



Indian Government opens the door for 100% FDI for Insurance Intermediaries

In her speech of July 5, 2019 on the Union Budget, India's Finance Minister first announced that 100% foreign direct investment ("FDI") would be permitted in Indian insurance intermediaries (such as insurance brokers, web aggregators, third party administrators, insurance surveyors and loss assessors and exclusive corporate agents).

On September 2, 2019, the Government of India gave effect to this announcement by notifying the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2019 ("Amendment Rules"), to amend the Indian Insurance Companies (Foreign Investment) Rules, 2015 ("Foreign Investment Rules") governing foreign investment in the insurance sector.

Key Features of the Amendment Rules

The salient features of the Amendment Rules are as follows:

- FDI proposals in insurance intermediaries will be under the automatic route (i.e. there will be no need to obtain prior approval from the Central Government). However, these proposals will be subject to verification by the IRDAI.
- The extant requirements of the RBI and SEBI continue to apply to foreign portfolio investment in insurance intermediaries. Any increase in foreign investment remains subject to the RBI's pricing guidelines.
- Entities such as banks that are registered as insurance intermediaries, but are primarily engaged in another business

will be subject to FDI limits applicable to the primary business. As a corollary, 100% FDI under the automatic route is now permitted for exclusive corporate agents.

- An insurance intermediary with majority foreign shareholding is required to ensure the following:
 - it should be incorporated as a limited company under the Companies Act, 2013;
 - at least 1 person from among the chairman of the board or the CEO or Principal Officer or Managing Director of the insurance intermediary should be a resident Indian citizen;
 - it should take prior permission of the IRDAI for repatriating any dividends outside India;
 - it should not make payments to foreign group entities or promoters or subsidiaries or interconnected or associate entities beyond "what is necessary or permitted by the IRDAI", and make disclosures of such payments to the IRDAI (in formats to be specified);
 - the composition of its board of directors and key management persons should be as specified by the concerned regulators; and
 - it should bring in the latest technological, managerial and other skills.
- Other aspects related to foreign investment in an insurance intermediary, which are not the subject matter of the

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Foreign Investment Rules, and fall within the regulatory ambit of the IRDAI, will be regulated as per regulations framed by the IRDAI.

Applicability of 'Indian Owned & Controlled' Requirements

The requirement on Indian insurance intermediaries to be 'Indian owned and controlled' originated from the erstwhile Rule 9 of the Foreign Investment Rules, which stated that "*foreign equity investment cap of 49 per cent shall apply on the same terms as above to... insurance intermediaries". The newly substituted Rule 9, however, states "*foreign investment in intermediaries or insurance intermediaries shall be governed by the same terms as provided under rules 7 and 8...*". Accordingly, only Rule 7 (*Requirements for Foreign Portfolio Investment*), Rule 8 (*Applicability of the RBI's Pricing Guidelines*) and Rule 10 (*Residuary Powers of the IRDAI*) apply in respect of foreign investment in insurance intermediaries. The other provisions, including Rule 4 of the Foreign Investment Rules, which requires Indian insurance companies to be 'Indian owned and controlled' in the manner prescribed, no longer applies to insurance intermediaries.*

In light of this, it is expected that the IRDAI will amend its Guidelines on Indian Owned and Controlled dated October 19, 2015 to reflect that its requirements will not apply to insurance intermediaries. The IRDAI's Guidelines on Indian Owned and Controlled for Insurance Intermediaries, 2015, may also be repealed.

Given the new conditions prescribed for insurance intermediaries with majority foreign investment, separate instructions may also be issued on key management/ board composition of such entities, as well as on "*necessary or permitted*" payments to foreign group entities.

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Following notification of the Amendment Rules, suitable amendments are expected to be made by the Department for Promotion of Industry and Internal Trade and the RBI, respectively, in the consolidated FDI Policy, 2017 and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, to reflect the policy change.

The liberalization of foreign investment in insurance intermediaries is indeed a welcome move that will increase FDI inflows, give an impetus to development of innovative insurance platforms and ultimately facilitate an increase in insurance penetration. The Amendment Rules have introduced some new conditions for insurance intermediaries - for instance, the requirement to obtain prior IRDAI approval for repatriation of dividends and restrictions on insurance intermediaries from paying foreign group entities beyond "*what is necessary or permitted*". Undoubtedly, the manner in which the IRDAI interprets and implements the above requirements will have a bearing on the ease of doing insurance intermediation business by foreign players in India.

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