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Foreign insurers like Mitsui Sumitomo, Standard Life's plans to raise stake may be hit

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MUMBAI: Mitsui Sumitomo, Standard Life, and some other insurers may face a snag as they look to raise their stakes in local ventures, following the passage of legislation lifting the overseas limit to 49% from 26%. That's because a law that exempts foreign holdings in the parent being counted toward the limit covers only banks. That appears to exclude those parent firms that are non-banking finance companies, for instance.

As per the law, the cap of 49% includes direct and indirect foreign direct investment as well as foreign portfolio investment.

HDFC has 80% foreign shareholding while Standard Life holds 26% in HDFC Life, resulting in a direct and indirect foreign shareholding of around 83%. This was not deemed to be a violation of Department of Industrial Policy and Promotion (DIPP), mainly as the strategic investor held only 26%.

"Now, with a composite limit, this may need re-examination," said Abizer Diwanji, national head, financial services, EY.

Although there is confusion, Diwanji said the spirit of the law should persuade the Foreign Investment Promotion Board to allow an increase even by nonbanks. The foreign institutional ownership and the foreign direct investment laws can be looked at differently by FIPB. Max India, 40% overseas held, has a 70% stake in Max Life. Mitsui Sumitomo has 26%, resulting in foreign shareholding equivalent to 54% in Max Life. Standard Life is likely to increase its stake to 35%. It's not clear whether this is because the law is silent on foreign shareholding in the parent or HDFC Life plans to list its shares on the stock exchanges. Azim Premji had bought a minority stake of 0.95% in HDFC Life for Rs 199 crore, valuing the life insurer at Rs 18,000 crore.

Both HDFC and Max India did not respond to email queries. "There is scope for clarity on indirect shareholding in insurance companies as the new Insurance Bill does not talk about you," said a senior executive of HDFC Life, who did not wish to be quoted.

"There is no clarity on indirect foreign ownership," said Alpesh Shah, partner at BCG. "There needs to be clarity on who appoints the CEO."

While increasing the foreign limit in insurance, the government ensured that ownership and control remain with Indian residents. Earlier, the Insurance Act did not provide for control and ownership of an Indian insurance firm to be with resident Indians. In the earlier regime, it was possible for offshore strategic partners to have substantial control rights on operational and financial policy decisions of the JV.

"If Irda does not come up with clarification, the existing law will continue," said Simone Reis, cohead, M&A and PE, Nishith Desai Associates. Foreign investment also includes any investment in the promoter entities of such insurance companies by the foreign companies (or their subsidiaries), non-resident investors or other foreign investors who hold shares in the insurance companies, Nishith Desai's report on new Insurance Bill said.

Legal departments of insurance companies are busy seeking clarity. They are looking for clarifications from (FIPB) and the Insurance Regulatory and Development Authority.