Insurance - India

New rules for insurers – one step closer to foreign direct investment reforms

Contributed by **Tuli & Co**

March 10 2015

Author

Neeraj Tuli

The Insurance Laws (Amendment) Ordinance 2014, promulgated on December 26 2014, brought a slew of reforms to the legal framework governing the insurance sector. While the ordinance remains a temporary law, the Insurance Regulatory and Development Authority (IRDA) and the central government will likely establish a number of new rules and regulations and amend existing provisions in order to implement the ordinance.

Insurance Companies (Foreign Investment) Rules

As one of the first steps taken to implement the ordinance, the Ministry of Finance ratified the Insurance Companies (Foreign Investment) Rules 2015 on February 19 2015. The main features of the rules are as follows:

- Insurers cannot allow total foreign investment in their equity shares by foreign investors – including portfolio investors – to exceed 49%. 'Total foreign investment' is defined as the sum of direct and indirect foreign investment, calculated in accordance with the IRDA (Registration of Indian Insurance Companies) Regulations 2000, read with Paragraph 4.1.4 of the Consolidated Foreign Direct Investment (FDI) Policy issued by the Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry. However, Paragraph 4.1.4 states that the method for determining direct and indirect foreign investment under the FDI Policy does not apply to the insurance sector, which is governed by other regulations.
- Foreign direct investment of up to 26% of the total paid-up equity of an insurer is allowed automatically (ie, without the need for prior government approval).
- The Foreign Investment Promotion Board must approve all foreign direct investment proposals which bring an insurer's total foreign investment above 26%.
- Investment made by foreign venture capital investors (as permitted under the Foreign Exchange Management (Deposit) Regulations 2000) is considered foreign direct investment.
- Insurers must ensure that ownership and control remain in the hands of resident Indian entities at all times.
- The 49% foreign equity investment cap also applies to insurance brokers, third-party administrators, surveyors and loss assessors and other insurance intermediaries appointed under the Insurance Regulatory and Development Authority Act 1999.
- Any increase in foreign investment must be made in accordance with the Reserve Bank's pricing guidelines.

Finally, the rules clarify that other aspects relating to, or flowing from, foreign investment which have not been dealt with by the rules will be regulated by IRDA regulations.

Press Note 3/2015

Due to ratification of the rules, on March 2 2014 the Department of Industrial Policy and Promotion issued Press Note 3/2015, which amends the FDI Policy. The main features of the amendments are as follows:

- Foreign direct investment of up to 26% of the total paid-up equity of an insurer is allowed automatically (ie, without the need for prior government approval).
- The Foreign Investment Promotion Board must approve all foreign direct investment proposals which bring an insurer's total foreign investment above 26%.
- Foreign portfolio investments in an insurer are governed by Regulation 5 of the Foreign Exchange Management (Deposit) Regulations 2000 and by the existing Securities Exchange Board of India (Foreign Portfolio Investors) Regulations.

The press note reiterates that any increase in foreign investment must be made in accordance with the Reserve Bank's pricing guidelines under the Foreign Exchange Management (Deposit) Regulations and that the 49% foreign equity investment cap applies to insurance brokers, third-party administrators, surveyors and loss assessors and other insurance intermediaries appointed under the Insurance Regulatory and Development Authority Act 1999.

Comment

The rules and press note are one step closer to providing a mechanism for increasing the foreign direct investment limit for the insurance sector. This change follows the amendment to Section 2(7A)(c) of the Insurance Act 1938 (as amended by the ordinance) which increased the foreign investment limit (including portfolio investment) to 49% of the paid-up equity capital of Indian-owned and controlled insurers. The rules and press note provide insurers and insurance intermediaries with much-needed clarity regarding the manner of increasing foreign investment. However, in order for the changes introduced by the ordinance to be implemented, further clarification in the form of regulations is needed:

- Amendments to Regulation 11 of the IRDA (Registration of Indian Insurance Companies) Regulations 2000 are needed in order to specify how the permissible 49% foreign investment limit should be calculated.
- Amendments to the FDI Policy are needed so that the policy reflects the increased foreign investment limit.
- Clarifications regarding permitted foreign investment in corporate agencies whose main business is not the distribution of insurance products and that are not banks are required.
- Clarifications regarding the permitted foreign investment in web aggregators are required, as these are not expressly listed as a separate category of insurance intermediary.

There is no indication as to when these amendments and clarifications will be issued. In the meantime, implementation of the rules and press note may be difficult to achieve.

For further information on this topic please contact Neeraj Tuli 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.