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Guidelines on “Indian owned and controlled”

The Insurance Laws (Amendment) Act 2015 introduced some much awaited reforms, including, increasing the foreign investment cap in the insurance sector to 49 percent, permitting overseas reinsurers to open branch offices to carry out reinsurance business in India, etc. The Insurance Laws (Amendment) Act, 2015 also provides for “Indian Owned and controlled” requirement for an Indian Insurance Company.

The Insurance Laws (Amendment) Act, 2015 defines Indian insurance company under Section 2(7A) as under:

“Indian insurance company” means any insurer, being a company which is limited by shares, and, -

- (a) *Which is formed and registered under the Companies Act, 2013 as a public company or is converted into such a company within one year of the commencement of Insurance Laws (Amendment) Act, 2015;*
- (b) *In which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed.*

Explanation – For the purpose of this sub-clause, the expression “control” shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreements;

- (c) *Whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.*

In exercise of the powers conferred by clause (aaa) of sub-section (2) of section 114 of the Insurance Act, 1938 read with clause (b) of sub-section (7A) of section 2 of the Insurance Act, 1938 and section 24 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government has notified the Indian Insurance Companies (Foreign Investment) Rules, 2015. These Rules mainly govern Indian control of Indian Insurance Company, Indian ownership and issues relating to foreign investment. The definition of "Indian ownership" has since been amended by Indian Insurance Companies (Foreign Investment) Amendment Rules, 2015.

As per the above definition, control can be exercised by the virtue of

- (a) Shareholding; (or)
- (b) Management rights; (or)
- (c) Shareholders agreements; (or)
- (d) Voting agreements; or
- (e) Any other manner as per applicable laws.

In order to bring more clarity on the issue of compliance with the manner of "Indian owned and controlled", the Authority, in exercise of powers conferred under Section 14 (1) of the IRDA Act 1999, lays down the following guidelines on compliance of "Indian owned and controlled".

1. Applicability : These guidelines are applicable to **Indian Insurance Companies which**

- a) May come into existence after notification of the Act;
- b) May propose to hike their foreign investment from the existing level; and
- c) Do not intend to increase their current foreign stake from the existing level.

2. Total foreign investment: Both direct and indirect holding in an Indian insurance company shall not exceed 49 percent. Total foreign investment shall be



computed in accordance with Rule 2 (P) read with Regulation 11 of the IRDAI (Registration of Indian Insurance Companies) Regulations, 2000.

3. Control: Control can be exercised by any one or more of the following criteria:

- (a) Virtue of shareholding; (or)
- (b) Management rights; (or)
- (c) Shareholders agreements; (or)
- (d) Voting agreements; (or)
- (e) Any other manner as per the applicable laws.

4. Indian Control : The Indian insurance company shall ensure the following:

- i. Majority of the directors excluding independent directors should be nominated by the Indian promoter (s) / Indian investor (s);
- ii. Appointment of key management person including Chief Executive Officer / Managing Director /Principal officer should be through the Board of Directors or by the Indian promoter (s) and / or Indian investor (s);

However, Key Management Person (s) excluding CEO may be nominated by the foreign investor provided that the appointment of such Key Management person is approved by the Board of Directors, wherein majority of the directors excluding independent directors are the nominees of Indian promoter (s) / Indian investor (s).

- iii. The control over significant policies of the insurance company should be exercised by the Board, provided that the constitution of the Board is compliant with para (i) above.
- iv. Where the Chairman of the Board is having a casting vote, such Chairman should be nominated by the Indian promoter (s) and / or Indian investor (s);
- v. **Quorum:** Quorum shall mean and include presence of majority of the Indian directors irrespective of whether a foreign investor's nominee is present or not. The right of a Foreign Investor's nominee to constitute valid

quorum for meetings is only a protective right and to that extent would not amount to control within the meaning of Explanation to Clause (7A) (b) as long as the presence of nominees of Indian Promoter (s) / Investor (s) are also mandatorily taken into account for the purposes of quorum.

Provided that the provisions of Companies Act, 2013 shall come into force in case of an adjournment.

5. Manner of ensuring compliance of “Indian Owned and Controlled”

- i. An undertaking to this effect shall be filed by all Indian Insurance Companies duly signed by the Chief Executive Officer and Chief Compliance Officer confirming the compliance of “Indian owned and controlled”.
- ii. Every undertaking shall be accompanied by
 - a) A certified copy of resolution passed by the Board of Directors confirming the compliance of “Indian owned and controlled”;
 - b) Where applicable, certified copy of the agreement / Joint venture agreement where amendments have been carried out to these agreements / joint ventures agreement to give effect the provisions of “Indian owned and controlled”.

6. Insurance Intermediaries: These guidelines are also applicable to Insurance Intermediaries as defined in the IRDA Act, 1999 such as Brokers, Third Party Administrators, Surveyors and Loss Assessors etc. However, in case of an insurance intermediary having more than 50 percent of its revenue from the non-insurance activities, these guidelines shall not be applicable to such insurance intermediaries.

7. Time Limit for Compliance :

- i. **Compliance by Existing Indian insurance companies:** Existing Indian insurance companies stated at para 1 (b) and (c) above are required to comply with “Indian Owned and controlled” guidelines within a period of three months from the date of issue of these guidelines. However, the

Authority may, on an application made to it by an existing insurer, for valid reasons, grant a further period of three months to comply, provided that the total time taken by an existing insurer to comply with "Indian owned and controlled" stipulations does not extend beyond six months.

- ii. **Insurance Companies coming into existence post issuance of these Guidelines:** shall comply with these guidelines before grant of certificate of registration.
8. These Guidelines shall come into force from the date of issue.
 9. **Interpretation:** The interpretation of these Guidelines shall be that of the Chairperson, in any matter as deemed fit.



(T S Vijayan)
Chairman