

Insurance - India

Foreign direct investment in insurance sector: industry still awaiting clarity

Contributed by **Tuli & Co**

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Introduction

The Indian insurance regulatory regime has experienced sweeping changes in 2015. In particular, the Insurance Laws (Amendment) Act 2015 introduced much-anticipated reforms, including:

- increasing the foreign investment cap in the insurance sector to 49%;
- permitting overseas reinsurers (which are not admitted in India) to open branch offices in India; and
- facilitating the entry of Lloyd's of London under regulations yet to be finalised.

Latest reforms

In order to implement the increased foreign investment cap, the Ministry of Finance and the government ratified the Indian Insurance Companies (Foreign Investment) Rules 2015. Further, the Department of Industrial Policy and Promotion and the Ministry of Commerce and Industry ratified Press Note 3/2015. The press note provides that the Ministry of Finance's Foreign Investment Promotion Board must approve all foreign direct investment (FDI) proposals which bring an Indian insurer's total foreign investment above 26% (for further details please see "[New rules for insurers – one step closer to foreign direct investment reforms](#)").

Although the foreign investment rules and press note provided much-needed clarification in relation to increases in foreign investment in insurers and intermediaries, certain aspects are still unclear, including how foreign investment in Indian promoters will be calculated (which will in turn affect the calculation of foreign investment in insurers and intermediaries).

In addition to the aforementioned reforms, the Insurance Regulatory and Development Authority of India (Transfer of Equity Shares of Insurance Companies) Regulations 2015 were introduced. The regulations require Insurance Regulatory and Development Authority approval for all transfers of an insurer's shares, similar to the requirement prescribed under the Insurance Act 1938.

The regulations specifically prescribe the conditions for obtaining approval for transfers of shares held by Indian promoters and foreign investors. For both of these categories of shareholder, the Insurance Regulatory and Development Authority can prescribe conditions in relation to, among other things, minimum lock-in periods and the infusion of additional capital at periodic intervals in order to ensure that insurers comply with the solvency requirements at all times.

In addition, the regulations provide for a scenario in which Indian promoters hold 26%, Indian investors hold 25% and foreign investors hold 49% of the paid-up equity share capital of an Indian insurer. In cases where the Indian investors are completely unrelated to the Indian promoters, the foreign investor is likely to be the single largest shareholder of the insurer. In its capacity as the single largest shareholder, the foreign investor may be in a position to control policy decisions and, in effect, guide the insurer's operations. This may conflict with the amendment act, the foreign investment rules and the press note, all of which require insurers to be Indian owned and controlled at all times.

The latest addition to the FDI reforms is the Insurance Companies (Foreign Investment) Amendment Rules 2015, which were ratified by the Ministry of Finance on July 3 2015. The amendment rules contain a proviso to the definition of 'Indian ownership' which states that the foreign holding of an Indian promoter or investment company will be determined in accordance with the definition of 'total foreign investment', as set out in the foreign investment rules. The definition of 'total foreign investment' provides that foreign investment in an Indian company is the sum of the direct and indirect foreign investment by foreign investors, calculated in accordance with the Registration of Indian Insurance Companies Regulations 2000 (Registration Regulations), read with Paragraph 4.1.4 of the Consolidated Foreign Direct Investment policy. Hence, foreign investment in an Indian promoter or

Author

Neeraj Tuli



investment company must also be calculated in accordance with Rule 11 of the registration regulations.

Comment

Although some news reports indicate that the amendment rules have provided clarity in relation to the calculation of foreign investment in promoters and investment companies (which in turn affects the computation of foreign shareholding of insurers), the exact interpretation of the amendment rules is still linked to Rule 11 of the registration regulations.

Therefore, the insurance industry is awaiting further clarifications. Many anticipate that the clarifications will state that if a foreign investor holds shares in both the Indian insurer and the promoter of the Indian insurer, only then will its shareholding in the Indian promoter be considered when computing the insurer's total foreign shareholding. In such cases, investments by other foreign investors in the Indian promoter will not be counted downstream.

In relation to the registration regulations, the Insurance Regulatory and Development Authority released an exposure draft on the Registration of Indian Insurance Companies (Seventh Amendment) Regulations 2000 (Exposure Draft). Although the exposure draft provides an amended version of Rule 11, it does not clearly set out the view discussed above.

The insurance industry is eagerly awaiting further clarifications and amendments in order to solidify their investment plans and determine the manner in which the Insurance Regulatory and Development Authority and the Foreign Investment Promotion Board will apply the foreign investment rules, the registration regulations and the consolidated FDI policy.

For further information on this topic please contact [Neeraj Tuli](mailto:n.tuli@tuli.biz) at Tuli & Co by telephone (+91 11 4593 4000) or email (n.tuli@tuli.biz). The Tuli & Co website can be accessed at www.tuli.biz.

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