GLOBAL FEDERATION OF INSURANCE ASSOCIATIONS

To: Mr. Praveen Garg
Joint Secretary
Ministry of Finance
North Block, New Delhi 110001
praveen.garg@nic.in

Date: 4 April 2016

Subject: GFIA comments on "local management control" issue in Insurance Act amendments

Dear Mr. Garg,

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 of total annual insurance premiums worldwide.

Knowing the key role you play in leading aspects of the Finance Ministry's engagement with foreign governments and other stakeholders, we thought it appropriate to apprise you of a situation arising out of the recent amendments to the Insurance Act, approved by Parliament in March 2015. Specifically, many foreign insurers are concerned about the implementation of the "local management control" issue and how it may impact joint-venture agreements that may have been signed over a decade earlier. Our members feel it is important to brief you on this subject, in case you are not aware of it.

The "Guidelines on Indian owned and controlled" (Ref: IRDA/F&A/GDL/GLD/180/10/2015) were released in connection with the increase to the foreign direct investment (FDI) cap in the insurance sector from 26% to 49% brought in by the Insurance Laws (Amendment) Act in March 2015.

The IRDA'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. Furthermore, the IRDA 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 was a steadfast supporter of the Indian Government's work to increase the FDI. We regularly engaged with opposition party leaders and provided detailed responses that helped strengthen arguments against opponents of the bill. 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 the 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 of existing contractual relationships between many foreign insurers and their India partners. Long-established joint-venture agreements previously approved by the IRDAI contain contractual obligations that now appear to be inconsistent with the new guidelines. Those

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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 indesirability 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 not only to 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 the 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 opportunity for their perspectives to be heard on key decisions affecting their investments.

We respectfully request that you carefully consider these concerns and 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.

Sincerely,

Brad Smith
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About 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. The GFIA is incorporated in Switzerland and its secretariat is based in Brussels.