

To: T. S. Vijayan
Chairman
Insurance Regulatory and Development Authority
Hyderabad, India

Date: 30 November 2015

Subject: GFIA comments on IRDAI Guidelines on Indian owned and controlled insurance companies

Dear Chairman,

The Global Federation of Insurance Associations (GFIA), which through its 40 member associations represents insurers that account for approximately 87% or more than \$4.0 trillion in total annual insurance premiums worldwide, would like to thank you for the opportunity to comment on the recently released “Guidelines on Indian owned and controlled” (Ref: IRDA/F&A/GDL/GLD/180/10/2015) in connection with the increase of the foreign direct investment (FDI) cap in the insurance sector from 26 to 49% legislated through the Insurance Laws (Amendment) Act, 2015 in March 2015.

IRDAI’s guidelines require that joint ventures (JV) with foreign insurers have a majority of the board of directors (excluding independent directors) nominated by the Indian promoter(s)/Indian investor(s) and that the Indian promoter(s)/investor(s) or the board of directors appoint the chief executive officer (or other principal officer). While some key management executives may be appointed by the foreign investor, they must be approved by the Indian investor-controlled board. Further, the IRDAI guidelines define a quorum of the directors as the presence of a majority of the Indian directors, irrespective of whether a non-Indian investor’s nominee is present and participating in a board meeting.

GFIA supported the increase in the FDI cap and GFIA members broadly welcomed the enactment of the Insurance Laws (Amendment) Act in March, as it represented a significant legislative initiative of the Indian Government and an important economic reform. Following the legislation’s enactment, many anticipated a substantial increase in foreign investment in the Indian insurance market that would benefit both the Indian economy and the full range of insurance sector investors.

Now that IRDAI has issued long-awaited guidelines designed to clarify provisions of the March legislation, GFIA would like to take this opportunity to express its members’ concern about their content and implications.

First, we believe that the guidelines undermine the sanctity of existing contractual relationships between many foreign insurers and their India partners. In this context, long established joint-venture agreements previously approved by the IRDAI contain contractual obligations that now appear to be inconsistent with the new guidelines. Those important contractual obligations were the very basis for foreign investors’ decisions to enter into joint-ventures with Indian investors. Investors on both sides of the JV agreements, attracted to



an opportunity where their commitment, investment, involvement and management control are aligned according to their strengths and abilities, carefully structured language that they believed would be most effective for them and for the operations of their joint ventures. At a time when the Indian government has publicly noted the undesirability of retroactive legislation and regulation, these new IRDAI guidelines appear to be inconsistent with the government's promises to promote clarity and certainty in India's foreign investment.

More broadly, we believe that the recent guidelines may undermine the core goal of the March legislation to attract more investment to India's insurance sector. Many current and potential foreign investors viewed the increase in in the investment cap as an opportunity to not only invest in India's future but also to take a more active role in their joint ventures in India, bringing additional cutting-edge global expertise, best practices and products to the Indian market. The latest restrictions will have the opposite effect, discouraging both new foreign investors from entering the market and existing foreign investors from increasing their stakes.

In raising these concerns, we would also like to highlight the absence of any opportunity for the public to consult with IRDAI prior to the release of the new guidelines. Public comment periods are an integral aspect of global regulatory best practices that provide investors, domestic and foreign alike, with the confidence that their perspectives have been heard on key decisions affecting their investments.

We respectfully request that you carefully consider these concerns in the hope that you will provide the opportunity for a dialogue with us with the goal of promoting a sound regulatory environment that will benefit India's insurance sector.

Yours sincerely,

GOVERNOR DIRK KEMPTHORNE
Chair, Global Federation of Insurance Associations

GFIA contact

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About the GFIA

Through its 40 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 60 countries. These companies account for around 87% of total insurance premiums worldwide. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.