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IRDAI NOTIFIES REQUIREMENTS FOR FOREIGN OWNED INSURANCE INTERMEDIARIES

18 November 2019

On 1 November 2019, the Insurance Regulatory and Development Authority of India (IRDAI) notified the IRDAI (Insurance Intermediaries) (Amendment) Regulations 2019 (Intermediaries Regulations).

Background

The Finance Minister, Nirmala Sitharaman in her budget speech to the Parliament of India on 5 July 2019 announced the Government's intention to permit 100% FDI in insurance intermediaries, from the current cap of 49%. On 2 September 2019, the Ministry of Finance notified the Indian Insurance Companies (Foreign Investment) Amendment Rules 2019 (Insurance FI Rules) which sets out certain conditions for foreign owned insurance intermediaries. These include (a) taking prior permission of the IRDAI for repatriation of dividends by the foreign shareholder; (b) not making payments to related entities of the insurance intermediary beyond what is permitted by the IRDAI; (c) disclosure of all payments made to related entities in the specified format; (d) bringing in latest technological, managerial and other skills; and (e) the composition of the board of directors and key management persons being complaint with the stipulations specified by the IRDAI.

Changes by the Intermediaries Regulations

The Intermediaries Regulations effect modifications to the various IRDAI regulations governing intermediaries to reflect the changes brought about by the Insurance FI Rules, including:

- the foreign investment cap limit of 49% for intermediaries has been removed;
- the provisions regarding compliance with the Guidelines on 'Indian Owned and Controlled' (IOCC Guidelines) prescribed by IRDAI to the extent applicable to insurance intermediaries have been done away with;
- introducing an undertaking requirement on insurance intermediaries with majority foreign shareholding to show compliance with the conditions mentioned in the Insurance FI Rules, including:
    - requirement of at least one amongst the chairman of the board, CEO, principal officer or the managing director being a resident Indian citizen;
    - prior permission of the IRDAI will be obtained for repatriating dividend;

- no payments will be made to any related parties of the insurance intermediary beyond 10% of the total expenses of the company in any financial year; and
- majority of the key management persons and directors on the board are resident Indian citizens.

Comments

- The move to allow 100% foreign investment in insurance intermediaries is a welcome move and will help bring in the latest technological, managerial skills in insurance intermediaries as envisaged by the Government.
- The removal of the IOCC Guidelines and the conditions under the Intermediaries Regulations is a path breaking development and will further improve deal activity and interest in this space. It needs to be seen how the IRDAI regulates the rights of foreign minority investors in insurance intermediaries.
- It is pertinent to note that though the reference to the IOCC Guidelines have been removed from the various regulations governing insurance intermediaries, the IRDAI circulars dated 19 October 2015 and 20 November 2015 which brings insurance intermediaries within the fold of the IOCC Guidelines has not been rescinded and/or amended to remove references to insurance intermediaries.
- With regard to payment to related parties of the insurance intermediaries, while the Insurance FI Rules require the insurance intermediary to obtain IRDAI specific permission, the IRDAI has imposed a blanket restriction on payments to related parties beyond 10% of the 'total expenses' of the insurance intermediary in a financial year. The term 'total expenses' has been left undefined and it would be interesting to see how the IRDAI construes the same. Insurance intermediaries will have to maintain a fine balance between bringing in latest technological and managerial skills and not exceeding the 10% threshold of payments to related parties.

The changes to the Foreign Exchange Management (Non-debt Instruments) Rules 2019 (*erstwhile FEMA (Transfer or Issue of Security by a Person Resident outside India) Regulations 2017*) are now awaited in order for the FDI relaxation for investment in insurance intermediaries to fully take effect.

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