What's New
News Flash
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IRDAI issues guidelines on investments by private equity funds in Indian insurance companies

Pursuant to the decision taken at the board meeting of the Insurance Regulatory and Development Authority of India (**IRDAI**) last week, the IRDAI issued the Insurance Regulatory and Development Authority of India (Investment by Private Equity Fund or Alternative Investment Fund in Indian Insurance Companies) Guidelines, 2017 on 05 December, 2017 (**IRDAI Guidelines**). The IRDAI Guidelines are effective from the above date.

In addition to the above, the private equity funds (PEFs) would be required to comply with the IRDAI (Transfer of Equity Shares) Regulations, 2015 (**Transfer Regulations 2015**) and other applicable IRDAI, exchange control and SEBI regulations.

The IRDAI Guidelines are applicable to unlisted Indian insurance companies and the PE funds that have invested in unlisted Indian insurance companies either as an "investor" or as a "promoter". A PEF has been defined to include an Alternative Investment Fund registered under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 and/ or a Fund specifically formed for investment in one/ more entities by one/ more persons. It appears that only onshore PEFs are sought to be governed by the IRDAI Guidelines.

The key conditions emanating from the IRDAI Guidelines are summarised below.

(A) Key conditions applicable to PEFs investing in Indian insurance companies as an "investor"

1. A PEF may invest in an Indian insurance company as an "investor" directly or through a Special Purpose Vehicle (**SPV**) i.e. an onshore company or limited liability partnership incorporated in India;
2. Investment to be as per the PEF's strategy reflected in its placement memorandum;
3. The PEF shall hold maximum 10% of the paid up equity share capital of the insurance company;
4. All Indian investors along with the PEFs to jointly hold maximum 25% of the paid-up equity share capital of the insurance company;
5. Minimum shareholding by the promoters/ promoter group to be 50% of the paid up equity share capital of the insurance company at all times. However, if the present holding by the promoters is below 50%, such lower holding would be the minimum holding;
6. Investment to be subject to the prescribed "Fit and Proper" criteria as annexed to the IRDAI Guidelines;
7. PEFs to provide a specific undertaking that it will not create any encumbrance on or leverage the investment;
8. Upfront disclosure by the PEF if the investment is onetime.

(B) Key conditions applicable to PEFs investing in Indian insurance companies as a "Promoter"

1. A PEF can invest in an Indian insurance company as a "promoter" only through an SPV and not directly;
2. A PEF through an SPV shall not be a promoter for more than one life insurer, one general insurer, one health insurer and one reinsurer;
3. Schemes to be filed with SEBI in accordance with the provisions of relevant SEBI regulations;
4. Investment to be as per the PEF's strategy reflected in its placement memorandum;
5. Investment to be made entirely out of own funds and not borrowed funds;
6. Investment memorandum or charter documents of the investor/ investing vehicle to permit investment up to the permitted limits including any future capital requirements;
7. Investment to be subject to the prescribed "Fit and Proper" criteria. One of the key criteria is "whether the applicant is a widely held entity, publicly listed and a well established regulated financial entity in good standing in the financial community";

8. PEFs to provide a specific undertaking that it will not create any encumbrance on or leverage the investment;
9. Lock-in period of five years for the (i) SPV; and (ii) shareholders of the SPV holding atleast 10% capital of the SPV;
10. Any new shareholders in the SPV through issue of fresh shares beyond 25% would require prior IRDAI approval;
11. Minimum shareholding by the promoters/ promoter group to be 50% of the paid up equity share capital of the insurance company at all times. However, if the present holding by the promoters is below 50%, such lower holding would be the minimum holding;
12. The Indian insurance company to comply with IRDAI guidelines on "Indian owned and controlled" and Indian Insurance Companies (Foreign Investment) Rules, 2015;
13. Either the Chairman of the Indian insurance company to be an independent director or its Chief Executive Officer/ Managing Director/ Whole-time director to be a professional and not a nominee of a promoter;
14. Atleast one-third of the board of the insurance company to comprise of independent directors;
15. An undertaking to subscribe to the rights issue of the Indian insurance company to be provided to ensure that the Indian insurance company is not cash strapped;
16. An undertaking of the post lock in period divestment plan (preferably through an Initial Public Offer) in accordance with the relevant regulations to be provided.

Please click here to access the IRDAI Guidelines.

The key takeaways

The move to permit PEFs to promote an Indian insurance company is a welcome step. The minimum lock-in of five years will result into only PEFs with adequate residual fund life to participate in such opportunities. The restriction on leverage is noteworthy.

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