

The consultation paper seeking comments/views from the public on the draft IFSCA (Finance Company) (Amendment) Regulations was issued by IFSCA on June 3, 2022.

The following comments were received:

Sr No.	Regulation No. (as per consultation paper)	Comments/Suggestions	Detailed Rationale	Our comments
1	2 and/ or 5	Clarification on non-applicability of Finance Company Regulations for investment activities for the purpose of liquidity and balance sheet management by entities registered under other Regulations issued by the IFSCA.	<ul style="list-style-type: none"> The IFSCA has substituted Regulation 5(2) to provide that a Finance Company/ 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'. - Several companies/ units in IFSC [example – capital markets intermediaries, ancillary service entities, fund management entities, etc] may invest their surplus funds in securities / shares of companies, as part of its normal business operations. The 	<ul style="list-style-type: none"> The scope of these regulations is limited to a Finance Company and / or a Finance Unit in IFSC undertaking the permissible core and or non-core activities. The regulations have included a clarification (regulation 3(1)) that the entities already authorised / registered for carrying out specific capital market related permissible (non-core) activities are not required to get registered as Finance Company / Finance Unit¹. The amendment further clarifies that entities (FC/FU) undertaking non-core activities may also undertake investments as part of its normal business operations. In view of the above, it can be inferred that entities undertaking core and non-core activities can undertake investments as part of its normal business operations for the purpose of

¹ Refer circular F. No. 172/IFSCA/Finance Company Regulations/2021-22/08 titled 'IFSCA (Finance Company) Regulations, 2021 – Clarification, dated August 9, 2021. The essence of the above mentioned circular has been added in the amended FC regulations.

			<p>IFSCA should clarify that the entities registered in the IFSC in India undertaking investment activities for the purpose of liquidity and balance sheet management, as part of its normal business operations, shall not require registration under the Finance Company Regulations.</p> <ul style="list-style-type: none"> Alternatively, an amendment to Regulation 3(1) of the Finance Company Regulations should be made to provide that liquidity and balance sheet management activities of an entity/ unit registered in the IFSCA should not require registration under the Finance Company Regulations. 	balance sheet and liquidity management.
2	3(1) – Classification of Permissible Activities	Request to grant grandfathering under the proposed amendments to existing registration as Finance Company due to omission of category named “Specialised Activities”	<p>IIBHL is registered as a Finance Company under the IFSCA (Finance Company) Regulations, 2021, on August 09, 2021. Thus, guidance is needed whether to take fresh / regularise the registration or we will be grandfathered under the new regulations.</p> <p>Entity has requested to provide grandfathering under our existing registration.</p>	<p>The IIBHL was created as a finance company for the sole purpose of enabling the creation of bullion exchange eco system in IFSC, by a consortium of institutions, by acquiring the full shareholding of IIBX, the Clearing Corporation and the Depository. The IIBHL was issued a Certificate of Registration for carrying out ‘specialised activity’, under the extant Finance Company Regulations.</p> <p>The amendment regulations result in dropping of the category of ‘specialised activity’ but cover such an activity under the category of non-core activities (without customer interface). Going beyond with grandfathering IIBHL, the division intends to</p>

				issue a separate framework for holding companies in due course for providing further clarity about the governance and other aspects and also the non-applicability of exposure norms etc. IIBHL has been informally informed about it and the issue may be treated as resolved for the purpose of issuing the Finance Company amendment notification.
3	Regulation 3 sub-regulation (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	<ul style="list-style-type: none"> • Relaxation of Overseas Direct Investments (ODI) conditions for parent un-regulated entity to set-up a finance company in IFSC • It is hereby recommended that the said conditions should be relaxed to promote setting-up of the Finance company in the IFSC. • A specific exemption should be provided to the participants making investments in the IFSC. 	<p>The current ODI regulations provide for an approval under Automatic route for various situations one of them being Investments (or financial commitment) in the Financial Services Sector (Para B.6 of the ODI regulations). The conditions being as under:</p> <ul style="list-style-type: none"> • The investing entity is required to be registered with the regulatory authority in India for conducting the financial services sector activities; • It has earned net profit during the preceding three financial years from the financial services activities; • has obtained approval from the regulatory authorities concerned both in India and abroad for venturing into such financial sector activity; • has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority 	This is beyond the purview of the IFSCA Finance Company Regulations. Incidentally, the proposed revised draft ODI Rules and Regulations are expected to address this issue.

			<p>in India The above conditions act as a deterrent for entities which are engaged in non-financial services sector and wanting to make an investment in the financial services sector.</p> <p>Further, the regulated entities also would have a difficulty in obtaining an approval/ No objection certificate from their regulators. Owing to the above, the participants are discouraged to set-up the Finance Company in the IFSC.</p> <p>In addition to the above, the preference of the stakeholders would be to set-up a Finance Company rather than a finance Unit given there would be appropriate ring-fencing of activities, business segments and compliances.</p>	
4	<p>Regulation 3 sub-regulation (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</p>	<p>The Schedule to the Finance Company regulations provides for the capital requirements applicable with respect to the type of activity proposed to be undertaken (please refer Appendix 1 for the details).</p> <ul style="list-style-type: none"> • The capital requirements should be reduced to create level playing field with the domestic NBFCs. • Alternatively, where the same is not possible, IFSCA could consider implementing the capital requirements in a 	<ul style="list-style-type: none"> • The capital requirement mandated for undertaking core activities is too high as compared to the NBFCs in the domestic market. Therefore, it would be difficult to raise capital in the very first year as it would also take some time to build investor confidence for the IFSC platform. • While it is understood that the scope of activities that is made available to a NBFC vis-à-vis to a Finance Company is very different, it is recommended 	<p>The core activities of a finance company allow it to undertake all bank-like activities, except deposit-taking. Still, with a view to encouraging newer entities, the minimum initial base capital of USD 3 mn has been kept at much lower than that applicable for IBUs (USD 20 mn). The FCs/ FUs undertaking core activities are subject to (similar but slightly different from those applicable to IBUs) prudential guidelines including minimum regulatory capital and liquidity norms. Going ahead, it is envisaged that similar activity shall be subject to same regulatory guidelines.</p>

	<p>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</p>	<p>staggered or a phased manner giving time of 3 to 5 years to scale up the capital.</p>	<p>that the capital requirements may be met in a staggered manner or a phased manner.</p> <ul style="list-style-type: none"> • IFSCA could consider issuing conditional registration (by providing the satisfaction of capitalization norms in a phased manner). 	
<p>5</p>	<p>3.(In Proposed Amendments section published on June 3, 2022)</p>	<p>IFSCA should consider adding “Export Eligibility” finance within the “Permitted Core Activities” purview of proposed FC/FU regulations</p> <ul style="list-style-type: none"> • Unlike other export-oriented credit products, this credit facility should be given to Indian domestic MSMEs <u>without</u> any prior customer order/LC in-hand • FC/FU should have an option to give this credit product in <u>INR</u> and not in USD/Foreign Currency • Export Eligibility finance can be given by FC/FU to domestic 	<ul style="list-style-type: none"> • Substantial credit support is required to help domestic micro or small entities <u>to become eligible</u> to export in global markets. • Most EXIM credit products are useful once the customer order is received. There are hardly any credit products that provide specific credit support to help MSMEs become eligible for export. • Even before the first order is received from foreign customer, respectable capital needs to be invested by a MSME to build its own digital presence, buy 	<p>The concept of export eligibility finance needs to be explored and discussed as a potential permissible financial services (lending) activity, not only for FCs/FUs but also for IBUs. The suggestion regarding such export eligibility finance for domestic MSMEs shall be subject to the external commercial borrowings regulations under the FEMA.</p>

		<p>MSMEs to help them become eligible for export for the first time.</p> <ul style="list-style-type: none"> This finance should be given to help domestic MSMEs/entities procure: <ul style="list-style-type: none"> Export Eligibility Documents Documents required to comply with importing country's regulations/ non-tariff measures. ESG-related certifications Digital tools, technologies, and software (including websites) that help them move their goods to port, take customer orders, market/sell their goods in global markets. 	<p>digital tools, and get this own papers/ internal compliance in order.</p> <ul style="list-style-type: none"> This product can be used as an <u>embedded finance offering</u> by EXIM/ Cross Border Fintech Start-ups who aim to become FC/FU in the long run. In the absence of this regulation, FC/FU registered with IFSCA will have to tie up with Banks/NBFCs in the domestic market to offer such products as micro-personal loans. Alternatively, they may have to consider getting a separate NBFC license (from RBI) just to offer such a product to domestic MSMEs. 	
6	7	<p>In line with the other Regulations issued by the International Financial Services Centres Authority ('IFSCA'), the IFSCA should specify time limit for processing the application seeking clarification/ relaxation</p> <p>B. In line with the IFSCA (Fund Management) Regulations, 2022 ('Fund Management Regulations') the IFSCA should relax applicability of IFSCA (Finance Company) Regulations, 2022</p>	<p>A. Timelines for processing the application seeking clarification/ relaxation Newly proposed Regulation 10A empowers the IFSCA to relax the strict enforcement of any requirement of the regulations, upon payment of fee (if any). Regulation 144 of Fund Management Regulations and Regulation 71 of the IFSCA (Capital markets intermediaries) Regulations 2021 prescribes timeline of 60 and 30 days</p>	<p>A. The FC Regulations are closer in nature to and modelled on IFSCA Banking Regulations. The suggestion for specifying timelines for processing the applications may need to be examined by Legal Department for aligning with other IFSCA Regulations.</p> <p>B. The relaxations from applicability of IFSCA (Finance Company) Regulations, 2022 in case of applicants under Regulatory or Innovation Sandbox shall need to be</p>

		<p>(‘Finance Company Regulations’) in case of applicants under Regulatory or Innovation Sandbox.</p>	<p>respectively, in the Regulations for processing application seeking clarification/ relaxation. IFSCA may follow similar approach of prescribing timelines in the Finance Company Regulations for processing the application seeking clarification/ relaxation. B. Application under Regulatory/ Innovation sandbox Regulation 145 of the Fund Management Regulations carves exemption from the requirements of Fund Management Regulations to persons operating under Regulatory/ Innovation sandbox for a specified period. The IFSCA may consider extending the same exemption under the Finance Company Regulations.</p>	<p>examined under a uniform comprehensive approach.</p>
7	Other suggestions	<ul style="list-style-type: none"> IFSCA should consider putting out a detailed note distinguishing between FinTech Entity framework and Finance Company/Finance Unit regulations. Thirdly, IFSCA should consider putting out a detailed note/guidance on how cross-border trade start-ups can initially register themselves as FinTechs under Regulatory Sandbox or Innovation Sandbox route. Later on, after meeting time, capital and other 	<ul style="list-style-type: none"> From a banking perspective, there are similar looking/sounding terms and definitions which have been used in both drafts which can be confusing. Secondly all these lending products have same end goal of lending for cross-border/sustainable trade using digital as a medium. For e.g. <ul style="list-style-type: none"> i) <u>FinTech Entity Framework</u> – Digital Lending, Digital Banking (Neo Bank/Challenger 	<p>We may need to examine the interaction between the FinTech Entity framework and Finance Company/Finance Unit regulations and if found necessary clarity may be provided through guidance notes, FAQs etc.</p>

		<p>eligibility-related requirements, how they can convert themselves into Finance Company/Finance Unit.</p>	<p>Bank), Open Banking, BNPL, Sustainable Finance Products</p> <p>ii) <u>FC/FU Regulations</u> - Finance Company, Finance Unit</p> <ul style="list-style-type: none"> • EXIM Intelligence startups like us are aiming to offer cross border lending products to domestic MSMEs. • Such guidance/FAQs/notes, will go a long way for startups like us to exactly understand what steps one needs to take immediately to be registered as FinTech and how in what manner we can convert ourselves from a Fintech to a Finance Company/Finance Unit in the long run. 	
8	<p>Other recommendations/ suggestions on the FC Regulations.</p>	<p>Relaxation of 'Exposure Ceiling' for Group Holding Companies' set-up in the IFSC.</p>	<p>Under the Finance Company Regulations, 'Investment' is considered as 'Core activity'. Resultantly, Regulation 4(4) of the Finance Company Regulations dealing with Exposure limits apply.</p> <p>- As per Regulation 4(4) of the Finance Company Regulations – Exposure Ceiling - the sum of all the exposures of a Finance Company/ Unit, to a single counterparty or group of connected counterparties shall not exceed 25% of its available eligible capital base without the approval of the</p>	<p>IFSCA is in the process of issuing a framework on holding companies. Due consideration shall be given to the comment/ suggestion while drafting the same.</p>

			<p>IFSCA. - In case of the Finance Company set-up as a 'Group Holding Company' for investments globally/ India, this condition is likely to create hindrances and shall make it very challenging to set-up a Group Holding Company in compliance with the current regulations. Applicants may need to come to IFSCA for seeking relaxation under Regulation 10A of the Finance Company Regulations.</p> <p>- It is therefore, suggested that the 'Exposure Ceiling' under Regulation 4(4) should be relaxed in case of Finance Company set-up as a Group Holding Company. - Also, the term 'Group Holding Company' should be defined under the Finance Company Regulations. Reference may be drawn on RBI Regulations for 'Core Investment Companies', however, with an objective of developing an ecosystem for Group Holding Company in the IFSC, it is suggested to keep the regime liberal.</p>	
9	Other recommendations / suggestions	Relaxation of RBI conditions/ Downstream investment requirement for Finance companies in the IFSC.	RBI regulations on Overseas Investments ² requires Indian party engaged in financial services activities making investment/ Financial commitment to Joint venture ('JV')/ Wholly owned	This pertains to ODI Rules and Regulations under the FEMA to be issued by the GoI and the RBI and is beyond the scope of the IFSCA Finance Company Regulations.

² Regulation 7 of FEM (Transfer or Issue of any foreign security) Regulations, 2004 read with Master Directions – Direct investment by Residents in JV/ WOS abroad

			<p>subsidiary ('WOS') to fulfil certain conditions³. These conditions are also required to be adhered to by the JV/ WOS set-up abroad, for investments in the step-down subsidiaries outside India.</p> <p>One of the conditions is requirement of 'approval of the concerned regulatory authority' for venturing in the financial sector activity abroad and any further downstream investments made by such company - The requirement of multiple approvals for every downstream investments is a time consuming affair and slows down the 'Go Global' agenda of the Indian companies. - Considering supervision and control of the Finance Company by the IFSCA [being a regulatory body set-up in India and under the jurisdiction of Ministry of Finance, Government of India], it is recommended that the aforesaid conditions (including multiple approval requirement) should be relaxed with a one-time approval requirement of the financial services sectoral regulator at the time of set-up of the Finance Company / Unit at the IFSC by an Indian entity. Any further downstream investments in JV/</p>	
--	--	--	--	--

³ Conditions to be satisfied includes a) earning net profit during the preceding 3 financial years from the financial services activities; b) registration with regulatory authority in India for conducting the financial services activities; c) obtaining approval from regulatory authorities in India and abroad; d) fulfilling prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

			WOS should be subject to supervision/ approval (if any) of the IFSCA only. - The proposed change, amongst other things, can make IFSCs in India – a preferred location/ hub for overseas investments	
10	Other recommendations/ suggestions	Relaxation of 'Deemed dividend' provisions of the Income-tax Act, 1961 (Act) in case of loans/ advances given by/ to the Global/ Regional Corporate Treasury Centre in the IFSC.	As per Section 2(22)(e) of the Act, the term 'dividend' includes any payment by a company (not being a company in which the public are substantially interested), by way of advance or loan to a shareholder, being: (i) A person who is the beneficial owner of shares holding 10% or more of the voting power (ii) Concern in which such shareholder is a member/ partner (iii) Concern in which he has a substantial interest ⁴ to the extent to which the company possesses accumulated profits. - Accordingly, a deeming provision is created to tax loans/ advances given by private/ unlisted companies [companies in which Public are not substantially interested] of the same group as 'dividend'. In absence of any relaxation, the provisions also apply to entities in the IFSC in India - A Global/ Regional Corporate Treasury Centre set-up in the IFSC would	This pertains to Department of Revenue, MoF, Gol. We may note this in respect of GRCTC framework.

⁴ As per the Act, a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than 20% of the income of such concern. Also, "person who has a substantial interest in the company", means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than 20% of the voting power

			<p>primarily borrow and/ or lend to Group entities as a part of managing treasury operations of the Group entities. The aforesaid provision may create hindrances for Global/ Regional Corporate Treasury Centre set-up in the IFSC</p> <p>–</p> <p>It is suggested that an amendment is made in the Act to relax applicability of section 2(22)(e) of the Act in case of loans/ advances given to/ by the Global/ Regional Corporate Treasury Centre set-up in the IFSC.</p>	
11	Other recommendations/ Suggestions.	E-KYC regulations: Digitalization of KYC documents without the requirement to maintain physical copies of the same.	<p>Due to the applicability of PMLA 2002 the apostille and notary requirements of the physical KYC, transit and storage remains as a challenge. Additionally, Digital KYC process under the PMLA rules requires that the client, for the purpose of KYC shall visit the location (customer touch points) of the authorized official of the Reporting Entity or vice-versa and Reporting Entity must ensure that the Live photograph of the client is taken by the authorized officer.</p> <ul style="list-style-type: none"> • Ultimately these clauses mandate physical presence of at least one authorized officer and/or Office of the Reporting entity for carrying out the Client KYC. 	This pertains to the proposed IFSCA integrated KYC/AML guidelines being coordinated by the Legal Department. We may forward the comment for consideration of Legal Department.

			<ul style="list-style-type: none"> • Accordingly, detailed guidelines from the regulator are required for IFSC to have seamless Digital KYC compliance regulations at GIFT City level to reduce the difficulties of presence of office and documentation. • V-CIP (video customer identification process) as provided by RBI for Clients may be integrated with the Digital KYC Process under PMLA Rules to make the Digital KYC Process comprehensive. 	
13	Other recommendations / suggestions	<p>Co-lending with the IFSC Banking Units (IBUs)</p> <p>Currently, there is no clarity on the co-lending model by an IBU and a Finance company. Thus, a clarification should be provided on the same.</p>	Co-lending would result in combining of synergies of the bank and the Finance company thereby limiting the risk appetites of the respective entities.	There is no restriction imposed for such activity under the present regulations. However, the concept of co-lending needs to be further explored and discussed for modalities under the permissible financial services (lending) activity, not only for FCs/FUs but also from the perspective of IBUs.
14	Other recommendations / suggestions	Borrowings from banks and on-lending for capital markets activities Clarification is required as to whether Finance companies can borrow funds from IBUs for the purpose of on-lending for capital markets activity.	Circular No F.No.110/IFSCA/Banking Regulation/2020-21/1 dated 4 December 2020 provides that Banking Units (BU) in the IFSC can borrow funds from its parent, domestic branches of Indian banks, overseas branches of Indian banks and a person resident outside India (including other BUs). Further, vide Circular F. No 172/ IFSCA/Finance Company/Unit Regulations/2021-	There is no restriction imposed for such activity under the present regulations.

			<p>22/3 dated 3 May 2021, it was provided that the contents of the circular dated 4 December 2020 would apply to Finance Companies and Finance Units in the IFSC.</p> <ul style="list-style-type: none">• Thus, we understand that the intent of the IFSCA is clear to permit the Finance companies to undertake borrowings from other banks and IBUs as well. We understand that in the absence of any restrictions on the end-use of the funds, the funds can be used for on-lending in the capital markets.• The same is concluded on the rationale that the intent of the Finance Company regulations provide a broad scope of activities and permitting the use of borrowed funds for further applying in business should be doable by the Finance companies.• In addition to the above, we understand that the Circular dated 4 December 2020 also provides that BUs can act as lenders and deploy funds with persons resident in India and persons resident outside India (which further supports the intent of the law to permit any end use).	
--	--	--	--	--