Public Comments

The consultation paper seeking comments/views from public on the draft IFSCA (Re-insurance) Regulations, 2023 was issued by IFSCA on 17-Feb-2023. The following comments have been received:

Sr. No.	Reg. No.	Sub-Regu No. /Para No.	Comments / Suggestions / Suggested modifications	Rationale
1	3	1(h), 1(r) and 1(s)	The definitions cover note, reinsurance contract and reinsurance slip can be combined into one definition as Reinsurance Contract	Reinsurance Contract is a commercial agreement mutually agreed by the reinsurer and the cedent and hence it is suggested not to specify the various forms of reinsurance contract
2	3	Nil	Addition of Inward Reinsurance	Inward Reinsurance is an important means for IIOs registered as direct insurers to do insurance business from other jurisdictions. Inward Reinsurance arrangements on both facultative and treaty side will help IIOs to have business dealings in the relevant offshore jurisdictions.
3	3	Nil	Addition of Inward Reinsurance	Inward Reinsurance is an important routes for IIOs registered as direct insurers to do insurance business from other jurisdictions. Inward Reinsurance arrangements on both facultative and treaty side will help IIOs to do business in admitted jurisdictions through locally licensed direct partners. It is therefore necessary that there is an express reference to Inward Reinsurance and direct players are expressly allowed to undertake Inward Reinsurance, especially in relation certain identified direct business.
4	3	1 (f)	Deleted “underwrites direct insurance business and”	Cedant should ordinarily also include an IIO undertaking reinsurance business and therefore it is not necessary to restrict the definition of cedant to direct business. Otherwise retrocession will not be covered within the scope.

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5	3	1 (p)	Addition of Inward Reinsurance defination	It is important to have the definition of Inward Reinsurance and the necessity of express reference to Inward Reinsurance is explained in 1 above.
6	3	1 (k)	The suggestion is being highlighted in the said sub-Regulation ‘fronting’ means a process of transferring risk in which an IIO cedes or retro-cedes most or all of the assumed risk to a re-insurer or retrocessionaire;	Since the business pertains to regulate IIO therefore the language has been modified to cover the same.
7	4	-	Request the Authority to exempt unincorporated IIOs from this provision	An unincorporated IIO is envisaged to be a branch of a Foreign Reinsurer. Foreign Reinsurers have a global reinsurance strategy and it may not be advisable to have a branch specific reinsurance programme. A reinsurance IIO is expected to retrocede only 50% of its written business in any accounting year. Hence it seem to be additional administrative burden to define the reinsurance strategy for such an IIO.
8	4	(7)	Addition of “Every IIO transacting direct insurance business and seeking to write Inward Reinsurance shall ensure that its RSRB inter alia includes a well-defined underwriting policy duly approved by its Board and shall include details of insurance segments, geographical scope, underwriting limits, performance objectives or other matters as may be specified by the Authority from time to time.”	This is a consequential amendment in relation to Inward Reinsurance. RSRB for an IIO transacting direct business should also include detailed underwriting policy and other information with respect to Inward Reinsurance.

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9	4	(5)	The suggestion is being highlighted below in the said Sub-Regulation 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 30 days after commencement of Financial Year along with its own Reinsurance Programme.	The rationale behind the said suggestion is to bring it in line with the Reinsurance regulations of the Parent Entity. The Reinsurance Programme of the insurers incepts with the Financial Year and the details of the Programme may not be finalized a month before commencement of the Financial Year. This is herewith suggested to make it in line with Reinsurance Programme of the Parent Entity.
10	5	2 (iii)	Addition of “For avoidance of doubts, Authority shall issue guidelines and notifications with respect to ART for the purpose of attaining the objectives of the Act and the regulations as the Authority deems fit.”	ART is an important tool for IIOs to manage their risks and also an important new line of business for both insurers and reinsurers. IFSCA should be empowered to issue guidelines and circulars to promote it and there needs to be express provisions in this regard in the regulation.
11	5	Explanation (i) & (ii)	As per Sub-Regulation 8 of IRDAI (Re-insurance) Regulations, 2018, the Alternate Risk Transfer (ART) solutions submitted by Indian Insurer are examined by the Authority and the Authority may allow ART solution on case to case basis. We request the Authority to clarify the guidelines on ART like type of ART, assessment of significant risk transfer, re-insurance credit for the purpose of solvency.	We request the Authority to clarify the guidelines on ART like type of ART, assessment of significant risk transfer, re-insurance credit for the purpose of solvency to ensure follow of uniform approach across industry.

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12	6	(3)	Addition of “registered to undertake reinsurance business”	Retention requirement is only for IIOs undertaking reinsurance business and therefore it is important to clarify this.
13	7	(1) (i)	Deleted “and its promoters, partners or controlling shareholders are is” and replacing it with “is”.	Insurance and reinsurance entities are organized in a manner that their partners, promoters or shareholders may be in jurisdictions which are not FATF countries and therefore this is too wide. IFSCA may restrict this to only the foreign insurers or foreign reinsurer.
14	7	(1) (iv)	Addition of “such foreign insurer or foreign re-insurer complies with this regulation and any guideline issued by the Authority from time to time, with respect to reinsurance matters to the extent applicable to such foreign insurer or foreign re-insurer.”	There needs to be an express reference in the regulation that foreign insurers or foreign reinsurers dealing with IIOs will need to comply with IFSCA regulations to the extent applicable

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15	7	1 (iii)	***Existing*** (iii) the home country of such foreign insurer or foreign re-insurer has signed Double Taxation Avoidance Agreement (DTAA) with India. ***Suggestions*** (iii) such foreign insurer or foreign re-insurer is a tax resident of a country which has signed a DTAA with India or has signed an Agreement for exchange of information or assistance in collection with respect to taxes (AEOI), also referred as Tax Information Exchange Agreement, with India.	We understand that this condition was inserted to ensure that the Indian Government has adequate safeguards to collect information from various countries through its network of DTAAs. Such information could have been for tax claims, investigations, etc. There could be companies which would be tax resident of jurisdictions with which India has a DTAA, though incorporated in other jurisdictions, and hence, the conditions may be modified. In addition to India's network of DTAA, India has entered into Tax Information Exchange Agreement which helps get same information with respect to tax payers/ investors coming from countries which do not have a DTAA with India. Further, given that it is proposed *vide* Regulation 7 which mandates an applicant to not be from jurisdictions identified by Financial Action Task Force (FATF) as falling under the FATF 'black' or 'grey' list, this condition can now be relaxed to cover entities from jurisdictions not in the FATF black or grey list and which do not have a DTAA with India. Modification to the language will lead to commercial flexibility for International Financial Services Centre Insurance Offices (IIOs) to place reinsurance with larger set of foreign insurers or reinsurers, thereby spreading the risks assumed by IIOs and reduction in the capital requirements of the IIOs.

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16	7	(1)	As per Sub-Regulation 4 of IRDAI (Re-insurance) Regulations, 2018, Indian Insurer needs to ensure the eligibility criteria related to authorisation by home country, minimum credit rating, DTAA with India, minimum solvency margin and past claims settlement experience while placing the re-insurance business with CBR. Reinsurance placement with CBR which does not fulfil the above requirement requires the prior approval of the Authority. As per Proposed Sud-Regulation 7 of IFSCA (Re-insurance) Regulation, the financial strength details of foreign reinsurer related to minimum credit rating, minimum solvency and past claims settlement experience eligibility criteria related is not specifically mentioned while placing the reinsurance business. We request the Authority to mention the financial strength eligibility guidelines required for the foreign reinsurer while placing the reinsurance business. We also request the Authority to mention the approach for placing the reinsurance business with foreign reinsurer who do not meet the eligibility criteria, for better clarity.	It is important to ensure that the reinsurance arrangements are placed with foreign reinsurers who are financially strong and are capable to meeting the reinsurance claims as and when they fall due. We request the Authority to specify the financial strength eligibility guidelines required for the foreign reinsurer while placing the reinsurance business. We also request the Authority to mention the approach for placing the reinsurance business with foreign reinsurer who do not meet the eligibility criteria, for better clarity.

The above comments were considered suitably and the revised draft of the IFSCA (Re-insurance) Regulations, 2023 was placed before the Authority in its meeting held on March 24, 2023.