, at any time prior to granting final approval to the proposed Scheme, cause an independent actuarial valuation of the insurance business (encompassing the assets, liabilities and solvency position) of the transacting parties.

6. In-principle approval by the Authority

1. The Authority, on being satisfied that the proposed Scheme is (i) in the interests of the orderly growth of the insurance sector, and (ii) on confirmation of compliance with any requirements as the Authority may deem fit in the context of its regulatory mandate, may grant in-principle approval to the proposed Scheme subject to such conditions as it may consider appropriate.
2. While granting such in-principle approval and during the period prior to the transacting parties receiving the Court approval for the scheme of arrangement under the Companies Act, 1956, the Authority may, if so required, impose such requirements on the transacting parties as it may consider necessary and appropriate (a) to ensure protection of the interests of the policyholders; and (b) to ring fence the assets of the transacting entities including stipulations for filing of information/reports at such periodicities as it may deem fit.
3. During the interim period, the parties to the Scheme shall ensure that the insurance operations are carried out in compliance with all requirements of the Insurance Act, 1938, the regulations framed thereunder and the directions issued by the Authority.

7. Effect of grant of 'In-Principle' approval

1. Upon grant of 'in-principle' approval, the transacting parties shall cause copies of the proposed Scheme to be kept open for inspection by policyholders at the registered office and the main corporate office of the transacting parties, and simultaneously the same shall be uploaded on the website of the respective insurers. Such inspection and access to the documents referred to above shall be kept open until the complete implementation of the Scheme.
2. Upon grant of 'in-principle' approval to the Scheme and prior to the said Scheme being presented to the relevant Court / Tribunal for approval, the Authority shall cause a statement of the nature and terms of the Scheme to be published in at least one National Daily and one vernacular newspaper, copies of which shall be filed with the Authority.
3. Further, the Authority, if it deems necessary, may direct that notice of the application, in such form as it may direct, be sent to every person resident in India who is the holder of a general insurance policy of any of the insurer concerned in the proposed transaction.
4. Upon receipt of the 'in-principle' approval of the Authority, the transacting parties to the Scheme would initiate steps to seek such other regulatory approvals as may be required including but not restricted to -
 - a. Filing the scheme of arrangement (along with the 'in-principle' approval of the Authority) with the relevant High Courts/Tribunal, for confirmation of the scheme of arrangement in terms of sections 391 to 394 of the Companies Act,

1956 and compliance with all requirements under the Companies (Court) Rules, 1959.

- b.* Filing applications with the Foreign investment Promotion Board (FIPB) and the Reserve Bank of India (RBI) seeking requisite approvals, if any;
- c.* In cases where a foreign joint venture partner is also associated with the transaction, approval from the regulator in the relevant jurisdiction, if such approval is required; and
- d.* Seek such other approvals as may be necessary, including those from the Securities and Exchange Board of India (SEBI), Stock Exchange(s) and Competition Commission of India (CCI).

Final approval from the Authority

8. On completion of the various processes indicated in the foregoing Regulations and upon receipt of approvals from various applicable regulatory authorities and the relevant Court/Tribunal, as applicable, the transacting parties shall approach the Authority for the final approval of the Scheme. The Authority would ensure that the Scheme as finally approved is consistent with such requirements or stipulations as might have been imposed by the other competent authorities while according their regulatory approval as in para 7 (4) above.

9. Effect of final approval

- 1. The amalgamation and transfer of the general insurance business, as envisaged in the Scheme, shall be effective from such date as shall be specified by the Authority while granting its final approval to the Scheme.
- 2. On and from the date of the coming into operation of the Scheme or any provision thereof, the Scheme or such provision shall be binding on the transacting insurers and also on all the shareholders, policyholders and other creditors and employees of each of the transacting insurers, and on any other person having any right or liability in relation to any of the transacting insurers.
- 3. On and from the date of the coming into operation of the Scheme, the properties and assets of the transferor insurer shall, by virtue of and to the extent provided in the Scheme, stand transferred to and vest in, and the liabilities of the transferor insurer shall, by virtue of and to the extent provided in the Scheme, stand transferred to and become the liabilities of the transferee insurer.
- 4. Publication of Notice in the newspapers about completion of the process (at least one national Daily and one vernacular, copies of which shall be filed with the Authority).
- 5. If any difficulty arises in giving effect to the provisions of the Scheme, the Authority may by order issue such directions which appear to it necessary or expedient for the purpose of removing the difficulty.
- 6. The Authority may issue such directions as it deems fit, taking into account the facts and circumstances of each case, its regulatory objectives, the interests of policyholders and orderly growth of the insurance sector, in relation to any sequencing of measures involved in the Scheme being approved by it.

Payment of fees for processing of the application

10. The fees for the processing of the application for an 'in-principle' approval shall be jointly remitted by the parties to the transaction by a demand draft issued by a scheduled bank in favour of the Insurance Regulatory and Development Authority payable at Hyderabad. The fees shall be one-tenth of one per cent of the total gross premium written direct in India by the transacting entities during the financial year preceding the financial year in which the application is filed with the Authority which shall be subject to a minimum of fifty lakh rupees, but shall not be higher than five crore rupees.

Timing

11. The Authority shall process and pass appropriate order on the application for amalgamation and transfer as expeditiously as possible, and the transacting parties shall ensure prompt response to the queries and requests for information from the Authority for processing the application.

Annexure

Scheme of Amalgamation and Transfer Information to form part of the Proposal Document

1. Structure of the transacting parties.
2. Board Resolution of the transacting parties approving the steps to undertake transactions which would result in change of structure of the respective transacting parties.
3. Submission of confirmations by shareholders through a special resolution at a general body meeting of the transacting parties about their intent to pursue the transfer contemplated in the Scheme.
4. Details as to protection of interests of policyholders, creditors and/or shareholders of the transacting parties.
5. Composition of Board of directors of the resultant entity along with the role of senior management.
6. Compliance with the Guidelines on the Corporate Governance issued by the Authority.
7. Details of other regulatory approvals in respect of the proposed scheme :
 - (i) applications submitted to the other Regulators in respect of to the proposed scheme as and when they are filed with other Regulators.
 - (ii) approvals granted by the other Regulators in this regard.
8. Share Purchase/Subscription Agreement with respect to the transfer/acquisition of general insurance business by the transacting parties.
9. Shareholders' Agreement with respect to the management and governance arrangements, if any, for the transferred business.
10. Actuarial Report(s) on valuation of the insurance businesses of the transacting parties encompassing the assets, liabilities and solvency position.
11. Rationalization of existing range of products in accordance with the File & Use Guidelines.
12. Assessment of impact on Distribution Channels/Intermediaries and Branch Network.

13. Details of Reinsurance Strategies and Protection & Maintenance of Reinsurance Assets.
14. Implication of the Scheme on the Key Contracts.
15. Issues pertaining to the Information Technology.
16. Projected Financial Statements of the amalgamated entities, as at the appointed date of the scheme.
17. Such other information which the Authority may require from time to time till the grant of final approval to the Scheme.

[F. NO.IRDA/REG/1/55/2011]