Government clarifies foreign investment limit for insurance intermediaries

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Introduction

Foreign investment in the insurance sector has been a widely debated issue for a number of years. The Indian insurance sector was liberalised in 2000. Through simultaneous amendments to the Insurance Act 1938, foreign investment in Indian insurance companies was permitted, but restricted to 26% of the total equity share capital.

It was intended that the cap on foreign investment in insurance companies would be increased incrementally. Following the liberalisation of the insurance sector and the formation of initial joint ventures, several stakeholders and potential foreign investors began requesting that the government consider increasing the foreign investment limits to 49%. After much debate by various political parties and others, the Insurance Laws (Amendment) Bill 2008 was announced, proposing that foreign investment limits for insurance companies be increased to 49%. However, the bill has been delayed for several years and is yet to receive the assent of Parliament.

In mid-2013, the government liberalised foreign direct investment for the insurance sector (for further details please see "Insurance industry poised for change"). In a decision widely anticipated by foreign investors in India's insurance sector, the permitted level of foreign direct investment is set to increase to 49% following approval by Parliament. However, this decision will come into force only once Parliament clears the bill. Recent press reports indicate that Parliament is likely to consider the bill following the elections in May 2014, but no confirmation has been given on the session of Parliament in which this will occur.

Limits for insurance intermediaries

Debate has also centred on foreign investment limits for insurance intermediaries. Unlike Indian insurance companies, for which the foreign investment limit is specified in the Insurance Act 1938, foreign investment limits for insurance intermediaries have not been so clear. Section 2(f) of the Insurance Regulatory and Development Authority (IRDA) Act 1999 contains an inclusive definition of 'insurance intermediary', which expressly includes insurance brokers, reinsurance brokers, insurance consultants, surveyors and loss assessors.

The IRDA issued regulations in 2000 and 2002 that govern the licensing and operation of surveyors and loss assessors and brokers (both direct and reinsurance brokers), respectively, but is yet to issue regulations applicable to insurance consultants. The IRDA has also issued regulations for other intermediaries (eg, corporate agents, third-party administrators, insurance repositories and web aggregators) from time to time. However, these regulations have not specified standard rules for insurance intermediaries in terms of the permitted foreign investment. Similarly, the Insurance Act specifies that a 26% cap on foreign investment will apply to all Indian insurance companies, but does not extend these provisions to insurance intermediaries.

Applicable legislation

In this context, the relevant IRDA regulations are as follows:

- The IRDA (Insurance Brokers) Regulations 2002 and the IRDA (Third-Party Administrators – Health Services) Regulations 2001 expressly limit foreign investment to 26% for these entities and specify that the method of calculation of foreign investment limits would be the same as that applicable to Indian insurance companies.

- The IRDA (Insurance Surveyors and Loss Assessors) (Licensing, Professional Requirements and Code of Conduct) Regulations 2000 did not expressly apply foreign investment limits to insurance surveyors and loss assessors. However, a 2013 amendment to these regulations introduced a 26% cap on foreign investment for corporate surveyors; all existing corporate surveyors with foreign investment in excess of 26% were asked to reduce their foreign investment by the time of their licence renewal.
- On November 21 2011 the IRDA Guidelines on Web Aggregators were issued, under which eight web aggregators were licensed. The guidelines specified no limits on foreign investment. However, the IRDA (Web Aggregators) Regulations 2013 specified that a 26% cap on foreign investment would apply to web aggregators; all licensed web aggregators with foreign investment in excess of 26% were asked to reduce their foreign investment within one year of the introduction of the regulations.
- The IRDA (Licensing of Corporate Agents) Regulations 2002 and the IRDA Guidelines on Licensing of Corporate Agents 2005 do not expressly apply foreign investment limits to corporate agents. While corporate agents whose main business is not the distribution of insurance products (eg, banks and non-banking finance companies) are bound to comply with the foreign investment limits applicable to their main business, those for which acting as a corporate agency is their main business (ie, exclusive corporate agents) are not subject to compliance with any limits on foreign investment.
- The IRDA Guidelines on Insurance Repositories and Electronic Issuance of Insurance Policies 2011 specify that no foreign investment in insurance repositories will be permitted.

In addition, the consolidated FDI policy issued by the Department of Industrial Policy and Promotion (DIPP) and amended at regular intervals specifies that foreign investment for the insurance sector will be permitted, subject to a limit of 26%.

DIPP clarification

On February 4 2014 the DIPP issued a press release clarifying that the 26% limit on foreign investment (including foreign direct investment, foreign institutional investment and investment by non-resident Indians) will apply to insurance companies, insurance brokers, third-party administrators, surveyors and loss assessors.

While the press release clarified the position with respect to the insurance intermediaries named therein, it has not clarified the position in terms of other insurance intermediaries (eg, corporate agents, web aggregators and insurance repositories). Thus, these insurance intermediaries will be bound to comply with the foreign investment limits (if any) specified in the IRDA regulations that govern their licensing and operation.

Comment

The DIPP's clarification came shortly after the IRDA formed a committee to investigate whether foreign direct investment restrictions should be relaxed or removed for insurance intermediaries. The committee, which is expected to submit its report in the coming months, was formed after several requests were made to the IRDA from various stakeholders and is also expected to look into international practices in this regard. Following the DIPP's clarification, the IRDA's reaction to the committee's report will be closely analysed, particularly if the committee's recommendations differ from those issued recently by the DIPP.

Additionally, if the Insurance Laws (Amendment) Bill is passed by Parliament, the foreign investment limits will automatically increase for insurance companies. However, this increase will not apply directly to insurance intermediaries, unless the DIPP and the IRDA issue further clarification in this regard.

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