

Consultation paper on the proposed IFSCA (Payment Services) Regulations, 20XX

Objective:

1. The objective of this consultation paper is to seek comments/views/suggestions from the public on the proposed International Financial Services Authority (Payment Services) Regulations, 20XX (“the regulations”).

Background:

1. The International Financial Services Centres Authority (IFSCA) is the unified regulator for the development and regulation of financial products, financial services and financial institutions in the International Financial Service Centres (IFSC). Section 3(1)(d)(xi) of the IFSCA Act, 2019 (“the act”) lists “providing payment services” as a financial service under the act.
2. While the terms “payment service” and “payment system” are generally used interchangeably, they differ in scope, application as well as the type of participants. Payment service can be defined as a service related to fund transfer transactions realised with or without payment accounts, which includes operation of payment accounts, issuance or acceptance of payment instruments and mobile payments and is provided by Payment Service Provider to payment service user. The payment system, on the other hand, refers to the specialised infrastructure used for interbank money transfers.
3. While the Authority enjoys powers under the Payment and Settlement Systems Act, 2007 to license and regulate payment systems, authorisation and regulation of payment services requires a differentiated approach with issues like protection of customers funds, customer service etc. to be dealt with at a more granular level. Several projects currently in the IFSCA Fintech sandbox and some being considered for inclusion in the sandbox are payment services as they support the process of payments. For such systems to go live after successfully exiting the sandbox, due legal recognition of their role as a supporting service for enabling payments needs to be ensured.
4. The Regulations *inter alia* provide for:
 - (1) **Procedure for applying to provide a “Payment Service”**
 - (a) The regulations lay down the process for applying to be a Payment Service Provider (PSP) and the types of authorisations that shall be granted for the Authority.

- (b) The regulations also permit the Authority to revoke an authorisation previously granted and also lay down the procedure for a PSP to surrender an authorisation previously granted.

(2) **Types of authorisations**

Depending on the time of payment service/s sought to provided and the requirement for holding customer funds, the regulations provide for two types of authorisations namely Licensing and Registration.

(3) **Providing initial capital**

Authorisation shall be granted once the applicant demonstrates ability to hold the necessary capital prescribed by the Authority.

(4) **Governance requirements**

The PSP shall comprehensively document its governance arrangements and keep such documentation upto date.

(5) **Exemption from the requirement of authorisation**

The Authority may exempt a payment service or a person proposing to provide a payment service from the requirement for authorisation under the regulation subject to such conditions as it may deem fit to impose.

(6) **Safeguarding the funds of the users**

The PSP is required to safeguarding the funds of the users received by it and also keep such funds segregated from the funds owned by the PSP.

5. The draft regulations are placed on the website of the IFSCA at <https://ifsc.gov.in/PublicConsultation>. General public and stakeholders are requested to forward their comments/suggestions through e-mail to Mr. Supriyo Bhattacharjee at supriyo.b@ifsc.gov.in and Mr. Vaibhav Sattavan at vaibhav.sattavan@ifsc.gov.in on or before July 5, 2023, in the attached format. The comments may be provided in MS Word or MS Excel format only.

Format for providing comments / suggestions

IFSCA (Payment Services) Regulations, 20XX

Name, Designation of the person				
Contact No.				
Name of Organisation				
Page No. of Draft Regulation	Reg. No.	Sub-Regulation No/Para No.	Comments/Suggestions/Suggested modifications	Rationale

DRAFT

**International Financial Services Centres Authority (Payment Services)
Regulations, 20XX**

In exercise of the powers conferred by sub-section (1) of Section 12 of the International Financial Services Centres Authority Act, 2019 (50 of 2019), the International Financial Services Centres Authority hereby makes the following regulations namely: -

Chapter I

Preliminary

1. Short title and commencement: -

(1) These regulations may be called the International Financial Services Centres Authority (Payment Services) Regulations, 20XX.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Objective: -

These regulations lay down the process of regulating payment services and Payment Service Providers in International Financial Services Centres ('IFSCs') including licensing and authorisation of Payment Service Providers

3. Definitions: -

(1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings as assigned to them below and their cognate expressions shall be construed accordingly-

(a) 'Act' means the International Financial Services Centres Authority Act, 2019 (50 of 2019);

(b) 'Applicable funds' means

- i. funds received by the Payment Service Provider from, or for the benefit of, a payment service user for the execution of a payment transaction;
- ii. sums received from a Payment Service Provider for the execution of a payment transaction on behalf of a payment service user.

(c) "Authorisation" means licensing, registration or any other type of approval granted by the Authority to an applicant to provide a payment service specified in (d)

(d) 'Authorisation Certificate' means the certificate containing the details of the authorisation issued by the Authority

(e) 'Authority' means the International Financial Services Centres Authority established under sub-section (1) of Section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019);

(f) "Licensing" is a type of authorisation which requires the Payment Service Provider to comply with specified organisational, financial and risk management requirements and to be prudentially supervised by the Authority.

(g) 'Payment Service' means the execution of payment transactions, the issuance or acquisition of payment instruments and includes any other service enabling the transfer of money that may be specified as a "payment service" by the Authority.

(h) 'Payment Service Provider' means any person that provides payment services as a principal business and who has been duly authorised by the Authority to provide such payment service.

(i) "Payment Service User" means any person that makes use of a payment service in the capacity of a payer or a payee, or of both;

(j) "Registration" is a type of authorisation that requires the Payment Service Provider to satisfy certain conditions for being included in a register but on which no ongoing supervision is conducted by the Authority.

(2) All other words and expressions used and not defined in these regulations or the Act but defined in the Acts specified under column (3) of the First Schedule of the Act shall have the meanings respectively assigned to them in those Acts.

Chapter II

Authorisation to Payment Service Providers

4. Requirement of authorisation for commencing or carrying on a Payment Service

Any person seeking to provide payment services from IFSC shall require authorisation from the Authority.

5. Application for authorisation for providing Payment Services: -

(1) Any person seeking to provide Payment Services in IFSC (hereinafter referred to as 'applicant') shall submit an application to the Authority for grant of authorisation;

Provided that in case the applicant desiring to provide more than one Payment Service in IFSC, shall submit separate applications for providing each Payment Service.

(2) The application under sub-regulation (1) shall be made in such form and contain such particulars as may be specified by the Authority and addressed to the Chairperson of the Authority.

(3) The application under sub-regulation (1) shall be accompanied by a non-refundable application fee as may be specified by the Authority and paid in such manner as may be specified by the Authority.

6. Grant of Authorisation: -

- (1) On examination of the particulars furnished by the applicant and other information available with the Authority, if the Authority is satisfied that the requirements for authorisation are fulfilled, it shall issue authorisation certificate to the applicant to commence and carry on a payment service;

Provided that separate authorisation certificate shall be issued for each payment service.

- (2) The Authority, while granting authorisation, may impose such additional conditions as it may deem fit and the authorisation so granted shall be in force subject to satisfaction of such conditions.
- (3) The Authority may, if it considers it necessary, for the proper conduct of the Payment Service, require the applicant to furnish a security deposit of such amount as may be specified by the Authority from time to time.

The applicant shall, at any time after the grant of authorisation under sub-regulation (1), intimate to the Authority of any material change in the information or particulars previously furnished along with the application, which has a bearing on the Authorisation Certificate granted to it.

7. Refusal of Authorisation : -

(1) If the Authority is of the opinion that the authorisation cannot be granted, it shall communicate the deficiencies to the Applicant giving it thirty (30) days' time to rectify them.

(2) If the Applicant fails to rectify such deficiencies to the satisfaction of the Authority within the specified time, the Authority may refuse to grant authorisation and shall communicate the same to the Applicant, giving reasons for such refusal.

8. Revocation of Authorisation:-

- (1) If the Authority is satisfied that the Payment Service Provider has failed to comply with any of the conditions of the authorisation, provision of these regulations, orders or directions of the Authority; or that the activity of the Payment Service Provider is being carried on in a manner prejudicial to the interests of the Payment Service Users, it may revoke the authorisation given to such provider.
- (2) The order for revocation of the Authorisation Certificate shall be issued after giving the Payment Service Provider a reasonable opportunity of being heard.

9. Surrender of Authorisation:-

- (1) The Payment Service Provider, if it so desires, may file an application with the Authority for surrender of its authorisation.
- (2) An application for surrender of authorisation shall contain complete details of the reasons behind the surrender of authorisation, details of the process of winding up of its operations including proposed safeguards to ensure that the Payment Service Users are not adversely affected.
- (3) On perusal of the application under this regulation, if the Authority is satisfied that such surrender is unlikely to cause any material adverse effect in the financial ecosystem of the IFSC it shall permit surrender of such authorisation subject to such conditions as it may think fit to specify.
- (4) The Authority may, by an order, specify the date from which the authorisation shall cease to have effect.

10. Exemption from authorisation:-

- (1) The Authority may, suo motu or on an application made for this purpose, exempt a Payment Service Provider or a person proposing to provide a Payment Service from the requirement for authorisation under these regulations.
- (2) Any application for exemption under sub-regulation (1), shall, inter alia, include the reason behind seeking such exemption.
- (3) The Authority shall, after due consideration of the application and the information provided thereunder and any other information that may be available with it, decide to accept, with or without conditions or reject the request for exemption and communicate the same to the Payment Service Provider.
- (4) The exemption so granted under sub-regulation (3), may be withdrawn by the Authority at any time after giving due notice to the Payment Service Provider of and after giving reasonable opportunity to seek authorisation of such service.

Chapter III

Governance of Payment Service Providers

11. Governance arrangements:-

- (1) The Payment Service Provider to whom a license is issued shall document the governance arrangements i.e. the framework under which the Board and Management of such Payment Service Provider operates, comprehensively and clearly.

- (2) The governance arrangements of such Payment Service Provider should, at minimum, include the following components namely :
 - i. role and composition of the Board and any board committees;
 - ii. senior management structure;
 - iii. reporting lines between management and the board;
 - iv. ownership structure;
 - v. internal governance policy;
 - vi. design of risk management and internal controls;
 - vii. procedures for the appointment of board members and senior management;
 - viii. processes for ensuring performance accountability.
- (3) The governance arrangements of such Payment Service Provider should be clear and thoroughly documented and kept upto date.
- (4) Notwithstanding the satisfaction of all conditions laid down by the Authority, the Authority shall not issue an authorisation certificate unless the applicant for a Payment Service Provider license demonstrates that it holds an initial capital as specified by the Authority.
- (5) Post commencement of operations such Payment Service Provider shall maintain such capital as specified by the Authority.
- (6) An applicant, to whom an Authorisation certificate has been issued under regulation 5 of these regulations, shall not undertake activities other than providing payment services without the prior permission of the Authority and after satisfying the conditions that the Authority may specify.
- (7) The Payment Service Provider shall devise clear and comprehensive rules and procedures for the payment services provided by it and should provide sufficient information to enable payment service users to have an accurate understanding of the risks, fees, and other material costs they incur by availing the payment service.
- (8) The relevant rules and key procedures of the payment service shall be publicly disclosed.
- (9) A Payment Service Provider shall be set up in such legal form as may be specified by the Authority.
- (10) The ownership and control of the Payment Service Provider shall not be transferred or altered without the prior approval of the Authority.

Chapter IV

Framework for management of risks

12. A Payment Service Provider should develop a management framework consisting of risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by it while providing the payment service . Such risk-management frameworks should be subject to periodic review by the Board of the Payment Service Provider.

13. A Payment Service Provider should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks.

14. A payment service that establishes a link with one or more payment systems should identify, monitor, and manage link-related risks

Chapter V

Duties of the Payment Service Provider

15. Duty to protect applicable funds:

- (1) It shall be the duty of the Payment Service Provider to safeguard applicable funds by following the directions issued by Authority in this regard.
- (2) The Payment Service Provider must keep applicable funds segregated from any other types of funds that it holds.

16. Duty to comply with Know Your Customer/ Anti Money Laundering Guidelines:-

The Payment Service Provider shall ensure compliance with International Financial Services Centres Authority (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022, and other provisions of Prevention of Money Laundering Act, 2002 and the Rules made thereunder including any statutory modification(s) or re-enactment thereof for the time being in force.

Chapter VI

17. Place of business or registered office:-

- (1) A Payment Service Provider shall not provide a payment service for which an authorisation has been granted by the Authority unless it has permanent place of business or a registered office in IFSC.

- (2) A Payment Service Provider must depute adequate staff at its permanent place of business or registered office in IFSC to address any queries or complaints from any payment service user that uses any payment service.
- (3) A Payment Service Provider who wants to carry on a payment service from a place of business other than in (1) shall seek prior approval from the Authority.
- (4) The Authority may permit a Payment Service Provider to offer payment service from a place of business other than (1) subject to such conditions as the Authority may think fit.

.Chapter VII

Returns, Documents and Other Information

18. Submission of returns, documents or other information etc.: -

(1) Every Payment Services Provider shall be required to submit to the Authority such returns, documents and other information as may be required by the Authority from time to time and in such form as specified by the Authority.

19. Furnishing of accounts and Balance Sheet : -

(1) Every Payment Services Provider shall furnish to the Authority within three months from the date on which its annual accounts are closed a copy of its audited balance sheet as on the last date of the relevant year together with a copy of the profit and loss account for the year and a copy of the Auditor's report.

Provided that the Authority may, on an application made by the Payment Services Provider , extend the said period of three months for furnishing of returns by a further period not exceeding three months.