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Insurers may face criminal charge for new Ulip launch

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Insurance companies planning to go ahead with the launch of new Unit Linked Insurance Plans (Ulips) may have to face criminal prosecution from the Securities and Exchange Board of India (Sebi), say experts.

This assumes significance as insurance companies have said that they will approach only the Insurance Regulatory and Development Authority (Irda) and not Sebi before launching new Ulips. Insurance companies have confirmed to Business Standard that they are working on new Ulips and may even launch these before the current impasse between Sebi and Irda over regulating these products is resolved. This is because the product constitutes a bulk of fund inflows.

Sebi had said on April 13 that insurers would have to register new products with it. Replying to Sebi's move, Irda, which has been regulating Ulips for the four years since the product was first launched, asked insurers to ignore the capital market regulator and continue as usual.

"The Sebi order or the latest clarification issued on April 13 still stands valid. Insurance firms planing to issue fresh Ulips without Sebi nod may be liable for criminal prosecution," said Siddharth Shah, managing partner with Mumbai-based law firm Nishit Desai & Associates.

While Sebi declined comment, legal experts said the former's order could not be set aside by Irda. "Only the Securities Appellate Tribunal, high courts and the Supreme Court have the authority to set aside a Sebi order," said former Sebi executive director Sandeep Parekh.

Both Parekh and Shah are of the view that Sebi can file for criminal prosecution against those violating its rules under Section 24 of the Sebi Act, 1992. By Section 24, prosecution proceedings can be initiated against a person for contravention of any of the provisions of the Sebi Act, rules or regulations. Violation of this Section becomes a cognizable offence if, prima facie, there is evidence to file a complaint at a magistrate's court or police. The penalty is imprisonment for one year.

Replying an to email query from Business Standard, Irda said Ulips were insurance contracts to which the Insurance Act, 1938, the Irda Act, 1992, and Irda regulations apply.

"Insurance companies who sell Ulips are registered under the said enactments. The insurance companies are therefore acting in accordance with the statutory directions of Irda to conduct their insurance business according to the said enactments. Consequently, Irda is unable to understand as to how any criminal prosecution by any party can be maintained against sale of Ulips by insurance companies," said an Irda official.