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Analysing developments impacting business

100% FOREIGN INVESTMENT PERMITTED IN INSURANCE INTERMEDIARIES

30 April 2020

On 27 April 2020, the Ministry of Finance notified the long-awaited Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules 2020 (NDI Amendment) to permit 100% foreign direct investment (FDI) in insurance intermediaries under the automatic route.

Background

The Department for Promotion of Industry and Internal Trade through Press Note No. 1 (2020 series) dated 21 February 2020 brought in amendments to the consolidated FDI Policy of 2017 to permit 100% FDI in insurance intermediaries. The NDI Amendment has been introduced in furtherance of this press note.

The liberalisation to allow 100% foreign shareholding in insurance intermediaries started with the introduction of the Indian Insurance Companies (Foreign Investment) Amendment Rules 2019 (FI Amendment Rules) on 2 September 2019. After the introduction of the FI Amendment Rules, Insurance Regulatory and Development Authority of India (IRDAI):

- on 30 October 2019, notified the IRDAI (Insurance Intermediaries) (Amendment) Regulations 2019 (Intermediaries Regulations), to amend the regulations governing intermediaries to allow 100% FDI and to prescribe compliance requirements for insurance intermediaries with majority foreign ownership (FOIs);
- on 19 November 2019, issued a circular to notify that the Guidelines on 'Indian Owned and Controlled' will be inapplicable to insurance intermediaries; and
- on 3 January 2020 notified the 'Guidelines on repatriation of dividends by insurance intermediaries which have majority by foreign investor' (Dividend Guidelines).

Our updates on these developments are available [here](#) and [here](#).

Conditions for 100% FDI in an insurance intermediary

The FI Amendment Rules, Intermediaries Regulations and Dividend Guidelines have prescribed certain conditions that need to be satisfied by an FOI. The key conditions include:

- prior approval of the IRDAI for repatriation of dividends;

- no payments can be made to any related party of the FOI beyond 10% of the total expenses of the FOI in any financial year. Mandatory disclosure of such payments to IRDAI;
- bringing in latest technological, managerial and other skills;
- majority of the directors on the board and key management persons (including one amongst the chairperson of the board, CEO, principal officer or managing director) must be resident Indian citizens; and
- setting out the procedure and considerations for repatriation of dividend. Details in this regard are available [here](#).

It has also been clarified that where an entity whose primary business is not insurance (such as a bank), is allowed by IRDAI to function as an insurance intermediary, the foreign equity investment caps applicable in the sector in which such entity operates will continue to apply, subject to the condition that the revenues from the primary business (i.e. non-insurance related business) must exceed 50% of their total revenues in any financial year.

Comments

- While the move to allow 100% FDI in insurance intermediaries is a welcome move, some of conditions (described above) may be viewed as onerous by foreign investors.
 - As 'Indian Owned and Controlled' requirements are no longer applicable to insurance intermediaries; intermediaries with foreign shareholders could review existing agreements to evaluate additional rights (including potential renegotiation of their existing rights).
 - It is unclear whether conditions other than sectoral caps contemplated under NDI Amendment, FI Amendment Rules, Intermediaries Regulations and Dividend Guidelines (such as restrictions on payments to related parties, repatriation of dividends, board composition etc.) should apply to entities engaged in insurance intermediation, whose core business is not insurance intermediation. Greater clarity on this aspect is expected in the days to come.
 - Restrictions on payments to related parties, repatriation of dividends, board composition etc. appear to apply only to FOIs. It will be interesting to see whether IRDAI will apply these conditions to Indian owned and controlled intermediaries with minority foreign shareholders.
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