

# IRDAI regulations amended: much-awaited clarification on calculation of foreign investment

April 26 2016 | Contributed by [Tuli & Co](#)

## Introduction

### Overview

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The Indian insurance sector has witnessed various reforms since the notification of the Insurance Laws (Amendment) Act 2015. The latest addition to the long list of regulatory changes that have been introduced since the Amendment Act is the Insurance Regulatory and Development Authority of India (IRDAI) (Registration of Indian Insurance Companies) (Seventh Amendment) Regulations 2016 (the 'Registration Amendment Regulations'). Although the Registration Amendment Regulations were notified on February 22 2016 (and came into force on March 22 2016), they were released on the IRDAI's official website only on April 1 2016.

## Overview

The Registration Amendment Regulations have introduced a number of key changes to the existing IRDAI (Registration of Indian Insurance Companies) Regulations 2000, including the following:

- An applicant whose Form IRDAI/R1 has been rejected by the IRDAI can now appeal to the Securities Appellate Tribunal.
- Requests for registration may now be made for life insurance businesses, general insurance businesses, health insurance businesses (exclusively) and reinsurance businesses.
- An applicant whose request has been accepted may apply via Form IRDAI/R2 for a certificate of registration. In cases where foreign direct investment in the applicant is more than 26%, Form IRDAI/R2 must be accompanied by, among other things, a certified copy of approval from the Foreign Investment Promotion Board (FIPB), in accordance with the Insurance Companies (Foreign Investment) Rules 2015.
- The manner of calculation of equity capital held by foreign investors prescribed by Regulation 11 of the Registration Regulations has been amended to state that the number of equity shares held by one or more foreign investors in an applicant will be calculated as the aggregate of:
  - the quantum of paid-up equity share capital held by the foreign investors, including foreign venture capital investors in the applicant; and
  - the proportion of the paid-up equity share capital held or controlled by the foreign investor either by itself or through its subsidiary companies in the Indian promoter(s) or Indian investor(s) as mentioned above

However, this does not apply to Indian promoters or investors which are banking companies or public financial institutions.

- Indian insurers which have already been granted a certificate of registration for carrying out insurance business in India must comply with the norms pertaining to 'Indian owned and controlled' (for further details please see "[IRDAI issues guidelines on 'Indian owned and controlled'](#)") within the period set out by the IRDAI, as specified in Section 2(7A) of the Insurance Act 1938.

AUTHOR

[Celia Jenkins](#)



- New formats for Form IRDAI/R1 and Form IRDAI/R2 have been introduced.

Although all of the changes introduced by the Registration Amendment Regulations will affect entities proposing to operate as insurers in India, the amendments made to Regulation 11 will, in all probability, have the most lasting impact. Interestingly, even before the amendments the regulator's approach to calculating foreign investment in an Indian insurer was to include no foreign investment in the Indian promoter of an Indian insurer where the foreign investment was not made by a shareholder of the Indian insurer.

If this approach was altered, the existing structures of some of the major Indian insurers would come under scrutiny. However, Regulation 11 has been amended to provide that the total foreign investment in an Indian insurer will be:

- the sum of the paid-up equity share capital held by the foreign investor(s) (including foreign venture capital investors) in the applicant; and
- the proportion of the paid-up equity share capital held or controlled by the foreign investor(s) either by itself or through its subsidiary companies in the Indian promoter(s) or investor(s) of the applicant entity.

From a plain reading of the amended Regulation 11, it appears that the IRDAI has adopted the approach that the shareholding of a foreign investor in an Indian promoter or investor will be considered when calculating the total foreign investment in an Indian insurer only if:

- the foreign investor is a shareholder in the Indian insurer; and
- the foreign investor is also a shareholder in the Indian promoter(s) or investor(s).

This amendment will undoubtedly be welcomed by the insurance industry.

The Registration Amendment Regulations also require a copy of the FIPB's approval to be provided if the quantum of foreign investment in the applicant entity is more than 26%. However, since the publication of the Registration Amendment Regulations, the Department of Industrial Policy and Promotion has amended the Consolidated FDI Policy 2015, pursuant to which up to 49% foreign investment in Indian insurers and insurance intermediaries has been brought under the automatic route. In view of these changes, it is anticipated that the Registration Amendment Regulations will be amended further in order to bring them in line with the Consolidated FDI Policy 2015.

## **Comment**

Since the amendments were notified, feedback from stakeholders has been taken into account while carrying out the amendments to the Registration Regulations. The key amendments have provided welcomed clarifications and will help to encourage investment in the insurance sector and promote growth and expansion therein.

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

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