IRDA prescribes guidelines for operations in the International Financial Services Centre of Indian and Foreign Insurers/ Re-insurers

Executive summary

The Insurance Regulatory and Development Authority of India (IRDA) has recently notified the Insurance Regulatory and Development Authority of India [(Registration and Operations of International Financial Service Centre Insurance Offices (IIO)) Guidelines, 2017 (Guidelines). These Guidelines shall come into force with effect from 21 December 2017 and will supersede the earlier guidelines/ circulars of the IRDA on the subject.

The Guidelines have prescribed the eligibility criteria, permitted activities, process of registration and operation of insurance and re-insurance offices in the International Financial Service Centres (IFSCs) set-up in Special Economic Zones (SEZs).

This alert summarizes the key features of the Guidelines.

Background

- The Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 were issued by the Insurance Regulatory and Development Authority of India (IRDA) on 6 April 2015 in order to permit insurers including foreign insurers or re-insurers to set-up a branch in the International Financial Service Centre (IFSC).

- Thereafter, the IRDA also issued Circular Ref: IRDA/NL/CIR/MISC/O19/01/2016 dated 28 January 2016 to provide clarifications and additional details/formats in relation to the application by insurers/re-insurers desirous of opening an IIO in the IFSC.

- The Government of India has set-up an IFSC in Gujarat International Finance Tech City (GIFT City), Gandhinagar, Gujarat with a vision to make this a vibrant hub for Global Financial Services. The Government is working closely with the Regulators to translate its vision into reality.

- The IRDA has in furtherance thereof, now notified the Insurance Regulatory and Development Authority of India [(Registration and Operations of International Financial Service Centre Insurance Offices (IIO)) Guidelines, 2017 (Guidelines). These Guidelines shall come into force with effect from 21 December 2017. These Guidelines replace and supersede the previous guidelines and circulars mentioned above.

- The Guidelines have inter alia prescribed the eligibility criteria, permissible activities, process of registration and operation of insurance and re-insurance offices in the IFSCs set up in Special Economic Zones (SEZs).

This alert summarizes the key features of the Guidelines.

Definitions

- **International Financial Service Centre (IFSC)** means an International Financial Service Centre which has been approved by the Central Government under section 18(1) of the Special Economic Zones Act, 2005.

- **GIFT City** in Gandhinagar is the only operational IFSC in India at present.

- **Special Economic Zone (SEZ)** means a special economic zone as defined under Section 2(2a) of the Special Economic Zones Act, 2005.

- **Indian insurer** for the purpose of these Guidelines means an “Insurer” as defined under Section 2(9) (a) and (c) of the Insurance Act, 1938.

- **International Financial Service Centre Insurance Office (IIO)** means a branch office (of an Applicant) to transact Direct Insurance Business or Re-insurance Business as permitted by IRDA.

- **Foreign insurer or re-insurer** means a body corporate incorporated under the law of any country outside India and duly registered with its home country regulatory or supervisory Authority for transacting insurance or re-insurance business.

- **Applicant** means an Insurer (Indian or foreign) or a Re-insurer (Indian or Foreign) as the case may be.

- **Net Owned Fund** (NOF) shall consist of (i) paid-up equity capital, (ii) free reserves, (iii) Securities Premium Account, sum of which is reduced by (i) accumulated losses, (ii) book value of intangible assets, which shall be computed on the basis of last audited Balance Sheet and any capital raised after the Balance Sheet date shall not be accounted for.

Applicability

The Guidelines are applicable to:

- the Applicants (Indian and Foreign) who are willing to apply for registration of an IIO

- an IIO of the Indian insurer or re-insurer registered with the IRDA under these Guidelines to transact Direct Insurance Business or Re-insurance Business or both

- an IIO of the foreign insurer or re-insurer registered with the IRDA under these Guidelines to transact Direct Insurance Business or Re-insurance Business or both

Eligibility criteria for registration of the IIO

A. **Indian Insurer or Indian Re-insurer**

The Applicant is required to satisfy inter alia the following conditions/requirements:

- registration as an Indian insurer or Indian re-insurer with the IRDA

- continuous operation during the preceding five years from the year in which the application is made

- satisfactory track record in respect of regulatory compliance

B. **Foreign Insurer or Foreign Re-insurer**

The Applicant is required to satisfy inter alia the following conditions/requirements:

- registration or license for transacting insurance or re-insurance business in the country of incorporation

- authorization by the regulatory or supervisory authority of its home country to set up an IIO in India

- continuous operation during the preceding five years from the year in which the application is made
Complying with the provisions of Assigned Capital, Paid-Up Equity Capital and NOF as mentioned in the Guidelines

- satisfactory track record in respect of regulatory or supervisory compliance in its country of incorporation and also in any other country in which it is functioning
- registered or certified in a National Regulatory Environment and with whom the Government of India has signed Double Taxation Avoidance Agreement
- solvency margin as stipulated by its home country regulatory or supervisory Authority
- minimum credit rating which is having at least good financial security characteristics from any of the internationally renowned credit rating agencies for the last three years

Permissible business for the IIO

Business for which the IIO may be registered:
- Life Insurance Business
- General insurance Business
- Health Insurance Business
- Re-insurance Business
- The IIO may be permitted to transact Direct Life Insurance Business or Direct General insurance Business but not both or Re-insurance Business.

However, the IIO may be allowed to transact Health Insurance Business as provided under the extant Health Insurance Regulations notified by IRDA.

The IIO may be permitted to transact Direct Insurance Business within the IFSC, from other SEZs and from outside India. Domestic business would however be only such business as is permitted in accordance with section 2CB of the Insurance Act, 1938.  

The IIO registered to transact re-insurance business may:
- accept re-insurance business from within the IFSC, from other SEZs and from outside India
- accept re-insurance business from the insurers operating in the IFSC in accordance with the order of preference for cession, as per the extant Regulations notified by IRDA
- No foreign insurer/ re-insurer setting up an IIO shall be permitted to transact a class of business which is not permitted to the Applicant by its home country regulatory or supervisory authority.

Capital requirement

The requirements of assigned capital and NOF applicable to foreign insurers/ re-insurers setting up an Indian branch will be equally applicable to foreign insurers/ re-insurers who make an application for registration of IIO (in the IFSC) to the IRDA.

Assigned Capital

- The Applicant would be required to maintain minimum assigned capital of INR 100 million. In case the Applicant is a Foreign Direct Insurer, it shall be required to possess paid-up equity capital as per provisions of section 6(1) of the Insurance Act, 1938.
- The Assigned Capital may be held in the form of Government Securities issued by the Government of India or held as deposits with Scheduled Banks in India and shall be maintained by the IIO at all times during the subsistence and validity of its registration under the Guidelines.

NOF

- The Applicant shall maintain NOF as applicable to the Branches of Foreign Re-insurers under Section 6 (2) of the Insurance Act, 1938 or as may be prescribed by the Government of India.
- Maintaining of NOF requirement is not applicable for Foreign Direct Insurers.
- The NOF shall be maintained by the Applicant at all times during the subsistence and validity of its registration.

The Applicant shall inform IRDA about a change in its shareholding pattern or ownership, if any, within 30 days of effecting such change.

Application process

Format and documents to be submitted

The application for obtaining a Certificate of Registration (CoR) is required to be submitted in Form A by an Indian Insurer or Re-insurer and in Form B by a Foreign Insurer or Re-insurer.

The application form should be accompanied by inter alia the following documents:
- certificate of approval from the appropriate authority as prescribed in the Special Economic Zones Act, 2005 for conducting insurance business in the IFSC
- INR 1 billion in case of health insurance business
- INR 2 billion in case of re-insurance business
- The insurer may enhance the paid-up capital in accordance with the provisions of the Companies Act, 2013, Securities and Exchange Board of India Act, 1992 and rules and regulations issued thereunder, or as per any other law for the time being in force.

1 Section 2CB of the Insurance Act, 1938 states that no person shall take out or renew any policy of insurance in respect of any property in India or any ship/ vessel/ aircraft registered in India with an insurer whose principal place of business is outside India save with the permission of the IRDA.

2 As per section 6(1) of the Insurance Act, 1938, the paid-up capital prescribed is as under:
- INR 1 billion in case of life insurance or general insurance business
• Certificate of Incorporation, Memorandum of Association and Articles of Association of the Applicant or a corresponding document which details the manner of formation of Company and conduct of its business
• published annual report of Applicant for the last five years preceding the year of filing of application for registration of IIO
• approval from the board of directors of the Applicant through a resolution, in support of the commitment to set up such IIO
• business projections of the IIO for the next five years
• name, address, occupation and contact details of the Directors, Chief Executive Officer of the Applicant and the person proposed to be in-charge of the operations in proposed IIO
• copy of the registration certificate issued by IRDA (in case of Indian insurers or Indian re-insurers)

Additional documents to be submitted by foreign insurers/ re-insurers inter alia include:
• CoR issued by its home country regulatory or supervisory authority to transact insurance or reinsurance business, as the case may be
• statement indicating infusion of the assigned capital of INR 100 million or more
• certificate from its home country regulatory or supervisory authority that, the Applicant has necessary permission to open an IIO in SEZ in India
• note on the regulatory architecture of the country where the Applicant is incorporated and licensed along with its reporting and compliance structure
• certificate from a practising Chartered Accountant or a practising Company Secretary certifying that all the requirements relating to processing fees, assigned capital, NOF and other requirements have been complied with by the Applicant

Translation documents pertaining to Audited and other financial reports shall have monetary values in INR only.

**Application processing and annual fee**
• The Applicant, along with the application, shall pay non-refundable processing fee of INR 0.05 million
• The IIO shall also pay an annual fee of INR 0.1 million and applicable taxes, if any, for every financial year to IRDA before 31st day of January of the preceding financial year. For the Financial year 2018-2019 the annual fees shall be paid by 31 January 2018

**Consideration for grant of CoR**
The Chairperson of the IRDA shall consider inter alia the following criteria for grant of CoR to the Applicant:
• record of performance of Insurance or Re-insurance business carried on by the Applicant
• record of performance of the directors and Key Managerial Persons in the management of the Applicant
• proposed infrastructure of the IIO such as adequate office space, equipment, IT infrastructure and trained manpower to effectively carry out the insurance business from IFSC
• organisation structure consisting of Key Managerial Persons of the Applicant and also of proposed IIO
• capability of underwriting risks of specified insurance or re-insurance business and settling claims
• commitment to appoint in the proposed IIO, sufficiently skilled staff to underwrite the classes of insurance or re-insurance business and settlement of claims

Additional criteria considered in case of foreign insurers/ re-insurers inter alia include:
• soundness of the financial condition and the general character of management of the Applicant
• documentary proof of having INR 100 million or more as assigned capital
• affidavits, as prescribed, with respect to satisfaction of the assigned capital and NOF requirements of the Applicant
• certificate from a practising Chartered Accountant or a practising Company Secretary certifying that all the requirements relating to processing fees, assigned capital, NOF and other requirements have been complied with by the Applicant

**Operational guidelines for IIOs**
The IRDA has prescribed inter alia, the following operational guidelines to be adhered to by all IIOs:
• **Commencement of operations:** An IIO shall commence business, for which it has been authorised, within 12 months from the date of grant of CoR. An extension for commencement of business can be sought for an additional period by making an application at least 30 days in advance. No extension of time shall be granted beyond 18 months from the date of grant of CoR under the Guidelines.
• **Transactions in foreign currency only:** All the monetary transactions with respect to insurance or re-insurance business made by an IIO shall be in foreign currency and not in INR.
• **Appointment of Principal Officer:** The Applicant shall appoint a Principal Officer, who will be in charge of the IIO. The appointment, reappointment, removal and managerial remuneration payable to the Principal Officer shall be with the prior approval of IRDA.

• **Re-insurance and Retrocession:** The IIO shall retrocede not more than 90 percent of its re-insurance business.

   The surplus available after such retrocession arrangements as per the Guidelines shall be held in the form of Government Securities issued by Government of India or in deposits with Scheduled Banks in India or invested as per extant Investment Regulations notified by IRDA.

• **Solvency Margin:** The IIO shall prepare and submit a separate statement of assets, liabilities and solvency margin requirements in the manner as may be specified in the IRDAI (Assets, Liabilities and Solvency Margin of General Insurance Business) Regulations, 2016 and IRDAI (Assets, Liabilities and Solvency Margin of Life Insurance Business) Regulations, 2016.

• **Repatriation of surplus:** Any repatriation of the surplus generated by the operations of the IIO shall be only with prior approval of IRDA. IRDA before granting such an approval shall obtain all relevant information and satisfy itself that the assets of the IIO are adequate to meet their liabilities. In addition, the repatriation of surplus shall comply with the other requirement of the Reserve Bank of India, Foreign Exchange Management Act, 1999 as applicable.

• **Supervision and Control:**

  i. The Board of the Applicant shall ensure to have in place effective supervision and control and to monitor continued viability of IIO through necessary returns

  ii. A copy of synopsis of the findings of the inspection, audit, scrutiny and compliance submitted by the IIO and put up to the Audit Committee of the Applicant shall also be submitted to the Authority once Board of the Applicant has taken such findings on record

• **Maintenance of books of accounts/records and submission of annual report to IRDA:**

  i. An IIO shall maintain proper records, documents, evidence and books of all transactions carried out by it in terms of these Guidelines

  ii. The IIO shall submit financial returns including statement of accounts in the matter as may be specified in the IRDA (Preparation of Financial Statements and Auditor’s Report of Insurance Companies) Regulations, 2002

  iii. All other records shall be maintained for such period as may be specified by IRDA. Such records, documents, evidence, books etc., and any information contained therein shall be made available to IRDA or to such person appointed by IRDA for investigation into or inspection of the functions of the IIO

  iv. While maintaining the records in terms of these Guidelines, the IIO shall follow strictly the professional confidentiality as required. However, this does not prevent the IIO from disclosing the relevant information relating to its business to any Court of Law, Tribunal, the Government or the Authority in case any investigation is carried out or is proposed to be carried out against the any insurer or reinsurer or any other person or for any other reason.

v. The IIO shall submit separate financial returns including statement of accounts, annual reports and other returns, declarations and undertakings, in the manner and based on periodicity as may be specified by IRDA

• **Reporting requirements to the IRDA:**

  i. The IIO of foreign insurer shall immediately report to IRDA any regulatory or supervisory action taken by the home country regulator with full details and the penalty, any administrative action imposed and the remedial steps taken

  ii. All the IIOs shall submit periodic returns in such form and such manner as the IRDA may specify from time-to-time

  iii. Downgrading Reporting: The IIO shall immediately report along with relevant documents to IRDA any downgrade in Credit Rating by an internationally renowned credit rating agency

  iv. Erosion of NOF: The IIO shall immediately report to IRDA more than five percent erosion in the NOF of the Applicant

• **Corporate Governance:** The IIO shall have a Board Approved Executive Committee consisting of Principal Officer or Chief Executive Officer (CEO) of the IIO and other two Key Managerial Persons preferably the Chief Risk Officer and the Chief Finance Officer.

   The Executive Committee shall keep the CEO of the Applicant informed about the decision taken by the Executive Committee. The CEO of Applicant shall keep the Board informed about the major and important decisions taken from time-to-time.

• **Information Technology:** The IIO shall have its IT system which will have all the transaction details and information relating to its business transactions.

• **Protection of Policy Holders’ Interest:** With respect to underwriting of Direct Insurance Business sourced from and within IFSC, other SEZs and domestic tariff area, the IIO shall comply with extant Protection of Policy Holders’ Interest Regulations as notified by IRDA.

**Outsourcing:** Activities related to outsourcing shall be in compliance with extant Outsourcing Regulations as notified by IRDA.
The IRDA has now prescribed detailed guidelines for IFSC operations of Indian as well as foreign insurers.

The said Guidelines which supersede all previous guidelines and circulars provide the ability to IIOs of foreign insurers to participate in Direct Insurance Business within the IFSC, with other SEZs and from outside India.

This impetus to the insurance market in India should provide a competitive environment with foreign expertise and should contribute to overall growth of this sector.

The limitation of eligibility of only those Applicants who hail from a country with which India has signed a Double Taxation Avoidance Agreement could be looked at as being restrictive. Further, the capital requirements for a Foreign Re-insurer to become eligible to set-up an IIO continue to remain high.

Tax implications of IIOs ought to remain the same as for any other Foreign Insurance/Re-insurance branch subject to availability of deduction under section 80LA of the Income-tax Act, 1961. Minimum Alternate Tax (MAT) provisions should be attracted wherever MAT is applicable.
Our offices

Ahmedabad
2nd floor, Shivalik Ishaan Near C.N.
Vidyalya Ambawadi
Ahmedabad - 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru
6th, 12th & 13th floor “UB City”,
Canberra Block No.24 Vittal Mallya
Road Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000

Ground Floor, ‘A’ wing Divyasree
Chambers
#11, D’Souzaheas Road Langford
Gardens Bengaluru - 560 025
Tel: +91 80 2222 9914
Fax: +91 80 2222 9888

Chandigarh
1st Floor, SCO: 166-167 Sector 9-C,
Madhya Marg Chandigarh - 160 009
Tel: +91 172 331 7800
Fax: +91 172 331 7888

Chennai
Tidel Park, 6th & 7th Floor
A Block (Module 601,701-702) No.4,
Rajiv Gandhi Salai Taramani, Chennai - 600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Delhi NCR
Golf View Corporate Tower B Sector 42,
Sector Road Golfaon - 122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

3rd & 6th Floor, Worldmark-1 IGI Airport
Hospitality District Aerocity, New Delhi - 110 037
Tel: +91 11 6671 8000
Fax +91 11 6671 9999

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
NOIDA - 201 304
Gautam Budh Nagar, U.P.
Tel: +91 120 671 7000
Fax: +91 120 671 7171

Hyderabad
Oval Office, 18, iLabs Centre Hitech
City, Madhapur Hyderabad - 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Jamshedpur
1st Floor, Shantiniketan Building
Holding No. 1, SB Shop Area Bistupur,
Jamshedpur - 831 001
Tel: +91 657 663 1000
BSNL: +91 657 223 0441

Kochi
9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata
22 Camac Street 3rd
Floor, Block "C" Kolkata -
700 016
Tel: +91 33 6615 3400
Fax: +91 33 2281 7750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg Darar
(W), Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor, Block B-2 Nirlon
Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

Pune
C-401, 4th floor Panchshil
Tech Park Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

Ernst & Young LLP

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camac Street, 3rd Floor, Block C, Kolkata - 700016

© 2017 Ernst & Young LLP. Published in India. All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither Ernst & Young LLP nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.