

CONSULTATION PAPER ON PROPOSED IFSCA (FINANCE COMPANY) (AMENDMENT) REGULATIONS, 2022

Objective:

The objective of this consultation paper is to seek comments / views / suggestions from public on the proposed International Financial Services Centres Authority (Finance Company) (Amendment) Regulations, 2022.

Background:

1. The IFSCA Finance Company Regulations were issued by the Authority on March 25, 2021 that were intended to enable a wider set of entities to undertake permissible activities in IFSC. Adopting a combination of entity-based and activity-based regulatory approaches, such entities are subject to different levels of prudential, corporate governance, capital requirements and other norms, depending on the category of activities - classified into core, non-core and specialised activities.
2. Based on the industry feedback and a general review, it is observed that some of the provisions of the FC regulations are required to be amended for certain types of entities, rationalising and simplifying the classification of activities and for better clarity with regard to some important aspects covered in circulars issued under the regulations.

Proposed amendments

3. The major amendments proposed to be carried out are as follows:
 - (i) Classification of permissible activities
In the extant regulations, permissible activities were classified into three categories, namely core, non-core and specialised activities. As the activities under the category of specialised activity namely, credit enhancement and factoring and forfaiting of receivables are in the nature of core activities, they have been shifted accordingly and the category specialised activity is omitted.

(ii) Branch (FU) route for any incorporated entity

The FC regulations at present do not permit a non-financial entity to set up a business in IFSC in the branch mode and they can undertake core / non-core or specialised activity(ies) only through a subsidiary (FC). Based on the feedback from the industry, it was observed that a non-financial entity may prefer to undertake an activity such as global / regional treasury centre, through a branch rather than a separate subsidiary. The branch model will offer greater flexibility and ease of operations and will also help the IFSC Finance Unit in benefitting from the parent company's balance sheet for borrowings and other market related activities. The proposed amendment will enable any incorporated entity to set up as a Finance Unit for undertaking specialised activity as permissible under respective frameworks. However, Finance Unit for undertaking any core activity(ies) under these regulations, shall be allowed only for those parent entities that are regulated by a Financial Sector Regulator in home jurisdiction.

(iii) Clarity on applicability of respective frameworks / regulations / guidelines for specific non-core activities

FC/FU intending to undertake any of the non-core activity (ies) in IFSC, shall be subject to the provisions of the respective Framework / Guidelines as specified by the Authority for that particular activity. Also, an entity carrying out multiple permissible activities under the FC regulations will have to maintain the higher of the minimum capital / owned funds / net worth prescribed for each individual activity, subject to the compliance with the respective Frameworks / Regulations governing such activities.

(iv) Registration requirements for FC/FU

This Authority had issued a clarification circular on August 5, 2021 clarifying that entities registered or authorised under any other framework or regulation administered by the Authority are exempt from the requirement of registering under the FC Regulations. However, a certificate of registration under the FC Regulations was required to be obtained by an entity intending to carry out such permissible activities which are not covered under the Framework/Regulation under which it has already been granted registration. The essence of this circular has been

inserted in the FC Regulations under the registration requirements in order to provide clarity to the applicant entities already registered /authorized for specific activities regarding registration requirements.

4. The draft amendment regulations are available on IFSCA's website <https://ifsc.gov.in/PublicConsultation>. Comments / suggestions are invited from the general public and stakeholders on the draft amendment regulations that may be sent to the Authority by email to lobhas.khairnar@ifsc.gov.in or to kamlesh.sharma27@ifsc.gov.in on or before June 24, 2022, in the following format:

Name and Details of the Person / Entity (Organisation name (if applicable), Contact No. and Email address)			
Sr. No.	Point No.	Comments/Suggestions	Detailed Rationale

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY
NOTIFICATION
Gandhinagar, the #DATE

International Financial Services Centres Authority (Finance Company) (Amendment)
Regulations, 2022

No. IFSCA/2020-21/GN/REG#__.- In exercise of the powers conferred by sub-section (1) of section 28 read with sub-section (1) of Section 12 and sub-section (1) of Section 13 of the International Financial Services Centres Authority Act, 2019, the International Financial Services Centres Authority hereby makes the following regulations, further to amend the International Financial Services Centres Authority (Finance Company) Regulations, 2021 (hereinafter referred to as the Principal Regulations), namely:-

1. (1) These regulations may be called the International Financial Services Centres Authority (Finance Company) (Amendment) Regulations, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Principal Regulations, sub-regulation (1), (2), (3) and (5) of regulation 3 shall be substituted by the following, namely, -

“(1) An entity shall commence business as a Finance Company or Finance Unit, as the case may be, in International Financial Services Centres (IFSCs) only after obtaining a certificate of registration from the Authority for carrying out the activities specified in Schedule to these regulations.

Explanation: An entity that has obtained a certificate of registration or authorisation for a specific activity under another framework or Regulations issued or administered by the IFSCA, shall not be required to seek a fresh registration under these Regulations for carrying out the same activity, if it is a permissible activity under regulation 5 of these Regulations:

Provided that a certificate of registration under these Regulations shall be required to be obtained by an entity intending to carry out such permissible activities which are not covered under the Framework / Regulations under which it was previously granted registration/authorisation, if any.”

“(2) A Finance Company can be set up either as a subsidiary or a joint venture, or as a newly incorporated company under the Companies Act, 2013, or in any other form as may be specified by the Authority from time to time,

Provided that if a parent of a Finance Company is carrying out a regulated financial activity in its home jurisdiction, it shall obtain a No-objection Certificate from its home country regulator for setting up a Finance Company in the IFSCs, wherever applicable.”

- “(3) A Finance Unit can be set up if the parent of the Finance Unit, is an incorporated entity in its home jurisdiction.

Provided that a Finance Unit can be set up for undertaking core activities as specified in these regulations only if the parent is engaged in the business of financial services and is regulated by a Financial Sector Regulator in its home jurisdiction and has obtained a No-Objection Certificate from its home regulator for setting up a Finance Unit in the IFSCs, wherever applicable.”

- “(5) The applicant shall fulfil the following conditions for seeking registration with the Authority:

(i) In case the applicant is seeking registration as a ‘Finance Company’, it shall have and maintain minimum owned fund, depending on the category of activity(ies) or a combination of activities classified under different categories under these regulations, shall maintain the higher of the minimum capital / owned funds / net worth prescribed for each individual activity or category of activities specified in Schedule under these regulations or under any of the Framework/Regulations issued by the Authority, as applicable.

(ii) In case the applicant is seeking registration as ‘Finance Unit’, its parent shall provide and maintain minimum owned fund on unimpaired basis at all times, depending on the category of activity(ies) or a combination of activities classified under different categories under these regulations, shall maintain the higher of the minimum capital / owned funds / net worth prescribed for each individual activity or category of activities specified in Schedule under these regulations or under any of the Framework/Regulations issued by the Authority, as applicable.”

3. In the Principal Regulations, clause (i) of sub-regulation (1) of regulation 5 shall stand omitted.
4. In the Principal Regulations, clause (ii) and (iii) of sub-regulation (1) of regulation 5 shall be substituted by the following, namely, -

“(ii) Permitted Core Activities

- (a) Lend in the form of loans, commitments and guarantees, credit enhancement, securitisation, financial lease and sale and purchase of portfolios;
- (b) Factoring and forfaiting of receivables;
- (c) Undertake investments, including subscribing, acquiring, holding, or transferring securities or such other instruments, as may be permitted by the Authority;
- (d) Buy or Sell derivatives; and
- (e) any other core activity as may be permitted by the Authority.”

“(iii) Permitted Non-core Activities

Subject to specific registration requirements, wherever applicable, permitted non-core activities for a Finance Company or a Finance Unit, as the case may be, shall include following activities:

- (a) Operating lease of any products, including aircraft lease, ship lease or equipment as may be specified by the Authority from time to time;
- (b) Global/Regional Corporate Treasury Centres;
- (c) International Trade Financing Services Platform;
- (d) Activities enabled under the IFSCA (Capital Market Intermediaries) Regulations, 2021 and other activities permitted under a separate framework or Regulations; and
- (e) any other activity, as may be permitted and classified as a non-core activity by the Authority, under these regulations.”

5. In the Principal Regulations, sub-regulation (2) of regulation 5 shall be substituted by the following, namely, -

“(2) A Finance Company or a Finance Unit registered for carrying out one or more non-core activities only shall be permitted to undertake investment activities for the purpose of liquidity and balance sheet management, as part of its normal business operations, and such investment activity shall not be treated as core activity for the purpose of these regulations.”

6. In the Principal Regulations, after sub-regulation 3 of regulation 5 the following sub-regulation shall be inserted, namely, -

“(3A) A Finance Company or a Finance Unit intending to undertake any of the non-core activity (ies) shall be subject to the provisions of the respective framework as specified by the Authority for that particular activity.”

7. In the Principal Regulations, after regulation 10 the following regulation shall be inserted, namely, -

“10A. 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) The Authority, for reasons to be recorded in writing, may in the interest of development of financial market, relax the strict enforcement of any requirement of these regulations, upon payment of fee, if any, as may be specified by the Authority.”

8. In the Principal Regulations, the Schedule shall be substituted by the following, namely, -

SCHEDULE

[See regulation 3(1), 3(5)(i) and 3(5)(ii)]

No.	Activity	Minimum Owned Fund Requirement (in USD or equivalent amount in any other freely convertible currency)	Exempted Regulations, if any
1	Undertaking one or more of the non-core activities only – without any core activity(ies).	(1) Highest of USD 0.2 million or any such amount as may be required to seek specific registration for a proposed non-core activity under the respective Framework/Regulation for that particular activity; or (2) Any higher amount as may be specified by the Authority.	Regulation (4) and Regulation (8) subject to the following: (i) To have a Board approved prudential policy (ii) Fit and Proper criteria set out by the Authority.

2	Undertaking one or more core activities with or without non-core activities.	(1) Highest of USD 3 million, minimum regulatory capital for core activities as specified by the IFSCA; or any such amount as may be required for a non-core activity(ies) under the respective Framework/Regulation for that particular activity; or (2) Any higher amount as may be specified by the authority.	None
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INJETI SRINIVAS, Chairperson

Note:

1. The International Financial Services Centres Authority (Finance Company) Regulations, 2021 were published in the Gazette of India Extraordinary vide notification No. IFSCA/2020-21/GN/REG010 on 25th March 2021, to be read with the International Financial Services Centres Authority Corrigendum published in the Gazette of India Extraordinary vide notification No. CG-GJ-E-16042021-226667, on 16th April, 2021.