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MASTER CIRCULAR ON REGISTRATION OF INDIAN INSURANCE COMPANIES REGULATIONS - TIMELY AND HELPFUL CLARIFICATIONS AIMED AT TRANSITIONING TO

10 June 2023

I. Introduction

In December 2022, the Insurance Regulatory and Development Authority of India (IRDAI) published the IRDAI (Registration of Indian Insurance Companies) Regulations 2022 (New Regulations) to overhaul and simplify the regime relating to registration of Indian insurance companies and investments in and transfer of shares of insurers. The Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations 2000 and the IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations 2015 were repealed by the New Regulations. On 24 April 2023, IRDAI also issued a master circular (Master Circular) that prescribes various forms under the New Regulations, but more importantly, provides various clarifications in respect of important aspects of the New Regulations to enable a smoother and efficient transition. Discussed below are key provisions of the Master Circular.

II. Key provisions

BACKGROUND	MASTER CIRCULAR CLARIFICATIONS	COMMENT
1. LOCK-IN FOR INVESTMENT-APPROVALS GRANTED PRIOR TO THE NEW REGULATIONS		
Old regime: (a) Shareholders that are 'promoters' – 5 year lock-in from the date of investment. (b) Shareholders that are 'investors' – no lock-in New Regulations:	For approvals granted *prior* to the New Regulations: (a) shareholders that are 'promoters' – lock-in will be as per the New Regulations; (b) shareholders that are 'investors' – no lock-in on shares acquired prior to 5 December 2022 (i.e. date of notification of the New Regulations);	Applicability of the new lock-in provisions to investments made under the old regime was a key issue discussed by our firm with the IRDAI prior to the finalisation of the New Regulations. 2 key requests of the investor-community that we had emphasized to the IRDAI were: (a) shareholders that invested as 'promoters' under the old regime should have the benefit of the shorter lock-in

(a) Lock-in is applicable for all shareholders, though it varies depending on the categorisation of the shareholder (i.e. 'promoter' or 'investor'). (b) Lock-in can be 5 years from date of investment or lower, and this variation is linked to the age of the insurer as on the date of investment.	<u>*however,*</u> shares acquired post such date will be subject to lock-in as per the New Regulations.	periods (linked to age of the insurer) introduced by the New Regulations; and (b) shareholders that invested as 'investors' under the old regime should not be subjected to a lock-in (since such lock-in was not applicable to the investor at the time of its investment). *Vide* the Master Circular, IRDAI has addressed both these concerns, which is a positive step and clarifies the position and facilitates smoother entry and exit from the insurance sector.
2. <u>LOCK-IN IN CASE OF LISTED INSURERS</u>		
Proviso to Regulation 6(1) of the New Regulations provides that IRDAI "*may relax*" the lock-in requirements to enable the insurer to list its shares on the stock exchange(s) in India.	Lock-in under the New Regulations will not be applicable on the insurers having equity shares listed on the stock exchange(s) in India. Minimum promoter holding requirements (as per the New Regulations) will however need to be complied with.	During our discussions with the IRDAI on the draft of the New Regulations, we had suggested such an *automatic fall away* of lock-in at the time of listing. The New Regulations did not explicitly provide for this (and instead IRDAI retained the enabling right to consider approving the fall-away of lock-in at the time of listing. The clarification introduced (vide the Master Circular) implements the same concept. Introduction of this concept is a progressive move as this will give investors (whether investing as 'promoter' or 'investor') the certainty of exit and confidence at the time of making the investment and ties in well with IRDAI's soft push to insurers to consider listing their shares in the very near future.
3. <u>DIRECTORSHIP RESTRICTIONS</u>		
Proviso to Regulation 6(7)(b)(iii) of the New	(a) Following shareholders <u>*cannot*</u>	(a) The old regime did not prescribe any similar

Regulations provide that *"investor may nominate a director on the Board of the insurer if its investment exceeds 10 percent of the paid up capital of the respective insurer."*	nominate a director to the board of directors of an insurer and must ensure that their existing board seats are vacated within 6 months from date of the Master Circular: **(i)** Shareholder that holds up to 10% in insurer and is a 'promoter' under the old regime but now intends to be *re-classified* as 'investor' under the New Regulations; **(ii)** Shareholder that holds up to 10% in insurer and is an 'investor' under the old regime and intends to continue as 'investor' under the New Regulations. (b) Following shareholders may nominate a director to the board of directors of an insurer: **(i)** Shareholder that holds any shareholding %, is a 'promoter' under the old regime, and intends to continue as 'promoter' under the New Regulations; **(ii)** Shareholder that holds more than 10% but less than 25%, is a 'promoter' under the old regime but	directorship-linked restrictions. In view of the new restrictions under the New Regulations, these clarifications are helpful. Some 'investors' holding below 10% will have to give up their board seats within the timeline set by IRDAI, unless they raise their shareholding % to above 10% but below 25% (which will enable them to continue as an 'investor'). (b) The specific mention of prior IRDAI approval being required for re-classification of status exactly aligns with what IRDAI had mentioned during the discussions on the draft regulations – i.e. that the increased shareholding-threshold under the New Regulations for being considered as an 'investor' does not imply automatic re-classification of existing shareholders and instead, for any re-classification, prior approval will be required. It will be interesting to see the documentation and other requirements that IRDAI may prescribe for considering such re-classification applications.

		intends to be *re-classified* as 'investor' under the New Regulations.	
	(c)	*Re-classification of status* (from 'promoter' to 'investor') will require prior IRDAI approval.	

<u>In addition</u>, listed below are certain other relevant provisions of the Master Circular:

1. <u>Applicability</u>: The Master Circular will be in force for 3 years from the date of its issuance (i.e. from 24 April 2023).

   <u>Comment</u>: This is similar to the 3-year sunset clause provided in the New Regulations and is in line with the latest broader approach of the IRDAI to relook at insurance laws/regulations periodically to ensure that these are updated to meet changing industry needs. (*Note that similar sunset clauses have also been included in certain recently notified new regulations, including, IRDAI (Expenses of Management of Insurers transacting General or Health Insurance Business) Regulations 2023, IRDAI (Payment of Commission) Regulations 2023, IRDAI (Other Forms of Capital) Regulations, 2022, etc*).

2. <u>Repeal of guidelines / circulars:</u> The Master Circular specifically repeals the following from the date of the Master Circular: (a) IRDAI (Investment by Private Equity Funds in Indian Insurance Companies) Guidelines 2017; (b) Guidelines for Listed Indian Insurance Companies 2016; (c) Circular dated 22 July 2020 on transfer of shares of the insurance companies; and (d) Circular dated 27 September 2018 on details of equity holding pattern of insurance companies.

   <u>Comment</u>: Though this was IRDAI's desired/ intended effect at the time of notification of the New Regulations, it was not specifically set out in the New Regulations and hence, from a legal perspective, there was doubt, ambiguity as well as separate and inconsistent (to some extent) regulations in place dealing with the same aspects. These doubts have now been settled.

3. <u>Lastly</u>, the Master Circular prescribes forms / stipulates details for various applications to be made to the IRDAI – including applications to be filed at the different stages of the registration process (namely, Form IRDAI/R1 (and prior to that application for issuance of this form), Form IRDAI/R2), application for seeking share-transfer approval, etc. The Master Circular also discusses validity of no-objection certificates and Form IRDAI/R1 issued by IRDAI prior to notification of the New Regulations and clarifies the processing fees payable for applications that were lodged prior to the notification of the New Regulations.

III. <u>Conclusion</u>

Based on our recent interactions with IRDAI, we understand that the Master Circular has been in the works for a while due to various questions and doubts that were being raised by the industry with IRDAI. Time will tell if further clarifications are necessary. However, in our view, the Master Circular clarifies few crucial doubts that had emanated pursuant to the New

Regulations and certainly achieves its objective – which is to enable transition to the new regime, ease doing of business and incentivize investments in the insurance sector. IRDAI's consultative approach in preparing the New Regulations and introducing such clarificatory provisions promptly bodes well for the industry as it indicates the regulator's objective of improvising and being open to practical and forward-looking suggestions and changes.

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