A.R.A LAW

Advocates & Solicitors

Strictly for private circulation only

LEGAL EYE

YOUR PEEK INTO THE INDIAN LEGAL SCENE

Volume 3, Issue 3 January 2001

Attn:

Thought for the month

The shifts of fortune test the reliability of

Inside This Issue

Note from the Editor

After several decades, the insurance sector is in for some competition. The insurance sector has hitherto been monopolised by the State in India. The liberalization of the insurance sector by permitting 26% in the insurance sector is a step in the right direction and has to be taken in perspective, given the wide disparities in the socio-economic sector of the country. Having said that, I feel that the Government of India should take further steps to enhance the foreign investors' confidence in this sector and in India by permitting them to invest at least up to 51%, if not more. The competition between the Life Insurance Corporation of India Ltd. (LIC), General Insurance Corporation Ltd. and its subsidiaries (GIC) and new private insurance firms has just begun, and hopefully the consumer will be the beneficiary. The Insurance Regulatory Department Authority (IRDA) has been instrumental in putting together the regulatory framework for the sector and it remains to be seen as to how expeditiously the dispute under an insurance claim is resolved under the aegis of the Arbitration and Conciliation Act, 1996. The Arbitration Act, as we speak, is proposed to be further amended to reduce any delays.

The vacillating attitude of the Central Government in the telecom sector is hardly encouraging for FDI. Changing rules mid-way is uncalled for. The TRAI's recommendation on WLL and its subsequent acceptance by the Central Government have probably caused tremendous harm to the cellular operators. We hope the policy makers are more considerate to such issues in future and take necessary steps to create confidence in foreign investors to achieve the 10 billion target set by our Prime Minister.

- Rajesh N. Begur, Editor, Legal Eye

Insurance Sector in India

- MRINAL CHANDRAN, ASSOCIATE, A.R.A. LAW

The Government of India has recently opened up the insurance sector for private participation. Till recently, the monopoly of State-run corporations, the deregulation has led to a flurry of activity with several private players, domestic and multinational expressing interest in the sector.

The Government of India has enacted the Insurance Regulatory & Development Authority (IRDA) Act, 1999 (the "Act") establishing IRDA as the nodal agency for regulating the insurance sector in the country. The Act has also amended the Insurance Act, 1938 ("Insurance Act"). The monopolies of the Life Insurance Corporation and the General Insurance Corporation have been ended by appropriately amending the Life Insurance Corporation Act, 1956 and the General Insurance Corporation Act, 1972 respectively.

Requirements under the Insurance Act, 1938

A. Who can carry on the business of insurance?

A proviso to Section 2C of the Insurance Act provides that no insurer other than an Indian insurance company shall carry on any class of insurance business in India on or after the commencement of the IRDA Act.

An Indian insurance company has been defined as a company:

1. Which is formed and registered under the Indian Companies Act, 1956;
2. In which the aggregate holdings of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees, do not exceed twenty six percent of the paid-up equity capital of the Indian insurance company;
3. The sole purpose of which is to carry on life insurance business or general insurance business or re-insurance business.

The Act also requires all companies carrying on any insurance business to become a public company within one year from the date of commencement of business.

B. Capital Requirements

Section 30 read with the First Schedule of the Act has amended the Insurance Act. Section 6 of the amended Insurance Act prescribes the following criteria for any person intending to carry on the business of life, general or re-insurance in India:

1. A paid-up equity capital of Rupees one hundred crores, in the case of a person carrying on the business of life insurance or general insurance.
2. A paid-up equity capital of Rupees two hundred crores, in the case of a person carrying on the business of re-insurance.

C. Capital Structure, Voting Rights and Transfer

Section 6A of the Insurance Act prescribes that no public company shall engage in the business of life insurance, general insurance or re-insurance unless it satisfies the following conditions:

1. The capital of the company consists only of ordinary shares that have a single face value.
2. Except during a period not exceeding one year allowed by the Company for payment of calls on shares, the paid-up amount is the same for all shares whether existing or new.

The Insurance Act also specifies that the voting rights of the shareholders shall strictly be in accordance with the paid-up amount of the shares held by him.

A public company carrying on the businesses mentioned above shall not register any transfer of shares:

1. Unless such transfer is in compliance with the provisions of the Indian Companies Act, 1913 (sic) and the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee or joint holder ;
2. Where, after the transfer the total paid-up holding of the company is likely to exceed five percent of its paid-up capital or where the transferee is a banking or an investment company, is likely to exceed two and a half percent of such paid-up capital, unless the previous approval of the Authority has been obtained;
3. 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 unless the previous approval of the authority has been obtained for the transfer.

Under section 6AA no promoter can hold more than twenty six percent or such other percentage as may be prescribed of the paid-up equity capital in an Indian insurance company. However, where an Indian insurance company commences business with its promoters having a holding in excess of such percentage, the promoters are required to divest in a phased manner the share capital in excess of the 26% of the paid-up equity capital or such excess paid-up equity capital as may be prescribed after a period of ten years from the commencement of the said business by such insurance company.

Participation of Banks in Insurance

The Reserve Bank of India (RBI) has developed a policy on the entry of banks into insurance. RBI has proscribed banks from undertaking the business of insurance departmentally. Banks intending to undertake the insurance business are required to obtain the prior approval of the RBI before engaging in such business. At the time of making such application, banks are required to mention details as regards equity contribution proposed, name of the joint venture partner etc.

A. As Insurance Agents

All scheduled commercial banks are permitted to undertake insurance business as agents of insurance companies on a fee basis, without any risk participation. Subsidiaries of banks will also be required to undertake distribution of insurance products on agency basis.

B. Equity Participation

The RBI has prescribed eligibility criteria for banks that wish to undertake the insurance business with risk participation. The maximum equity contribution such a bank can hold in the joint venture will be 50% of the paid-up capital of the insurance company. RBI may permit higher equity participation at its discretion.

The eligibility criteria prescribed will be as under as on March 31, 2000:

1. The net worth of the bank should not be less than Rs. 500 crores;
2. The CRAR of the bank should not be less than 10%;
3. The level of non-performing assets (NPA) should be reasonable;
4. The bank should have a net profit for the last three continuous years;
5. The track record of the performance of the subsidiaries, if any should be satisfactory.

In case where the joint venture is with a foreign partner one or more banks may be allowed to participate in the equity of the joint venture if they satisfy the criteria mentioned above.

A subsidiary of a bank or of another bank will normally not be allowed to join the insurance company on risk participation basis. Subsidiaries would include bank subsidiaries undertaking merchant banking, mutual fund, leasing finance, housing finance etc.

Banks which are not eligible as mentioned above can make investments up to 10% of the networth of the bank or Rs. 50 crores, whichever is lower. Such participation would be considered as an investment without any contingent liability for the bank. The eligibility criteria for such banks will be as under:

1. The CRAR of the bank should not be less than 10%;

2. The level of NPAs should be reasonable;

3. The bank should have net profit for the last three continuous years.

As mentioned earlier, all banks shall enter insurance business after obtaining the approval of the RBI. The RBI will base its permission keeping in view relevant factors including level of NPAs of the applicant so as to ensure that they do not pose a threat to the bank in the proposed line of activity. It should be ensured that the risks involved in the insurance business do not get transferred to the bank and that the banking business does not get contaminated by any risks that may arise from the insurance business. There should be an arms length relationship between the bank and the insurance outfit.

Participation of NBFCs in Insurance

RBI has permitted non-banking financial companies (NBFCs) to enter into the Insurance sector. As in the case of banks, RBI has prescribed certain eligibility criteria for NBFCs. Like banks, NBFCs are proscribed from carrying on the insurance business departmentally.

A. As Insurance Agents

All NBFCs registered with SEBI having net owned funds of Rs. 2 crores are permitted to undertake insurance business as agents of insurance companies on a fee basis without any risk participation.

B. Equity Participation

The RBI has prescribed eligibility criteria for NBFCs registered with the RBI that desire to undertake the insurance business with risk participation. The maximum equity contribution a NBFC can hold in a joint venture will be 50% of the paid-up capital of the insurance company.

The eligibility criteria prescribed are as under based on the latest available audited balance sheet:

1. The owned fund of the NBFC should not be less than Rs. 500 crores;
2. The CRAR of the NBFC engaged in loan and investment activities should not be less than 15% and for other NBFCs at 12% irrespective of their holding public deposits;
3. The level of non-performing assets should be more than 5% of the total outstanding leased/hire purchase assets and advances taken together;
4. The NBFC should have a net profit for the last three continuous years;
5. The track record of the performance of the subsidiaries, if any should be satisfactory;
6. Regulatory compliance and servicing public deposits, if held.

In case where the joint venture is with a foreign partner one or more, NBFCs may be allowed to participate in the equity of the joint venture if they satisfy the criteria mentioned above.

A subsidiary of a NBFC or a company in the same group as the NBFC engaged in the business of a non-banking financial institution or banking business will normally not be allowed to join the insurance company on risk participation basis.

NBFCs registered with the RBI which are not eligible as mentioned above can make investments up to 10% of the networth of the bank or Rs. 50 crores, whichever is lower. Such participation would be considered as an investment without any contingent liability for the Bank. The eligibility criteria for such banks will be as under:

1. The CRAR of the bank should not be less than 12% if engaged in equipment leasing/hire purchase finance activities and 15% if it is a loan or investment company.
2. The level of NPAs should not be more than 5% of total outstanding leased/hire purchase assets and advances;
3. The NBFCs should have net profit for the last three continuous years.

As mentioned earlier, all NBFCs registered with the RBI shall enter insurance business after obtaining RBI approval. The RBI will base its permission keeping in view relevant factors It should be ensured that the risks involved in the insurance business do not get transferred to the NBFC and that the NBFC's business does not get contaminated by any risks which may arise from the insurance business.

Foreign Direct Investment (FDI) in insurance companies

The Government of India has allowed foreign direct investment in the insurance sector. It has been decided that foreign equity participation up to 26% in the Insurance sector, as prescribed in the Insurance Act, 1999, will be allowed under the automatic route.

Companies bringing in FDI shall, however, be required to obtain necessary licence from the IRDA for undertaking insurance activities. ❖

Re-insurance

- DOEL KAR, ASSOCIATE, A.R.A. LAW

The Indian general insurance industry can become a leader in reinsurance among developing countries owing to its financial strength, its ability to offer better terms due to lower costs, skilled manpower and relative lack of interest by reinsurers of developed markets in the lower volume of the third world business.

- Malhotra Committee Report, 1994

Re-insurance is primarily an insurance of risks assumed by an insurer and provides a partial substitute for incremental risk capital. An insurer arranges re-insurance for:

(1) Improving service to the insured by increasing capacity to handle large risks;

(2) Spreading the risk with as many insurers as possible; and

(3) Stabilising operating results by levelling out peak risks/losses.

Reinsurance evolved as a natural corollary to insurance. It operates on the same principle as direct insurance, which is to spread sharing of risk as wide as possible. Professional companies handling reinsurance business exclusively started functioning over a century ago.

Kinds of Reinsurance

The contract of reinsurance is divided into two broad classes namely (i) facultative and (ii) treaty. There is another kind by which reinsurance is effected, namely by means of a 'pool'.

A **facultative** risk is one that is offered individually to another company which may either accept or reject the same as it may choose. A facultative reinsurance goes through numerous stages before it is effected by the acceptance of the accepting company.

A **treaty** is an agreement between two offices usually obligatory in its terms, under which one office is bound to cede and the other office is bound to accept, all risks of a certain nature and for a certain fixed share as laid down in the terms of agreement.

Reinsurance of a certain kind of insurance is effected by means of a **pool**. It is an arrangement made amongst a group of offices that agrees to put some definite category of risk into a kitty/pool and to share the aggregate risk.

The post-independence period in India, especially 1951 onwards, was marked by rapid developments in the Indian general insurance industry due to acceleration in the pace of development and large-scale industrialisation. This increase in business leading to the assumption of even larger and more complex risks enhanced the need for reinsurance protection which, at the time, could only be bought from foreign markets.

In order to increase retention, India Reinsurance Corporation was formed in 1956 by the insurers operating in India. In 1961 the government, by an amendment to the Insurance Act, 1938, named India Reinsurance Corporation and the Indian Guarantee and General Insurance Company as statutory insurers. Each of these reinsurance companies received about 10% 'Statutory Cession' from every insurer in India. Following nationalisation, GIC became the Indian re-insurer.

A general insurer has to rely on support of reinsurance to a great extent to achieve a homogenised and balanced book of business. The level of retention and reinsurance, the types of reinsurance resorted to and the advantage derived from judicious reinsurance trading are, to a great extent determined by the level of capital and free assets and the type of business written. Such an activity has a fundamental impact on the solvency of an insurer and therefore needs to be monitored by a regulator. For the last several decades the governments have found it necessary to establish or encourage optimal usage of capital in maintaining retained premium within a company. This concept has also been extended to the country as a whole and measures were initiated to optimise retained premiums within the country with a view to reduce outflow of funds through reinsurance and to strengthen national insurance markets.

Before nationalisation of non-life business, section 101A of the Insurance Act, 1938, provided for obligatory cessions by general insurance companies to India Reinsurance Corporation and Indian Guarantee and General Insurance Company (GIC). After nationalisation of general insurance business, these companies were merged with two of the subsidiary companies of GIC and by a notification under the General Insurance Business (Nationalisation) Act, GIC was notified as the Indian Reinsurer under section 101A of the Insurance Act, 1938. Section101A was made inapplicable to the four subsidiaries of GIC by a notification of June 1974 issued under the General Insurance Business (Nationalisation) Act. GIC receives 20% cessions from its subsidiaries by way of a voluntary arrangement. A unique feature in the Indian reinsurance market is that the GIC decides on a uniform reinsurance program for every line of business for their four subsidiaries. Proportional reinsurance is utilized predominantly.

Essentially the regulations applicable to a reinsurer are the same as for direct insurers in the matters of registration, accounts, investments, solvency margin, etc. Under the Indian Insurance Act, the Controller of Insurance has powers to call for and examine reinsurance treaties and contracts entered into by an insurer.[1]

[1] S.101C, Indian Insurance Act, 1938.

Scope of the Reinsurance business in India

The Reinsurance Programme is guided by the following objectives to:

a) maximise retention within the country;

b) develop adequate capacity;

c) secure the best possible protection for the reinsurance costs incurred;

d) simplify the administration of business.

In its newly-announced guidelines for transacting life reinsurance business, the Insurance Regulatory & Development Authority (IRDA) has stipulated that every domestic life insurer has to retain the maximum premium earned in India commensurate with his financial strength and volume of business.

This effectively means the life insurance companies, which intend to do business in the country don't have to follow non-life counterpart companies, have to cede minimum 20-30 percent of the total annual premium in the form of reinsurance premium to GIC, the official re-insurance outfit of the country.

In another distinction, IRDA has followed IRDA Act, 1999 for framing the re-insurance guidelines of non-life companies while it has implemented the necessary clauses of Insurance Act, 1938 (4 of 1938) for formulating the life-reinsurance guidelines.

The 1938 Act does not prescribe any compulsory cession of life insurance business to the National Re. The institution will continue its existing re-insurance policy which requires reinsurance for any individual policy with a sum assured of more than Rs 40 lakhs. However, as required by the IRDA, the initial 30% above Rs 40 lakhs has to be reinsured with the GIC. As there are not many high net-worth policies of this amount with LIC, the institution, at present, has a very small reinsurance transaction with Swiss Re.

Each of the new life insurance companies has to take the individual approval of the IRDA about their maximum limit beyond which they have to re-insure business.

Sources point out, the maximum amount for start-up companies may not be pegged at beyond Rs two to three lakhs. The IRDA (Life Insurance - Reinsurance) Regulations, 2000 will come into force on the date of their notification in the Official Gazette.

The procedures to be followed for reinsurance arrangements include:

- Every life insurer shall draw up a programme of reinsurance in respect of lives covered by him.
- The profile of such a programme, which shall include the name(s) of the reinsurer(s) with whom the insurer proposes to place business, shall be filed with the Authority, at least 45 days before the commencement of each financial year, by the insurer.
- The Authority may, if it considers necessary, elicit from the insurer any additional information, from time to time, and the insurer shall furnish the same to the Authority forthwith.
- The Authority shall scrutinise such a programme of reinsurance and may suggest changes, if it considers necessary, and the insurer shall incorporate such changes forthwith in his programme.
- Every insurer shall submit to the Authority statistics relating to its reinsurance transactions in such forms as it may specify, together with its annual accounts.

IRDA also has laid down elaborate guidelines for the reinsurance companies which would do business with the Indian companies:

- The reinsurer, chosen by the insurer, should enjoy a credit rating of a minimum of BBB of Standard and Poor or equivalent rating of any international rating agency.
- The placement of business by the insurer with any other reinsurer shall be with the prior approval of the Authority.
- No programme of reinsurance shall be on original premium basis unless the Authority approves such programme.
- Provided further that no life insurer shall have reinsurance treaty arrangement with its promoter company or its associate/group company, except on terms which are commercially competitive in the market and with the prior approval of the Authority, which shall be final and binding.

IRDA regulations also stipulate that every insurer who wants to write inward reinsurance business shall adopt a well-defined underwriting policy for underwriting inward reinsurance business. An insurer shall ensure that decisions on acceptance of reinsurance business are made by persons with adequate knowledge and experience, preferably in consultation with the insurer's appointed actuary. The insurer has to file with the Authority, at least 45 days before the commencement of each financial year, a note on its underwriting policy indicating the classes of business, geographical scope, underwriting limits and profit objective, says the IRDA guidelines.

The insurer has to file any changes to the note referred to in sub-regulation (3) as and when a change in underwriting policy is made.

There is no prohibition on any insurer from reinsuring with any Indian reinsurer or other insurer the entire sum assured on any policy or any portion thereof exceeding the specified percentage. Hence an insurance company can reinsure its policies abroad after the compulsory ceding to the Indian insurance companies.

The Marine Insurance Act, 1963 holds that an insurer effecting a contract of marine insurance has an insurable interest in his risk so that he may reinsure the said risk. It also enacts that the original assured with whom the insurer has effected the contract of marine insurance, has no right or interest in respect of reinsurance effected by his insurer but if the policy otherwise provides, the original assured may have such right or interest on his insurer’s reinsurance.

Reinsurance litigation

India today does not have any reinsurance litigation to speak of due to the present structure of the insurance industry where GIC and its subsidiaries have handled all general reinsurance. With the opening up of the insurance and reinsurance sector to private players however, the structure is all set to undergo a complete transformation. With the entry of private reinsurance companies, there will be a wide range of reinsurance policies on offer to the insurance companies to choose from. There will also be an increase in reinsurance litigation as there will not be any such understanding between the insurance and reinsurance companies (as there was in the old setup between the GIC and its subsidiaries) in what promises to be a very competitive Indian insurance market.

Reinsurance policies on offer will have to be studied and adapted to suit the Indian market but looking at the international legal scene it looks like reinsurance litigation will be a regular part of the Indian legal system. ❖

LEGAL SNAPSHOTS

DoT approval for wireless in local loop (WLL) services

The Department of Telecommunications (DoT) has decided to accept the Telecom Regulatory Authority of India's (TRAI) recommendations of allowing basic telecom operators to offer short-distance mobile telephone services based on WLL technology. This will bring down the cost of short-distance mobile calling to one-twentieth of current cellular rates. TRAI also recommended that cellular operators be permitted to provide fixed line services using their existing GSM networks. The lowering of the quantum of revenues shared by cellular operators with the government from 17 percent to 12 percent was also suggested. Both the basic and cellular operators are opposed to the implementation of the TRAI recommendations. The basic telecom service operators do not want their mobile telephone services to be restricted to "local areas", i.e. short-distance calling areas such as a city or town. The cellular operators do not want basic operators to be allowed to offer mobile telephony at all. ❖

Fourth cellular operators to pay two part license fee

The government has issued guidelines for bids for the fourth cellular operator, thus setting the scene for stiffer competition and leaner margins for cellular operators. The guidelines provide that the license fee for the fourth operator will have two components – first, a one-time entry fee which will be the same as the highest bid, and second the sharing of 17 percent of the operator's annual gross revenue. Successful bidders would have to pay the entry fee before signing the license agreement. Existing operators cannot bid for a fourth license of the areas they already operate in. Tenders for the bidding process would be floated by the end of next month and the evaluation process would begin by April 2001. ❖

Basic Services thrown open

The Government allowed unlimited competition in basic telecom services with one-time entry fee upto Rs. 115 crores and revenue sharing 12% towards license fee. Licenses for the basic services would be issued for a period of 20 years and be extendable by another 10 years. The total foreign equity capital in the company is limited at 49%. The license fee for the operators has been fixed at 12, 10 and 8 percent of annual gross revenue for A, B and C circles respectively. The operators have to provide financial bank guarantees of an amount equal to the entry fee, subject to a maximum of Rs. 20 crores for each circle. Basic operators have been allowed to provide limited mobility on their networks within the short distance charging area or the local call area in the circle. The bidding process for new basic services licenses opened on January 2001. ❖

DoT plans to bring back CPP

In a bid to provide a level playing field to the cellular operators compared to the basic operators in the wireless local loop (WLL) arena, the Department of Telecommunications (DoT) is considering bringing back the concept of "calling party pays" (CPP). Currently, a cellular subscriber has to pay for both the incoming and outgoing calls, while the basic telecom subscriber has to pay for only outgoing calls. DoT is looking at allowing CPP for the cellular subscriber as a sop in light of the fact that it is allowing the basic telecom service providers to offer limited mobile services through WLL. ❖

Stamp duty revamped

The Maharashtra government has announced a 90% concession in stramp duty to information technology (IT) companies for all purposes, ranging from registration as well as mergers and acquisitions. Accordingly, the Bombay Stamp Duty Act has been amended to charge 10% of the aggregate of market value of the shares issued or allotted in exchange or otherwise and the amount of consideration for the said amalgamation, provided the amount shall not exceed the amount equal to 7% of the true market value of the immovable property located in Maharashtra.

For other sectors, the stamp duty on mergers, demergers and amalgamation of companies has been restructured and made uniform all over the state. Financial institutions, including banks will now be treated on par with other companies. The restructuring of banks will also attract stamp duty on those transactions.❖

Consolidated accounts for companies now accepted by ICAI

In accordance with SEBI's insistence on consolidated accounts by corporates, the Institute of Chartered Accountants of India (ICAI) has come out with a draft of the proposed accounting standards on consolidated financial statements. The accounting standard for consolidated statements, to be made mandatory, proposes that an enterprise having one or more subsidiaries present consolidated financial statements. The accounting standard will apply to all subsidiaries except in cases where control of the parent on a subsidiary is intended to be temporary or where a subsidiary operates under severe long-term restrictions which significantly impair its ability to transfer funds to the parent.

Intra-group balances, intra-group transactions and resulting unrealised profits would be fully eliminated. Unrealised losses resulting from intra-group transactions would also need to be eliminated unless the costs cannot be recovered.

SEBI has prescribed that it will be compulsory for listed companies to present consolidated financial statements from April 1st, 2001. ICACI's draft states that the consolidated financial statements would be in addition to the separate financial statements. ICAI's final drafts are likely to be in place by April or May this year and would become applicable for companies closing their financial year in June 2001 or later. ❖

New bank licensing guidelines

The Reserve Bank of India (RBI) has barred corporate houses from promoting banks in its new bank licensing guidelines. A number of large corporate groups had drawn up mega plans to enter the banking sector. Like many similar occasions in the past, this time also, RBI does not seem comfortable about letting corporate India into banking. There is however one change. The new rules will allow non-banking finance companies to convert into banks, subject to their meeting certain prudential norms. The guidelines state that RBI will issue only two to three additional licenses within the next three years. The additional licenses will include those granted to non-banking finance companies seeking conversion into banks. ❖

FIPB clearance no longer required for FII's to invest in domestic companies

Foreign institutional investors (FII's) will no longer be required to seek clearance from the Foreign Investment Promotion Board (FIPB) to invest in domestic companies, provided such investments by them are within the sectoral caps and conform with the regulations of the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI). The provisions of Press Note 18 will not be applicable to investments made by FII's such as Asian Development Bank, International Finance Corporation and Commonwealth Development Corporation, in Indian companies. Press Note 18 of the 1998 series of the Ministry does not allow foreign investors, with an existing financial technical or trademark collaboration in an existing domestic company engaged in the same or allied activity, to come through the automatic route for new investment proposals. Such proposals are considered by FIPB on merit.

The exception has been made considering that these institutions have been picking up equity stake in domestic companies from time to time, without technical or trademark collaboration. ❖

GoM clears Convergence Bill

The group of ministers on information technology and telecom, headed by the finance minister Mr. Yashwant Sinha, has approved the draft Communications and Convergence Bill, 2001, which proposes to set up a super convergence regulator subsuming existing regulators such as the Telecom Regulatory Authority of India and the proposed broadcasting authority. The super regulator to be called the Communications Commission of India will be along the lines of the US Federal Communications Commission. The sole licensing authority for the information technology, broadcasting and communications sectors, it will also manage and allocate spectrum for commercial purposes. The function of the Commission would be to facilitate and regulate all aspects of telecommunication and broadcasting and other communications, including all aspects of convergence in these services. ❖

Indian portfolio managers allowed to manage overseas funds

Indian portfolio managers will now be able to manage moneys raised overseas following a change in the SEBI (Foreign Institutional Investors)

Regulations, 1995, which creates a level playing field for foreign and Indian portfolio managers. The Indian portfolio managers will be granted a deemed FII status to allow them to manage assets raised from overseas investors. However, these deemed FIIs will not be allowed to avail of benefits like convertibility with respect to their proprietary trading activities. ❖

Payment to managers as per Companies Act rule

The Department of Company Affairs (DCA) recently issued a directive forbidding companies not making adequate profit to pay remuneration to their managerial personnel beyond the limits prescribed in Schedules XIII of the Companies Act, 1956. The order follows a spate of requests that have been received by DCA from loss-making companies for clearance to pay higher than permissible remuneration. For the purpose of calculating remuneration, companies are required to include any expenditure incurred by it resulting in any benefit to the employee. ❖

FDI up to 49% in domestic airlines

The civil aviation ministry has short-circuited the decision of the Group of Ministers (GoM) on foreign direct investment (FDI) to allow 51% foreign investment in domestic airlines. The GoM has been forced to reverse the foreign investment limit in domestic airline companies to 49%. The current limit on FDI in domestic airlines is 40% but non-resident Indians/overseas corporate bodies (NRIs/OCBs) could own up to 100% equity. The argument of the ministry of civil aviation is that majority stake in domestic airline companies has to be held by Indians so that they can utilise India's bilateral rights to operate on overseas destinations. ❖

SEBI sub-group plans retain boost to derivatives trade

The SEBI committee on derivatives has set up a three-member sub-group to look at increasing the retail participation in the derivatives market. Since the retail participation in the cash segment of the stock markets has been primarily through the sub-brokers, SEBI feels that sub-brokers should be co-opted into the derivatives segment as well. So far sub-brokers have not been able to participate in this segment because of SEBI's gross margin requirement norms. The three-member sub-group has been set up to look at how sub-brokers can play a role in this segment while maintaining norms of client level margins. ❖

SEBI to keep tabs on broker directors

SEBI has finally decided to tighten the screws on broker directors and key functionaries at stock exchanges. SEBI has put together a draft report which outlines norms to prevent conflicts of interest, but more importantly plans to discuss the issue of barring broker directors from indulging in proprietary trading during their tenure. ❖

BSNL to charge local up to 200km

BSNL has extended the local call facility up to a distance of 200 km. The call charges and monthly rental changes were subsequently revised. Under the new scheme, the pulse rate for calls in the distance of 50 to 100 km is being increased to 120 seconds as against 15 seconds, thereby effectively reducing the call charges to 1/8th of the existing charges. The slab of 100 km to 200 km, the rates are being reduced to half of the prevailing rates by doubling the pulse rate to 30 seconds from 15 seconds. This facility would apply only in respect of intra-cricle calls made by the BSNL subscribers.

The monthly rentals have been hiked on the following guidelines:

- For customers in an exchange with a capacity of 1,000 lines and above, the rental would be Rs. 110 compared to the existing Rs. 100;
- For urban low calling subscribers (up to 200 calls per month) coming under the same exchange the new rental would be Rs. 120 as against Rs. 100;
- For rural customers in an exchange capacity of 30,000 lines and above but below one lakh lines, the new rental is Rs. 150 against Rs. 137.50;
- For urban low calling subscribers in this category, the new rental is Rs. 180 compared to existing Rs. 137.50;
- In exchanges where the system capacity is above one lakh but below three lakh lines, the rental rates are being increased to Rs. 210 from Rs. 180 for customers, whereas for the urban low calling users coming under a similar exchange, the rental is Rs. 250 as against Rs. 180. ❖

BSNL plans expansion

Bharat Sanchar Nigam Ltd (BSNL) plans to roll out its cellular service in 600 cities across the country. The roll out would be in two phases spanning two years wherein BSNL would install 40 lakh GSM connections. The first phase envisages a cost of Rs. 600 crores in which 15 lakh lines would be established in rural and urban areas, In the second phase about 25 lakh lines would be installed at an approximate cost of Rs. 1,500 crores. The company also plans to roll out WLL services. ❖

Meet the A.R.A. LAW Team

In each issue, we will be profiling one person who is part of A.R.A. LAW. They will also be sharing their experience of working at A.R.A. LAW.

VIVEK DASWANEY obtained his Law Degree from the G.J.A Law College (University of Bombay) in 1998 and his Masters degree (L.L.M., University of Bombay) in 2000. The subjects of specialisation for L.L.M. were company law, commercial law, tax laws, intellectual property rights and labour laws. He has a one-year post-graduate diploma in International Trade Management. Vivek is a keen elocutionist and has taken part in debates and group discussions throughout college. He has also participated in inter-college sports competitions. Vivek has been with *A.R.A.* LAW since December 1997, during which time he has worked mainly on joint ventures, corporate law including tax related issues, dealing with the Registrar of Companies, Reserve Bank of India and other government agencies, and litigation matters. Vivek is currently studying for the Solicitors exam. This is what Vivek thinks about work at A.R.A. LAW:

I think A.R.A. LAW is a perfect example of a new generation law firm. While effectively as well as efficiently adapting itself to the constantly changing global legal and business arena, it still forms an integral part of the traditional Indian legal community.

Being a member of the A.R.A. family not only gives me a feeling of security but also provides me with ample opportunity to develop my skills and my potential. Working at A.R.A. LAW has been and continues to be a learning experience. I say this not only because A.R.A., being a fairly new firm, is open to accepting and handling matters from various areas, but because of the ease and efficiency in which it manages to learn and master a particular subject. Needless to say, this is possible because of the contribution of the partners and every member towards team work, administration, research, negotiations and last but not the least, building and developing good relations with senior counsels and jurists in the profession. My thoughts about A.R.A. would be incomplete without appreciating the camaraderie and humour shared between all. I'm happy to be a member of the A.R.A. team. ❖

EDITOR IN CHIEF
Rajesh N. Begur
EDITORIAL TEAM
Beryl Moses
Krishna Patel
Statira Ranina
CIRCULATION
Beryl Moses
Melanie D'souza
M.P. Madhusoodanan

LEGAL EYE is published by A.R.A. LAW for private circulation only.

This newsletter is intended to provide an informational summary of the breaking legal developments in India as they happen. It is not intended to provide definitive legal advice in connection with any particular article, and counsel should be consulted with respect to any of the articles.

Should you require any clarifications or additional updates, please feel free to contact us at:

A.R.A. LAW
Agra Building, 1st Floor
121 M.G. Road
Fort, Mumbai 400023
India
Tel: +91 22 2631700
Fax: +91 22 2631800
e-mail: aralaw@vsnl.com