

**CONSULTATION PAPER ON PROPOSED
IFSCA (MANAGEMENT CONTROL, ADMINISTRATIVE CONTROL AND
MARKET CONDUCT OF INSURANCE BUSINESS) REGULATIONS, 2023**

Objective:

The objective of this consultation paper is to seek comments / views/ suggestions from public on the proposed International Financial Services Authority (Management Control, Administrative Control and Market Conduct of insurance business) Regulations, 2023.

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 Services Centres (IFSCs) in India.
2. To facilitate the growth of insurance & reinsurance sector and to provide best in class regulatory framework, which is at par with top international jurisdictions, IFSCA has already issued relevant regulations. In order to further strengthen the regulatory framework related to Management Control, Administrative Controls and Market Conduct of insurance business carried out by IFSC Insurance Office (IIO) or IFSC Insurance Intermediary Office (IIIO), IFSCA is proposing to notify comprehensive regulations by adopting international best practices.
3. The proposed IFSCA (Management Control, Administrative Control and Market Conduct of insurance business) Regulations, 2023 *inter-alia* provides regulatory framework for -
 - (1) Capital related issues and Management control
 - (2) Minimum Limits for Annuities and other Benefits
 - (3) Acquisition of Surrender and Paid up values
 - (4) Expenses of Management of IIOs
 - (5) Payment of Commission or Remuneration or Reward to Insurance Intermediaries
 - (6) Protection of Policyholders' Interests
 - (7) Insurance Advertisements and Disclosure
4. 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 Department of Insurance, IFSCA at insurance-dept@ifsc.gov.in with copy to Mr. Bhaskar Khadakhbavi at bhaskar.khadakhbavi@ifsc.gov.in and Rishi Kale at rishi.kale@ifsc.gov.in on or before 13th March, 2023 in the attached format. It is further requested to provide comments in MS Word or MS Excel format only.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY

NOTIFICATION

Gandhinagar, the ___/___, 2023

DRAFT - International Financial Services Centres Authority (Management Control, Administrative Control and Market Conduct of insurance business) Regulations, 2023

F. No. IFSCA/2022-23/GN/REG0xx. – In exercise of the powers conferred by Section 28 read with Sections 12 and 13 of the International Financial Services Centres Authority Act, 2019, and clause (zd) of sub-section (2) of Section 114A of the Insurance Act, 1938, , the International Financial Services Centres Authority hereby makes the following regulations, namely -

CHAPTER- I

General

1. Short title, commencement and applicability -

- (1) These regulations may be called the International Financial Services Centres Authority (Management Control, Administrative Controls and Market Conduct of insurance business) Regulations, 2023.
- (2) They shall come into force on the date of their publication in the Official Gazette.
- (3) These regulations are applicable to all International Financial Services Centres Insurance Offices (IIOs), and also to the International Insurance Intermediary Offices (IIIOs) to the extent specified hereunder.

2. Objective –

These regulations aim to put in place the regulatory framework related to Management Control, Administrative Controls and Market Conduct of insurance business carried out by IIO or IIIO.

3. Definitions –

- (1) In these regulations, unless the context otherwise requires –
 - (a) ‘**Act**’ means the International Financial Services Centres Authority Act, 2019 (50 of 2019);

- (b) **‘allied services’** for the purposes of these regulations means, risk analysis, gap analysis, plan design, predictive modelling, data management, advertisement, sales promotion, product positioning, brand building etc. and include any other services of similar nature;
- (c) **‘benefits’** refers to any promise or payment of incentive, direct or indirect or both, in the nature of commissions, compensations, coupons, incentives, performance-based bonuses, rewards, remunerations, stock options, gratuity, insurance protection, telephone or travel or office allowances, cost of setting up infrastructure, competition prizes etc. and includes any other payment or incentive of similar nature.
- (d) **‘board’** means the board of directors of an IIO; or the Board of the Parent Entity of an IIO, in case the IIO is in an unincorporated form;
- (e) **‘capital’** means the capital of an IIO and includes equity share capital, preference share capital and subordinated debt;
- (f) **‘change in control’** refers to any change in shareholding, shareholding patterns, organisational changes etc., consequent to amalgamations, mergers, takeovers, portfolio transfers, issuance of initial or follow on public offerings, subordinated debt, transfer of shares, employee stock options, dilution of shareholding by promoters, and the like;
- (g) **‘commission’** means all direct or indirect benefits which are of monetary value; paid, payable or promised and/ or received by an insurance agent, intermediary or insurance intermediary, for the solicitation, procurement, retention or conversion of insurance policies or allied services;
- (h) **“confidential information”** for the purposes of these regulations, with regard to a foreign entity shall mean information obtained from the foreign entity that cannot be made available to in public domain regarding which the concerned foreign entity has requested that secrecy be maintained either explicitly or under any agreement / Memorandum of Understanding to which both the foreign entity and the Authority are signatories;
- (i) **“confidential information”** for the purposes of these regulations, with regard to domestic entity shall be as defined in applicable domestic laws.
- (j) **‘custodian of information’** shall mean an officer designated as ‘custodian of information’ not below the rank of Deputy General Manager of the Authority in whose custody the confidential information is kept under and

key away from public view and without whose authority and approval, such information cannot be released or accessed;

- (k) **‘expenses of management’** or **‘EoM’** means all operating expenses such as commission, remuneration payable to the insurance agents, intermediaries or insurance intermediaries including commission and expenses reimbursed on inward reinsurance; and operating expenses.

Explanation: charges against profit such as income tax, wealth tax, service tax and other taxes borne by the IIO and shall not form part of EoM;

- (l) **‘Foreign entity’** shall mean a foreign financial regulatory authority or any foreign financial entity.
- (m) **‘information’** for the purposes of these regulations shall mean with regard to foreign entity shall mean information in any material form relating to a foreign authority being a foreign financial regulatory authority and/or information relating to any other foreign financial entity.
- (n) **‘information’** for the purposes of these regulations, in the context of domestic entity shall be as defined in Section 2 (f) of The Right to Information Act 2005.
- (o) **‘regulated entity’** shall mean any entity coming within the regulatory domain of the Authority or entity regulated by a foreign financial regulatory authority.
- (p) **‘requesting entity’** shall mean entity requesting information relating to a requested entity.
- (q) **“requested entity”** shall mean the domestic or foreign entity whose information is subject of disclosure under these regulations.
- (r) **‘subordinated debt’** means “Debenture” as defined in Section 2(30) of the Companies Act, 2013 and includes any other debt instrument permitted by the Authority.
- (2) Words and expressions used and not defined in these regulations but defined in the Act or Acts mentioned in the First Schedule to the Act or any rules, regulations or notifications 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

Changes in Shareholding Pattern and Management Control

4. Every IIO shall ensure that it shall prevent any entity, from exercising control over it, directly or indirectly, by acquiring significant ownership or interest in the IIO, through portfolio transfers and altered shareholding pattern.
5. In case of any proposed change in shareholding pattern or management control, every IIO shall-
 - (1) inform the Authority of any proposal that could lead to change in control of the existing ownership (decreased or increased) ;
 - (2) not issue and allot capital in any form without obtaining prior approval of the Authority.
 - (3) Inform the Authority about such proposal or activity which may result even in change of portfolios and is supported by a Board resolution and a shareholder resolution, if required;

Provided that in case of the proposed change is beyond the specified limit, prior approval from the Authority shall be sought by the IIO.

- (4) ensure that the proposed changes in portfolio, shareholding pattern and management controls do not affect the seniority of claims with respect to claims on assets or earnings;
- (5) ensure seniority of the claims in the following order of priority:
 - (a) policyholders,
 - (b) creditors,
 - (c) subordinated debt holders,
 - (d) preference shareholders, and
 - (e) equity shareholders.
- (6) not guarantee any instrument which may affect seniority of claims;
- (7) not pay dividends on Preference Shares or pay interest on any Subordinated Debt, in any accounting year, without prior approval of the Authority, where –
 - (a) the solvency is below the minimum Control Level of Solvency specified by the Authority,
 - (b) the impact of such accrual/ payment would result in the Control Level of Solvency falling/ remaining below the specified regulatory requirement, or

- (c) payment of dividend or payment/accrual of interest would result in net loss or increase the net loss.
 - (8) provide complete details to the Authority in advance, about the shareholders or any other entities which may be eligible for compensation due to portfolio transfer, change in shareholding pattern or amalgamation and alterations in management control;
6. The Authority may specify the hair-cut norms on different types of instruments, for the purposes of computing ‘Available Solvency Margin’;
7. The Authority may issue guidelines in relation to issuance and allocation of capital of an IIO;
8. In case of a merger, amalgamation or transfer involving an IIO, the IIO involved shall while satisfying the following, seek prior approval of the Authority –
- (a) the available solvency margin of the proposed merged entity will not be lower than the required minimum regulatory level;
 - (b) the scheme is compliant with all applicable laws and regulations;
 - (c) the scheme does not compromise on the best interests of the policyholders; and
 - (d) the scheme shall not affect the orderly growth of the industry.

CHAPTER - III

Internal Administrative Controls

9. Expenses of Management –

- (1) Every IIO shall formulate a policy duly approved by its Board for allocation of direct expenses and apportionment of indirect expenses of management amongst various insurance segments ;
- (2) Such Board approved policy on expenses of management shall, *inter-alia*, include the following –
 - (a) the expenses that shall be allocated and the basis thereof;
 - (b) the expenses which shall be apportioned and the basis of such apportionment;
 - (c) the expenses of acquisition and renewal of policies and the manner of such allocation and / or apportionment;
 - (d) the manner in which the Policy shall be implemented, and compliance ensured.

- (3) The approved policy on expenses of management shall be submitted to the Authority, as and when directed by it.
- (4) The Authority may specify manner and form for submission of accounting year wise, segment wise expenses of management.

10. Payment of Commissions –

- (1) Every IIO shall formulate a policy duly approved by its Board for payment of commissions to insurance agents, intermediary or insurance intermediary.
- (2) Such Board approved policy on payment of commission shall, *inter-alia*, include the following –
 - (a) interest of the policyholders;
 - (b) specify all the services that qualify for commissions and/ or incentives from the IIO;
 - (c) the minimum entitlements and maximum limits, by way of fairness to the insurance agents, intermediaries or insurance intermediaries;
 - (d) bring the cost efficiency in conduct of insurance business.
- (3) The accounting year wise payment of commission shall be commensurate with policy on expenses of management of the IIO;
- (4) The approved policy on payment of commission shall be submitted to the Authority, as and when directed by it.

11. Places of Business -

- (1) Every IIO shall formulate a policy duly approved by its Board specifying procedures to be followed for opening or closing of place of business in an IFSC or outside India;
- (2) An IIO shall obtain prior approval of the Authority before opening of place of business outside India.
- (3) An IIO shall exercise due diligence in opening new places of business, keeping in view concerns like risks and costs involved and evaluating the possible benefits;
- (4) An IIO, while closing a place of business shall mitigate the risks involved in such closure, including but not limited to providing alternate facilities to existing policyholders ensuring uninterrupted access to insurance services, as well as servicing of claims.

12. Payment of Salaries and other Benefits –

- (1) Every IIO shall formulate a policy duly approved by its Board specifying the benefits enjoyed by its different cadres of officers or employees, including managers, officers, consultants, retainers and staff;
- (2) Such policy shall include salaries, emoluments, stock options, perquisites, tax concessions, incentives, subsidies, loans, advances, and similar benefits called by any other name;
- (3) Similarly, the benefits accruing to the Members of the Board, Directors also need to be documented and approved by the Board with due transparency;
- (4) The approved policy on payment of salaries and other benefits shall be submitted to the Authority, as and when directed by it.

13. Outsourcing of Activities -

- (1) Every IIO shall ensure -
 - (a) that it follows prudent practices on management of risks arising out of outsourcing with a view to preventing negative systemic impact and to protect the interests of the policyholders;
 - (b) sound and responsive management practices for effective oversight and adequate due diligence with regard to outsourcing of activities;
 - (c) the privacy of data in respect of all policyholders.
- (2) Where an IIO need to share data with any entity for outsourcing of activities or for any other reason, they are required to have proper non-disclosure agreements for data protection purposes.
- (3) Every IIO shall comply with the provisions on outsourcing arrangements as may be specified by the Authority.

14. Sharing of confidential information concerning domestic or foreign entity -

- (1) Disclosure of information under this section shall be subject to the following –
 - (a) Applications for disclosure of information under the Right to Information Act, 2005 shall be processed as enumerated under the said Act only;
 - (b) Disclosure of information under this section, other than (a) above, can be considered only upon written request for the same by the requesting entity;

- (c) Upon receiving the written request for information from the requesting entity, the Authority shall notify the requested entity about such request and obtain the explicit prior consent of the requested entity;
 - (d) Disclosure of information can be made only to assist the requesting authorities for the sole purpose of the lawful performance of their duties;
 - (e) Disclosure can be made only after obtaining written approval of the custodian of information;
 - (f) Where confidential information provided under this section is subject to legally enforceable request, the Authority will notify the Requested Authority prior to complying with such demand. Where consent to passing on information is not given by the Requested Authority, the Authority shall use all reasonable legal means to resist such a demand or protect the confidentiality of the information;
 - (g) “All employees and officials currently and previously employed by the Authority gaining access to confidential information relating to foreign entity / domestic entity in the course of their duties while working with the Authority are bound by an obligation of professional secrecy. Any breach of such obligation will render them liable for action as per IFSCA (Employees Service) Regulations, 2020.
- (2) The information that can be sought under section 20 of the Insurance Act, 1938 is non-commercial and largely in public domain. All requests under this provision shall be examined to ensure that no information that can affect competition or stability of the company or the industry, may be shared.
- (3) Information sought for carrying out statutory and regulatory purposes from -
- (a) domestic regulators, including the financial sector regulators such as Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India, Pension Fund Regulatory and Development Authority of India,
 - (b) International supervisors and agencies;
 - (c) various public authorities, Government of India, Judiciary, law enforcement agencies in the lawful performance of their functions, shall be -

would be individually examined to assess whether it is (a) sharable information; or (b) non-sharable information. The assessment on shareability of the information not available in the public domain would be guided by the following broad consideration -

- (i) convincing reason for the request made – whether such reasons are to assist the lawful performance of the duties of such authorities;
- (ii) Nature of information sought (not proprietary);
- (iii) Maintenance of confidentiality of the information sought;
- (iv) Reciprocity of the request made.

- (4) Each request for the information sought would be considered on merit and decision on sharing of information sought may be taken. This is particularly pertinent since there may be occasion when the information sought may be considered to be confidential for commercial or other reason, including access to information by the competitors.
- (5) The Authority reserves the right not to share any information which could possibly impact the stability of its regulated entity, IIO, IIIO; or the insurance sector.

CHAPTER - IV

Market Conduct

15. Distribution of Surplus to Policyholders -

- (1) Every IIO permitted to transact life insurance business shall maintain separately –
 - (a) a life insurance fund for participating policy holders; and
 - (b) a life insurance fund for non-participating policy holders;
- (2) Every IIO permitted to transact Life Insurance business shall have a Board approved policy regarding Distribution of Surplus to Policyholders of Participating or Non-Participating Policies;
- (3) The IIOs shall disclose the relevant provisions to the policyholders as well as make provisions for the same in their book of accounts;
- (4) The approved policy on distribution of surplus to the policyholders shall be submitted to the Authority, as and when directed by it.

16. Acquisition of Surrender and Paid-up Values of Life Insurance Policies –

- (1) Every IIO permitted to transact life insurance business shall disclose to the policyholders about the conditions under which a Life Insurance Policy would acquire a Surrender Value, and the formula to be used for computing the Surrender Value from the Paid-Up Value.
- (2) The IIO shall maintain provisions for making timely payments of Surrender Value of Linked and Non-Linked Life Insurance policies (liable to be paid on the complete withdrawal or termination of the entire policy, as per contract terms) based on the paid-up values.

17. Minimum Limits for Annuities and other Benefits: -

- (1) Every IIO permitted to transact life insurance business and dealing with pension and annuities product, shall design such products which address the actual need of the beneficiaries and should not be merely symbolic;
- (2) The IIO dealing with pension and annuities products shall not pay or undertake to pay amounts less than the amount as may be specified by the Authority.

18. Advertisements: -

- (1) Every IIO and IIIIO as the case may be, shall adopt fair, honest and transparent practices while issuing advertisements and avoid practices that tend to impair the confidence of the general public;
- (2) Every IIO and IIIIO shall ensure that the advertisement issued by it in any media such as print, audio, video, digital or social media, shall –
 - (a) be relevant, fair and in simple language, enabling informed decision making;
 - (b) be responsible for the accuracy of the communications in all forms of advertisements made on its behalf;
 - (c) include the veracity of the statements;
 - (d) ensure reliability and accuracy of the data used;
 - (e) ensure the legitimacy of the promises made;
 - (f) have clarity in communication (including translations);
 - (g) have the accuracy of the advertisement vis-à-vis the policy document;
 - (h) ensure the transparency and fairness to customers as a paramount principle.

19. Policyholders' Protection:-

- (1) Every IIO and IIIIO shall formulate a policy duly approved by its Board on protection of interest of holders of insurance policies, such policy shall, *inter-alia*, include the following –
 - (a) ensure that interests of holders of insurance policy are protected;
 - (b) steps to be taken for enhancing Insurance Awareness so as to educate prospects and policyholders about insurance products, benefits and their rights and responsibilities;
 - (c) ensure that IIO and IIIIO, fulfil their obligations towards policyholders and have in place standard procedures and best practices in sale and service of insurance policies;
 - (d) steps to be taken to prevent mis-selling and unfair business practices at point of sale and service;
 - (e) steps to be taken to ensure that during policy solicitation and sale stages, the prospects are fully informed and made aware of the benefits of the product being sold vis-a-vis the product features attached thereto and the terms and

conditions of the product so that the benefits / returns of the product are not mis-stated / mis-represented.

- (f) service parameters including turnaround times for various services rendered;
 - (g) ensure policyholder-centric governance by the IIO with emphasis on grievance redressal and to fulfil their obligations towards policyholders;
 - (h) procedure for expeditious resolution of complaints;
 - (i) shall have in place standard procedures and best practices in the sale and service of insurance policies,
 - (j) include simple and transparent claims settlement procedures.
- (2) Every IIO shall display the service parameters and turnaround times as approved by the Board on its website and keep the same updated as and when the service parameters are revised by the Board.
- (5) The approved policy on protection of interest of holders of insurance policies shall be submitted to the Authority, as and when directed by it.

CHAPTER – V

MISCELLANEOUS

20. Reporting and general requirements -

- (1) Every IIO shall furnish information relating to the above regulations to the Authority or policyholders in such manner, interval and forms as may be specified by the Authority;
- (2) Every IIO shall be guided by norms of fairness to the policyholder, international best practices, and transparency to build trust in the insurance mechanism and to build insurance awareness and insurance literacy.

21. Power to specify procedure, etc. -

For the purpose of implementation of these regulations and matters incidental thereto, the Authority may specify norms, procedures, processes and manners for compliance by the IIO or IIIIO as the case may be.

22. Power to remove difficulties and relax strict enforcement of the regulations:

- (1) In order to remove any difficulty in the application or interpretations of the provisions of these regulations, the Authority may issue clarifications through guidance notes or circulars;

- (2) On an application, received along with the specified non-refundable processing fees, the Authority, may for the reasons to be recorded in writing, relax the strict enforcement of any of the provisions of these regulations.

23. Repeals and saving –

- (1) On and from the commencement of these regulations, following regulations, guidelines or circulars issued thereunder shall cease to apply in International Financial Services Centres.
 - (i) the Insurance Regulatory and Development Authority (Distributions of Surplus) Regulations, 2002;
 - (ii) the Insurance Regulatory and Development Authority (Scheme of Amalgamation and Transfer of General Insurance Business) Regulations, 2011;
 - (iii) the Insurance Regulatory and Development Authority (Sharing of Confidential Information Concerning Domestic or Foreign Entity) Regulations, 2012;
 - (iv) the Insurance Regulatory and Development Authority (Scheme of Amalgamation and Transfer of Life Insurance Business) Regulations, 2013;
 - (v) the Insurance Regulatory and Development Authority of India (Places of Business) Regulations, 2015;
 - (vi) the Insurance Regulatory and Development Authority of India (Issuance of Capital by Indian Insurance Companies transacting Life insurance business) Regulations, 2015;
 - (vii) the Insurance Regulatory and Development Authority of India (Issuance of Capital by Indian Insurance Companies transacting other than Life Insurance Business) Regulations, 2015;
 - (viii) the Insurance Regulatory and Development Authority of India (Transfer of Equity Shares of Insurance Companies) Regulations, 2015;
 - (ix) the Insurance Regulatory and Development Authority of India (Minimum Limits for Annuities and other Benefits) Regulations, 2015;
 - (x) the Insurance Regulatory and Development Authority of India (Acquisition of Surrender and Paid up values) Regulations, 2015;
 - (xi) the Insurance Regulatory and Development Authority of India (Expenses of Management of Insurers transacting life insurance business) Regulations, 2016;
 - (xii) the Insurance Regulatory and Development Authority of India (Expenses of Management of Insurers transacting General or Health Insurance Business) Regulations, 2016;
 - (xiii) the Insurance Regulatory and Development Authority of India (Payment of Commission or Remuneration or Reward to Insurance Agents and Insurance Intermediaries) Regulations, 2016;

- (xiv) the Insurance Regulatory and Development Authority of India (Protection of Policyholders' Interests) Regulations, 2017;
 - (xv) the Insurance Regulatory and Development Authority of India (Outsourcing of Activities by Indian Insurers) Regulations, 2017;
 - (xvi) the Insurance Regulatory and Development Authority of India (Insurance Advertisements and Disclosure) Regulations, 2021;
 - (xvii) the Insurance Regulatory and Development Authority of India (Manner of Assessment of Compensation to Shareholders or Members on Amalgamation) Regulations, 2021
 - (xviii) the Insurance Regulatory and Development Authority of India (Other Forms of Capital) Regulations, 2022;
- (2) Notwithstanding anything contained in sub-regulation (1), anything done or any action taken or purported to have been done or taken under the regulations, guidelines or circulars mentioned in sub-regulation (1), before the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
- (3) An IIO or IIIO, as the case may be, operating in an International Financial Services Centre prior to the commencement of these regulations, shall comply with the additional requirements specified in these regulations, if any, within a period of three months from the of commencement of these regulations or within such extended period as may be specified by the Authority.

INJETI SRINIVAS, Chairperson
[ADVT. xxx/x/Exty./xxx/2023]

Format for providing comments / suggestions.

Proposed IFSCA (Management Control, Administrative Control and Market Conduct of Insurance Business) Regulations, 2023

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