

EXPOSURE DRAFT ON THE IRDAI REGISTRATION REGULATIONS: AN OVERHAUL OF EXISTING REGULATIONS

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Introduction

On 13 October 2022, the Insurance Regulatory and Development Authority of India (“**IRDAI**”) released an exposure draft on the IRDAI (Registration of Indian Insurance Companies) Regulations 2022 (“**Draft Regulations**”). The Draft Regulations follow from the recent increase in the permissible limit of foreign direct investment in Insurance Companies and other related changes to the insurance regulatory framework in India, and also propose several amendments to the existing IRDAI (Registration of Indian Insurance Companies) Regulations 2000 (“**Registration Regulations**”).

Proposed Amendments in the Draft Regulations

The Draft Regulations propose to bring about several changes to the existing requirements and procedures for registration of an Insurance Company in India. Some of the key changes proposed are as follows:

- The Draft Regulations propose that the applicant company or co-operative society (“**Applicant**”) obtain a no-objection certificate (“**NOC**”) from the IRDAI for use of the word “*insurance*” or “*assurance*” within its name. The Applicant is required to file a registration application form [IRDAI/R1] along with the specified documentation within 6 months of obtaining the NOC.
- Once the IRDAI/R1 is approved, the Applicant is required to submit specified documentation for the approval of Form IRDAI/R2. On submission of the form and before obtaining the IRDAI’s approval, the Applicant is required to submit evidence of receipt of equity share application money (in accordance with applicable law) and an affidavit by the Applicant, its promoters, and investors confirming that upon grant of certificate of registration (“**COR**”), the equity share application money would be converted into paid-up equity share capital of the Applicant.

- The Applicant will receive the COR in Form IRDAI/R3, subject to certain conditions which include: (a) the Applicant, its promoter and investor comply with the “Fit & Proper” criteria; (b) the promoter and investor shall remain compliant with the lock-in period on their shareholding, as specified, from the date of grant of the COR; (c) the shareholders of the Applicant have not created any encumbrance on the equity shares of the Insurance Company.
- In cases where the Applicant is promoted by a special purpose vehicle or a non-operative financial holding company, the Applicant is required to comply with certain conditions which include: (a) there should not be an issuance of any type of convertible instruments; (b) there should not be any stock options/sweat equity shares issued to the employees/directors of the company.
- The Draft Regulations specify certain eligibility criteria which are required to be fulfilled by the “promoter” of an Applicant. In this regard, a promoter should generally not be a subsidiary of any other entity. However, certain exceptions are proposed to be introduced to this norm, where such promoter entity: (a) is listed on the stock exchange in India; (b) has its own source of funds independent from its holding company; (c) has a net worth of at least rupees five hundred crores; (d) has a holding company which is not a subsidiary of any other company.
- Investment into an Insurance Company may be made in the capacity of an investor, subject to certain conditions, including: (a) the investment shall be less than twenty-five percent of the paid-up equity share capital of the Insurance Company; (b) investment in the capacity of the investor shall be restricted to not more than two Life Insurance Companies, two General Insurance Companies, two Health Insurance Companies and two Reinsurers. However, this limit will not be applicable in case of investments of up to ten percent of the paid-up equity capital of the Insurance Company.
- Investment into an Insurance Company may be made in the capacity of the promoter subject to certain conditions, including: (a) the promoter should not be a promoter of more than one Life Insurance Company, one General Insurance Company, one Health Insurance Company and one Reinsurer; (b) the promoter should otherwise be eligible to act as a promoter under the Draft Regulations.
- Investment by a Private Equity Fund (“**PE Fund**”) into an Insurance Company could be made either in the capacity of a promoter or an investor. However, for a PE Fund to invest in the capacity of a promoter certain additional conditions have been proposed, such as: (a) the PE Fund or its parent fund must have completed ten years of operation; (b) the funds raised by the PE Fund including its group entities must be at least US\$500 million; (c) the investible funds available with the PE Fund must be at least US\$100 million; (d) the PE Fund must have invested in the financial sector in India or other jurisdictions.

Concluding Remarks

The Draft Regulations propose significant changes to the existing Registration Regulations on various key points. However, for the proposed changes to be brought into effect, we believe that certain other

IRDAI guidance, such as, the IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations 2015 (“**Transfer Regulations**”) and IRDAI (Investment by Private Equity Fund or Alternate Investment Fund in Indian Insurance Companies) Guidelines 2017 (“**PE Guidelines**”) may also need to be amended for consistency with the Draft Regulations.

By way of example, the Transfer Regulations state that the maximum amount of shareholding by an Indian investor, should not exceed ten percent of the paid-up equity share capital of the Insurance Company, and cumulatively the total investment by investors should not be more than twenty-five percent. These limits are different from the limits proposed under the Draft Regulations. Similarly, the Draft Regulations provide certain additional criteria for a PE Fund to act as a “promoter”, such as the investible funds requirement and the minimum number of years of operation requirement mentioned above. However, these requirements are not set out in the PE Guidelines. Hence, the Transfer Regulations and the PE Guidelines will also need to be amended to bring them in conformity with the revised Registration Regulations once the Draft Regulations are finalised and notified.

In addition, by way of a press release of 17 August 2022, the IRDAI had proposed a single window NOC portal (“**Single Window Portal**”) for the Applicant to obtain the NOC from the IRDAI and assist with the incorporation in a hassle-free and timebound manner. However, in their current format, the Draft Regulations do not appear to provide for a Single Window Portal.

While the Draft Regulations propose various amendments to the existing regulatory framework which would perhaps be welcomed by the industry participants, the Indian insurance industry is also awaiting simplification of the registration process. Various press reports over the last few months have indicated that several changes in terms of the eligibility criteria and the process for registering an Insurance Company are on the anvil.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

For further information on this topic please contact Tuli & Co

T +91 120 693 4000, F +91 120 693 4001 or email lawyers@tuli.co.in

www.tuli.co.in

Author(s)



Shubhangi Pathak

Partner



Harshit Dhandhia

Associate