

IRDAI'S EXPOSURE DRAFT FOR REINSURANCE 2022

08 November 2022



Introduction

In its continuing objective to promote insurance penetration in the country and to enhance ease of doing business, the IRDAI has issued an exposure draft on the IRDAI (Re-insurance) (Amendment) Regulations 2022 of 21 October 2022 ("**Draft Amendment**"). The Draft Amendment proposes to "*harmonize the provisions of various regulations applicable to insurance companies and Reinsurers including Foreign Reinsurance Branches (FRBs) and Lloyd's*" and proposes changes to the Order of Preference to be followed by a Cedant^[1] while reinsuring its risks as well as the minimum retention^[2] to be maintained by Indian reinsurers, Foreign Reinsurers' Branches ("**FRBs**") and Lloyd's India.

The Draft Amendment, if notified, would amend: (i) the IRDAI (Re-insurance) Regulations 2018 ("**Reinsurance Regulations**"), (ii) IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations 2015 ("**FRB Regulations**"), and (iii) IRDAI (Lloyd's India) Regulations 2016 ("**Lloyd's Regulations**").

Salient Amendments

A brief summary of the proposed key changes in the Draft Amendment are as follows:

- 1) The Draft Amendment proposes to amend the manner in which Cedants must obtain best terms for their cessions^[3]. The proposed changes are as follows:
 - a. Instead of the present requirement for seeking terms from Indian reinsurers, it is

¹ R2(5) of the Reinsurance Regulations defines Cedant as follows:

"Cedant' means an Indian Insurer who underwrites direct insurance business and contractually transfers (cedes) a portion of the risk;"

² R2(20) of the Reinsurance Regulations defines Retention as follows:

"Retention' means the portion of the risk, which an Indian Insurer assumes for its own account;"

³ R2(6) of the Reinsurance Regulations defines Cession as follows:

"Cession' means the part of risk passed to a Re-insurer by the cedant;"

proposed that a Cedant obtain terms from at least three “Category 1” reinsurers (which includes Indian Reinsurers, FRBs, Lloyd’s India and IIOs per R5(2)(A)(a) of the Reinsurance Regulations).

- b. It is reiterated at both R5(1) and R5(2) that except for facultative^[4] reinsurance, no Cedant shall offer participation to any Indian Insurer, which is not registered with the IRDAI to “*exclusively*” transact reinsurance business.
- 2) The Draft Amendment proposes to significantly overhaul the Order of Preference which Cedants are mandatorily required to follow for all Cessions. The proposed Order of Preference is as follows:
- a. Category 1: Indian Reinsurers, FRBs, Lloyd’s India, IIOs
 - b. Category 2: Cross Border Reinsurers (“*CBRs*”) who:
 - i. “*Agree to retain minimum 50% premium by way of premium deposit with the cedant. It will be the responsibility of the Insurers to maintain this premium in a separate designated/escrow account as well as to invest such amount into Government of India Securities;*”

or

 - ii. “*Agree to provide collaterals/ letter of credit/ bank guarantee for 50% premium to the cedant;*”

or

 - iii. “*Agree to maintain a dollar denominated account in IFSC Banking Unit (IBU) in IFSC/ and maintain 50% of premiums in the account.*”
 - c. Category 3: To other Indian Insurers (facultative) and other CBRs.

3) The Draft Amendment proposes that the retrocession^[5] to the International Financial Service Centre (“*IIOs*”) will be “*reckoned*” or counted towards the retention requirements of Indian reinsurers, FRBs and Lloyd’s India. Presently every Indian reinsurer, FRB and Lloyd’s India is required to retain at least 50% of its Indian business.

4) In terms of compliance requirements, the Draft Amendment proposes to do away with the requirement to obtain Board approval for the reinsurance programme and retention policy for the forthcoming year, instead requiring that such details be provided to the IRDAI in a simple format as specified. In addition, the requirement to submit soft copies of “*each and every re-insurance contract*” has been removed.

5) The Draft Amendment proposes to increase the overall cession limits for a financial year (for other

⁴ R2(10) of the Reinsurance Regulations defines Facultative Reinsurance as follows:

“Facultative Reinsurance” means reinsurance for a single risk or a defined package of risks, where neither the cedant is obliged to submit these risks to the reinsurer nor the reinsurer is obliged to provide reinsurance protection;”

⁵ R2(21) of the Reinsurance Regulations defines Retrocession as follows:

“Retrocession” means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR;”

than life insurance business), in the following manner:

- a. For CBRs with rating greater than A+: From 20% to 25%
 - b. For CBRs with rating greater than BBB+ and up to A+: From 15% to 17.5%.
 - c. For CBRs with rating BBB+ and BBB, the cession limit of 10% remains unchanged.
- 6) The foregoing cession limits continue to be calculated on the total reinsurance premium ceded outside India per CBR.
- 7) The Draft Amendment proposes to insert a *Third Schedule* and *Fourth Schedule* to the Reinsurance Regulations, which respectively amend the FRB Regulations and the Lloyd's Regulations. In addition to reckoning retrocessions to IIOs in computing the minimum retention of FRBs and Lloyd's India, it is also proposed to reduce the assigned capital requirements from ₹100 crores to ₹50 crores in respect of opening of new FRBs and Lloyd's India branches.

The IRDAI has invited comments from various stakeholders and general public on the proposed Draft Amendment by 11 November 2022 in the format prescribed thereunder.

Concluding Remarks

The Draft Amendment proposes to make significant changes to the present reinsurance framework in India, by amending several significant provisions under the Reinsurance Regulations, FRB Regulations and the Lloyd's Regulations. Perhaps most significantly, the Draft Amendment proposes to revise the existing Order of Preference to be followed by Indian Cedants while reinsuring their risks, placing FRBs, Lloyd's India branches and IIOs at the highest category with the present Indian reinsurer, GIC Re and to relax the cession limits to be followed by Cedants while placing business with CBRs.

It remains to be seen whether the Draft Amendment will be notified in the present form, or if there are yet additional changes to be seen subject to comments from stakeholders.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

For further information on this topic please contact Tuli & Co

T +91 120 693 4000, F +91 120 693 4001 or email lawyers@tuli.co.in

www.tuli.co.in

Author(s)



Celia Jenkins

Partner



Anuj Bahukhandi

Managing Associate

Article