

CONSULTATION PAPER ON PROPOSED IFSCA (RE-INSURANCE) REGULATIONS, 2023

Objective:

The objective of this consultation paper is to seek comments / views/ suggestions from public on the proposed International Financial Services Authority (Re-insurance) 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 on oversight and control of inward and outward arrangement of re-insurance by the IIO, IFSCA is proposing to notify comprehensive regulations by adopting international best practices.
3. The proposed IFSCA (Re-insurance) Regulations, 2023 *inter alia* provide for :
 - (1) **Re-insurance Strategy and Re-insurance Programme (RSRP)**
 - (a) Every IIO shall develop and document its Re-insurance Strategy and Re-insurance Programme (RSRP) which shall form an integral part of the IIO's overall underwriting strategy and risk management philosophy.
 - (b) The RSRP shall be approved by the Board at least thirty days prior to commencement of accounting year.
 - (2) **Re-insurance contract and Risk Transfer:** Any contract classified as a re-insurance contract shall meet the risk transfer requirements and protect the ceding insurer from negative financial impacts arising from the underlying insurance business ceded.
 - (3) **Re-insurance and Retrocession Requirements:** Every IIO shall formulate a segment-wise retention policy duly approved by its Board and shall maximise the retention commensurate with its financial strength and quality of risk while ensuring that the re-insurance arrangements are not fronting.

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 Khadakbhavi at bhaskar.khadakbhavi@ifsc.gov.in and Nitin Gupta at g.nitin@ifsc.gov.in on or before 11th 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 (Re-insurance) Regulations, 2023

F. No. IFSCA/2022-23/GN/REGxxx. - 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 Centre Authority (Re-insurance) Regulations, 2023.
- (2) These regulations shall come into force from the date of their publication in the Official Gazette.
- (3) Unless otherwise specified herein, these regulations shall be applicable to all International Financial Services Centres Insurance Offices (IIOs).

2. Objectives –

To provide framework for oversight and control of inward and outward arrangement of re-insurance by the International Financial Service Centre Insurance Offices (IIOs), wherein a part of the risks assumed by an IIO is ceded to another IIO or the re-insurer.

3. Definitions –

- (1) In these regulations, unless the context otherwise requires –
 - (a) **‘accounting year’** shall have the same meaning as assigned to it under clause (ii) of sub-regulation (1) of regulation 4 of the International Financial Services Centres Authority (Preparation and Presentation of Financial Statements of International Financial Service Centre Insurance Offices) Regulations 2022;

- (b) **‘Act’** means the International Financial Services Centres Authority Act, 2019 (50 of 2019);
- (c) **‘Alternate Risk Transfer’** or **‘ART’** means non-traditional structured re-insurance solutions tailored according to specific needs and profile of an IIO, Indian insurer, foreign insurer or foreign re-insurer;
- (d) **‘Authority’** or **‘IFSCA’** means the International Financial Services Centres Authority established under sub-section (1) of Section 4 of the Act;
- (e) **‘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;
- (f) **‘cedant’** means an IIO who underwrites direct insurance business and contractually cedes a part of the risk to re-insurer;
- (g) **‘cession’** means the part of risk passed to a re-insurer by the cedant;
- (h) **‘cover note’** means a written document, detailing the terms and conditions of the re-insurance contract, issued by re-insurer, composite or re-insurance broker authorised by the re-insurer;
- (i) **‘Domestic Tariff Area’** or **‘DTA’** means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones established under The Special Economic Zones Act, 2005 (28 of 2005);
- (j) **‘foreign insurer** or **foreign re-insurer’** for the purposes of these regulations, means an insurer or re-insurer carrying on business of re-insurance outside the International Financial Services Centres or DTA;
- (k) **‘fronting’** means a process of transferring risk in which an Indian Insurer cedes or retro-cedes most or all of the assumed risk to a re-insurer or retrocessionaire;
- (l) **‘Indian Insurer’**, for the purpose of these regulations, means an ‘insurer’ as defined under sub-section (9) of section 2 of the Insurance Act, 1938, who has been granted certificate of registration by the Insurance Regulatory and Development Authority of India;
- (m) **‘IRDAI’** means The Insurance Regulatory and Development Authority of India constituted under the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

- (n) **‘insurance segment’**, for the purpose of these regulations, means insurance or re-insurance business transacted by an IIO in any one or more of the following segment:
- (i) Fire (Other than Oil & Energy);
 - (ii) Marine Hull;
 - (iii) Marine Cargo;
 - (iv) Engineering;
 - (v) Aviation;
 - (vi) Motor;
 - (vii) Health (including Personal Accident & Travel), other than policies issued by insurers transacting Life Insurance business;
 - (viii) Crop;
 - (ix) Trade Credit;
 - (x) Oil & Energy;
 - (xi) Liability;
 - (xii) Miscellaneous;
 - (xiii) Life (including health insurance policies issued by Life Insurers);
 - (xiv) Any other segment (under Miscellaneous segment) which contributes more than ten percent of the Gross Written Premium of the Miscellaneous segment;
 - (xv) Any other segment as may be specified by the Authority from time to time.
- (o) **‘International Financial Services Centre Insurance Office’** or **‘IIO’** shall have the same meaning as assigned to it under clause (k) of sub-regulation (1) of regulation 3 of the International Financial Services Centres Authority (Registration of Insurance Business) Regulations 2021;
- (p) **‘Parent Entity’** or **‘Head Office’** shall have the same meaning as assigned to it under clause (q) of sub-regulation (1) of regulation 3 of the International Financial Services Centres Authority (Registration of Insurance Business) Regulations, 2021;
- (q) **‘re-insurance’** shall have the same meaning as assigned to it under sub-section (16B) of section 2 of the Insurance Act, 1938;
- (r) **‘re-insurance contract’** refers to a commercial agreement which is legally binding on all the parties evidenced by a Re-insurance Slip or Cover Note or any other suitable document;
- (s) **‘re-insurance slip’** refers to a document, which provides the abridged details of the risk, terms and conditions offered for re-insurance;

- (t) **'re-insurer'** for the purpose of these regulations, means an IIO, Indian Insurer, foreign insurer or re-insurer carrying out re-insurance business;
 - (u) **'retention'** means the portion of the risk, which an IIO assumes for its own account;
 - (v) **'retrocession'** means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another re-insurer;
 - (w) **'treaty'** means a re-insurance contract between a cedant and a re-insurer or between a re-insurer and a retrocessionaire which stipulates the technical particulars and financial terms applicable to the re-insurance of defined class(es) or segment(s) of business;
- (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

Re-insurance Strategy and Objectives of Re-insurance Programme

4. Re-insurance strategy and re-insurance programme -

- (1) Every IIO shall develop and document its Re-insurance Strategy and Re-insurance Programme (RSRP), which shall form an integral part of the IIO's overall underwriting strategy and risk management philosophy.
- (2) The policies and procedures for selecting and monitoring re-insurance arrangements as well as management responsibilities and controls including re-insurance management systems shall be included in the RSRP.
- (3) An IIO, ceding the risk shall *inter-alia* clearly document the risk concentration levels and ceding limits as per its risk appetite.
- (4) The senior management of the IIO or Parent Entity of the IIO, as the case may be, shall –
 - (a) develop, implement and maintain RSRP which shall be relevant to the operations of the IIO and shall ensure that the IIO has sufficient resources to meet their business obligations;

- (b) formulate operational policies and procedures for implementing the RSRP;
- (c) develop clear methodologies for evaluating re-insurance arrangements of the IIOs, including but not limited to -
 - (i) identification of tolerance to risk;
 - (ii) identification of the segment-wise risk retention levels vis-à-vis tolerance to risk with appropriate re-insurance arrangements;
 - (iii) selection of the panel of re-insurers used, including consideration of diversification and credit worthiness of the re-insurers;
 - (iv) management of any known concentration risks with respect to a particular industry, geographical region, product type, and/or single insured in the insurer's underwriting books;
 - (v) involvement of re-insurance brokers if any, including their role in structuring the re-insurance arrangements;
 - (vi) the process for monitoring, reviewing and updating the RSRP;
 - (vii) management of credit and liquidity risk;
 - (viii) management of legal risk arising from the re-insurance contract;
- (d) develop robust internal control systems to ensure that all business activities are carried out in compliance with the RSRP;
- (e) develop effective reporting systems to satisfy the requirements specified by the Board;
- (5) The RSRP shall be approved by the Board at least thirty days prior to commencement of accounting year;

Provided that in case of an IIO in an unincorporated form, its Parent Entity shall provide details of RSRP designed for the IIO.

- (6) The approved RSRP shall be submitted to the Authority, as and when directed by it.

CHAPTER III

5. **Re-insurance contract and Risk Transfer** - Any contract classified as a re-insurance contract shall have the following characteristics:-

- (1) It shall meet the risk transfer requirements for particular accounting year;
- (2) It protects the ceding insurer from negative financial impacts arising from the underlying insurance business ceded;

Explanation:

- (i) If the ART arrangement is in the nature of re-insurance, coupled with financing arrangement, and the components are capable of separation, each element should be accounted for as per the accounting standards followed by the IIO;
- (ii) In cases where the aforesaid components are not separable, the entire ART arrangement should be treated as a financial transaction and should be accounted for accordingly. All the IIOs are required to account for the ART arrangements by looking into the “Substance over Form”, and account for the same as per the accountings standards followed by IIO.

CHAPTER IV

Re-insurance and Retrocession Requirements

6. Retention Policy -

- (1) Every IIO shall formulate a segment-wise retention policy duly approved by its Board and shall maximise the retention commensurate with its financial strength and quality of risk while ensuring that the re-insurance arrangements are not fronting;
- (2) The Authority may require an IIO to justify its retention policy and may give such directions, as considered necessary;
- (3) Every IIOs shall comply with minimum retention requirements as may be specified by the Authority.

7. Placement of re-insurance business:

- (1) Every IIO, before placing of re-insurance business (cession or retrocession) with the foreign insurers or foreign re-insurers, shall ensure that -
 - (i) such foreign insurer or foreign re-insurer and its promoters, partners or controlling shareholders are not from the jurisdiction identified in the public statement of Financial Action Task Force as:
 - (a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - (b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;

- (ii) such foreign insurer or foreign re-insurer is duly authorised by its home country regulatory or supervisory authority to transact re-insurance business during the immediate past three continuous years; and
- (iii) the home country of such foreign insurer or foreign re-insurer has signed Double Taxation Avoidance Agreement (DTAA) with India;

CHAPTER V

MISCELLANEOUS

8. **Reporting requirements:** An IIO shall furnish information related to inward and outward re-insurance arrangements, as the case may be, to the Authority, in such manner, interval and in such form, as may be specified by the Authority.

9. **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 IIOs.

10. **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.

11. **Repeals and saving:**

- (1) On and from the commencement of these regulations, the Insurance Regulatory and Development Authority (Re-insurance) Regulations, 2018 and guidelines or circulars issued thereunder shall cease to apply in International Financial Services Centres.
- (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 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 International Financial Services Centres Authority (Re-insurance) 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