



**Report of the Committee on  
“Ease of doing business for  
Reinsurers, FRBs and Lloyd’s India”**

**12<sup>th</sup> Mar, 2020.**

## **Letter of Transmittal**

12<sup>th</sup> March 2020

**Dr. Subhash C Khuntia**

Chairman

Insurance Regulatory and Development Authority of India

Hyderabad

**Sub: Report of the Committee on “Ease of doing business for reinsurers, FRBs and Lloyd’s India”**

Dear Sir,

The Chairman, vide IRDAI Order Ref: IRDA/RI/ORD/MISC/187/10/2019 Dt. 11th Oct, 2019 constituted a committee on “Ease of doing business for Reinsurers, FRBs and Lloyd’s India”.

The Committee within the terms of reference deliberated various aspects on ease of doing business for Reinsurers, FRBs and Lloyd’s India. All issues from the angle of insurance and re-insurance domain including legal and regulatory requirements and its implementation were discussed in making the recommendations. The Committee felt the recommendations will provide a focused regulatory oversight in providing control over the re-insurance industry in India and at the same time will enable the re-insurance industry to move in the right direction in doing its business.

I thank the members of the Committee for their active participation and valuable contribution in making this report. In addition, I thank you in permitting me to head the committee in completing the task. The final report, will serve us in re-drafting the Regulations applicable to Foreign Re-insurance Branches in India.

With Regards,

Yours faithfully

**Mrs. T.L. Alamelu**

**Chairperson of the Committee**

## **TABLE OF CONTENTS**

<b>No.</b>	<b>Chapter No.</b>	<b>DESCRIPTION</b>	<b>Page Number</b>
1		IRDAI Order Constituting the Committee	<b>4 - 5</b>
2	I	Introduction and Methodology	<b>6 - 8</b>
3	II	Capital and Solvency	<b>9 - 10</b>
4	III	Underwriting, Product and Claims	<b>11 - 13</b>
5	IV	Investments	<b>14 - 15</b>
6	V	Operations	<b>16 - 20</b>
7	VI	Corporate Governance	<b>21 - 23</b>
8	VII	Others	<b>24 - 30</b>



ORDER

Ref: No. IRDA/RI/ORD/MISC/187/10/2019

11<sup>th</sup> October, 2019

**COMMITTEE TO RECOMMEND AMENDMENTS TO  
RE-INSURANCE, INVESTMENT, FRBs AND LLOYD'S INDIA REGULATIONS**

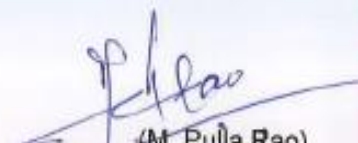
1. The Authority had issued Regulations on Re-insurance, Foreign Re-insurance Branches (FRBs) and Lloyd' India. Subsequent to the issue of these regulations, the Insurers have made representations through the General Insurance Council for clarifications, applicability of certain provisions of the Regulations / Guidelines / Circulars as would be applicable to Indian Re-insurers, FRBs and Lloyd's India.
2. The Authority, to have a re-look into the Regulations, Circulars and Guidelines issued earlier, is constituting a Committee, to be chaired by Mrs T.L. Alamelu, Member (Non-Life) with the following Members:

Sl. No	Name	Designation	Organisation	Chairman / Member
1	Mrs. T.L. Alamelu	Member (NL)	IRDAI	Chairperson
2	Mr. Suresh Mathur	ED (Re-ins. Dept.)	IRDAI	Member
3	Mr. S.N. Jayasimhan	GM (Inv. Dept.)	IRDAI	Member
4	Mr. Mahalingam Santhana Gopalan	CEO (Retd.)	SCOR SE, India Br	Member
5	Mr. Sanjib Chaudhuri	Ex-Head	Munich Re, Liaison Office India	Member
6	Mr. R. Chandrasekaran	Head, Re-Ins. (Retd.)	Cholamandalam GICL	Member
7	Mr. Satish Raju	CEO	Swiss Re, India Br.	Member
8	Mr. Naga Gowri Shankar Ganigiparthi	CEO	Lloyd's India	Member
9	Ms. C. Latha	DGM, Re-Ins.	IRDAI	Member Convener

3. The above Committee may also include Special Invitees, as permitted by the Chairperson to review the applicability of earlier issued Regulations / Circulars / Guidelines relating to

Indian Re-insurers, FRBs, Lloyd's India, Service Cos. of Lloyd's India and IFSC Insurance Offices. The review shall cover the following aspects:

- a) Applicability of certain provisions of the Insurance Act, 1938 on Investments, IRDAI (Investment) Regulations, 2016 read along with Master Circular – Investments, 2017 and electronic submission of periodical returns.
  - b) Calculation of Economic Capital and related disclosures
  - c) Applicability of Corporate Governance Guidelines
  - d) Appointment of Key Management Persons (KMP)
  - e) Operational constraints submitted by Indian Re-insurers, FRBs and Lloyd's India, through GI Council
  - f) Any other aspect as may be permitted by the Chairperson
4. The Committee shall meet as often as required and submit its recommendations within two months of issue of this order.



(M. Pulla Rao)  
Executive Director (Gen)

## CHAPTER - I

### INTRODUCTION AND METHODOLOGY

1. The Insurance Laws (Amendment) Act, 2015 permits foreign insurers to establishment of branch office in India doing reinsurance business (Foreign Reinsurer Branches - FRB). In this connection, Section 2 (9) (d) of the Insurance Act, 1938 defines an 'insurer' as under:

*"A foreign company engaged in re-insurance business through a branch established in India.*

**Explanation** — *For the purposes of this sub-clause, the expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom) or any of its Members"*

2. Pursuant to the Amendment in the Act, IRDAI has permitted FRBs and Lloyd's to set up branches in India and as on date IRDAI has granted registration for eleven (11) entities consisting of nine (9) FRBs, Lloyd's India and one of its service Company, to transact re-insurance business in India.
3. As the Insurance Act, 1938 defines FRBs as an 'insurer' all provisions applicable to 'insurers' which cover Life, Non-Life, Health and Re-insurer will also be applicable to FRBs. The Act and Regulatory provisions which are applicable to all the 'insurer' do now sync with the operations of FRBs. Owing to this FRBs through GI Council had submitted a note titled "ease of doing business" requesting IRDAI to relook into the provisions made applicable to FRBs and provide necessary clarifications by amending the Regulations and by issue of Circulars and Guidelines,
4. IRDAI Vide circular dated 07<sup>th</sup> January, 2019 issued clarification on applicability of certain Regulations / Guidelines / Circulars to Indian Re-insurers, Branches of Foreign Re-insurers, Lloyd's India, Service Cos. of Lloyd's India and IFSC Insurance Offices registered for carrying on reinsurance business. As the report that was filed with IRDAI through GI Council include further more issue, the Committee on 8<sup>th</sup> and 9<sup>th</sup> Nov, 2019 re-visited the earlier issued Guidelines and took into consideration the submissions made by FRBs subsequently.
5. The committee examined the applicable regulatory provisions as made applicable to FRBs under;

- a. Capital and Solvency
- b. Underwriting, Product and Claims
- c. Investments
- d. Operations
- e. Corporate Governance
- f. Others

6. The recommendations against each of the above head is discussed in the report.

7. The list of regulations, circulars, guidelines with specific applicability for Re-insurers, FRBs, Lloyd's India is at Annexure – 1 to this report.

**Annexure – 1****Applicability of Regulations, Circulars, and Guidelines for Re-insurers, FRBs, and Lloyd's India**

<b>No</b>	<b>Circular, Guideline Ref. No.</b>	<b>Date of issue</b>	<b>Regulation, Circular, Guideline</b>	<b>Nodal Dept. at IRDAI</b>
1	IRDAI/Reg/17/107/2015	19-10-2015	The IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015	Re-insurance
2	IRDAI/Reg/1/113/2016	28-01-2016	The IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) (First Amendment) Regulations, 2016	Re-insurance
3	IRDA/NL/CIR/RIN/036/02/2016	29-02-2016	Date of enforcement of Reg 28(9) of IRDAI (Registration and Operations of Branch offices of Foreign Reinsurers other than Lloyds) Regulations, 2015	Re-insurance
4	IRDAI/Reg/4/116/2016	09-03-2016	IRDAI (Lloyd's India) Regulations, 2016	Re-insurance
5	IRDAI/NL/GDL/RIN/231/11/2016	23-11-2016	Operational Guidelines for FRBs	Re-insurance
6	IRDA/Reg./24/136/2016	02-12-2016	IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) (Second Amendment) Regulations, 2016	Re-insurance
7	IRDAI/NL/CIR/RIN/021/01/2017	16-01-2017	Date of enforcement of Reg 28(9) of IRDAI (Registration and Operations of Branch offices of Foreign Reinsurers other than Lloyds) Regulations, 2015	Re-insurance
8	IRDAI/ACT/CIR/MISC/147/06/2017	21-06-2017	Submission of Actuarial Reports by FRBs for FY 2016-17	Actuarial
9	IRDAI/Reg/4/151/2018	05-12-2018	IRDAI (Re-insurance) Regulations, 2018	Re-insurance
10	IRDA/RI/CIR/MISC/004/01/2019	07-01-2019	Applicability of Regulations/Guidelines/Circulars to registered reinsurance entities	Re-insurance



## CHAPTER - II

### CAPITAL AND SOLVENCY

#### 1. Applicability of provisions on computation of Solvency Margin for FRBs / Lloyd's India:

Solvency of FRBs is currently computed as per factor based calculation. It was pointed out that in many jurisdictions Solvency is calculated as a percentage of premium

##### Recommendations:

- a. As the Indian Insurance industry is yet to prepare for Risk-Based Capital (RBC) calculation, the FRBs should continue to calculate solvency margin as required under IRDAI regulations.
- b. The Solvency calculation for Life re-insurance business should be amended as per miscellaneous line of business of Non-Life business and should be a factor-based calculation.
- c. The granularity of data mandated under IRDAI (Actuarial Report and Abstract) Regulations, 2016 are not practically possible for FRBs. IRDAI should not mandate granular data from FRBs, as applicable to other Insurers.
- d. Calculation of Mathematical Reserve at Policy/Contract level needs clarity, as Gross Premium Valuation (GPV) method provides negative result, requiring UPR to be maintained as a matter of prudence. However, Regulations are silent on this issue. In addition, many clauses or parameters, like lapse assumption, specified therein are not applicable to FRBs.
- e. IRDAI needs to revisit the regulatory provisions made applicable to FRBs under Financial reporting, Investment regulations and Re-insurance, except valuation of returns in the case of Life re-insurance business, as FRBs should not be looked like General Insurers.

#### 2. Non-applicability of Appointed Actuary Certification on excess fund over solvency requirement

Currently FRBs and Lloyds India are waived from providing Appointed Actuary Certification on excess fund over solvency requirement.

**Recommendations:**

IRDAI may continue with such waiver; But it is necessary that a Certification from an Actuary, who need not necessarily be an Appointed Actuary, but who holds Certificate of Practice issued by Indian Actuarial Institute as per the Actuaries Act, 2006, shall be obtained.

## CHAPTER - III

### UNDERWRITING, PRODUCT AND CLAIMS

#### 1. Definition of Re-insurer, Branch office of the Foreign Re-insurer, Lloyd's

Sec. 2 (9) of the Insurance Act 1938 defines 'insurer' as under:

*"Insurer" means-*

- a. An Indian Insurance Company, or
- b. A statutory body established by an Act of Parliament to carry on insurance business, or
- c. An insurance co-operative society, or
- d. A foreign company engaged in re-insurance business through a branch established in India.

**Explanation.**—For the purposes of this sub-clause, the expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom) or any of its Members

The operations of a direct insurer and re-insurer and a FRB are not the same. Thus, FRBs may not be in a position to comply with many provisions applicable to insurers.

#### **Recommendations:**

- a. IRDAI may consider amending the Act by defining direct insurer, re-insurer, FRB, and Lloyd's India.
- b. IRDAI has permitted FRBs / Lloyd's India to operate through a Branch. Thus, all regulatory requirements of solvency, controls and reporting needs regulatory alignment to fit in the operations of FRB and Lloyd's India. Till such time the Insurance Act is amended, IRDAI may issue the regulations, circulars, guidelines which shall be complied separately by direct insurers, re-insurers, FRBs, Lloyd's India, Exempted Insurers and IIOs. Also, for consistent treatment of FRBs by all Departments at IRDAI, the final compliance requirement may be communicated internally in respect of:
  1. Direct insurers transacting Non-Life Insurance Business;
  2. Direct insurers carrying out Life Insurance Business;
  3. Direct insurers carrying out Health Insurance Business;
  4. Indian Re-insurers;

5. FRBs, Lloyd's India,
6. Exempted Insurers,
7. IIOs;

## **2. Applicability of guidelines on Product filing for General, Life, Health Insurance Products:**

IRDAI had notified product-filing guidelines for General Insurance Products (Dt 18-02-2016), Life Insurance Products (Dt. 12-12-2001) and Health Insurance products (Dt. 29-07-2016). As the FRBs are registered as reinsurers, IRDAI vide Circular No. IRDA/RI/CIR/MISC/004/01/2019 Dt 7<sup>th</sup> Jan, 2019 exempted FRBs and Lloyds India from the applicability of the above Guidelines on product filing

### **Recommendations:**

The exemption on product filing guidelines for Indian Re-insurer, FRBs and Lloyd's India needs to continue.

## **3. Applicability of IRDAI (Protection of Policyholders' Interests) Regulations, 2017:**

The Regulation applies to Direct Insurers in respect of Policyholder protection. IRDAI vide Circular No. IRDA/RI/CIR/MISC/004/01/2019 Dt. 7<sup>th</sup> Jan, 2019 has exempted applicability of said regulations for Indian Re-insurers, FRBs.

### **Recommendations:**

The exemption permitted needs to continue.

## **4. Applicability of Guidelines on Information and Cyber Security for Insurers:**

IRDAI had issued Guidelines Ref. No. IRDA/IT/GDL/MISC/082/04/2017 Dt. 07-04-2017 on Cyber Security.

### **Recommendations:**

The applicability of these guidelines to Indian Re-insurer, FRBs should continue. In respect of certification by CISO, the CISO appointed by parent company / Regional Office of the FRB / Lloyd's India, may issue certificate(s) as per standards laid by IRDAI Guidelines. This may be in addition to the once in 3-year's certification mandated under Guidelines Ref. No. IRDA/IT/GDL/MISC/082/04/2017 Dt. 07-04-2017 on Cyber Security.

## **5. Applicability of Guidelines on Trade Credit Insurance:**

IRDAI has exempted Indian Re-Insurers, FRBs and Lloyd's India vide circular IRDAI Circular No. IRDA/RI/CIR/MISC /004/01/2019 dated 7<sup>th</sup> Jan, 2019 compliance to guidelines on trade credit insurance.

### **Recommendations:**

The exemption shall be continue.

## **6. Applicability of Fraud Monitoring Framework:**

### **Recommendations:**

All Indian Re-insurers, FRBs needs to have a fraud monitoring framework/policy in place complying with IRDAI requirements and report in the specified format by 30<sup>th</sup> June every year for the period as required under the extant Circular on Fraud Monitoring Framework.

## **7. Applicability of Large Risk under 'File and Use' Guidelines**

IRDAI vide Circular No. IRDA/RI/CIR/MISC /004/01/2019 dated 7<sup>th</sup> Jan, 2019 exempted Indian Re-insurers, FRBs and Lloyd's India from the applicability of 'Large Risk under 'File and Use' Guidelines'.

### **Recommendations:**

The exemption permitted needs to continue.

## **8. Applicability of IRDAI (Obligations of Insurer to Rural and Social Sector) Regulations, 2015:**

The regulations aims at Insurance penetration in rural areas for economically weaker sections which IRDAI has made applicable to direct insurers. IRDAI vide Circular No. IRDA/RI/CIR/MISC/004/01/2019 dated 7<sup>th</sup> January, 2019 exempted Indian Re-insurer, FRBs from its applicability.

### **Recommendations:**

The exemption permitted needs to continue.

## CHAPTER IV

### INVESTMENTS

#### **1. Applicability of Section 27(7) of Insurance Act, 1938 to FRBs / Lloyd's India:**

The FRBs being a branch office of the foreign re-insurers are facing certain difficulties in complying with certain provisions of Investment Regulations.

##### **Recommendations:**

Section 27(7) of the Act refers only to Sec 27(1) of the Insurance Act, 1938 (which refers only to the savings premium of the policy referred therein) and as such does not apply to re-insurance business. Further, it was suggested that Section 27E of the Act should not be made applicable to re-insurers and FRBs as Insurers and re-insurers investments are to be in different market to avoid credit and currency risk.

#### **2. Provisions applicable for Investment Operations**

FRBs / Lloyd's India proposed for dispensation of the mandatory requirement of Chief Investment Officer (CIO) as the current level of Gross Premium does not justify appointment of a separate CIO. Instead it was suggested the CIO function may be looked after by any other designated officer.

##### **Recommendations:**

- a. the Investment Systems and Process of Front, Mid and Back Office, Custodian Control and other operational requirements under IRDAI (Investment) Regulations, are independent of CIO and are to be in place from the date of starting the operations;
- b. However the requirement for CIO shall become mandatory, as required under IRDAI (Investment) Regulations, once the Gross Premium reaches Rs. 5000 Crores for the first time for the FRB / Lloyd's India. Till such time, the CFO of the FRB / Lloyds India may be permitted to discharge the functions of CIO and the CEO shall be responsible for acts of the CIO. IRDAI needs to issue a Circular superseding the earlier dispensation in this regard.

### **3. Audit of Investments**

FRBs / Lloyd's India submitted that unlike direct insurers and Indian Reinsurers, they do not make large volume of investments on a day-to-day basis. Currently FRB make around 10 transactions per quarter.

#### **Recommendations:**

- a. Owing to fewer investment transaction, IRDAI may consider permitting an Internal Auditor (an Indian Chartered Accountant firm) on an Annual Basis to confirm compliance as required under IRDAI (Investment) Regulations the Investments made by Reinsurers, FRBs and Lloyd's India. This leniency shall continue till the Gross premium of the FRB /Lloyd's India reach Rs. 5000 Crores, for the first time and file the returns with IRDAI along with the subsequent 1<sup>st</sup> Quarter Returns;
- b. Till such time the Quarterly Investment returns (including BAP Returns) shall be certified by the CEO of the FRB / Lloyd's India while submitting to IRDAI.

## CHAPTER - V

### OPERATIONS

#### **1. Provisions of Insurance Act relating to Lloyds, appointment of Lloyd's Syndicate and Regulating Lloyd's**

The structure of Lloyd's in UK and in India are quite different and unique to Lloyds India in registering a Syndicate, Service Company, appointment of Key Management Personnel (KMPs) Capital requirement, Solvency, Compliance with Investment regulations. The committee put forth its recommendation on the following after discussion:

##### **a. Maintenance of 'Assigned capital' by the Service Company of Lloyd's India:**

Current Regulations requires, every Syndicate, through the Service Company to maintain an Assigned Capital of Rs. 5 Crores. However, Service Companies face difficulties in maintaining the Capital in their bank account in India owing to operational issues of extant FEMA Guidelines.

##### **Recommendations:**

1. IRDAI may dispense with the Syndicate's requirement to maintain an Assigned Capital of Rs. 5 Crores and may mandate Lloyd's India to have a higher Assigned Capital
2. The Assigned Capital needs to be mandated at Lloyd's India level, which should be minimum Assigned Capital for Lloyd's India and additionally for each Syndicate, registered under Lloyd's India;
3. IRDAI shall mandate the method of maintaining the Assigned Capital. The "Letter of Comfort" provided by Lloyd's while processing its registration in India, needs to be revisited after IRDAI takes the necessary legal clearance.

##### **b. Solvency should be looked at the Lloyd's India level:**

As per Lloyd's structure, Lloyds is a (re)insurance market and its Members of Syndicate are risk bearers, who write (re)insurance business through its Service Companies. Thus, the extant Regulations do not provide how Solvency needs to be calculated at Syndicate level. This needs to be revisited as re-insurance business is written at Syndicate level and not at Lloyd's India level.



The extant Regulations require a minimum Assigned Capital of Rs. 100 Crore for Lloyd's India which does not write any (re)insurance business. On the other hand, the Syndicate / Service Company, which writes the Risk are prescribed to have an assigned capital of Rs.5 Crores. Thus, the Assigned Capital between Lloyd's India and Syndicates needs to be re-fixed from Solvency angle.

**Recommendations:**

1. Solvency of Lloyd's India needs to be computed at an overall Lloyd's India level, which needs to be aligned to the business booked by its Syndicates / Service Companies under Lloyd's India;
2. The "Letter of Comfort" of Lloyd's to process its registration in India, needs to be revisited after necessary legal clearance, on Lloyds maintaining Solvency Margin on behalf of Syndicates / Service companies as syndicates are not legal entities;

**c. Compliance with Investment Regulations:**

As per extant regulatory provisions, Lloyd's India is responsible for effective supervision of its syndicates / service Companies. Though syndicates are risk carriers, complying with Investment Regulations at Syndicate level may not be feasible.

**Recommendations:**

Lloyd's India needs to responsible for compliance with the extant IRDAI (Investment) Regulations, for and on behalf of all its syndicates / Service Companies.

**d. Issuance of joint certificate of registration:**

As per extant regulatory provisions, IRDAI shall issue a joint certificate of registration to the Service Company of Lloyd's India and the Syndicate(s) it represents. However, as per Lloyd's structure, Syndicate is not a legal entity.

**Recommendations:**

1. IRDAI may review the regulations in light of the structure of Lloyd's;
2. the possibility of issuing of Certificate of Registration (CoR) to Service Company along with name of Syndicate on behalf of which such Service Company will be writing re-insurance business may be mentioned;

3. The Lloyd's India needs to provide details of member(s) supporting such Syndicates. Annually, such details of Members of Syndicate needs to be disclosed in IRDAI website;
4. Lloyds India shall be responsible for Syndicate's KYC;
5. As Service Companies are registered under Lloyd's, Lloyds shall prescribe the minimum standards which shall be made available to IRDAI, that would apply to such Managing Agent and Syndicate to operate under Lloyds;
6. IRDAI shall enforce compliance only through Lloyds for all Service Companies and Syndicates, who operate under Lloyd's India.

## **2. Applicability of Provisions of Regulations, guidelines on Insurance Advertisements:**

As solicitation and procurement of direct insurance business and re-insurance business are distinctly different, advertisements made by reinsurers should be made to direct insurers and should not target any individual policyholders.

### **Recommendations:**

- a. As re-insurance is a business written between a reinsurer and a direct insurer and as reinsurer does not sell any products directly to general public, the advertisement regulations that are applicable to direct insurer should not apply for Indian Re-insurers, FRBs / Lloyd's India;
- b. The provisions on Advertisement which are exempted vide Master Circular on Advertisement, 2019 dated 16-10-2019 and through Advertisement Regulations should continue for FRBs, Lloyd's India and re-insurers.

## **3. Applicability of Provisions on AML Guidelines:**

### **Recommendations:**

- a. These guidelines shall apply to Re-insurers, FRBs, Lloyd's India.
- b. IRDAI shall mandate the format in which FRBs / Lloyd's India are required to file the report.

- c. IRDAI shall clarify the periodicity and the nodal department to whom the reporting needs to be done.

#### **4. Applicability of IRDAI (Maintenance of Insurance Records) Regulations, 2015**

The exemption from IRDAI (Maintenance of Insurance Records) Regulations, 2015 which mainly applies to Direct Insurers, vide Circular No. IRDA/RI/CIR/MISC/004/01/2019 Dated 7<sup>th</sup> January, 2019 needs to continue for Indian Re-insurer, FRBs.

##### **Recommendations:**

- a. Regulation 3 (9) of IRDAI (Maintenance of Insurance Records) Regulations, 2015 requires “records including those held in electronic mode, pertaining to all the policies issued and all claims made in India shall be held in data centers located and maintained in India.”
- b. Regulations 3 (9) alone needs to be made applicable to for re-insurers, FRBs and Lloyd’s India, as specified at the time of processing R1.
- c. IRDAI may amend the following regulations by adding the above provision under the heading ‘Operational issues’;
  - 1. For FRBs under Regulation 28 of IRDAI (Registration and Operations of Branch Office of Foreign Reinsurers other than Lloyd’s) Regulations, 2015 and
  - 2. For Lloyd’s India under Regulation 50 of IRDAI (Lloyd’s India) Regulations, 2016.

#### **5. Applicability of IRDAI (Outsourcing Activities by Indian Insurers) Regulations, 2017**

The above regulations are exempted to the insurers who engaged in re-insurance business.

##### **Recommendations:**

However, FRBs and Lloyd’s India shall comply the following:

- a. Regulation 28 (5) of IRDAI (Registration and Operations of Branch Office of Foreign Reinsurers other than Lloyd’s) Regulations, 2015:

**Outsourcing:** The branch office of FRBs shall retain all process needed for Core Activities of Underwriting, Claims processing and Settlement and Regulatory compliances. Back office functions that may be outsourced shall be with the **prior approval** of the Authority.

- b. Regulation 50 (4) of IRDAI (Lloyd's India) Regulations, 2016:

**Outsourcing:** The service company of Lloyd's India shall retain all process needed for Core Activities of Underwriting, Claims processing and Settlement and Regulatory compliances. Back office functions that may be outsourced shall be with the **prior approval** of the Authority.

## CHAPTER - VI

### CORPORATE GOVERNANCE

#### 1. Applicability of Role of various Committees

IRDAI Corporate Governance Guidelines Ref. No. IRDA/F&A/GDL/CG/100/05/2016 dated 18-05-2016 mandates insurers to constitute various committees. However, as per said guidelines, such committees do not apply to FRBs and Lloyd's India.

##### **Recommendations:**

The exemption permitted needs to be continued.

#### 2. Compliance Officer for FRBs / Lloyd's India:

The nature of business and functions of FRB, demands Compliance Officer to report to a Regional Compliance Officer or to its Chief Compliance Officer at its Group level.

##### **Recommendation:**

It was recommended that the Compliance Officer need not be KMP within the meaning of IRDAI Corporate Governance Guidelines.

#### 3. Remuneration of CEO

Section 34A of Insurance Act, 1938 requires prior approval of the Authority, to appoint or change the CEO or his Remuneration. In this regard, the following suggestions was made:

As changes to remuneration of CEOs of FRBs and Lloyd's India, is done at the Head Office level, as part of the overall group and not at the branch level in India. Further, reinsurers don't have any policyholder funds. Thus, any revision to remuneration of CEOs done at Head Office / parent Company at the end of its financial year, should be taken as consistent with the requirement under Section 34A of Insurance Act, 1938

##### **Recommendations:**

1. The FRBs / Lloyd's India shall take prior approval of IRDAI on appointment and payment of remuneration of the CEO;

2. FRBs and Lloyd's India shall submit an application for change in terms of appointment and / or payment of Remuneration to the CEO, supported by the approval of the Board of the parent Company / Regional Office of the FRB and Lloyd's India;
3. IRDAI shall amend the process of approval of CEOs remuneration, which would be in sync with the practice of FRBs with their parent Company.

#### **4. Evaluation of Board & Independent Directors:**

IRDAI Guidelines for Corporate Governance for insurers in India Ref. No. IRDA/F&A/GDL/CG/100/05/2016 dated 18-05-2016, permits FRBs & Lloyd's India not to constitute as Board.

Further, IRDAI Circular No. IRDAI/NL/GDL/RIN/231/11/2016 dated 23-11-2016 mandates FRBs, Lloyd's India to constitution of Executive Committee (EC) equivalent to a Board of the Branch operating in India, with the delegated powers of the Board of the parent Company. The Guidelines makes it mandatory that the role and functions of Members of EC and any change thereof, which is not inconsistent with the Regulations, shall be intimated to IRDAI.

#### **Recommendations:**

The above provisions may continue.

#### **5. Whistle Blower Policy**

#### **Recommendations:**

The said guidelines may be made applicable to FRBs and Lloyd's India.

#### **6. Appointment of KMPs as per Corporate Governance Guidelines:**

#### **Recommendations:**

##### **a. Fit & Proper Criteria – KMPs**

FRBs, Lloyd's India shall appoint KMPs as per Corporate Governance Guidelines when the book gross premium reaches a level of Rs. 5000 Crores, for first time.

**b. KMPs Role & Conflict of Interest**

KMP Roles and Conflict of Interest may be properly addressed as per extant regulatory provisions once the FRB, Lloyd's India book gross premium of Rs. 5000 crores for first time.

## CHAPTER - VII

### OTHERS

#### 1. BAP Compliance for financials and Investments

It was informed to the Committee that, the Working Group for Reinsurance Reporting Formats has submitted its report and recommended for various reporting format.

##### **Opinion:**

It has been opined that IRDAI may prescribe, as applicable to FRBs and Lloyd's India, the applicable forms along with the periodicity of its filing

#### 2. Exemption from Public Disclosure Requirements

Business figures, on a Quarterly basis, need to be reported to IRDAI. FRBs, Lloyd's India suggested that they may be exempted from the Quarterly public disclosure requirements as there will be inordinate delay in getting the data from the Direct insurers. Besides public at large are not particularly concerned with the financial data of a re-insurer.

##### **Recommendation:**

- a. The FRBs / Lloyd's India may be permitted to make a yearly public disclosure of its parent's business results.
- b. Such disclosure may be made on the respective Indian Branch's website of the FRB, if it has a website specific to the Indian branch;

#### 3. Periodical submission of various Returns by FRBs

##### **Recommendation:**

FRBs are required to file or submit various returns as prescribed by the IRDAI.

#### 4. Waiver from Joint Statutory Audit requirement

As the FRBs/ Lloyd's are at the nascent stage of their operations as compared to other insurers, and also because of the fact that the accounts are settled on quarterly basis, it was proposed that, requirement of two audit firms for operational convenience, may be dispensed with for the time being till IRDAI may decide on it at a later date when their operations expand justifying the same.



**Recommendation:**

This requirement of joint audit may be waived till the FRB / Lloyd's India business reaches a gross premium of Rs 5000 crores for the first time.

**5. Taxation of Reinsurers – The following tax issues were discussed:****a. Rate of Income Tax:**

1. Domestic Insurance and Reinsurance companies are liable pay to income tax at the rate of 22% plus surcharge and education cess, amounting to an overall income tax rate of 25.17% (30% plus surcharge if any other concessions have been availed by the domestic company). On the other hand, an FRBs and Lloyd's India are liable to pay income tax at the rate of 40% plus surcharge and education cess.

This increased rate of taxation put FRBs and Lloyd's India in a disadvantageous position vis-à-vis domestic insurer who enjoy a lower tax rate. FRBs and Lloyd's India requested that income tax parity be considered, and that the Authority support this request to the DFS/CBDT.

**2. Withholding Tax**

FRBs and Lloyd's India also submitted that they are subject to withholding tax of 40% (unless a lower withholding tax certificate is obtained). Whilst the tax authorities have allowed for a lower withholding tax of 2 to 5%, this is an annual process and also not uniform across India and creates unnecessary compliance/administrative burden. FRBs mentioned that any reinsurance premium paid to a CBR does not suffer any withholding tax deduction (provided CBR does not have a presence in India).

Given that the FRBs and Lloyd's India are subject to advance tax and are paying taxes in India, FRBs and Lloyd's India should be exempted from withholding tax. The Authority is therefore requested to consider taking up this issue with the DFS/CBDT, on behalf of the FRBs and Lloyd's India.

**3. Other Tax Issues:**

The Committee reviewed and considered a note on tax challenges for FRBs and Lloyd's India.

**Recommendation:**

IRDAI may take up the matter with tax authorities.

**6. Applicability of Circular on Estimating of Economic Capital for Life, Non-Life and Health Insurers:**

**Recommendation:**

IRDAI vide IRDAI Circular No. IRDA/RI/CIR/MISC/004/01/2019 dated 7<sup>th</sup> January, 2019, has exempted FRBs and Lloyd's India from applicability of said circular. The same may be continued.

**7. Unearned Premium Reserve (UPR)**

Currently FRBs and Lloyds are not consistent in adopting the method of computing UPR as they can adopt either a fixed percentage method or fraction method (such as  $\frac{1}{4}$ ;  $\frac{1}{8}$ ;  $\frac{1}{365}$ ) for the line of business and reinsurance treaty.

**Recommendation:**

It is suggested that all FRBs and Lloyd's India shall follow  $\frac{1}{365}$  method consistently year on year and disclose the same to IRDAI in its filing.

**8. Reinsurance Program by FRBs / Lloyd's India:**

As per provisions of Regulation 3 of IRDAI (Re-insurance) Regulations 2018, FRBs and Lloyd's India needs to submit their reinsurance program as per Regulations. FRBs submitted that, being a branch their reinsurance program is purchased at parent company / Head Office level, covering the entire group, thereby taking advantage of the economies of scale.

**Recommendations:**

- a. IRDAI needs to ensure that the FRB India branch is fully covered under the reinsurance arrangement purchased by head office / parent company of respective FRB;
- b. IRDAI needs to mandate certification from the Head of the Reinsurance Department of Head Office / Parent Company of respective FRB and Lloyd's India, to the effect that the India branch is covered under the Group's reinsurance program
- c. The certification shall accompany the reinsurance program filed with IRDAI.

d. IRDAI shall issue the format for such certification.

**Rationale for complying the specified Regulatory Provisions on Gross re-insurance Premium reaching Rs. 5000 Cr for 1<sup>st</sup> time by FRBs / Lloyd's India**

1. There are separate Regulations governing the Registration and Operation of Branch Offices of foreign reinsurers and Lloyd's India. There is also a separate Reinsurance Regulation, 2018 applicable to all the reinsurers in India.

2. Sec (9) (d) of the Insurance Act while defining "insurer" included

(d) a foreign company engaged in re-insurance business through a branch established in India.

Explanation - For the purposes of this sub-clause, the expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom) or any of its Members;';

3. This implies many of the guidelines and regulations applicable to a direct insurer are also made applicable to Foreign Reinsurance Branches and Lloyd's India. Although the Regulator has exempted FRBs and Lloyd's India from complying with many such regulations by way of separate circulars based on representations received from them through GI Council, still there are many grey areas, which need to be addressed on the applicability of many regulations.

4. If the Indian reinsurance market is to develop as a 'hub' of reinsurance for this region, the FRBs and Lloyd's India, which are at their nascent stage of development, need to be granted some concessions for ease of doing business.

5. The development of insurance and reinsurance market are inter-dependent.

6. Though the FRBs and Lloyd's India are permitted to do both Indian as well as foreign business, as on date, the vast majority of the business underwritten by them stem from India. The Reinsurance Regulation by mandating 50% of the Indian business underwritten by them should be retained in India exercises direct control over the outflow of Indian premium beyond that level. This is primarily aimed at developing the Indian reinsurance market besides controlling the outflow of foreign exchange.

7. The following table provides the gross premium underwritten by the FRBs and Lloyd's during the year 2018-19 and up to 3rd quarter of 2019-20.

No.	Name of FRB	Gross Premium INR in Crore	
		2018-19	3rd QTR of 2019-20
1	Munich Re	2285.08	3,047.63
2	Axa Vie	2173.54	1333.94
3	Swiss Re	2275.41	2145.21
4	SCOR	1571.77	1068.29
5	XL Cat	324.50	431.67
6	Hannover	622.60	1007.45
7	RGA	267.01	558.88
8	Gen Re	194.06	149.48
9	Lloyd's (Amlin / Markel)	1.19	13.19
10	Allianz Global	--	170.39

8. From the above table we can observe that the reinsurance market is at an emerging stage and the necessity to provide an environment of 'ease of doing business' for further development is inevitable.
9. Without compromising on certain mandatory requirement and regulations which are essential to be complied with irrespective of the size and volume the Committee recommended certain waivers and concessions till such time they reach a reasonable level of business volume. Granting waivers and exemptions per se without fixing a period will also result in losing control for a longer period. To alleviate that issue it was felt that a gross premium level of Rs.5,000 Crores would be a reasonable level to have a full-fledged operation and office for an FRB and Lloyd. However, this can be kept to further review based on the market need and business development. It is also subjected to withdrawal if at any time it is felt that it is not supporting to operational ethics.
10. To give a few examples,
- Since currently the FRBs and Lloyd's operate with minimal staff, especially at the higher level, the requirement relating to appointment of KMPs are either modified or waived till they reach the gross premium level of Rs.5,000 Crores.
  - Certification from Appointed Actuary. Currently the FRBs being branches and Lloyd's India may not have an AA. Instead they may be asked to provide the Certificate from an Actuary registered with ASI.

- Waiver from Joint Statutory Audit requirement till they reach a gross premium level of Rs.5,000 Crores.
- Appointment of Chief Investment Office – till they reach a gross premium level of Rs.5,000 Crores the CFO may be permitted to discharge the functions of CIO while simultaneously making CFO responsible for the functions of CFO as CIO.