

Insurance Regulatory and Development Authority of India

NOTIFICATION

Hyderabad, the ...July, 2022

**Insurance Regulatory Development Authority of India (Other Forms of Capital)
Regulations, 2022**

F. No. IRDAI/Reg/ / /2022- In exercise of the powers conferred by Section 6A (1) (i) and Section 114A (2) (db) of the Insurance Act, 1938 read with section 26 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Authority, in consultation with the Insurance Advisory Committee, hereby makes the following regulations, namely:-

Objective: To provide for effective regulatory framework for issuance of Other forms of Capital by Insurers and to specify minimum reporting and disclosure norms.

1. Short title and commencement. --(1) These regulations may be called Insurance Regulatory and Development Authority of India (Other Forms of Capital) Regulations, 2022.

(2) These Regulations shall come into force on the date of their publication in the Official Gazette.

(3) These Regulations shall supersede Insurance Regulatory and Development Authority of India (Other Forms of Capital) Regulations, 2015

2. (1) Definitions. -In these Regulations, unless the context otherwise requires, -

- i. **“Act”** means the Insurance Act, 1938 (4 of 1938).
- ii. **“Authority”** means the Insurance Regulatory and Development Authority of India established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).
- iii. **“Other forms of capital” (OFC)** means the following instruments issued by an Insurer in the manner specified herein:
 - (a) Preference Share capital; or
 - (b) Subordinated debt.
- iv. **“Preference Share Capital”** means the preference share capital as defined in explanation (ii) to section 43 of the Companies Act, 2013 and satisfying the criteria laid down in these Regulations.

“Subordinated debt” means Debenture as defined in Section 2(30) of the Companies Act, 2013 and satisfying the criteria laid down in these Regulations; and any other debt instrument as may be permitted by the Authority.

(2) All words and expressions used herein and not defined in these Regulations but defined in the Companies Act, 2013 or Insurance Act, 1938 (4 of 1938), or in the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) or Rules or Regulations

made there under shall have the same meaning respectively assigned to them in those Acts or Rules or Regulations.

Qualification for “Other forms of capital”

3. Preference shares or subordinated debt shall qualify as “Other forms of capital” provided all of the following criteria are met:

- i. **Fully Paid up:** The Instruments must have been issued and fully paid up in cash;
- ii. **Seniority of Claims:** The seniority of the claims shall be governed by the following order:
 - a) **Preference Shares:** The claims of the Preference Shareholders shall be superior to the claims of investors holding equity share capital but shall be subordinated to the claims of the policyholders and all other creditors;
 - b) **Subordinated Debt:** The claims of the holders of the subordinated debt shall be superior to the claims of the investors in preference shares and equity shares in that order but shall be subordinated to the claims of the policyholders and all other creditors.
- iii. **Security:** The instruments issued under these Regulations shall neither be secured nor covered by a guarantee of the Insurer or other arrangements that legally enhance the seniority of the claims as against the claims of the insurer’s policyholders and creditors;
- iv. **Maturity Period:** The maturity period of the instruments issued by insurers under these Regulations shall be as under:
 - a) **Preference Share Capital:** The maturity period or redemption period shall not be less than: (i) Ten years for Life, General Insurance and Reinsurance Companies; and
(ii) Seven years for Health Insurance Companies.
 - b) **Subordinated Debt:** The issue of the subordinated debt shall either be perpetual or the maturity period or redemption period shall not be less than:
 - (i) Ten years for Life, General and Reinsurance Insurance Companies;
and
 - (ii) Seven years for Health Insurance Companies;

Conditions for issue of “Other forms of Capital”

4. Issuance of “Other forms of Capital” is subject to fulfilment of the following conditions:

- i. All instruments shall be non-convertible, fully paid up and unsecured;
- ii. Investment in such instruments by foreign investors including Foreign Institutional Investors (FIIs) or foreign portfolio investors (FPIs) shall be subject to the following:
 - a. The aggregate investment by all Foreign Investors including FIIs and Foreign Portfolio Investors shall not exceed the limit specified in FEMA Act, 1999 or Regulations or any other stipulations issued thereunder;

- b The issuance of the preference shares and subordinated debts to Foreign investors including FII and Foreign Portfolio Investors shall be in compliance with the pricing guidelines as applicable.
 - c The terms and conditions, if any, stipulated by SEBI / other regulatory authorities in regard to issue of the said instruments shall be complied with;
 - d Compliance with all FEMA Regulations, directions, notification, order etc.,
 - e Compliance with the directions/ instructions issued by the Central Government with respect to FDI.
- iii. No incentives shall be payable for early redemption;
 - iv. The rate of dividend / interest payable to the investors may be either a fixed rate or a floating rate. Such rate shall be with reference to a market determined rupee interest benchmark rate.;
 - v. Interest on subordinated debt shall be charged to the Profit & Loss Account and Dividend on Preference Shares shall be paid out of the distributable profit of the shareholders;
 - vi. The solvency of the Insurer shall remain at least at the control level of solvency;
 - vii. Cancellation of dividend distribution on preference shares or servicing of the subordinated debt must not impose restrictions on the Insurer except for distribution of dividend to equity shareholders.
 - viii. Insurer shall ensure compliance with all regulatory requirements, including but not limited to the Corporate Laws and all other stipulations as may be applicable.
 - ix. Such other conditions as may be stipulated by Authority from time to time.

Prior Approval

5. The Insurer shall require prior approval of the Authority for payment dividend or interest for any financial year if:
- a. The solvency is below the minimum control level of solvency; or
 - b. The impact of such accrual or payment would result in the control level of solvency falling below or remaining below the regulatory requirement specified by the Authority; or
 - c. Where the impact of accrual or payment of interest results in net loss or increases the net loss, the insurer shall obtain prior approval of the Authority for such payment.

Reporting requirements

6. The Insurer issuing the instruments under these Regulations, shall file a report within 15 days from the date of allotment to the Authority giving the details of the funds raised through issue of these instruments, including but not limited to:
- Total amount raised,
 - Name, address and nationality of the subscriber(s),
 - Purpose of the issue,
 - Type and nature of the instruments issued

- Rate of interest (fixed/floating) or dividend
- Issue has been subscribed on premium, where applicable
- A confirmation that all applicable laws have been complied with
- A copy of the offer document along with term sheet

Classification in the Balance Sheet

7. The Balance Sheet to be prepared by the insurer in accordance with IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002 as amended from time to time, shall classify instruments issued by an Insurer under these regulations as under :-
- a. In case of preference shares under the head "Share Capital" in the relevant schedule.
 - b. In case of subordinated debt under the head "Borrowings" in the relevant schedule.
 - c. In case any instrument is issued at a premium, the premium received shall be shown under the head "Securities Premium" in the relevant schedule.

Disclosure

8. The Insurer shall disclose the amount raised through the issue of instruments under these Regulations along with a gist of the terms of issue and the maturity / redemption period in the Notes to the Accounts forming part of the Annual Financial Statements prepared in accordance with IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002 as amended from time to time.

Call Back of Instruments

9. An Insurer shall not issue any instrument under these Regulations with "put option". However, an Insurer may issue the instruments with a "call option" subject to the following:
- i. Call option may be exercised after the instrument has run at least for a period of five completed years;
 - ii. Insurer may exercise the call option without the prior approval of the Authority.
Provided that such prior approval of the Authority is required, if after exercising such call option, the solvency position of insurer is not at least 20% above the control level of the solvency (e.g. $1.50 + 20\% \text{ of } 1.50 = 1.8$).
 - iii. While considering the proposals, as at proviso to (ii) above, received from the Insurer for exercising the call option, the Authority shall, amongst other things, take into consideration the Insurer's solvency position and future business plans, both at the time of exercise of the call option and after exercise of the call option
 - iv. Insurers shall inform the Authority of the call options exercised, within 15 days from the date of communication of exercise of option.

10. For the purposes of these regulations, it is hereby expressly clarified that any event of non-payment of Interest, non-repayment of the Redemption Amount of the Debentures by the Issuer shall not be construed to be an Event of Default and shall not be qualified to be included in an Event of Default Intimation.

Subscribers to the Instruments

11. The issuance of such instruments may be subscribed by the following:

- i. Indian promoters as defined in IRDAI (Registration of Indian insurance companies) Regulations, 2000 as amended from time to time;
- ii. Indian investors as defined in IRDAI (Registration of Indian Insurance companies) Regulations, 2000 as amended from time to time;
- iii. Foreign investors as defined in Indian Insurance Companies (Foreign Investment) Rules, 2015 as amended from time to time.
- iv. Any other person as may be approved by the Authority.

Investment by an Insurer in “Other forms of capital” of another insurer

12. An Insurer may invest in the “Other forms of capital” issued by another Insurer subject to the following:

- a. such investments shall only be classified under “Other investments”;
- b. such instruments shall be subject to the exposure norms as specified in IRDA (Investment) Regulations, 2016 as amended from time to time;
- c. Such investments shall not qualify as an admissible asset for determining the control level solvency.

Provided that the existing investments in the OFC instruments of the insurers will continue to be admitted towards the solvency till such investments are transferred/redeemed.

- d. Insurer shall not invest in the other forms of capital of another insurer having common promoter.

Grant of Loans against the Instruments

13. Insurers shall not grant any loan against the security of the instruments issued by them.

Limit for Other forms of Capital

14. The total quantum of the instruments under other forms of capital taken together shall be lower of the following, at any point in time:

- (i) 50 percent of the total Paid up Equity Share Capital and Securities premium of an Insurer
- (ii) 50 percent of the net worth of the insurer.

15. Amortization of the instruments for the purpose of computing solvency

- i. The instruments issued as “Other forms of Capital”, net of hair cut as specified in sub- Regulation (ii) herein below, shall be counted towards “Available Solvency Margin” of the Insurer.
- ii. The instruments shall be subjected to a progressive hair cut for the purpose of computation of “Available Solvency Margin” on straight-line basis in the final five years prior to maturity. Accordingly, as these instruments issued under these

Regulations approach maturity, the outstanding balances are to be reckoned for inclusion in capital as indicated in the Table 'A' below:

TABLE- A

Years to Maturity	% of Capital Included in Available Solvency Margin
5 years or more	100%
4 years and less than 5 years	80%
3 years and less than 4 years	60%
2 years and less than 3 years	40%
1 year and less than 2 years	20%
Less than 1 year	0%

In effect, the amount arrived at after making the above said adjustment alone shall be eligible for inclusion in "Available Solvency Margin".

Further, determination of such hair cut shall be applied at the end of each financial quarter based on the "years to maturity".

16. Responsibility of the Board

- i. For issuance of preference shares, Board resolution and special resolution shall be passed in the general body meeting of the shareholders authorising the issue of such preference shares;
- ii. For issue of the debentures and any other debt instrument, a Board resolution shall be passed authorising the issue of the such debentures and any other debt instrument;
- iii. The Board shall ensure that it is rationale for Insurer to issue Other forms of capital to meet its capital and / or solvency requirement.
- iv. The Board of the Insurer which has raised other forms of capital shall ensure compliance with these Regulations at all times, including the reasonableness of the interest/coupon rate for debt or dividend rate for preference shares.

17. Power to Remove Difficulties and Issue Clarifications:

In order to remove any doubts or the difficulties that may arise in the application or interpretation of any of the provisions of these Regulations, the Chairperson of the Authority may issue appropriate clarifications or guidelines as deemed necessary.