

India: IRDAI's Revamped Guidelines For Cross Border Re-insurers Writing Indian Risks

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Introduction

On 3 January 2023, the IRDAI issued the "Guidelines on Issuance of File Reference Numbers (FRN) to Cross Border Re-insurers" ("2023 CBR Guidelines"), which superseded the former guidance under the IRDAI's Guidelines on Cross Border Re-Insurers of 22 January 2021 ("2021 CBR Guidelines"). The stated objective for the 2023 CBR Guidelines was to "streamline the regulatory process with respect to cross border reinsurers" and to enhance the ease of doing business¹.

Evolution of Cross Border Reinsurer ("CBR") norms in India

At present, an Indian Insurer ("Cedant") writing non-life business is required to apply to the IRDAI and obtain a File Reference Number ("FRN")² for placing reinsurance business with a CBR. The process has been made online and an auto-renewal facility is available (limited to 3 years).

Under the *erstwhile* IRDA's "Guidelines on submission of information on Cross Border Reinsurers not having any presence in India" of 6 January 2012 ("2012 CBR Guidelines"), a CBR was required to file an information sheet though the concerned Cedant³ and obtain a unique reference number ("URN") from the IRDA⁴. The responsibility was imposed on the Cedant to ensure that the CBRs, who accept their reinsurance business, comply with the requirements set out by the IRDA⁵. Under this *erstwhile* guidance, we understand that the information sheet was required to be physically filed with the IRDA and this process was annual in nature.

Thereafter, the IRDAI's "Guidelines on Cross Border Reinsurers" of 19 January 2016 ("2016 CBR Guidelines") were notified, which superseded the 2012 CBR Guidelines, and substituted the practice of issuing the URN with a "Filing reference number" ("FRN")⁶. The 2016 CBR Guidelines expressly set out an "eligibility criteria"⁷, which was required to be complied with by CBRs and those that did not satisfy such eligibility criteria, were required to obtain prior approval from the IRDAI⁸. Further, the practice of filing an information sheet continued, and upon the Cedant doing so, an FRN was automatically generated for the CBR, through an online portal⁹. The issued FRN was valid for one year¹⁰.

Following the introduction of a separate CBR eligibility criteria under the Reinsurance Regulations¹¹, the 2021 CBR Guidelines were introduced. These superseded the 2016 CBR Guidelines, and categorised the CBRs as (i) "Eligible CBRs" and (ii) "Non-Eligible CBRs"¹², based on the criteria under the Reinsurance Regulations. Similar to the 2016 CBR Guidelines, an FRN was required to be obtained by the Cedant, on behalf of the CBR, which was valid for a period of one year¹³, albeit through a detailed "application for allotment of FRN", as opposed to the "information sheet".

Key Amendments under the 2023 CBR Guidelines

The 2023 CBR Guidelines introduced the following key changes:

1. For obtaining a new FRN, a Cedant who wishes to place reinsurance business with a CBR, is required to file an online application form with the IRDAI in the prescribed format¹⁴. The IRDAI may allot an FRN upon examination of the application and other details sought, if any.
2. Each application for allotment of the FRN is required to specify whether the CBR falls under the category of "Eligible CBR" or "Non-Eligible CBR", as the case may be. Further, upon placing reinsurance business with any non-eligible CBR, Cedants are required to obtain a Board resolution ratifying such placement and file a certified copy with the IRDAI¹⁵.

3. As a new development, the 2023 CBR Guidelines also prescribe an "Auto renewal" facility¹⁶ for CBRs that have been allotted the FRN under the "Eligible CBR" category in the preceding FY and provided they have a higher credit rating (ie, at least S&P's A- or equivalent) than the minimum credit rating specified under the Reinsurance Regulations (ie, at least S&P's BBB or equivalent).

4. The auto renewal facility would be available for three consecutive FYs, provided that the CBR continues to meet the requirements specified under the 2023 CBR Guidelines. After such three year period, the Cedant is required to file a fresh online application form¹⁷.

Concluding Remarks

The 2023 CBR Guidelines follow a slew of significant changes seen in the Indian insurance framework this year. It introduces some key changes to the regulatory framework governing reinsurance in India. Some of the changes, such as the auto renewal facility allowing Cedants to generate the FRN on their own (for 3 years), is expected to help minimise the Cedant's administration process and improve the efficiency of placing reinsurance business with CBRs.

Further, while the 2023 CBR Guidelines permit placement of reinsurance with non-eligible CBRs, in addition to a prior approval of the IRDAI, they also require a Board resolution approving/ratifying such placement. This move appears to be an attempt both to encourage business with eligible category CBRs as well as to place the responsibility of carrying on the necessary due diligence on the Board.

As the 2023 CBR Guidelines were notified only fairly recently, it remains to be seen how these changes will impact the Indian insurance sector, including whether they have the effect of encouraging more overseas reinsurers to obtain an FRN and carry on reinsurance business in India.

Footnotes

1 ¶1(E) of the 2023 CBR Guidelines.

2. ¶3(i) of the 2023 CBR Guidelines.

3. ¶2 of the IRDAI's Circular on "Methodology to operationalize the circular on cross border reinsurers" of 31 January 2012 ("2012 Circular").

4. ¶4 of the 2012 Circular.

5. ¶5 of the 2012 CBR Guidelines.

6. ¶4(iii) of the 2016 CBR Guidelines.

7. ¶3 of the 2016 CBR Guidelines.

8. ¶6(i) of the 2016 CBR Guidelines.

9. ¶4(iii) of the 2016 CBR Guidelines.

10. ¶4(iv) of the 2016 CBR Guidelines.

11. R4(1) of the Reinsurance Regulations.

12. ¶1(c) of the 2021 CBR Guidelines.

13. ¶2(c) of the 2021 CBR Guidelines.

14. ¶2(A)(ii) of the 2023 CBR Guidelines.

15. ¶3(vi) of the 2023 CBR Guidelines.

16. ¶2(B)(i) of the 2023 CBR Guidelines.

17. ¶2(B)(i)(d) of the 2023 CBR Guidelines.

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.

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