GLOBAL FEDERATION OF INSURANCE ASSOCIATIONS

15 December 2015

GFIA comments on IRDAI proposed amendments to Regulation 28(9) – Order of preference of cessions by Indian insurers

The Global Federation of Insurance Associations (GFIA), which through its 40 member associations represents insurers that account for approximately 87% or more than $4.0 trillion in total annual insurance premiums worldwide, would like to provide comments to the Insurance Regulatory and Development Authority of India (IRDAI) on its recently published *Amendment to Regulation 28(9) – Order of preference of cessions by Indian insurers – IRDAI's Regulations* dated December 02, 2015.

As stated previously, GFIA welcomed the recent enactment of the Insurance Laws (Amendment) Bill, 2015. GFIA believes that the reforms approved in the Bill have the potential to create a competitive (re)insurance market in India, which will have a positive impact on both the Indian insurance industry and wider Indian economy. GFIA also welcomed the IRDAI's intention to move quickly and implement the part of the Insurance Bill that grants access to foreign reinsurers to the Indian market through branches. Much work remains to be done to establish these foreign branches, and so facilitating access to an open and fair marketplace should be the IRDAI's immediate priority.

An open reinsurance market is a critical factor in making insurance markets more competitive, providing price and product advantages to consumers and creating opportunities for diversification of risk. To achieve these goals, GFIA believes that it is particularly important that all the Regulations that are implemented promote fair competition within the Indian (re)insurance market and international participants. GFIA is committed to work with the IRDAI to develop an appropriate (re)insurance framework. Therefore, GFIA stands ready to discuss with IRDAI this regulation and others that GFIA has commented on in the past months[1].

GFIA's members have significant concern about the content and implications of the proposed amendment regarding the order of preference of cessions by Indian insurers. GFIA members believe that elevating the Indian reinsurers to first order of preference ahead of foreign reinsurers granted certificate of registration pursuant to regulation 4 (a) (ie, a category I foreign reinsurer required to maintain a minimum retention limit of 50% of Indian reinsurance business) is a regressive and negative development. The proposed amendment is viewed as undesirable for the following reasons:

1. The proposed amendment would result in protectionist behaviour that discriminates against foreign reinsurers and is inconsistent free trade principles.
2. The proposed amendment would result in significant concentration risk and on the flip side limits or possibly prevents the benefit of diversification of risk that would otherwise be available if foreign reinsurers were on par with the GIC.
3. The proposed amendment would reduce competition within the Indian reinsurance market. In turn, insurance consumers would be denied the benefit of savings being passed on that might be secured in a competitive reinsurance market (ie, lower reinsurance premiums → lower insurance premiums).

[1] These comment letters were GFIA-15-22, GFIA-15-10, GFIA-15-08, and GFIA-14-20, amongst others.

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4. The proposed amendment is inconsistent with IAIS Insurance Core Principles, (ie, leads to concentration risk, stifles or precludes risk diversification).

Need for a competitive (re)insurance market in India

GFIA believes that reinsurers that have sufficient capital and experience are well supervised and comply with the IRDAI's strict requirements for branches should be granted the same treatment as Indian reinsurers.

For this reason, GFIA has strong concerns about the proposed amendment regarding the order of preference. This amendment would strongly disadvantage foreign reinsurers who are proposing to set up branches in India and would create an un-level playing field and would jeopardise the step in the right direction marked by the enactment of the Insurance Bill. It would not live up to the level of ambition proposed in the Insurance Bill and would certainly have a negative impact on those reinsurers that had been encouraged to participate in the India market by the approval of the Bill.

Funnelling transactions to domestic reinsurers would also result in a concentration of risks in India, placing a greater burden on the local market and potentially Indian taxpayers in the case of a large-scale loss event. It must be noted that no comparable provision applies in the banking sector, where foreign branches are subject to the same rules and a level playing field with local business.

Consequently, the draft regulations should be revised to remove this potentially discriminatory clause and to establish a free, open and efficiently operating reinsurance market in India, where cedants are responsible for making decisions based solely on an analysis of their business profile and needs. The regulation should strive for a commitment to the cedent responsibility principle, which is important with regard to the ability to freely choose the reinsurance partners and the types of reinsurance contracts for the risks that need to be covered.

GFIA believes that Indian insurers should be given the freedom to decide on their reinsurance strategy and solutions according to their risk profile. This should be ensured in the regulation by refraining from implying a restriction to "facultative and treaty surpluses" and instead make it clear that Indian insurers are free to choose the kind of reinsurance that optimally fits their needs.

GFIA respectfully requests that you carefully consider these concerns and provide the opportunity for a dialogue. GFIA hopes that our mutual goal of promoting a sound, fair and competitive regulatory environment will benefit the insurance sector, protect consumers and lead to increased investment in India.

GFIA contact

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About the GFIA

Through its 40 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 60 countries. These companies account for around 87% of total insurance premiums worldwide. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.

To: Arun Jaitley, Finance Minister of India

Cc: Secretary Financial Services Ms. Anjuly Chib Duggal (secy-fs@nic.in)
Additional Secretary Financial Services Ms. Snehlata Shrivastava (as-dfs@nic.in)
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Date: 16 December 2015

Subject: GFIA comments on IRDAI Amendment to Regulation 28(9)

Dear Mr. Minister,

On behalf of the Global Federation of Insurance Associations (GFIA), I am writing to raise serious concerns about the reversal of the opening of the Indian insurance sector, which your government has undertaken this year to spur growth and investment. GFIA's detailed response to the Insurance Regulatory and Development Authority of India's (IRDAI) call for public comment is attached.

Specifically, GFIA wishes to draw your attention to the amendment made on 2 December to the October IRDAI regulations on reinsurance branches in India. This amendment introduces a first order of preference/right of first refusal for Indian reinsurers — namely the General Reinsurance Corporation of India (GIC) — over both existing established Indian primary insurers and newly created reinsurance branches in India. These changes, if accepted, will maintain the status quo and call into question the possibility of establishing India as a regional reinsurance hub, which GFIA believes was the intent of your previous actions.

It had been widely reported in the Indian press that this proposal was advanced by GIC Re. GFIA believes it appropriate, therefore, to point out that the interests of GIC Re are in direct conflict with that of all of the primary insurance companies in India who have previously conducted reinsurance business, and the numerous global reinsurers currently in the process of establishing and capitalising Indian branches based on IRDAI's October regulations.

The amendment made in December will not only drastically diminish the incentive for global reinsurers to establish operations in India, but will also harm foreign primary companies' business expansion plans and reduce further insurance penetration levels in India. GFIA does not see this as being consistent with your government's overall theme of liberalization and attracting increased investment. In fact, media reports of it being inward-looking — and forced upon the IRDAI despite their objection — will only be affirmed, to the detriment of India's reputation as pro-investment.

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The previous policy in the October draft of the Foreign Reinsurer Branch Regulations of providing a level playing field for all participants, including foreign branch reinsurers, has been reversed within 40 days of the October notification of the regulations. Some foreign reinsurers have already filed their application for a license under the provisions of the notified Foreign Reinsurer Branch Regulations. Such a sudden reversal exposes the unpredictability of India's regulatory framework and will significantly impact foreign investors' confidence.

Many global insurance and reinsurance companies see great potential in the Indian insurance market and have plans to expand capital and technology investment in India, building front and back office operations to service their Indian, regional and global business. However, this business model depends on an open and stable regulatory environment that supports global operations. The amendment made in December is in direct conflict with this vision and GFIA urges your government to allow IRDAI to implement their original October regulations as drafted.

Sincerely,

GOVERNOR DIRK KEMPTHORNE
Chair, Global Federation of Insurance Associations

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