

## **Guidelines for Listed Indian Insurance Companies, 2016**

The Authority, in exercise of the powers conferred by Section 14 of Insurance Regulatory and Development Authority of India Act, 1999, read with clause (b) of sub-section (4) of Section 6A of the Insurance Act, 1938, hereby, issues the following guidelines.

### **1. Applicability:**

- i. These Guidelines shall be in addition to, and not in derogation of, any other law for the time being in force, including the IRDAI (Issuance of Capital by Indian Insurance Companies transacting Life Insurance Business) Regulations, 2015 and IRDAI (Issuance of Capital by Indian Insurance Companies transacting other than Life Insurance Business) Regulations, 2015.
- ii. These Guidelines shall be called the Guidelines for Listed Indian Insurance Companies.
- iii. These Guidelines shall be applicable to all insurers who have listed their equity shares or are in the process of getting their shares listed on the stock exchanges in relation to transfer or proposed transfer of shares.
- iv. These guidelines shall come into effect on the day of their issuance.

## **PART-A**

### **2. Definitions**

- i. **“Act”** means Insurance Act, 1938 (4 of 1938)
- ii. **“Authority”** means the Insurance Regulatory and Development Authority of India established under sub-section (1) of Section 3 of Insurance Regulatory and Development Authority Act, 1999 ( 41 of 1999)
- iii. **“Aggregate Holding”** means the total holding including through “acquisition” and the shares held by the applicant, his relatives, associate enterprises and persons acting in concert with him.
- iv. **“Concerned Insurer”** means the insurer in which the “acquisition” is being made.

- v. **“Person acting in concert”** means persons who for a common objective or purpose of acquisition of shares or voting rights along with the applicant, pursuant to an agreement or understanding (formal or informal), directly or indirectly, cooperate for acquiring or agreeing to acquire shares or voting rights in the concerned insurer and without prejudice to the generality of the foregoing, includes an associate enterprise, relative, promoter, promoter group, and director of the said applicant or the associate enterprise.
- vi. **“Relative”** has the same meaning as defined in section 2 (77) of the Companies Act, 2013 and Rules made thereunder.
- vii. **“Major shareholder”** means shareholder having / likely to have an “aggregate holding” to the extent of 5 percent or more of the paid up equity share capital of the insurer.
- viii. **“Major shareholding”** means “aggregate holding” resulting in / likely to result in the applicant acquiring 5 percent or more of the paid-up equity share capital of the insurer.
- ix. All words and expressions used herein and not defined, but defined in the Insurance Act, 1938 (4 of 1938) or in the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), or in any Rules or Regulations made thereunder, shall have the meaning respectively assigned to them in those Acts or Rules or Regulations.

## **Chapter-II**

### **DIRECTIONS ON PRIOR APPROVAL**

- 3. Every person who intends to make any transfer / make any agreement for transferring the paid up equity shares capital of the concerned insurer, may do so subject to the compliance of the lock-in period requirement specified by the Authority.
- 4. Every person who intends to make any transfer/ make any arrangement or agreement for transferring 1 percent or more but less than 5 percent of the paid up equity share capital of the concerned insurer, may do so, subject to the compliance of Fit and Proper. A self certification for Fit& Proper shall be filed with the respective insurance company. Such self-certification of the Fit and Proper criteria of the acquirer and filing with the concerned insurer shall be considered as the deemed approval of the Authority for the purpose of Section 6A(4)(b)(iii) of the Act. It is clarified that the deemed approval accorded under this Clause shall not

be considered as an approval under any other law. If the concerned insurer has any doubt about the fulfillment of 'Fit and Proper' criteria by the acquirer, it may approach the Authority for seeking clarity.

5. Every person who intends to make an acquisition / make an arrangement or agreement for acquisition which will / is likely to take the aggregate holding of such person together with shares held by him, his relatives, associate enterprises and persons acting in concert with him, to 5 per cent or more of the paid-up equity share capital of the concerned insurer or entitles him to exercise 5 per cent or more of the total voting rights of the concerned insurer, shall seek prior approval of the Authority in the manner specified in these guidelines.

### **Procedure of Application**

6. Every person referred to in clause 5 above shall make an application to the Authority along with the Declaration in Form A specified in the Schedule to these Guidelines. The applicant shall also file draft of the definitive agreement(s) for acquisition of shares, if any, proposed to be entered into between the transferor and the acquirer, along with the application.
7. The Authority may undertake a due diligence on the applicant to assess his "fit and proper" status. It will be open to the Authority to seek additional information / documents from the applicant / concerned insurer, including but not limited to shareholders agreements and make such enquiries with regulator/s, revenue authorities, investigation agencies, credit rating agencies, etc. as considered appropriate.
8. The decision of the Authority to accord or deny permission or accord permission for acquisition of a lower quantum than that has been applied for, shall be conveyed to the applicant and the concerned insurer and the decision of the Authority shall be binding on the applicant and the concerned insurer. If the decision is to grant approval, the concerned insurer shall register the transfer / purchase, as the case may be, in the name of the applicant. If the decision is to reject the application, the concerned insurer shall not give effect to such acquisition. In the event of the Authority accords permission for acquisition of lower quantum of equity shares or voting rights, the concerned insurer shall

register the transfer / purchase only to such lower quantum of shares or voting rights.

### **CHAPTER – III**

#### **PRIOR APPROVAL IN CASE OF SUBSEQUENT INCREASE IN SHAREHOLDING**

9. Any fresh acquisition by an existing major shareholder, who has already obtained prior approval of the Authority for having a major shareholding in the concerned insurer, shall be subject to the provisions of clauses 10 and 11 below as the case may be.
10. If any fresh acquisition referred to in clause 9 results in the aggregate holding of the major shareholder along with the persons acting in concert to reach upto 10 per cent of the shares or voting rights of the concerned insurer, prior approval of the Authority is not necessary,

Provided that the major shareholder furnishes the details of the source of funds for such incremental acquisition to the concerned insurer before such acquisition.

Provided further that the concerned insurer shall report the incremental acquisitions by the major shareholders in its quarterly shareholding pattern furnished to the Authority regarding continuance of “fit and proper” status of its major shareholders, as referred to in clause 13 of these Guidelines.

11. Where the acquisition referred to in clause 11 results in the aggregate holding of the major shareholder along with the persons acting in concert exceeding 10 per cent of paid up equity share capital or voting rights of the concerned insurer, the applicant shall seek a fresh prior approval of the Authority for the proposed aggregate holding in the manner specified in clause 6 of these Guidelines along with additional information specified in Form A. Without prejudice to the generality of the factors that may determine the grant or refusal of approval for such acquisitions by the Authority, approval for acquisition of shares or voting rights in excess of 10 per cent shall be considered at the discretion of the Authority by taking into account in the following cases
  - i. The details of the promoters/promoter group of the concerned insurer ;or
  - ii. If the acquirer is a regulated financial institution, whether such a financial institution, is well diversified and listed; or

- iii. Whether the acquirer is a Government or a public sector undertaking; or
- iv. Existence of exceptional circumstances; or
- v. Whether acquisition is in the public interest; or
- vi. Whether acquisition shall ensure proper management of the concerned insurer;
- vii. Whether acquisition is in the interest of consolidation in the insurance sector; etc.

## **CHAPTER – IV**

### **DETERMINATION OF “FIT AND PROPER” STATUS**

#### **12. Illustrative criteria for determining “fit and proper” status of applicants**

In determining whether the applicant is “fit and proper” to be a major shareholder, the Authority may take into account all relevant factors, as appropriate, including, but not limited to the following :

- i. For acquisition of 5 per cent or more upto 10 per cent in the concerned insurer
  - a) The applicant’s integrity, reputation and track record in financial matters and compliance with tax laws,
  - b) Whether the applicant has been the subject of any proceedings of a serious disciplinary or criminal nature, or has been notified of any such impending proceedings or of any investigation which may lead to such proceedings,
  - c) Whether the applicant has a record or evidence of previous business conduct and activities where the applicant has been convicted for an offence under any legislation designed to protect members of the public from financial loss due to dishonesty, incompetence or malpractice,
  - d) Whether the applicant or persons acting in concert or any of its promoters or promoter group has indulged in insider trading, fraudulent and unfair trade practices or market manipulation;
  - e) Whether the applicant has achieved a satisfactory outcome as a result of due diligence conducted with the relevant regulator, revenue authorities, investigation agencies and credit rating agencies etc. as considered appropriate,
  - f) Whether the applicant has a record of any serious financial misconduct, bad loans or whether the applicant was adjudged to be bankrupt,
  - g) The source of funds for the acquisition,

- h) Where the applicant is a body corporate, its track record or reputation for operating in a manner that is consistent with the standards of good corporate governance, financial strength and integrity in addition to the assessment of individuals and other entities holding more than 1 percent of the capital of the body corporate as enumerated above.
- ii. For acquisition in excess of 10 per cent in the concerned insurer
- a) All aspects as laid down in clause 12 (i) of these Guidelines;
  - b) Details in respect of the conglomerate, in case the applicant belongs to a conglomerate group.
  - c) Source and stability of funds for acquisition and the ability to access financial markets as a source of continuing financial support for the insurer
  - d) The business record and experience of the applicant including any experience in acquisition of business.
  - e) The extent to which the corporate structure of the applicant will be in consonance with effective supervision and regulation of the insurer.
  - f) Whether the applicant is a widely held entity, publicly listed and a well-established regulated financial entity in good standing in the financial community.
  - g) Whether the applicant is a Government or a public sector undertaking.
  - h) The acquisition is in public interest.
  - i) To secure the proper management of any insurer; or
  - j) The desirability of diversified ownership of insurer.
  - k) Track record of the applicant,
  - l) Shareholder agreements and their impact on control and management of the insurer.

## **CHAPTER- V**

### **CONTINUOUS MONITORING ARRANGEMENTS**

#### **Continuous monitoring arrangements for due diligence in case of existing major shareholders**

13. It is the responsibility of the concerned insurer to ensure that all its major shareholders are fit and proper and for this purpose every insurer shall,
- i. obtain, within one month of the close of financial year, an annual declaration from all its major shareholders in Form B as specified in the Schedule to these Guidelines, and

- ii. deliberate on the declarations, obtained from the major shareholders, at its Board meetings and make an assessment about the “fit and proper” status of such shareholders in the light of information provided through the declarations and its own investigations; and
- iii. Furnish a certificate, by the end of every quarter, to the Authority regarding continuance of the “fit and proper” status of all its major shareholders. Such reporting shall be done within 45 days from the end of each quarter. In case any major shareholder is assessed to be not “fit and proper”, the concerned insurer shall report the same immediately in Form C specified in the Schedule to these Guidelines to the Authority.

Apart from the annual review as specified in the above clause, every insurer shall examine any concern / information regarding the major shareholders that may come to its notice that render(s) the persons not “fit and proper” to hold such shares or voting rights and the insurer shall immediately furnish the report on the same to the Authority.

If the major shareholders do not satisfy the “fit and proper” criteria within 6 months of the close of financial year, then the Authority shall initiate appropriate action against such major shareholder, as it deems fit, including a direction for such shareholder to transfer its shareholding to any other ‘Fit and Proper’ person.

## **CHAPTER – VI**

### **Controlling Interest in Insurers**

#### **ACQUISITION OF SHARES / VOTING RIGHTS FOR THE PURPOSE OF GAINING CONTROLLING INTEREST IN AN INSURER**

14. Notwithstanding anything contained in these guidelines, even when the acquisition / aggregate holding is proposed to be less than 5 per cent and if the concerned insurer suspects that dubious methods have been adopted to get over the ceiling of 5 per cent to camouflage the real purpose of these Guidelines by individuals / groups with a view to acquire controlling interest in the insurer, a reference shall be made to the Authority by the concerned insurer. In such cases, it shall be in order for the Authority to require such shareholders to comply with the procedure referred to in Chapter III and IV of these Guidelines.

## **CHAPTER – VII**

### **COMPLIANCE WITH OTHER REGULATIONS AND VOTING RIGHTS**

15. The prior approval from the Authority for having major shareholding by a foreign investor or any subsidiary thereof, in insurer will be subject to compliance with FEMA 1999 and other applicable laws and regulations, by the applicant.
16. It is clarified that an insurer who is neither listed nor in the process of getting its shares listed on the stock exchanges shall continue to be governed by the provisions of IRDAI (Transfer of Equity shares of Insurers) Regulations, 2015.

## **PART-B**

### **SHAREHOLDING AND VOTING RIGHTS LIMITS IN INSURERS**

1. The minimum shareholding by promoters / promoter group shall at all times be maintained at 50 percent of the paid up equity capital of the insurer. However, where the present holding of the promoters is below 50 percent, such holding shall be the minimum holding.
2. Ownership limits for all shareholders, other than promoters/ promoter group, in a definitive time frame as may be specified by the Authority, shall be based on categorization of the shareholders under two broad categories viz. (i) natural persons (individuals) and (ii) legal persons (entities/institutions). Further, non-financial and financial institutions, and among financial institutions, diversified and non-diversified financial institutions shall have separate limits for shareholding as under:
  - (i) In the case of individuals and non-financial entities, the limit shall be 10 per cent of the paid up capital.
  - (ii) In the case of entities from the financial sector, other than regulated or diversified or listed, the limit shall be at 15 per cent of the paid-up capital.
  - (iii) In the case of 'regulated, well diversified, listed entities from the financial sector' or public sector undertaking or Government, a uniform limit up to 50 per cent of the paid-up capital is permitted for both promoters / promoter group and non-promoters.
  - (iv) Higher stake / strategic investment by promoters / non-promoters through capital infusion by domestic or foreign entities / institution shall be permitted on a case to case basis under circumstances such as



relinquishment by existing promoters, rehabilitation / restructuring of problem / weak insurers / entrenchment of existing promoters or in the interest of the insurance company or in the interest of consolidation in the insurance sector, etc.

3. The matrix of shareholding is as under

Category of shareholder	Promoter group	All shareholders in the long run				
		Natural person	Legal person			
			Non financial institution / entities	*Non-regulated or non-diversified and non-listed	Regulated, well diversified and listed / supranational institution / public sector undertaking / Government	# Circumstances as mentioned in para 2 (iv) above
Proposed shareholding cap	50 percent	10 percent	10 percent	15 percent	40 percent	As permitted on a case to case basis

*\*In case of financial institutions that are owned to the extent of 50 per cent or more or controlled by individuals, the shareholding would be deemed to be by a natural person and the shareholding will be capped at 10 per cent;*

*\*\*Promoter includes Indian promoter and also includes a foreign investor who has take a stake in the insurance company in such capacity.*

*#Shareholders permitted 10 per cent or more in an insurance company will be subject to a minimum lock-in period of five years.*

## **PART-C**

### **Foreign Holding and Other requirements**

1. Every insurance company which intends to go for listing shall convert its equity shares holding in Demat format. Every insurance company shall submit necessary documentary proof to this effect.
2. An Insurer may invest in the equity share capital of another listed Insurer subject to the exposure norms as specified in IRDA (Investment) Regulations, 2000 as amended from time to time.
3. As per IRDAI (Registration of Indian Insurance Companies) Regulations, subsidiary of a company shall not be allowed to invest in an insurance company. However, for the purpose of these Guidelines, the Authority permits a subsidiary to invest in a listed insurance company, provided it complies with all the provisions as may be applicable for such an investment under applicable laws.
4. Every listed Insurance company shall put in a necessary system in place to ensure the compliance of Regulation 11 of IRDAI (Registration of Indian Insurance Companies) Regulations, 2015. Regulation 11 for a listed insurance company shall read as under

#### ***“11. Manner of calculation of equity capital held by foreign investors –***

- (1) For the purposes of the Act and these Regulations, the calculation of the holding of equity shares by one or more Foreign Investors in the applicant company, shall be made as under and shall be aggregate of:-
  - (i) the quantum of paid up equity share capital held by the Foreign Investors including foreign venture capital investors, in the applicant company; and
  - (ii) the proportion of the paid up equity share capital held or controlled by such foreign investor(s) either by itself or through its subsidiary companies in the Indian promoter(s) or Indian Investor(s) as mentioned in sub-clause (i) of this Regulation.

Provided that clause (ii) shall not be applicable to an Indian promoter or Indian investors referred in clause (ii) and (iv) of clause (g) of sub-regulation (1) of Regulation 2.

Provided further that the clause (ii) shall not be applicable to any Indian promoter or Indian investor of a listed Indian insurance company where such Indian promoter and / or Indian investor is regulated by Reserve Bank of India, Security Exchange Board of India and /or National Housing Bank”.

**5. Insurance company shall ensure that :**

- i. the foreign investment in the Insurance company at any point of time is in accordance with the limit allowed by the Authority read with the Foreign Direct Investment Policy of India and the provisions of FEMA 1999.**
- ii. the company is compliant to “Indian owned and controlled” Guidelines issued by the Authority.**

**6. The above guidelines shall also be applicable to an insurance intermediary licensed by the Authority provided that such insurance intermediaries is drawing more than 50 percent of its revenue from insurance business.**