



IRDA/F&A/GDL/PEF/263/12/2017

December 5, 2017

**IRDAI (Investment by Private Equity Funds in Indian Insurance Companies)
Guidelines, 2017**

Background

The Authority in past has allowed Private Equity Fund (PE Fund) and Alternative Investment Fund (AIF) to invest in insurance companies as investors. However, in recent past, the Authority is in receipt of proposals wherein Private Equity Fund / Venture Fund / Alternative Investment have evinced interest in purchase of stake / promote an insurance company either as investor or as promoter.

In light of the above, the Authority, in exercise of the powers conferred by sub (1) of Section 14 of Insurance Regulatory and Development Authority 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 should be read with any other law for the time being in force, including the IRDAI (Transfer of Equity shares of Insurance Companies) Regulations, 2015;
- ii. These Guidelines shall be called Insurance Regulatory and Development Authority of India (Investment by Private Equity Fund or Alternate Investment Fund in Indian Insurance Companies) Guidelines, 2017;
- iii. These Guidelines shall be applicable to unlisted Indian insurance companies and to the Private Equity Funds who have invested in the unlisted Indian insurance companies either as investor or as promoter;
- iv. These guidelines shall come into effect on the day of the issuance.

PART-A

2. **Definitions:** In these guidelines, unless the context otherwise requires, -

- 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. **“Private Equity Fund”** includes an Alternative Investment Fund registered with SEBI under the SEBI (Alternative Investment Fund) Regulations, 2012 and / or a Fund specifically formed for investment in one or more entities by one or more persons.

Provided that foreign investment in such Fund will be determined in accordance with the guidelines issued by DIPP, Govt of India from time to time.

- iv. **“Special Purpose Vehicle”**, for the purpose of these Guidelines, means a company registered under the provisions of Companies Act, 2013 or a Limited Liability Firm formed under the Limited Liability Partnership Act, 2008 by the Private Equity Fund for the purpose of investment in insurance company as investor or promoter or both.
- v. 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.



Part-B

3. A Private Equity Fund may invest directly in an Indian insurance company in capacity of investor subject to compliance of the following conditions:
- i. Investment shall be as per the fund's strategy reflected in its placement memorandum to its investors;
 - ii. The Fund shall not hold shares in the insurance company exceeding ten percent of the paid up equity share capital of insurance company;
 - iii. All Indian investors including the investment by the Private Equity Fund /s jointly shall not hold more than twenty-five percent of paid up equity share capital of the insurance company;
 - iv. 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.
 - v. The investment shall be subject to compliance of Fit and Proper criteria. A self-certification for "Fit & Proper" shall be filed along with the application for transfer of the shares. The determination as to Fit and Proper status shall be made on the basis of the criteria laid down in Annexure A read with part C below;
 - vi. A specific undertaking shall be given by the Private Equity Fund/s to not to create any encumbrance on or leverage the investment;
 - vii. In case the investment is onetime, then the Private Equity Fund shall make an upfront disclosure to this effect.
4. A Private Equity Fund may also invest in an Indian insurance company through a Special Purpose Vehicle either in capacity of promoter or investor. Where a Private Equity Fund (through an SPV) invests in an insurance company in capacity of Indian investor then the Private Equity Fund shall comply with the stipulations stated in para 3 above.

5. A Private Equity Fund shall not be allowed to invest directly in an Indian insurance company in capacity of promoter. However, a Private Equity Fund can invest through a Special Purpose Vehicle in an Indian insurance company subject to the following:

- i. A Private Equity Fund through an SPV shall not be a promoter for more than one life insurer, one general insurer, one health insurer and one reinsurer;
- ii. Scheme to be filed with SEBI in accordance with the provisions of the relevant SEBI regulations, as applicable;
- iii. Investment shall be as per the fund's strategy reflected in its placement memorandum to its investors and shall be made entirely out of own funds and not from borrowed funds;
- iv. The investment memorandum or the charter documents of the investor or the investment vehicle, as the case may be, must permit the investment to be made in the least upto the proposed limits including in respect of the future capital requirements of the insurance company;
- v. The investment shall be subject to compliance of Fit and Proper criteria. A declaration for "Fit & Proper" shall be filed with the Authority in the format given in Annexure-A. The determination as to Fit and Proper status shall be made on the basis of the criteria laid down in Annexure A read with Part-C below;
- vi. A specific undertaking to be given to not create any encumbrance on or leverage the investment made through borrowings;
- vii. The investments made shall be subject to a lock in period of five years. The lock in period shall be applicable on SPV and also on the shareholders of the SPV.

Provided that the above said lock in period shall not be applicable on the shareholder / s of SPV holding less than 10 percent capital of SPV;



- viii. Any induction of new shareholder/s in SPV by issue of fresh shares beyond 25 percent shall require the prior approval of the Authority.
 - ix. 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.
 - x. The Indian insurance company shall comply with Guidelines on “Indian owned and Controlled” issued by the Authority;
 - xi. The Indian insurance company shall comply with the Indian Insurance Companies (Foreign Investment) Rules, 2015;
 - xii. Chairman of the Board of the Indian Insurance Company shall be an independent director, failing which the CEO / Managing Director / WTD should be a professional and should not be a nominee of a promoter.
 - xiii. At least one third of the directors on the Board of the insurance company must be independent directors;
 - xiv. An undertaking to subscribe to the rights issue of the insurance company to be provided to ensure that the Indian insurance company is not cash strapped.
 - xv. An undertaking of the post lock in period divestment plan preferably through an IPO in accordance with the relevant regulation applicable for such divestment shall be submitted.
6. Private Equity Funds shall, in addition, to the above shall comply with the provisions of IRDAI (Transfer of Equity Shares of Insurer) Regulations, 2015 including the filing of the application for transfer of the equity shares.



Part-C

7. DETERMINATION OF "FIT AND PROPER" STATUS: Illustrative criteria for determining "fit and proper" status of applicants:

In determining whether the Private Equity Fund or SPV is "fit and proper" to be a promoter / or investor of Indian insurance companies, the Authority may take into account all relevant factors, as appropriate, including, but not limited to the following:

- i. For acquisition of upto 10 per cent shareholding 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 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 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 per cent of the capital of the body corporate as enumerated above.

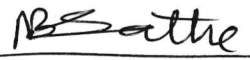
- ii. For acquisition in excess of 10 per cent shareholding in the concerned insurer
 - a) All aspects as laid down in clause 7 (i) of these Guidelines;

- b) Sources and stability of funds for acquisition and the ability to access financial markets as a source of continuing financial support for the insurer;
- c) The business record and experience of the applicant including any experience in acquisition of business;
- d) The extent to which the corporate structure of the applicant will be in consonance with effective supervision and regulation of the insurer;
- e) Whether the applicant is a widely held entity, publicly listed and a well-established regulated financial entity in good standing in the financial community;
- f) The acquisition is in public interest;
- g) The acquisition is to secure the proper management of any insurer;
- h) The desirability of diversified ownership of insurer;
- i) Track record of the applicant;
- j) Shareholder agreements and their impact on control and management of the insurer.

Interpretation:

8. The interpretation of these regulations shall be that of the Chairperson of the Authority, whose decisions on all issues shall be binding on all applicants.

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(Nilesh Sathe)

Member-Life &
In-charge of Finance



Annexure-A

Declaration to be submitted by Private Equity Fund intending to acquire shareholding in an insurer

Name of the insurer in which acquisition is sought:

Registration No.

S. No.	Particular	Remarks
1.	Information to be submitted by the applicant for acquisition of shares or voting rights upto the extent of 10% in the insurer	
1	Name of the applicant (including previous names, if any)	
2	SEBI Registration No.	
3	Address of the applicant	
4	Ownership and control status (as per DIPP Guidelines, Govt of India and FEMA)	
5	Shareholding pattern if the applicant is an entity (applicable in cases of para 4 & 5 of Part-B)	
6	Details of "acquisition" by the applicant and "aggregate holding" in the insurer (name, shareholding in Rs. (in lakhs) and %)	
7	a) List of "relatives" of the applicant b) List of "persons acting in concert" with the applicant c) List of "associate enterprises"	

S. No.	Particular	Remarks
	The list should contain details of name, net worth, total assets, credit rating, shareholding (if any) in the insurer in Rs. (in lakhs) and %	
8	Source of funds for acquisition of the shares / voting rights in the insurer (Duly certified by a Chartered Accountant)	
9	Total net worth, profitability and average income of the applicant over the last 5 years (Duly certified by a Chartered Accountant)	
10	In case of acquisition of voting rights, the details of agreement in brief and consideration paid for such agreement, if any	
11	Has the applicant, or any of the persons listed in 7 above been adjudged bankrupt at any time	
12	If the applicant, or any of the persons listed in 7 above is a member of a professional association / body, details of disciplinary action, if any, pending or commenced or resulting in conviction in the past against him / her or whether he / she has been banned from entry into any profession / occupation at any time	
13	Has the applicant or any of the persons at 7 above been subject to any investigation at the instance of any Government department or agency?	
14	Details of prosecution, if any, pending or commenced or resulting in conviction in the past against the applicant, or persons listed in 7 above for violation of economic laws, tax laws and regulations	

S. No.	Particular	Remarks
15	Details of serious disciplinary or criminal prosecution, if any, pending or commenced or resulting in conviction in the past against the applicant, or persons listed in 7 above	
16	Has the applicant, or persons listed in 7 above at any time been found guilty of violation of rules / regulations / legislative requirements by customs / excise / income tax / foreign exchange / companies act / other revenue authorities, if so give particulars	
17	Whether any qualification, reservation or adverse remark on the books and accounts and financial statements was made by the auditors in their report in respect of the applicant and/ or entities listed in para 7 above, during the past five financial years	
18	Whether the applicant, or persons listed in 7 above has at any time come to the adverse notice of any regulator / revenue authorities / investigative agency including issuance of Show Cause Notice. (Though it shall not be necessary for an applicant to mention in the column about orders and findings made by regulators which have been later on reversed / set aside in toto, it would be necessary to make a mention of the same, in case the reversal / setting aside is on technical reasons like limitation or lack of jurisdiction, etc., and not on merit. If the order of the regulator is temporarily stayed and the appellate / court proceedings are pending, the same also should be mentioned).	
19	Whether the applicant, or persons listed in 7 above has been convicted for any offence under any	

S. No.	Particular	Remarks
	legislation designed to protect members of the public from financial loss due to dishonesty, incompetence or malpractice.	
20	Whether any other person has beneficial interest in the proposed acquisition (if applicable)	
21	Details of shareholding / voting rights of the applicant in other insurers and other institutions in the financial sector	
22	If the applicant is a regulated entity, names and addresses of the regulators of the applicant in India and abroad	
23	Whether any regulatory action has been taken against the applicant or persons listed in 7 above, in any other country	
24	Details of the applicant and persons / entities at 7 above regarding - date of birth / incorporation, Registered Office address, nature of business activity, PAN no., TAN No., CIN No. / DIN No., income tax circle, name of the regulator, type of registration with SEBI, bank, branch and account number (including credit facilities and non-fund based facilities), net worth, total assets. (May be given in a separate annexure).	
II. Additional information to be submitted by the applicants intending to acquire shares or voting rights to the extent of more than 10 % in the insurer		
25	Details of capital raised by the applicant during the past 5 years	
26	Details of serious disciplinary or criminal prosecution, if any, pending or commenced or resulting in	

S. No.	Particular	Remarks
	conviction in the past against the applicant, or parties or entities listed in 7 above	
27	Whether the applicant intends to have a Board representation in the Insurer	
28	Details of representation of the applicant on the Boards of other insurers and other institutions in the financial sector	
29	The business record and experience of the applicant including any experience of acquisition of companies / business	
30	Reasons for acquiring a stake or voting rights in the insurer	
31	Any other explanation / information in regard to items above considered relevant for judging "fit and proper" status of the entities listed in 7 above	

Undertaking

I confirm that the above information is to the best of my knowledge and belief, true and complete. I undertake to keep the insurer and the Authority fully informed, as soon as possible, of all events which take place subsequent to submission of this declaration which are relevant to the information provided above.

Signature of the Authorized Signatory
with common seal, if any

Place:

Date: