## THE NEW FOREIGN DIRECT INVESTMENT NORMS FOR INSURANCE INTERMEDIARIES

### *Background*

Previously, foreign direct investment ("**FDI**") in insurance intermediaries was treated at par with FDI in insurance companies and was restricted up to 49% under the automatic route. Insurance intermediaries (including, insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors) vehemently argued this to be unfair as they did not deal with policyholders' funds and only supported the insurance business under the purview of India's insurance regulator, the Insurance Regulatory and Development Authority of India (the "**IRDAI**").

### *Liberalization*

In this year's budget speech, the Finance Minister proposed to liberalize the norms for FDI in insurance intermediaries. In line with the budget speech, in end-September, the Indian government permitted 100% FDI in insurance intermediaries under the automatic route (i.e., without the prior approval of the IRDAI), but subject to adherence to India's foreign exchange and securities regulations, and IRDAI verification of the intermediary.

Further, an entity whose primary business is not insurance (for example, a bank), but which has been allowed by the IRDAI to function as an insurance intermediary, will have to adhere to the foreign investment caps applicable to its primary business and ensure that its revenue from the primary business is more than 50% of its total revenue in any financial year. <u>This condition has been imposed to ensure that the sectoral investment cap and FDI-linked conditions applicable to the primary business are complied with by insurance intermediaries whose primary business is not insurance</u>.

### *Investment conditions*

The IRDAI has also imposed certain conditions in order for an insurance intermediary to be able to have majority foreign shareholding. The key conditions are as follows:

- at least one (1) officer among the chairman of the board of directors, the chief executive officer, the principal officer and the managing director has to be a resident Indian citizen;
- prior IRDAI permission is required to repatriate dividends to foreign shareholders;
- the foreign shareholder has to bring in the latest technological, managerial and other skills;
- payments (except dividends) in excess of 10% of the insurance intermediary's total expenses in a financial year cannot be made to the foreign shareholder or its affiliate and group companies;
- all payments made to the foreign shareholder or its affiliate and group companies have to be disclosed to the IRDAI;
- a majority of the board of directors has to be comprised of resident Indian citizens; and
- a majority of the key managerial personnel have to be resident Indian citizens.



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***Our comments***

Overall, doing away with the investment cap for foreign investment in insurance intermediaries is a positive attempt by the Indian government to encourage FDI in this sector, which will strengthen the Indian insurance ecosystem through the introduction of global technology and best practices. Having said that, foreign investors may find it onerous to adhere to some of the investment conditions, i.e., the requirement for a majority of directors and key managerial personnel to be resident Indian citizens may pose a problem for a foreign investor with no prior Indian presence as it may not be comfortable entrusting the management of the insurance intermediary in the hands of new Indian directors and personnel.

There also appears to be an apparent contradiction between the conditions. On the one hand, the foreign shareholder is required to get the latest technological and managerial skills to the insurance intermediary. But, on the other hand, there is a cap on the payments for intercompany arrangements between the insurance intermediary and its group companies. It is standard practice for a foreign shareholder (or its group companies) to provide technology and other services in exchange for royalty. However, the restriction on payments may pose a challenge to standard intercompany arrangements, and one will have to see if a foreign insurance intermediary may be willing to share technology without receiving adequate royalties or fees.

Lastly, the requirement of bringing in the latest technological, managerial and other skills is subjective and is always open to scrutiny by the IRDAI as a part of its verification process.

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