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UPDATE

ERGO

Analysing developments impacting business

74% FOREIGN INVESTMENT IN INDIAN INSURANCE COMPANIES | ONE STEP CLOSER TO FULL IMPLEMENTATION

24 May 2021

The final form of amendments to the Indian Insurance Companies (Foreign Investment) Rules, 2015 (Foreign Investment Rules) have now been notified, with effect from 19 May 2021 (Amendment). Our previous Ergo dated 21 April 2021 had analysed the draft amendments published on 15 April 2021 and also highlighted the key implications and next steps. The Amendment is a key part of the legislative and regulatory changes that are currently being implemented to increase the foreign investment cap in Indian insurance companies from 49% to 74% (also see our Ergo dated 4 February 2021).

The Amendment follows the conclusion of a stakeholder consultation process, which took place from 15-30 April 2021. There are no material differences between the Amendment and the draft amendments published in April.

Summary of the Amendment

- ***Residency requirement for directors and KMPs and additional independent directors***. Indian insurance companies with foreign investment will now need to ensure that: (i) a majority of their directors; (ii) a majority of their key management persons (KMPs); and (iii) at least one of the board chairperson, the managing director and the CEO, are "*resident Indian citizens*". In addition, if the level of foreign investment is more than 49%, at least half or one-third of the board (depending on whether the chairperson is independent) will need to comprise independent directors.

- ***Additional layer of solvency control for insurers with more than 49% foreign investment***. Indian insurance companies with more than 49% foreign investment will now need to retain at least 50% of their net profits as part of their general reserves if, in the relevant financial year, they have paid a dividend on their equity shares and their solvency margin was lower than 1.2 times of the control level of solvency.

Comment

Although the government has not softened the solvency requirements, the fact that the changes have been implemented so quickly is encouraging. However, to give full effect to the changes, the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and the consolidated FDI policy published by the Department of Industrial Policy and Promotion will need to be amended (or a press note or similar clarificatory notification published). Given the quick progress to date, these changes are expected to occur very quickly.

Once this is complete, two points will remain. As indicated in our Ergo dated 21 April 2021: (1) the detailed governance requirements under the guidelines on Indian owned and controlled dated 19 October 2015 are inconsistent with the amended Insurance Act, 1938 and the amended Foreign Investment Rules and these guidelines will need to be withdrawn or repealed; and (2) necessary amendments to the operational regulations issued under Indian exchange control laws will need to be made to provide for a 74% foreign investment cap. We expect that these issues will also be addressed shortly.

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