ALMT Legal
ADVOCATES AND SOLICITORS

news flash

April 2015

RBI NOTIFIES AMENDMENTS TO FDI POLICY- INSURANCE SECTOR

The Reserve Bank of India ("**RBI**") has vide Circular No. 94 dated 8 April, 2015 ("**Circular**") notified the amendments in conditions for Foreign Direct Investment ("**FDI**") in the Insurance sector to bring it in line with the amendments made by the Department of Industrial Policy and Promotion vide Press Note No. 3 (2015 Series) dated 2 March, 2015 ("**Press Note**").

Prior to the Circular, FDI in Insurance sector was permitted only up to 26% under the automatic route. No additional FDI was permissible in the insurance sector, even under the approval route. Pursuant to the Circular, FDI in the Insurance Sector up to 26% continues to be available under the automatic route and beyond 26% and up to 49%, is permitted under the government route i.e. with specific prior approval from the Foreign Investment Promotion Board ("**FIPB**").

Another important amendment to be noted is that "*Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)* ("**IRDA Act**") has also been included in the definition of Insurance. This means that insurance intermediaries which were not specifically included in the Consolidated Foreign Direct Investment Policy issued by the Department of Industrial Policy and Promotion ("**FDI Policy**") earlier will now be governed by the FDI Policy thereby restricting the cap of FDI in such insurance intermediaries to 49%.

All the other terms and conditions for FDI entry in the Insurance sector as stipulated under the Press Note shall continue to apply *inter alia* being:

a. FDI in Insurance sector will have a maximum ceiling of 49% (26% under automatic route and between 26% and 49%, under the government approval route);
b. The investment is permitted only subject to compliance with the provisions of the Insurance Act, 1938 and the necessary license from the Insurance Regulatory & Development Authority of India shall be availed by the investment company for undertaking insurance activities in India;
c. An Indian insurance company shall ensure that its ownership and control at all times remains in the hands of resident Indian entities;
d. Foreign Portfolio Investment ("**FPI**") in Insurance Sector shall be in accordance with the provisions of the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 and provisions of the Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 ("**FPI Regulations**"). The general cap of 24% for aggregate FPI investment and 10% for individual FPI investment, in an Indian company continues to remain applicable.

contd...

However, since the sectoral cap has now been increased, an insurance company can seek approval for additional FDI in the form of an FPI up to aggregate of 49% provided that it obtains board and shareholder approval by a special resolution and intimates RBI prior to receiving such additional FDI from an FPI. These conditions for FPI are derived pursuant to a reading of the FPI Regulations and the FDI policy.

e. Any increase of FDI in insurance company shall be in accordance with guidelines issued by the RBI under the Foreign Exchange Management Act, 1999;
f. The terms *'Control'*, *'Equity Share Capital'*, *'Foreign Direct Investment'*, *'Foreign Investors'*, *'Foreign Portfolio Investment'*, *'Indian Insurance Company'*, *'Indian Company'*, *'Indian Control of an Indian Insurance Company'*, *'Indian Ownership'*, *'Non-resident Entity'*, *'Public Financial Institution'*, *'Resident Indian Citizen'*, *'Total Foreign Investment'* will have the same meaning as provided in Notification No. G.S.R 115 (E), dated 19 February, 2015 issued by the RBI; and
g. The FDI cap of 49% shall also apply to insurance brokers, third party administrators, surveyors, loss assessors and other insurance intermediaries as appointed under the IRDA Act.

CONCLUSION

This amendment is undoubtedly a positive step towards fostering economic development and liberalisation of foreign investment in the insurance sector. However, what remains to be seen are the practical implications of this amendment, given that the FDI in Insurance Sector will involve multiple approvals from various regulatory bodies and government authorities including the RBI, Securities Exchange Board of India (in case of listed companies and FPIs), Insurance Regulatory Development Authority and the FIPB (for investments beyond 26% and up to 49%).

DISCLAIMER

For further clarification and details on the above, you may write to the Exchange Control team comprising of among others Mr. Aliff Fazelbhoy (Senior Partner) at afazelbhoy@almtlegal.com, Mr. Vaishakh Kapadia (Partner) at vkapadia@almtlegal.com, and Ms. Purti Minawala (Associate) at pminawala@almtlegal.com.

ALMT Offices

Mumbai:

4th Floor, Express Towers
Nariman Point
Mumbai 400-021
India
Tel: +91 22 4001 0000
Email: mumbai@almtlegal.com

Bangalore:

2 Lavelle Road
1st Floor
Bangalore 560 001
India
Tel: +91 80 4016 0000
Email: bangalore@almtlegal.com

contd...