

Public Comments

The consultation paper seeking comments/views from public on the draft IFSCA (Insurance Intermediary) Regulations, 2021 were issued by IFSCA on August 13, 2021.

The following comments have been received:

Sr. No.	Draft Reg. No.	Sub-Reg- No. /Para No.	Comments / Suggestions / Suggested modifications	Rationale
1	16		Remunerations for intermediaries sourcing business may not be capped as prescribed in DTA	These intermediaries would be sourcing business in international market, where commissions are not regulated at same level as defined in DTA. If commissions are restricted for IIIO from IIO, then there may be a tendency for them to place business outside India.
2	20	1	Section 64VB of the Insurance Act may not be applicable for business placed outside India	Internationally cash before cover is limited to very few countries and hence having this limitation will restrict the direct (other than reinsurance) insurance business for IIO from foreign locations
3	20	2	Premium for direct business from foreign locations shall be also allowed for brokers to collect	There may be instances where IIIO place policies with participation of both categories of insurers ie IIO and foreign insurers. As a market practice IIIO collects premium, and then distribute it to foreign insurers and IIO. Hence this facility shall be available not only for reinsurance but for direct insurance business also
4	4	1	An Applicant should not be allowed to make “intra-category” applications and register multiple entities within the same category of intermediaries.	We note that the sub-regulation (1) classifies intermediaries into two categories, viz. (i) insurance distributors including corporate agents, composite brokers, direct brokers; and (ii) claim service providers including surveyors and loss assessors, and third party administrators. Applicants can apply for multiple sub-categories within the broader categories which means that a direct broker may also apply to register as a corporate agent. This provision falls foul of sub-regulation (2) of Regulation 4 wherein only specific types of entities are allowed to apply as specific intermediaries. For example, while a banking unit in IFSC may take up corporate agency, it cannot apply for acting as an insurance broker. Sub-regulations (1) and (2) contradict each other. Accordingly, this aspect would need to be clarified in the Regulations in order to avoid any confusion/ misinterpretation.

5	4	2(a) to 2(d)	The provision is silent on a foreign company (not registered in India) wanting to operate as a TPA.	Please clarify if only an Indian registered entity can conduct business as IIO.
6	4	2(c) to 2(d)	Unlike in the case of sub-clauses (a)(iv) and (b)(viii), there is no enabling provision to set up as Insurance Credit Service Provider with the discretion of the Authority.	An enabling provision to this effect may be considered.
7	4	3	Clarification on meaning and implication of the term 'branch office'.	A foreign registered intermediary is allowed to open 'branch office' in IFSC. We note that the terminology is different from the term "IIO" that is used in sub-regulation (2) of Regulation 4. Considering the difference in terminology, it is not clear whether foreign intermediaries can apply for registration as IIO or are allowed to set up only branch offices. There is a need to clarify whether the implication of the terms is different and whether it is intended as such by the Authority.
8	5	3(i)	Specification of disqualification criteria within the body of the provision.	The sub-regulation refers to Section 42D(5) of the Insurance Act, 1938. For the sake of completeness, keeping in mind the specific need of foreign intermediaries, it will be helpful to include the disqualification criteria within the body of the provision instead of a cross-reference to provision under Insurance Act, 1938.
9	5	3(vii)	The provision does not provide the fit and proper criteria.	A clarification is required providing such fit and proper criteria to ensure that principal officers/ director(s)/ promoter(s)/ KMPs are appointed accordingly.
10	6	(ii)	Clarification on application of Insurance Act, 1938 and IFSCA Act, 2019 (including regulations, circulars, guidelines, instructions thereunder).	As a condition for grant of registration, intermediaries are required to comply with provisions of Insurance Act, 1938 and IFSCA Act, 2019 (including regulations, circulars, guidelines, instructions thereunder). It is not clear whether the requirement entails compliance with all applicable provisions under the said legislations or with specified provisions. It is also not clarified whether the requirement is applicable to only Indian intermediaries or it includes foreign intermediaries.
11	8	1	We understand this provision applies for selection of insured persons. However, please clarify if there are any restrictions or limitation on the insurers whose products may be marketed and sold by the IIOs or to whom services may be offered by the IIOs. Are there any requirements for the products	There should be clarity not only on whom the products can be offered but also on which products can be offered and to whom (insured as well as insurers) to whom services may be offered.

			to be only those originated from the IFSC and/ or foreign jurisdictions?	
12	9	1	The proviso does not provide the additional fees in form of penalty that may be levied.	Please consider inserting this for the sake of objectivity and transparency.
13	9	3	<p>1) For the 90-days' period, when the renewal application is made and the Certificate of Registration is not expired, we suppose it is fair to assume that the business can continue as normal since the license has not expired.</p> <p>2) What is the time period within which the Authority will grant the renewal of certificate? This needs to be clarified even for the original process for receipt of first certificate of registration.</p> <p>3) Wouldn't the insured and insurer be adversely affected from such suspension of business by an insurance claims service provider such as a TPA?</p>	<p>1) Please consider clarifying if the understanding is incorrect.</p> <p>2) This is essential to ensure continuity of business from the IIIO's perspective. Also, considering that an IIIO who may be applying on a slightly delayed basis also pays a penalty amount, it is only fair that the renewal application for such IIIO is also processed in time to facilitate continuity of business.</p> <p>3) Any suspension/ discontinuity in business of the IIIOs should not adversely affect the insurer and insured, who avail services of the IIIO. Accordingly, provisions may be included to facilitate a transition whereby only the defaulting person in the chain (i.e. the IIIO in the instant case) suffers.</p>
14	9	5	It may be helpful to define the term "CoR" (used as abbreviation in places) as Certificate of Registration, if that is the intended meaning thereof.	Please consider clarifying.
15	9	6	The provision does not provide a timeline within which the Authority has to grant the renewal of registration.	A clarification is required to ensure that renewal is in a timely manner and if there is a delay in providing the renewal by the Authority, the insurance intermediary is not adversely affected by the timelines provided in Regulation 9.
16	10	1	The provision does not provide for extension of time period to remove any deficiencies.	It may be helpful to have an enabling provision permitting the Authority to extend time, per its discretion, in a genuine case where more time may be necessary for removing the deficiencies.
17	10	3	The provision does not provide for any appeal / review mechanism in case of refusal to renew the registration by the Authority.	Please consider clarifying this.

18	12	4	The timeline provided in the proviso does not match the time line provided in Regulation 12(4).	A clarification is required to avoid any misinterpretation or confusion.
19	13	5	Inclusion of definition of “net worth” within the explanation to sub-regulation (5).	The explanation to the sub-regulation (5) makes a reference to the definition of net worth under the Companies Act, 2013. For the sake of completeness, keeping in mind the specific need of foreign intermediaries, it will be helpful to include the definition of net worth within the explanation to the sub-regulation.
20	15	1	The regulation along with the proviso raises the following questions: 1) Can there be a threshold where such change in beneficial ownership/ control is allowed without the prior approval of the Authority? 2) Please clarify the rationale for such approval requirement, especially considering that no such approval would be required for change in control/ ownership of a parent company (wherever situated, whether in India or offshore), where the IIIO is set up only as a branch. 3)Based on the response to #2 above, and by the same rationale, please clarify if the approval requirement in Regulation 15(1) only applies for a direct change or also for an indirect change in ownership and/ or control.	1) Some leeway may be available for change in shareholding up to a percentage that does not necessarily affect control of the IIIO. 2) We understand that the IFSCA will review necessary documents filed at the time of original registration (as well as renewal) of the IIIO, whether as a branch or as an entity. In case of a change in ownership, control and/ or transfer of business, the said documents and credentials basis which the IFSCA registration was granted have changed. However, from a reading of the ownership and control related provisions and transfer (of business) related business, we understand that IFSCA approval for any such change is not required if IIIO is set up as a branch. It would be helpful to understand the rationale for this for instance is it the case that IFSCA is willing to rely on the approval granted by a home country regulator for the parent of IIIO and hence will not need to review the change further. Such a clarification would help the insurance intermediary to decide the form in which it may set-up in the IFSC.
21	15	1	The definition of IIIO in Regulation 3(1)(p) read with Regulation 4(2) does not clarify or specify and/or indicate the form in which the IIIO can be set -up in the IFSC, such as a company, LLP, society etc.	Please consider clarifying this.
22	16		The term ‘insurer’ has not been defined in the Regulations. Please clarify if the term is limited only to an IFSC registered insurer.	Please consider clarifying this.

23	20	1	Inclusion of relevant parts of Section 64VB of the Insurance Act, 1938 within the sub-regulation.	Sub-regulation (1) refers to Section 64VB of the Insurance Act, 1938. For the sake of completeness, keeping in mind the specific need of foreign intermediaries, it may be helpful to include the relevant parts of Section 64VB within the body of the sub-regulation.
24	20	2	1) Please clarify the exact nature of regulation that the Authority proposes to impose on the usage of such amounts already committed to be dealt with in accordance with the contract with the insurer/reinsurer by the IIIO. 2) Please clarify if these provisions will apply to all Insurance distributors or only to insurance brokers.	The contract between a registered insurance broker and the reinsurer/insurer will need to be performed in accordance with the terms set out therein. Therefore, if there is any specific provision that the Authority may want to impose and/ or regulate, upfront clarity on the same is essential to ensure that smooth performance of the commercial contract..
25	21	4	Please clarify who is the “auditor” referred to in this clause setting out the deficiencies. Will this be the IIIO’s / parent company’s (in case where IIIO is a branch) statutory auditor?	Please consider clarifying this.
26	22	3	Clarification of insurance/reinsurance business from government body or public sector undertaking.	Sub-regulation (3) carves out an exemption from the limit imposed on business from a single client if business is obtained from government body or public sector undertaking. Considering that intermediaries in the IFSC are restricted from conducting business from the territory of India, it is not clear whether the terms “government body” or “public sector undertaking” refer to those within India or those in other countries as well.
27	25	1	Clarification on requirement to appoint “Principal Officer”.	Sub-regulation (1) requires intermediaries to obtain prior approval of the Authority while changing the “Principal Officer”. While the term is defined in the Regulations, there is no provision requiring appointment of “Principal Officer”. It is also not clear which categories of intermediaries are required to appoint a “Principal Officer”.
28	25	1	Does this provision apply likewise to an IIIO set up as a branch or as an entity in IFSC?	Please consider clarifying this.
29	25	2	Clarification on intimation of change in list of “Broker Qualified Persons” and “Specified Persons”.	Sub-regulation (2) requires intermediaries to notify the Authority on changes in the list of “Broker Qualified Persons” and “Specified Persons”. It is not clear whether the requirement of intimation is on all intermediaries or not, especially considering that only insurance brokers may appoint “Broker

				Qualified Persons” and only corporate agents may appoint “Specified Persons”.
30	26		The sub-clauses in the regulations are not correctly numbered.	
31	26	2	<p>Is the rationale for exemption in the proviso available on the basis that the home country insurance regulator of the insurance intermediary will have accorded an approval or rejection, as applicable, to such amalgamation / merger and hence IFSCA’s approval is not necessary?</p> <p>Further, would IFSCA’s approval not be necessary for transfer of the IIO business (whether set up as branch office or otherwise).</p>	Please consider clarifying this.
32	26	3	Is the 6 months’ period intended to facilitate a transition support post the transfer?	Please consider clarifying this, especially considering the business will be transferred by the IIO.
33	27	1	Clarification is required on what is meant by “linking to web portals of insurers”.	<p>Insurance intermediary is allowed to enter into agreements with insurers for online sale of insurance products. This is specified to be conducted through “linking to web portals of insurers”. It is not clarified whether this is meant to be a redirection to the insurer’s website or is meant to be a form of lead generation. It is also not clear whether the intermediary is allowed to operate its own website for the purpose of solicitation of business.</p> <p>Further, it is not clarified whether the term ‘insurer’ refers to an IIO based in the IFSC, or to insurers based in other SEZs, foreign countries, or insurers located in the territory of India.</p> <p>While there is no inclusion of “web aggregators” in the categories of intermediaries classified in the Regulations, it is not clear whether registered intermediaries (IIOs or branch offices) may offer aggregation services to IIOs based within the IFSC or to insurers in other SEZs, foreign countries or within India</p>

34	30	2	The provision does not provide any clarification on appeal/ review option against the decision of the Authority.	Please consider clarifying this.
35	schedule 1		The headings say INR but the amount is in USD.	A clarification is required to avoid any misinterpretation or confusion.

36	4,5,6,7,9		<p>The Authority may authorise a Company Secretary in Practice (PCS) to certify the Form for processing an application for registration as an insurance intermediary.</p> <p>The PCS will certify that an applicant seeking registration as insurance intermediaries under regulations 4, 5, 6, 7 & 9, has complied with the conditions laid down in regulations and is eligible for operating as insurance intermediary, governed by the provisions of these regulations and any other regulations that have been formulated by the Authority.</p> <p>This certification in form of a 'Certificate of Compliance' will provide assurance to the Authority about the fulfilment of conditions mentioned in the Form and will assist in faster disposal of applications for registration as an insurance intermediary.</p> <p>The ICSI may provide the draft format of the Certificate of Compliance upon hearing from your good office.</p>	<p>A Company Secretary is well versed with memorandum of association, articles of association, byelaws, and ownership and governance structure of a company or LLP or body corporate or partnership firm or proprietorship firm or any other form and can ascertain requirements relating to the structure, shareholding, net worth, etc. required for the formation of an insurance intermediary in the above mentioned forms.</p> <p>The certification by a PCS will give necessary assurance to the Authority while registering an insurance intermediary as the Authority will not be required to review each aspect threadbare which will speed up the process of approval.</p> <p>Company Secretary is widely acclaimed for the understanding of laws not only from a legal perspective but also from a management and technical perspective. Company Secretary is provided with exhaustive exposure by the ICSI through coaching, examination, rigorous training and continuing professional development programmes and is governed by the Code of Conduct as prescribed in the Company Secretaries Act, 1980.</p> <p>A Company Secretary in Practice (PCS) renders various services viz. certification/ attestation, compliance, advisory, representation and arbitration, conciliation services and the other services as prescribed under Section 2(2) of the Company Secretaries Act, 1980 to the corporations, body corporates, societies, trusts, associations, enterprises, undertakings, etc.</p> <p>A PCS is authorised to undertake the following certification and audit services:</p> <ul style="list-style-type: none"> • to certify Registration along with Article of Association, Memorandum of Understanding, Details of Promoters/ Partner/ Shareholder, Net worth, Paid up Capital, Foreign Direct Investment in the company for the purpose of Application for Grant of Unified License (Virtual Network Operators)/ Authorisation for Additional Services {Department of Tele-communications (Access Service Cell) [Notification No. 800- 23/2011-VAS (Vol. II)]}
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- to issue No Objection/Tax Clearance Certificate regarding transfer of capital contribution/ profit shares of a Limited Liability Partnership from resident to non- resident / non-resident to resident. [Form Foreign Direct Investment-LLP-(II) of RBI/FED/2015-16/13 FED Master Direction No. 18/2015-16]

37	13	6	<p>A PCS may be authorised to certify the net-worth of insurance intermediaries in respect of compliance with these regulations.</p>	<p>In the context of Insurance Business, insurance intermediaries are an important constituent of overall governance framework. Being an important link between regulators, investors and issuers, they are expected to ensure that their internal controls are so efficient that they ensure effective investor service at all times and provide regulators comfort as to the compliance of regulatory prescription.</p> <p>It is in this direction that the NSE Ltd. has authorised a PCS to issue Net-worth certificate for pre and post scheme like Demerger, Capital Reduction, Scheme of Arrangement under Section 230-234 and Section 66 of the Companies Act, 2013. Recognitions to Company Secretaries in Practice (PCS)</p> <ul style="list-style-type: none"> • To issue Networth Certificate to be submitted by issuers at the time admitting securities in Central Depository Services (India) Limited (CDSL) and National Securities Depository Limited (NSDL). • To certify the net worth to be submitted by the Trading members / Clearing members / Company that the computation of Net worth is in accordance with the method of computation prescribed by SEBI as per Schedule VI of Securities and Exchange Board of India (Stock Brokers) Regulations 1992 or as amended from time to time as per the criteria prescribed by the BSE. • To act as Registered Valuer and to issue valuation reports for asset class of Securities or Financial Assets under the Companies (Registered Valuers and Valuation) Rules, 2017.
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38	22	4	Sub- Regulation 22 (4) may be modified as under: An insurance intermediary shall along with the audited accounts furnish an auditor's or Company Secretary in Practice's certificate, annually, confirming compliance with this regulation.	The sub regulation is in contradiction with Point No 12 of FORM B wherein it is proposed to "Provide a certificate from a practicing Chartered Accountant in India or a practising Company Secretary in India certifying that all the requirements of the Act read with IFSCA(Insurance Intermediary)Regulations, 2021 and rules, circulars have been complied with by the applicant". Therefore, to align the same, the modifications are suggested.
39	FORM B	Point 12	Certificate from CA/PCS Provide a certificate from a practicing Chartered Accountant in India or a practising Company Secretary in India certifying that all the requirements of the Act read with IFSCA(Insurance Intermediary)Regulations, 2021 and rules, circulars have been complied with by the applicant	As Point 12 provided for certificate of Compliance from a practicing Chartered Accountant in India or a practising Company Secretary in India, the heading inadvertently missed the name of PCS. Hence, modification suggested.

The above comments were considered suitably and the revised draft of the IFSCA (Insurance Intermediary) Regulations, 2021 was placed before the Authority in its meeting held on [September 24](#), 2021.