

Draft International Financial Services Centres Authority (Finance Company), Regulations, 2021

IFSCA proposes to notify regulations inter-alia to provide for a competitive regulatory environment to non-banking financial institutions to complement the role of banking in providing finance, innovative products and service in IFSCs in India and play their role in development of financial centres and overall economy.

Accordingly, the Draft IFSCA (Finance Company) Regulations, 2021 are proposed to be notified after public consultations. All market participants and other stakeholders are therefore advised to offer their comments on following draft regulations to Ms. Riddhi Bhandari (DGM) at riddhi.bhandari@ifsc.gov.in by 17th February, 2021.

Draft Regulations

In exercise of the powers conferred by sub-section (1) of Section 28, read with sub-section (1) of Section 12 and sub-section (1) of Section 13 of the International Financial Services Centres Authority Act, 2019, the International Financial Services Centres Authority hereby makes the following regulations for Finance Company in the International Financial Services Centres, namely: -

CHAPTER I PRELIMINARY

1. Short title and commencement

- (1) These regulations may be called the International Financial Services Centres Authority (Finance Company) Regulations, 2021.
- (2) They shall come into force from the date of its notification in the Official Gazette.

2. Definitionse

- (1) In these regulations, unless the context otherwise requires, -
 - a) "Act" means the International Financial Services Centres Authority Act, 2019 (50 of 2019);
 - b) "Aircraft Lease" includes operating and financial lease and any hybrid of operating and financial lease of aircraft or helicopter and engines of aircraft or helicopter or any parts thereof;
 - c) "Authority" means the International Financial Services Centres Authority established under sub-section (1) of Section 4 of the Act;

- d) "Banking Unit" shall have the same meaning as assigned to it under clause (c) of sub-regulation (1) of Regulation 2 of the IFSCA (Banking) Regulations, 2020;
- e) "Capital fund" for a Finance Company shall mean the paid-up-capital and free reserves, balance in share premium account and capital reserves representing surplus arising out of sale proceeds of asset, excluding reserves created by revaluation of asset, as reduced by accumulated loss balance, book value of intangible assets and deferred revenue expenditure, if any;
- f) "Deposits", means an amount raised from a person resident in India or a person resident outside India, in any form which are repayable on demand or is a term deposits and includes such other amounts as may be specified by the Authority from time to time;
- g) "Finance Company" means a financial institution as defined under clause (c) of sub-section (1) of section 3 of the Act, separately incorporated, to deal in one or more of the permissible activities specified under sub-regulation (1) of Regulation 5 of these regulations, provided:
 - (i) It does not accept deposits as defined in these regulations; and
 - (ii) It is not registered with the Authority as a Banking Unit;
- h) "Finance Unit" means a financial institution as defined under clause (c) of sub-section (1) of section 3 of the Act, set up as a branch permitted under these regulations, which deals in one or more of the permissible activities specified under sub-regulation (1) of regulation 5 of these regulations, provided:
 - (i) it does not accept deposits as defined in these regulations; and
 - (ii) it is not registered with the Authority as a Banking Unit;
- i) "International Financial Services Centre" shall have the same meaning as assigned to it under clause (g) of sub-section (1) of Section 3 of the Act;
- j) "Leverage Ratio" means the capital measure (the numerator) divided by the exposure measure (the denominator), with this ratio expressed as a percentage;
- k) "Non-resident" means a person resident outside India as defined under clause (w) of Section 2 of The Foreign Exchange Management Act, 1999;
- l) "Resident" means a person resident in India as defined under clause (v) of Section 2 of The Foreign Exchange Management Act, 1999;
- m) "Reserve Bank" means the Reserve Bank of India established under the Reserve Bank of India Act, 1934 (2 of 1934);
- n) "Ship Lease" includes lease for ocean vessel(s) for a specific route(s) or duration(s), involved in commercial business of transportation, in form of a commercial structure, which conforms to the relevant accounting standards for qualifying it as a lease;

(2) Words and expressions used and not defined in these regulations but defined in the IFSCA Act or Acts mentioned in the First Schedule to the IFSCA Act or Companies Act, 2013, or any rules or regulations made thereunder shall have the same meanings respectively assigned to them in those Acts, rules or regulations or any statutory modification or re-enactment thereto, as the case may be.

CHAPTER II

SETTING UP OF A FINANCE COMPANY

3. Registration Requirement

(1) An entity shall commence business as a Finance Company or Finance Unit, as the case may be, in the IFSC only after obtaining a certificate of registration from the Authority for carrying out the activities specified in Schedule to these regulations.

(2) The Finance Company can be set up either as a subsidiary or a joint venture, or as a newly incorporated company under the Companies Act, 2013 or in any other form as may be specified by the Authority from time to time,

Provided, a Finance Unit may be permitted to be set-up by an entity, if the investing entity, or the ultimate parent of the investing entity is carrying out a regulated financial activity in its home jurisdiction;

(3) An application for grant of registration as a Finance Company or a Finance Unit, as the case may be, shall be made by the applicant in the form and manner as specified by the Authority.

(4) The applicant shall fulfil the following conditions for seeking registration with the Authority:

(i) An applicant seeking registration as a 'Finance Company' shall have and maintain a capital fund, depending on the activity proposed to be undertaken by it, as specified in Schedule of these regulations, or such other higher amount as may be specified by the Authority.

(ii) In case the applicant is seeking registration as 'Finance Unit', its parent shall provide the capital on unimpaired basis at all times, depending on the activity proposed to be undertaken by the Finance Unit, as specified in Schedule to these regulation, or such other higher amount as may be specified by the Authority.

Provided that the parent entity shall obtain No-Objection Certificate from the home country regulator for setting up a Finance Unit in the IFSC.

- (5) The applicant entity and/or the promoters shall be from a FATF compliant jurisdiction and comply with international standards set by the Financial Action Task Force to combat money laundering and terrorist financing.
- (6) After considering the application filed under sub-regulation (3), if the Authority is satisfied that the terms and conditions as specified in these regulations have been fulfilled, it may grant certificate of registration to the applicant, in such form as may be specified,
Provided that on a request received from an applicant, if the Authority is satisfied that the Applicant may be given more time to comply with certain conditions for grant of registration, it may, for the reasons to be recorded in writing, consider grant of provisional registration giving additional time to the applicant subject to such conditions, as it may deem necessary.
- (7) If, after considering the application for registration, the Authority is of the opinion that registration cannot be granted, it shall communicate the deficiencies to the applicant giving it thirty days' time to rectify them.
- (8) If the applicant fails to rectify such deficiencies to the satisfaction of the Authority within the specified time, the Authority may refuse to grant certificate of registration and shall communicate the same to the applicant giving reasons for such refusal.
- (9) Provided that no such refusal shall be made by the Authority without giving the applicant an opportunity to make written submissions on the grounds on which the registration is proposed to be refused.

CHAPTER III

PRUDENTIAL REGULATORY REQUIREMENTS

4. Applicable prudential regulations

- (1) The prudential regulations applicable to a Finance Company or a Finance Unit, as the case may be, shall be similar to those applicable to a Banking Unit registered in IFSCA, unless otherwise specified by the Authority.
- (2) **Capital Ratio**
A Finance Company or a Finance Unit, as the case may be, shall maintain a capital ratio in proportion to its aggregate risk weighted assets at 8% or any such ratio as may be determined by the Authority.
- (3) **Capital Buffer**
The capital buffer to be maintain by a Finance Company or a Finance Unit, as the case may be, shall be such as may be determined by the Authority.
- (4) **Liquidity Coverage Ratio (LCR)**

A Finance Company or a Finance Unit as the case may be, shall maintain LCR on stand-alone basis, at all times, as may be determined by the Authority.

Provided that in the case of a Finance Unit,, the LCR may be allowed to be maintained by the Parent entity, with specific approval of the Authority.

(5) Leverage Ratio

The Finance Company shall disclose its Leverage Ratio to the Authority as advised and it may be subjected to a ceiling as determined by the Authority.

(6) Exposure Ceiling

The sum of all the exposures of a Finance Company or a Finance Unit, as the case may be, to a single counterparty or group of connected counterparties shall not exceed twenty-five per cent of their available eligible capital base, without the approval of the Authority.

Explanation: The Authority may issue operational guidelines with respect to the implementation of the requirements under sub-regulations (1) to (6) of regulation 4.

Chapter IV

PERMISSIBLE ACTIVITIES

5. Permissible activities

(1) A Finance Company or a Finance Unit, as the case may be, may undertake the following permitted core and non-core activities, subject to compliance with such terms and conditions or guidelines as may be specified by the Authority:

(i) Specialised activities

- (a) Credit enhancement;
- (b) Factoring and forfaiting of receivables
- (c) any other specialised activity as specified by the Authority, from time to time.

(ii) Permitted core activities:

- (a) Lend in the form of loans, commitments and guarantees, securitisation, and sale and purchase of portfolios;
- (b) Undertake investments, including subscribing, acquiring, holding, or transferring securities or such other instruments, as may be permitted by the Authority, as principal;
- (c) Undertake equipment leasing, and ship leasing,
- (d) Carry out financial lease transactions for aircraft lease ;
- (e) any other core activity as may be permitted by the Authority.

(iii) Permitted non-core activities:

Subject to a Finance Company or a Finance Unit, as the case may be, seeking a specific registration wherever applicable, permitted non-core activities shall include:

- (a) Function as trading and professional clearing member of exchanges set up in IFSC,
 - (b) Investment Advisory services,
 - (c) Wealth Management services,
 - (d) Distribution of mutual fund units,
 - (e) Distribution of insurance products,
 - (f) Operating lease transactions for aircraft lease;
 - (g) any other non-core activity, with prior approval of the Authority
- (2) The Finance Company or a Finance Unit, as the case may be, may undertake transactions in financial products and services as part of permissible activities as specified in sub-regulation (1), with both residents and non-residents.
- Provided that*, any dealing with residents shall be subject to the provisions of FEMA.
- (3) A Finance Company or a Finance Unit, as the case may be, shall be allowed to participate in derivative transactions only for the purpose of hedging their underlying exposures.
- (4) A Finance Company or a Finance Unit, as the case may be, shall not be permitted to undertake or fund any speculative transaction.
- (5) The source of funds for Finance Company or a Finance Unit, as the case may be, shall be from non-residents. However, paid-up-capital can be raised from residents as permitted under the provision of FEMA.

CHAPTER V MISCELLANEOUS

6. Currency of Operations

(1) A Finance Company or a Finance Unit, as the case may be, shall carry out its operation in a freely convertible foreign currency and with such persons, whether resident or otherwise, as may be permitted by the Authority.

Provided that such entities may be permitted to conduct such business in INR with such persons, whether resident or otherwise, as may be specified by the Authority, subject to settlement of the financial transaction in relation to such business in freely convertible foreign currency.

(2) Every Finance Company and Finance Unit shall maintain its books of accounts, records and documents in such foreign currency, as may be declared by it at the time of making an application for registration under Regulation 3

7. Know Your Customer and Anti-Money Laundering

(1) Every Finance Company and Finance Unit shall follow Know Your Customer norms, combating of financing of terrorism and other anti-money laundering requirements, including reporting requirements, as specified for a Banking Unit in IFSC.

8. Corporate Governance and Disclosure requirements

(1) Every Finance Company and Finance Unit shall adhere to the guidelines on corporate governance and disclosure requirements to be specified by the Authority

9. Reporting Requirements

(1) Every Finance Company and Finance Unit shall furnish information relating to their operations to the Authority, in such manner, interval and form, as may be specified by the Authority.

(2) Any financial reporting by a Finance Company and a Finance Unit to the Authority shall be in US Dollar, unless otherwise specified by the Authority.

10. Power to specify procedures and issue clarifications

For the purposes of implementation of these regulations and matters incidental thereto, or in order to facilitate and regulate financial services relating to activities permitted under these regulations, the Authority may specify norms, procedures, processes, manners including relaxations therefrom, by way of circulars or guidelines.

11. Action in case of default

(1) If a Finance Company or a Finance Unit fails to fulfil any of the conditions subject to which the registration under Regulation 3 has been granted, the Authority may take any enforcement action as it may deem fit, including suspension or cancellation of registration, after giving an opportunity of making its submissions.

Schedule

[See regulation 3(1), 3(4)(i) and 3(4)(ii)]

No,	Activity	Capital Requirement	Fund	Exempted Regulations, if any
1	Undertaking one or more non-core activities.	USD 1 mn or equivalent amount in any other freely convertible currency.		Regulation (4) and Regulation (8) subject to the following: (i) To have a Board approved prudential policy (ii) Fit and Proper criteria set out by the Authority
2	Undertaking to act as facilitators of core activities as and when permitted by the Authority.			
3	Undertaking any of the permissible activities, if operating without access to direct or indirect public borrowing.			
4	Undertaking one or more core activities with or without non-core activities.	USD 3 mn or equivalent amount in any other freely convertible currency.		None
5	Undertaking specialised activities with or without core or non-core activities.	USD 5 mn or equivalent amount in any other freely convertible currency.		None