



December 2022

## New Regulations for registration of Indian insurance companies

The Insurance Regulatory and Development Authority of India (“IRDAI”), vide its notification dated December 5, 2022, has notified the IRDAI (Registration of Indian Insurance Companies) Regulations, 2022 (“**Registration Regulations**”). The Registration Regulations repeal the IRDAI (Registration of Indian Insurance Companies) Regulations, 2000 and the IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015, to promote the insurance sector’s growth by simplifying the process of registration of Indian insurance companies and to promote ease of doing business. The Registration Regulations have introduced several reforms in the existing framework for the registration and administration of the Indian insurance companies, keeping in mind the recent increase in the permissible foreign direct investment limit in the insurance sector in India.

Key provisions of the Registration Regulations are as follows:

### 1. Permissible classes of insurance business

Life insurance, general insurance, health insurance, reinsurance and any other class of business as specified by IRDAI may request for registration under the Registration Regulations.

### 2. NOC for use of the words ‘insurance’, ‘assurance’, or ‘reinsurance’

Companies/co-operative societies must obtain a no-objection certificate (“**NOC**”) from the IRDAI in order to use the words ‘insurance’, ‘assurance’, or ‘reinsurance’ within its name.

### 3. R1 and R2 approvals

The NOC issued by the IRDAI is valid for only 6 (six) months within which period the applicant must file the registration application, i.e., Form IRDAI/ R1. Once the IRDAI has granted the R1 approval (*which is valid for only 3 (three) months*), the applicant is issued an application for registration in Form IRDAI/R2, which must be submitted to the IRDAI before the expiry of the R1 approval, basis which the IRDAI will issue the R2 approval to the applicant.

### 4. Certificate of Registration (R3)

The IRDAI may grant the applicant the certificate of registration in Form IRDAI/ R3 (“**R3 Registration**”) subject to the certain conditions such as: (a) the applicant and its promoter(s) and investor(s) must comply with the ‘fit and proper’ criteria; (b) the promoter(s) and investor(s) must comply with the specified lock-in period on their shareholding from the date of grant of certificate of registration; (c) the promoter(s) and investor(s) of the applicant must not create any encumbrance on the applicant’s equity shares during the lock-in period as may be prescribed.

### 5. Lock-in period requirements for equity shares

The Registration Regulations set out the following lock-in restrictions on the applicant's equity shares:

- a) Investment by a promotor/investor at the time of, or before grant of, R3 Registration (*i.e., certificate of registration*): 5 (five) years from the date of grant of R3 Registration;
- b) Investment by a promotor/investor during the 5 (five) years post grant of R3 Registration (*in case of change in shareholding pattern*): 5 (five) years from the date of investment or lock-in period (*whichever is earlier*);
- c) Investment after 5 (five) years but before 10 (ten) years post grant of R3 Registration (*in case of change in shareholding pattern*): In case of a promotor - 3 (three) years from the date of investment or 12 (twelve) years from the grant of R3 Registration (*whichever is earlier*); and in case of an investor - 2 (two) years from the date of investment or 11 (eleven) years from the grant of R3 Registration (*whichever is earlier*); and
- d) Investment after 10 (ten) years post grant of R3 Registration (*in case of change in shareholding pattern*): In case of a promotor - 2 (two) years from the date of investment; and in case of an investor - 1 (one) year from the date of investment.

#### 6. **Promotion by a special purpose vehicle ("SPV")**

Where the applicant is promoted by an SPV, such SPV will be subject to certain restrictions, including, among others, restrictions in relation to issuance of convertible instruments, issuance of stock options or sweat equity shares to its employees/directors, transfer of its shares, investment limits, capital, and lock-in period.

#### 7. **Promoter(s) holding**

The insurer's promoter(s) must collectively maintain a minimum shareholding of 50% of the insurer's paid-up equity capital. However, the promoter(s) can dilute their stake to below 50% if: (a) the insurer has a satisfactory 5 (five) year solvency track record, and (b) the insurer's shares are listed on the stock exchange(s) in India. That said, in no event can the promoter's shareholding be diluted to below 26% of the insurer's paid-up equity capital.

#### 8. **Criteria for investment by the private equity funds ("PE Fund")**

A PE Fund may invest in the applicant as a promotor or an investor. However, a PE Fund may invest in the insurer in the capacity of a promotor only if: (a) the manager of the PE Fund or its parent fund has completed 10 (ten) years of operation; (b) the funds raised by the PE Fund, including its group entity/equities, is USD 500 million (US Dollars five hundred million) or more (or its equivalent in INR); (c) the investible funds available with the PE Fund is not less than USD 100 million (US Dollars one hundred million); and (d) the PE Fund manager has invested in the financial sector in India or the other jurisdictions.

#### 9. **Requirements in case of foreign investment**

An Indian insurance company having foreign investment must have: (a) a majority of its directors; (b) a majority of its key management persons; and (c) at least 1 (one) among the chairperson of its board, its managing director, and its chief executive officer as a resident Indian citizen.

Further, an Indian insurance company having foreign investment exceeding 49%: (a) for a financial year for which dividend is paid on equity shares and for which, at any time, the solvency margin is less than 1.2 times the control level of solvency, must have at least 50% of its net profit for the financial year be retained in the general reserve; and (b) the independent directors must constitute at least 50% of its board strength, and where the chairperson of its board is an independent director, at least one-third of its board must comprise of independent directors.

#### 10. **Reporting requirements in case of transfer of shares**

Every insurer who has been granted registration must, within 30 (thirty) days of the end of every quarter, furnish to the IRDAI a statement indicating changes exceeding 1% of the promoter's shareholding, and in the event of a change in excess of 5% of the promoter's shareholding, the same must be immediately reported to the IRDAI. In addition, every insurer must, on a quarterly basis, file a declaration that its promoters and investors are 'fit and proper'.

Further, an insurer must forthwith furnish to the IRDAI the full particulars of any alteration that occurs, or is made, affecting any of the following matters: (a) any encumbrance created on the promoter’s shareholding; (b) any change of control in respect of the promoter; or (c) any penal or regulatory action taken against the promoter.

It remains to be seen whether these well-planned reforms have the desired impact on the insurance sector.

## Insurance Practice

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