cyril amarchand mangaldas

ahead of the curve

Doing Business in IFSC

PUBLISHED BY © 2021 Cyril Amarchand Mangaldas
DESIGNED BY www.eumo.in

FSC

The pages of this book are printed on FSC Certified paper. Products containing material from FSC certified forests meet the environ mental and social standards of FSC.

DISCLAIMER

The book has been prepared for informational purposes only and nothing contained in this book constitutes legal or any other form of advice from Cyril Amarchand Mangaldas. Although reasonable care has been taken to ensure that the information in this book is true and accurate, such information is provided 'as is', without any warranty, express or implied as to the accuracy or completeness of any such information. Cyril Amarchand Mangaldas shall not be liable for any losses incurred by any person from any use of this book or its contents.

Doing Business in IFSC

Preface

It is with great pleasure that I present this handbook on doing business in India's first International Financial Services Centre (IFSC), situated at GIFT City, Gandhinagar. This handbook will provide readers with an insight into the key aspects of investing and undertaking business in Indian IFSCs, including an analysis of the opportunities and advantages associated with doing business in IFSC. I am hoping that the insights provided in this handbook will help readers in making better and more informed choices when it comes to operating within IFSCs.

GIFT City's strategic location, coupled with the highly attractive legal regime of Indian IFSCs and access to India's diverse economy, makes it attractive for investors looking to invest in IFSC, GIFT City. Furthermore, GIFT City is a smart city, with a globally competitive tax regime and a highly skilled workforce, making it an ideal business location globally.

Of late, there has been renewed focus on IFSCs, as evidenced by the flurry of activity surrounding GIFT City, both at the government and private sector level. During the presentation of the 2021-22 Union Budget, the Hon'ble Finance Minister noted the potential of IFSC, Gift City in becoming an international finance hub, and also announced a number of measures to incentivise financial activities there. The enactment of the International Financial Services Centres Authority Act in 2019 has been instrumental in strengthening the institutional and regulatory framework of IFSCs, with India's first unified regulator IFSC Authority emerging as a super-regulator of the banking, capital markets and insurance sectors in IFSC, thereby simultaneously reducing regulatory duplication, and increasing ease of doing business by implementing dynamic legal reforms.

Encouraging trends are already emerging on the back of these reforms. We are witnessing a sharp rise in the interest of potential investors in India's maiden IFSC. Interestingly, this is translating into a real time increase in the quantum of investment and business activity in IFSC, Gift City, with numerous banks, alternative investment funds, financial intermediaries, insurance companies, and aircraft leasing companies lining up to set up shop. Innovative policymaking has also made IFSC, GIFT City a potential hub for niche activities such as aircraft and ship leasing, which had traditionally been exported to international hubs such as Ireland. Moreover, being cognizant of the latest technological and institutional developments around the world, the government has correctly recognised the role that IFSC, GIFT City can play in spearheading the development of sunrise sectors such as fintech and cryptocurrency.

The aim of this handbook is to take stock of the progress made so far in IFSC, in terms of regulatory reforms in banking, capital markets and insurance sectors, and with regard to dispute resolution, tax regimes, data protection, aircraft leasing, insolvency and employment regulations. I hope this guide will help not only the potential investors in IFSC, GIFT City, but also the existing occupants as it provides a cohesive description of the latest financial regulations applicable to IFSC. I am positive that this guide will provide potential investors with answers to many questions that they may face while setting up shop and operating in IFSCs.

With **cam** itself having an on-ground presence in the IFSC, GIFT City, we are proud to have been legal partners and advisors to many organisations in IFSC, right from helping them establish their presence in GIFT City, to providing support for their ongoing legal requirements, as well as being instrumental in the burgeoning policy landscape governing the entities within IFSC. We are aspirational about the opportunities that IFSC, GIFT City has to offer as India commences its journey of 'Onshoring the Offshore' Financial Services Sector.

Further, I would like to acknowledge all the partners and associates from the various practice areas of Cyril Amarchand Mangaldas who provided their valuable inputs, insights and contributions to this handbook.

I hope that as readers, you will find this handbook insightful, enjoyable and useful.

Cyril Shroff
Managing Partner, Cyril Amarchand Mangaldas and
Co-chair – Task Force on IFSC,
Federation of Indian Chamber of Commerce & Industry (FICCI)

September 2021

Foreword

Over our professional life of last 30 years, we have seen many offshore financial centres (OFCs) emerge and take away business from the more closed economies like ours. The business model of these OFCs was essentially based on two important factors – first, the ease of doing business and second, a very friendly taxation regime. As a consequence, we did not just start losing business and employment opportunities – the collateral damage was brain-drain. Even today, a significant part of the Indian financial services such as trading, lending, and investing are operated from or booked in other jurisdictions.

As a creative solution to this, the Government of India introduced the framework of International Financial Services Centre (IFSC). The IFSC-GIFT City at Gandhinagar operates under this framework and is akin to a foreign jurisdiction on Indian soil. The International Financial Services Centre Authority (IFSCA) has been vested with the powers of four domestic sectoral regulators namely – RBI, SEBI, IRDA and PFRDA.

With Mr. Injeti Srinivas being handpicked by the Government of India as Chairman, IFSCA, to deliver an effective International Financial Services Centre in India, we at FICCI have also committed ourselves towards an evolved IFSC. We are playing the role of a bridge between the IFSC, the industry and the market participants. A taskforce set up by FICCI under the leadership of Mr. Cyril Shroff is conceptualizing various initiatives for the IFSC. The endeavor of the taskforce is to provide constructive suggestions across various verticals including – banking, insurance, capital markets, fund management, fintech, aircraft leasing and other ancillary services.

The IFSC is already seeing significant traction as an offshore centre for booking trades, foreign currency loans and investments, which were earlier booked in other jurisdictions. It also has the potential to become an investment gateway for India. With investors moving out of some of the other jurisdictions and looking to diversify to other investment destinations, this is clearly an inflection point to attract the fund industry and create a vibrant financial services ecosystem. This opportunity arising from the current scenario must not be lost.

As our Hon. PM has earlier said, “My vision is that in 10 years from now, GIFT City should become the price setter for at least a few of the largest traded instruments in the world, whether in commodities, currencies, equities, interest rates or any other financial instrument.” I am sure, we are well on a path in that direction.

The handbook on “Doing Business in IFSC” by Cyril Amarchand Mangaldas is a comprehensive compendium of all that we need to know about operating in the IFSC. My compliments to the team for brilliantly putting this together. I sincerely believe this handbook will be useful to businesses aiming to operate from the IFSC.

Sunil Sanghai
Co-chair — Task Force on IFSC

Table of Contents

PART C- Conclusion


1
£
¥
$
¥
£
¥
$
¥

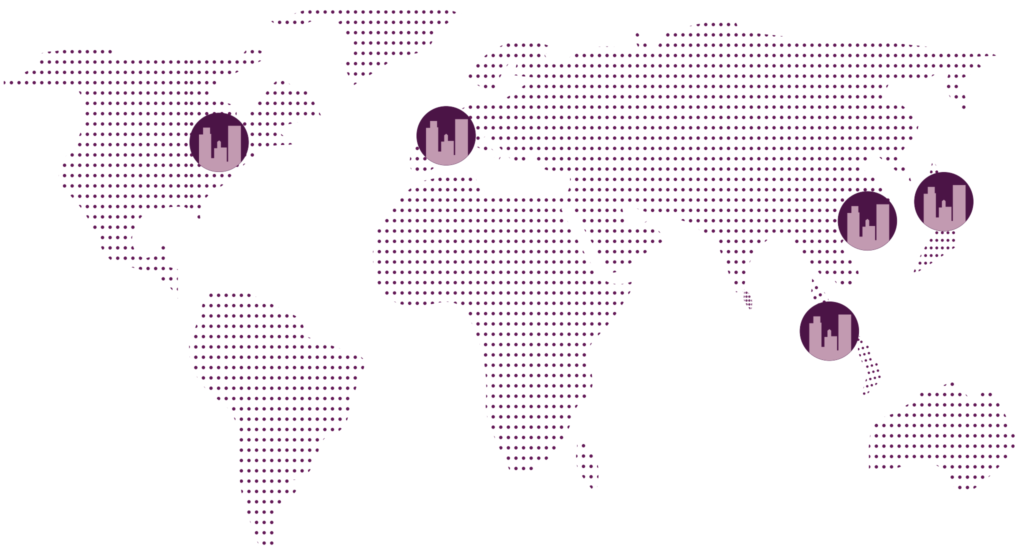
IFCs in India — An Introduction

International Financial Centres — A Brief Background

International trade and commerce have been integral contributors to economic growth and prosperity throughout history. Progressive developments in transport and communication systems have led to the emergence of an interconnected network of commercial hubs, acting as conduits of international trade and commerce. By the 19th century, many of the well-established global trading hubs had also started developing as centres of international finance and financial services. Port cities such as New York, London, Singapore, Hong Kong and Tokyo, located on arterial trade routes and being the focal points of commercial activity, were ideally situated for further development of banking and financial services. Evolution of the financial sector and development of new financial services and products meant that the existing international commercial hubs became the testing grounds for introduction of new ideas and concepts such as stock exchanges, commodity trading, insurance, financial instruments, intermediaries and derivatives. Till date, these cities figure prominently as providers of traditional as well as the most novel financial services and products, and have resultantly developed into what we today call IFCs.

Importance of IFCs

Apart from their importance in terms of services rendered and products offered in the financial sector, IFCs also bring in a number of advantages for their respective host countries. Banking services, asset management, stock market and intermediary services provided in IFCs attract huge amounts of capital inflow. Employment opportunities across the gold, white and blue collar job spectrum are enhanced as a result of diversified work avenues. Incoming MNCs, setting up shop in IFCs, bring with them advanced knowhow, international standards, and skilled and experienced staff.



Perhaps most importantly, an IFC enables the host country to enhance its capital account convertibility, have greater control over financial instruments, act as a benchmark and price setter for important derivatives and commodities, better mobilise funds, and develop diversified investment portfolios and strategies. Countries such as the US, UK, UAE and China have built significant financial firepower through the effective utilisation of IFCs.

According to Duffy and Giddy (1978), IFCs are largely characterised by economic and political stability, an efficient and experienced financial community, good communications and supportive services, and an official regulatory climate favourable to the financial industry, whereby investors are protected without excessive restrictions.

The compelling advantages have prompted many countries to undertake conscious efforts to develop IFCs within their territories. China has invested heavily in its eastern cities as part of its efforts to position itself at the centre of international finance. As a result, Shanghai, Beijing, Hong Kong and Shenzhen have emerged as important IFCs. In the UAE, DIFC was established in 2004 to tap into the financial markets of the Middle East, Africa and South Asia, and has since been an important contributor to Dubai's growth as a global city and business centre.

The Need for an Indian IFC

The historical lack of an IFC has hurt India economically, as large volumes of currency and commodity trading, which could have otherwise taken place in India, happened in foreign destinations. Further, India was heavily reliant on oversees financial services and foreign funds to finance its current account deficit, which led to an outward flow of capital and remittances. As early as in 2015, it was estimated that India was losing out on approximately fifty billion dollars annually, due to high value financial transactions, currency and commodity trading, and financial services being availed in more promising oversees jurisdictions.

The case for developing India as a global financial services hub is strong. South Asia is the most heavily populated region in the world, with India, especially, having a young age profile, skilled talent pool and workforce, and possessing a robust economy with healthy economic growth and a well-developed domestic market. Further, India is strategically located at the crossroads of south-east, east, central and south-west Asia and sits in the middle of important sea lanes, stretching from the Suez Canal to the Straits of Malacca. Recent improvements in transport and communication infrastructure, governance, regulatory regimes and ease of doing business, have greatly improved global perceptions about India being an investor friendly destination.

Recent trends and developments in other parts of the world also bolster India's case for emerging as an alternative global financial hub. The time is therefore ripe for India to capitalise on these internal pull and external push factors and position itself as an alternative and attractive destination for global finance.

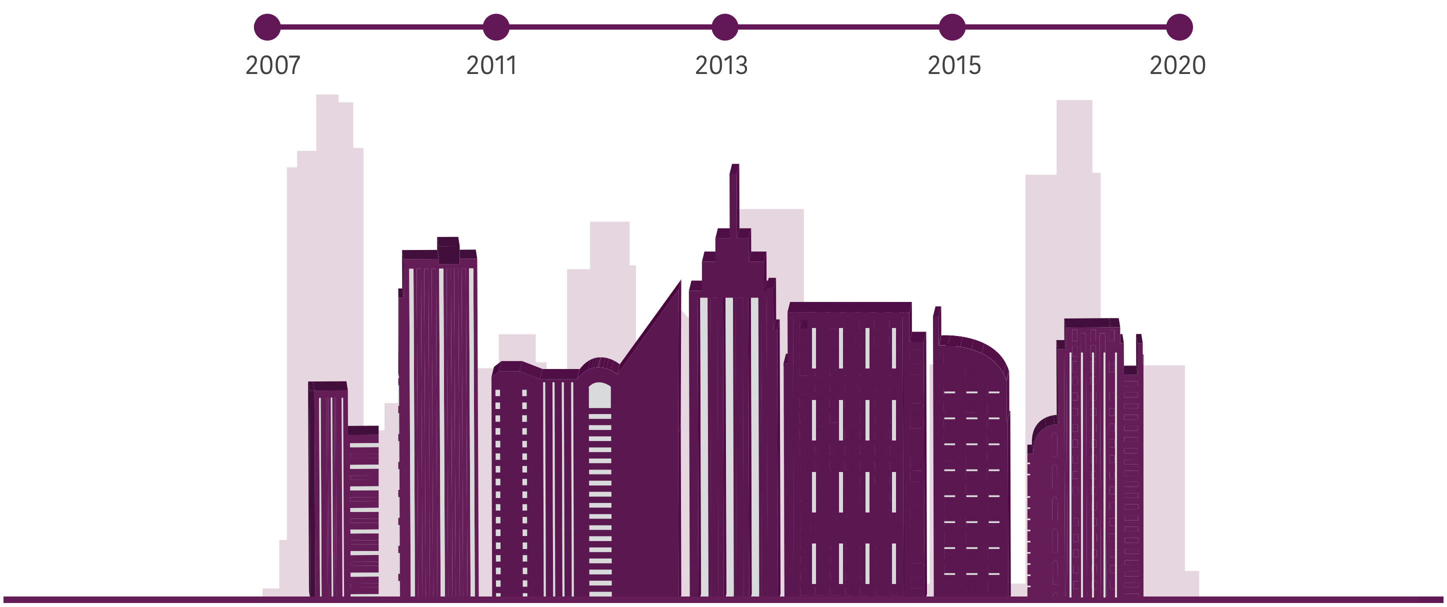
Pull & push factors that can help bolster and cement India's position as a leading IFC.

- Europe has been steadily ceding ground to Asia as a provider of financial services, on account of decreasing demographic dividend and sluggish economic growth.
- Tokyo's financial services sector has been facing problems due to similar trends.
- The faltering economic performance of Dubai in recent years has raised doubts over its sustainability as a leading IFC.
- In China and Hong Kong, autocratic governance, lack of democracy and transparency, and increasing political repression and surveillance have shaken investor confidence. These reasons have already seriously impacted Hong Kong's status as an IFC.

Development of GIFT City

Plans to put India on the world map of international finance have been in place since 2007.

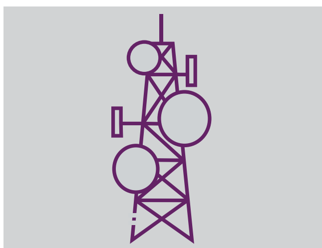
- A High-Powered Expert Committee Report on 'Making Mumbai an IFSC' was submitted in February 2007.
- The committee was constituted by the Ministry of Finance. The committee recommended that a phased and specific action plan be formulated for developing Mumbai as an IFC.
- At around the same time, the idea of GIFT City was floated at the Vibrant Gujarat Global Investor Summit of 2007. GIFT City was envisaged to be developed as the Indian equivalent of Singapore, Shanghai and Dubai, serving as a hub for international finance, commerce and IT/ ITES services. Despite Mumbai being by far the bigger and more established of the two cities, GIFT City was eventually chosen to be the country's first IFC.
- Brick and mortar development of GIFT City commenced in 2011, with the first tower being completed in 2013. Since then, as part of the Phase I development plan, more than 3.4 million square feet of built-up area has been developed, in the form of 14 multi storey projects, employing more than 10,000 people
- Accordingly, in 2015, 261 acres out of 886 acres earmarked for GIFT City, was notified as a multi-services special economic zone, consisting of (a) an IT/ ITES and exports hub; and (b) an IFSC, to be developed as a hub for banking, capital markets, asset management, insurance, and other financial services.
- Further, in 2020, the IFSC Authority was established to act as the nodal regulator for all IFSCs in India. Being the only operational IFSC in the country so far, GIFT City was chosen as the headquarters for the IFSC Authority. Apart from the IT/ ITES hub and the IFSC (together forming the GIFT City SEZ), the remaining 625 acres of GIFT City is being developed as a domestic tariff area, catering to domestic businesses and activities.
- GIFT City is currently home to two international stock exchanges, numerous foreign and Indian banks, and a large number of stock brokers, clearing houses, financial intermediaries, insurance corporations and IT/ ITES and other service providers. Additionally, world class residential, health, educational and recreational centres have been developed. The Phase I target of GIFT City is to operationalise 11.2 million square feet of built-up area, consisting of 114 skyrise buildings, and generating more than one million jobs. Phase II of GIFT City development, which is currently underway, focusses on the development of IFSC, and entails the undertaking of township level development of projects and infrastructure and supporting international banking and finance related activities.



GIFT City Advantages

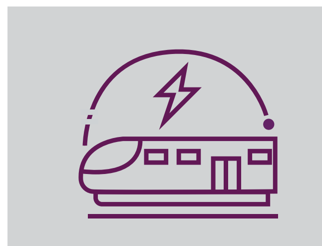
GIFT City presents incoming MNCs and domestic entities with many potential advantages and incentives. It has been developed as a greenfield smart city project, with a futuristic vision, encompassing integrated and cutting-edge transportation, telecommunication and power linkages, centralised and automated waste management systems, city level air conditioning, and the best practices and latest technologies in town planning, architecture, design, green spacing, and sustainable development. Situated near Ahmedabad, GIFT City enjoys many locational advantages. It is 18 kilometres away from the Sardar Vallabhbhai Patel International Airport and will fall in the vicinity of the proposed Delhi-Mumbai Industrial Corridor.

On account of being a flagship government project, GIFT City IFSC has been granted a number of tax breaks and incentives through successive union Budgets. In terms of policy and regulatory governance, GIFT City IFSC enjoys the benefit of being a notified SEZ, thereby having access to a more streamlined and business friendly regulatory regime. Single window clearance for licencing and business approvals may potentially improve the ease of doing business within GIFT City IFSC. Further, the IFSC Authority acts as the nodal authority for all finance related activities within the GIFT City IFSC. It is also sufficiently empowered to issue its own rules and regulations governing markets, exchanges and financial intermediaries within the GIFT City IFSC. This allows the IFSC Authority to develop a more rational, easy to navigate and business friendly regulatory regime, which will promote financial activities and attract international investments to GIFT City IFSC.



Telecommunication & Power Linkage

Technological Advancement



Cutting-edge Transportation

Current Status and the Way Forward

Despite the policy incentives and regulatory measures enacted by GOI and on-ground brick and mortar development, private participation in GIFT City has till date not been as robust as had been contemplated by GOI. Locational challenges continue to be the primary underlying factor hindering the growth of GIFT City, with entrepreneurs and professionals being hesitant to relocate from cosmopolitan centres such as Dubai, Singapore or even Mumbai to a greenfield city that is nascent and much smaller in comparison.

Further, the rupee is yet to be made freely convertible in GIFT City IFSC, leading to continuing restrictions on Indian enterprises and individuals carrying out overseas transactions. Concerns also remain about the ability and willingness of GOI to ensure a stable, pragmatic and predictable tax regime, and speedy dispute resolutions.

A host of other factors – both internal and external, continue to pose challenges to the development of GIFT City, such as sluggish economic growth in the wake of the 2008 financial crisis, the increasing trend of protectionism in international trade and finance, competition from existing IFCs such as Dubai and Singapore, the belated setting up of the International Financial Services Centres Authority (IFSCA), and project development issues surrounding IL&FS, the erstwhile development partner in GIFT City. Put together, these issues have resulted in GIFT City missing many of its originally contemplated development milestones.

That being said, the setting up of the IFSC Authority in 2020, combined with innovative and pragmatic policy initiatives, such as developing GIFT City IFSC as a hub for fintech activities, aircraft leasing, alternative investment funds and offshore funds, as well as the push for opening branches of international stock exchanges in GIFT City, may prove to be a gamechanger.

Recent reports suggest that there is renewed interest among enterprises in GIFT City IFSC, with the IFSC Authority receiving many applications for setting up offices and conducting business in GIFT City IFSC[1]. The 16 banks operating out of GIFT City IFSC have generated capital of more than 51 billion dollars, while the combined average daily volume traded on the stock exchanges is approximately 17 billion[2].

Ease of Doing Business

GIFT City IFSC has been granted a number of tax breaks and incentives through successive union Budgets. In terms of policy and regulatory governance, GIFT City IFSC enjoys the benefit of being a notified SEZ, thereby having access to a more streamlined and business friendly regulatory regime. Single window clearance for licencing and business approvals may potentially improve the ease of doing business within GIFT City IFSC.

1 https://timesofindia.indiatimes.com/city/ahmedabad/companies-come-calling-at-gift-city/articleshow/81976006.cms
2 https://theprint.in/economy/planned-as-the-next-singapore-in-2012-gujarats-gift-city-still-remains-a-work-in-progress/647021/

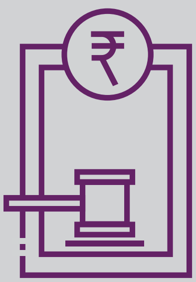

2

Overview of the Legal and Regulatory Frameworks Applicable in IFSC

With a view to level the playing field for IFSCs in India vis-à-vis their global peers, such as the DIFC and Singapore, the Finance Minister announced plans to establish a unified regulatory authority for regulating all financial services and products in the IFSCs in India. GOI approved the establishment of a unified authority for regulating all financial services in IFSCs vide the IFSC Authority Bill, which received the Presidential assent on December 19, 2019, formalising the IFSC Authority Bill into the IFSC Authority Act.

The IFSC Authority was established as a unified regulator on April 27, 2020, under the IFSC Authority Act and is headquartered at GIFT City, Gandhinagar, in Gujarat.

The objective of the IFSC Authority is to create a favourable regulatory island for financial services transactions from the Indian IFSCs and allow for a higher degree of inter-regulatory coordination within the financial sector. Additionally, the IFSC Authority has been established as a unified regulator, with a holistic vision to promote ease of doing business in Indian IFSCs and provide a world class regulatory environment[1]. Section 13 of the IFSC Authority Act empowers the IFSC Authority to function as a unified regulator and exercise the powers of the erstwhile regulators namely RBI, SEBI, IRDAI and PFRDA in respect of the financial institutions, financial services and financial products performed/ situated within the Indian IFSCs. Section 13 also states that all the powers exercisable by the respective financial sector regulators (RBI, SEBI, IRDA, and PFRDA, etc.), under the respective applicable acts and regulations, applicable within the Indian IFSCs, shall be solely exercised by the IFSC Authority for the regulation of financial products, financial services and financial institutions.



Financial institutions

Insurance offices and intermediaries

Capital market institutions and Asset management

[1] https://ifsca.gov.in/Pages/Contents/AboutIFSCA

Overview of the IFSC Authority

Composition

Section 5 of the IFSC Authority Act provides the following composition of the IFSC Authority :

Sr. No.	Composition	Appointing Authority
1.	Chairperson	Central Goverment
2.	Member of RBI	Nominated by RBI
3.	Member of SEBI	Nominated by SEBI
4.	Member of IRDAI	Nominated by IRDAI
5.	Member of PFRDA	Nominated by PFRDA
6.	Two members, from amongst the officials of the Ministry dealing with Finance	Nominated by Central Government
7.	Two other Members to be appointed on the recommendation of a Selection Committee[2]	Nominated by Central Government

[2] Selection Committee shall comprise of such member as may be prescribed and nominated by the Central Government.

Functions

Section 12 of the IFSC Authority Act provides for inter alia the following key functions of the IFSC Authority :

Sr. No.	Functions, Duties and Powers of the IFSC Authority
1.	To develop and regulate financial products, financial services, and financial institutions in the Indian IFSCs
2.	To regulate financial products, financial services, and financial institutions in Indian IFSCs, which have been permitted, before the commencement of the IFSC Authority Act by any regulator for any Indian IFSC
3.	To regulate such other financial products, financial services, or financial institutions in the Indian IFSC as may be notified by the Central Government from time to time
4.	To recommend to the Central Government such other financial products, financial services and financial institutions, which may be permitted in an Indian IFSC by the Central Government

Transaction in Foreign Currency

Section 20 of the IFSC Authority Act prescribes that every financial services transaction in an Indian IFSC shall be in such foreign currency as may be specified through regulations by the IFSC Authority, in consultation with the Central Government.

With the notification of the establishment of the IFSC Authority, Mr. Injeti Srinivas, the former Secretary for Corporate Affairs, has been appointed as the Chairman of IFSC Authority to spearhead the development of the Indian IFSCs by providing a world-class conducive regulatory architecture.

Legal and Regulatory Framework Applicable to Indian IFSCs

The power to establish an IFSC in SEZs is provided under the SEZ Act. Section 18(1) of the SEZ Act provides that the Central Government can approve the setting up of an IFSC in an SEZ and prescribe requirements for setting up of such an IFSC, and its operations. Section 18(1) further prescribes that the Central Government can approve only one IFSC in any SEZ.

The SEZ Act provides that an SEZ may be established, either jointly or severally by the central government, state government, or any person for manufacture of goods or rendering of services, or both.

On April 8, 2015, in exercise of the powers conferred under Section 18(2) of the SEZ Act, the GOI, vide the IFSC Notification, notified that units in an IFSC within SEZs shall be permitted to be set up and approved in accordance with the SEZ Rules, read with Notification No. S.O. 870(E)22 and the IRDAI (RIB) Rules, 2015, as amended from time to time, subject to the guidelines and regulations framed in this regard by the respective regulators, including RBI, the SEBI and the IRDAI, namely :

- FEMA (IFSC) Regulations
- Scheme for setting up of IFSC Banking Units by banks, dated April 1, 2015, (now replaced by the IFSCA Banking Regulations)
- SEBI (IFSC) Guidelines
- IRDAI IFSC Guidelines

Further, this notification also states that units in an IFSC shall conform to the provisions of the SEZ Act, SEZ Rules and the regulations made thereunder from time to time. Pursuant to the IFSC notification, the GOI has further prescribed the procedure for setting up units in an IFSC, whereby entrepreneurs are required to submit application to the concerned Development Commissioner in the modified Form-F prescribed under Rule 17 of the SEZ Rules. Prior to the establishment of the IFSC Authority as a unified regulator, an array of sectors such as banking, capital markets and insurance in Indian IFSC were regulated by multiple regulators, i.e. RBI, SEBI and IRDAI, respectively.

Ease of Doing Business

The IFSC Authority now acts as the sole regulator for all financial services and products in the Indian IFSCs, with an objective to increase ease of doing business, by streamlining sectoral regulatory processes for international and domestic investors and cross-cutting the time consuming formalities prescribed by sectoral regulatory practices.

With the notification of Section 13 of the IFSC Authority Act, the IFSC Authority now acts as the sole regulator for all financial services and products in the Indian IFSCs, regulatory processes for international and domestic investors and cross-cutting the time consuming formalities prescribed by sectoral regulatory practices.

An overview of the regulatory and legal regime applicable to IFSC is as follows :

IFSC Units (providing financial services, products and ancillary services)		
***Sector**	**Regulators**	**Governing Laws**
Banking	IFSC Authority, SEZ Authority and MCA	FEMA IFSC Regulations IFSCA Banking Regulations IFSCA Banking Handbook (wef from January 1, 2022) SEZ Act and SEZ Rules Companies Act, 2013
Capital Markets	IFSC Authority, SEZ Authority and MCA	SEBI IFSC Guidelines Relevant regulations promulgated by the IFSC Authority on relevant issues SEZ Act and SEZ Rules Companies Act, 2013
Insurance	IFSC Authority, SEZ Authority and MCA	IRDAI IFSC Guidelines Relevant regulations promulgated by the IFSC Authority on relevant issues SEZ Act and SEZ Rules Companies Act, 2013

**Detailed regulatory regime vis-à-vis specific sectors have been further elaborated in the respective chapters of this Handbook.*

Applicability of the Companies Act, 2013, and Relaxations Thereunder

With a view to operationalise IFSCs in India and provide an attractive business environment therein, on January 4, 2017, the MCA, vide the Companies Act Notifications[3] inter alia has granted several relaxations and exemptions under the Companies Act to IFSC companies, which are licenced to operate by the erstwhile regulators (i.e. RBI, IRDAI, SEBI) and the IFSC Authority from an Indian IFSC. The Central Government has granted such company law relaxations and exemptions to IFSC companies to increase the ease of doing business in the financial services sector in IFSC.

The Companies Act Notifications inter alia also sets out certain general characteristics / requirements for IFSC companies, such as:

- inclusion of suffix 'International Financial Services Centre' or 'IFSC' as a part of the name[4] ;
- formed with the objective to perform financial services activities, as permitted under SEZ Act, read with SEZ Rules[5] ;
- registered office to be situated within an IFSC, located in the approved multi services SEZ[6] , set up under SEZ Act, read with SEZ Rules, where it is licenced to operate at all times; and
- to be formed only as a company limited by share[7].

[3] G.S.R. 08(E) dated January 4, 2017 for unlisted public company and G.S.R. 09 (E) dated January 4, 2017 for private company.
[4] Section 4(1)(a) of the Companies Act.
[5] Section 4 (1) (c) of the Companies Act.
[6] Section 12(1) of the Companies Act.
[7] Section 2 of the Companies Act.

IFSC Companies — Relaxations and Exemptions Under Company Law

Whilst the Companies Act Notifications provide an array of relaxations and exemptions to IFSC companies, the Companies Act is generally more restrictive, comprehensive and regulatory in nature for public companies, in comparison to private companies, given that certain provisions of the Companies Act are either not applicable to the latter or are applicable with relaxations. The concerned Companies Act notification, dealing with IFSC Public Companies, exempts such companies from certain provisions to which ordinary private companies and therefore IFSC Private Companies are already exempt under the Companies Act. Some of the key relaxations and exemptions for both IFSC Private Companies and IFSC Public Companies under the Companies Act Notifications are set out below:

a) **Registered Office:** Any change in the registered office of an IFSC company (within the concerned IFSC) is permitted by passing a mere board resolution of such an entity.[8] Further, the time period for filing a notice of change in the registered office of the IFSC company to the RoC is relaxed to 60 days (as compared to 30 days under the Companies Act for an ordinary company).[9]

b) **Execution of Documents:** In respect of an ordinary company, Section 21 of the Companies Act enables a key managerial personnel, officer or employee of such a company (duly authorised by the board of directors) to authenticate documents, proceedings and contracts on behalf of such a company. Whereas, for an IFSC company, in addition to the aforesaid, any other person authorised by the board of directors can also undertake such actions for and on behalf of such an IFSC company.

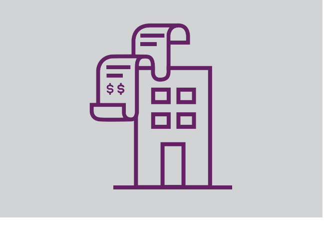
c) **Management:** IFSC companies are exempt from complying with cumbersome requirements of Secretarial Standards 1 and 2 as prescribed by the Institute of Company Secretaries of India, in respect of shareholders meeting and board meetings, respectively. This exemption permits IFSC companies to forgo sine qua non stipulations vis-à-vis shareholders meetings and board meetings, such as procedure in respect of notices, maintenance of minutes of meetings, adjournment of meetings, etc. Furthermore, the board of directors of IFSC companies are authorised to exercise power by passing certain specified resolutions vide circular resolution, which otherwise are required to be passed in a physical meeting only, in terms of Section 179(3) of the Companies Act (and thereby dispenses with the mandate of conducting physical board meeting for such resolutions).

d) **Corporate Social Responsibility:** Provisions pertaining to corporate social responsibility[10] will not apply to IFSC companies for a period of five years from the commencement of its business. Accordingly, requirements of constituting a corporate social responsibility committee, forming a corporate social responsibility policy and mandatory contribution of money towards corporate social responsibility activities will not apply to IFSC companies for an initial period of five years from the commencement of business.

8 Section 12 of the Companies Act.

9 Section 2 of the Companies Act.

e) **Audit:** Companies Act Notifications provide exemption to IFSC companies from undertaking internal audit, unless their respective articles of association specifically provide for the same[11]. IFSC companies are also exempt from the provisions prescribing time limit on rotation and appointment of auditors. In terms of Section 140(1) of the Companies Act, removal of an auditor of a company before the expiry of term requires prior approval of the Central Government. In this regard, for IFSC companies a proviso has been inserted, setting out a timeline of 60 days for the Central Government to communicate its decision and any failure on the part of the Central Government to do so will be considered as deemed approval.[12]



f) **Loan and Investments by Company:** Section 186(1) of the Companies Act imposing restriction on a company from undertaking investment through more than two layers of investment companies is not applicable to IFSC companies. The restriction on providing a loan or guarantee or providing security in connection with a loan of any other body corporate or person will also not be applicable to IFSC companies, provided a resolution is passed at the meeting of the board of directors or a resolution is passed through circulation in this regard.[13]

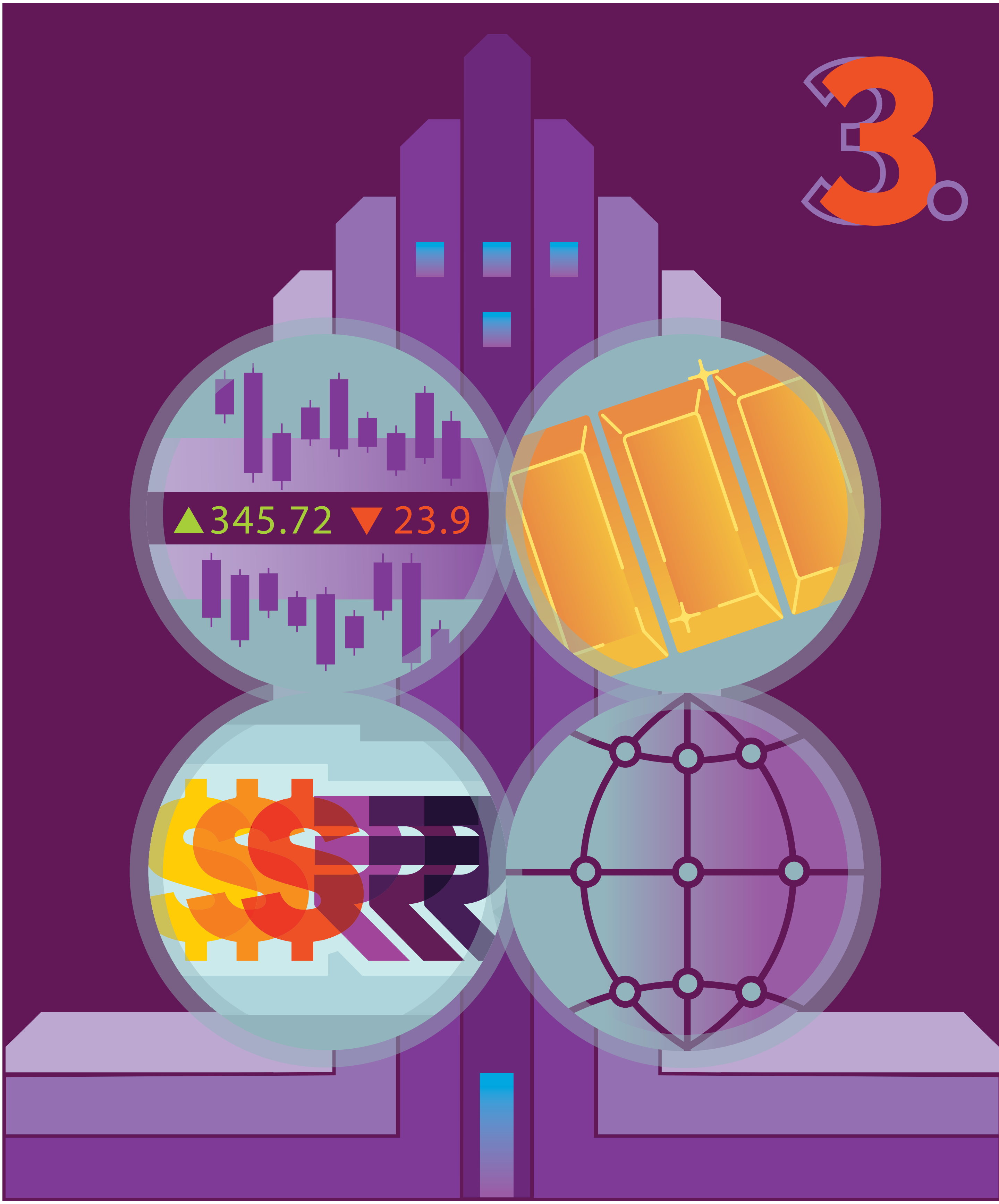
g) **Administrative Relaxations:** Additionally, IFSC companies have also been granted certain administrative relaxations to increase ease of doing business within the IFSC.

Such administrative relaxations for IFSC companies inter alia include:

- no requirement to include the web-link to the extract of an annual return of the company as disclosed on its website in the board of director's report;[14]
- the board of directors may, subject to the consent of all shareholders of the company, convene extraordinary general meetings at any place within or outside India[15];
- first meeting of board of directors may be held within 60 days from the date of incorporation;
- to hold minimum of one board meeting only in each half of a calendar[16].

To conclude, an efficient regulatory regime, coupled with tax, commercial and other relaxations and benefits (such as location, manpower and infrastructure) offered by an Indian IFSC make the GIFT IFSC very attractive. The Central Government and the IFSC Authority are continuously working to increase investor confidence by ensuring greater consistency, predictability and transparency. To that effect, the Central and State Government along with IFSC Authority have enacted a number of legislative, administrative and policy changes.

[10] Section 135 of the Companies Act.
[11] Section 138 of the Companies Act.
[12] Section 140(1) of Companies Act.
[13] Section 186 of the Companies Act.
[14] Section 92(3) of Companies Act.
[15] Section 100 (1) of Companies Act.
[16] Section 173(1) of Companies Act.


3.
345.72
23.9

Overview of Key Areas of Financial Activity and Services in the IFSC

1. What are the stock exchanges set up in the GIFT City IFSC and what products are offered on such exchanges?

Currently, NSE and BSE have set up international exchanges in the GIFT City IFSC to bring capital into India, majorly by offering trading in specified products, including, inter alia, index futures, Indian and foreign stock futures and currency and commodity derivatives in any currency other than the Indian Rupee.**NSE IFSC was set up as an international exchange by NSE, as its wholly owned subsidiary in November 2016. India INX, on the other hand, was established by BSE Limited as its subsidiary in January 2017.**

NSE IFSC offers trading in index futures, Indian and foreign stock futures, currency and commodity derivatives. Subject to SEBI approval, trading is permitted in equity shares of companies incorporated outside of India, depository receipts (DR), debt securities of eligible issuers, currency, index, interest rate and non-agriculture commodity derivatives and all categories of exchange traded products that are available for trading in stock exchanges in FATF/ IOSCO compliant jurisdictions. Whereas, India INX offers trading in all asset classes - equity derivatives, currency derivatives, commodity derivatives, including index and stocks, providing significant cost advantages to its participants.

2. What are the benefits of listing/ trading on the international exchanges in the GIFT City IFSC?

Some benefits that participants may reap are enlisted below:

2.1 Opportunity to invest in global instruments

Investors get an opportunity to trade in both Indian as well as global instruments, such as equities, currencies, commodities, derivatives and depository receipts. Currently, **exchanges at GIFT City IFSC offer derivative contracts for several NASDAQ listed companies such as Apple and Facebook. Investors, who may have exited Indian markets due to the curbs, can now trade in Indian derivatives by investing through a service provider or a broker present at the GIFT City IFSC.** The international exchanges offer a diversified portfolio of products and technology services at a cost, which is far more competitive than the Indian exchanges as well as other global exchanges like the ones in Hong Kong, Singapore, Dubai, London and New York.

India INX is one of the world's most advanced technology platforms with a turnaround time of 4 microseconds and operates for 22 hours a day to allow international investors and NRIs to trade from anywhere across the globe. NSE IFSC has entered into a tie-up with SGX pool for Nifty products in GIFT City IFSC. The framework of such international exchanges also provides for listing of debt securities. The listing framework of India INX applies to an issuer who seeks to list debt securities or whose debt securities have already been admitted to trading on Global Securities Markets and is at par with the global standards, offering equal platform to both Indian and foreign issuers.

2.2 Well regulated environment with strong legacy infrastructure

Some noteworthy benefits of trading out of the GIFT City IFSC include **exemption from capital gains, securities transaction tax and stamp duty and the presence and oversight of a single unified regulator i.e., the IFSC Authority, which weeds out the hurdle of multi-layered approval requirements, thereby, further promoting** ease of doing business.

Further, the regulatory framework emphasises on FATF compliance, with respect to the jurisdiction of issuers, especially in the case of listing of debt securities. The securities markets regulator, SEBI, continues to have the authority to monitor the activities in the GIFT City IFSC, thereby enhancing the regulatory confidence.

On October 28, 2020, the IFSC Authority prescribed the regulatory framework for listing of DRs. The said framework provides for listing of DRs by companies that are listed in FATF compliant jurisdictions (including India), thus enabling eligible listed companies to raise capital through issuance and listing of DRs on the stock exchanges in the GIFT City IFSC. In addition, this framework provides an opportunity to eligible companies, having DRs listed on any exchange in a FATF compliant jurisdiction, to list and trade such DRs on the stock exchange(s) in GIFT City IFSC as an additional venue for trading, without the need to undertake any fresh public offering.

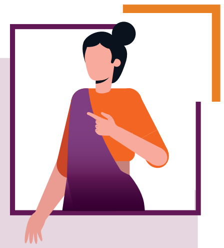
While IFSC Authority has prescribed the framework for essential disclosure requirements, listed companies shall continue to comply with the applicable requirements of their respective home jurisdictions, with respect to corporate governance norms and several other disclosure requirements, without any additional regulatory burden. Listed companies will have to make all disclosures made in their home jurisdictions to the stock exchange(s) in GIFT City IFSC.

This is encouraging to note, given that the regulator is looking to broaden the avenues of international listing, while ensuring a strong compliance framework.

IFSC Authority weeds out the hurdle of multi-layered approval requirements, thereby, further promoting ease of doing business.

Bullion Exchange

1. What is an International Bullion Exchange, which is expected to be set up at the IFSC, and what are the products/services offered on such an exchange?



In the Union Budget 2020, Union Finance Minister, Smt. Nirmala Sitharaman had made an announcement for setting up an IBE at the IFSC in GIFT City. Subsequently, the Government of India had **notified bullion spot delivery contracts and bullion depository receipts (with bullion as underlying) as 'financial products' and related services as 'financial services' under the IFSC Authority Act.** The IFSC Authority has been authorised to operationalise and regulate all financial services in relation to the IBE in GIFT City IFSC.

The IBE is entrusted with the duty to protect the interests of consumers in the bullion market, to regulate bullion contracts and to work with global agencies or institutions in the bullion industry in order to promote growth, transparency and orderly development of the bullion market. The BSE, NSE and the Multi Commodity Exchange of India, along with an international partner, is setting up the IBE, which is slated to be operational by October 2021. The IBE will facilitate the purchase and sale of bullion, bullion depository receipts or such other bullion products, including derivatives on bullion and bullion spot delivery contracts.

In addition to a bullion exchange, the IFSC Authority (Bullion Exchange) Regulations, 2020, provide for the operationalisation and regulation of clearing corporations, bullion depositories and vault managers.

2. Who is eligible to set up a bullion depository?

Entities may participate in the IBE at the GIFT City IFSC as bullion depositories. They are required to apply to the IFSC Authority to carry on depository business in bullion, subject to meeting the prescribed eligibility criteria.

To qualify as an eligible bullion depository, an entity will be required to:

- Have a net worth of not less than USD 15 million, on a continuous basis;
- Put in place bye-laws and legal documents that are consistent with the objective of a bullion depository and for protection of the interest of consumers;
- Enter into an agreement with a vault manager, which has the necessary infrastructure and standards for safe storage of bullion and its security;
- Establish standards of encrypted transmission and reconciliation mechanisms for electronic communication of data, between the bullion depository, participants, issuers and issuers' agents;
- Possess physical/ electronic access to the premises, facilities, automatic data processing systems, data storage sites and facilities, including back up sites and facilities;
- Ensure that the electronic data communication network connecting the bullion depository, participants, issuers and issuers' agents is controlled, monitored and recorded; and
- Make adequate arrangements, including for insurance in relation to indemnifying the beneficial owners for any loss that may be incurred by them by a wrongful act, negligence or default of the bullion depository or its participants or agents or of any of their employees.

Minimum Networth of USD 15 Million

Proper Physical & Electronic Access

Encrypted Communication

3. What are the benefits of trading on the IBE?

Listed below are some of the benefits of trading on the IBE:

3.1 Better price discovery of gold

The establishment of a regulated IBE is a step towards making gold a mainstream asset class. An organised bullion trading system will benefit the entire supply chain, particularly, small players and exporters. It will also lead to a uniform pricing of gold across the country. Today, prices vary from state to state and consumers are forced to buy gold at the rate they are being offered.

Annually, India consumes 800-900 tonnes of gold and despite being the largest consumer of the yellow metal, it does not have a say in its international pricing. Trading on the IBE will help leverage purchasing power in the global market and provide traders with access to bullion of international standards.

With its unique locational, infrastructural and regulatory advantages, GIFT City IFSC is well placed to build a fair, efficient and transparent bullion trading ecosystem.

3.2 Strong employment generator

The trading ecosystem created by the IBE will add liquidity and depth to the gold commodity market. There is tremendous value potential to be unlocked from the gold industry in India, in terms of it being one of the largest consumers globally and in terms of the finesse of jewelry produced in India, thereby acting as a vast employment generator. Opportunities abound in terms of creating employment in relation to vault management, logistics services, security infrastructure, and valuation services, among others.

3.3 Convenience in long-term storage of precious commodities

The key benefits of considering GIFT City IFSC for import and long-term storage of precious commodities are its geographical proximity to important manufacturing hubs, well-regulated and systematic management of inventory, possibility for deferred customs duty payment, long term storage insulated from duty fluctuations, duty exemption on re-export and lower transaction cost.

Currency Derivatives

The extant exchange control regulations in India permit a financial institution or its branch setup in an IFSC to conduct business in foreign currency, as may be determined by a regulatory authority governing such financial institution. Accordingly, the RBI has allowed regulated financial institutions to conduct business in Indian Rupees in GIFT City IFSC by way of Foreign Exchange Management (International Financial Services Centres) Regulations, 2015.

In a report dated July 30, 2019, the Task Force on Offshore Rupee Markets, chaired by the Former RBI Deputy Governor, Smt. Usha Thorat, recommended measures to incentivise non-residents to access the onshore foreign exchange market. One of the recommendations included allowing Rupee Derivatives (with settlement in foreign currency) to be traded in the IFSC.

In accordance with these recommendations, **the RBI has allowed Rupee Derivatives (with settlement in foreign currency) to be traded in the IFSC, starting with exchange traded currency derivatives as of January 20, 2020. Currency derivatives can now be traded as currency futures or currency options.**

1. What are the guidelines for trading in currency futures contracts?

Currency futures contracts are standardised foreign exchange derivative contracts traded on a recognised stock exchange in the IFSC to buy or sell one currency against another on a specified future date, at a price specified on the date of contract, but it does not include a forward contract.

Permission

Currency futures contracts are allowed to be traded in any currency pair, including the Indian rupees or otherwise. A person resident in India, as defined in FEMA Act, unless specifically permitted by RBI, shall not be eligible to undertake currency futures contracts. A person resident outside India, as defined under the FEMA Act, shall be eligible to undertake currency futures contracts/ currency options contracts.

Conditions

Currency futures may be traded, subject to the following conditions:

- All contracts shall be settled in a currency other than the Indian Rupee;
- The settlement price for currency futures contracts involving the Indian Rupee shall be FBIL Reference rate (i.e., rates of currency pairs computed and published on a daily basis, on all Mumbai business days, by FBIL), where available, on the last trading day of the contract; and where FBIL reference rates are not available, and for other currency pairs, the mechanism for arriving at the settlement price shall be decided by the recognised stock exchange where these futures will be traded in consultation with SEBI.
- The size, maturity and other specifications of the contracts shall be decided by the recognised stock exchange mentioned above, in consultation with SEBI.

2. What are the benefits of trading in currency futures/ currency options in the IFSC?

The following are the benefits of trading in the GIFT City IFSC:

2.1 Better Price Discovery

Trading volumes on the two Indian exchanges at the GIFT City IFSC have been growing phenomenally, ever since these Exchanges commenced trading activities. With a cumulative trading volume of USD 822 billion since launch and international debt medium-term note (MTN) programme of about USD 48 billion, India's INR-USD derivative is an attractive investment destination and positions the Indian INX and the NSE IFSC as leading centres for raising capital for issuers across the globe. Rupee derivatives in IFSC would not only help in creating a robust foreign exchange market in India, but will also play an important role in bringing the offshore Rupee market back to India and strengthen price discovery in the Indian markets.

2.2 Convenience for foreign investors

The IFSC platform offers access to international investors and non-resident participants who currently participate in INR trading in various offshore markets. It shall offer such participants an additional trading venue at par with other offshore market platforms. Long trading hours and settlement in USD at IFSC would also help to improve access for overseas participants and this shall, in turn, help these participants in hedging their Rupee exposures effectively at the IFSC.

2.3 Hedging Alternatives

With the introduction of exchange traded derivatives on exchanges at GIFT City IFSC, portfolio investors, Indian companies, IFSC banking units, trading members, global banks and custodians and NRIs can use this platform for hedging or for taking directional calls. With the transaction on the exchanges being exempt from short-term and long-term capital gains tax as well as transaction taxes and stamp duty, this platform is quite competitive, compared to global offshore financial hubs.

2.4 Risk Management Measures

The trading of currency futures/ currency options is subject to maintaining initial, extreme loss and calendar spread margins, which will allow trading entities to hedge exchange rate risks and associated market risks. The clearing corporation/ clearing house of the recognised stock exchange is also required to monitor and ensure participants comply with such margins, creating a double layered supervision. This will, in effect, allow participants to mitigate risk of loss associated with futures/options contracts.

International Foreign Currency Bond & Credit Markets

There is a robust and attractive market for foreign currency bonds and credit enabled in the GIFT City IFSC. Some features of this market include:

- Trading in Rupee denominated bonds issued overseas (i.e., masala bonds) has been permitted in stock exchanges in the IFSC, provided such bonds are listed on stock exchanges in FATF / IOSCO compliant jurisdictions;
- Exemptions on capital gains tax for foreign currency denominated bonds listed on a recognised stock exchange in the GIFT City IFSC; and
- A massive growth in debt raising volume at the GIFT City IFSC, making it the preferred destination for Indian corporates to raise money through bond issuances.

Innovation Sandbox

During the Budget speech for financial year 2021-22, the Finance Minister announced the union government's plans of setting up a "world class fintech hub" at GIFT City IFSC to bolster innovation and development of technology in the GIFT City IFSC. It is expected that the Asian Development Bank may set up a fintech hub and may infuse INR 1,000 crore as its initial funding to facilitate skill development and resource mobilisation and is in talks with the government for the same. The availability of an existing support ecosystem from the regulator (including proximity and ease of access to the regulators, banks, insurance companies and other financial institutions) and willing investors make this a suitable destination for fintech products.

1. What is a regulatory sandbox?

A regulatory sandbox is a framework set up by the regulator, i.e., in this case, the IFSC Authority, which allows Fintech companies and innovators to conduct experiments for new products or services in a controlled environment, under supervision. In the IFSC Innovation Sandbox, entities will be able to test their solutions in isolation from the live market, based on market related data from market infrastructure institutions operating in the GIFT City IFSC.

2. Who shall be eligible to conduct testing in the Innovation Sandbox?

The below mentioned entities, operating in capital markets, banking, insurance and financial services sectors shall be eligible for testing in the Innovation Sandbox in the IFSC:

- Entities registered with SEBI, RBI, IRDAI, and PFRDA;
- Start-ups registered with Startup India;
- Companies incorporated and registered in India;
- Companies incorporated and regulated in FATF compliant jurisdictions by a financial services or banking or capital market or insurance or pensions regulator and having subsidiaries/ branch offices/ representative offices in the IFSC;
- Indian citizens; and
- Citizens of FATF compliant jurisdictions

3. How should one apply for testing in the Innovation Sandbox?

Innovative solutions, which bear no risk to the financial system and have direct identifiable benefits to the users, shall be eligible for testing in the sandbox.

The applicant shall be required to submit an application form to the IFSC Authority. During the testing stage, the IFSC Authority shall work closely with the applicant to set the specific regulatory requirements and conditions, including the test limits, to be applied. If the applicant satisfies the prescribed regulatory conditions, it shall be granted permission to develop and test the proposed innovation in the Regulatory Sandbox. The applicant is allowed to test for a period of 12 months and the same may be extended on the applicant's request.

4. What are the benefits of testing in the Innovation Sandbox?

To encourage innovation and testing, the IFSC Authority may consider **relaxing certain regulatory requirements, including net worth requirements, track record, registration fees and financial soundness, depending on the solution to be tested.** However, no exemptions will be granted from compliance with the investor protection framework, including maintaining confidentiality of customer information, fit and proper criteria and the KYC obligations under the anti-money laundering rules issued in accordance with the Prevention of Money Laundering Act, 2002, and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005.

Ease of Doing Business

IFSC provides for exemption from capital gains, securities transaction tax and stamp duty and the presence and oversight of a single unified regulator i.e., the IFSC Authority, which weeds out the hurdle of multi-layered approval requirements, thereby, further promoting ease of doing business.


4

Specific Financial Business Opportunities: Banking and Finance

The RBI enacted the FEMA (IFSC) Regulations in March 2015, which is applicable to **financial institutions and branches of financial institutions set up in the IFSC. Such entities are treated as persons resident outside India.** In particular, the banking units and GICs, which have been permitted to be established in the IFSC, are lucrative avenues for financial institutions looking to set up offshore branches/ units, without incurring the cost of having to set up the same in an offshore jurisdiction.

IFSC Banking Unit (IBU)

1. What is an IBU and who can set up an IBU?

An offshore banking unit, established by an existing resident (both private and public banks authorised to deal in foreign exchange) or a foreign bank, within the IFSC is an IBU. These units set up by domestic banks are treated as overseas branches of Indian banks. IBUs are regulated by the IFSC Authority and the RBI under the extant RBI and IFSC Authority guidelines, including FEMA (IFSC) Regulations, and the IFSCA Banking Regulations. Currently, the following entities are permitted to set up an IBU:

- **Indian bank, i.e., any bank incorporated in India, including a wholly owned subsidiary of a foreign bank. However, cooperative banks are not permitted to set up IBUs.**
- **Foreign bank, already having presence in India. The procedure for a foreign bank not having presence in India has not been specified by the IFSC Authority yet.**

2. What are the key steps to be taken to set up an IBU?

An IBU, established by an Indian bank, is treated at par with an offshore branch of an Indian bank and in case of foreign bank branches, they would not be accounted towards the number of normal branches of the foreign bank in India (owing to the fact that GIFT City is not considered to be a place of business in India). A bank is allowed to set up only one IBU.

The following are the key steps in setting up an IBU in GIFT City:

- **The parent bank shall provide a minimum capital equivalent of USD 20 million.** The parent bank shall also be required to submit an undertaking, stating that it will provide liquidity to the IBU whenever required in the manner to be prescribed by the IFSC Authority.

- The parent bank will require permission from the IFSCA for setting up an IBU. Additionally, a foreign parent bank will also require a no-objection certificate from the regulator in the home country before setting up an IBU.

3. Who is eligible to open an account with the IBU?

The following are permitted to open, hold and maintain foreign currency accounts with the IBU:

- Individuals who are person resident in India. Resident individuals are permitted to undertake permissible capital and current account transactions as specified under the RBI's Liberalised Remittance Scheme;
- Individuals who are person resident outside India;
- Corporate or institutional entities resident outside India; and
- Corporate or institutional entities resident in India;

4. What are the banking services provided by an IBU?

An IBU allows a bank to offer a complete range of services, activities that a bank in India may engage in as permitted by the RBI. An IBU may raise funds from non-resident Indians (not individuals), including foreign banks, overseas branches of Indian banks as well as resident entities, subject to FEMA regulations. An IBU offers the following services:

- Opening, holding and maintaining foreign currency current accounts on behalf of their institutional clients, thereby allowing the client to access offshore markets from the IFSC itself;
- Buying, selling or subscribing to financial products, including securities, contracts of insurance, deposits, credit arrangements and foreign currency contracts (except for foreign exchange spot transactions);
- Accepting deposits;
- Safeguarding and administering assets consisting of financial products;
- Effecting contracts of insurance;

  Offering and managing assets consisting of financial products;

  Establishing or operating an investment scheme;
- Derivative transactions;
- Exchange traded currency derivatives (with settlement in foreign currency) listed on exchanges in the IFSC;
- Offering portfolio management services to persons resident in and outside India, in terms of the Operating Guidelines for Portfolio Managers and Investment Advisors in International Financial Services Centre;

- Offering investment advisory services to persons resident in and outside India in terms of the Operating Guidelines for Portfolio Managers and Investment Advisors in International Financial Services Centre;
- Acting as a professional clearing and settlement member for transactions in the derivative segment; and
- Underwriting the issuance or subscription of a financial product.

5. What are the reporting and compliance requirements for IBU?

An IBU is exempt from maintaining cash reserve ratio and statutory liquidity ratio as mandated by the RBI. The same are maintained by Indian and foreign banks on an ongoing basis. However, an IBU will be required to maintain liquidity coverage ratio and leverage ratio, and as and when specified by the IFSC Authority, it shall also have to maintain net stable funding ratio. **Priority sector lending obligations do not apply to IBUs.**

The IBU will also have to comply with the RBI Master Directions KYC and other RBI directions and guidelines issued to combat terrorist financing and money-laundering.

The IBU will have to ensure that its operations are completely ring-fenced from those of the Indian operations of the bank. To that effect, the IBU will be required to ensure the following:

- Maintenance of balance sheets only in foreign currency. An IBU will not be allowed to deal in INR transaction, except from a special rupee account for administrative and statutory expenses;
- Maintenance of separate NOSTRO accounts with correspondent banks, i.e., separate from the one maintained by other branches of the said bank in India.

6. What are the benefits of establishing an IBU?

As on date, close to 15 banks (both domestic and foreign) have established IBUs in the IFSC GIFT City. In addition to the advantages offered by the lowered cost of doing business from the IFSC and the tax exemptions, an IBU also allows its clients to access foreign markets and seamlessly engage in international business transactions.

Finance Company in IFSC

1. What is a finance company?

On March 25, 2021, the IFSC Authority notified the FC Regulations, to allow for functioning of non-banking financial institutions in the IFSC. The FC Regulations define a finance company or a finance unit as financial institutions under Section 3(1)(c) of the IFSC Authority Act[1]. **A finance company is one which has been incorporated as a separate entity, while a finance unit is one that has been set up as a branch under the FC Regulations. A finance company/unit should not accept deposits from the public (resident and non-resident) and it must not be registered as an IBU.**

2. What are the key steps for setting up a finance company/ unit?

The following are the key steps for setting up a finance company/ unit in the ISFC:

a) A finance company may be set up as a newly incorporated company, a joint venture or a subsidiary or in any other form.

b) In the event an investor in the finance company undertakes regulated financial business in its home country, such investor shall obtain a no-objection certificate from the relevant regulator in its home country.

c) A finance unit may be set up in the investing entity/ ultimate parent of the investing entity, carrying out regulated financial activity in its home jurisdiction and has obtained a no-objection certificate from its home country regulator for setting up a finance unit.

d) The applicant seeking registration as a finance company shall have and maintain the minimum owned fund requirement, or in case of a finance unit, its parent should provide and maintain minimum owned fund on unimpaired basis at all times.

e) The applicant entity and its promoters must be from FATF compliant jurisdictions and they must comply with the standards to combat money-laundering and terrorist financing.

[1] Section 3(1)(c) – "financial institution" means a unit set up in an International Financial Services Centre and which is engaged in rendering financial services in respect of any financial product"

3. What are the compliance requirements applicable to finance companies/ units set up in the IFSC?

a) A finance company/unit is required to comply with prudential norms and maintain a

- minimum capital ratio at 8% of its regulatory capital to risk weighted assets;
- liquidity coverage ratio in the manner specified by the IFSC Authority; and
- exposure ceiling – the sum of all exposures (to a single entity or group of connected entities) should not exceed 25% of its available eligible capital base. The IFSC Authority is yet to issue operational guidelines for implementation of these prudential norms.

b) Finance companies/units will also be required to ensure compliance with KYC norms, combating of money-laundering and terrorist financing requirements, including reporting requirements as specified for banking units *(Please refer to Q. 5 under IBUs above).*

c) Finance companies/units can carry out transactions in freely convertible foreign currency, but it may be permitted to carry out certain transactions in INR, subject to settlement of such transactions in freely convertible foreign currency.

d) Finance companies/units will also be required to ensure compliance with corporate governance norms and disclosure requirements specified by the IFSC Authority. They are also required to seek prior approval of the IFSC Authority for a change in control (of at least 20%) of the total share capital, business decisions, etc., of the finance company/ unit.

4. What activities may be carried out by a finance company/ unit?

The activities that may be carried out by a finance company/ unit may be broadly divided into three categories:

(a) Permitted Specialised Activities

These include

- credit enhancement; and
- factoring and forfaiting of receivables.

(b) Permitted Core Activities:

These include

- lending in the form of loans, commitments, guarantees, etc.;
- investments including subscribing, acquiring, holding or transferring securities or other instruments;
- equipment leasing;
- financial lease transactions for aircraft and ship lease;
- buy or sell derivatives; and
- global/ regional corporate treasury centres.

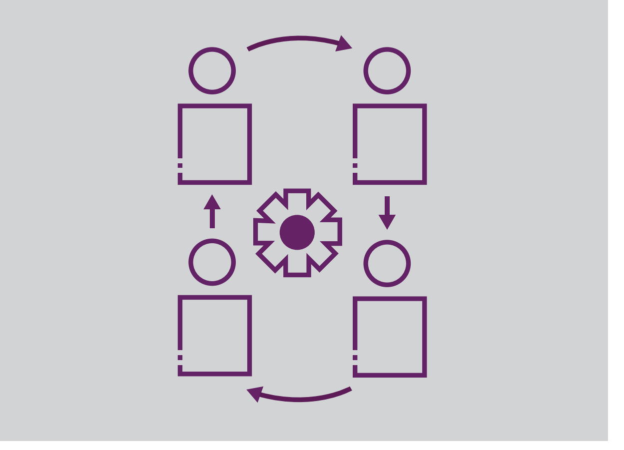
(c) Permitted Non-Core Activities:

These activities may be carried out with specific registration requirements, as may be applicable. The permitted non-core activities include inter alia:

- merchant banking;
- authorised person;
- registrar and share transfer agent;
- trusteeship services;
- investment advisory services;
- portfolio management services;
- distribution of insurance products;
- distribution of mutual fund products;
- acting as trading and clearing members or professional clearing member of exchanges and clearing corporations set up in IFSC; etc.

All finance companies/units intending to undertake any of the non-core activities mentioned above will also be required to ensure compliance with the relevant regulatory framework (i.e., regulations, circulars, guidelines, etc., issued by SEBI, IFSC Authority, etc., from time to time) for providing such services. A finance company/ unit intending to undertake airport lease transactions must be in conformity with the Cape Town Convention and Protocol. A finance company/unit intending to undertake any of the non-core activities mentioned in paragraph (c) above will be required to ensure that each such activity is carried out through a separately identifiable department and that a fire wall is maintained between the various non-core activities so that there is no conflict of interest. The finance company/ unit will also be required to implement a grievance redressal and customer compensation policy. Dealings with Indian residents will be subject to provisions of FEMA.

Global In-House Centres in IFSC



1. What are GICs and what are the beneficial aspects of setting up GICs in IFSC?

The IFSC Authority had notified the IFSC Authority GIC Regulations, on November 12, 2020, and pursuant to the same, has stated that **GICs are units set up in the IFSC for providing support services, directly or indirectly, to entities within its financial services group for carrying out financial services.**

Ease of Doing Business

Apart from the incentives and benefits that are provided to IFSC units by the Gujarat government, setting up GICs provides entities with the opportunity to save cost at an enterprise level, while being able to access a skilled and employable talent pool. Coupled with a well-regulated ecosystem, backed by strong physical infrastructures, the GIFT City provides multinational corporations and regulated entities, the opportunity to maximise the scale of core operations, while ensuring access to reliable support services within their group at relatively better cost in comparison to outsourcing such services to third parties in their home jurisdiction.

2. What entities are eligible to apply for GIC registration in the IFSC?

GICs in the GIFT City have been set up with the purpose of providing service to non-resident entities only. The IFSC framework with respect to GICs lists banks, non-banking financial companies, financial intermediaries, investment banks, insurance companies, re-insurance companies, actuaries, brokerage firms, funds, stock exchanges, clearing houses, depositories, and custodians as entities for whom GICs may be set up. **Accordingly, applicants who want to register as a GIC in the IFSC, should exclusively service entities within its financial services group, i.e., entities that are regulated by the financial services regulator in their home jurisdiction.**

Further, only such entities will be considered eligible to register as GICs, whose parent/ group entities, receiving the services, are located in jurisdictions that are complaint with FATF stipulations. Accordingly, existing non-resident entities in the IFSC can also set up GICs.

3. What are the key registration requirements for setting up a GIC?

An applicant for GIC is required to submit an application form, along with the relevant details which include, copies of constitutional documents and incorporation certificate, organisation chart of the financial services group, including the entities, which will utilise the services of the GICs, business plan with details of revenue and expenditure, details of targeted activities to be carried out, and whether the applicant/ parent entity is based in an FATF compliant jurisdiction, etc.

4. What is the nature of activities that can be undertaken by GICs?

The framework for GICs that may operate in the IFSC specifies that these are entities providing support services for financial products and services. Thus, GICs set up in the GIFT City should be engaged in the services relating to financial products. As per the IFSC Act, financial products and services include, buying, selling, or subscribing to a financial product or agreeing to do so, acceptance of deposits, offering, managing or agreeing to manage assets consisting of financial products belonging to another person, selling, providing, or issuing stored value or payment instruments or providing payment services, etc., or even making arrangements for carrying on any such services. Thus, the scope of providing support services by GICs, pertaining to the financial products and services space, is quite expansive.

5. Are there any regulatory concerns for outsourcing financial services?

The GIC Regulations are silent on the outsourcing of financial services. It is relevant to note the RBI's guidelines in this regard.

As per the RBI Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs, issued on November 9, 2017, and the RBI Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by Banks, it is noted that the outsourcing of any activity does not diminish the obligations of the board of the bank or the NBFC, in any manner, and the ultimate control is retained by the bank/ NBFC. The RBI Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs **define outsourcing as "the NBFC's use of a third party (either an affiliated entity within a corporate group or an entity that is external to the corporate group) to perform activities on a continuing basis that would normally be undertaken by the NBFC itself, now or in the future."**

It is also imperative that the financial institution exercise due diligence while outsourcing services. Per the RBI Guidelines, banks and NBFCs, which decide to outsource their financial services should not, however, outsource core financial services, including internal audit, compliance functioning, KYC norms, etc. Irrespective of whether such financial services are outsourced to a third party or to a member of a group/ conglomerate, the same would be applicable.

Hence, as a matter of prudence and good governance, while outsourcing its financial services, the GIC should be mindful of the RBI guidelines, in addition to the GIC Regulations, in this regard.


5

Specific Financial Business Opportunities: Capital Markets and Asset and Investment Management in International Financial Services Centre

Investment Management and Advisory in International Financial Services Centre

1. What is meant by investment advisory?

Investment advisory means providing advisory services pertaining to purchase, sale or otherwise of securities or investment products, and includes advising on investment portfolio(s) containing a bunch of securities or investment products for the client's benefit.

The advice can be written, oral or communicated through any other form. It also covers financial planning, from analysis of a client's current financial situation to identification of financial aspirations to development and recommendation of financial strategies that will enable the client to realise such financial aspirations.

However, it does not, from a regulatory perspective, incorporate any advice given through newspapers, magazines, or any electronic, broadcasting or telecommunications medium, widely available to the public.

Any person providing investment advice to a person for a consideration is an investment adviser.

2. What are the regulations that govern investment advisors in the IFSC?

Presently, investment advisers operating in the IFSC are primarily governed by:

- The SEBI (IFSC) Guidelines, provide a broad operational framework for various intermediaries, including investment advisers, in the IFSC; the SEBI Operating Guidelines for Investment Advisers in International Financial Services Centre issued in January 2020, provide the operational framework specifically for entities desirous of undertaking the investment advisory services in the IFSC;
- Investment Advisers Regulations provide for governance and regulation of the investment advisers, generally;
- Circulars, guidelines and notifications issued by SEBI in this regard, from time to time;
- Rules, regulations, circulars, guidelines and notifications issued by the IFSC Authority in this regard, from time to time.

In an attempt to streamline the laws pertaining to different capital market intermediaries operating in the IFSC such as, broker dealers, portfolio managers, depository participants, credit rating agencies, custodians, etc., the IFSC Authority has, in July 2021, issued a consultation paper on the draft 'IFSCA (Capital Market Intermediaries) Regulations, 2021' which seeks to provide a comprehensive regulatory framework for various capital market intermediaries including, investment advisers, based on internationally recognised principles. Once enacted, the draft intermediaries' regulations will be the principal regulation governing the establishment and operation of investment advisers in the IFSC, and the Investment Advisers Regulations and other operating guidelines issued by SEBI shall no longer apply to investment advisers in the IFSC. The draft intermediaries' regulations inter alia will cover registration requirements (proposing a simplified registration process for entities already registered in India and in foreign jurisdictions), structuring requirements, net worth requirements (proposing USD 700,000 for entities incorporated in India and USD 1.5 million for foreign entities) and fit and proper requirements, for investment advisers in the IFSC, and propose the conditions and requirements for undertaking cross border business in capital markets in India or a foreign jurisdiction.

3. Who can provide investment advisory services in the IFSC and in what form?

A company or a LLP or any other similar structure recognised under the laws of its parent jurisdiction, which is desirous of operating as an investment adviser in the IFSC, may form a company or LLP to provide investment advisory services in IFSC. However, if the applicant is already operating as a company or an LLP in the IFSC, then incorporation of a separate company or LLP is not required.

Recently, the IFSC Authority has also permitted banking units to provide investment advisory services to persons resident in India and outside India.

Additionally, only SEBI/ IFSC Authority registered investment adviser (under the Investment Advisers Regulation) can provide investment advisory services in the IFSC.

Under the Investment Advisers Regulation, SEBI can recognise any body/body corporate for the purpose of regulating investment advisers and delegate administration and supervision of investment advisers to such body or body corporate. Recently, SEBI has granted recognition to BASL, a subsidiary of the Bombay Stock Exchange Limited, as the 'Investment Adviser Administration and Supervisory Body', to administer and supervise investment advisers for a period of three years from June 1, 2021. It will now be mandatory for all existing SEBI registered investment advisers to become members of BASL. Moreover, for new applicants seeking registration with SEBI as an investment adviser, having membership of BASL will be a prerequisite.

4. Can an NBFC provide investment advisory services in the IFSC?

Yes, an NBFC can provide investment advisory services in the IFSC through a subsidiary or a separately identifiable department or a division. However, in addition to being SEBI-registered, the non-banking financing companies also require permission from the RBI to undertake investment advisory services in the IFSC.

5. Can an entity incorporated outside India provide investment advisory services in the IFSC?

Yes. An entity incorporated outside India can provide investment advisory services by setting up a subsidiary in India and applying through that subsidiary for registration with SEBI/the IFSC Authority.

6. Who can avail investment advisory services in the IFSC?

A person looking to avail investment advisory services in the IFSC, must be either:

- A person resident outside India;
- A non-resident Indian;
- A financial institution resident in India that is eligible under the extant foreign exchange laws of India to invest funds offshore, to the extent of outward investment permitted; or
- A person resident in India having a net worth of at least USD 1 Million during the preceding financial year, who is eligible under the extant foreign exchange laws of India to invest

funds offshore, to the extent allowed in the Liberalised Remittance Scheme of the RBI.

Further, an investor adviser must ensure compliance with the applicable guidelines issued by the relevant overseas regulator/authority while dealing with persons resident outside India and non-resident Indians seeking advice from an investment adviser in the IFSC.

7. Are there any financial criteria for setting up investment advisory service in the IFSC?

Yes. An entity proposing to provide investment advisory services in the IFSC should have a networth of at least INR 5 Crore (approx. USD 700,000). In case the investment advisory is set up as a subsidiary, the networth requirement is to be met by the subsidiary itself. However, if the subsidiary does not meet the criteria, the networth of the parent can be considered.

The aforesaid networth requirement needs to be satisfied by the investment adviser or the parent entity (as the case may be) separately and independently for each activity undertaken by it under relevant regulations.

8. Are there any qualification/certification requirements for investment advisers in the IFSC?

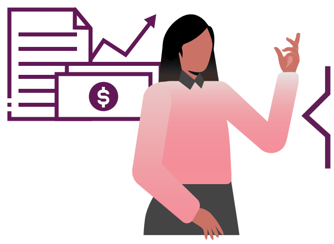
Yes. Partners and representatives of investment advisers offering investment advice should have the following qualifications:

- At all times, have a professional qualification or post-graduate degree or post graduate diploma (minimum two years tenure) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognised by the central government or any state government or a recognised foreign university or institution or association; and
- In activities relating to advice in financial products or securities, or fund/ asset/ portfolio management, or investment advisory services, have an experience of at least five years.

Further, it is mandatory for such partners and representatives to have a certification on following investment advisory services:

- In respect of resident Indian partners and representatives, from:
  - The NISM; or
  - Any other organisation or institution including, the Financial Planning Standards Board India or any recognised stock exchange in India provided that such certification is accredited by NISM; and
- In respect of partners and representatives resident outside India, from any other organisation or institution or association or stock exchange, which is recognised/accredited by a financial market regulator in that foreign jurisdiction.

However, certification from NISM is compulsory for partners and representatives who offer investment advice in relation to the Indian securities markets.



9. Is it necessary for an investment adviser in the IFSC to meet a 'fit and proper test'?

Yes. An investment adviser and its partners, principal officers, directors and persons associated with investment advice should meet the 'fit and proper persons' criteria as prescribed by SEBI. In order to determine whether a person or an entity is 'fit and proper', SEBI may take in account any factors as it deems fit, including the following:

- Integrity, reputation, and character;
- Absence of conviction and restraint orders;
- Competence based on financial solvency and networth; and
- Absence of categorisation as a wilful defaulter.

10. Can an investment adviser in the IFSC also provide distribution services?

- An individual investment adviser cannot provide distribution services; and
- A non-individual investment adviser has to follow client level segregation at the group level for investment advisory and distribution services. This means that the same client cannot be offered both advisory and distribution services within the group of the non-individual entity.

11. Can an investment adviser in the IFSC also provide implementation services?

Yes, an investment adviser can provide implementation services to the advisory clients in securities market, but only through direct schemes or products. However, it cannot charge any implementation fee or consideration, including any commission or referral fee, for such services.

12. What are the key responsibilities of an investment adviser operating in the IFSC?

Some key responsibilities of an investment adviser providing investment advisory services in the IFSC include:

- To act in a fiduciary capacity towards its client and make all relevant disclosures about conflict of interests;
- To not receive consideration (whether by way of remuneration, commission or in any other form) from any person other than the client being advised;
- To maintain an arm's length relationship between its investment advisory activities and other activities;
- To clearly segregate its investment advisory activities from all its other activities;
- To take SEBI's prior approval if there is any change of control of the investment adviser;
- To follow 'KYC' procedure as may be specified by the SEBI;
- To abide by the 'Code of Conduct' prescribed under the Investment Advisers Regulations;
- To not enter into transactions on its own account which are contrary to the advice given by it to its clients for a period of 15 days from the day of such advice. However, if during the period of 15 days, the investment adviser is of opinion that the situation has changed, then it may enter into such has changed, then it may enter into such transactions, on its own account, after giving revised assessment to the client at least 24 hours in advance of entering into such transaction;
- To not act on its own account knowingly to sell or purchase securities or investment products to or from clients;

- To not divulge confidential client information without the consent of the client or if not required under appliable laws;
- To promptly resolve client grievances; and
- To maintain and preserve records (such as, list of clients, the date and nature of advice, the products/securities in which advice was rendered and fee charged, client 'KYC', risk profiling and risk assessment of clients, copies of agreements with clients and investment advice provided to client and it's rationale) electronically or physically for five years.

13. Is an investment adviser operating in the IFSC required to appoint a compliance officer?

Yes. An investment adviser operating in the IFSC must appoint a compliance officer who will be responsible for monitoring compliances by the investment adviser with the requirements under the Securities and Exchange Board of India Act, 1992 and various regulations, notifications, guidelines and instructions issued by SEBI in this regard.

Alternate Investment Funds in International Financial Services Center : A Key Area of Growth

1. What are alternate investment funds?

An alternative investment fund (AIF(s)) is defined under the SEBI (Alternative Investment Funds) Regulations, 2012 ("SEBI AIF Regulations") to mean a privately pooled investment fund/vehicle which collects funds/monies from sophisticated investors, whether Indian or foreign, for investing such funds in accordance with a defined investment policy, for the benefit of its investors. The SEBI AIF Regulations provide the regulatory framework for setting up funds with a variety of strategies including angel funds, VC funds, PE funds, SME funds, infrastructure funds, credit funds, real estate funds, hedge funds, sector agnostic funds etc.).

In India, AIFs are governed and regulated by SEBI under the SEBI AIF Regulations, and are funds, regulatory management of which are not covered under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of SEBI.

AIFs play an important role in India's overall fund regime by serving as an engine for economic growth. They feed the capital requirements of a wide variety of ventures and businesses helping them through different stages of development thus, creating stability and encouraging entrepreneurial spirit.

Currently, there are more than 800 AIFs registered with the SEBI. As per the data published by SEBI, the total capital commitment of these AIFs, as on March 31, 2021, is INR 4,51,216.01 Crore, of which the funds raised from investors is INR 2,30,014.65 Crore and the amount of investments made is INR 2,00,483.50 Crore.

2. What are the legal forms in which an AIF can be set up?

An AIF can be established or incorporated in the form of a trust, a company, an LLP or a body corporate. Notably, an overwhelming number of AIFs set up in India are structured as trusts. Besides relative ease of setting up and operations, a trust structure is not subject to the solvency tests and restrictions on capital redemption or reduction.

The IFSC Authority, by an Order dated September 22, 2020, constituted an Expert Committee (Committee) to examine the relevance and adaptability of Variable Capita Companies (VCC) in the IFSC. The Committee has provided a detailed report recommending the broad framework for the implementation of the VCC structure in the IFSC including principles for incorporation of VCC/sub-fund, capital funding, corporate governance, etc.

3. Are there different categories of AIFs which are permitted to be set up in the IFSC?

AIFs can be set up under any of the following categories:

- Category I AIF: Funds which invest in start-ups, early stage ventures, social ventures, small and medium enterprises, infrastructure sector or areas which the Government of India considers as socially or economically desirable and includes angle funds, venture capital funds, social venture funds, SME funds and infrastructure funds;
- Category II AIF: Residual category i.e., other than Category I AIF and Category III AIF, and which do not undertake leverage other than to meet the day-to-day operational requirements and includes, private equity funds or debt funds, real estate funds etc.; and
- Category III AIF: Funds which employ diverse or complex trading strategies and leverage including through investment in listed or unlisted securities/ derivatives and includes, hedge funds.

4. How are AIFs regulated in the IFSC?

Until 2020, SEBI regulated AIFs in the IFSC pursuant to the SEBI (IFSC) Guidelines 2015 and the 'Operating Guidelines for AIF IFSC (November, 2018). While the former facilitated & regulated the securities market in the IFSC. Together with the SEBI AIF Regulations, these guidelines governed the regulatory framework for setting up and operating AIFs in the IFSC.

In April 2020, the Government of India established IFSC Authority as a 'one stop regulator' for IFSCs in India, vesting in it, the regulatory powers of four Indian regulators, including SEBI. The IFSC Authority has now been vested with the authority and responsibility to regulate and develop the financial market in the IFSC, in India.

Accordingly, the IFSC Authority issues notifications and circulars from time to time to regulate AIFs in the IFSC. The guidelines, notifications and circulars issued by SEBI have not been repealed, replaced, modified, amended or superseded by the IFSC Authority, and the same will also continue to regulate AIFs in the IFSC.

AIFs in IFSC are governed by the terms of SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations). However, special dispensations have been granted to AIFs in IFSCs to equip them with higher operational flexibility while maintaining tax efficiency.

5. What approvals are required to set up an AIF in the IFSC?

Primarily, the following approvals are required for setting up an AIF in the IFSC:

- Approval from relevant SEZ authorities; and
- Approval from SEBI/the IFSC Authority.

Fund management entities of IFSC AIFs may be set up either as a branch of an existing entity or as a new entity in the IFSC. Notably, the option of setting up a branch office is available only to existing fund managers. First time managers desirous of raising a fund in an IFSC must first incorporate an entity in that IFSC, which would be responsible for management of that AIF in IFSC.

The process of setting up of a new company or LLP in GIFT City would be subject to Regulation 7 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 ("ODI Regulations"), in light of the status of entities in IFSCs being of a person resident outside India and given the nature of fund management activity. Under Regulation 7, an Indian party engaged in financial services sector is permitted to set up an overseas joint-venture or a subsidiary subject to certain conditions, including the requirement to procure regulatory NOCs from the relevant financial services regulator in India and overseas.

6. Who can invest in an AIF set up in the IFSC?

Generally speaking, the following persons may invest in AIFs operating in the IFSC:

- A person resident outside India;
- A non-resident Indian;
- An institutional investor resident in India, who is eligible under the extant foreign exchange laws of India to invest funds offshore, to the extent of outward investment permitted; and
- A person resident in India having a networth of at least USD 1 Million during the preceding financial year who is eligible under the extant foreign exchange laws of India to invest funds offshore, to the extent allowed in the Liberalised Remittance Scheme issued by the RBI.

Additionally, funds raising capital from Indian residents should ensure that investments are made in in a manner which does not lead to 'round tripping' of funds in India.

7. Where can AIFs in the IFSC invest?

An AIF operating in the IFSC can invest in:

- Securities which are listed in the IFSC;
- Securities issued by companies incorporated in the IFSC; and
- Securities issued by companies incorporated in India or companies belonging to foreign jurisdiction.

An AIF set up in the IFSC may also invest in the units of other AIFs set up in the IFSC and in AIFs registered with SEBI in India, in compliance with the SEBI AIF Regulations. Further, an AIF in the IFSC can invest in listed securities in India under the FPI route.

8. What are the routes available to an AIF investing in India?

'Units' and entities in an IFSC are treated as 'persons resident outside India' for the purposes of the exchange control laws of India, and hence AIFs in IFSC are deemed to be non-residents.

AIFs in IFSC are permitted to invest in India under the following routes:

- FPI route, wherein an AIF must obtain an FPI licence under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014;
- FVCI route, wherein an AIF must obtain an FVCI licence under the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulation, 2000; or
- FDI route, in accordance with the applicable FDI policy/guidelines issued by the Government of India and RBI in this regard (with sectoral investment limits and other conditions therein applying in such case).

This flexibility under the foreign exchange regulations complements AIF Regulations well, making the IFSC platform attractive for funds of a wide range of strategies viz. angel funds, VC funds, PE funds, infrastructure funds, credit funds, real estate funds, hedge funds etc. The application for registration as an FPI or FVCI could be made by an IFSC AIF before the IFSC Authority.

9. What are the investment limits, both in India and outside, for AIFs operating in the IFSC?

An AIF can invest in India subject to the applicable FPI/FVCI/FDI limits. As regards overseas investments made by AIFs operating in the IFSC, there is no limitation.

10. What should be the currency of investment for any AIF operating in the IFSC?

An AIF operating in the IFSC can accept money from eligible investors only in foreign currency.

11. Is there a minimum corpus requirement for the AIF scheme?

Yes. Each scheme of an AIF should have corpus of at least USD 3 Million.

12. Is there a minimum investment size for an investor in an AIF?

Yes, USD 150,000. However, for investors who are employees or directors of an AIF or employees or directors of the manager of an AIF, the value of investment should be at least USD 40,000.

13. Who is a sponsor of an AIF?

Sponsor is a person(s) who set(s) up the AIF, and includes a promoter in case of a company and designated partner in case of an LLP.

The RBI has recently clarified that an Indian party will be permitted to make sponsor commitments to an AIF in IFSC, as required by the SEBI AIF Regulations, subject to fulfilment of the requirements of Regulation 7 of the ODI Regulations.

The sponsor commitment may also be made by a non-resident person or an entity in IFSC.

14. Who is a manager of an AIF?

Manager is a person or entity who is appointed by an AIF to manage its investments and may also be same as the sponsor of an AIF.

15. Is it mandatory to appoint a custodian for AIFs and what is the role of a custodian?

Yes. It is mandatory to appoint a custodian for Category III AIFs. However, for Category I and Category II AIFs, a custodian has to be appointed only if the corpus of an AIF is more than USD 70 Million.

A custodian is responsible for the safekeeping of securities.

16. How can a sponsor and/or a manager be set up in the IFSC?

A first-time sponsor and/or manager can be setup only as a company or an LLP in the IFSC. A sponsor/manager of an existing AIF in India may act as a sponsor/manager of an AIF set up in the IFSC by:

- Setting up a branch in the IFSC; or
- Incorporating a company or an LLP in the IFSC.

17. What are the key benefits for AIFs in the IFSC?

There are many factors which act as the key drivers for growth of AIFs as a key capital market participant in the IFSC. Some key benefits for AIFs in the IFSC include:

- Overseas investment by AIFs set up in the IFSC need not comply with the requirements and conditions prescribed by SEBI under the SEBI AIF Regulations, such as, obtaining prior approval from SEBI and caps on investment limits;

- To encourage relocation of foreign funds to IFSCs, FPIs have been provided a one-time opportunity for 'off market' transfer of its securities to a 'resultant fund' in IFSC; and
- Sponsor Indian party's contribution to AIFs situated in the IFSC is treated as 'Overseas Direct Investment' and therefore, an Indian party can set up an AIF in IFSC under the automatic route (without requiring an approval), subject to compliance with the applicable extant foreign exchange laws of India.
- Various tax incentives and exemptions are granted to AIFs operating in the IFSC, including:
  - Income from offshore investments by non-resident investors through Category I or Category II AIF is not taxable;
  - Exemption from payment of dividend distribution tax to all three categories of AIFs if set up in the form of a company;
  - Exemption to foreign investors from obtaining PAN if TDS has been deducted from their income by the AIF;
  - Exemption from payment of stamp duty, securities transaction tax and commodities transaction tax for transactions carried out on IFSC exchanges;
  - Tax holiday for 10 consecutive years for units located in the IFSC;
  - No goods and services tax to be paid on services received by a unit in the IFSC and services provided to IFSC/SEZ units or to offshore clients;
  - No tax on interest paid by the IFSC units to non-residents; and
  - Units located in the IFSC will be subject to a lower minimum alternate tax/alternative minimum tax at the rate of 9% instead of the current rate of 15%;
- Restrictions and limitations placed on AIFs by SEBI under the SEBI AIF Regulations from engaging in leverage (such as duration and leverage limits) are not applicable to AIFs operating in the IFSC. The IFSC Authority permits AIFs operating in the IFSC to borrow funds or engage in leveraging activities, subject to certain conditions, including:
  - Maximum leverage along with the methodology for calculation of leverage to be disclosed in the placement memorandum;
  - Leverage to be exercised subject to consent of the investors; and
  - AIF to have a comprehensive risk management framework appropriate to the size, complexity and risk profile of the AIF;
- AIFs in the IFSC are not required to comply with the investment diversification requirements under Regulations 15(1)(c) and 15(1)(d) of the SEBI AIF Regulations, provided that appropriate disclosures are made in the placement memorandum and the investments by AIFs are in line with the risk appetite of the investors. Hence, IFSC AIFs may Invest up to 100% of their investible funds in a single investee company, as against the concentration limits imposed on non-IFSC AIFs
- AIFs in the IFSC are permitted to:
  - Co-invest in a portfolio company through a segregated portfolio by issuing a separate class of units subject to simple disclosure requirements and other conditions; and
  - In addition to other permissible investments, invest in an AIF registered with SEBI in India; and
- They are not required to comply with the 'Net Foreign Exchange Earnings' requirement to the extent of any:
  - Inflow of investible funds from investors;
  - Investments made from such investible funds;
  - Returns earned on such investments inclusive of principal return; and
  - Returns paid to investors from such investments including the original investment.

Establishing Stock Exchanges and Clearing Corporations in International Financial Services Centre

Until the establishment of the IFSC Authority, SEBI was the principle regulator for stock exchanges as well as clearing corporations in the IFSC. Various regulations, guidelines, circulars and notifications were issued periodically by SEBI to regulate the establishment and operation of stock exchanges and clearing corporations in the IFSC, including the SEBI SE and CC Regulations 2018, Chapter II (Stock Exchanges, Clearing Corporations And Depositories) of the SEBI IFSC Guidelines and SEBI Guidelines 2016.

Upon the establishment of the IFSC Authority as a unified regulator for the IFSC, the task of regulating stock exchanges and clearing corporations in the IFSC has been entrusted to it. In April 2021, the IFSC Authority introduced the IFSCA Market Infrastructure Institutions Regulations, effective May 15, 2020, with the aim to regulate the establishment and operation of inter alia stock exchanges and clearing corporations in the IFSC. This IFSC Authority regulation replaces/supersedes the SEBI SE and CC Regulations 2018, Chapter II of the SEBI IFSC Guidelines 2015 and the SEBI Guidelines 2016. However, other applicable circulars and guidelines issued by SEBI will continue to operate unless superseded by any regulation, circular or guideline issued by the IFSC Authority.

2. Who can establish a stock exchange or a clearing corporation in the IFSC?

A company incorporated in an IFSC can seek recognition or approval to operate as a stock exchange or a clearing corporation in the IFSC.

3. What is the role of a clearing corporation in the IFSC?

A stock exchange operating in the IFSC has to use the services of a clearing corporation in the IFSC for the purposes of clearing and settlement of its trades, in accordance with an agreement between them. A clearing corporation includes clearing houses.

4. Is it mandatory to obtain a recognition or approval to operate as a stock exchange or a clearing corporation in the IFSC? What is the process for setting up a stock exchange or a clearing corporation in the IFSC?

Yes. To establish and operate as a stock exchange or a clearing corporation in the IFSC, recognition from or approval of the IFSC Authority must be obtained.

To set up a stock exchange or a clearing corporation in the IFSC:

- An application seeking recognition as a stock exchange or a clearing corporation must be made to the IFSC Authority in the prescribed form along with payment of the requisite fee;
- Such application needs to be accompanied with the documents specified under the IFSCA Market Infrastructure Institutions Regulations, including, a copy of the memorandum and

articles of association of the company seeking such recognition;

- The applicant must comply with the following requirements:
  - It should be a company limited by shares;
  - It should be demutualised;
  - It and its directors and shareholders should be 'fit and proper' persons;
  - It should satisfy the requirements relating to ownership and governance structure, as described below in more detail;
  - It should satisfy the networth requirements;
  - It should have the financial capacity and functional expertise; and
- Upon being satisfied that the applicant satisfies the requirements under the IFSCA Market Infrastructure Institutions Regulations and is eligible to act as a stock exchange or a clearing corporation in the IFSC, the IFSC Authority will grant recognition to the applicant to organise, conduct and operate as a stock exchange or a clearing corporation in the IFSC.

5. Is the recognition granted by the IFSC Authority to operate as a stock exchange or a clearing corporation in the IFSC permanent? Can a recognition once granted be withdrawn subsequently?

The period of recognition granted to a stock exchange or a clearing corporation in the IFSC can be permanent or can be for such other period as may be specified by the IFSC Authority. However, such period cannot be less than one year.

Further, the recognition granted may be withdrawn by the IFSC Authority after giving a reasonable opportunity of hearing and the procedure provided under Section 5 of the Securities Contracts (Regulation) Act, 1956 shall be followed to withdraw the recognition granted to a stock exchange or a clearing corporation.

6. Are there any limitations on shareholding in a stock exchange in the IFSC?

Yes. The shareholding structure in a stock exchange in the IFSC must be as follows:

- At least 26% of the paid-up equity share capital in a stock exchange in the IFSC should be held by an Indian recognised stock exchange or any stock exchange recognised in a foreign jurisdiction. Alternatively, a consortium of market infrastructure institutions recognised in India, the IFSC or a foreign jurisdiction should hold at least 51% of the paid-up equity share capital of the stock exchange in the IFSC. However, within such consortium, 51% or more of the shareholding must be held by a stock exchange recognised in India, the IFSC or a foreign jurisdiction; and
- Any other person in India, the IFSC or a foreign jurisdiction cannot at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than 25% of the paid-up equity share capital in a stock exchange in the IFSC; and
- There should be no conflict of interest and prior approval of the IFSC Authority is required if a person acquires, directly or indirectly, either individually or together with persons acting in concert, 10% or more of the paid-up equity share capital or voting rights, in a stock exchange in the IFSC.

  Adequate monitoring mechanisms need to be established by a stock exchange in the IFSC to ensure compliance with these shareholding conditions, at all times.

7. Are there any limitations on shareholding in a clearing corporation in the IFSC?

Yes. The shareholding structure in a clearing corporation in the IFSC must be as follows:

- At least 26% of the paid-up equity share capital in a clearing corporation in the IFSC should be held by a stock exchange or a clearing corporation recognised in India, the IFSC or a foreign jurisdiction. Alternatively, a consortium of market infrastructure institutions recognised in India, the IFSC or a foreign jurisdiction, should hold at least 51% of the paid-up equity share capital of the clearing corporation in the IFSC. However, within such consortium, 51% or more of the shareholding must be held by a stock exchange recognised in India, the IFSC or a foreign jurisdiction; and

- Any other person in India, the IFSC or a foreign jurisdiction cannot at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than 25% of the paid-up equity share capital in a clearing corporation in the IFSC; and
- There should be no conflict of interest and prior approval of the IFSC Authority is required if a person acquires, directly or indirectly, either individually or together with persons acting in concert, 10% or more of the paid-up equity share capital or voting rights, in a stock exchange in the IFSC.

Adequate monitoring mechanisms need to be established by a clearing corporation in the IFSC to ensure compliance with these shareholding conditions, at all times.

8. What are the disclosure requirements vis-à-vis shareholding for a stock exchange or a clearing corporation in the IFSC?

A stock exchange or a clearing corporation in the IFSC have to make shareholding disclosures every quarter (within 15 days from the end of each quarter) to the IFSC Authority , which should include details of names of 10 largest shareholders along with the number of shares held and their respective percentage shareholding and also the names of shareholders who acquired shares in the relevant quarter.

9. What is the minimum networth requirement to set up a stock exchange or a clearing corporation in the IFSC?

A stock exchange or a clearing corporation operating in the IFSC must maintain a networth of at least USD 3 Million, at all times. If required, a higher networth may be prescribed by the IFSC Authority as a risk management measure, based on the nature and scale of business.

To ensure compliance with this requirement, the stock exchange or the clearing corporation in the IFSC needs to submit an audited net worth certificate from the statutory auditor, on a yearly basis (by September 13 of every year for the preceding financial year), to the IFSC Authority.

10. What is demutualisation?

Demutualisation means that ownership and management of the applicant seeking recognition as a stock exchange or a clearing corporation is segregated from the trading rights or clearing rights (as applicable) of its members.

11. What is the 'fit and proper' test?

A stock exchange or a clearing corporation in the IFSC must ensure that, at all times, its respective directors, key managerial personnel and shareholders are 'fit and proper' persons. However, if listed, the responsibility to ensure 'fit and proper' person for shareholders is on:

- the acquirer, in respect of shareholding of less than 5% in the recognised market infrastructure institution; and
- both the acquirer and the relevant recognised market infrastructure institution, in respect of shareholding of 5% or more in the recognised market infrastructure institution.

A person will deemed to be 'fit and proper' if:

- He/she has a general reputation and record of fairness and integrity, including but not limited to financial integrity, good reputation and character and honesty;

  He/she has not incurred inter alia the following disqualifications:

  - A conviction by a court, meted out to

a person or its whole-time directors or managing partners, for any offence involving moral turpitude or any economic offence or any offence against the securities laws;

- A recovery proceeding has been initiated against the person by a financial regulatory authority and is pending;
- An order for winding up has been passed against the person for malfeasance;
- The person, or any of its whole-time directors or managing partners, has been declared insolvent and has not been discharged;
- An order, restraining, prohibiting or debarring the person or any of its whole-time directors or managing partners, from dealing in financial products or financial services or from accessing the securities market, has been passed by the IFSC Authority or any other regulatory authority and a period of 3 years from the date of the expiry of the period specified in the order has not elapsed;
- Any other order against the person, or any of its whole-time directors or managing partners, which has a bearing on the securities market, has been passed by the IFSC Authority or any other regulatory authority, and a period of three years from the date of the order has not elapsed;
- The person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;
- The person is financially not sound or has been categorised as a wilful defaulter; or
- The person has been declared a fugitive economic offender.

12. Are there any additional conditions for setting up a stock exchange in the IFSC?

Yes. In addition to the conditions set out in Paragraph 4 above, an applicant seeking recognition as a stock exchange inter alia needs to have:

- Necessary infrastructure for timely clearing and settlement of trades;
- An adequate risk management mechanism;
- A settlement procedure for trades in a manner specified by the IFSC Authority;
- Capacity to have a fund to guarantee settlement of trades;
- Necessary capability to have a wide network of clearing members and adequate facility to admit and regulate its members;
- Established connectivity with depositories, clearing banks, stock exchange and clearing members;
- Adequate system capacity for on-line/real time risk management of trades cleared and settled, supported by a suitable business continuity plan, including a disaster recovery site;
- Sufficient number of employees having adequate professional and other relevant experience;
- Necessary arrangements for resolving disputes and redressal of grievances arising out of clearing and settlement of trades; and
- An agreement with a depository and with a stock exchange in the IFSC in respect of clearing and settlement of trades.

13. Are there any additional conditions for setting up a clearing corporation in the IFSC?

Yes. In addition to the conditions set out in Paragraph 4 above, an applicant seeking recognition as a clearing corporation inter alia needs to have:

- Necessary infrastructure for orderly execution of trades;
- An online screen-based trading system;
- An online surveillance capability which monitors prices, volumes and positions in real time so as to ensure market integrity;
- Adequate infrastructure to list securities for trading on its platform, wherever applicable;
- Necessary capability to have a comprehensive network of trading members and adequate facility to admit and regulate its members;
- Necessary arrangements to establish connectivity with its trading members and clearing corporation;

- Adequate investor grievance redressal mechanism and arbitration mechanism to resolve disputes arising out of trades and its settlement;
- Facility to disseminate information about trades, quantities and quotes in real time to at least two information vending networks which are accessible to investors;
- Adequate system capacity supported by a business continuity plan, including a disaster recovery site; and
- Sufficient number of employees having adequate professional and other relevant experience.

14. Are stock exchanges or clearing corporations in the IFSC required to pay a regulatory fee?

Yes. A stock exchange or a clearing corporation in the IFSC must pay a regulatory fee as prescribed by the IFSC Authority.

15. Can a stock exchange or a clearing corporation operating in the IFSC list its securities?

Yes. Subject to IFSC Authority's approval, a stock exchange or a clearing corporation recognised by the IFSC Authority to operate in the IFSC can apply for listing of its securities on any stock exchange.

16. Is prior approval required for admission of securities by a stock exchange or a clearing corporation in the IFSC?

Yes. A stock exchange or a clearing corporation recognised in the IFSC has to seek IFSC Authority's prior approval before introducing or offering settlement services to any new category of securities.

17. Can a stock exchange or a clearing corporation in the IFSC engage in any activities involving deployment of funds?

No. Except with the IFSC Authority's prior approval, a stock exchange or a clearing corporation in the IFSC cannot carry on any activity which involves deployment of funds. However, no prior approval will be required in case of treasury investments, if such investments are as per the investment policy approved by the governing board of such stock exchange or clearing corporation.

Further, a stock exchange or a clearing corporation in the IFSC can engage in activities involving deployment of funds or otherwise that are unrelated or not incidental to its activity as a stock exchange or a clearing corporation through a separate legal entity and subject to IFSC Authority's approval.

18. Is a stock exchange in the IFSC required to establish an 'Investor Education and Protection Fund'?

Yes. A stock exchange in the IFSC has to establish this fund in the manner as specified by the IFSC Authority.

19. Is a clearing corporation in the IFSC required to establish a 'Settlement Guarantee Fund'?

Yes. A clearing corporation in the IFSC is required to establish and maintain a 'Settlement Guarantee Fund' to guarantee the settlement of trades executed on a stock exchange, and such fund should at least have the minimum required corpus as arrived at from the monthly stress test value or USD 1 Million, whichever is higher.

20. What are the trading hours and settlement period for stock exchanges established in the IFSC?

The trading hours for all product categories is as decided by the relevant stock exchange in the IFSC. However, the same cannot exceed a duration of 23 hours and 30 minutes in a day and settlement should be done at least twice a day.

21. What are the governance requirements for a stock exchange or a clearing corporation in the IFSC?

A stock exchange or a clearing corporation in the IFSC needs to adopt the broader principles of governance prescribed by the IOSCO, 'Principles for Financial Market Infrastructures by Committee on Payments and Market Infrastructures (CPMI)' and such other governance norms which the IFSC Authority may intermittently prescribe. The IFSCA Market Infrastructure Institutions Regulations require that a recognised stock exchange or a recognised clearing corporation should meet the following governance requirements:

Governing board

- A recognised stock exchange or a recognised clearing corporation's governing board should meet certain requirements including:
- Members of governing board to include shareholder directors, public interest directors and a managing director;
- All director appointments to be subject to IFSC Authority's prior approval;
- Trading members/clearing members in the IFSC or their associates and agents (except persons on board of a scheduled commercial bank or public financial institution) not to be on the governing board;
- Board's chairperson to be elected from amongst the public interest directors;
- Number of public interest directors to be not less than the number of shareholder directors;
- Managing director to be from amongst the shareholder directors;
- Term of appointment of managing director to not exceed five years subject to maximum age limit of 70 years. However, he may be re-appointed subject to the IFSC Authority's approval;
- An employee of a recognised market infrastructure institution can be appointed on the governing board in addition to the managing director and such director will deemed to be a shareholder director; and
- Public interest director to be nominated for a term of three years, extendable by another term of three years subject to performance review as may be specified by the IFSC Authority;

Statutory committees

- Should be established as the IFSC Authority may specify from time to time;

Regulatory departments

- Should be clearly segregated from other departments by adopting a policy;

'Code of Conduct'

- As specified by the IFSC Authority should be complied with by the directors and key managerial personnel;

Compliance officer

- Should be appointed for monitoring compliance with applicable laws and for redressal of investors' grievances.

22. What relaxations/exemptions/benefits are available to a stock exchange or a clearing corporation setup in the IFSC vis-à-vis stock exchanges and clearing corporations operating in a non-IFSC zone?

While, through the IFSCA Market Infrastructure Institutions Regulations, it appears that the IFSC Authority has attempted to streamline the regulation of stock exchanges and clearing corporations in the IFSC, nonetheless, stock exchanges or clearing corporations in the IFSC offer certain benefits, facilitated through the SEBI SE and CC Regulations 2018, that make IFSC an attractive destination for providing capital market related products and services. These include:

- A stock exchange or a clearing corporation in the IFSC is required to meet a lower minimum networth requirement of USD 3 Million compared to INR 100 Crore (approx. USD 13 Million) required to set up a stock exchange or a clearing corporation in India;
- Relaxation in shareholding limits for foreign entities holding shares in a stock exchange or a clearing corporation in the IFSC; and
- To procure increased participation from regulated entities belonging to foreign jurisdictions in stock exchanges and clearing corporations in the IFSC,

the IFSC Authority has now permitted eligible foreign entities to set up a branch office in the IFSC and operate as stockbrokers and clearing members after taking its approval.

The continuing efforts to make IFSC a world class financial services platform is also evident with the recent introduction of the 'Negotiated Large Trade' facility for derivatives on stock exchanges, by the IFSC Authority. The IFSC Authority has prescribed the operational framework for such 'NLT' facility and has advised stock exchanges to devise proper mechanisms for implementation of the same. The IFSC Authority seeks to garner greater foreign participation through such 'NLT' facility.

23. What are the tax incentives for capital market participants in the IFSC, including stock exchanges and clearing corporations in the IFSC?

Some key tax incentives available to capital market participants in the IFSC include:

- No capital gains tax for sale of specified securities listed on a stock exchange in the IFSC, by a non-resident or category III AIF located in the IFSC;
- No securities transaction tax or commodities transaction tax will be charged on transactions carried out on stock exchanges located in the IFSC;
- No stamp duty will be levied and paid on transactions carried out on stock exchanges established in the IFSC;
- No tax on transfer of bonds, global depository receipts, rupee denominated bonds and derivatives by non-residents on stock exchanges located in the IFSC; and
- Tax will be chargeable at the rate of 4% on interest paid to non-resident on long-term bonds and rupee denominated bonds listed on a stock exchange in the IFSC.

24. Who are the other key capital market participants eligible to operate in the IFSC?

Some other key capital market participants eligible to operate in the IFSC include, commodity exchanges and depositories, and intermediaries such as, mutual funds, portfolio managers, stock-brokers, sub-brokers, merchant bankers, share transfer agents, registrars to issue, bankers to issue and underwriters.

Bullion Exchanges In International Financial Services Centre

1. What is a bullion exchange and what is a bullion?

A bullion exchange is a financial unit set up in the IFSC for regulating and controlling contracts for the sale and purchase of bullion, bullion depository receipts or such other bullion products, including derivatives on bullion, bullion spot delivery contracts, and other contracts permitted in an IFSC by the IFSC Authority.

Bullion means precious metals, including gold and silver in the form of bars or unallocated gold, silver, or such other precious metals, as the IFSC Authority may consider relevant.

2. What is the legal framework governing bullion exchanges in the IFSC?

IFSC Authority which has been entrusted with the task of operationalisation of the bullion exchange has introduced the IFSCA Bullion Exchange Regulations which provides the framework for recognition and operation of bullion exchanges, as well as their clearing corporations, depositories and vaults in the IFSC.

However, the IFSCA Bullion Exchange Regulations must not be read in isolation as, with the recent amendment to the IFSCA Bullion Exchange Regulations, the IFSC Authority has clarified that in case there is a conflict between the provisions of the IFSCA Bullion Exchange Regulations and the IFSCA Market Infrastructure Institutions Regulations pertaining to the same subject matter, the provisions of the IFSCA Market Infrastructure Institutions Regulations will prevail.

3. What is the scope of growth for a bullion exchange operating in the IFSC?

India being the second largest consumer of gold in the world, with a household accumulation of approximately 22,000 tonnes of gold, provides tremendous opportunity of growth for bullion exchanges in India. With the establishment of a bullion exchange in the IFSC (being established as a regulatory regime of international repute and credibility), a platform will be provided for the introduction of such accumulated gold and bullion into the market, making gold/bullion a mainstream asset class, and regulation of the bullion market through such bullion exchange would facilitate efficient price discovery, ensure quality assurance and encourage global participation.

Recently, the IFSC Authority has released a consultation paper proposing certain amendments to the IFSCA Bullion Exchange Regulations in order to align some of its provisions with the IFSCA Market Infrastructure Institutions Regulations to bring consistency in the broad framework for market infrastructure institutions operating in the bullion market and the securities markets, in an IFSC. The paper inter alia proposes to amend the provisions in relation to grant of recognition to bullion exchanges and bullion clearing corporation, shareholding, governance, statutory committees, trading hours, risk management and registration and liabilities of vault managers.

4. What is a bullion clearing corporation?

A bullion clearing corporation is a financial unit set up in the IFSC for offer clearing and settlement functions in the bullion market, which comprises bullion exchanges, bullion clearing corporations, bullion depositories, vaults, bullion contracts dealt therein, and any other persons involved with such market.

5. What are the requirements of setting up a bullion exchange or a bullion clearing corporation in the IFSC?

An application seeking recognition for setting up a bullion exchange or bullion clearing corporation must be made along with payment of the prescribed fee to the IFSC Authority, under the IFSCA Bullion Exchange Regulations.

The applicant must:

- Be a company limited by shares;
- Have demutualised;
- Have a networth of USD 30 Million, to be maintained on a continuing basis;
- Have 'fit and proper' persons as its directors and its shareholders;
- Satisfy the requirements relating to ownership and governance structure, as described below in more detail; and
- Must have financial capacity and functional expertise.

6. What does 'demutualisation' of applicant mean in terms of the IFSCA Bullion Exchange Regulations?

Demutualisation means that ownership and management of the applicant seeking recognition of the bullion exchange or the bullion clearing corporation is segregated from the trading rights or clearing rights (as applicable).

7. Are there any additional conditions for setting up a bullion exchange in the IFSC?

Yes. In addition to the conditions set out in Paragraph 5 above, an applicant seeking recognition as a bullion exchange inter alia needs to have:

- Necessary infrastructure for orderly execution of trades;
- An online screen-based trading system;
- An online surveillance capability which monitors positions, prices and volumes in real time so as to ensure market integrity;

- Adequate infrastructure to list bullion depository receipts for trading on its platform;
- Necessary capability to have a comprehensive network of trading members and adequate facility to admit and regulate its members;
- Necessary arrangements to establish connectivity with its trading members and bullion clearing corporation;
- Adequate consumer protection fund for the purpose of consumer education and providing compensation to consumers in case of defaults by the bullion trading member;
- Consumers' grievance redressal mechanism and arbitration mechanism to resolve disputes arising out of trades and its settlement;
- Facility to disseminate information about trades, quantities and quotes in real time to at least two information vending networks which are accessible to consumers; and
- Sufficient number of employees having adequate professional and other relevant experience.

8. Can a recognition given to a bullion exchange be withdrawn subsequently?

Yes. The IFSC Authority can withdraw the recognition given to a bullion exchange in the interest of trade or public interest, after giving a reasonable opportunity of hearing.

9. What are the functions of a bullion exchange?

A bullion exchange is touted with the responsibility of protecting consumer interest in the bullion market, regulating bullion contracts and promoting growth, transparency and orderly development of the bullion market by working closely with global agencies. To this end, some of the major functions of a bullion exchange include:

- Regulating bullion contracts;
- Regulating the working of bullion trading members and other intermediaries associated with the bullion exchange;
- Establishing and enforcing good delivery standards;
- Prohibiting fraudulent and unfair trade practices in the bullion market;
- Promoting consumer education and training of intermediaries of bullion market;
- Levying fees or other charges for carrying out the purposes of the IFSCA Bullion Exchange Regulations;
- Setting standards of quality, quantity and other parameters as well as means of verification of such standards;
- Setting standards for vaulting and transport of bullion; and
- Calling for information by undertaking inspection, conducting inquiries and audits of the bullion trading members, intermediaries and other persons associated with the bullion exchange.

10. What is the shareholding structure and limits of a bullion exchange or a bullion clearing corporation?

- Up to 51% shareholding: Up to 51% shareholding must be held by any Indian bullion exchange or a recognised stock exchange, or any bullion exchange or stock exchange of a foreign jurisdiction, either on its own or through a consortium by forming a subsidiary; and
- Balance % shareholding: To be held by any other person (whether Indian or of foreign jurisdiction) and such person must not, directly or indirectly, either individually or together with persons acting in concert acquire or hold more than 5% of the paid-up equity share capital in a bullion exchange or a bullion clearing corporation; and
- A bullion exchange, a bullion depository, a stock exchange, a depository, a banking company, an insurance company, or a commodity derivatives exchange, whether Indian or of foreign jurisdiction, or a public financial institution of Indian jurisdiction, or a bilateral or multilateral financial institution approved by the Central Government, may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert up to 15% of the paid-up equity share capital in a bullion exchange or a bullion clearing corporation.

11. What are the governance requirements for a bullion exchange or a bullion clearing corporation in the IFSC?

A bullion exchange or a bullion clearing corporation need to adopt the broader principles of governance prescribed by IOSCO, 'Principles for Financial Market Infrastructures (FMI)' and such other governance norms, which the IFSC Authority may prescribe.

The IFSCA Bullion Exchange Regulations require that a recognised bullion exchange and a recognised bullion clearing corporation should have in place, a governing board, statutory committees and a compliance officer.

Governing Board

- A recognised bullion exchange and a recognised bullion clearing corporation's governing board should meet certain requirements including:
- Members of governing board to include shareholder directors, public interest directors and a managing director;
- A governing board cannot accommodate persons who are bullion trading members/bullion clearing members or their associates & agents, irrespective of the bullion stock exchange or bullion clearing corporation of which they are members;
- Board's chairperson to be elected from amongst the public interest directors;
- Number of public interest directors to be not less than the number of shareholder directors;
- Public interest director to be nominated for a term of three years, extendable by another term of three years subject to performance review as may be specified by IFSC Authority;
- Term of appointment of managing director to not exceed five years subject to maximum age limit of 65 years; and
- Appointment of directors to be subject to IFSC Authority's prior approval.

Statutory Committees

- A recognised bullion exchange and a recognised bullion clearing corporation has to constitute the following committees:
- Functional committee, comprising member and core settlement guarantee fund committee;
- Grievance redressal committee;
- Nomination and remuneration committee;
- Oversight committee, comprising of standing committee on technology;
- Advisory committee;
- Regulatory oversight committee;
- Audit committee; and
- Risk management committee.

Appointment of Compliance Officer

- A recognised bullion exchange and a recognised bullion clearing corporation has to appoint a compliance officer. This compliance officer will be responsible for monitoring compliance with the IFSCA Bullion Exchange Regulations, or circulars/guidelines/directions issued by the IFSC Authority, and for redressal of investors' grievances.

12. Do the IFSCA bullion exchange regulations provide any preference to a bullion clearing corporation to recover dues from its bullion clearing members?

Yes, a bullion clearing corporation will have priority to recover from the collaterals, deposits and the assets of its bullion clearing members, over any other liability of or claim against them, in order to recover dues from its bullion clearing members arising from the discharge of their clearing and settlement functions.

13. What is a bullion depository and what are the requirements for granting recognition to a bullion depository in the IFSC?

A bullion depository is a financial unit set up in the IFSC which has been recognised by the IFSC Authority to carry out the depository business in bullion in an IFSC.

An application seeking recognition as a bullion depository in the IFSC will be granted subject to fulfilment of certain requirements. These include:

- A networth of at least USD 15 Million, on a continuous basis;
- Execution of an agreement with a vault manager having the necessary infrastructure and standards for safe storage of bullion and its security;
- Having established standards of encrypted transmission and reconciliation mechanisms for electronic communications of data between the bullion depository, participants, issuers and issuers' agents;
- Having physical or electronic access to the premises, facilities, automatic data processing systems, data storage sites and facilities including back up sites and facilities and to the electronic data communication network connecting the bullion depository, participants, issuers and issuers' agents is controlled, monitored and recorded; and
- Having adequate arrangements including insurance for indemnifying the beneficial owners for any loss that may be caused by the wrongful act, negligence or default of the bullion depository or its participants or agents or of any of their employees.
- The IFSC Authority, before granting approval, will physically verify the infrastructure facilities and systems established by the bullion depository and the vault.

14. Who is a vault manager and what are the liabilities of a vault manager functioning in the IFSC?

A vault manager is a person registered with the IFSC Authority whose primary responsibility is to manage the vault which has been empanelled by a bullion depository for carrying on the vaulting business.

A person must make an application to the IFSC Authority for procuring registration as a vault manager. Along with this application, such person will also have to submit an undertaking acknowledging and agreeing to its liabilities under the IFSCA Bullion Exchange Regulations, which include:

- Liability for loss of, or any injury to, bullion stored in a vault managed by it, arising out of its failure to exercise such care and diligence as a careful and vigilant owner of the bullion in their custody would exercise.

  Liability in case of loss or damage to the bullion in following two scenarios:

- Despite taking all care and precautions, if loss/damage occurs due to unavoidable circumstances, then compensation payable by the vault manager will be equal to the value of bullion at the time of its deposit; and
- If loss/damage occurs due to negligence, then the compensation payable by the vault manager will be equal to value of the bullion plus the loss of profit payable to the beneficial owner or the depositor, as the case may be.

  However, the vault manager will not be responsible for any loss, destruction, damage or deterioration of the bullion attributable to circumstances such as force majeure, act of war, act of public enemies and the like.


6.

Specific Financial Business Opportunities: Insurance Regime In IFSC

Background of Insurance in IFSC

The IRDAI gave a major boost to insurance operations in 2015 by issuing regulations for insurance firms to carry out offshore business from Gujarat-based GIFT IFSC. The insurance sector in IFSC has seen various developments since then and has been gaining attention. According to Tapan Ray, MD & Group CEO, IFSC, "IFSC at GIFT City is fast emerging as a hub for global financial services business. While Banking and Capital Markets verticals have been doing extremely well, the insurance and re-insurance business in IFSC is also gaining momentum..."[1]. The first private non-life insurance company received approval to set up an insurance office at IFSC on February 5, 2021, enabling it to conduct direct insurance and reinsurance businesses within the IFSC, SEZs and outside the country.

1. Describe how the insurance sector has been set up in IFSC and the legislative framework governing these entities.

To protect and regulate insurance business in SEZs, the IRDAI has laid down the IRDAI (RIB) Rules, 2015. The IRDAI laid down a set of guidelines on April 7, 2015 to put in place the process of registration and operations of insurers and reinsurers in IFSC SEZs in alignment with the IRDAI (RIB) Rules, 2015. These guidelines have now been replaced by the IIO Guidelines. On January 28, 2016, the IRDAI issued a circular allowing Insurance Brokers to set up IFSC Insurance Broking Offices to facilitate insurance and reinsurance business in IFSCs. Further, on January 16, 2019, the IIIO Guidelines for all insurance intermediaries interested in undertaking operations in the IFSC as per the objectives of the Rules, subsuming the aforementioned circular. Section 13 of the IFSC Authority Act, as notified with effect from October 1, 2020, authorises the IFSCA to exercise all such powers as exercisable by the relevant sectoral regulators including the IRDAI. Unlike the regulation of banking units in IFSC SEZs for which the IFSCA has notified the IFSCA Banking Regulations (as amended), no separate directive for registration and regulation of IIOs and IIIOs have been notified/ effected by the IFSCA as on date. The IFSCA continues to rely on the aforementioned guidelines issued by the IRDAI with respect to regulation of insurers/ insurance intermediaries set up in IFSC SEZs. Pursuant to notification of Section 13 of the IFSC Authority Act, given that the IFSCA shall be the concerned authority to exercise all such powers as exercisable by the IRDAI2 vis-à-vis the IIOs and IIIOs, it is expected that fresh regulations are promulgated by the IFSCA for the purposes of regulation of IIOs and IIIOs.

In this regard, exercising its powers under Section 13 of the IFSC Authority Act, the IFSCA on July 30, 2021 released the draft IFSCA (Registration of Insurance Business) Regulations, 2021 ("Draft Regulations") for public consultation, effectively proposing to replace the IIO Guidelines. In this context, it must be noted that the Draft Regulations are not in a finalized form and pursuant to completion of the public consultation process, it may be subject to changes.

[1] Press Release dated February 5, 2021 issued by ICICI Lombard General Insurance Company Limited.

[2] IFSCA Notification dated September 29, 2020.

2. What are some of the recent legislative developments which make insurance in IFSC attractive to investors?

Since 2015 the IRDAI has regularly intervened to ease the hurdles in the way of doing business for insurance companies and to ensure that the interests of the policyholders are protected at all times.

Insurance in IFSC has also seen certain important developments. Since the second half of 2020, the IFSCA has set up various expert committees, including a committee of experts on insurance. The IFSCA Expert Committee on international retail business development in the IFSC, in its second interim report to the chairperson of the IFSCA, has made various suggestions to make IFSC an attractive destination for life, health and non-life insurance companies. The report[3] also suggested various changes to reduce capital requirements, relax maintenance of separate solvency margins, allowing retrocession beyond the fixed limit of 90% and encouraging foreign reinsurance brokers to set up offices in IFSCs. On January 18, 2021, the IFSCA issued a circular clarifying the provisions of the IIO Guidelines regarding maintenance of solvency margins, simplifying the compliance process for the first 5 (five) years of operation.

It must be noted that the Government of India has completed the liberalisation of foreign direct investment in investment intermediaries, permitting non-residents to acquire 100% stake in insurance intermediaries, subject to verification by the IRDAI. In continuation of the trend to provide a boost to this growing sector, Finance Minister Nirmala Sitharaman, during her speech for the Union Budget 2021-2022, announced a proposal to amend the Insurance Act to increase the permissible foreign direct investment limit from 49% to 74% in insurance companies. Subsequently, the Insurance (Amendment) Act, 2021 has been enacted to amend the Insurance Act, carrying out changes to enable increased foreign direct investment in insurance companies and to allow foreign ownership and control of insurance companies with safeguards.

3. Which insurance entities are currently allowed to operate in IFSC?

Before we answer this, it is important to get a general overview of the insurance sector in India.

The statutory framework governing the Indian insurance sector is the Insurance Act, the IRDA Act, the Marine Insurance Act, 1963 and the regulations, rules, guidelines and circulars issued by the IRDAI from time to time. All insurance companies are required to be registered with the IRDAI for conducting any kind of insurance business in India. Further, insurance and corporate agents are required to be licensed in accordance with the IRDA (Licensing of Insurance Agents) Regulations, 2000 and IRDA (Licensing of Corporate Agents) Regulations, 2015, respectively. Insurance brokers and reinsurance brokers are required to be licensed in accordance with the IRDA (Insurance Brokers) Regulations, 2018. All entities engaged in the insurance sector are required to comply with the regulations/guidelines issued by the IRDAI, as applicable to them.

The insurance sector in India comprises the following participants:

a) Insurance companies (general insurance and life insurance);

b) Insurance intermediaries – insurance intermediaries are responsible for sale, solicitation and servicing of insurance products and include product distributors and ancillary service providers. These can be further classified under the following broad categories:

- Product distributors: The intermediaries falling under this category undertake the sale and solicitation of insurance policies to policyholder. Insurance agents, corporate agents, insurance brokers, point of sale agents (POS), web aggregators and insurance marketing firms, fall under this category of intermediaries.
- Ancillary service providers: These intermediaries are not directly involved in the sale and solicitation of insurance products, but provide services which assist in completion of sale

and servicing of insurance policies. Third party administrators, insurance repositories, surveyors and loss assessors fall under this category of intermediaries.

c) Re-insurers–re-insurers are entities which are engaged in the business of covering or indemnifying insurance risks accepted by insurance companies under the insurance products provided by them.

The following category of insurance sector participants are permitted to set up offices in the IFSC:

- An Indian insurer
- An Indian reinsurer
- A foreign insurer
- A foreign reinsurer
- An insurance intermediary

For operating in IFSC, insurers and reinsurers are required to set up an IIO, whereas insurance intermediaries are required to set up an IIIO.

Operations and Eligibility

1. Which activities are permitted to be carried out in an IFSC by entities engaged in the insurance sector?

Depending on the type of activity an entity wishes to undertake, it may open an IIO or an IIIO, in accordance with the provisions of the applicable guidelines. In terms of the IIO Guidelines, the only activity an IIO is permitted to undertake in the IFSC is insurance or reinsurance business and cannot engage itself in any business other than as permitted by the IRDAI.

An IIO may be registered with the IRDAI to carry out the following types of insurance business :

The IRDAI may permit the IIO to transact either direct life insurance business or direct general insurance business (but not both) or reinsurance business. Further, although located in India, an IIO is prohibited from transacting a class of business, which is not permitted to the applicant company by its home country regulatory or supervisory authority.

The registered IIO may have the flexibility to transact direct insurance business from

a) within the IFSC,

b) other SEZs and

c) outside India.

However, they cannot transact direct insurance business in other zones within India. Further, the IIO registered to transact direct insurance business is not permitted to write direct insurance business from the DTA[4] except in accordance with Section 2CB of the Insurance Act. Section 2CB provides that IIOs may be permitted to undertake direct insurance business only in relation to properties located in India or vessels, ships or aircraft registered in India on obtaining approval from the IRDAI.

IIOs registered with the IRDAI for reinsurance business may only accept reinsurance business:

a) from within the IFSC, from other SEZs and from outside India;

b) from the insurers operating in the DTA in accordance with the order of preference for cession, as per extant regulations notified by the IRDAI.

The following category of IIIOs may be authorised by the IRDAI to operate in IFSC:

a) insurance brokers;

b) corporate agents;

c) surveyors and loss assessors;

d) third party administrators – health services; or

e) any other category of intermediary recognised by the IRDAI from time to time.

IIIOs are permitted to undertake insurance intermediary business emanating outside the country. IIIOs can undertake only the insurance intermediary business, as authorised by the IRDAI, and which is permitted under SEZ Act and the rules framed thereunder.

2. Who is eligible to open an IIO in IFSC?

Before commencement of business through an insurance office in IFSC, insurers and reinsurers are required to obtain prior registration as IIO. The chairperson of the IRDAI has the power to, at his or her discretion, approve such an application. Clause 11 of the IIO Guidelines lays down certain eligibility criteria to guide the chairperson during its consideration of an application.

An applicant, being an Indian insurer or reinsurer, must:

a) be registered with the IRDAI as an Indian insurer or reinsurer;

b) demonstrate a minimum assigned capital of INR 10,00,00,000 (Rupees Ten Crore);

c) demonstrate it has Net Owned Funds (“NOF”) of not less than INR 5000,00,00,000 (Rupees Five Thousand Crore);

d) have been in continuous operation during the preceding 5 (five) years from the year in which the application is made; and

e) have a satisfactory track record in respect of regulatory compliance.

An applicant, being a foreign insurer or reinsurer, must:

a) have a registration or license for transacting insurance or reinsurance business in its country of incorporation;

b) have authorisation by the regulatory or supervisory authority of its home country to set up an IIO in India;

c) have been in continuous operation during the preceding 5 (five) years from the year in which the application is made;

d) demonstrate a minimum assigned capital of INR 10,00,00,000 (Rupees Ten Crore);

e) in case of a direct insurer, demonstrate possession of paid-up equity capital of INR 100,00,00,000 (Rupees One Hundred Crore), if carrying on the business of life insurance or general insurance or if carrying on exclusively the business of health insurance;

f) in case of a reinsurer, demonstrate possession of NOF of not less than INR 1000,00,00,000 (Rupees One Thousand Crore).

Pursuant to the notification of the Finance Act, 2019, the NOF requirement for the opening of branches of foreign re-insurers in IFSC was reduced from INR 5000,00,00,000 (Rupees Five Thousand Crore) to INR 1000,00,00,000 (Rupees One Thousand Crore. This significant reduction in the NOF requirement is expected to attract foreign re-insurance companies to set up branches in IFSC.

g) have a 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;

h) be registered or certified in a national regulatory environment and with whom the Government of India has signed Double Taxation Avoidance Agreement;

i) have a solvency margin as stipulated by its home country regulatory or supervisory authority; and

j) have a minimum credit rating which is having at least good financial security characteristics from any of the internationally renowned credit rating agencies for the last 3 (three) years.

In line with similar provisions laid down in other statutes, the IIO Guidelines lay down disqualification criteria for registration as an IIO. An applicant is barred for making an application for registration as an IIO if its:

a) application for registration as IIO has been rejected by the IRDAI at any time during the preceding 2 (two) financial years as on the date of requisition for registration application; or

b) the certificate of registration as IIO has been cancelled or withdrawn by the IRDAI in the preceding 2 (two) financial years as on the date of application for registration as IIO.

3. Who is eligible to open an IIIO in IFSC?

Since applicants who can apply to the IRDAI for authorisation as an IIIO are already entities which are registered with the IRDAI, the IIIO Guidelines lay down a very limited list of criteria for eligibility. To determine whether an applicant is eligible for authorisation as an IIIO, the IRDAI will consider whether it:

a) already has a valid certificate of registration issued by the IRDAI, which should not have been suspended or cancelled;

b) is eligible to apply for authorisation in the category for which it has been granted certificate of registration by the IRDAI; and

c) satisfies any further requirement that may be stipulated by the IRDAI from time to time.

Ease of Doing Business

The IFSCA is expected to bring out separate regulations to govern the setting up and operation of IIOs and IIIOs in IFSC SEZs, as has been done in the case of regulating banking units in IFSC SEZs.

Setting Up and Running an Office

1. What is the process for making an application to set up an IIO?

IIO is deemed as a branch office of the applicant in IFSC to transact direct insurance business or reinsurance business as permitted by the IRDAI[5]. In order to operate an IIO, an insurer/reinsurer is required to submit an application[6] to the IRDAI to obtain a Certificate of Registration ("CoR"), along with an application fee of USD 1,000 (One Thousand Dollars) and a one-time non-refundable registration fee of USD 5,000 (Five Thousand Dollars)[7].

An application submitted by an Indian insurer or reinsurer and a foreign insurer or reinsurer is required to include such documents as prescribed under the IIO Guidelines.

The IRDAI may require further information or documents in order to process the application. If the applicant fails to provide such information or documents, the application may be rejected on grounds of incompleteness.

The applicant is required to approach the authority in case:

a) after the submission of the application, the applicant seeks change in the structure, composition and other aspects such as assigned capital of the applicant. Such a change may be carried out after obtaining prior approval from the IRDAI.

b) there is any information which might affect the IRDAI's decision on the application in terms of the IIO Guidelines.

Although the IIO Guidelines lay down this duty of disclosure on the applicant, the exact parameters of such disclosures are not defined. It must be noted that if such information is disclosed after the grant of CoR, IRDAI may review the registration in light of the information disclosed.

2. Do the IIO Guidelines prescribe certain factors to be considered by the IRDAI while considering an application from grant of CoR?

While the IIO Guidelines provide for a list of factors that are to be considered by the IRDAI, the list is not exhaustive. The IRDAI has the right to consider any requirements as it may deem fit on a case-to-case basis. The chairperson of the IRDAI is empowered to take into account all matters in relation to the operations of the applicant in terms of carrying out insurance or reinsurance business while considering an application.

The chairperson would inter alia consider the following factors in relation to an applicant:

a) the performance record of its insurance or re-insurance business;

b) the performance record of the directors and key managerial persons ("KMPs") in its management;

c) the proposed infrastructure to effectively carry out the insurance business from the IIO such as adequate office space, equipment, IT infrastructure and trained manpower;

d) the organisation structure of the applicant detailing the KMPs as well as the KMPs of proposed IIO;

e) capability to underwrite risks of specified insurance or reinsurance business and settling claims;

f) bona fide credentials; In addition to the list above In addition to the list above, if the applicant is a

---

5 The following points are to be kept in mind while applying to for the CoR:
- In case any document(s) required to be submitted to the IRDAI is in any language other than English, the copy(ies) of the document(s) must be accompanied by a certified translation.
- If the translated documents are pertaining to audited financial reports, they must be certified by a practicing chartered accountant.
- For any other type of translated document, certification must be done by a practicing company secretary.

6 In Form A for Indian insurers and reinsurers and in Form B for foreign insurers and reinsurers.

7 IFSCA Circular dated May 24, 2021 (Ref: No. 01/IFSCA/Insurance/2021-22) titled: Fee Structure for IFSC Insurance Offices (IIOs).

foreign insurer/reinsurer, the chairperson will also consider the following points:

a) documentary proof of having INR 10,00,00,000 (Rupees Ten Crore) or more as assigned capital;

b) affidavit of the applicant, certifying the fulfilment of the requirements of the assigned capital, issued by a person authorised by the board of directors or the executive committee of management;

c) affidavit certifying the NOF of the applicant company; and

d) certificate from a practising chartered accountant or a practising company secretary certifying fulfilment of the requirements relating to processing fees, assigned capital and NOF.

3. What is the process laid down in the IIO Guidelines in relation to grant or refusal of the CoR?

If the chairperson is satisfied that the applicant fulfils all requirements and conditions as stipulated in the IIO Guidelines, he or she may grant registration. The registration granted for operation of the IIO is for a specific class/classes of insurance or reinsurance business. In this context it must be noted that the registration may be granted by the IRDAI subject to such terms and conditions as deemed fit on a case-to-case basis.

The chairperson may refuse to grant the CoR for the following reasons:

a) the applicant has been found to have misrepresented the facts; or

b) the applicant has failed to fulfil any requirements stipulated in the Insurance Act, IRDA Act, SEZ Act and rules, regulations, guidelines under these acts; or

c) the application is incomplete; or

d) the application does not conform to the instructions mentioned in the form for application or with any requirements under the IIO Guidelines or with any of the directions of the IRDAI.

Before refusing to grant the CoR, the IRDAI will offer an opportunity to the applicant to provide reasons for non-compliance or failure to provide information/documents. Further, the IRDAI will also offer the opportunity for the applicant to adhere to the instructions or comply with any requirements within 30 days of communication being received from the authority. Any order by which CoR is refused to be granted is communicated to the applicant clearly in writing detailing the reasons for refusal and the manner in which any shortcoming can be corrected for the decision to be reconsidered. The applicant has the option to appeal to the Securities Appellate Tribunal against the order refusing grant of CoR.

It must be noted that any applicant who is refused a CoR is deemed ineligible to apply for registration as an IIO for a duration of 2 (two) years from the date on which the order refusing grant of CoR was issued by the IRDAI.

4. Are there any steps required to be taken upon grant of CoR?

After a CoR is granted, the IIO must commence business within a period of 12 (twelve) months from the date of grant. In the event the business cannot be commenced within the stipulated period, an application can be made to the chairperson at least 30 (thirty) days before the expiry of the time period, i.e., within 11 (eleven) months from the grant of CoR. Any extension which may be granted cannot exceed 18 (eighteen) months from the date of grant of the CoR.

If the IIO is an Indian insurer or reinsurer, it is required to display in public domain the name with which it is registered with the IRDAI along with the IRDAI registration number and address of the IIO and the applicant company. Before commencement of the business, a principal officer is required to be appointed as an IIO in-charge. The appointment, re-appointment, removal as well as the remuneration payable to the principal officer is to be done with the prior approval of the IRDAI.

5. What is the process of making an application to set up an IIIO?

Before commencement of business in the IFSC, insurance intermediaries are required to obtain prior permission from the IRDAI to act as an IIIO. IIIO is deemed as a branch office of the applicant in IFSC as authorised by the IRDAI.

Any intermediary desirous of operating an IIIO must apply to the IRDAI in Form IRDAI/IIIO/R1 along with application fee and registration fee. The amount payable differs based on the type of insurance intermediary. For direct/re-insurance/composite insurance brokers, an application fee of USD 500 (Five Hundred Dollars) and a one-time non-refundable registration fee of USD 1,000 (One Thousand Dollars) is payable to the IFSCA[8]. For all other insurance intermediaries including Corporate Agent, Surveyor & Loss Assessor, Third party Administrator – Health Services and any other intermediary recognised by the IFSCA, an application fee of USD 100 (One Hundred Dollars) and a one-time non-refundable registration fee of USD 500 (Five Hundred Dollars) is payable to the IFSCA[9].

Every application for authorisation is to be accompanied by the documents set out in IIO Guidelines.

The IRDAI may require the applicant to furnish any further information, document or any clarification with regard to the matters which may be considered while deliberating over the grant of authorisation. As in the case with insurers, failure to comply with the requests or direction of the IRDAI might lead to the rejection of the application.

6. Do the IIIO Guidelines prescribe certain factors to be considered by the IRDAI whil e considering an application?

While considering an application, the IRDAI generally considers all such factors which are relevant to the operation and business of an intermediary or any other such factors as it deems fit. Though not an exhaustive list, the prescribed factors which would be taken into account are:

a) all matters relating to carrying on the insurance intermediary business by the applicant;

b) the general track record of conduct and performance of applicant in the respective field in which it is engaged;

c) the record of conduct and performance of the directors and persons in management of the applicant;

d) the planned infrastructure of the IIIO needed to effectively act as an insurance intermediary; and

e) the proposed business plan for next 3 (three) years.

7. What is the process laid down in the IIIO Guidelines in relation to grant or refusal of the authorisation?

The IRDAI will generally grant authorisation if it is satisfied of the following:

a) the applicant is eligible and is likely to effectively meet its obligations as an insurance intermediary specified under the Insurance Act and respective regulations thereunder;

b) the soundness of the financial condition and the general character of management; and

c) the best interests of the insurance sector will be served if the authorisation is granted in the respective category of an intermediary business.

The IRDAI may, after giving the applicant an opportunity of being heard, reject the application in the event any of the requirements detailed above are not adhered to. The order rejecting such application is communicated to the applicant in writing, specifying the grounds for rejection within 30 (thirty) days of such rejection. Unlike insurers, rejection of IIIO application will not disqualify an intermediary from reapplying for any period of time.

[8] IFSCA Circular dated May 24, 2021 (Ref: No. 02/IFSCA/Insurance/2021-22) titled: Fee Structure for IFSC Insurance Intermediary Offices (IIIOs).

[9] Ibid

8. With respect to the authorisation granted to IIIOs, is there any validity period/renewal requirement applicable?

Once granted, the authorisation is valid till the certificate of registration granted by the IRDAI to carry on intermediary business is valid. The intermediary would thereafter need to renew its certificate of registration with the IRDAI in order to apply for a renewal of the IIIO authorisation. The authorisation granted on renewal will be tied to the validity of the certificate of registration and therefore, will remain valid for the period for which the certificate of registration remains valid. On expiry of the certificate of registration, the authorisation also expires. The grant of authorisation is subject to all conditions referred to under the SEZ Act and the rules, regulations, circulars, guidelines and any other instructions that may be issued thereunder from time to time.

9. Are there any steps required to be taken upon receipt of authorisation?

The applicant must set up the IIIO and commence business within 3 (three) months from the date of receiving authorisation. In the event it is impossible to commence business within the stipulated time, an application in writing may be made to the chairperson requesting extension of the timeline. This application must be made within the 3 (three)-month time period from the date of authorisation. Failure to apply within the stated timeline will lead to the authorisation lapsing. Further, if the application for extension is accepted, the period of extension granted will not be more than 6 (six) months from the date of authorisation.

Compliance in IFSC

1. What are some common compliances for IIOs and IIIOs?

Since IIOs and IIIOs are regulated by the IRDAI, there are certain common compliance requirements applicable to them. So, to start with, we have set out below certain common compliance requirements under both the guidelines:

a) submission of period returns in relation to financial reporting and business reporting;

b) any other periodic reporting as required by the IRDAI from time to time;

c) maintenance of separate statement of accounts and financial returns specifically for the IFSC offices; and

d) compliance under extant laws such as the SEZ Act, the Insurance Act, Foreign Exchange Management Act, 1999 and the rules and regulations framed thereunder, and the circulars/guidelines/ notifications as issued by the RBI from time to time.

2. Does the IRDAI have authority to regulate the operations of IIOs and IIIOs?

The IRDAI has extensive authority to investigate into the operations of IIOs and IIIOs in IFSC and may call for inspection of any document, any record or any communication. It may also appoint a designated person to carry out the inspection on its behalf. If the IRDAI believes that the operations of office are not in the best interest of the insurance sector, it may consider withdrawal of the authorisation or the CoR as the case may be. However, it is not specified as to what considerations may lead to the IRDAI holding the operations being detrimental to the insurance industry. rules and regulations framed thereunder, and the circulars/guidelines/ notifications as issued by the RBI from time to time.

3. What are the compliance requirements for IIOs set up in IFSC?

Once an insurer or reinsurer has obtained the requisite CoR and has commenced operations in the IFSC, it is required to adhere to the compliance conditions stipulated in the IIO Guidelines on a continuous basis.

In addition to the common compliances, an IIO must inter alia:

a) maintain proper records, documents, evidence and books of all transactions carried out by it in terms of the IIO Guidelines;

b) submit financial returns including statement of accounts in accordance with the IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002;

c) submit its annual report and any other return of its activities as may be specified to the authority;

d) file periodic information relating to its business activities and furnishing of declarations/ undertakings in specified form;

e) ensure all the monetary transactions with respect to insurance or reinsurance business is in foreign currency and not in Indian Rupees;

f) submit separate statement of assets, liabilities and solvency margin requirements in the manner specified;

On January 18, 2021, the IFSCA issued a circular clarifying that for the initial 5 (five)-year period of operation of IIOs, maintenance of the solvency margin as stipulated in the guidelines at the head office of the company of the IIOs will be considered as compliance with the solvency margin requirements. The provision is subject to the following requirements:

a) the assets backing such solvency margin being invested in government bonds;

b) the assets backing the solvency margin being unencumbered at all times; and

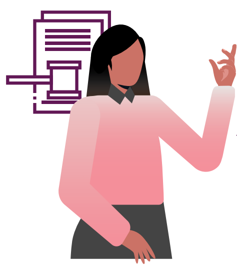
c) the IIO furnishing a quarterly certificate signed by the appointed actuary of the company, to the effect that assets, liabilities and solvency margin are being maintained at head office of the company on its behalf.

IIOs engaged in reinsurance business, must also ensure:

a) it does not retrocede more than 90% of its reinsurance business; and

b) the surplus available after such retrocession arrangements are 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 the IRDAI.

Further, an IIO is required to pay annual fees of USD 5,000 (Five Thousand Dollars) to the IFSCA for every financial year within 30 days from the beginning of the financial year, i.e. before April 30 of each year[10]. In addition to the annual fee, a turnover fee is also required to be paid which shall be the higher amount of either USD 6,500 (Six Thousand Five Hundred Dollars) or 1/20th of 1% of total gross premium written by the IIO.[11] The turnover fee for each financial year is payable before September 30 of the succeeding financial year. Separately, IIOs are required to comply with the extant Know Your Customer (KYC) and Anti-Money Laundering (AML) guidelines, extant Protection of Policyholders' Interest Regulations, Outsourcing Regulations and Advertisement Regulations.



4. Does IRDAI have the power to revoke, suspend or cancel a CoR?

The IRDAI has the authority to by order, revoke, suspend or cancel the CoR granted to an IIO or may initiate any other regulatory action if it finds that the compliance conditions have not been adhered to. In addition to the grounds of compliance listed above, the IRDAI may also consider action if it inter alia finds that the IIO:

a) is functioning in a manner detrimental to the interests of the insured, policyholder, ceding insurer or reinsurer, as the case may be;

b) has furnished wrong or false information or undertaking or wilfully concealed or failed to disclose material facts in the application for obtaining a CoR;

[10] IFSCA Circular dated May 24, 2021 (Ref: No. 01/IFSCA/Insurance/2021-22) titled: Fee Structure for IFSC Insurance Offices (IIOs).

[11] Ibid

c) has failed to resolve the complaints of the policyholders, ceding insurer or reinsurer or failed to give a satisfactory reply to the IRDAI in this regard;

d) or applicant company has failed to maintain specified equity paid-up capital, assigned capital or failed to infuse additional capital as advised by the IRDAI or failed to meet the NOF requirements; or

e) has failed to pay penalties imposed or the reimbursement of expenses, if any, under the IIO Guidelines.

The IRDAI may revoke or cancel registration already made under the IIO Guidelines if it is satisfied that an IIO or its applicant company i.e. such a foreign insurer or reinsurer has been debarred by law or practice by the home country supervisor or regulator to carry on insurance or reinsurance business.

The IRDAI may also revoke or suspend the CoR without notice if the IIO:

a) is found to be guilty of fraud or is convicted of a criminal offence; or

b) commits such defaults which require immediate action in the opinion of the IRDAI; or

c) has not commenced business within specified timelines from the date of CoR.

Any such order revoking, suspending or cancelling the CoR will be communicated in writing specifying the grounds for such action being taken. In any event, the applicant is provided adequate opportunity of being heard before the final decision is taken as to cancellation/suspension/revocation.

5. What are the compliance requirements for IIIOs set up in IFSC?

Once the authorisation is granted and the operations of the IIIO have commenced, in addition to the common compliance requirements mentioned in the response to the first question in this section, the IIIO must also ensure that :

a) intermediation business is undertaken only to the extent as permitted under the SEZ Act and the rules framed thereunder;

b) the IRDAI is intimated on the appointment, re-appointment or removal of the person in charge within 10 (ten) days of such change; and

c) it complies with the Foreign Exchange (IFSC) Regulations, 2015 and the guidelines/circulars as issued by the RBI.

IIIOs are required to pay annual fees to the IFSCA for every financial year within 30 days of the commencement of that financial year, i.e. before April 30 of each year.[12] The annual fee payable differs according to the type of insurance intermediary. For direct/re-insurance/composite insurance brokers, the annual fee payable is USD 1,000 (One Thousand Dollars). For all other types of insurance intermediaries including Corporate Agent, Surveyor & Loss Assessor, Third party Administrator – Health Services and any other intermediary recognised by the IFSCA, the annual fee payable is USD 200 (Two Hundred Dollars).

[12] IFSCA Circular dated May 24, 2021 (Ref: No. 02/IFSCA/Insurance/2021-22) titled: Fee Structure for IFSC Insurance Intermediary Offices (IIIOs).

Concluding Thoughts: The Way Forward

The IIO and the IIIO guidelines are relatively new. With the first guideline for insurers coming out in 2015 and that for intermediaries in 2019, there is a lot of jurisprudence which has not been adequately explored. In that context, there are some gaps in the regulatory regime, particularly with regard to compliance requirements.

1. Is the Insurance Act and/or the regulations framed under the Insurance Act exempt from applying to IIOs and IIIOs from the perspective of compliance?

The IIO Guidelines specifically require IIOs to comply with provisions of the Insurance Act. In that regard, although Indian insurance companies based in IFSCs have been granted exemption from specific provisions of the Insurance Act, foreign insurers and reinsurers have not been granted any such exemptions. While the exempted sections do not technically impact the operations of a foreign insurer's or reinsurer's IIO, the lack of an explicit exemption from any of the provisions essentially means that foreign insurers/reinsurers must comply with all provisions of the Insurance Act.

As previously noted, the IIOs are meant to comply with extant regulations on Outsourcing, AML, Reinsurance, Advertisements and Policyholders' Protection. Therefore, any contravention of the provisions of these regulations by an IIO will be punishable under Section 102 (which provides for penalties in the event of failure to comply with rules and regulations framed by the IRDAI). The applicability of this provision to foreign insurers and reinsurers[13] could be a possible deterrent to foreign investors since they would be subject to double penalties i.e., penalties applicable in their home country as well those penalties specified under the Insurance Act. Similarly, lack of exemptions granted to foreign insurers/reinsurers from the provisions of the Insurance Act will also be burdensome on the establishment and operation of these entities in IFSC. Furthermore, application of regulations like the Policyholders' Protection or Advertisement Regulations to an IFSC, for both foreign and Indian insurers and reinsurers, is absurd since it makes provisions designed for the protection of Indian policyholders also applicable to the protection of policyholders of the IIOs based in other SEZs and foreign countries.
Since IIOs are also not permitted to carry on direct insurance business within the DTA, outside of the IFSC and other SEZs, there should be more clarity on the extent of the applicability of these regulations to IIOs.

The notification of the Draft Regulations (seeking comments from the public) signifies the intent of the IFSCA to detach and delineate the regulatory framework applicable to IIOs from the domestic regulatory framework applicable to Indian insurers. IIOs, as 'offshore' entities, are sought to be governed under a different regulatory regime as opposed to that applicable to Indian insurers.

13 Insurers registered with a regulator based outside India.

2. Are IIOs and IIIOs treated as foreign entities from the perspective of compliance?

As per the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015 ("FEM (IFSC) Regulations"), an IIO is deemed to be an entity resident outside India. Therefore, an IIO should not be subject to the same legal provisions and compliances expected from other insurers based within the territory of India.

Regarding IIIOs, there is no specific reference to insurance intermediaries in the FEM (IFSC) Regulations, and therefore, it appears that IIIOs would not be deemed to be entities resident outside India. This position is further strengthened due to the fact that all intermediaries who have set up IIIOs would already be IRDAI-registered intermediaries and would, therefore, already be required to be in compliance with regulations applicable to insurance intermediaries. No foreign intermediaries are allowed to set up IIIOs.

3. Have you identified any conflict with other laws or regulations?

Since the IIOs are deemed to be branch offices, technically the guidelines for opening of foreign insurance company (including branch office) outside India by an Indian insurance company registered with the IRDA, dated May 23, 2013 should apply. However, some of the compliance and eligibility criteria applicable to IIOs would be in conflict with what is provided under the IIO Guidelines. Since the IIO Guidelines are more specific in nature, they should ideally supersede any other guidelines on the subject of setting up branch offices for insurance offices in IFSCs. However, there is no clarity in law as to how to limit or reconcile the conflict.

4. Considering the existing issues as identified, what changes does the regulatory framework need going forward to make IFSC a more attractive proposition?

Going forward, the regulatory regime needs to be re-evaluated in order to simplify and streamline the legal provisions applicable to IIOs and IIIOs. The ideal approach would be to have a unified and comprehensive regulatory regime set in place exclusively for governing insurance entities in IFSC. As it stands today, the IIO regulations impose several layers of compliance, with foreign insurers being forced to comply with both laws/regulations applicable to the IFSC as well as the regulatory regime applicable to their home country. This appears to be counter-intuitive to the goal of setting up of IFSCs in India.

The Draft Regulations have initiated the movement towards a simpler and more streamlined process as far as application/ registration of IIOs is concerned. IFSCA as the sole unified regulator is proposed to be responsible for all activities concerning an IIO, starting from the application process for registration, all the way to the commencement of business and for continued compliances thereafter.

The scope of investment from the perspective of IIIOs for intermediaries is also low due to restriction on foreign intermediaries from entering the field. In view of the low rate of penetration in the insurance sector in IFSCs, incorporating some of these changes in the regulatory regime may go a long way in accomplishing the goal of ease of doing business in India and also assist in making investing in IIOs and IIIOs more attractive. As previously mentioned, the IFSCA Expert Committee on international retail business development has suggested progressive changes in the regulatory framework to simplify the conduct of business in IFSCs.

As noted at the beginning of this chapter, the IFSCA is expected to bring out separate regulations to govern the setting up and **operation of IIOs and IIIOs in IFSC SEZs**, as has been done in the case of regulating banking units in IFSC SEZs. Given that Section 13 of the IFSC Act is effective from October 1, 2020, presently, the IFSCA is the governing authority of the various financial services entities set up at IFSC SEZs. Accordingly, the IFSCA has the requisite powers to notify regulations to exercise its regulatory oversight over IIOs and IIIOs. While the fresh regulations in relation to IIOs and IIIOs are still in the works, it is likely that the IFSCA would take cues from the regulations formulated by IRDAI as applicable to domestic insurers/re-insurers and intermediaries, while formulating the distinct regulatory regime of the IFSCA vis-à-vis the IIOs and IIIOs. With time, the regulatory framework will evolve keeping with the spirit of free trade and commerce as envisaged in the concept of IFSC.

5. What are the major changes proposed by the Draft Regulations which are proposed to replace the IIO Guidelines?

The Draft Regulations propose to adopt the general criteria on eligibility as well as the application procedure from the IIO Guidelines. It is now proposed that all applications be made to the IFSCA directly instead of the IRDAI. A few minor deviations have been proposed from the IIO Guidelines pertaining to inter alia specifics of:

- Categories of direct insurance business that may be conducted simultaneously;
- Categories of applicants which now seek to include cooperative societies, public companies, subsidiaries of Indian insurers/reinsurers or any body corporate incorporated in any other country which is not a private company; and
- Specified persons which are required to be appointed on commencing operations.

The Draft Regulations propose to introduce separate categories of participants that may set up in the IFSC:

- A branch office of Lloyd's society of underwriters based in the United Kingdom ("Lloyd's IFSC");
- Members of Lloyd's society who wish to participate in the Lloyd's IFSC; and
- Service companies which any member of Lloyd's may appoint to transact insurance/reinsurance business in the IFSC.

It has been proposed that the society of underwriters in the United Kingdom known as the Lloyd's will be granted a certificate of registration by the IFSCA to set up a branch office in the IFSC, to be known as Lloyd's IFSC, to facilitate transaction of insurance and re-insurance business from the IFSC. Registered members of Lloyd are proposed to be allowed to set up their presence in the Lloyd's establishment in the IFSC subject to:

a) having a solvency margin as stipulated by its home country regulatory or supervisory authority;

b) obtaining registration with the appointed administrator of the Lloyd's IFSC; and

c) appointing service companies through which it can transact insurance or reinsurance business.

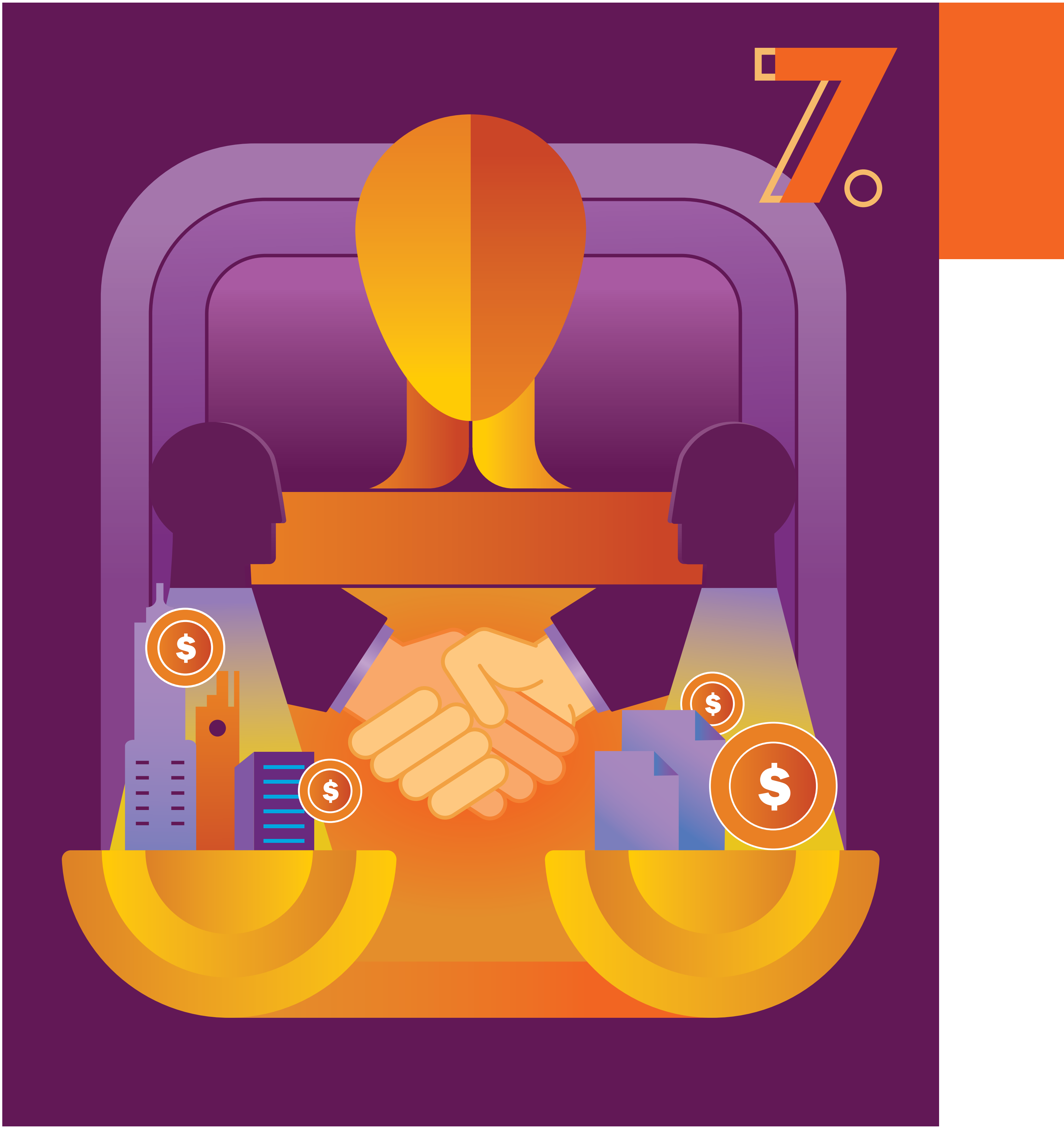
It is also proposed that the following entities can apply to the administrator of Lloyd's IFSC to obtain registration as service companies:

a) companies promoted by Managing Agents of Lloyd's listed under the list of such agents maintained by Lloyd's; or

b) companies promoted by registered Indian companies.

The Draft Regulations also propose to impose compliances on the members of Lloyd's and the service companies which include inter alia, specific undertakings on compliance with extant regulations/laws, periodic reporting of financial information, professional indemnity details. The registration of the service company may be cancelled on specified grounds as proposed, which include inter alia non-commencement of business within specified time frame, failure to satisfy compliances/obligations, determination by IFSCA of busines being conducted in a manner detrimental to the interest of policyholder of policies issued by Lloyd's IFSC and non-disclosure of information or material facts.

As indicated previously, it must be noted that the Draft Regulations are at the stage of public consultation as on date. Therefore, the eligibility criteria, compliance requirements and application procedure specified in the Draft Regulations may be subject to change, on the basis of comments and recommendations received from public stakeholders. The regulations governing IIOs are expected to be finalised soon, pursuant to which we expect more clarity in relation to the application procedure, eligibility criteria and compliance requirements while setting up an IIO.


7.

Dispute Resolution in IFSC

Introduction

Specifically set up IFCs are usually granted special exemptions from certain domestic laws and regulations and are also governed by special / beneficial legislation or legal regulations. Some IFCs may be granted certain administrative independence. Ultimately, **the IFCs are intended to function as investor-friendly territories with robust legal framework to ease up modalities for conducting businesses and to enforce contracts.**

For instance, Dubai International Financial Centre (DIFC), set up in 2004, is treated as a separate and independent jurisdiction within the UAE with its own legal framework for civil and commercial matters. From the perspective of dispute resolution, DIFC introduced the Arbitration Law[1] (based on the UNCITRAL Model Law) reflecting international arbitration practices and standards to be adopted to resolve disputes through the ADR process of arbitration, within the DIFC. This is particularly notable given that the UAE is a country governed by civil law principles as well as by Sharia law, which can be restrictive to the more sophisticated foreign investor.

Further, DIFC formed a partnership with London Centre of International Arbitration (LCIA) and introduced the DIFC-LCIA Arbitration Centre Arbitration Rules[2] to administer arbitrations.

Similarly, Abu Dhabi Global Market (ADGM), which is another IFC set up in 2013, introduced the ADGM Courts Regulations[3] as well as the ADGM Arbitration Regulations[4] to regulate court and arbitral proceedings within the ADGM. Interestingly, the laws that are applied to the DIFC and the ADGM are based on English law/common law[5], similar to **the laws of the top financial centres/hubs of the world viz. Singapore, London, Hong Kong, New York. As a result, the global business community, having established its presence in DIFC or ADGM, is familiar with and can identify the underlying system of common law reflected therein.**

Indian Context

Most commercial contracts in India contain dispute resolution provisions that provide for ADR – usually arbitration, with informal mediation perhaps, as a precursor. One of the drivers of this trend (apart from the draw of party autonomy, informality of procedure and confidentiality), is the massive backlog of cases in Indian courts. Indian courts have become notorious for the time taken to finally dispose of a civil suit – which sometimes can take over a decade. Recent data from the National Judicial Data Grid indicates that there are over four million civil cases pending in only the High Courts all over India[6], more than 20% of which have been pending for over 10 years. It is therefore no surprise then that arbitration has become the de rigeur dispute resolution clause, particularly in cross border contracts.

1 DIFC law no. 1 of 2008 available at https://www.difc.ae/files/8216/0257/5338/Arbitration_Law_DIFC_Law_No_1_of_2008.pdf

2 DIFC LCIA Arbitration Rules 2021 available at http://www.difc-lcia.org/arbitration-rules-2021.aspx

3 ADGM Courts, Civil Evidence, Judgments, Enforcement, and Judicial Appointments Regulations 2015 available at https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/ADGM1547_18205_VER06242020.pdf

4 ADGM Arbitration Regulations, 2015 available at https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/ADGM1547_19075_VER231220.pdf

5 See https://www.difc.ae/business/laws-regulations/ and https://www.adgm.com/adgm-courts/english-common-law

6 https://njdg.ecourts.gov.in/hcnjdgnew/?p=main/pend_dashboard

The Indian Government has been alive to this issue and has over the last five years, overhauled and amended various provisions of the arbitration regime in India, in trying to make India a viable regional hub for arbitration.

Recent pro-arbitration decisions emanating from Indian courts have also brought comfort to foreign investors entering the Indian market. These measures have, in part, been the reason for the dramatic improvement in India's World Bank rankings, from 77th in 2019 to 63rd under the 2020 Ease of Doing Business Rankings[7].

GIFT City IFSC, governed by an independent regulatory authority i.e., the IFSC Authority, having an independent legal and regulatory framework distinct from the domestic economy, provides a conducive ecosystem for entities in the financial services sector looking to establish or further enhance their presence on Indian soil.

Ease of Doing Business in Indian IFSC

The GOI proposes to set up a robust independent legal framework and mechanism in line with global peers, having independent courts, governed by rules and regulations as specifically drafted/amended, in addition to providing ADR services accompanied by ease of enforceability and a timely cost-efficient resolution of disputes for the benefit of stakeholders, in the IFSC.

Key Developments at GIFT City IFSC From a Legal Standpoint

Presently, what does GIFT City IFSC have to offer investors, with respect to an efficient dispute resolution mechanism?

In order to make GIFT City IFSC an investor-friendly jurisdiction for both domestic and international businesses and investors, a **key element in the ease-of-doing-business aspect is a robust and efficient dispute resolution mechanism. In fact, an international dispute resolution mechanism through Singapore International Arbitration Centre (SIAC) and a robust regulatory and legal environment are listed among the key benefits for entities setting up operations at GIFT IFSC[8].**

Indeed, SIAC has had a long-standing relationship with India and Indian entities. In 2020, Indian parties were SIAC's top foreign user. These Indian parties contributed heavily to the total sum in dispute for all new case filings with the SIAC (the total sum being in excess of S$ 10 billion). India also contributed 14 arbitrators from among the 288 newly-appointed arbitrators by the SIAC in 2020[9].

SIAC's participation and partnership with the GIFT City started early. In 2016, within a year of the announcement of the GIFT City, SIAC signed a Memorandum of Agreement with the Gujarat International Finance Tec-City Company Limited and GIFT SEZ Limited to establish a representative office in GIFT City[10]. The SIAC's intention of expanding to GIFT City was to work closely with the existing Mumbai office (setup in 2013) to promote its services offered to businesses and investors in GIFT City and throughout India. Subsequently, in August 2017, the SIAC opened its second representative office in India within GIFT City IFSC. It is noteworthy to mention that despite the presence of SIAC's representative office in GIFT City IFSC, arbitrations under the SIAC Rules will nevertheless continue to be administered by SIAC's Secretariat in Singapore, where the case management office is situated, irrespective of the nationality of parties or the seat of arbitration[11].

7 https://www.doingbusiness.org/content/dam/doingBusiness/pdf/db2020/Doing-Business-2020_rankings.pdf; also see Doing Business 2019 Report, pg. 5, available at https://www.doingbusiness.org/en/reports/global-reports/doing-business-2019

8 Q 18; page 7; Gift SEZ Ltd. And IFSC related FAQs available at http://www.giftgujarat.in/documents/FAQs-GIFT_City_IFSC.pdf

9 SIAC Annual Report 2020 available at https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf

10 News article titled "GIFT IFSC signs MoA with Singapore International Arbitration Centre" (June 2, 2016) available at https://www.indiainfoline.com/article/news-top-story/gift-ifsc-signs-moa-with-singapore-international-arbitration-centre-116060200770_1.html

11 https://www.siac.org.sg/about-us/about-us/siac-india-representative-offices

The benefit of having SIAC as the choice partner for dispute resolution at GIFT IFSC is that it can provide an independent and neutral dispute resolution platform to parties, thereby imbibing confidence in them to undertake large financial transactions at GIFT City IFSC[12]. **Further, entities set up at GIFT IFSC can also adopt SIAC's model clause on arbitration[13] as their preferred dispute resolution clause for international contracts exceeding a certain value.[14]**

Additionally, how does the government propose to enhance the reputation of GIFT City as India's premier investor-friendly jurisdiction?

The Gujarat government will also be setting up the Gujarat Maritime Arbitration Centre (GMAC) in GIFT City — India's first arbitration and mediation centre focusing on maritime disputes. While **specific rules governing adjudication of maritime disputes under GMAC have not yet been formally issued, reportedly, vetting of the draft GMAC rules by Indian and international maritime arbitrators has commenced.[15]**

India is the sixteenth largest maritime country in the world with a coastline of about 7,517 kms. India has 12 major and over 200 minor and intermediate ports. According to the Ministry of Shipping, India, situated along some of the most important global maritime trading routes, conducts around 95% of its trade by volume and 70% by value through maritime transport. Traffic at major Indian ports reached 704.82 million tonnes in FY20[16]– a testament to India's status as a maritime hub.

The GMAC is being set up to further position India along the lines of global maritime hubs like China, Hong Kong and Singapore.
The GMAC is being set up under the aegis of the Gujarat Maritime University and will form a key part of the Gujarat Maritime Cluster that will be housed in GIFT City[17].

On June 21, 2021, the Gujarat Maritime University entered into a Memorandum of Understanding with the IFSC Authority to promote GIMAC as a first of its kind Indian arbitration and mediation centre exclusively focussing on disputes in the shipping and maritime sector.
The IFSC Authority would reportedly look to provide technical expertise to the GIMAC during the course of its establishment and initial years of operation.[18]
The development of GIMAC at GIFT City is meant to ensure cost effective and time bound redressal of maritime disputes with a view to increasing the ease of doing business capabilities of India and simultaneously encouraging foreign stakeholders to the country.

GMAC will ensure the ease of doing business

12 SIAC Opens its Second Representative Office in India in GIFT (August 10, 2017) available at https://www.siac.org.sg/69-siac-news/542-siac-opens-its-second-representative-office-in-india-in-gift

13 SIAC Model Clause available at https://www.siac.org.sg/model-clauses/siac-model-clause

14 News article titled "Singapore International Arbitration Centre opens an office in GIFT IFSC" available at https://economictimes.indiatimes.com/news/company/corporate-trends/singapore- international-arbitration-centre-opens-an-office-in-gift-ifsc/articleshow/60001219.cms

15 News article titled "India's first maritime arbitration centre to be set up in GIFT City" available at https://timesofindia.indiatimes.com/city/ahmedabad/indias-first-maritime-arbitration-centre-to-be-set-up-in-gift-city/articleshow/79765502.cms

16 Shipping Industry and Ports in India available at https://www.ibef.org/industry/ports-india-shipping.aspx

17 News article titled "India's first maritime arbitration centre to be set up in GIFT City" available at https://timesofindia.indiatimes.com/city/ahmedabad/indias-first-maritime-arbitration-centre-to-be-set-up-in-gift-city/articleshow/79765502.cms

18 18 IFSC Authority news update available at https://www.ifsca.gov.in/news/NewsDetail?id=14; News article titled "MoU inked for Int'l Maritime Arbitration Centre" at GIFT City available at https://timesofindia.indiatimes.com/city/ahmedabad/mou-inked-for-intl-maritime-arbitration-centre-at-gift-city/articleshow/83730937.cms -in-gift-city/articleshow/79765502

What other steps have been taken by the IFSC Authority in pursuance of the objective of providing an end-to-end ecosystem for the financial services sector at GIFT City IFSC?

The GIFT City is also slated to set up an end-to-end ecosystem to enable the financial services sector to flourish in the GIFT City. Toward this end, the **IFSC Authority has introduced a special framework to enable entities to provide ancillary services for the development of financial services and financial institutions in the IFSC. By way of the February Circular, the IFSC Authority has allowed to undertake ancillary activities by service providers who have set up shop in GIFT City including inter alia for legal, compliance and secretarial services, accounting and auditing services and management consulting services.**

Under the February Circular, Legal Services broadly comprise the following:

- Legal Advisory Services including inter alia tendering legal opinions, drafting of legal documents including pleadings, representation before the IFSC Authority or entities regulated by it, research work for the preparation of any non-judicial case and the execution of post-litigation work.
- Legal documentation and certification services including inter alia preparation, drafting and certification of legal documents including any contracts, charters, etc.
- Such other legal advisory and information services including inter alia advising the client on their legal rights and obligations.

The February Circular effectively allows for a full range of legal services to be provided by entities in the GIFT City. The February Circular also enables such global or foreign entities to set up shop in the GIFT City. The GIFT City IFSC can thus provide a complete and conducive ecosystem for the financial services sector. Major domestic corporates engaged in ancillary services have reportedly expressed interest in actively moving to the GIFT City IFSC in the near future.[19]

Dispute Resolution in Leading IFCs

What are the dispute resolution mechanisms in leading IFCs around the world?

Some IFCs have developed their own satellite judicial system by establishing separate courts that are competent to adjudge disputes within the relevant IFC and/or between entities incorporated/or while carrying on business there. Some of these separate courts or arbitration centres, also have opt-in jurisdiction, meaning that parties, irrespective of their location, can agree in writing for their dispute to be resolved by these special courts.

Taking **DIFC and ADGM as examples, the jurisdiction of their specially set up courts, is defined under law to deal with civil and commercial matters. They are subject to English common law, rather than the domestic laws that are applicable in UAE – which have historically discouraged the foreign investors in the UAE.**

Arbitration is a popular form of dispute resolution and along with the setting up of courts, IFCs have established centres for arbitration and mediation, partnering with global arbitration institutions to leverage their experience and best practices. For instance, **the DIFC has partnered with the LCIA, and offer the DIFC-LCIA Rules under which arbitrations can be administered.**[20]

Inspired by such successful mechanisms, the GIFT IFSC in India has also tied up with SIAC in order to provide effective dispute resolution (as detailed above).

[19] News article titled "Framework declared, companies line up at GIFT City" available at https://timesofindia.indiatimes.com/city/ahmedabad/framework-declared-companies-line-up-at-gift-city/articleshow/80967573.cms

[20] Arbitration Rules, 2021, available at http://www.difc-lcia.org/arbitration-rules-2021.aspx

Are the judgments/awards rendered by the courts/tribunals of the IFCs enforceable outside the territory of the IFC and vice versa?

For a dispute resolution system to be effective, the ease of enforcement of judicial decisions/awards holds vital importance. Accordingly, the jurisdictions, within which the IFCs are located, form laws to enforce the decisions/awards rendered by the courts/ tribunal of the IFCs even outside the IFCs. **For instance, decisions rendered by DIFC and ADGM Courts are enforced in other parts of UAE by merely following the procedure under law.**[21]

While the issues of enforcement within a country in which the IFC is located, are resolved by enacting laws, the enforcement of decisions rendered by IFC Courts in jurisdictions other than the ones they are located in, depend on the treaties that the countries have entered into with other jurisdictions.

As far as enforcement of decisions (rendered by other courts) by the courts in IFCs is concerned, the courts within the IFCs are considered as pro-enforcement courts. Such approach is evidenced by certain DIFC and ADGM decisions[22] in which **enforcement was mandated, even though those judgments or awards did not particularly relate to the respective IFC. However, such enforcement is not free from controversy and some decisions rendered by DIFC[23] Courts have been reversed by the other courts in Dubai on the basis that the decision did not have a nexus to DIFC. Accordingly, the IFCs around the world are enacting laws to address such issues that may arise in relation to enforcement.**

Conclusion

It is almost undeniable that, among other things, an IFC needs a strong dispute resolution mechanism in order to provide a strong and stable investor-friendly environment conducive to carrying out business activities. The steps taken by Abu Dhabi, Dubai and Shanghai IFCs have proved helpful in protecting the interests of investors and has gained the world's attention for further investment as well.

While India is at a relatively nascent stage, the steps taken by the Indian Government to bring GIFT City IFSC in line with global peers is praiseworthy. A robust dispute resolution mechanism with the objective of promotion of investor activities will take GIFT City IFSC on its way to being a hassle-free environment to conduct business. The early success of GIFT City is also evident from the fact that there are multiple entities providing financial as well as allied services, having already established their presence, with a lot more entities declaring their intention to follow suit.

---

21 Law No. (16) of 2011 Amending Certain Provisions of Law No. (12) of 2004 Concerning Dubai International Financial Centre Courts, available at https://www.difc.ae/files/8414/5510/4278/

Law No _ (12) of 2020 https://www.adgm.com/documents/legal-framework/abu-dhabi-legislation/abu_dhabi_law_no_12_of_2020.pdf

22 DNB Bank ASA v Gulf Eyadah Corporation & Gulf Navigation Holding PJSC CA/007/2015; in Meydan Group LLC v. Banyan Tree Corporate Pte Ltd (ARB 003/2013 & CA 005/2014); A4 v B4 [2019] ADGMCFI 0007 (8 October 2019).

23 Commercial Case No. 1619/2016, ruling of the Dubai Court of First Instance of 15 February 2017;

Also see Dr Gordon Blanke (Partner, Blanke Arbitration LLC), Dubai courts v DIFC courts: just a jurisdictional stand-off or an outright declaration of war, Practical Law Arbitration Blog (June 12, 2017), available at http://arbitrationblog.practicallaw.com/dubai-courts-v-difc-courts-just-a-jurisdictional-stand-off-or-an-outright-declaration-of-war/

8.

Tax Regime in IFSC

What does GIFT City have to offer to investors looking out to setup operations in IFSC in GIFT City, from a direct tax perspective?

The Indian government is conscious that any investor looking to set up operations in IFSC in GIFT City will need to be assured of a stable and welcoming tax regime to carry out its operations globally, with GIFT City as its base. The government, aware of its primary responsibility to make the GIFT City initiative an attractive investment destination in the eyes of the foreign investors or for offshore funds, has announced a slew of tax incentives to facilitate their business operations in GIFT City. GIFT City being India's first offshore financial centre, the government has endeavoured to provide it a favourable tax regime as compared to any similar entity operating from outside of GIFT City.

For this purpose it may be appreciated that from a direct tax perspective, GIFT City shall be construed as an offshore financial centre, which caters to customers outside the jurisdiction of the domestic economy, even though it is situated within the territorial jurisdictions of India. Units setup in the IFSC in GIFT City can be involved in rendering a wide range of financial services related to financial products, banking, insurance, etc., such as buying or selling financial products, acceptance of deposits, effecting insurance contracts, operating an investment scheme, managing financial products belonging to another person, establishing or operating an investment scheme, etc. Such units, allowed to carry out operations in IFSC in GIFT City, have been incentivised by the government for setting up their operations in the IFSC in GIFT City through various tax incentives under the Income Tax Act, 1961 (IT Act) as discussed in detail below.

Is there a special tax framework applicable on profits derived by new units as referred above, setup in IFSC in GIFT City, to support them in initial years of their operations?

A unit setup in IFSC, as specified above, can avail 100% deduction from its income from its busines setup for any period of 10 consecutive years, out of 15 years, beginning with the assessment year relevant to the financial year in which it received permission under Banking Regulations Act, 1949, or Securities and Exchange Board of India Act, 1992 or IFSC Authority Act.

Similar deductions will also apply to its income arising from transfer of an aircraft or aircraft engine, previously leased by it to any person, provided it has commenced its operations by March 31, 2024.

It may be appreciated that even if concessional tax rates, provided under certain provisions[1] of IT Act, are availed in a particular case, such that various tax deductions are no longer available once those concessional rates are availed, the aforesaid deduction provided under Section 80LA of IT Act can still be availed by a unit in IFSC.

1 Such as Section 115BAA or Section 115BAC or Section 115BAD or 115A of IT Act

Whether there are any tax exemptions for income derived from such units in IFSC in GIFT City?

There are specific tax exemptions incorporated in the (Indian) income tax laws in relation to operations set up in IFSC in GIFT City or transactions with entities operating out of IFSC in GIFT City, as set out below:

a) **Earnings of a non-resident from money lent to units in IFSC, not taxable in India:** Under Section 10(15)(viii) of IT Act, interest income earned by a non-resident or a person not ordinarily resident in India from an Offshore Banking Unit[2] in IFSC on account of money borrowed on or after April 1, 2005, is exempt. Consequently, no taxes are also required to be withheld from interest payable to such persons by such Offshore Banking Unit in IFSC, as provided under Section 197A(1D) of IT Act.

   Further, interest income derived by a non-resident from a unit in IFSC in respect of monies borrowed by it on or after September 01, 2019, is also exempt under Section 10(15)(ix) of IT Act.

b) **Incentives to setup investment funds in IFSC:** Under Section 10(4D) of IT Act, following income is exempt from tax under the IT Act:

   i. in case of a specified fund:

   - capital gains from transfer of specified capital assets[3] on a recognised stock exchange located in an IFSC are tax exempt, where consideration is paid in foreign currency, or
   - income from transfer of securities (other than shares of a company resident in India) is tax exempt, or
   - income from securities[4] issued by a non-resident (not being a PE of a non-resident in India), which income otherwise does not accrue or arise in India is tax exempt
   - income from a securitisation trust, chargeable as profit and gains of business or profession, attributable to units held by a non-resident (not being PE of a non-resident in India), which does not accrue or arise in India, computed in the prescribed manner

   A "specified fund" herein refers to -

   - a Category-III Alternate Investment Fund, regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, or IFSC Authority Act located in an IFSC, such that all its units are held by non-residents (except for its sponsor or manager), or
   - investment division of an offshore banking unit registered as a Category-I Foreign Portfolio Investor under the Securities and Exchange Board of India (Foreign

---

2 As defined under Section 2(u) of the Special Economic Zones Act, 2005 and also refer CBDT Circular No. 26/ 2016 dated July 4, 2016

3 Capital asset as referred to in Section 47(viiab) of IT Act as under:
- Bond or Global Depository Receipt as referred to in Section 115AC(1) of IT Act or
- rupee denominated bond of an Indian company, or
- derivative as defined under Section 2(ac) of Securities Contracts (Regulation) Act, 1956

4 As covered by Section 2(h) of Securities Contracts (Regulation) Act, 1956 (42 of 1956)

Portfolio Investors) Regulations, 2019, having commenced its operations by March 31, 2024,

ii. income of investment division of a banking unit of a non-resident located in an IFSC, which would have commenced its operations by March 31, 2024

iii. Under Section 10(23FBC) of IT Act, income derived by a unit-holder from a specified fund as referred to above or on transfer of units in a specified fund will also be tax exempt

c) **Tax incentives for non-residents dealing with units in IFSC:** Under Section 10(4E) of IT Act, income of a non-resident from transfer of non-deliverable forward contracts entered into with an offshore banking unit of an IFSC is exempt, pursuant to fulfilment of certain conditions, yet to be notified by the government.

Further, under Section 10(4F) of the IT Act, royalty or interest income derived by a non-resident from leasing an aircraft to a unit in IFSC is exempt, provided such unit commences its operations by March 31, 2024.

Whether there are any favourable tax rates prevailing exclusively for such units in IFSC, under the income tax laws?

During the course of the last few years, the government has come up with beneficial tax rates in several cases for such units set up in IFSC, as set out below:

a) **Beneficial tax rate regime for specified funds in IFSC:** In case of a specified fund as already defined above, following beneficial tax rates have been laid down under Section 115AD of the IT Act for units held by a non-resident (not being PE of a non-resident in India):

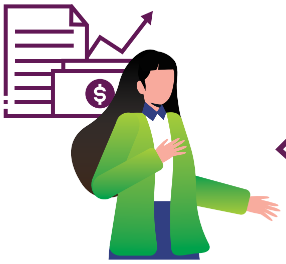
i. Income from securities taxable at the rate of 10%

ii. Long term capital gains on transfer of securities taxable at the rate of 10%

b) **MAT and AMT:** There are beneficial tax rates for MAT and AMT prescribed for such units in IFSC, where taxes on book profits are higher than normal taxes applicable in their case in any year. Under Section 115JB of IT Act, where tax on total income of a unit in IFSC, being a company deriving income in foreign currency, is less than 9% of its book profits, it will pay tax at 9% on its book profits, as opposed to the standard rate of 18.5%[5]. Similarly, under Section 115JC of IT Act, where tax on total income of a unit in an IFSC, not being a company and deriving income in foreign currency, is less than 9% of its adjusted income as specified, it will pay tax at 9% on its adjusted income, as opposed to the standard rate of 18.5%.

(c) **Concessional tax rate on income from GDRs issued by certain companies, extended to GDRs listed and traded on IFSC:** Under Section 115ACA of the IT Act, dividend and long term capital gain income on GDRs issued by an Indian company or its subsidiary, engaged in certain specified knowledge based industry or business, to its employees under an Employees' Stock Option Scheme is taxable at a rate of 10%. The benefit of such tax rate of 10% has also been extended to GDRs created in an IFSC and issued to investors against the issue of ordinary shares of a company incorporated outside India, if such GDR is listed and traded on IFSC.

[5] Rate of 18.5% has been amended and replaced with 15% from Assessment Year 2020-21 onwards.



Is there any special tax relaxation if fund manager of an offshore fund is located in IFSC?

Under the (Indian) income tax laws, there is a general relaxation available, basis specified criteria, from treatment of an investment fund as having a business connection and thus from having a taxable presence in India, if advised by fund managers located in India. In this regard, Section 9A of the IT Act provides that in case of an investment fund registered outside India, the fund management activity carried out through a fund manager located in India will not by itself constitute a business connection in India of such fund and will therefore not be taxable under the IT Act, pursuant to fulfilment of certain specified conditions.

In case such fund manager is located in IFSC in GIFT City, the central government has been given powers to allow relaxation with respect to fulfilment of certain conditions, provided the fund manager would have commenced operations in the IFSC by March 31, 2024. A notification in this respect is presently awaited.

Are there any other tax incentives or relaxations applicable in general in case of transactions carried out in IFSC in GIFT City?

In addition to tax incentives already set out above for specified entities or transactions carried out in IFSC in GIFT City, certain tax relaxations in general are also available for operations carried out in GIFT City, as under:

a) **Beneficial withholding tax provisions:** Under Section 194LC of the IT Act, in case of an Indian company or a business trust making interest payment to a non-resident on any long-term bonds or rupee denominated bonds listed on a recognised stock exchange located in the IFSC issued on or after April 1, 2020, but before July 1, 2023, a concessional tax withholding rate of 4% will be applicable. This is one of the lowest withholding tax rates in India in respect of interest payments and it is highly anticipated that this concessional provision may encourage many Indian entities to list their securities on a recognised stock exchange in IFSC in GIFT City.

b) **Relaxation from filing return of income:** CBDT, in exercise of its powers under Section 139(1C) of the IT Act, issued a Notification[6] dated July 26, 2019, providing that a non-resident is not required to file an income tax return in India under the IT Act, where during the relevant year, he only derives income from an investment fund setup in the IFSC, being a Category I or Category II AIF regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, where TDS under Section 194LBB of IT has already been deducted on such person. However, it may be noted that the said exemption will no longer be available where a notice under Section 142(1) or Section 148 or Section 153A or Section 153C of IT Act is issued to such person by the income tax authorities.

c) **Incentivising relocation of international funds to India, in the IFSC:** Under Section 10(23FF) of IT Act, capital gains in the hands of non-resident or a specified fund[7] on account of transfer of shares of a company resident in India, by the resultant fund[8] or a specified fund, attributable to units held by a non-resident, (not being PE of a non-resident in India) located in an IFSC where such shares were transferred from the original fund[9] or its wholly owned SPV, to the resultant fund, in relocation and where capital gains on such shares would not have been chargeable to tax had that relocation not taken place, will be exempt.

---

[6] F.No. 225/79/2019-ITA.II/Notification No. 55/2019

[7] As defined in Section 10(4d)(c) of IT Act

[8] A fund established in India as a company or trust or limited liability partnership and registered with SEBI as a Category I, II or III AIF

[9] A fund registered outside India, resident of a country with which India has entered into a Double Taxation Avoidance Agreement or which is notified by the central government

The term relocation herein refers to transfer of assets from the original fund or its wholly owned SPV to resultant fund on or before March 31, 2023, for which consideration has been paid to a shareholder or unit holder of the original fund in the form of a share or unit or interest in the resulting fund, in the same proportion in which the share or unit or interest was held by it earlier in the original fund. It may be noted that capital gains on such relocation is exempt under Section 47(viiac) of the IT Act and is exempt in the hands of the respective shareholder or unit holder under Section 47(viiad) of IT Act.

d) **Concessional capital gain tax rate applicable even if STT not paid, if transfer undertaken on a recognised stock exchange located in IFSC:** Under Section 112A of IT Act, long term capital gains exceeding INR 1,00,000, arising from transfer of equity shares in a company or units of an equity oriented fund or units of a business trust are taxable at a concessional rate of 10% so long as STT has been paid on such transaction. Similarly, under Section 111A of IT Act , short term capital gains arising from transfer of equity shares in a company or units of an equity oriented fund or units of a business trust are taxable at a concessional rate of 15%, where STT has been paid on such transaction. Where transfer of such securities is undertaken on a recognised stock exchange, located in IFSC and the consideration is in foreign currency, the concessional tax rates as set out above will continue to be available even if STT is not paid.

Whether ancillary services are allowed to be provided in GIFT City to provide assistance in carrying out various financial activities in the GIFT City and if they are equivalent to such units in IFSC to avail tax exemptions?

The IFSC Authority recently came out with a special framework, enabling service providers to render specified ancillary services in the IFSC in GIFT City by setting up a unit as an ancillary service provider in the IFSC vide the February Circular[10]. Ancillary services include services which aid in the provision of financial services, such as legal services, compliance and secretarial services, professional and management consulting services, etc.

It may be appreciated that tax incentives, as detailed above, have been provided for under the IT Act only for units set up in an IFSC. As per IFSC Authority Act, units in an IFSC are governed by the IFSC Authority and are engaged in rendering financial services in respect of any financial product as described in Section 3(1) clause (c) to (e) of IFSC Authority Act, such as buying or selling of financial products, acceptance of deposits, effecting contracts of insurance, etc.

The February Circular has been issued only for enabling the carrying on of ancillary services in IFSC in GIFT City. It may be appreciated that such action in itself does not per se make the ancillary service providers equivalent to financial service providers to make them eligible for tax incentives meant for units in an IFSC as specified above. However, in respect of the above, it may be noted that a suitable clarification with respect to this position may be issued by the government in due course of time.

Ease of Doing Business

The government, aware of its primary responsibility to make the GIFT City initiative an attractive investment destination in the eyes of the foreign investors or for offshore funds, has announced a slew of tax incentives to facilitate their business operations in GIFT City. GIFT City being India's first offshore financial centre, the government has endeavoured to provide it a favourable tax regime as compared to any similar entity operating from outside of GIFT City.

10 Circular - F. No. 206/IFSCA/Anc.Aux/2020-21 dated February 10, 2021 available at https://ifsca.gov.in/Viewer/Index/143


9

A) Reimagining Data Practices: Forthcoming Data Privacy Framework

India is home to a thriving start-up ecosystem and is a growing market for data-focussed enterprises. Exponential market growth is being witnessed, particularly in the Fin-Tech, Health-Tech and Insur-Tech sectors. The Government's initiatives such as Digital India and Atmanirbhar Bharat are supporting this growth and establishing India as a destination for innovation in technology.

A large volume of online activity and growing rates of internet penetration have led to a proliferation in data collection and monetisation, along with a corresponding increase in scrutiny of data practices and formulating approaches to general and sector-specific regulation.

The Supreme Court's decision on the right to privacy has brought into sharp focus the current legal framework, which is a pastiche of sectoral regulation and offers limited protection under the Information Technology Act. The advent of a fundamental right to privacy and the comprehensive data privacy regime in form of the PDP Bill is likely to significantly impact data practices across sectors.

Navigating through existing compliance framework

The current general framework[1] for data privacy in India is focussed on a limited subset of personal information, termed sensitive personal data or information[2] or SPDI. It requires entities to obtain consents, follow principles such as purpose limitation and storage limitation and maintain reasonable security practices and procedures[3]. Liability is compensatory and linked to wrongful loss or gain caused by negligence in maintaining these reasonable security practices. A clarification exempts entities, providing services under a contract, from substantial compliance requirements such as consent.

The Supreme Court, in the case of Justice K. S. Puttaswamy (Retd.) v. Union of India[4], recognised the fundamental right to privacy and formulated a three-step test of legality, legitimate aim and proportionality to review validity of interferences to the right to privacy. Further, the court recognised key guiding principles such as consent, transparency, purpose limitation, collection limitation and storage limitation. Subsequently, based on a report of a committee of experts[5], a draft Personal Data Protection Bill was introduced in Parliament and is currently being reviewed by a joint parliamentary committee. A concurrent development proposes a framework for non-personal data governance[6].

That apart, sectoral regulators such as Reserve Bank of India, Insurance Regulatory Development Authority of India and the Competition Commission of India have released guidelines in relation to information technology, data protection and governance, prominently including localisation, cybersecurity requirements and standards and also adjudicated on disputes involving data and anti-trust.

1 Information Technology Act, 2000 and the information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

2 Sensitive personal data or information means such personal information which consists of information relating to: (a) passwords; (b) financial information such as bank account, credit card, debit card or other payment instrument details; (c) physical, physiological and mental health condition; (d) sexual orientation; (e) medical records and history; and (f) biometric information.

3 Section 43A, Information Technology Act, 2000.

4 Justice (Retd) K. S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

5 'A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians', July 2018, available at https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report-comp.pdf

6 Reports by the Committee of Experts on Non-Personal Data Governance Framework: (a) Revised Report dated December 16, 2020; and (b) the Initial Report dated July 12, 2020.

Forthcoming Law on Data Privacy

The forthcoming comprehensive personal data regime, the PDP Bill, proposes a personal data framework applicable to collection and processing of personal data where such data has been collected or processed within India by the State, Indian companies, or citizens. The PDP Bill is applicable to entities which determine purpose and means of processing i.e. Data Fiduciaries and those which process personal data on behalf of Data Fiduciaries i.e. Data Processors within and outside India, to the extent that such processing is in connection with businesses carried out in India or relates to any systematic activity of offering goods and services to Data Principals in India or in connection with any activity involving profiling of Data Principals in India.

The PDP Bill proposes a framework for processing[7] personal data[8] of Indian residents based on standards of free, informed, specific and clear consent. "Enhanced obligations such as obtaining explicit consent and data localisation have been specified for sensitive personal data or SPD (including financial data)." footnote 9 to be added at the end of the line. The consequences of non-compliance such as contraventions under the PDP Bill typically include penalties calculated on the basis of total worldwide turnover of entities, while penal consequences such as imprisonment are limited to re-identification and processing of de-identified personal data.

Entities in the GIFT-IFSC would have to evaluate data collection and consent practices on enactment of the PDP Bill.

- Sandbox: Entities in the IFSC using innovative technologies such as artificial intelligence, machine-learning or similar emerging technologies may also likely take advantage of a proposed sandbox for the purposes of encouraging innovation[10]. The sandbox may extend exemptions or modify application of purpose, collection or storage limitation requirements to such entities whose privacy-by-design policies have been certified by the DPA. These may be aligned with existing regulatory initiatives, such as the regulatory sandbox by the Reserve Bank of India[11].
- Local storage and cross-border transfer conditions: Entities in the IFSC processing SPD or a yet undefined category of critical personal data may be required to store such information within India. We may have to wait and watch to understand whether the codes of practice or regulations specified by the DPA or the Central Government would include financial data within the ambit of critical personal data. The Report of the Committee of Experts indicates that critical data would include all kinds of data necessary for the wheels of economy and nation-state to keep running and generally may well extend beyond personal data[12].

---

7 Processing means "an operation or set of operations performed on personal data, and may include operations such as collection, recording, organization, structuring, storage, adaptation, alteration, retrieval, use, alignment or combination, indexing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction".

8 Personal data means "data about or relating to a natural person who is directly or indirectly identifiable, having regard to any characteristic, trait, attribute or any other feature of identity of such natural person, whether offline or online, or any combination of such features with any other information and shall include any inference drawn from such data for the purpose of profiling".

9 "Sensitive Personal Data" under the PDP Bill includes financial data, health data, official identifier, sex life, sexual orientation, biometric data, genetic data, transgender status, intersex status, caste or tribe, religious or political belief or affiliation or any other data categorized as sensitive personal data.

10 Section 40, PDP Bill.

11 Enabling Framework for Regulatory Sandbox dated August 13, 2019; Reserve Bank of India, available at https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=938

12 'A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians', Pg. 97, July 2018, available at https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report-comp.pdf

In addition to the localisation requirements, cross-border transfers must be undertaken pursuant to an explicit consent, in addition to a legal basis such as approved intra-group schemes or contracts, transfer to an entity or country which has adequate level of protection (determined by Central Government) or specific permission for a class of SPD by the DPA. This is further limited in case of critical personal data.

- Classification as Significant Data Fiduciaries: Entities may be required to assess if their processing of personal data or SPD may lead to them being categorized as significant data fiduciaries, especially when processing critical datasets such as financial and health data. Such entities may be required to comply with registration requirements apart from other obligations such as conducting data protection impact assessments and regular data audits.
- Breach Reporting obligations: The PDP Bill imposes breach reporting obligations on Data Fiduciaries to the DPA where it is likely to cause harm to Data Principals[13], such report including nature of personal data, number of Data Principals affected, possible consequences and action being taken to remedy the breach, in such timelines as may be notified by the DPA. Entities must incorporate breach reporting requirements as part of incident response plans and policies in order to efficiently comply with requirements and timelines indicated thereunder.
- Reviewing exemptions and other grounds for processing: Data Fiduciaries may evaluate applicability of exemptions provided under the PDP Bill such as when processing for research, archiving or statistical purposes or on grounds which enable processing without consent such as for debt recovery, credit scoring and mergers and acquisitions and may avail of such exemptions or other grounds, as applicable.

Preparedness Measures

Data Fiduciaries in critical sectors may take advanced preparedness measures to evaluate the impact of the PDP Bill on their business practices and models. Such entities may consider reviewing data in-flows, out-flows, storage and data handling practices across all third parties (such as customers, suppliers and employees), including cross-border transfers, appointment of processors or sub-processors. This includes identification, analysis and classification of SPD and examination of current policies and agreements involving personal data such as user-facing documents like terms of use, privacy policy, employee handbooks, and back-end agreements like data sharing agreements, non-disclosure and employment agreements and other commerci al documents.

The enactment of the PDP Bill will require entities to evaluate data practices at every instance of data processing, including by way of conducting gap assessments. Data Fiduciaries may be required to review agreements with third parties such as Data Processors, develop internal processes, privacy-by-design policies and a system for responding to Data Principal requests, assess interactions with consent managers, data storage, retention policies and process flows for incident response as well as evaluate management and information solicitation. Many of these requirements may be particularly relevant in view of the eligibility for sandbox under the PDP Bill.

Harmonisation and Exemptions :Entities may have to be vigilant in aggressively tracking legislative developments on the PDP Bill and meeting compliance timelines, as may be notified by the Government. It may also be useful for entities in the IFSC to engage with the DPA, IFSC Authority and the Government on extending relevant exemptions to entities in the Fin-Tech sector from application of the PDP Bill. These may prominently include relaxation on cross-border transfer requirements and exemptions for data processing of residents outside India.

To conclude, it may be useful to track the developments of the PDP Bill, particularly on the extent to which modification is proposed pursuant to the joint parliamentary committee's review and consequent impact of such modifications on entities across different sectors. Once enacted, entities must consider proactively engaging with the IFSC Authority and the DPA on development of by-laws relating to data protection for entities operating in the IFSC.

[13] Section 25, PDP Bill.

B) Aircraft Leasing Hub

Background and Recent Developments

The Indian aviation industry, underpinned by an ever-increasing passenger market, has shown remarkable growth in the last decade. The Indian airline operators have also increased their fleet to meet the growing demand for air-travel in the country. The high purchasing cost of an aircraft makes leasing, especially under a sale and lease-back arrangement, an efficient tool for the airline operators to manage their operational costs. Owing to the lack of a home-grown aircraft leasing industry, Indian airline operators, hitherto, have had to depend entirely on foreign lessors to acquire aircrafts.

The recent years have witnessed the government taking significant steps towards the creation of an aircraft leasing industry in India. In January 2019, the working group established by the Ministry of Civil Aviation had published a report that set out a roadmap for the development of an aircraft leasing industry in the IFSC. Pursuant to the recommendations of the working group, in October 2020, 'aircraft lease' was included in the list of financial products that can be offered by the entities set up in the IFSC. In furtherance of the same, the IFSCA has recently issued a "Framework for Aircraft Operating Lease." Taking a step further in India's bid to become a hub for aircraft leasing activities, the Finance Minister, in her Budget 2021-22 speech, has also announced tax exemptions for aircraft leasing companies in the IFSC. These initiatives mark India's first steps towards the creation of an Atmanirbhar (self-reliant) aircraft leasing industry, the projected market size of which is more than USD 50 billion.

Overview of the Framework

The Framework provides for the registration of a company, a limited liability partnership or a trust as a 'lessor' in the IFSC. Such lessors are permitted to undertake the business of providing aircrafts under an operating lease, including a sale and lease-back arrangement. The lessors undertaking aircraft leasing business in the IFSC are required to, inter alia, (1) maintain a minimum capital of USD 200,000 or its equivalent in freely convertible foreign currency, at all times; and (2) make annual filings to the IFSCA, certifying their compliance with the applicable laws. The entities intending to establish an aircraft leasing business in the IFSC will be required to pay an initial registration fee of USD 6,000 and a subsequent annual fee of USD 3,000.

Sale and Lease-Back Model

The sale and lease-back model is the popular choice for aircraft leasing around the globe. Under this model, an airline operator purchases an aircraft from a manufacturer and thereafter sells it to a leasing company to immediately lease it back. It is common practice that manufacturers sell their aircrafts at a lower price to the airline operators than to the leasing companies. This allows the airline operators to make some profit on the aircraft, by selling it to the leasing company at a margin, even before the aircraft flies! The popularity of this model is owed to the win-win situation it creates for the airline operators as well as the leasing companies. On one hand, this model offers an efficient way for the airline operators to meet their operational requirements without burdening their balance sheets whereas on the other hand, the leasing companies are ensured a stable cash flow in the form of monthly lease rentals.

Factors Contributing to the Success of Market Leaders in the Aircraft Leasing Industry

If India is to become a hub for aircraft leasing activities, it must take a leaf out of the book of current world leaders in aircraft leasing industry like Ireland, Singapore, Hong Kong and China. The success of these jurisdictions is predominantly owed to (1) a concessionary tax regime; and (2) a legal framework to ring-fence the risk of losing possession of the aircraft for the leasing companies in case the airline operator becomes insolvent.

Concessionary Tax Regime

Ireland, which is currently the global hub of aircraft leasing activities, has been able to maintain this position by offering one of the lowest corporate tax rates in Europe. Furthermore, it had amended its Taxes Consolidation Act in 2011 to allow aircraft leasing companies to set up tax neutral SPVs (popularly known as Section 110 companies) in Ireland. Similarly, to attract investors, Hong Kong had reduced its profit tax rate by half for entities engaged in aircraft leasing activities. The United Arab Emirates also established the ADGM in 2013, which offers a 0% corporate tax rate for years to aircraft leasing companies operating in the ADGM.

A comparison of India's tax regime (tabulated below) vis-à-vis the current world leaders makes it evident that India will be required to adopt a more competitive tax regime. However, by announcing, in Budget 2021-22, a tax holiday on capital gains for aircraft leasing companies and a tax exemption for aircraft lease rentals paid to foreign lessors in the IFSC, the government has shown its commitment towards supporting the Indian aircraft leasing Industry.

In addition to the above, none of these jurisdictions impose any stamp duty for activities associated with the aircraft leasing industry, whereas India offers only a limited exemption on the payment of stamp duty. Although Section 3 of the Indian Stamp Act, 1899 provides an exemption on instruments executed in connection with the carrying out of the purposes of the SEZ, the IFSC, being located in state of Gujarat, is subject to the provisions of the Gujarat Stamp Act, 1958, which exempts payment of stamp duty only in respect of registration of loan agreements, credit deeds and mortgages. This means that other instruments associated with an aircraft leasing transaction, such as an aircraft purchase agreement or an aircraft leasing agreement would still attract a high rate of stamp duty. A reduction in stamp duty for aircraft leasing and financing activities, therefore, is desirable to give India an edge against its competitors in this industry.

Ring-Fencing the Risk of Losing Possession of the Aircraft in Case the Airline Operator Becomes Insolvent.

Another factor contributing to the success of the abovementioned jurisdictions is their ratification of the Cape Town Convention and the subsequent adoption of Alternative A. Alternative A, inter alia, provides that the leasing company will be entitled to the possession of the aircraft in the event insolvency proceedings are initiated against the airline operator. This provides a much-needed comfort to the leasing companies by ensuring that they are not embroiled in a long-winding insolvency proceeding to get the possession of their aircraft.

India had ratified the Cape Town Convention in 2008 and had agreed to adopt Alternative A. However, India is yet to provide a legislative recognition to Alternative A. In 2018, the Ministry of Civil Aviation had published the Cape Town Convention Bill to discharge its treaty obligations but the bill has not yet been approved by the Parliament.

Particulars	Ireland	Singapore	Hong Kong	China	UAE	India (IFSC)
Corporate Tax Rate	12.5% (group consolidation is permitted)	17% (reduced to 8% for income derived from aircraft leasing activities)	16.5% (reduced to 8.25% for aircraft leasing companies)	25%	0% for 50 years to ADGM companies	0% for the first 5 years; 17.48% for the next 5 years; and 34.96% from the 11th year (group consolidation is not permitted)

Till the time, the bill becomes an Act, insolvency proceedings against an airline operator will be governed by the provisions of the Insolvency and Bankruptcy Code, 2016, which does not contain any provision to provide the same level of comfort to leasing companies like Alternative A.

India's Prospects in the Aircraft Leasing Industry

The rate at which the Indian aviation sector has grown holds an enormous potential to attract investors to the IFSC. Currently, India has the third largest domestic passenger market and the seventh largest aviation market in the world. If this trend continues, then India is set to become one of top aviation hubs by 2040.

In terms of aircraft leasing, India has one of the largest aircraft order books in the world with pending deliveries of over 1,000 aircrafts, the fair market value of which is more than USD 50 Billion. These orders are estimated to generate an annual lease revenue of USD 5 Billion and an annual tax revenue of USD 200 Million. Additionally, the aviation fleet in India has been projected to increase from 750 in 2018 to 6,100 by 2040. By choosing IFSC as the birthplace of aircraft leasing activities in India, the government has offered to the potential investors, a business and regulatory environment comparable to other leading international financial centres like that of London and Singapore. The entities operating in the IFSCs are treated as 'persons resident outside India'. This is beneficial for Indian leasing companies as it allows them access to cheaper debt from the international markets. The tax benefits announced by the Finance Minister for the aircraft leasing companies in the IFSC is another indication that India will leave no stone unturned in its drive to make itself a global hub of aircraft leasing activities.

India's impressive order book for aircraft leasing

- **Pending deliveries— over 1000 aircrafts**
- **FM value of pending deliveries— USD 50 billion +**
- **Expected lease revenue— USD 5 bn annually**
- **Expected tax revenue— USD 200 mn annually**
- **Projected aviation fleet– 6100 by 2040**

Conclusion

The recent initiatives taken by the Indian government are certainly indicative of its commitment to support the aircraft leasing industry. The development of an aircraft leasing industry will carry with itself additional benefits in the form of retention of foreign currency within the country, availability of new employment opportunities and creation of substantial business opportunities for the Indian banks, accounting firms and the legal industry. The rate at which the Indian aviation sector has grown, coupled with the creation of an aircraft leasing industry is a sign that India will soon be becoming a hub for aircraft leasing activities.

C) Insolvency Regime in IFSC

Introduction

Insolvency laws in India were revamped with the introduction of the IBC, on May 28, 2016, which introduced comprehensive rules based insolvency framework, replacing several disparate, and often conflicting legislations. The basic tenet of the IBC is to move from a recovery regime to a revival regime, bringing in institutional infrastructure for insolvency and bankruptcy and greater role for the creditors to take commercial decisions in the corporate rescue process. As per the Ease of Doing Business Report 2020, India made substantial progress in resolving insolvency/reorganisation, owing to the implementation of IBC[1]. India has recorded a jump of 37 positions against its rank at 100 in 2017, to be placed now at 63rd rank among 190 countries assessed by the World Bank in the Doing Business Report (DBR, 2020)[2].

As of March 31, 2021, the IBC has rescued 348 CDs through resolution plans, one third of which were in deep distress. It has also referred 1,277 CDs for liquidation. The realisable value of the assets available with the 348 CDs rescued, when they entered the CIRP, was ₹1.11 Lakh Crore and they owed ₹5.67 Lakh Crore to creditors. The resolution plans recovered ₹2.09 Lakh Crore, which is around 189% of the realisable value of these CDs[3]. The Report on Trend and Progress of Banking in India 2019-20, published by the RBI, on December 29, 2020, presents a comparison of recoveries under CIRP and other mechanisms. Recoveries by SCBs, through the IBC channel, increased to about 61% of the total amount recovered through various channels in 2019-20, against 56% in 2018-19. RBI data indicates that as a percentage of claims, SCBs have been able to recover 45.5% of the amount involved through IBC for financial year 2019-20, which is the highest as compared to recovery under other modes and legislations such as the lok adalats, debt recovery tribunals and the SARFAESI Act[4].

Further, the FSP Rules, issued under Section 227 of the IBC were brought into effect on November 15, 2019. The FSP Rules, do not however apply to banks and provide for flexibility to the Central Government to notify the types of FSPs to whom the rules are to apply to, as well as the 'appropriate regulator' for the categories of notified FSPs. Vide notification dated November 18, 2019, the Central Government (in consultation with the Reserve Bank of India) notified FSPs under the FSP Rules as "all systemically important NBFCs, which include Housing Finance Companies, having an asset size of INR 500 crore or more, as per the last audited balance sheet", with the Reserve Bank of India as the nominated 'appropriate regulator'. The IFSC Authority Act, defines 'financial institution'[5] as an unit set up in an IFSC and which is engaged in rendering 'financial services'[6] in respect of any 'financial product'[7].

[1] https://usispf.org/portfolio/india-climbs-up-14-ranks-in-2020-ease-of-doing-business-index-albeit-13-ranks-short-of-thetarget/

[2] https://www.doingbusiness.org/content/dam/doingBusiness/country/i/india/IND.pdf

[3] The Quarterly Newsletter of the Insolvency and Bankruptcy Board of India January - March, 2021, Vol. 18

[4] Available at https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/0RTP2020_F3D078985540A4179B62B7734C7B445C9.PDF

IFSC at GIFT City has been set up to position it as a global hub for financial services. Apart from providing a global financial platform, it provides easy access to the Indian economy, which is amongst the largest and fastest growing economies in the world, and connects 30 million strong Indian diaspora globally to India through the IFSC. **To aid the objectives of IFSC, a defined insolvency regime for units in the IFSC is important. An independent insolvency regime supports the fundamental principle that distressed businesses that are capable of being rehabilitated should be given that opportunity. In the event that this is not possible, businesses without a future should be capable of being wound-up in an orderly manner, with a view to maximising returns for creditors.** The IFSC, having its independent insolvency framework, will consolidate, standardise and harmonise processes needed to be adopted in insolvency and liquidation/ bankruptcy events of companies and individuals doing business in IFSC. Also, by adopting an independent insolvency framework, IFSC will act as a one-stop solution for financial institutions and its customers to deal with and resolve insolvency events in a time-bound manner. **While not currently applicable, the FSP Rules can act as a model for developing legal framework, dealing with resolution of financial institutions incorporated in the IFSC.**

In the global context, DIFC, on June 13, 2019, adopted the much awaited 2019 DIFC Insolvency Law, which came into full force and effect, replacing the erstwhile insolvency laws. The 2019 DIFC Insolvency Law applies only to entities registered and operating within the DIFC. The salient features of the 2019 DIFC Insolvency Law include simplified provisions relating to voluntary arrangements, receivership, winding-up, director's duties, fraudulent and wrongful trading, along with dedicated courts to only deal with companies incorporated in the DIFC.

In India, a combination of learnings from the fairly evolved IBC and evolving FSP Rules can guide the adoption of insolvency regime, suited for the financial institutions doing business in IFSC. In addition, IFSC can be developed as the preferred hub for insolvency resolution of customers (individuals and companies) of the financial institutions in the IFSC.

Current Insolvency Regime for Financial Institutions in India

The resolution of financial firms globally is undertaken in a manner distinct from those of other corporate debtors, on account of three primary reasons: (i) systemic financial stability concerns; (ii) consumer protection (particularly the protection of retail depositors) and the continuation of critical financial services to consumers; and (iii) the diverse and disaggregated creditor base, which makes collective, coordinated creditor action difficult. Further, the resolution of financial firms is an essential part of national macroprudential regulation and supervision, where stabilisation and resolution are prioritised and in rare instances liquidation is undertaken. Accordingly, the involvement of a separate resolution corporation or of the relevant financial sector regulator is usually central. In recognition of the centrality of the role of the regulator in resolution proceedings, FSP Rules require the appropriate regulator to initiate resolution (as opposed to individual creditors initiating resolution), since the regulator would be aware of the systemic implications of triggering a resolution process for a large interconnected FSP. Such power being retained with regulators will also mitigate the disruption of critical financial services being provided by FSPs to consumers.

Interim moratorium and carve out for third party assets: Upon the appropriate regulatory filing for CIRP, a moratorium is immediately applicable, which applies until admission (at which stage Section 14 moratorium would apply) or rejection (when there would no longer be a moratorium in place). This interim moratorium applies to actions contemplated under sub-sections (1), (2) and (3) of Section 14 of the IBC. The institution of such an interim moratorium will obviate the multiplicity of proceedings in various fora during the initial filing stage. The FSP Rules additionally clarify that the interim moratorium will not apply to any third party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties. The administrator appointed for the FSP is permitted to take control of all such third party assets in custody or in possession of the FSP, only for the purpose of dealing with them in the manner as may be notified by the Central Government

[5] Section 3(c) of the IFSCA Authority Act

[6] Section 3(e) of the IFSCA Authority Act

[7] Section 3(d) of the IFSCA Authority Act

under Section 227 of the IBC. This is in recognition of bona fide third-party purchasers of assets from FSBs and similar contractual arrangements.

The FSP rules contemplate the appointment of an administrator, to take over the control and management of FSP, upon the admission of the insolvency application against it. The administrator is akin to a resolution professional under the IBC, during the corporate insolvency resolution process, and is required to take on the same functions, duties, obligations, responsibilities, rights and powers of such statutory functionaries as prescribed under the IBC.

Reinforcing the centrality of the committee of creditors, their approval is required for the resolution plan. Following such approval, the appropriate regulator is also required to provide a no-objection certificate. This no objection certificate is required to be provided by the appropriate regulator on the basis of the 'fit and proper' criteria, applicable to the business of the FSP, without prejudice to the applicability of the eligibility criteria prescribed under Section 29A of the IBC. Given that the resolution of financial firms must be undertaken swiftly, a concept of "deemed" no-objection has been built in, following 45 days from the submission of the application to the appropriate regulator. In this regard, the Rules also provide for the constitution of an advisory committee, which advises the administrator in the operations of the FSP during the corporate insolvency resolution process. The timelines for resolution appear to be aligned with the IBC i.e., a directory period of 330 days. The resolution plan, once approved by the NCLT, will be binding on creditors, members and other stakeholders as set out in Section 31(1) of the IBC.

In terms of the FSP Rules, the provisions of the IBC, pertaining to liquidation are to apply in their entirety for purposes of liquidation of FSPs, subject to the licence or registration of the FSP continuing during the liquidation process and the regulator being given the opportunity to be heard prior to liquidation.

As regards units in the IFSC, FSP Rules do not extend to entities in the businesses of banking, investments (especially green finance and social impact capital), insurance and reinsurance, capital markets and asset management. Therefore, one option would be to consider tailoring the FSP Rules appropriately and the power and duties of regulators like RBI, Securities and Exchange Board of India (SEBI) and Insurance Regulatory Development Authority of India (IRDAI) may be vested with IFSCA, as given to RBI currently under the FSP Rules.

Insolvency Regime in Financial Centres Globally

Dubai

Under the United Arab Emirates Law, the DIFC is a financial free zone. As such, the DIFC has its own legal framework for the conduct and regulation of civil and commercial matters within its jurisdiction, including its own English-language, common law courts i.e., the DIFC Courts. The DIFC Courts are a division of the recently established Dispute Resolution Authority. UAE federal, civil and commercial laws do not apply within the DIFC. A broad range of English-language civil, commercial and regulatory laws are in force in the DIFC and govern its constituent bodies and establishments.

Debtor in Possession Bankruptcy Regime – The 2019 DIFC Insolvency Law introduces a debtor in possession regime, which the law refers to as 'rehabilitation'. A distressed company is eligible to apply for a rehabilitation plan, where such a company is, or is likely to become unable to pay its debts, and there is a reasonable likelihood of successful rehabilitation, i.e., such a company will eventually become capable of paying its debts.

A company's rehabilitation plan has to be submitted to the DIFC insolvency court, and to its creditors for consideration. In assessing the rehabilitation plan, the DIFC insolvency court will categorise the distressed company's creditors into different classes, in order to vote on the plan. The 2019 DIFC Insolvency Law does not stipulate how creditors will be split into different classes and ultimately categorised, as such the presumption is that the DIFC insolvency court will determine the class of creditors. The DIFC Courts also have "cram-down" power to bypass stipulated thresholds under the 2019 DIFC Insolvency Law in the interest of senior creditors while approving a rehabilitation plan.

Once a rehabilitation plan has been submitted to the DIFC insolvency court, an automatic moratorium for a period of 120 days will apply to all creditors, both secured and unsecured. A distressed company in rehabilitation will also benefit from certain protections against the termination of contracts, i.e., irrespective of a creditor's right to terminate, such right will be typically stayed during the period of the moratorium. In addition, the DIFC insolvency court has the authority to sanction new financing during the rehabilitation process, whilst ensuring that existing creditors are protected.

During the implementation of a rehabilitation plan, the directors of the distressed company will be permitted to manage the company's affairs unless there is evidence that such officers or management were involved in fraud or mismanagement of the company. In such a scenario, the management of the distressed company could be taken over by a court-appointed administrator.

The creditors and shareholders of a distressed company have the right to challenge a rehabilitation plan and the DIFC insolvency court will consider whether: (a) there will be irreparable harm to the distressed company; (b) the creditor requesting relief would suffer significant loss; and (c) the balance of harm to the creditor outweighs the interest of the distressed company.

Abu Dhabi

ADGM was established as a financial free zone, pursuant to Abu Dhabi Law No. 4 of 2013 and Federal Decree No. 15 of 2013. Established as an independent jurisdiction within the United Arab Emirates, the ADGM is empowered to create its own legal and regulatory framework for all civil and commercial matters. ADGM's three independent authorities - the Registration Authority, the Financial Services Regulatory Authority and ADGM Courts - together ensure that its business-friendly environment operates in line with international best practices, recognised by major financial centres worldwide.

The ADGM recognises setting up businesses under a variety of segments, such as:

- Financial business – banking, capital markets, wealth, asset management and fintech;
- Non-financial business – corporate headquarters, family offices and foundations, professional services, etc.;
- Special Purpose Vehicles (SPVs) – passive holding companies; and
- Retail – lifestyle destination - home, luxury retail and dining options, premium hospitality and world-class healthcare.

The restructuring options available in ADGM are receivership/ administrative receivership, administration, deeds of company arrangement (in conjunction with an administration), schemes of arrangement and liquidation. All the aforesaid restructuring options are governed by the ADGM Insolvency Regulations, other than the scheme of arrangement, which is governed by the Companies Regulations 2020. In addition, the Application of English Law Regulations 2015 purport to incorporate, to a large extent, the common law and statutory laws of England (including the principles and rules of equity) into ADGM law. As such, to the extent that the English common law addresses any issues in relation to the relevant subject areas, such laws should (subject to certain limited exceptions) apply equally under ADGM law. ADGM has carefully selected which English statutes and statutory modifications are to have effect in ADGM. As it has given legal effect to locally modified English statutes or drafted its statutes from precedent acts from other jurisdictions, it benefits from the interpretative case law, which has developed around the original precedent acts. The ADGM Insolvency Regulations incorporate and apply the Model Law. Accordingly, foreign insolvency officials may apply for recognition of insolvency proceedings commenced in other jurisdictions or for cooperation of the ADGM courts in connection with such foreign insolvency proceedings. In accordance with the Model Law, if an ADGM court determines that the "centre of main interests", in relation to a particular insolvency, is in a jurisdiction other than the ADGM, the ADGM courts should recognise the foreign proceedings as being the "foreign main proceedings".

Main Objective of Global Connect at IFSC and Relevance of Model Law

The objective of the IFSC is to develop a strong global connect and focus on the needs of the Indian economy, as well as to serve as an international financial platform for the entire region and the global economy as a whole. **In the absence of a defined set of legislation to address instances of cross border insolvencies, in respect of offshore financial institutions doing business in India, the Model Law ought to act as a guiding force to deal with such situations. The Model Law is designed to assist states to equip their insolvency laws with modern legal framework, in a bid to effectively address cross-border insolvency proceedings concerning debtors experiencing severe financial distress or insolvency.** The Model Law focuses on authorising and encouraging co-operation and coordination between jurisdictions, rather than attempting the unification of substantive insolvency law, and respects the differences among national procedural laws. For the purposes of the Model Law, a cross-border insolvency is one where the insolvent debtor has assets in more than one state or where some of the creditors of the debtor are not from the state where the insolvency proceeding is taking place.

The Model Law is based on four main principles[8] : access, recognition, cooperation and coordination.**It allows foreign professionals and creditors direct access to domestic courts and to participate in and commence domestic insolvency proceedings against a debtor.** It allows recognition of foreign proceedings and enables courts to determine relief accordingly. It provides a framework for cooperation between insolvency professionals and courts of countries and for coordination in the conduct of concurrent proceedings in different jurisdictions. It appears to be a comprehensive instrument as it builds upon the prevailing bilateral frameworks and extends the flexibility for deviations as per the requirement of any particular jurisdiction. The Model Law, at best, provides a broad framework, leaving individual jurisdictions to decide about the operational nitty gritty and altogether refrains from suggesting any mechanism through which differences in approaches within the ambit of Model Law, as adopted by the various countries, can be resolved.

The Model Law does make the distinction between main and non-main proceedings. 'Foreign main proceeding' in Model Law is defined as 'a foreign proceeding taking place in the State where the debtor has the centre of its main interests', and 'foreign non-main proceeding' means 'a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment'. Also, 'establishment' is referred to as 'any place of operation where the debtor carries out a non-transitory economic activity with human means and goods or services'. Based on the distinction of main and non-main proceedings, the Model Law further provides rules on access to local courts, recognition of foreign orders, relief to assist foreign proceedings, cooperation among courts and coordination of concurrent proceedings.

Key Takeaways for Insolvency Regime in IFSC

IFSC as global insolvency hub: The IFSC, with certain tweaks in its current model, can emerge as a favoured global destination for insolvency resolution of companies across the globe. IFSC already has the advantage of having a unified regulator (IFSCA), vested with extensive power to govern widespread businesses dealing in financial services. To enable IFSC to emerge as the global hub for insolvency resolution, the following key missing components needs to be addressed:

- Companies not engaged in the business of financial services – the current regime does not enable companies not involved in the business of financial services (as defined in IFSCA Authority Act) to register and operate within IFSC. This challenge limits the reach of IFSC to certain number of companies. **This may be addressed by the formation of an SPV to have presence within IFSC for companies operating within or outside India and thereby submitting to the jurisdiction of IFSC for insolvency resolution or liquidation; and**
- Independent Insolvency Framework – the insolvency regime applicable for companies registered within the IFSC is not clear currently. **Drawing from the experience of IBC (and FSP Rules), IFSC should have its own, independent insolvency framework to deal with stressed situations and provide for options of restructuring, corporate insolvency resolution process, liquidation, winding-up, scheme of arrangement, power and duties of the insolvency professionals and committee of creditors, along with**

[8] Report of Insolvency Law Committee on Cross Border Insolvency, October, 2018

provisions dealing with avoidance, fraudulent or wrongful transaction. The success of any legislation is dependent on the infrastructure provided for the machinery within the legislation to function efficiently. Accordingly, for IFSC to be a success, the actual test will lie in it being able to resolve insolvency scenarios in a smooth, timely and orderly manner. Therefore, there is a need for IFSC to have its own insolvency laws with functionaries like insolvency professionals, court/tribunals, legal advisors, etc. It is advisable that such regime also include mechanisms for pre-packaged resolution plans.

For IFSC to be independent and prosper as a financial hub, it is of utmost importance that an independent insolvency court/ tribunal or an alternate dispute resolution forum is set up, with provisions relating to appeal, review and finality of any decision of IFSCA. The courts/ tribunals at IFSC should have specialised members with expertise and prior background in financial and insolvency matters relating to financial service providers. The governing laws applicable to the IFSC courts should be designed to ensure the highest international standards of legal process and procedure, which in turn create a legal and judicial environment that is conducive to trade, finance and investment and provides the certainty, transparency and efficiency expected by the global financial institutions operating within the IFSC. The dedicated IFSC court/ tribunal shall add speed to dispute resolution and save backlog of cases as witnessed normally with any civil and commercial court/ tribunals in India.

Cross-border insolvency: India has not yet adopted a cross-border insolvency framework, whether under the Model Law, or otherwise. Sections 234 and 235 of the IBC provide only for an enabling framework for cross-border insolvency, which is yet to be acted upon. Section 234 provides for bilateral or multilateral agreements to be entered into by the Central Government with other countries for purposes of cross-border insolvency. Section 235 provides for a mechanism whereby the NCLT can seek assistance from foreign countries with which such a reciprocal arrangement has been arrived at or agreed upon, for the enforcement of the provisions of the IBC.

To evolve the IFSC as a global restructuring hub, a robust, independent framework to deal with cross-border insolvency, along the lines of the Model Law and insolvency protocols, needs to be developed and adopted for application on companies doing business in IFSC.

Conclusion

The government of India and all the regulators have been working together to make IFSC at GIFT City as one of the leading international financial centres at par with London, New York, Hong Kong, Singapore and Dubai. While the regulatory regime, in respect of the unified regulator, IFSCA, is in place, the government and authority are actively working to address any issues or legislative gaps that a business entity at IFSC may have faced.

The IBC has been a successful framework to deal with stressed assets in India and has been lauded for its clarity, timeliness and implementation in resolving stressed companies. Further, adoption of FSP Rules for undertaking insolvency process for FSPs aids to the completeness of insolvency regime in India. Several committees have made recommendations for the adoption of Model Law and have a defined piece of legislation to deal with cross-border insolvency. The Insolvency and Bankruptcy Board of India has been proactive in addressing the gaps/ needs in the Indian economy and has come up with timely and useful amendments, rules and regulation. Against the aforesaid backdrop, the insolvency regime in IFSC could be evolved to conduct business and deal with stressed situations, non-performing assets and bad loans. The central government, IFSCA and IBBI may collaborate from time to time and provide a thriving insolvency framework for the IFSC, guided by the Indian experience gained in the last five years, since implementation of the IBC, and look to develop the IFSC as a global restructuring hub.

D) Employment

Overview

In India, labour and employment laws may be enacted by both GOI and the respective State Governments. The laws that are in force presently govern a wide array of subject matters such as wages, social security benefits, occupational health, safety and working conditions and industrial relations. The current laws governing wages (such as laws governing payment of minimum wages), social security (such as laws governing provident fund and gratuity benefits), and occupational health, safety and working conditions in commercial establishments like insurance companies, banks and stock exchanges, will all be applicable to IFSC as well. However, there are certain differences between the laws governing industrial relations applicable to SEZs in Gujarat and other areas in India. This chapter provides an overview of some such key provisions that are specific to SEZs in Gujarat such as IFSC, along with other key business-friendly employment law provisions in force in Gujarat.

Additionally, the Parliament has passed four new labour codes, viz., the Code on Wages, 2019, the IR Code, the SS Code and the OSH Code. **The Labour Codes will be brought into force once the appointed date for their implementation is notified by the Central Government. Once notified, these Labour Codes will subsume 29 key central labour laws.** Therefore, wherever relevant, we have also highlighted certain key provisions that have been included under the Labour Codes to promote ease of doing business in India.

Termination of Employment

Employees in India can primarily be divided into two categories, namely, workmen and non-workmen. Workmen are afforded a greater degree of legal protection and benefits under Indian laws, especially in relation to termination of employment, which is primarily governed by the IDA.

Under the IDA, ordinarily, employers of commercial establishments may only terminate the employment of workmen by:

- Providing a month's notice or pay in lieu thereof;
- Paying compensation calculated at the rate of 15 days' salary for every year of continuous service or a part thereof in excess of 6 months; and
- Giving notice of termination of employment of workmen to the labour authorities.

With the intent of easing compliance with procedural requirements for SEZs in Gujarat, the obligation to intimate labour authorities of termination of employment of workmen has been done away with. However, employers are required to provide workmen with requisite notice or pay in lieu of such notice, and pay compensation in the form of 60 days' salary for every year of continuous service (as opposed to 15 days' salary in non-SEZ areas). Employers will not be required to pay compensation where such compensation amount has been insured. In such cases, the employer is only required to forward all necessary documents of the impacted workmen to the insurance provider within 15 days after termination of employment.

Law Relating to Strikes

Under the IDA, persons employed in public utility services are prohibited from going on strike, unless, amongst other things, they provide a minimum of 14 days' prior notice to the employer. This obligation to provide notice is not placed on employees of any other industry.

The IDA defines public utility service to only include essential services such as railways, postal services, any industry involved in supplying water and power etc. In a business-friendly move, the State of Gujarat has amended the definition of public utility service via the Gujarat SEZ Act, to include any service in the industry or establishment set up in an SEZ.

Consequently, **persons employed in any unit in an SEZ, including in any unit set up in the IFSC, will be required to give notice of strike to the employer.** When such notice of strike is served on the employers, they will be better placed to manage their affairs by utilizing the time afforded by the notice to enter into discussions with their employees and avoid further escalation or disruption to their businesses.

Under the IR Code, the aforesaid protection granted to businesses set up in a SEZ has now been replicated in respect of all industrial establishments. Therefore, persons employed in units set up in the IFSC would continue to be under an obligation to provide notice of strike even after the IR Code is brought into effect.

Consolidated Returns Under Labour Laws

Most employment laws in India require employers to file periodic returns certifying their compliance with such laws. Filings are required to be made separately under each of the laws, often as physical copies. **In order to simplify and make this compliance process hassle-free, a provision has been included in the Gujarat SEZ Act, pursuant to which a consolidated annual return can be filed by employers under key employment laws such as the Payment of Wages Act, 1936, MW Act and Payment of Gratuity Act, 1972.**

The Labour Codes have adopted a similar approach in respect of all establishments and in addition to returns, they have also consolidated and streamlined the maintenance of various registers and records needed under the employment laws. Further, under the Labour Codes returns may be filed, and records and registers may be maintained, electronically.

Compounding of Offences

Gujarat is one of the few states in India to provide for compounding of offences (whereby further proceedings are not initiated against an employer upon the employer filing an application admitting non-compliance and paying the penalty levied by the appropriate authority). Offences under legislations such as the IDA, MW Act, Payment of Bonus Act, and the Contract Labour (Regulation and Abolition) Act, 1970, may be compounded as the intent is to focus on enabling organisations to comply with the legal requirements, as opposed to penalsing them for inadvertent defaults.

The aforesaid beneficial provisions are also reflected under the Labour Codes and extend to offences not only under the legislations mentioned above but also to offences committed under the social security legislations such as those governing provident fund and gratuity.

Other beneficial provisions under the Labour Codes

Ease of doing business is the cornerstone on which the Government has been advocating for the Labour Codes. Some of the key provisions that have been introduced to facilitate the same are set out below.

- Registrations: Under the current employment regime, registrations are required to be obtained by employers separately under the applicable central and state laws. This increases the compliance cost of employers. However, this position is going to undergo a fundamental change once the Labour Codes are enforced. Unlike the present requirement to obtain separate registrations under different labour law enactments, the provisions of the OSH Code read with SS Code would permit employers to obtain a single registration for their operations.
- Right to redemption: In a far reaching move and with the aim to foster an attitude of compliance among employers, they are protected, under certain circumstances, from prosecution for their defaults until they have been given a fair chance to rectify their non-compliances.
- Duration to complete enquiries: The SS Code provides that enquiries undertaken in respect of applicability of EPF and ESI benefits or payment of dues thereunder should be completed within two years, which may be extended for a period of maximum one year. This move will provide considerable relief to employers, who often find themselves embroiled in long-drawn enquiries regarding EPF or ESI dues.
- Decriminalisation of offences: The Labour Codes have decriminalised most offences, reserving imprisonment only for serious infractions. This is in stark contrast with the current laws which prescribe imprisonment even for minor non-compliances and put employers at risk of imprisonment even for relatively less serious misdemeanours.

Conclusion

The State of Gujarat has taken measures to simplify the procedural compliances under various labour laws to ease business operations for units set up in placessuch as IFSC. This sentiment resonates with the provisions of the Labour Codes and has been further augmented under these new codes. From an employment law perspective, the immediate future holds immense promise for businesses.

Glossary of Terms	
ADGM	Abu Dhabi Global Market
ADGM Insolvency Regulations	Abu Dhabi Global Market Insolvency Regulations 2015, and certain amendments thereto
ADR	Alternate Dispute Resolution
AIF	Alternative Investment Funds
Alternative A	Alternative A to Article XI of the Protocol on Matters Specific to Aircraft Equipment, 2001
AMT	Alternate Minimum Tax
BASL	BSE Administration and Supervision Limited
BSE	BSE Limited
Cape Town Convention	Convention on International Interests in Mobile Equipment, 2001
CIRP	Corporate Insolvency Resolution Process
Companies Act	Companies Act, 2013
Companies Act Notifications	G.S.R. 08(E) dated January 4, 2017 for unlisted public company and G.S.R. 09(E) dated January 4, 2017 for private company, dated January 4, 2017, issued by MCA
CDs	Corporate Debtor(s)
DIFC	Dubai International Financial Centre
DIFC Courts	Courts under 2019 DIFC Insolvency Law
(2019) DIFC Insolvency Law	DIFC Insolvency Law No. 1 of 2019 and associated DIFC Insolvency Regulations 2019
DTA	Domestic Tariff Area, which means the whole of India including territorial waters and continental shelf but excluding Special Economic Zones

Data Fiduciaries	entities which determine purpose and means of processing
Data Processors	entities which process personal data on behalf of Data Fiduciaries
EPF	Employees' Provident Fund
ESI	Employees' State Insurance
FATF	Financial Action Task Force
FBIL	Financial Benchmarks India Private Limited
FC Regulations	International Financial Services Centre Authority (Finance Company) Regulations, 2021
FDI	Foreign Direct Investment
February Circular	Circular titled 'Framework for enabling Ancillary Services at International Financial Services Centres' dated February 10, 2021 issued by the IFSC Authority
FEMA Act	Foreign Exchange Management Act, 1999
FEMA (IFSC) Regulations	Foreign Exchange Management (International Financial Services Centre) Regulations, 2015
FPI	Foreign Portfolio Investor
Framework	Framework for Aircraft Operating Lease
FSP	Financial Service Providers
FSP Rules	Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority Rules), 2016
FVCI	Foreign Venture Capital Investment
GDRs	Global Depository Receipts
GIC	Global In-house Centres

GIC Regulations	International Financial Services Centres Authority (Global In-house Centres) Regulations, 2020
GIFT City	Gujarat International Finance Tec City
GIFT City IFSC	IFSC set up in GIFT City
GMAC	Gujarat Mediation and Arbitration Centre
GOI	Government of India
Gujarat SEZ Act	Gujarat Special Economic Zone Act, 2004
IBC	Insolvency and Bankruptcy Code, 2016
IBE	International Bullion Exchange
IDA	Industrial Disputes Act, 1947
IFCs	International financial centres
IFSC	International Financial Services Centre
IFSC Authority	International Financial Services Centres Authority
IFSC Authority Act	International Financial Services Centres Authority Act, 2019
IFSC Authority Bill	International Financial Services Centres Authority Bill, 2019
IFSC Companies	IFSC Private Companies and IFSC Public Companies
IFSC Private Companies	Private companies operating in IFSC
IFSC Public Companies	Public companies operating in IFSC
IFSC Notification	Notification No. S.O. 968 (E)
IFSCA Banking Regulations	International Financial Services Authority (Banking) Regulations, 2020
IFSCA Bullion Exchange Regulations	International Financial Services Centres Authority (Bullion Exchange) Regulation, 2020

IFSCA Market Infrastructure and Institutions Regulations	International Financial Services Centres Authority (Market Infrastructure Institutions) Regulations, 2021
IIO	International Financial Service Centre Insurance Office
IIO Guidelines	Insurance Regulatory and Development Authority of India (Registration and Operations of International Financial Service Centre Insurance Offices (IIO)) Guidelines, 2017
IIIO	International Financial Service Centre Insurance Intermediary Office
IIIO Guidelines	Insurance Regulatory and Development Authority of India (International Financial Service Centre Insurance Intermediary Offices) Guidelines, 201
India INX	India International Exchange
IOSCO	International Organisation of Securities Commissions
IR Code	Industrial Relations Code, 2020
IRDAI	Insurance Regulatory Development Authority of India
IRDAI IFSC Guidelines	Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015
IRDAI (RIB) Rules, 2015	Insurance Regulatory and Development Authority of India (Regulation of Insurance Business in Special Economic Zone) Rules, 2015
IT Act	Income Tax Act, 1961
Insurance Act	Insurance Act, 1938
Investment Advisors Regulations	SEBI (Investment Advisers) Regulations, 2013
IRDA Act	Insurance Regulatory and Development Authority Act, 1999

KYC	Know Your Client
LLP	Limited Liability Partnerships
Labour Codes	Code on Wages, 2019, the IR Code, the SS Code and the OSH Code, collectively
LCIA	London Centre for International Arbitration
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
Model Law	UNCITRAL Model Law on Cross Border Insolvency
MW Act	Minimum Wages Act, 1948
NISM	National Institute of Securities Markets
NSE	National Stock Exchange of India Limited
NSE IFSC	NSE IFSC Limited
OSH Code	Occupational Safety, Health and Working Conditions Code, 2020,
PE	Permanent Establishment
PDP Bill	Personal Data Protection Bill, 2019
PFRDA	Pension Fund Regulatory and Development Authority
RBI	Reserve Bank of India
RoC	Registrar of Companies
SARFAESI Act	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SCBs	Scheduled Commercial Banks
SEBI	Securities and Exchange Board of India

SEBI AIF Regulations	Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012
SEBI Guidelines 2016	SEBI circular SEBI/HO/MRD/DSA/CIR/P/2016/125 dated November 28, 2016 (Guidelines for functioning of Stock Exchanges and Clearing Corporations in International Financial Services Centre (IFSC))
SEBI (IFSC) Guidelines	Securities and Exchange Board of India (International Financial Services Centre) Guidelines, 2015
SEBI SE and CC Regulations 2018	Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018
SEZ	Special Economic Zones
SEZ Act	Special Economic Zone Act, 2002
SEZ Rules	Special Economic Zone Rules, 2006
SGX	Singapore Stock Exchange Limited
SIAC	Singapore International Arbitration Centre
SPV	Special Purpose Vehicle
SPD	Sensitive personal data
SPDI	Sensitive personal data or information
SS Code	Code on Social Security, 2020
STT	Securities Transaction Tax
UAE	United Arab Emirates

Contributors List

1. Arjun Goswami
2. Paridhi Adani
3. Shaneen Parikh
4. Rashmi Pradeep
5. Dhananjay Kumar
6. Anu Tiwari
7. Arun Prabhu
8. Indranath Bishnu
9. Ajay Sawhney
10. SR Patnaik
11. Abe Abraham
12. Rohan Banerjee
13. Rutu Gandhi
14. Vivaik Sharma
15. Aditya Sarkar
16. Anirban Mohapatra
17. Anirud Sudarsan
18. Anushka Shah
19. Devanshi Dalal
20. Hamraj Singh
21. Jeet Shroff
22. Manish Soni
23. Mayank Udhwani
24. Moolshree Shrivastava
25. Rahul Mantri
26. Rashi Gupta
27. Ritu Sajnani
28. Sakshi Sejwal
29. Soumyaditya Dasgupta
30. Surabhi Chatterjee
31. Tushar Karkaria
32. V.P, Thangadurai
33. Varsha Sriram
34. Varun Mehta

Content Editors

35. Devika Ghosh
36. Jhini Phira

Key Contacts

Cyril Shroff
Managing Partner
cyril.shroff@cyrilshroff.com

L. Viswanathan
Partner (Chair – Finance, Projects & Insolvency)
l.viswanathan@cyrilshroff.com

Leena Chacko
Partner
leena.chacko@cyrilshroff.com

Santosh Janakiram
Partner (Head – Projects and Co-Head - Financial Institutions Group)
santosh.janakiram@cyrilshroff.com

Arjun Goswami
Director (Public Policy Practice)
arjun.goswami@cyrilshroff.com

Paridhi Adani
Partner (Head - Ahmedabad)
paridhi.adani@cyrilshroff.com

Ketaki Mehta
Partner (GIFT City)
ketaki.mehta@cyrilshroff.com

Rajendra Rele
Senior Director – Financial Institution Group
rajendra.rele@cyrilshroff.com

GIFT City
Cyril Amarchand Mangaldas
415, Pragya Tower
GIFT City, Gandhinagar – 382 355
Gujarat, India
T +91 79 490 39900
F +91 79 490 39999
E cam.giftcity@cyrilshroff.com

Mumbai
Peninsula Chambers,
Peninsula Corporate Park, GK Marg,
Lower Parel, Mumbai – 400 013, India
T +91 22 2496 4455
F +91 22 2496 3666
E cam.mumbai@cyrilshroff.com

Ahmedabad
Shapath - V 1304/1305,
Opposite Karnavati Club, S G Road
Ahmedabad – 380 051, India
T +91 79 4903 9900
F +91 79 4903 9999
E cam.ahmedabad@cyrilshroff.com

Presence also in
Delhi - NCR | Bengaluru | Hyderabad |
Chennai | Singapore

cyril amarchand mangaldas

ahead of the curve