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Opportunities in GIFT City

Setting up Funds in India's New Offshore Financial Centre

December 2020



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About NDA

We are an India Centric Global law firm (www.nishithdesai.com) with four offices in India and the only law firm with license to practice Indian law from our Munich, Singapore, Palo Alto and New York offices. We are a firm of specialists and the go-to firm for companies that want to conduct business in India, navigate its complex business regulations and grow.

We helped pioneer the asset management industry in India, Mauritius and Singapore in early 1990s. It remains an authority in the Fund Formation space with a remarkable global reputation amongst the GP and LP community. For details of the members in our Funds Formation practice, please refer the end of this Paper.

We are proud to have been associated with GIFT City project right from its conceptualization in 2007 until today. After a long journey, it is on the verge of becoming a clean, transparent and FATF compliant offshore jurisdiction for international financial services. It also creates new and collaborative opportunities as mid-shore jurisdiction alongside other offshore jurisdictions. The Government of India established the International Financial Services Centre in the GIFT City at Gandhinagar, Gujarat in 2015. Since then the Indian government and the regulatory agencies have been working in unison to enable GIFT City for offering business and regulatory environment that is comparable to other leading Offshore Financial Centres.

It is expected that the establishment of the IFSC Authority to act as a single window clearance is likely to boost investor confidence in the GIFT City. As the fund management industry is increasingly becoming interested in the GIFT City and with the Indian government and regulatory authorities working in unison to promote the GIFT City, we hope that the readers find the research in this Paper useful.

Our reputation is well regarded for handling complex high value transactions and cross border litigation; that prestige extends to engaging and mentoring the start-up community that we passionately support and encourage. We also enjoy global recognition for our research with an ability to anticipate and address challenges from a strategic, legal and tax perspective in an integrated way. In fact, the framework and standards for the Asset Management industry within India was pioneered by us in the early 1990s, and we continue remain respected industry experts.

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The safety and security of our client's information and confidentiality is of paramount importance to us. To this end, we are hugely invested in the latest security systems and technology of military grade. We are a socially conscious law firm and do extensive pro-bono and public policy work. We have significant diversity with female employees in the range of about 49% and many in leadership positions.

Accolades

A brief chronicle our firm's global acclaim for its achievements and prowess through the years –

- **Benchmark Litigation Asia-Pacific:** Tier 1 for Government & Regulatory and Tax
2020, 2019, 2018
- **Legal500:** Tier 1 for Tax, Investment Funds, Labour & Employment, TMT and Corporate M&A
2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012
- **Chambers and Partners Asia Pacific:** Band 1 for Employment, Lifesciences, Tax and TMT
2020, 2019, 2018, 2017, 2016, 2015
- **IFLR1000:** Tier 1 for Private Equity and Project Development: Telecommunications Networks.
2020, 2019, 2018, 2017, 2014
- **AsiaLaw Asia-Pacific Guide 2020:** Tier 1 (Outstanding) for TMT, Labour & Employment, Private Equity, Regulatory and Tax
- **FT Innovative Lawyers Asia Pacific 2019 Awards:** NDA ranked 2nd in the Most Innovative Law Firm category (Asia-Pacific Headquartered)
- **RSG-Financial Times:** India's Most Innovative Law Firm 2019, 2017, 2016, 2015, 2014
- **Who's Who Legal 2019:**
Nishith Desai, Corporate Tax and Private Funds – Thought Leader
Vikram Shroff, HR and Employment Law- Global Thought Leader
Vaibhav Parikh, Data Practices - Thought Leader (India)
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- **IDEX Legal Awards 2015:** Nishith Desai Associates won the "M&A Deal of the year", "Best Dispute Management lawyer", "Best Use of Innovation and Technology in a law firm" and "Best Dispute Management Firm"

Please see the last page of this paper for the most recent research papers by our experts.

Recent Announcements

With the objective of providing impetus to the GIFT City, statutory bodies have been making several announcements in relation to operation in GIFT City. We have not discussed all the recent announcements in this Paper and have listed below such announcements to the extent relevant for this Paper:

1. The IFSC Authority vide circular dated October 16, 2020 notified Global-in-House Centres as a financial service to provide services relating to financial products and financial service
2. The IFSC Authority vide circular dated October 19, 2020 announced the guidelines for the functioning of the regulatory sandbox in IFSC
3. The IFSC Authority vide circular dated October 21, 2020 announced the framework for listing and trading of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) on recognized stock exchanges in IFSCs
4. The IFSC Authority vide circular dated December 04, 2020 issued Directions on business in foreign currency at IFSC

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1. Introduction

The origin of Offshore Financial Centers (“OFCs”) may be traced back to the 1960s and 1970s. The development of OFCs was essentially the response of international banks to the attempt by sovereign governments in many advanced countries to control capital flows through the imposition of restrictive domestic regulations. These restrictions, which were intended to provide governments with more control over monetary policy, encouraged a shift of deposits and borrowing to less regulated institutions, essentially banks in OFCs, which are exempt from such restrictions.¹ The International Monetary Fund (“IMF”) in its Background Paper on OFCs² defined an OFCs as under:

“

“A center where the bulk of financial sector activity is offshore on both sides of the balance sheet, (that is the counterparties of the majority of financial institutions liabilities and assets are non-residents), where the transactions are initiated elsewhere, and where the majority of the institutions involved are controlled by non-residents.”³

”

With an estimated 50% of the world’s cross-border assets and liabilities (\$21-\$32 trillion) passing through OFCs, they have become dominant nodes in the transactional financial-economic network in which capital is stored and redistributed.⁴

The IMF in its Background Paper lists OFCs as a third category of financial centres, with International Financial Centers (“IFCs”), and Regional Financial Centers listed in the first two categories. The last decade has seen unprecedented growth in India’s financial services sector. The financial services sector employs over 3 million people, constitutes about 5% of the Gross Domestic Product (“GDP”) and has an estimated market capitalization of over US\$ 200 billion. As India experiences continued economic growth, the financial sector could generate about 10-11 million jobs and a GDP contribution of US\$ 350 to 400 billion by 2020. Several developed countries have successfully established high-tech financial hubs, which over time have catered as international financial services centers. These centers provide suitable regulatory regimes and create a business environment to promote talent, increase capital flow and create significant economic value for their domestic economies, e.g. London and New York account for 10% of the GDP and about 5% of jobs.⁵

The High Powered Expert Committee submitted a report on ‘Making Mumbai an International Financial Services Centre’ to the Ministry of Finance in 2007, however, the initiative was abandoned due to the global financial crisis in 2008.⁶ The Hon’ble Finance Minister Mr. Arun Jaitley while presenting the Union Budget for the year 2015-16, recognizing that India produces some of the finest financial minds, announced the establishment of Gujarat International Financial Tec-City (“GIFT City”), in Gujarat as India’s first International Financial Service Center (“IFSC”).

1. ‘Concept of Offshore Financial Centers: In Search of an Operational Definition’ dated April 2007 by Ahmed Zoromé

2. <https://www.imf.org/external/np/mae/oshore/2000/eng/back.htm>

3. As per the IMF Background Paper, a jurisdiction with the following characteristics could be considered as OFCs:

- Jurisdictions that have relatively large numbers of financial institutions engaged primarily in business with non-residents;
- Financial systems with external assets and liabilities out of proportion to domestic financial intermediation designed to finance domestic economies; and
- More popularly, centres which provide some or all of the following services: low or zero taxation; moderate or light financial regulation; banking secrecy and anonymity

4. <https://www.nature.com/articles/s41598-017-06322-9>

5. <http://giftsez.com/giftcoltd.aspx>

6. <https://www.livemint.com/Industry/XmEtCCZklNL5woLmQ9K7l/What-is-an-IFSC-and-how-does-it-work.html>

The purpose of setting up the GIFT City is to develop a world class smart city that becomes a global financial hub with the development of an IFSC. GIFT City is central business hub with state-of-the-art infrastructure and a first of its kind development in India.⁷ The IFSC in GIFT City seeks to bring to the Indian shores, those financial services transactions that are currently carried on outside India by overseas financial institutions and overseas branches /subsidiaries of Indian financial institutions. Establishment of IFSC in India is expected to increase employment opportunities, capture an estimated INR 1,334 crore per day worth trading in rupee derivative, thereby, enhancing economic activity and revenue generation.⁸

This paper summarizes the present regulatory regime for GIFT City along with some structures that may be explored in GIFT City, the direct and indirect tax benefits extended to units established in IFSC to promote their growth.

7. <http://www.giftsez.com/documents/FAQS-GIFT-City-IFSC.pdf>

8. <https://www.ndtv.com/business/sebi-board-nod-for-international-financial-services-centre-guidelines-748680>

2. GIFT City – Genesis and Concept

To develop and implement GIFT City, the Government of Gujarat through its undertaking Gujarat Urban Development Company Limited (“GUDCL”) has established “Gujarat International Finance Tec-City Company Limited” (“GIFTCL”). GUDCL facilitates urban development by assisting state government in formulation of policy, institutional capacity building, project implementation, and in raising funds from multilateral agencies for urban projects in order to achieve high living standards and growth of economic activities.

The GIFT Master Plan facilitates Multi Services Special Economic Zone (“SEZ”) with IFSC status, Domestic Finance Center and associated social infrastructure.⁹ GIFT SEZ Limited (“GIFT SEZ”) has been formed by the GIFTCL for development of Multi Services SEZ at Gandhinagar with a prime focus on development of IFSC and allied activities in SEZ.¹⁰ The GIFT SEZ has been set up in accordance with the Special Economic Zones Act, 2005 (“SEZ Act”), Special Economic Zone Rules, 2006 (“SEZ Rules”) and the regulations made thereunder. The core objectives of developing IFSC in GIFT Multi Services SEZ are as under:

- To realize the vision of the Government of India (“GoI”) to emerge as a major economic power by facilitating development of strong base of IFSC in the country.
- Facilitate the implementation of the Government’s strategy for the development of a financial hub in the South Asian sub-continent.
- Position the IFSC as a world-class zone for the long-term provision of office / service accommodation and high technological, economical and commercial infrastructure.¹¹

GIFT SEZ is divided into well-defined Processing & Non-Processing areas with emphasis on integrated development such as limited residential & recreational facilities to make the area lively 24 x 7. The GIFT City consists of a Multi-Service SEZ (SEZ) and an exclusive Domestic Tariff Area (“DTA”). The total area of 261 acres has been demarcated as SEZ and additional 625 acres has been marked as DTA. It is a Vertical City which will optimize land area consumption for development. It is located on the banks of River Sabarmati connecting the Business capital (Ahmedabad) and Political capital (Gandhinagar) of Gujarat State. The GIFT City has seamless transport connectivity internally and connected to different parts of the world through Ahmedabad International Airport situated just 20 Kms away.

GIFT City caters to India’s large financial services potential by offering global firms, world-class infrastructure and facilities. It aims to attract the top talent in the country by providing the finest quality of life.

GIFT City is conceptualized as a global financial and information technology (“IT”) services hub. State of the art connectivity, infrastructure and transportation access have been integrated into the design of the GIFT City. The main goal is to develop GIFT City as a world-class hub to facilitate the delivery of a wide range of cross-border financial services to clients in other countries. The target business segments of GIFT City include offshore banking, capital markets, offshore asset management, offshore insurance, IT services, IT enabled services / business process outsourcing services, high end processing and other ancillary services.¹² GIFT City provides for a specifically delineated area where units may be set up for providing international financial services and is treated as a deemed

9. <http://giftsez.com/gift-sez-ltd.aspx>

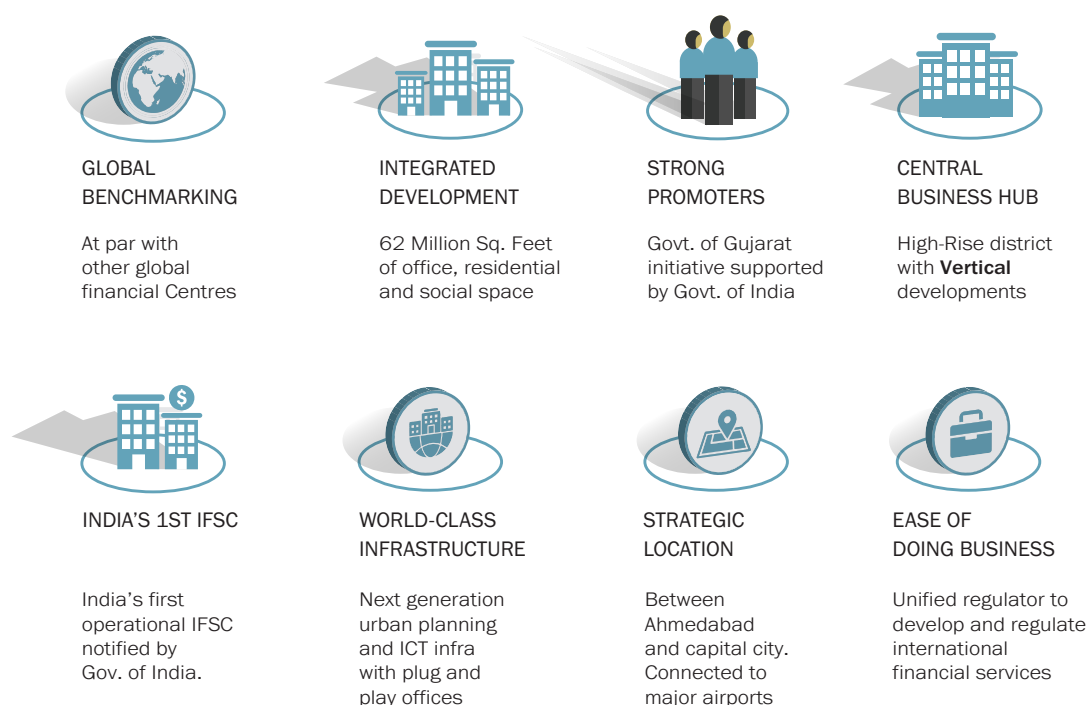
10. <http://giftsez.com/gift-sez-ltd.aspx>

11. *Ibid*

12. <http://www.giftgujarat.in/genesis>

foreign territory outside the jurisdiction of the domestic economy for the purposes of trade operations, duties and tariffs (explained in further detail below). GIFT City provides easy access to global hubs that facilitate the flow of capital, movement of goods and economies of scale. Additionally, GIFT City offers well-developed areas of infrastructure with built up space, power, water supply, transport and housing, including physical and social infrastructure facilities.¹³ GIFT City will allow businesses that are currently not being carried out in India to be established in India and set-up a platform for qualified Indian professionals to pursue global opportunities by residing and working in India rather than migrating to foreign countries. Currently there are 144 SEZ & IFSC units are operational in GIFT City excluding the Domestic Tariff Area (DTA). In terms of IFSC Ecosystem and business growth IFSC exchanges in GIFT operates 22 hours a day generating average daily turnover of USD 4 BN, 14 IFSC Banking units have achieved cumulative business of USD 28 BN, 10,000 plus employees are working for major banking, financial services, Insurance companies located in GIFT City.

The salient features of the GIFT City have been provided below:



13. <http://www.giftgujarat.in/gift-sez.aspx>

3. IFSC Authority

Earlier the banking, capital markets and insurance sectors in IFSC were regulated by multiple regulators, i.e. Reserve Bank of India (“RBI”), Securities and Exchange Board of India (“SEBI”) and Insurance and Regulatory Development Authority of India (“IRDAI”) respectively (as discussed in detail in Part 4). The dynamic nature of business in the IFSCs necessitates a high degree of inter-regulatory coordination. It also requires regular clarifications and frequent amendments in the existing regulations governing financial activities in IFSCs. The development of financial services and products in IFSCs would require focused and dedicated regulatory interventions. Hence, a need was felt for having a unified financial regulator for IFSCs in India to provide world class regulatory environment to financial market participants and also ease of doing business in IFSC.

During the Union Budget 2018, the Finance Minister announced that the Government of India (GoI) will establish a Unified Authority for regulating all the financial services in the IFSCs in India. Towards this objective, the GoI had approved the establishment of a unified authority for regulating all financial services in IFSCs through International Financial Services Centres Authority Bill, 2019 (“IFSC Authority Bill”). The IFSC Authority Bill received assent from the President of India on December 19, 2019 and has accordingly been formalized into International Financial Services Centres Authority Act, 2019 (“IFSC Authority Act”).¹⁴ The Central Government has recently notified that certain provisions of the IFSC Authority Act being section 12, sections 17 to 26 (both inclusive), section 28, section 31 and section 32 will come into force from August 21, 2020.¹⁵

The International Financial Services Centres Authority (“IFSCA” or “IFSC Authority”) is a statutory unified regulatory body under the Department of Economic Affairs, Ministry of Finance, Government of India established by an Act of Parliament to develop and regulate the financial products, financial services and financial institutions located / performed in the IFSC in India. The IFSCA will function as a unified regulator and is empowered to exercise the powers of RBI, SEBI, IRDAI and Pension Fund Regulatory and Development Authority (“PFRDA”) in respect of financial services, financial products and financial institutions performed / located in the IFSC in the country.

The key features of the IFSC Authority Act include:

- **Composition of the IFSC Authority:** The IFSC Authority shall consist of a Chairperson, one Member each to be nominated by the RBI, the SEBI, the IRDA and the PFRDA respectively, two members to be nominated by the Central Government and two other whole-time or full-time or part-time members.
- **Powers and functions of the IFSC Authority:** Section 12 of the IFSC Authority Act provides that the powers and functions of the IFSCA shall include:
 - i. Regulating financial products (such as securities, deposits or contracts of insurance), financial services, and financial institutions which have been previously approved by any appropriate regulator (such as RBI or SEBI), in an IFSC;
 - ii. Regulating such other financial products, financial services or financial institutions in the International Financial Services Centres as may be notified by the Central Government from time to time;
 - iii. Recommending to the Central Government such other financial products, financial services and financial institutions which may be permitted in an International Financial Services Centre by the Central Government;

¹⁴. <http://egazette.nic.in/WriteReadData/2019/214809.pdf>

¹⁵. S.O. 2844(E) dated August 21, 2020

iv. Perform such other functions as may be prescribed.

Section 13 of the IFSC Authority Act provides a list of appropriate regulators in a Schedule which includes the RBI, SEBI, IRDAI, and PFRDA. The Central Government has been provided the flexibility to amend this schedule through a notification. Further, section 13 also provides that all powers exercisable by the respective financial sector regulatory (viz. RBI, SEBI, IRDA, and PFRDA etc.) under the respective acts and regulations shall be solely exercised by the IFSC Authority in the IFSCs in so far as the regulation of financial products, financial services and financial institutions that are permitted in the IFSC are concerned. The Central Government has notified that section 13 will come into effect from October 1, 2020.¹⁶

- **Grants by the Central Government:** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the IFSC Authority grants of such sums of money as the Central Government may think fit for being utilized for the purposes of the IFSC Authority.
- **Fund of IFSC Authority:** The IFSC Authority Act provides for settlement up the IFSC Authority Fund. The following items will be credited to the IFSC Authority Fund: (i) all grants, fees and charges received by the IFSC Authority, and (ii) all sums received by the IFSC Authority from various sources, as decided by the central government. The IFSC Authority Fund will be used for: (i) salaries, allowances and other remuneration of members and employees of the IFSC Authority, and (ii) expenses incurred by the IFSC Authority.
- **Performance review committee:** The IFSC Authority will constitute a Performance Review Committee to review its functioning consisting of at least two members of the IFSC Authority. It will review whether: (i) the IFSC Authority has adhered to the provisions of the applicable laws while exercising powers or performing functions, (ii) the regulations made by the IFSC Authority promote transparency and best practices of governance, and (iii) the IFSC Authority is managing risks to its functioning in a reasonable manner. The Performance Review committee must make a review at least once in a financial year and submit a report of its findings to the IFSC Authority which shall forward a copy thereof along with action taken, if any, pursuant to such report to the Central Government within a period of three months from the date of receipt of the report.
- **Transactions in foreign currency:** The transactions of financial services in the IFSCs shall be done in the foreign currency as specified by the IFSC Authority in consultation with the Central Government.
- **Exemption from taxes:** The IFSC Authority Act provides that the IFSC Authority shall not be liable to pay any income-tax, or any other tax or duty with respect to its income, services or profits or gains.

On April 27, 2020 the Ministry of Finance, Department of Economic Affairs notified the establishment of IFSC Authority and stated that the head office of the IFSC Authority will be situated in Gandhinagar, Gujarat.¹⁷ Mr. Injeti Srinivas, former corporate affairs minister, was appointed as the Chairman of IFSC Authority. Recently, the Central Government in exercise of the powers under the IFSC Authority Act notified that the powers of IFSCA shall include regulating the specified financial products and financial services.¹⁸ The specified financial products included (i) bullion spot delivery contract and (ii) bullion depository receipt with underlying bullion, and the specified financial services included (i) trading in bullion depository receipts with underlying bullion in relation to bullion spot delivery contracts and (ii) provision of bullion financing, bullion based loans, bullion loans against collateral, bullion vaulting, clearing and settlement services in relation to bullion spot delivery contracts and bullion depository receipts. The establishment of a unified financial regulator for IFSCs should result in providing a world-class regulatory environment to market participants from an ease of doing business perspective.

16. S.O. 3374(E) dated September 29, 2020

17. Notification S.O. 1383 (E) dated April 27, 2020

18. S.O. 2957(E) dated August 31, 2020

4. Legal Regime

The power to establish an IFSC in SEZ is provided under the SEZ Act. Section 18(1) of the SEZ Act provides that the Central Government may approve the setting up of an IFSC in an SEZ and prescribe requirements for setting up and operation of such IFSC. It is also provided that Central Government shall approve only one IFSC in an 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 of both.¹⁹ Person is defined to inter-alia include an individual, whether resident in India or outside India, a company, whether incorporated in India or outside India, a firm or association of person, whether incorporated or not, local authority, or a trust and any other entity as may be notified.²⁰ Earlier the definition of 'person under the SEZ Act did not explicitly include trusts. Therefore, as per the SEZ Act even a trust may set up a unit in an SEZ, including a unit in an IFSC.

In exercise of the powers conferred under Section 18(2) of the SEZ Act, the GoI on April 8, 2015 notified²¹ that units in an IFSC in SEZs ("**Notification**") may be set up and approved in accordance with the SEZ Rules, read with Notification S.O. 870(E)²² and the Insurance Regulatory and Development Authority of India (Regulation of Insurance Business in Special Economic Zone) Rules, 2015 [**IRDAI (RIB) Rules, 2015**]], as amended from time to time, subject to the guidelines and regulations framed in this regard by the RBI, the SEBI and the IRDAI namely:

1. Foreign Exchange Management (International Financial Services Centre) Regulations, 2015 [**FEMA (IFSC) Regulations**]
2. Scheme for setting up of IFSC Banking Units by banks dated April 1, 2015
3. Securities and Exchange Board of India (International Financial Services Centre) Guidelines, 2015 [**SEBI (IFSC) Guidelines**]
4. Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015. In order to provide more clarity on business and operating issues, IRDAI has issued the Insurance Regulatory and Development Authority of India (Registration and Operations of International Financial Services Centre Insurance Office) Guidelines, 2017²³ [**IRDAI (Registration and Operations of IFSC IO) Guidelines**]. Further, the IRDAI has also issued the Insurance Regulatory and Development Authority of India (International Financial Service Centre Insurance Intermediary Offices) Guidelines, 2017 [**IRDAI (IFSC Insurance Intermediary Offices) Guidelines**] to grant permission to insurance intermediaries registered by the IRDAI to undertake operations in IFSC as per the objectives of the IFSC.²⁴

The Notification also provides that units in an IFSC shall conform to the provisions of SEZ Act, SEZ Rules and the regulations made there under. In order to facilitate setting up of an IFSC Unit in SEZ, the GoI has provided that entrepreneurs would be required to submit application to the concerned Development Commissioner in Form-F.²⁵

Currently, the banking, capital markets and insurance sectors in IFSC are regulated by multiple regulators, i.e. RBI, SEBI and IRDAI respectively. The regulatory regime for entities in the GIFT City is summarized in the chart below:

19. Section 3 of the SEZ Act

20. Section 2(v) of the SEZ Act as amended by the SEZ (Amendment) Act, 2019

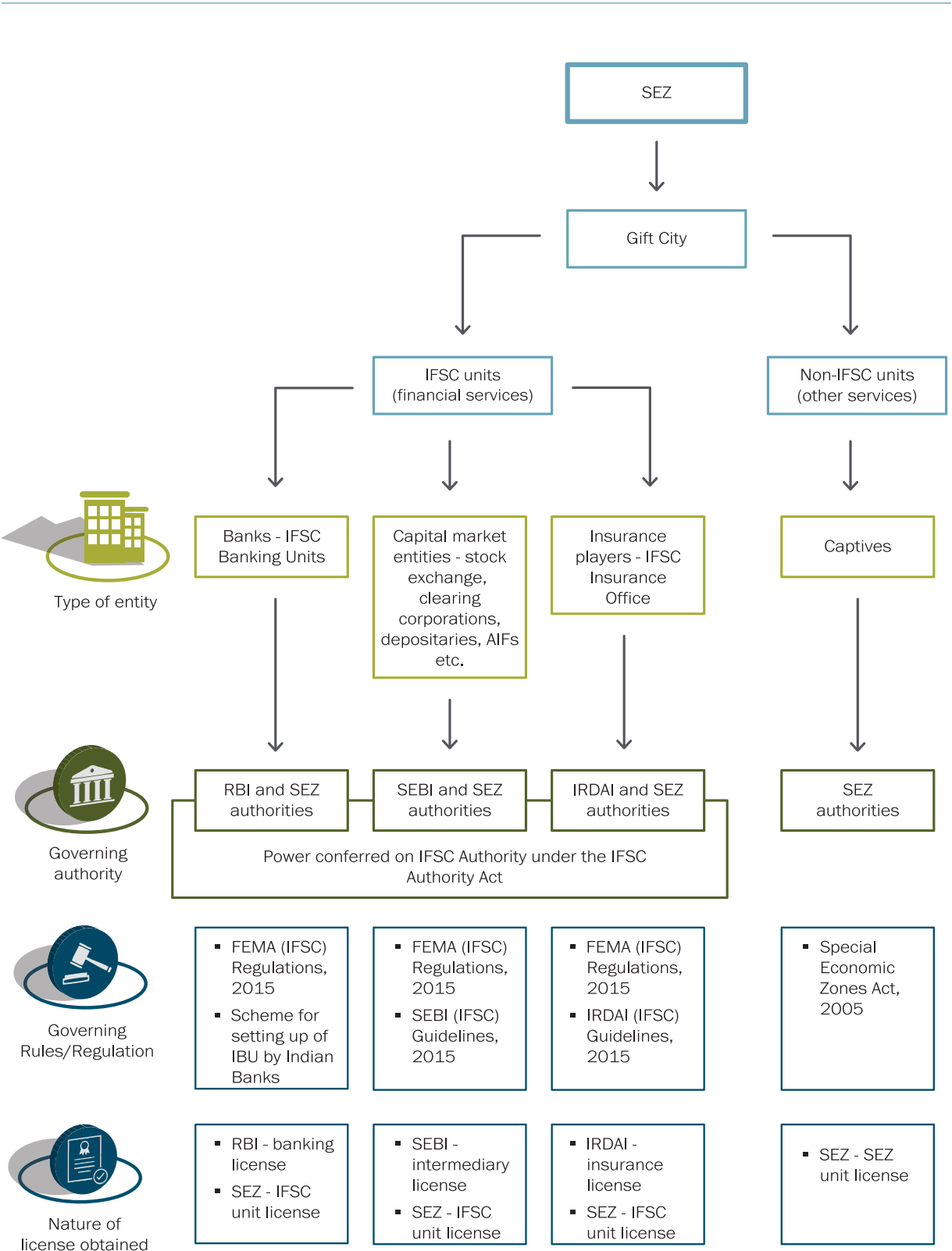
21. Government of India, Ministry of Commerce and Industry (Department of Commerce) Notification dated April 8, 2015

22. Government of India, Ministry of Finance (Department of Financial Services) Notification S.O. 870(E) dated March 27, 2015

23. <http://giftsez.com/ifsc-insurance.aspx>

24. Guidelines Reference No. IRDA/RI/GDL/MISC/012/01/2019, dated January 16, 2019

25. Government of India, Ministry of Commerce and Industry (Department of Commerce) Notification No. D.12/25/2009-SEZ dated April 8, 2015



I. Foreign Exchange Management (International Financial Services Centre) Regulations, 2015

The RBI notified the FEMA (IFSC) Regulations²⁶ on March 2, 2015 in exercise of the power under section 47 of the Foreign Exchange Management Act, 1999 (“**FEMA Act**”). The FEMA (IFSC) Regulations are applicable to all financial institutions or branch of financial institution set up in the IFSC and provide the following:

- Any financial institution or branch of a financial institution set up in the IFSC and permitted / recognized as such by the GoI or a Regulatory Authority shall be treated as a person resident outside India.²⁷

The term financial institution has been defined to include i) a company, or ii) a firm, or iii) an association of persons or a body of individuals, whether incorporated or not, or iv) any artificial juridical person, not falling within any of the preceding categories engaged in rendering financial services²⁸ or carrying out financial transaction.²⁹ It is further provided that ‘financial institution’ shall include banks, non-banking financial companies, insurance companies, brokerage firms, merchant banks, investment banks, pension funds, mutual funds, trusts, exchanges, clearing houses, and any other entity that may be specified by the GoI or a Financial Regulatory Authority.

- A financial institution or branch of a financial institution is required to conduct business in foreign currency other than Indian Rupees (INR), whether with a resident or otherwise.³⁰

However, recently, the FEMA (IFSC) Regulations were amended³¹ to provide that RBI may allow a financial institution or branch of a financial institution, through specific or general permission, to conduct business in Indian Rupee, whether with a resident or otherwise. Further to the amendment in FEMA (IFSC) Regulations, the RBI has vide Circular,³² allowed the trading of Rupee Derivative (with settlement in foreign currency) in IFSCs starting with Exchange Traded Currency Derivatives (discussed in detail below).

- The FEMA (IFSC) Regulations also provide that nothing contained in any other regulations shall apply to a financial institution or branch of a financial institution set up in an IFSC.

II. International Financial Services Centre Authority (Banking) Regulations, 2020

Pursuant to the powers conferred on the IFSCA under section 13 of the IFSC Authority Act, the IFSCA recently announced the International Financial Services Centres Authority (Banking) Regulations, 2020 [“**IFSCA (Banking) Regulations**”].

The IFSCA (Banking) Regulations repeal and supersede the scheme for setting of IFSC Banking Units formulated by the RBI. It also provides that a banking unit operating in IFSC prior to notification of these regulations shall comply with additional requirements, if any, within 3 months.

26. Notification [NO. FEMA/339/2015-RB]/GSR 218(E)]

27. Regulation 3 of FEMA (IFSC) Regulations

28. ‘Financial service’ shall mean activities a financial institution is allowed to carry out as specified in the respective Act of the Parliament or by the GoI or by any Regulatory Authority empowered to regulate the concerned financial institution

29. ‘Financial transaction’ shall mean making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt

30. Regulation 4 of FEMA (IFSC) Regulations

31. Foreign Exchange Management (International Financial Services Centre) (Amendment) Regulations, 2020, with effect from January 7, 2020

32. RBI/2019-20/145 A.P. (DIR Series) Circular No. 17 dated January 20, 2020

The IFSCA (Banking) Regulations inter-alia provides the guidelines for setting up of banking units in IFSC, prudential regulatory requirements, permissible activities, know your customer and anti-money laundering measures applicable to banking units etc.

III. Securities and Exchange Board of India (International Financial Services Centre) Guidelines, 2015

The SEBI has formulated the SEBI (IFSC) Guidelines to facilitate and regulate financial services relating to securities market in an IFSC set up under Section 18(1) of SEZ Act. The SEBI (IFSC) Guidelines, 2015 provide the following:

- **Applicability and scope:**
 - **Prior permission of SEBI:** Any entity desirous of organising or assisting in organising any stock exchange or clearing corporation or depository, or desirous of undertaking any other financial services relating to securities market, shall be a recognised entity and shall seek prior permission of the SEBI in order to operate in an IFSC.
 - **Compliance with regulations:** Any entity desirous of operating in an IFSC for rendering financial services relating to securities market, shall comply with the provisions relating to registration or recognition, as the case may be, of applicable regulations of the SEBI.
 - **Application of securities laws:** All provisions related to securities law shall apply to a financial institution operating in an IFSC, except as otherwise provided in these SEBI (IFSC) Guidelines.
 - **Foreign investment:** The SEBI (IFSC) Guidelines are subject to guidelines of GoI on foreign investment.
- The SEBI (IFSC) Guidelines govern stock exchange, clearing corporation, depositories, intermediaries,³³ funds desirous of operating in IFSC, issue of capital by entities (both debt and equity) in IFSC.
- The provisions of SEBI (IFSC) Guidelines in relation to securities market have been elaborated below:
 - a. **Stock exchange, clearing corporation and depositories operating:** The SEBI (IFSC) Guidelines *inter-alia* provides the eligibility criteria, shareholding conditions, reporting, net-worth requirements in relation to a stock exchange, clearing corporation and depositories operating in an IFSC. The Bombay Stock Exchange and National Stock Exchange have set up their exchanges in the GIFT City – India INX Ltd. and NSE IFSC Ltd., respectively.³⁴
 - b. **Intermediaries:** The SEBI has recently amended³⁵ the SEBI (IFSC) Guidelines in relation to intermediaries based on the internal discussions and consultations held with the stakeholders. In relation to intermediaries, the amended the SEBI (IFSC) Guidelines now permit SEBI-registered intermediaries to provide financial services relating to securities market in IFSC without forming a separate company, where services are offered exclusively to institutional investors, without prior SEBI approval.
 - c. **Issue of capital:** The SEBI (IFSC) Guidelines provide the manner of raising equity capital by domestic companies and companies of foreign jurisdiction. Domestic companies intending to raise capital, in a

33. Intermediaries have been defined to mean and include stock broker, a merchant banker, a banker to an issue, a trustee of trust deed, a registrars to an issue, a share transfer agent, an underwriter, an investment adviser, a portfolio manager, a depository participant, a custodian of securities, a credit rating agency, or any other intermediary or any person associated with the securities market, as may be specified by SEBI from time to time

34. The average daily trading volume in India INX Ltd. recently crossed USD 4 billion on its derivative segment; <https://www.dsij.in/DSIJArticleDetail/ArtMID/10163/ArticleID/14028/BSE-India-INX-achieves-a-new-landmark>

35. SEBI/HO/MRD1/DSAP/CIR/P/2020/30 dated February 27, 2020

currency other than Indian Rupee, in an IFSC shall comply with the provisions of Foreign Currency Depository Receipts Scheme, 2014.³⁶ Companies of foreign jurisdiction, intending to raise capital, in a currency other than Indian Rupee, in an IFSC shall comply with the provisions of the Companies Act, 2013 and relevant provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. It is also provided that domestic companies or companies of foreign jurisdiction, may list and trade their securities as per the norms specified by SEBI.

In relation to debt capital, it provides details of the eligibility issuer, mandatory listing requirements, credit rating requirements etc.

Further details in relation to the SEBI (IFSC) Guidelines have been provided in **Annexure 2**.

- d. Alternative Investment Funds and mutual funds: The SEBI (IFSC) Guidelines regulate activities in relation to alternative investment funds (“AIF”) or mutual funds operating in IFSC as well. We have discussed the guidelines in relation to AIF in detail in Part 6 of this paper.

The SEBI is committed towards bolstering development of the IFSC at the GIFT City as an attractive investment regime. The SEBI has notified that SEBI registered foreign portfolio investors (“FPIs”), proposing to operate in IFSC, shall be permitted, without undergoing any additional documentation and / or prior approval process. In case of participation of FPIs in IFSC, a trading member of the recognized stock exchange in IFSC, may rely upon the due diligence process already carried out by a SEBI registered intermediary during the course of registration and account opening process in India. FPIs, who presently operate in Indian securities market and propose to operate in IFSC also, shall be required to ensure clear segregation of funds and securities. The custodians shall, in turn, monitor compliance of this provision for their respective FPI clients. Such FPIs shall keep their respective custodians informed about their participation in IFSC.³⁷ The SEBI recently repealed the erstwhile SEBI (Foreign Portfolio Investor) Regulations, 2014 and introduced SEBI (Foreign Portfolio Investor) Regulations, 2019 (“**SEBI (FPI) Regulations**”). The SEBI (FPI) Regulations have extended certain leeway to entities established in IFSC, in terms of the eligibility norms required to be fulfilled by FPIs for registration with SEBI.

- **Exemption in eligibility criteria for FPIs in IFSC:** Certain eligibility norms in relation to the registration of an applicant with SEBI as an FPI, under Regulation 4 of the SEBI (FPI) Regulations, i.e. the applicant should (a) not be a resident Indian, (b) be a resident of the country whose securities market regulator is a signatory to the International Organization of Securities Commission’s Multilateral Memorandum of Understanding or a signatory to the bilateral Memorandum of Understanding with SEBI; and (c) in case the applicant is a bank, then it should be a resident of a country whose central bank is a member of the Bank for International Settlements, have been exempted for applicants incorporated or established in IFSC.
- An applicant incorporated or established in IFSC shall be deemed to be appropriately regulated, for the purposes of the SEBI (FPI) Regulations.³⁸ Therefore, an applicant incorporated or established in IFSC can apply for registration as a Category-I FPI.

36. Notified vide F. No. 9/1/2013-ECB by Government of India on October 21, 2014

37. SEBI circular IMD/HO/FPIC/CIR/P/ 2017/ 003 dated January 4, 2017

38. Explanation to Regulation 5 of the SEBI (FPI) Regulations 2019

IV. Insurance Regulatory and Development Authority of India (Registration and Operations of International Financial Services Centre Insurance Office) Guidelines, 2017

The IRDAI notified the IRDAI (Registration and Operation IFSC Insurance Office) Guidelines, 2017³⁹ in exercise of the power conferred by Rule 3 of IRDAI (RIB) Rules, 2015 read with SEZ Act. The IRDAI (Registration and Operations of IFSC IO) Guidelines aims to put in place the process of registration and operations of insurers, reinsurers in IFSC SEZ in alignment with the objectives of IFSC SEZ. The details of the IRDAI (Registration and Operation IFSC Insurance Office) Guidelines, 2017 and IRDAI (IFSC Insurance Intermediary Offices) Guidelines have been provided in **Annexure 3**.

V. Other guidelines

Apart from the above regulations, the regulatory authorities have issued few other operating guidelines for entities operating in IFSC.

A. Operating guidelines for Investment advisors in IFSC

The SEBI has recently put in place the Operating guidelines for Investment advisors (“IA”) in IFSC⁴⁰ basis representations received from various stakeholders. The Operating guidelines provide as under:

- Applicability of SEBI (Investment Advisors) Regulations, 2013: All provisions of the SEBI (Investment Advisors) Regulations, 2013 shall apply to IAs set up / operating in IFSC.
- Registration: Any recognized entity as per SEBI (IFSC) Guidelines or entity desirous of operating in the IFSC as an IA (“**Applicant**”), may form a company or LLP, which has the minimum prescribed net worth as prescribed in the Operating guidelines, to provide investment advisory services. SEBI has recently clarified⁴¹ that existing recognized entities in IFSC can also apply for IA registration without forming a separate company or LLP.
- Net worth requirements: The Applicant shall have a net worth of not less than USD 700,000.⁴² In case the IA is set-up as a subsidiary, the net worth requirement is to be met by the subsidiary itself. However, if the subsidiary does not meet the criteria, the net worth of the parent can be considered. The IA shall fulfil the aforesaid net worth requirement, separately and independently for each activity undertaken by it under the relevant regulations.
- Qualification and experience requirements: Partners and representatives of Applicants offering investment advice shall have:
 - At all times, a professional qualification or post-graduate degree / 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 recognized foreign university or institution or association; and

39. Guidelines Reference No. IRDA/RI/GDL/SEZ/269/12/2017 dated December 21, 2017

40. SEBI/HO/IMD/DF1/CIR/P/2020/04 dated January 9, 2020

41. SEBI/HO/IMD/DF1/CIR/P/2020/31 dated February 28, 2020

42. *Ibid*

- An experience of at least five years in activities relating to advice in financial products or securities, or fund / asset / portfolio management, or investment advisory services.
- Certification requirements: Partners and representatives of the Applicants offering investment advice shall have, at all times, a certification on investment advisory services:
 - In respect of partners and representatives resident in India from National Institute of Securities Markets (“NISM”) or from any other organisation or institution including Financial Planning Standards Board India or any recognised stock exchange (“RSE”) in India provided that such certification is accredited by NISM;
 - In respect of partners and representatives resident outside India, from any other organization or institution or association or stock exchange which is recognized / accredited by a Financial Market regulator in that foreign jurisdiction.

However, certification from NISM shall be mandatory for partners and representatives of Applicants who offer investment advice in relation to Indian securities markets.

Separately, as mentioned above, an entity desirous of providing advisory services is required to set up a company in IFSC. In this regard, a separate approval from RBI may be required for setting up a company in IFSC as the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2004 (“TIFS Regulations”) do not permit investment by an Indian Party⁴³ into an overseas company engaged in the financial services sector under automatic route. In February 2019, the RBI provided its response to certain frequently asked questions (“FAQs”) compiled by GIFT City. The FAQs *inter-alia* provide that a person resident in India can make direct investments in a joint venture or a wholly owned subsidiary set-up in IFSC to act as a financial institution as per FEMA (IFSC) Regulations. It further provides that such investment should be in accordance with the TIFS Regulation. However, the FAQs provide that resident Indians are not permitted to use liberalized remittance scheme (“LRS”) remittances for investment in IFSC.

B. Currency Futures / Options in IFSC (Reserve Bank) Directions, 2020

In the statement on Developmental and Regulatory policies, the RBI decided to allow Rupee derivatives (with settlement in foreign currency) to be traded in IFSCs, starting with Exchange Traded Currency Derivatives (“ETCD”). In this regard, RBI has permitted currency futures contracts⁴⁴ may be listed on RSEs at IFSCs subject to the Currency Futures in IFSC (Reserve Bank) Directions, 2020 (“Currency Future Directions”) and currency options contracts⁴⁵ may be listed on RSEs at IFSCs subject to the Currency Options in IFSC (Reserve Bank) Directions, 2020 (“Currency Options Directions”). The details of the Currency Futures Directions and Currency Options Directions are provided in **Annexure 4**.

43. Indian party has been defined to mean an Indian company, partnership firm registered under the Indian Partnership Act, 1932 or an LLP making investment in a Joint Venture or Wholly Owned Subsidiary abroad

44. ‘Currency Futures contract’ means a standardized foreign exchange derivative contract traded on a RSE in IFSCs to buy or sell one currency against another on a specified future date, at a price specified on the date of contract, but does not include a forward contract

45. ‘Currency Option’ means a standardized foreign exchange derivative contract traded on RSE in IFSCs where the purchaser of the option has the right but not the obligation to purchase (call option) / sell (put option) and the seller (or writer) of the option agrees to sell (call option) / purchase (put option) an agreed amount of a specified currency at a price agreed in advance and denominated in another currency (known as the strike price) on a specified date in the future

VI. Companies Act, 2013

The Central Government has the power to notify non-applicability of certain provisions of the Companies Act, 2013 (“CA, 2013”) with such exceptions, modifications and adaptations, to such classes of companies as it may deem fit in public interest.⁴⁶ In this regard, the Ministry of Corporate Affairs has provided certain procedural exemptions / relaxations to companies (private and unlisted public companies) which are licensed to operate by the RBI or SEBI or IRDA from the IFSC located in an approved multi-services SEZ set up under the SEZ Act.⁴⁷

46. Section 462 of the CA, 2013

47. G.S.R. 08(E) dated January 4, 2017 for unlisted public companies in an IFSC and G.S.R. 9(E) dated January 4, 2017 for private companies in an IFSC

5. Taxation Regime

In order for GIFT City to achieve the intended success, the GoI has provided several tax incentives for IFSCs. A brief summary of the tax incentives has been provided under:

I. Direct Tax incentives

- i. Tax holiday for units in IFSC: Section 80LA of the Income Tax Act, 1961 (“ITA”) provides that units of an IFSC can avail 100% deduction from its gross total income arising from business for which such unit has been established for any 10 consecutive years out of a period of 15 years, beginning with the year in which the requisite permission for the operation of the IFSC unit was obtained (“Tax Holiday”);
- ii. Computation of income: While computing income of non-resident, section 115A(4)⁴⁸ of the ITA prohibits deduction under chapter VI-A (which includes the provision for Tax Holiday) of the ITA in certain cases. However, an exception has been provided such that the conditions contained in section 115A(4) are not applicable to units located in IFSC. Accordingly, the units located in IFSC should be able to take full benefit of Tax Holiday under section 80LA of the ITA.
- iii. Reduced minimum alternate tax: Section 115JB⁴⁹ provides that in case of a unit located in an IFSC which derives income solely in convertible foreign exchange, minimum alternate tax (“MAT”) shall be applicable at rate of 9%. Pertinent to note that the MAT rate for companies has been reduced from 18.5% to 15% under the ITA.⁵⁰ Considering this, the Government may consider a further reduction of the MAT rate applicable to a unit located in an IFSC.
- iv. Reduced corporate tax rate: As per section 115BAA of the ITA, domestic companies may opt for concessional corporate tax rate of 25.17% (inclusive of surcharge and cess) provided certain specified deductions / benefits are not taken, for example, additional depreciation, deduction under section 10AA etc. However, a specific exemption has been provided that units in IFSC opting for lower tax rate would be eligible to claim deduction under Section 80LA of the ITA. Pertinent to note that the taxpayer has to specifically opt for this regime before filing the income-tax return and the option cannot be subsequently withdrawn once opted.⁵¹ Also, MAT does not apply to companies which opt for this concessional regime. Accordingly, units in an IFSC can opt for concessional tax rate and also take deduction under section 80LA of the ITA.
- v. Tax on distributed income: Section 115R provides that no additional income-tax is chargeable in respect of any amount of income distributed on or after the September 1, 2019 by a specified Mutual Fund, out of its income derived from transactions made on a RSE located in any IFSC and where the consideration for such transaction is paid or payable in convertible foreign exchange;
- vi. Concessional withholding tax on interest income: Section 194LC provides a concessional rate of withholding tax for certain interest income earned by non-resident, not being a company or a foreign company. Section 194LC provides that the Indian company or business trust responsible for paying interest to non-resident, not being a company or to a foreign company, shall withhold tax at rate of 4% on such interest income in respect of monies

48. Section 115A provides the method of calculation of income-tax payable by a non-resident (not being a company) or by a foreign company where the total income includes any income by way of dividend (other than referred in section 115-O), interest, royalty and fees for technical services; etc.

49. Section 115JB of the ITA levies a MAT on a company if the amount of income-tax payable under the general provisions of the ITA is less than 15% of the company's 'book profits'.

50. Taxation Laws (Amendment) Act, 2019, with effect from April 1, 2020

51. Section 115BAA introduced by the Taxation Laws (Amendment) Act, 2019 with effect from April 1, 2020

borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the April 1, 2020 but before the July 1, 2023, which is listed only on a RSE located in any IFSC;

- vii. Concessional rate of tax on capital gains: Section 112A and 111A of the ITA provides that long-term capital gains or short-term capital gains arising on sale of equity share or units of equity-oriented funds or units of a business trust on a RSE established in IFSC where consideration for such sale is received in foreign exchange, shall be taxable at the concessional rate of rate of 10% and 15%, respectively, irrespective of payment of securities transaction tax;
- viii. Exemption from capital gains tax from transfer of specified securities: Section 47(viiab) of the ITA exempts any transfer of global depository receipts, rupee denominated bonds of an Indian company, derivatives or other specified securities as may be notified by the Central Government made by non-residents on RSE in IFSC and where the consideration for such transaction is paid or payable in foreign currency, from capital gains tax. The Central Board of Direct Taxes (“**CBDT**”) has recently notified⁵² the following securities listed on a RSE located in an IFSC would also be eligible for the exemption from capital gains tax under section 47(viiab):
 - a. foreign currency denominated bond;
 - b. unit of a Mutual Fund;
 - c. unit of a business trust;
 - d. foreign currency denominated equity share of a company;
 - e. unit of AIF.

these securities along with global depository receipts, rupee denominated bonds of an Indian company, derivatives are hereinafter collectively referred to as “**Specified Securities**”.

- ix. Exemption of certain income of Category-III AIF in IFSC: Section 10(4D) of the ITA exempts the income accrued or arisen to or received by a Category-III AIF in IFSC as a result of transfer of the Specified Securities, on RSE located in IFSC where consideration for such transfer is paid in convertible foreign exchange, to the extent such income accrued or arisen to, or is received in respect of units held by a non-resident. This exemption is available only to Category-III AIF located in IFSC of which all units are held by non-residents other than units held by sponsor or manager.
- x. Exemption from filing income-tax return: The CBDT has exempted i) a non-resident, not being a company, or ii) a foreign company having income chargeable under the ITA from any investment in an investment fund (i.e. Category-I / Category -II AIF) set up in an IFSC located in India, from filing of income-tax return in India. However, such exemption is available only if tax has been appropriately deducted and deposited to the government by the IFSC AIF as per provisions of the ITA.⁵³
- xi. Exemption from obtaining permanent account number: The CBDT has recently granted exemption to a non-resident, not being a company or a foreign company, investing in Category-I / Category-II IFSC AIF from obtaining a permanent account number (“**PAN**”), provided the conditions below as satisfied:⁵⁴
 - The non-resident investor does not earn any income in India, other than the income from investment in IFSC AIF;

52. Notification S.O. 986 (E) [NO. 16/2020/F.NO. 370142/22/2019-TPL], dated March 5, 2020

53. Notification S.O. 2672(E) dated July 26, 2019

54. CBDT Notification No. 58/2020/F. No. 370133/08/2020-TPL dated August 10, 2020

- The IFSC AIF withholds tax under section 194LBB of the ITA and duly remits such tax withheld to the Central Government;
- The non-resident furnishes the specified details (like name, email ID, contact number, address in resident country etc.) to the IFSC AIF;

Further, the CBDT has provided that IFSC AIF shall electronically furnish a quarterly statement within 15 days from the end of the quarter of the financial year in Form No. 49BA to the tax authorities. Additionally, the CBDT has also clarified that the provisions of section 206AA of the ITA shall not apply in respect of payments made to a person being a non-resident, not being a company, or a foreign company if the provisions of section 139A do not apply to such person on account of the above exemption.

xii. Other exemption:

- a. Commodities transaction tax not leviable on units in an IFSC;
- b. Stamp duty not chargeable in respect of the instruments of transaction in RSE and depositories established in IFSC.⁵⁵
- c. Aircraft leasing and financing: The Government of Gujarat in exercise of the powers conferred by clause 9 of the Gujarat Stamp Act, 1958 issued notification dated August 4, 2020, for exemption of stamp duty chargeable under the Gujarat Stamp Act in connection with establishment / incorporation / setting up or carrying out or availing, providing any services or acquisition of moveable or immovable property for the purpose of and in relation to aircraft / aircraft engine / helicopter leasing, and or aircraft / aircraft engine helicopter financing or refinancing or insurance, reinsurance business in or from SEZ Including IFSC at GIFT City, Gandhinagar for the period of 10 years.

II. Indirect Tax incentives⁵⁶

- i. Customs Duty: Exemption from customs duty for all goods imported in the SEZ used for authorized operations. However, any removal of goods from SEZ into Domestic Tariff Area (“DTA”) would attract customs duty;
- ii. Central Excise Duty: Exemption from duty of excise on domestic procurement to carry out authorized operations. However, the removal of goods into DTA shall be liable to customs duty;
- iii. Drawback: Drawback and such other benefits on goods brought into the SEZ. Goods supplied to SEZ regarded as export for customs purpose;
- iv. Deemed Export: Supply of goods or services by an Export Oriented Unit (“EOU”) or Software Technology Parks of India (“STPI”) unit regarded as export. Foreign Trade Policy (“FTP”) regards supplies to SEZ as export of goods or services;
- v. Goods and Service Tax (“GST”): Supply of goods or services from DTA to a unit located in SEZ Unit is regarded as a zero rated supply (irrespective of the currency in which payment is being made). Further, import of services into FTWZ/ SEZ is not liable to GST;
- vi. Central Sales Tax (“CST”): Exemption from CST on inter-state procurement of goods used for authorized operations. (Entails compliance of issuing ‘Form I’ by the SEZ unit to the supplier of goods);

55. Section 9A of the Indian Stamp Act, 1899

56. <http://www.giftgujarat.in/tax-benefits>

- vii. Electricity Duty / Stamp Duty / Registration Fees: Exemptions / reimbursements under the Gujarat State Industrial and IT Policy. New IT policy introduced in February 2016 for five years (2016- 2021); and
- viii. The Government of Gujarat has also exempted stamp duty for entities having registered office in GIFT for capital market activities. The Government of Gujarat has also issued a notification dated April 11, 2020 to refund the Stamp Duty to Stockbrokers having registered office in GIFT City.

6. Setting up AIFs in IFSC

As discussed in Part 3, the SEBI (IFSC) Guidelines regulate activities in relation to AIFs operating in IFSC. In this Part, we elaborate the provisions of SEBI (IFSC) Guidelines in relation to AIFs in IFSC and also explore the key considerations for establishing an AIF in IFSC.

In relation to AIFs, the SEBI (IFSC) Guidelines provide the following:

- Eligible investors: The following persons can make investment in an AIF operating in IFSC (“**IFSC AIF**”):
 - i. a person resident outside India;
 - ii. a non-resident Indian;
 - iii. institutional investor resident in India who is eligible under FEMA to invest funds offshore, to the extent of outward investment permitted;
 - iv. person resident in India having a net worth of at least USD 1 million during the preceding financial year who is eligible under FEMA to invest funds offshore, to the extent allowed in the LRS of RBI and subject to RBI Approval

In relation to investors mentioned in point ii) to iv) above, the SEBI (IFSC) Guidelines provide that they may make investment in an IFSC AIF, subject to guidelines by RBI.⁵⁷

- IFSC AIF should accept money from eligible investors only in foreign currency.⁵⁸
- Permissible investments: IFSC AIF is permitted to invest in the following:
 - i. Securities which are listed in an IFSC;
 - ii. Securities issued by a company incorporated in IFSC;
 - iii. Securities issued by Companies incorporated in India or foreign jurisdiction
 - iv. Units of other AIFs
 - v. Other permissible investments as per AIF Regulations (LLP, REIT, InvIT, Derivatives, SPV)

SEBI has provided certain relaxations in relation to the manner of investment by IFSC AIF (discussed in detail below).

In November 2018, the SEBI based on deliberations with the Alternative Investment Policy Advisory Committee and with other stakeholders had issued the operating guidelines for IFSC AIFs (“**Operating Guidelines**”). The Operating Guidelines for AIF operating in an IFSC (“**IFSC AIF**”) lay down investment conditions and restrictions, registration requirements and compliance requirements for IFSC AIFs. Some key issues addressed by SEBI in the Operating Guidelines are set out below:

- Registration: For registration as an IFSC AIF, any fund established / incorporated in form of a trust or company or limited liability partnership (“**LLP**”) or a body corporate, can seek registration under SEBI (AIF) Regulations, 2012 (“**AIF Regulations**”).

⁵⁷. Regulation 22 of SEBI (IFSC) Guidelines

⁵⁸. Regulation 23 of SEBI (IFSC) Guidelines

- Permissible investment by IFSC AIF: The Operating Guidelines provide that IFSC AIF may invest in units of other IFSC AIFs and units of other AIFs in India subject to the provisions of AIF Regulations. It is further clarified that IFSC AIFs can invest in India under the foreign venture capital investment (“FVCI”) route or foreign direct investment (“FDI”) route as well. Earlier, IFSC AIFs were allowed to invest under the FPI route only. This move by SEBI will allow offshore funds flexibility to invest through IFSC AIFs and avail the benefits of the IFSC regime.

Further, SEBI recently⁵⁹ expanded the permissible investment by IFSC AIFs and aligned the conditions for IFSC AIFs to the conditions applicable to domestic AIFs. Accordingly, an IFSC AIF can now also invest in inter-alia LLP, Real Estate Investment Trust, Infrastructure Investment Trust, etc.

- Sponsor and manager of IFSC AIFs: A Sponsor / Manager of an existing AIF in India may act as a Sponsor / Manager of an IFSC AIF by setting up a branch in the IFSC or incorporating a company or LLP in the IFSC.
- Custodian: A Category-I / Category-II IFSC AIF shall appoint a custodian registered with SEBI for safekeeping of its securities if the corpus of the IFSC AIF is more than USD 70 million. Category-III IFSC AIF is mandatorily required to appoint a custodian.
- Overseas investment by IFSC AIFs: The Operating Guidelines for IFSC AIF also clarify that the provisions governing overseas investment by an AIF are not applicable to an IFSC AIF; thus offering an IFSC AIF flexibility to invest outside India without prior approvals or conditionalities.
- Conditions in relation to Angel Funds: The Operating Guidelines also lay down investment conditions and restrictions for angel funds operating in IFSC.

The minimum investment amount, minimum corpus requirement, manager / sponsor commitment, fees for registration etc. of an IFSC AIF are provided in **Annexure 5**.

Recently, the IFSCA issued a circular⁶⁰ announcing certain relaxations for IFSC AIFs (Category-I/ II/ III) to align the regulatory framework with international best practises (“Circular”).

I. Leverage limits for IFSC AIFs

The AIF Regulations restricts Category-I / Category-II AIFs from borrowing directly or indirectly or engage in any leverage except for meeting temporary funding requirements for not more than 30 days, on not more than 4 occasions in a year and not more than 10% of the investible funds.⁶¹ Category-III AIFs are permitted to engage in leverage subject to consent from investors of the fund and subject to maximum limit not exceeding 2 times of the Net Asset Value of the AIF.⁶² However, there are no such restrictions on offshore funds which frequently undertake leverage to fund investment opportunities.

The Circular now permits IFSC AIFs to undertake leverage, subject to the following conditions:

- a. The maximum leverage by the IFSC AIF, along with the methodology for calculation of leverage, shall be disclosed in the placement memorandum;
- b. The leverage shall be exercised subject to consent of the investors;

59. Circular SEBI/HO/IFSC/CIR/P/2019/91 dated August 9, 2019

60. F.No. 81/IFSCA/AIFs/2020-21 dated December 09, 2020

61. Regulation 16(1)(c) and Regulation 17(1)(c) of AIF Regulations

62. Regulation 18(1)(c) of AIF Regulations

- c. The IFSC AIF employing leverage shall have a comprehensive risk management framework appropriate to the size, complexity and risk profile of the fund.

II. Investment by IFSC AIFs

- a. Co-investment through segregated portfolio: The regulatory framework for AIFs is such that monies from all investors is pooled in the AIF and all the investors generally participate in deals on basis of their pro-rata share in the AIF. The AIF is not permitted to allow investors to increase their allocation to a particular deal on a standalone basis.

The Circular permits IFSC AIFs to co-invest in portfolio company through a segregated portfolio by issuing a separate class of units and such that the investments by such segregated portfolios shall, in no circumstance, be on terms more favourable than those offered to the common portfolio of the AIF; and appropriate disclosures have been made in the placement memorandum regarding creation of such segregated portfolio. This will simplify deal structuring and provide flexibility to AIFs and investors to allocate more capital to lucrative opportunities.

- b. Permission to invest in domestic AIFs: While the AIF Regulations permit Category-I AIF to invest in units of other Category-I AIFs⁶³ and Category-II AIF to invest in units of other Category-I AIF / Category-II AIF,⁶⁴ the AIF Regulations provide that the AIF should only invest in such units and shall not invest in units of other Funds of Funds. In such a case, an issue arises as to whether an IFSC AIF investing in a domestic AIF can also invest in portfolio companies in India. The Circular clarifies this and permits IFSC AIFs to invest in domestic AIFs, alongside other permissible investments. For domestic AIFs, this position is not clear and there are views that an AIF can either operate as a fund-of-funds or make direct investments.

III. Diversification limits

Under the AIF Regulations, Category I and II AIFs cannot invest more than 25% of the investable funds in one Investee Company.⁶⁵ Further, Category III AIFs cannot invest more than 10% of the investable funds in one Investee Company.⁶⁶ It is common for offshore funds to be set up for investment in a few targeted companies or sectors. Such conditions on diversification may not interact well with the investment strategy of offshore funds.

The Circular now provides that these diversification limits under the AIF Regulations should not apply to IFSC AIFs provided appropriate disclosures have been made in the placement memorandum and the investments by AIFs are in line with the risk appetite of the investors. In this regard, what is considered as risk appetite is subjective and accordingly, the investment managers should ensure appropriate disclosures in the placement memorandum. The exemption from diversification limits would also enable IFSC AIFs in co-investing in portfolio companies through a segregated portfolio by creation of separate class of units.

The Circular is indeed a very welcome move for the fund industry and it depicts the commitment of the IFSCA in onshoring the fund management industry to India. These relaxations offered to IFSC AIFs were long due industry asks and should encourage fund managers to explore setting up or migrating funds to the GIFT City. These relaxations seek to bring the GIFT City at par with the international offshore jurisdictions like Singapore,

63. Regulation 16(1)(b) of AIF Regulations

64. Regulation 17(1)(b) of AIF Regulations

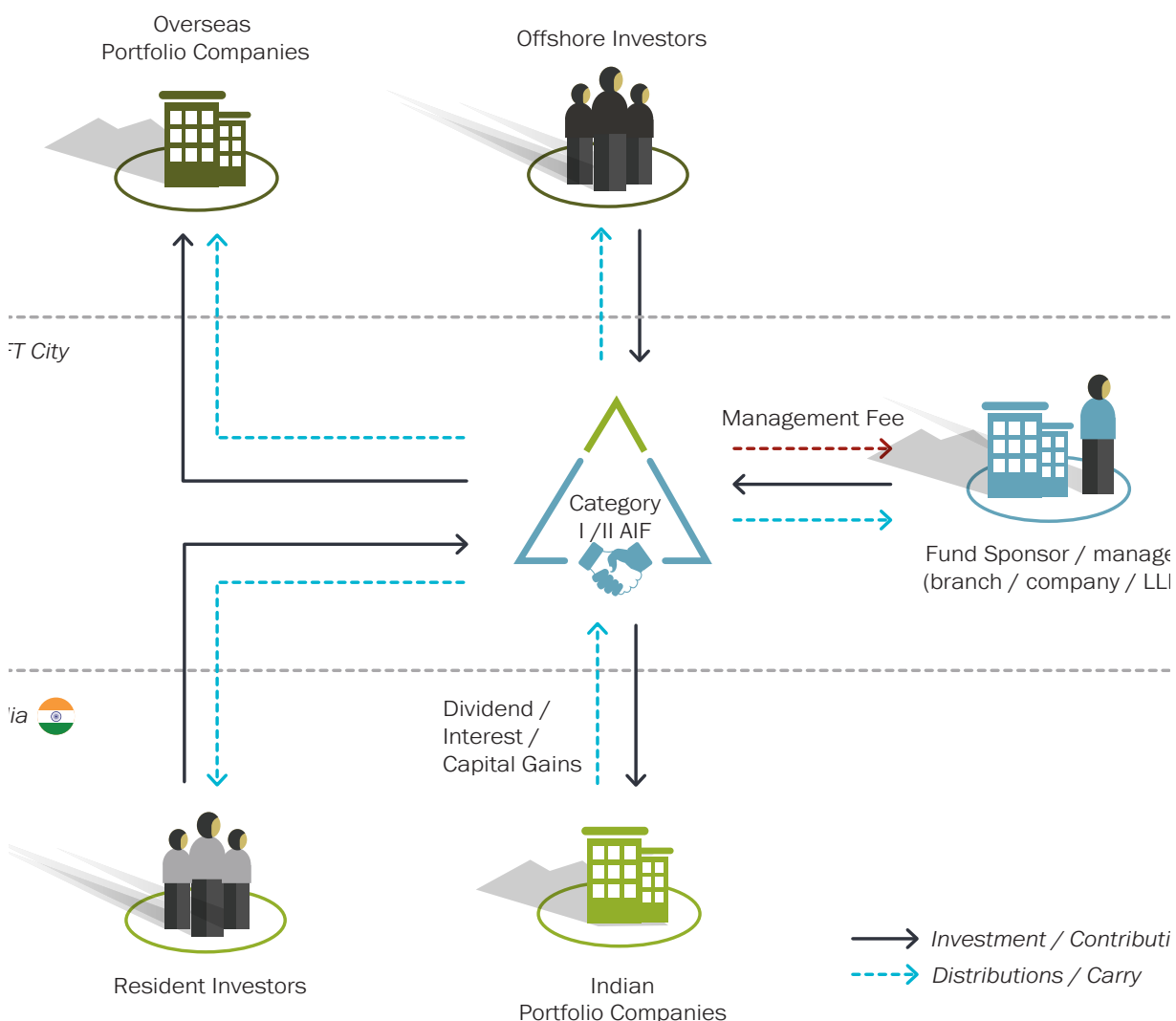
65. Regulation 15(1)(c) of AIF Regulations

66. Regulation 15(1)(d) of AIF Regulations

Netherlands, Luxembourg etc. wherein there are no restrictions on undertaking leverage, diversification requirements for offshore funds and create a level playing field for funds set up in IFSC. The relaxations provided by the Circular coupled with the other regulatory and tax incentives provided to units set up in IFSC should provide a conducive environment for operations of IFSC AIFs in the GIFT City.

IV. Category-I / Category-II IFSC AIF

The following diagram depicts the structure of a Category I / II IFSC AIF:



A. Key considerations and for establishing an IFSC AIF (Category-I / Category-II)

i. Regulatory considerations

- Status of IFSC AIF: As per the FEMA (IFSC) Regulations, IFSC AIF will be treated as a person resident outside India from a foreign exchange control perspective.
- Investment in IFSC AIF:

- Investment by individual Indian investor: As discussed above, the SEBI (IFSC) Guidelines permit a person resident in India to invest in an IFSC AIF, however, the investment is limited to the extent allowed under LRS. Currently, the LRS permits an Indian resident individual to remit USD 250,000 per year. To the contrary, the FAQs issued by RBI provide that resident Indians are not permitted to use LRS remittances for investment in IFSC. As per the technical reading of LRS, a resident individual is permitted to make investments abroad including acquisition and holding shares of both listed and unlisted overseas company or debt instruments. Therefore, it is unclear as to why such restriction has been placed by the RBI.
- Investment by an Indian institutional investor: As discussed above, the SEBI (IFSC) Guidelines permit an Indian institutional investor to invest in an IFSC AIF. Currently, an Indian institutional investor can invest in the IFSC AIF as per the extant TIFS Regulations. However, the TIFS Regulations do not permit investment by an Indian Party into an overseas fund, the latter being an entity engaged in the financial services sector under automatic route.
- Sponsor / manager commitment: The AIF Regulations require the sponsor or the manager of an AIF to contribute a certain amount of capital to the fund as continuing interest. Further, a Sponsor / Manager of an existing AIF in India may act as a Sponsor / Manager of an IFSC AIF by setting up a branch in the IFSC or incorporating a company or LLP in the IFSC. For a Category-I or Category-II AIF, the sponsor or the manager is required to have a continuing interest of 2.5% of the corpus of the fund or INR 50 million whichever is lower. The restriction of TIFS Regulation in relation to overseas investment in entities engaged in financial services sector will apply to set up of a sponsor / manager entity in the IFSC as well. Further, potential risk of round tripping also exists with regard to sponsors' / managers' commitment in an IFSC AIF. Thus, an RBI approval may be required in order to comply with the sponsor / manager contribution criteria.

Having said the above, while the same issues apply for investment by Indian investors in an offshore fund as well, given that AIF IFSC will be regulated by Indian regulatory authorities, at the minimum the need for obtaining prior RBI approval for establishment of a manager / sponsor entity in the IFSC and for purposes of complying with the sponsor commitment requirements should be relaxed. This should give a major impetus for establishing AIFs in IFSC and should enable on onshoring the fund management industry.

- Sponsor / manager entity: While the Operating Guidelines provide relaxation to permit sponsor / manager of an existing AIF in India to act as the sponsor / manager of IFSC AIF, the requirement of setting up a branch / subsidiary in IFSC by fund managers of an AIF and associated RBI approval requirement may increase burden on the fund managers wanting to manage IFSC AIF from their existing offices outside the IFSC.
- Investment by IFSC AIF: The SEBI has now permitted IFSC AIFs to invest in accordance with AIF Regulations and accordingly, IFSC AIFs can invest wherever domestic AIFs are permitted to invest. Further, IFSC AIFs can invest in India under the FVCI route or FDI or FPI route. Pertinent to note that the SEBI (FPI) Regulations provides that an applicant incorporated or established in IFSC shall be deemed to be appropriately regulated entity. Thus, it seems likely that two separate licenses may be required and two separate regulations may apply in such an instance. A reading of the AIF Regulations (which apply to the whole of India) also indicate that a fund set up in the IFSC would mandatorily need to be registered with SEBI as an AIF. The need of the hour would be to do away with multiple registrations, especially if one regulation would apply.
- Overseas investment: Basis the clarification in the Operating Guidelines, the restriction to limit overseas investment (25% of the corpus of an AIF) applicable to domestic AIFs will not apply in case of IFSC AIF. This is a welcome clarification which brings IFSC AIF at par with an offshore fund structure which in any case is not required to adhere to any Indian regulatory restrictions for the purposes of making foreign investments.
- Downstream investment by IFSC AIF: Investment made by IFSC AIF into an Indian entity shall not be reckoned as direct or indirect foreign investment for the investee Indian entity if both the sponsor and the

investment manager are owned and controlled by resident Indian citizens. While this interpretation is clear from the FEMA Rules, a clarification in this respect will be useful.

ii. Income-tax considerations

- Status of IFSC AIF: While a unit in an IFSC including an IFSC AIF and a manager / sponsor entity set up in IFSC is treated as a person resident outside India from a foreign exchange control perspective, however, for income-tax purposes, such entities are considered to be persons resident in India. This makes structuring of an IFSC AIF require careful considerations.
- Taxability of management fee earned by management entity: The management entities set up in IFSC may take the benefit of the Tax Holiday under section 80LA of the ITA.
- Taxability of carry: Currently, the fund industry is exposed to the risk of re-characterisation of carry as business income (instead of capital gains). Structuring of carried interest as performance fee (business income) or capital gain income would be of importance in GIFT City structures given that the management entity may be eligible for Tax Holiday under section 80LA of the ITA in case of business income.⁶⁷ This combined with the GST exemption makes the GIFT City management structure an attractive model for future AIFs.
- Taxability on income from overseas investment: The CBDT has clarified that income received by non-resident investors from off-shore investments routed through the Category-I or Category-II AIF, being a deemed direct investment outside India by the non-resident investor would not be taxable in India.⁶⁸ Therefore, income received by non-resident investor from overseas investment made by Category-I or Category-II IFSC AIF should not be subject to tax in India.
- Exemption from filing income-tax return: The CBDT has exempted i) a non-resident, not being a company, or ii) a foreign company having income chargeable under the ITA from any investment in an investment fund (i.e. Category-I / Category-II AIF) set up in an IFSC located in India, from filing of income-tax return in India. However, such exemption is available only if tax has been appropriately deducted and deposited to the government by the IFSC AIF as per provisions of the ITA.
- Exemption from obtaining PAN: The CBDT, in a welcome move, has also granted exemption to a non-resident, not being a company or a foreign company, investing in Category-I / Category-II IFSC AIF from obtaining a PAN provided the specified conditions are satisfied.

iii. GST considerations

- Goods and Service tax: In case of domestic AIFs, management fee is subject to GST at rate of 18%. The GST on management fees becomes an incremental cost to be borne by the investors, typically borne out of their capital contribution to the AIF. Management fee earned by management entities in IFSC from IFSC AIF should be exempt from GST. This should enhance the corpus available for investment by IFSC AIF.

It is important to note that exemption from GST will be available only if the manager sets up a branch / company in the IFSC. In this regard, the manager may have to hire a team for IFSC AIFs and also ensure that a proper split of management fee earned from IFSC AIF and domestic AIF is maintained. The exemption from GST may be available only to the extent of activities carried out in the GIFT City and hence may impact the availability of the benefit of the exemption.

67. MAT of 9% may apply nonetheless. However, MAT credits can be carried forward for a period ten years

68. Circular No 14 / 2019 dated July 3, 2019

B.Comparison of Offshore Fund vis-à-vis IFSC AIF

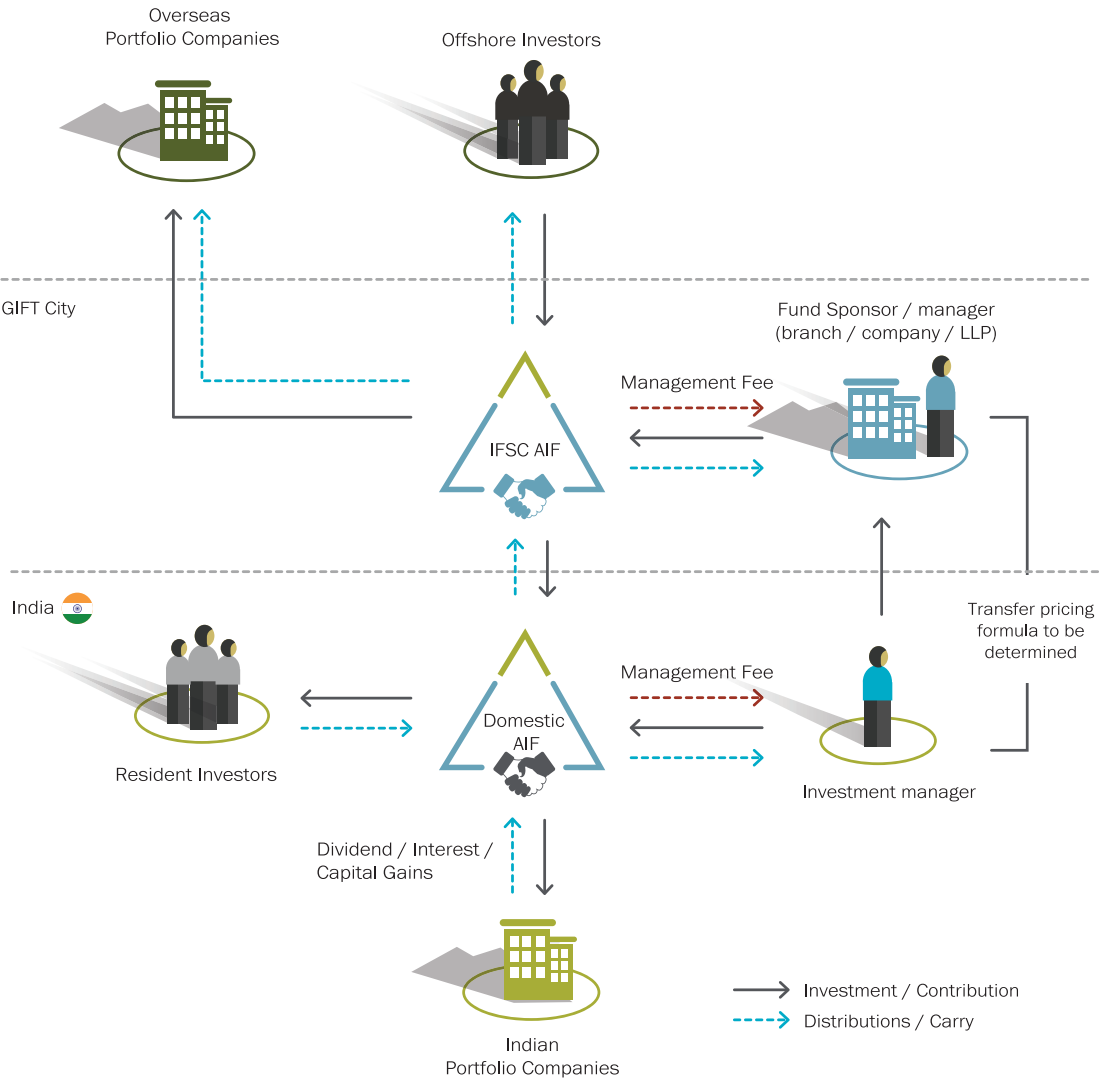
S No	Parameter	Offshore Fund	IFSC AIF
1.	Status under FEMA	Person resident outside India	Person resident outside India
2.	Status for income-tax purposes	Resident outside India. Accordingly, only India sourced income of Offshore Fund will be liable to be taxed in India.	Resident in India. <ul style="list-style-type: none"> ■ All income (except for business income) of IFSC AIF exempt at IFSC AIF level ■ Income from Indian investments
S No	Parameter	Offshore Fund	IFSC AIF
		<ul style="list-style-type: none"> ■ Income earned by offshore investors from offshore investments are not taxable in India 	<ul style="list-style-type: none"> • Indian investors: income taxable in hands of investors on pass through basis as per provisions of the ITA. • Foreign investors: income taxable in hands of investors on pass through basis as per provisions of the ITA or relevant tax treaty, whichever is more beneficial ■ Income from overseas investments • Indian investors: income taxable on pass through basis as per provisions of ITA. • Foreign investors: income from foreign investment not taxable in India
3.	Investment route	FDI / FPI / FVCI route; offshore fund takes separate license of investment under each route	FDI / FPI / FVCI route. Prima facie, in the absence of clarifications from SEBI, it appears that IFSC AIF will have to take separate license for investment under each route
4.	Restrictions on investment outside India	No such restrictions	No such restrictions
5.	Permanent Establishment ("PE") risk	In case of an India focused investment fund, the risk of constitution of PE in India is present.	No such risk, the IFSC AIF is considered to be a tax resident in India in any case
6.	Investment by Indian individuals	Indian individuals not permitted to use LRS remittances for investment in IFSC as per FAQs provided by the RBI.	
7.	Investment by Indian institutional investors	Not permitted to invest into an overseas fund, the latter being an entity engaged in the financial services sector under automatic route; Hence, RBI approval may be required	
8.	Establishing manager entity	Offshore manager along with an Indian advisor on cost plus arrangement	Set up a branch / subsidiary in IFSC after taking RBI approval

9.	Taxation of manager / advisor entity	Income of Indian advisor to be subject to tax in India at applicable corporate tax rate	The management entity may take tax holiday benefit under section 80-IA of the ITA. Appropriate structure for cash repatriation to parent / head office outside the GIFT City can be explored.
10.	Indirect transfer tax ⁶⁹	Indirect transfer provisions may apply on investor exit, in case offshore fund derives substantial value from India. However, these provisions may not apply in case the Offshore Fund invests into an AIF (subject to fulfilment of certain conditions)	Exit of an investor from IFSC AIF should be considered as a direct transfer; accordingly, such transfer would be subject to tax in India Indirect transfer provisions do not apply in respect of income accruing or arising to a non-resident on account of redemption or buyback of its share held indirectly in Category-I / Category-II AIFs. This exemption should be available to non-investors of IFSC AIF as well.
11.	GST	The advisor fee earned by Indian advisor chargeable to GST @ 18%	Management fee earned exempt from GST. However, the issue of splitting management fee with IFSC manager and non-IFSC manager would arise.
S No	Parameter	Offshore Fund	IFSC AIF
12.	Cost	Cost of setting up an offshore fund (cost would depend on the jurisdiction where such fund is established) may be higher than cost of setting up an IFSC AIF	Cost of setting IFSC AIF is relatively low

Further, due to existence of regulatory constraints on investment by Indian individuals / Indian institutional investors in an IFSC AIF (as discussed above), it may be possible that domestic money is pooled in a domestic AIF in India and money from offshore investors is pooled in IFSC AIF. However, this would mean compliance of AIF Regulations at two levels, including requirement of double sponsor commitment. The Circular explicitly permits IFSC AIFs to invest in domestic AIFs, alongside other permissible investments. While setting up a two-tier structure with an IFSC AIF and domestic AIF, achieves the objective of onshoring the fund management for offshore deals, it may still be subject to several practical complications.

69. This is the tax which gets levied in case of transfer of shares or interest in an entity located outside India, if such share or interest derives value substantially from India.

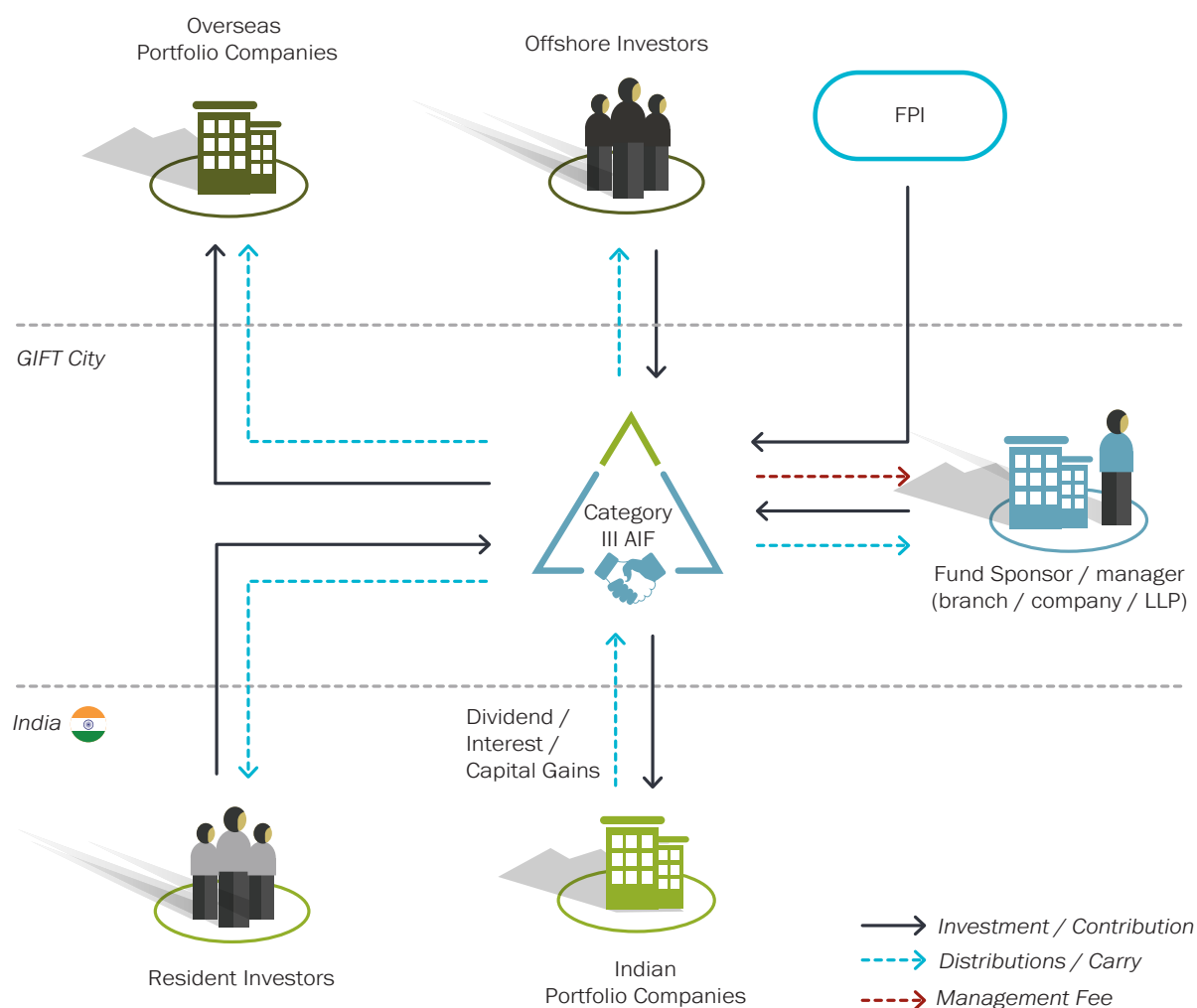
Offshore



V. Category-III IFSC AIF

The following diagram depicts the structure of Category-III AIF established in IFSC (“**Category-III IFSC AIF**”):

Offshore



A. Key considerations for establishing a Category-III IFSC AIF

Apart from the considerations stated above, the following points are of relevance from Category-III IFSC AIF's perspective:

i. Regulatory considerations

- The FEMA regulations provide that a Category-III AIF which has received any foreign investment shall make portfolio investment in only those securities or instruments in which an FPI is allowed to invest under the FEMA Act.⁷⁰ Further, an FPI is not allowed to hold more than 25% stake in a Category-III AIF.⁷¹

70. Schedule VIII of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019

71. SEBI Circular CIR/IMD/FPIC/39/ 2016 dated March 15, 2016

- As mentioned above, an entity established in IFSC is considered to be a person resident outside India for FEMA purposes. Accordingly, Category-III IFSC AIFs would be required to obtain an FPI license in order to invest in India. However, in such a case, it is unclear how provisions of FPI Regulations and AIF Regulations will work in parallel with each other.

ii. Income-tax considerations

- Taxation of Category-III AIF is not governed under section 115UB of the ITA. Typically, AIFs are established as trusts and consequently, they are subject to the taxation framework that is applicable to trusts in India. Under the ITA, a trust is not a separate taxable entity. Taxation of trusts is laid out in sections 161 to 164 of the ITA. Where the trust is specific / determinate, i.e., the beneficiaries are identifiable with their shares being determinate, the trustee is assessed as a representative assessee on behalf of the beneficiaries and tax is levied on and recovered from them in a like manner and to the same extent as it would be leviable upon and recoverable from the beneficiaries. Further, section 161(1A) of the ITA provides that where the income of the representative assessee consists of profits and gains from business or profession, such income should be taxable in the hands of the trust at maximum marginal rate (“MMR”).

Given the above, characterisation of income of a Category-III AIF assumes importance as business income would be taxable at the fund level at MMR. Category-III AIFs invest in long-term or short-term listed instruments and may employ diverse or complex trading strategies. Income earned by Category-III AIFs may be considered to be business income. In case of Category-III IFSC AIF, such business income should be eligible to claim the Tax Holiday under section 80LA of the ITA.

As mentioned above, Category-III IFSC AIFs would be required to obtain an (additional) FPI license to invest in India. The issue of characterisation of income of Category-III AIFs is further exacerbated for Category-III IFSC AIFs (registered as FPIs) as the ITA provides that any security held by an FPI should be considered to be a capital asset.⁷² Accordingly, securities held by Category-III IFSC AIFs should be considered to be capital asset and any income arising on transfer of such security is taxable as capital gains (and not business income) under the ITA. In this regard, there appears to be an anomaly to the extent that while Category-III IFSC AIFs may claim Tax Holiday under section 80 LA of the ITA, the characterisation of income from transfer of securities is considered to be capital gains by virtue of obtaining an FPI license, rendering the Tax Holiday provisions useless.

- Recently, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (“**Taxation Act, 2020**”)⁷³ made some amendments to the ITA in relation to Category-III IFSC AIFs to encourage relocation of foreign funds to the IFSC. The amendments by the Taxation Act, 2020 seeks to bring rest to the controversies in relation to characterization of income of Category-III IFSC AIFs by specifying the manner of taxation of Category-III IFSC AIFs as well as its investor and bringing the tax rates at par with those applicable to an FPI. This should ensure certainty in relation to tax treatment of income earned by Category-III IFSC AIFs and also reduce possibility of litigation in future.

The Taxation Act, 2020 has provided the following taxation regime for Category-III IFSC AIFs:

- Exemption to Category-III IFSC AIFs:** Currently, income from transfer of certain specified securities inter-alia being global depository receipts, rupee denominated bonds of an Indian company, derivatives, units of

72. Section 2(14) of the ITA

73. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance 2020 (“**the Ordinance**”) was promulgated on March 31, 2020, in order to ease compliance burden on taxpayers due to outbreak of COVID-19. The Taxation and Other Laws (Relaxations and Amendments of certain Provisions) Bill 2020 passed by Lok Sabha and Rajya Sabha seeks to replace the Ordinance. The Taxation Act, 2020 received assent from President of India on September 29, 2020

mutual funds, units of business trust, listed on a stock exchange located in IFSC is exempt from levy of capital gains tax. Therefore, the exemption was limited to income from transfer of specified securities listed on a stock exchange located in IFSC.

The Taxation Act, 2020 seeks to expand the scope of this exemption to the following income sources of Category-III IFSC AIF:⁷⁴

- Any income accrued or arisen to, or received by a Category-III IFSC AIF as a result of transfer of securities (other than shares of an Indian company). This exemption should include income from transfer of debt securities or derivatives issued by Indian companies irrespective of whether they are listed on a stock exchange located in IFSC and income from transfer of securities (capital gains) from overseas investments made by Category-III IFSC AIFs;
- Any income (interest / dividend) from securities issued by a non-resident and where such income otherwise does not accrue or arise in India;
- Any income from securitization trust under head profits and gains from business and profession (“PGBP”) to the extent such income is attributable to units held by non-residents. This exemption should include income from upside on loans on securitisation by securitisation trust

These changes not only seek to bring Category-III IFSC AIFs at par with FPIs, but also provide certain additional incentives for investing through IFSC. For example, while capital gains earned by FPIs on transfer of debt securities or derivatives issued by Indian companies is subject to tax in India, such income has now been made exempt from tax in case of Category-III IFSC AIFs.⁷⁵ Similarly, income of Category-III IFSC AIFs in form of upside on securitisation by securitisation trust to the extent characterised as PGBP has also been made exempt from tax.

- b. Exemption to unit holders of Category-III IFSC AIF: Any income accruing or arising to or received by unit holders from Category-III IFSC AIF or on transfer of units in Category-III IFSC AIFs has been exempted from tax.⁷⁶

Therefore, all distributions from Category-III IFSC AIFs to its unit holders and capital gains arising on exit from Category-III IFSC AIFs should be exempt from tax in India. From the perspective of investors, this exemption should ensure clarity and reduce chances of litigation in relation to their investment in Category-III IFSC AIFs. Pertinent to note that Category-I FPIs are granted exemption from application of indirect transfer provisions.⁷⁷ Given that a Category-III IFSC AIFs would apply for registration as a Category-I FPI,⁷⁸ indirect transfer provisions should not be applicable to them as well.

- c. Tax rates for Category-III IFSC AIFs: Section 115AD of the ITA provides a special regime for taxation of income of FPIs. The Taxation Act, 2020 has amended section 115AD of the ITA to provide flat rate of tax for income earned by Category-III IFSC AIFs (these relaxations apply only to the extent of income that is attributable to units held by non-resident investors). The table below captures the tax rates (exclusive of surcharge and cess) applicable to Category-III IFSC AIFs vis-à-vis FPIs:

74. Section 10(4D) of the ITA

75. Income from transfer of securities (other than shares of an Indian company) by Category-III IFSC AIFs should be considered to arise in India. In this regard, the language of section 10(4D) is unclear on whether this exemption is qualified by the words ‘and where such income otherwise does not accrue or arise in India’. Given the intention of amendments, it does not seem that the exemption is qualified by the accrue or arise condition

76. Section 10(23FBC) of the ITA

77. Third proviso to Explanation 5 of section 9(1)(i) of the ITA

78. The SEBI (FPI) Regulations provide that an applicant established in IFSC shall be deemed to be appropriately regulated, for the purposes of the SEBI (FPI) Regulations. Accordingly, a Category-III IFSC AIF would apply for registration as a Category-I FPI

Nature of income	Category-III IFSC AIFs (registered as FPI)	FPIs
Dividend	10%	20%
Interest under section 194LD	5%	5%
Interest	10%	20%
Long-term capital gains (including LTCG under section 112A)	10%	10%
Short-term capital gains under section 111A	15%	15%
Other short-term capital gains	30%	30%

As is evident from above, the tax rates for Category-III IFSC AIFs are now at par (except for dividend and interest income) with those applicable to FPIs. Further, dividend or interest income (other than interest under section 194LD) earned by Category-III IFSC AIFs have been put at a higher footing and are subject to tax at 10% vis-à-vis 20% for FPIs. Further, the surcharge rates applicable to FPIs should apply to Category-III IFSC AIFs as well. Given that a Category-III IFSC AIF would obtain an FPI license, an issue arises on whether the tax rates applicable to FPIs would apply to Category-III IFSC AIFs. Given that the intent of GoI is to incentivise Category-III IFSC AIFs, Category-III IFSC AIFs should be liable to tax on basis of the rate which is more beneficial to them.

- d. Clarity on withholding obligation: Given that characterisation of income of Category-III AIFs is controversial, there is lack of clarity on withholding tax obligation of investee companies as well. However, in relation to Category-III IFSC AIFs, the Taxation Act, 2020 has provided that the person responsible for paying any income (other than capital gains) to Category-III IFSC AIFs shall withhold tax at rate of 10% at the time of credit or payment, whichever is earlier. Section 196D further clarifies that no withholding is required to be done in relation to income which is exempt under section 10(4D) of the ITA.

VI. Key Challenges in setting up AIFs in IFSC

Basis our discussion above, the following are the key challenges in setting up AIFs in IFSC and necessary clarifications in this regard should go a long way in boosting fund management industry:

- Investment by residents in IFSC AIF: Investment by Indian residents (individuals / institutional investors including manager / sponsor of IFSC AIF) in an IFSC AIF is subject to RBI approval as IFSC AIF is engaged in financial services sector. Given that IFSC AIF is regulated by Indian regulatory authorities, the need for obtaining RBI approval for investment by residents in IFSC AIF should be removed.
- Requirement of multiple licences by IFSC AIF: The SEBI (IFSC) Guidelines read with the Operating Guidelines permit an IFSC AIF to invest under the FDI / FPI / FVCI route. Prima facie, in the absence of clarifications from SEBI, it appears that IFSC AIF will have to take separate license for investment under each route. Further, it is unclear how the provisions of AIF Regulations and the extant regulations under FEMA Act will apply in parallel. A clarification in this regard should be provided.
- Single-window clearance: While the GoI has established the IFSC Authority in Gandhinagar, the practical nuances and manner of operation of the single-window clearance has not been notified yet.

Further, while a Tax Holiday has been provided to units of an IFSC, considering that Category-I / Category-II AIFs do not have any business income, the Tax Holiday does not grant any additional benefit to Category-I / Category-II IFSC AIFs.

7. Conclusion

The Indian government and all the regulatory agencies have been working in unison to enable GIFT City for offering business and regulatory environment that is comparable to other leading IFCs. While the world has witnessed the growth of international financial hubs such as London, New York, Hong Kong, Singapore and Dubai, the time is now ripe to enhance capital flows through the GIFT City in India. According to a recent Global Limited Partner survey conducted by the Emerging Markets Private Equity Association, India is seen as one of the most attractive economies for allocating capital commitments.⁷⁹ India's attractiveness has also been enhanced by the Government's move to create an environment in which there is ease of doing business. Further, given the global political unrest, it may be a good time for investors to explore IFSC in India.

Having said the above, notably, the IFSC in GIFT City provides numerous benefits to the entities setting up operations there, some of the benefits include: a state-of-the-art infrastructure at par with other leading global financial centres, a liberal tax regime and a strong regulatory and legal environment. While, the GoI has mustered tremendous effort to boost the development of IFSC, it has not achieved much popularity yet. However, the recent tax and regulatory clarifications / relaxations should provide a stimulus for further development of IFSCs in India and enable bringing back of financial services and transactions that are currently carried out in OFCs to India. This should also generate significant direct and indirect employment in the financial sector in India. Further, appropriate utilization and allocation of land in GIFT City should also provide immediate boost for business activities in GIFT City. The establishment of IFSC Authority to act as a single-window for regulating activities in an IFSC should help build investor confidence through consistency, transparency and clarity in policy measures.

There clearly lies a lot of business potential in the IFSC. The GIFT city is ranked 1st in the recent report published by the Global Financial Centres Index 28 - London as one of the 15 centres that are likely to become more significant in the next few years.⁸⁰ Given that India has been late to enter the IFC regime, a collaborative effort from both the Government and industry should help IFSC regime reach the its intended heights.

79. Global Limited Partners Survey, Investors' view of Private Equity in Emerging Markets, 2019; available at <https://www.empea.org/app/uploads/2019/05/2019-lp-survey-final-web.pdf>

80. https://www.longfinance.net/media/documents/Financial_Centres_Likely_To_Become_More_Significant_2019-02-20.pdf

Annexure 1

SEBI (IFSC) Guidelines

A.Guidelines in relation to stock exchange, clearing corporation and depositaries operating in an IFSC⁸¹

S No	Parameters	Stock Exchange	Clearing Corporation	Depositaries
1.	Eligibility and shareholding	Any Indian RSE or any stock exchange of a foreign jurisdiction may form a subsidiary to provide the services of stock exchange in an IFSC, where at least 51% of the paid-up equity share capital is held by such exchange and remaining share capital may be offered to any other person (whether Indian or of foreign jurisdiction) and such person shall not at any time, 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 RSE in IFSC, subject to applicable law. ^{82, 83}	Any Indian RSE or clearing corporation, or any RSE or clearing corporation of a foreign jurisdiction may form a subsidiary to provide the services of clearing corporation in an IFSC where at least 51% of the paid-up equity share capital is held by such stock exchange or clearing corporation, and remaining shares may be held by any other RSE or clearing corporation, whether Indian or of foreign jurisdiction.	Any Indian registered depository or any regulated depository of a foreign jurisdiction may from a subsidiary to provide the depository services in an IFSC where at least 51% of the paid-up equity share capital is held by such depository and remaining shares may be offered to any other registered depository or RSE or clearing corporation, whether Indian or foreign jurisdiction.
2.	Reporting	Every person who acquires equity shares of a RSE or recognised clearing corporation or registered depository in IFSC shall inform SEBI within 15 days of such acquisition.		
3.	Net-worth requirement	<ul style="list-style-type: none"> Initial minimum net-worth: INR 25 crores (~USD 3.3 million); 	<ul style="list-style-type: none"> For new applicant, minimum net-worth (in form of liquid assets): equivalent of INR 50 crores (~USD 6.6 million); For recognised clearing corporation, on commencement of operations, minimum net-worth (in form of liquid assets): equivalent of INR 50 crores (~USD 6.6 million); 	

81. Chapter II – Stock exchanges, clearing corporation and depositaries of SEBI (IFSC) Guidelines

82. SEBI recently amended SEBI (IFSC) Guidelines vide Circular dated July 9, 2020

83. It is provided that i) a stock exchange ii) depository, iii) a banking company, iv) an insurance company, v) a commodity derivatives exchange (whether Indian or of foreign jurisdiction i) to v)) vi) a public financial institution of Indian jurisdiction and vii) 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 of a RSE with prior approval of SEBI

S No	Parameters	Stock Exchange	Clearing Corporation	Depositories
		<ul style="list-style-type: none"> Enhanced net-worth: minimum equivalent of INR 100 crores (~USD 13 million) over a period of 3 years from the date of approval. 	<ul style="list-style-type: none"> Enhanced net-worth (in form of liquid assets): minimum equivalent of INR 100 crores (~USD 13 million) over a period of three years from commencement of operations.⁸⁴ 	
4.	Relaxations	Relaxations from application of certain provisions of SEBI Regulations like Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, SEBI (Depositories and Participants) Regulations, 1996 etc. have been provided.		

It is further provided that the stock exchanges operating in IFSC may permit dealing in following types of securities and products in such securities in any currency other than Indian rupee, with a specified trading lot size on their trading platform subject to prior approval of SEBI:

- Equity shares of a company incorporated outside India;
- Depository receipt(s);
- Debt securities issued by eligible issuers;
- Currency and interest rate derivatives;
- Index based derivatives;
- Commodity derivatives;⁸⁵
- Derivatives on equity shares of a company incorporated in India;⁸⁶
- Units of InvITs and REITs in the Permissible Jurisdictions⁸⁷
- Such other securities as may be specified by SEBI.

Further, the SEBI has notified a broad framework for functioning of stock exchanges and clearing corporations in IFSC (“**Framework**”).⁸⁸ The Framework inter-alia provides as under:

- **Market Structure:** There shall be a single market structure to achieve synergies in terms of various operations and to facilitate ease of doing business;
- **Trading Hours and Settlement:** The trading hours for all product categories shall be as decided by the stock exchanges in IFSC based on cost-benefit analysis, but not exceeding 23 hours and 30 minutes in a day and settlement shall be done at least twice a day. The stock exchanges and clearing corporations in IFSC shall ensure that the risk management system and infrastructure are commensurate to the trading hours at all times;

84. SEBI amended the net worth requirements for clearing corporations in IFSC subsequent to the notification of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 vide circular SEBI / HO / MRD / DRMNP / CIR / P / 2019 / 60 dated April 26, 2019.

85. SEBI vide circular CIR/MRD/DSA/41/2016 dated March 17, 2016 has specified that the ‘Commodity Derivatives’ shall be eligible as securities for trading and the stock exchanges operating in IFSC may permit dealing in Commodity Derivatives

86. SEBI vide circular SEBI/HO/MRD/DRMNP/CIR/P/2017/31 dated April 13, 2017 has specified that the ‘derivatives on equity shares’ shall be eligible as securities for trading and the stock exchanges operating in IFSC may permit dealing in such securities

87. SEBI vide circular SEBI/HO/DDHS/DDHS/CIR/P/2020/174 dated September 16, 2020

88. SEBI circular SEBI/HO/MRD/DSA/CIR/P/2016/125 dated November 28, 2016

- **Product Category:** All categories of exchange-traded products as available for trading in stock exchanges in Financial Action Task Force (“**FATF**”) /IOSCO compliant jurisdictions shall be eligible for trading, subject to prior approval of SEBI. However, with respect to commodity derivatives, only non-agricultural commodity derivatives shall be eligible for trading;
- **Trading in Rupee denominated bonds issued overseas (Masala Bonds):** Masala Bonds shall be eligible for trading in stock exchanges in IFSC, provided such bonds are listed on stock exchanges in FATF / IOSCO compliant jurisdictions;
- **Risk management framework:** Prior to commencement of their operations, stock exchanges in IFSC shall tie-up with Clearing Corporations for clearing and settlement of their trades. The Clearing Corporations desirous of providing clearing and settlement services in IFSC shall evolve a robust risk management framework in line with the CPMI IOSCO Principles for Financial Market Infrastructures, in addition to compliance with some other conditions;
- **Dispute Resolution Mechanism:** Market participants shall avail the arbitration, mediation and other dispute resolution mechanisms offered by International Arbitration Centre in IFSC to resolve securities market-related disputes.

Additionally, with a view to further facilitate ease of market access for foreign investors in IFSC and based on feedback received from market participants, the SEBI has permitted Segregated Nominee Account Structure in IFSC wherein orders of foreign investors may be routed through eligible Segregated Nominee Account Providers (“**Providers**”), for trading on stock exchanges in IFSC while adhering to regulatory requirements, inter-alia, relating to identification of end-client, Unique Client Code, order placement at client level, client level margining and position limits.⁸⁹ Therefore, foreign investors who are not investing in India under the FPI route would be able to simply access the Indian capital market in IFSCs through Providers. It is further provided that stock exchanges in IFSC shall ensure that the provisions of Prevention of Money Laundering Act, 2002 and the rules thereof, including those relating to capturing the KYC information for sharing with the Central KYC Registry to the extent applicable to FPIs, are adhered to by Providers for their end-clients.

B.Guidelines in relation to intermediaries operating in an IFSC⁹⁰

In relation to intermediaries, the amended the SEBI (IFSC) Guidelines provide as under:

- **Eligibility criteria:** Any SEBI-registered intermediary (except trading member or clearing member) or its international associates in collaboration with such SEBI-registered intermediary may provide financial services relating to securities market, in IFSC, without forming a separate company, subject to the prior approval of SEBI. In case where services are offered exclusively to institutional investors, SEBI approval is not required. In case financial services are offered exclusively to institutional investors by non-SEBI registered intermediary, prior SEBI approval is not required, if such intermediary is recognized entity in a foreign jurisdiction.
- **Nature of clients:** Any intermediary permitted by SEBI for operating within an IFSC shall provide financial services to specified categories of clients inter-alia being a person not resident in India, a non-resident Indian, a financial institution resident in India who is eligible under FEMA to invest funds offshore, to the extent of outward investment permitted etc.

89. SEBI vide circular SEBI/HO/MRD/DRMNP/CIR/P/2018/83 dated May 24, 2018

90. Chapter III – Intermediaries of SEBI (IFSC) Guidelines

- Appointment of Designated Officer: Any intermediary permitted by SEBI for operating within the IFSC is required to appoint a senior management person as 'Designated Officer' for the purpose of enforcing compliance with regulatory requirements.
- Investment by portfolio manager operating in IFSC: A portfolio manager operating in an IFSC is permitted to invest in the following:
 - Securities which are listed in IFSC;
 - Securities issued by companies incorporated in IFSC;
 - Securities issued by companies belonging to foreign jurisdiction.

C.Guidelines in relation to issue of capital⁹¹

The SEBI (IFSC) Guidelines provide the following in relation to debt capital:

- Eligible issuer: Following criteria has to be satisfied by the issuer of debt capital:
 - The issuer is eligible to issue debt securities as per its constitution;
 - The issuer should not have been debarred by any regulatory authority in its home jurisdiction or any other jurisdiction, where it is operating or has raised any capital;
 - The issuer or its directors should not be convicted of any economic offence in its home jurisdiction or any other jurisdiction where it is operating or has raised any capital;
 - Any other criteria as may be specified by the SEBI.
- Minimum subscription: In case of private placement the minimum subscription amount per investor shall not be less than USD 1 million.
- Mandatory listing: An issuer desirous of issuing debt securities shall make an application for listing of such debt securities to one or more stock exchanges set up in IFSC. In addition to the mandatory listing of debt securities that are issued in IFSC, the SEBI has permitted listing of those debt securities on stock exchanges in IFSC, which are issued outside IFSC. However, listing of only those debt securities is permitted which are issued in, and by issuers resident in FATF member jurisdictions. The issuer of debt securities shall enter into a listing agreement with the stock exchange(s) where such securities are intended to be listed.⁹²
- Credit rating requirement: For debt issues listed on stock exchanges in IFSC, the credit rating may be obtained either from a recognized credit rating agency registered with the SEBI or from any other credit rating agency registered in a FATF member jurisdiction.
- Agreement with depository or custodian: An issuer of debt securities is required to enter into an agreement with a depository or custodian, registered in a FATF member jurisdiction, for issue of the debt securities, for the purpose of holding and safekeeping of such securities and also to facilitate transfer, redemption and other corporate actions in respect of such debt securities. The requirement of appointment of depository or custodian is exempted in case where the issuer has a registered office or branch office in IFSC, in such a case the issuer may service its investors from such office itself.

91. Chapter IV – Issue of capital of SEBI (IFSC) Guidelines

92. SEBI vide circular SEBI/HO/MRD/DRMNP/CIR/P/2017/96 dated August 31, 2017

- Reporting in financial statements: The entities issuing and / or listing their debt securities in IFSC are required to prepare their statement of accounts in accordance with the accounting standard applicable to them in their place of incorporation. In case an entity does not prepare its statement of accounts in accordance with the accounting standard applicable, a quantitative summary of significant differences between national accounting standards and IFRS shall be prepared by such entity and incorporated in the relevant disclosure documents to be filed with the exchange.
- Trading: The debt securities listed in stock exchanges shall be traded on the platform of the stock exchange and such trades shall be cleared and settled through clearing corporation set up in IFSC as specified. The SEBI has permitted over the counter (“OTC”) trading of debt securities in IFSC subject to clearing and settlement through clearing corporations in IFSC. The SEBI has advised that all OTC trades in debt securities shall be reported on the reporting platform of any one of the RSEs in IFSC within 15 minutes of the trade.⁹³
- Investment conditions: The SEBI has notified that a person resident in India shall not invest or trade in Rupee denominated bonds issued and / or listed in IFSC, except to the extent as permitted by RBI. Further, Person resident in India shall also not invest or trade in other debt securities, issued and / or listed in IFSC, by Indian entities.⁹⁴
- Other conditions: All other conditions like advertisement for debt issues in print media, appointment of trustee, creation of debenture redemption reserve, etc. provided in SEBI (IFSC) Guidelines have to be complied with.

93. *ibid*

94. *ibid*

Annexure 2

I. Insurance Regulatory and Development Authority of India (Registration and Operations of International Financial Services Centre Insurance Office) Guidelines, 2017

The IRDAI (Registration and Operation IFSC Insurance Office) Guidelines, 2017 are applicable to:

- The applicants who are willing to apply for registration of IFSC Insurance Office⁹⁵ (“**IIO**”).
- The Indian insurer or reinsurer registered as IIO with the IRDAI under these guidelines to transact direct insurance business or reinsurance business or both.
- The foreign insurer or reinsurer registered as IIO with the IRDAI under these guidelines to transact direct insurance business or reinsurance business or both.

The IRDAI (Registration and Operation IFSC Insurance Office) Guidelines, 2017 provides inter-alia the following:

- **Eligibility criteria:** Every person or entity aiming to commence or undertake insurance or a reinsurance business from an IFSC must obtain prior registration as an IIO from the IRDA. The sole objective of such IIO must be to exclusively carry on insurance or reinsurance business from IFSC. An IIO is not permitted to engage itself in any business other than that permitted by the IRDA. The IIO may be permitted to transact direct insurance business within IFSC, from other SEZs and from outside India. The IIO may accept reinsurance business from within IFSC, from other SEZs and from outside India.
- **Permissible classes of insurance business:** IIO may be registered with IRDAI for the following classes or subclasses of insurance business:
 - Life insurance business;
 - General insurance business;
 - Health insurance business;
 - Reinsurance business
- **Capital requirement:** capital requirement to establish an IIO unit in IFSC is as follows:
 - *Assigned Capital:* Any applicant must demonstrate a minimum assigned capital of INR 10 crores. In case the applicant is a foreign direct insurer, then such applicant must possess paid-up equity capital as per the provisions of Section 6(1) of the Insurance Act, 1938. Such assigned capital may be held in the form of Government Securities issued by the GoI or held as deposits with Scheduled Banks in India and shall be maintained by the IIO at all times during the subsistence and validity of its registration under these guidelines.

95. IFSC Insurance Office means a branch office of a applicant to transact direct insurance business or reinsurance as permitted by IRDAI

- *Net owned Fund:* An applicant shall maintain net owned funds as applicable to the branches of foreign reinsurers under Section 6(2) of the Insurance Act, 1938 or as may be prescribed by the GoI. Maintaining of net owned fund requirement is not applicable for a foreign direct insurer. Such NOF shall be maintained by the applicant at all times during the subsistence and validity of its registration.
- Other conditions: the guidelines provide other conditions like consideration for grant of certificate of registration of IIO, operational guidelines applicable to IIOs, applicable forms / formats etc.

II. Insurance Regulatory and Development Authority of India (International Financial Service Centre Insurance Intermediary Offices) Guidelines, 2017

IRDAI (IFSC Insurance Intermediary Offices) Guidelines are applicable for the applicants who wish to undertake operations as IFSC Insurance Intermediary Office (“**IIO**”) and to IIOs. No person or entity shall commence or undertake or render services as an insurance intermediary from an IFSC without obtaining prior permission from the IRDAI, to act as an IIO. The applicant may apply for any one of the following categories of intermediary i) Insurance Broker; ii) Corporate Agent; iii) Surveyor and Loss Assessor; iv) Third Party Administrator - Health Services; v) Any other category of intermediary recognized by the IRDAI.

Further, the IRDAI (IFSC Insurance Intermediary Offices) Guidelines provide the conditions on eligibility norms, manner of application for grant of authorization as IIO, procedure for issuance of authorization as an IIO, validity of authorization as an IIO, conditions of authorization to IIO etc.

Annexure 3

Details of the Currency Futures Directions and Currency Options Directions

The following conditions are provided in Currency Futures Directions and Currency Options Directions:

- **Permissions:** Currency futures contracts / currency options contract are permitted in any currency pair involving the Indian Rupee or otherwise. Person resident in India as defined under FEMA Act, unless specifically permitted by RBI, shall not be eligible to undertake currency futures contracts / currency options contract. Person resident outside India as defined under FEMA Act shall be eligible to undertake currency futures contracts / currency options contract.
- **Features of Currency futures:** All currency futures contracts shall be settled in a currency other than the Indian Rupee. The Currency Futures Directions provide details on the settlement price of currency futures contract and provides that the size, maturity and other specifications of the currency futures contracts shall be decided by the recognised stock exchange in consultation with SEBI.
- **Features of Currency options:** The premium for all currency option contracts shall be quoted in a currency other than the Indian Rupee. All currency options contracts shall be settled in a currency other than the Indian Rupee. The Currency Options Directions provide details on the settlement price of currency options contract and provides that the size, maturity and other specifications of the currency futures contracts shall be decided by the recognised stock exchange in consultation with SEBI.
- **Position limits:** The position limits for various classes of participants in the currency futures / options market shall be subject to guidelines issued by the SEBI. IBUs shall operate within prudential limits as laid down in the instructions issued by the RBI.
- **Risk management measures:** The trading of currency futures / currency options shall be subject to maintaining initial, extreme loss and calendar spread margins and the clearing corporation / clearing house of the recognised stock exchange shall ensure maintenance of such margins by the participants on the basis of the guidelines issued by SEBI from time-to-time.

Annexure 4

AIFs in IFSC

The SEBI (IFSC) Guidelines and Operating Guidelines issued by SEBI in November 2018, provide the following in relation to IFSC AIFs:

S No.	Parameter	Category-I / Category-II IFSC AIF	Category-III IFSC AIF	Angel Fund in IFSC
1.	Corpus	USD 3 million		USD 750,000
2.	Minimum investment amount for eligible investor	USD 150,000		USD 40,000 from an angel investor ⁹⁶
3.	Minimum investment amount for employees / directors of AIF or employees / directors of manager of AIF	USD 40,000		Not provided
4.	Minimum manager / sponsor commitment (in form of investment and not by waiver of management fees)	2.5% of corpus of IFSC AIF or USD 750,000, whichever is lower	5% of corpus of IFSC AIF or USD 1.5 million, whichever is lower	2.5% of corpus of IFSC AIF or USD 80,000, whichever is lower

Further, the Operating Guidelines provide the following in relation to investment by angel funds in IFSC:

- Angel funds should invest in venture capital undertaking (“VCUs”) in India as per AIF Regulations;
- Angel funds shall invest in VCUs which have a turnover of less than USD 3.75 million;
- Angel funds shall invest in VCUs which are not promoted or sponsored by or related to an industrial group whose group turnover exceeds USD 45 million;
- Investment by angel funds in any VCU should not be less than USD 40,000 and should not exceed USD 1.5 million.

The fee schedule for registration as an IFSC AIFs is provided below:

S No.	Parameter	Fee (USD)
1.	Application fee	1,500
2.	Registration fee for Category-I AIF other than Angel Funds	7,500
3.	Registration fee for Category-II AIF	15,000
4.	Registration fee for Category-III AIF	22,500
5.	Registration fee for angel funds	3,000
6.	Scheme fee for AIFs other than angel funds	1,500
7.	Re-registration fee	1,500

96. An angel fund in IFSC shall accept investment from angel investor up to a maximum period of 5 years. An investor would be considered as an angel investor if it fulfills the criteria below:

- An individual investor should have net tangible assets of at least USD 300,000 excluding value of his principal residence;
- A body corporate should have net worth of at least USD 1,500,000

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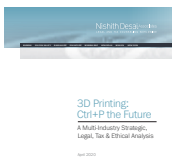



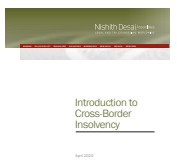
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