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GUJARAT INTERNATIONAL FINANCE TEC-CITY

Opportunities in GIFT City

Fund Formation

October 2024

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As a member of the funds practice at Nishith Desai Associates she advises on funds structuring and documentation of funds (domestic including GIFT City funds and offshore funds). She is also involved in advising various private equity clients with respect to their carry structures. She is extensively involved in the firms' effort on identifying new opportunities and leveraging the new international financial services centre at GIFT City, Gujarat.

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Payal holds a B.A. LL.B. from School of Law, Christ University and an LL.M. from Georgetown University Law Centre in International Business and Economic Law with a certificate in Securities and Financial Laws. Apart from private funds, Payal also has experience advising on and representing clients in corporate and commercial disputes.

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She frequently interacts with SEBI officials and has authored numerous articles on developments in the regulatory landscape, including the FPIs regime and other securities law issues.

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Introduction

In the intricate tapestry of global finance, International Financial Centers ("**IFCs**") emerge as towering pillars of economic prowess, serving as epicenters where capital, innovation and expertise converge on a global scale. These financial hubs, strategically scattered across the world, play a pivotal role in shaping the trajectory of international trade, investment and economic development by facilitating seamless cross-border financial transactions and by offering a spectrum of sophisticated financial services and products.

Renowned metropolitans such as London, New York, Singapore, Hong Kong and Dubai exemplify the essence of IFCs, acting as nerve centers that channel the lifeblood of the global economy. These hubs are characterized not only by towering skyscrapers that pierce the skyline but, more crucially, by the intricate networks of financial transactions, technological innovation and diverse talent that define their essence. Besides their strategic location, their dynamic ecosystems attract the brightest minds, the largest investments and the most cutting-edge technologies. In an era marked by relentless globalization, IFCs stand as symbols of economic vibrancy, offering a confluence of opportunities for businesses, investors, and financial institutions.[1]

Against the backdrop of a challenging global economic outlook, characterized by forecasts of slowed growth and potential financial sector stresses, the resilience and adaptability of IFCs become even more pronounced. According to the International Monetary Fund's World Economic Outlook, the global economic growth rate is expected to stay at 3.1% in 2024, a slight rise from the significantly low growth rate of 2.8% in 2023, with forecasts for 2024–25 below historical averages.[2] In such a scenario, the role of IFCs as examples of stability becomes crucial, providing a sanctuary for economic progress.

In this subdued global economic outlook, India emerges as a beacon of resilience and growth. According to projections from the World Bank, India is one of the fastest growing economies of the world and is poised to continue on this path, reflected in its resilience against the backdrop of a challenging global environment, with forecasts of India's Gross Domestic Product ("**GDP**") at 6.6% during FY 2024–25.[3] This optimism is supported by robust macroeconomic fundamentals, increased private investment, and strategic policy measures by the Government.

At the heart of India's financial resurgence lies Gujarat International Financial Tec-City ("**GIFT City**"), an ambitious project designed to be a global financial and IT services hub, first introduced by Hon'ble Finance Minister Mr. Arun Jaitley while presenting the Union Budget for the year 2015–16. GIFT City, with its status of being an International Financial Services Centre ("**IFSC**"), aims to bring to Indian soil the financial transactions currently undertaken outside the country, contributing to the development of domestic financial markets. Positioned as a visionary project, GIFT City holds the promise of reshaping India's economic future and contributing significantly to global financial stability.

In the broader context of nations enhancing the competitiveness of their financial services sectors and deepening integration with global markets, the emergence of GIFT City represents a strategic leap for India in the international financial arena. This paper summarizes the present legal, tax and regulatory regime for GIFT City, with an emphasis on fund formation established in the IFSC.

1 Hines, James R., Jr. "International Financial Centers and the World Economy." STEP Report. London: Society of Trust and Estate Practitioners, (2009), available at: https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1190&context=other.

2 International Monetary Fund, World Economic Outlook Update 2024, available at: https://www.imf.org/en/Publications/WEO/Issues/2024/01/30/world-economic-outlook-update-january-2024.

3 The World Bank, Global Economic Prospects, June 2024, available at: https://openknowledge.worldbank.org/server/api/core/bitstreams/6feb9566-e973-4706-a4e1-b3b82a1a758d/content.

GIFT City — Genesis and Concept

Nestled strategically between Ahmedabad and Gandhinagar, GIFT City has emerged as a thriving investment haven in India, attracting global players and igniting domestic growth. Established with a vision to consolidate India's financial presence previously scattered across global hubs like London and Singapore, GIFT City strives to not only emulate international standards, but surpass them.

GIFT City has been developed in two distinct parts.[1] First, the GIFT Special Economic Zone ("**GIFT SEZ**"), which has been classified as an IFSC, and the second a Domestic Tariff Area ("**DTA**"), where domestic financial and IT institutions along with social infrastructure like schools, restaurants, and residential properties are being developed (see Figure 1).

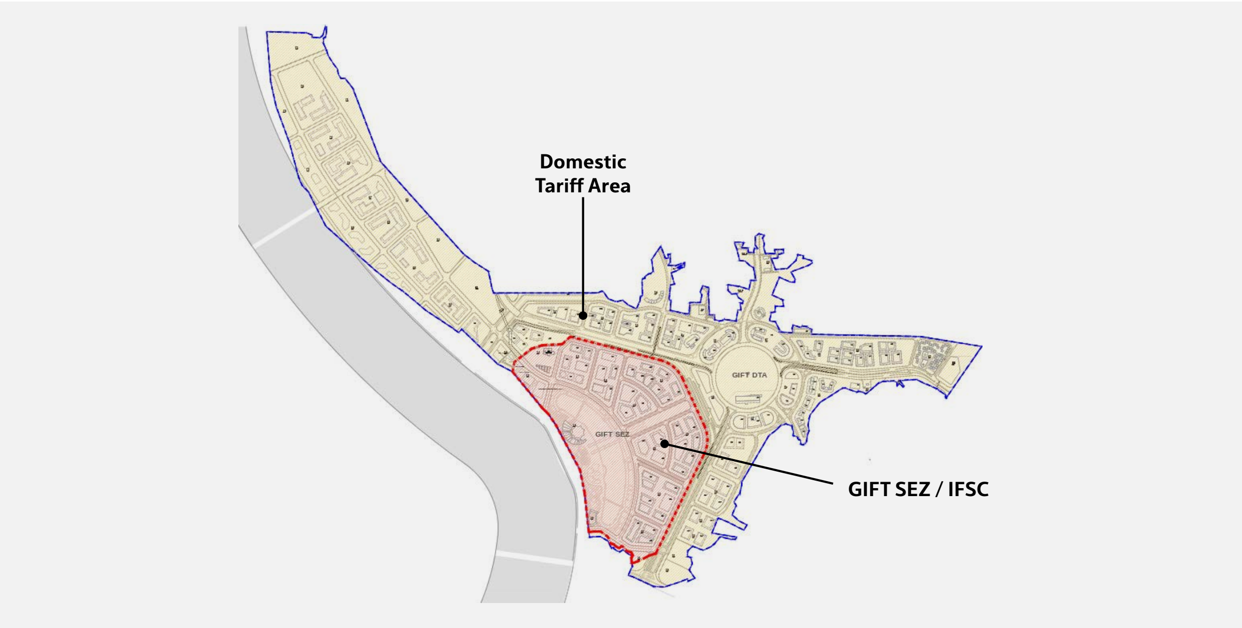

Figure 1

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 the GIFT SEZ are as under:

- To realize the vision of the Government of India ("**Government**") to emerge as a major economic power by attracting financial transactions to India which were previously being undertaken outside of India;
- To Facilitate the implementation of the Government's strategy for the development of a financial hub in the South Asian sub-continent; and
- To Position the IFSC as a world-class zone for the long-term provision of office / service accommodation and high technological, economical and commercial infrastructure.[2]

1 http://giftsez.com/gift-sez-ltd.aspx.

2 Ibid.

In order to achieve these goals, the IFSC at GIFT City houses various segments of the financial services sector including international banking, capital markets, asset management, insurance, aircraft and ship leasing and other ancillary services all targeted towards cross border transactions (see Figure 2).[3]

The DTA portion of GIFT City is dedicated to the growth of India-focused businesses and contributes to the development of GIFT City's socio-cultural experiences by providing space for the setting up schools, universities, shops, housing, restaurants and more.

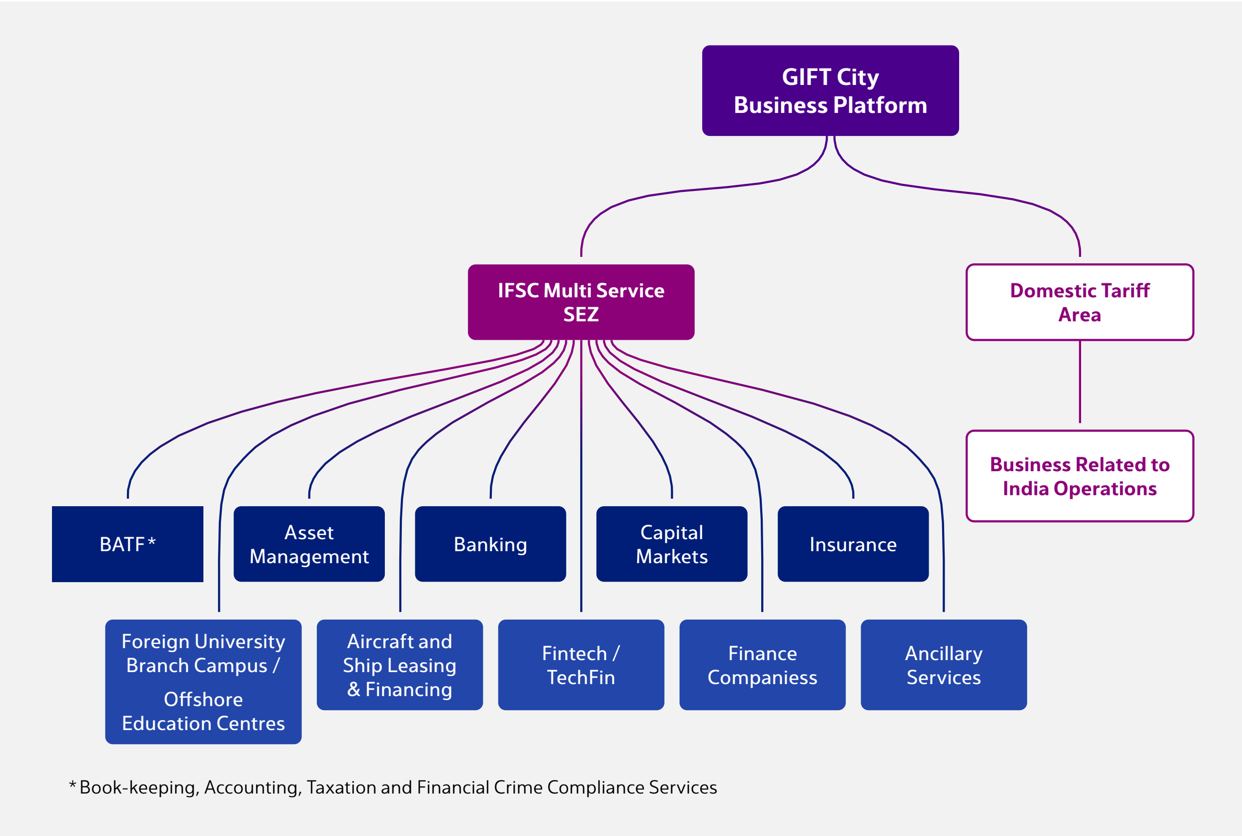

Figure 2

GIFT City also caters to India's large financial services potential by offering global firms, world-class infra-structure and facilities. It aims to attract the top talent in the country by providing the finest quality of life. It is estimated that GIFT City would provide 5,00,000 direct and an equal number of indirect jobs.[4] GIFT City is conceptualized as a global financial and information technology ("**IT**") services hub, designed to be at or above par with globally benchmarked financial centers such as New York, Singapore, London, Luxemburg, DIFC, etc.

3 https://www.giftgujarat.in/.

4 https://giftsez.com/gift-sez-ltd.aspx.

The IFSC at GIFT City

The IFSC at GIFT City ("**GIFT IFSC**") provides a unique opportunity wherein businesses incorporated in India are treated as non-residents for foreign exchange laws as well as certain specified duties and tariffs (explained in further detail below). GIFT IFSC provides easy access to global hubs that facilitate the flow of capital, movement of goods and economies of scale. Additionally, GIFT IFSC offers well-developed areas of infrastructure with built up space, power, water supply, transport and housing, including physical and social infrastructure facilities.[5] GIFT IFSC will allow financial sector 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.

In recent years, GIFT IFSC has experienced remarkable growth and diversification across its financial ecosystem. The capital market witnessed an impressive surge, with a 104% increase in turnover on stock exchanges in the GIFT IFSC, driven by substantial growth in index futures and options.[6] Commodity derivatives, particularly gold, also displayed positive trends.[7]

In debt securities, cumulative listings of all debt securities reached USD 56.5 billion and the fiscal year 2023–24 witnessed the listing of USD 5.9 billion, showcasing the robustness of the market.[8] Furthermore, as of June 30, 2024 116 Fund Management Entities have been registered in the IFSC, raising commitments exceeding USD 38 billion across different type of schemes.[9] The insurance sector also saw the registration of new (re)insurers and insurance brokers, contributing to a dynamic marketplace. The banking sector, marked by the operation of 27 International Banking Units (IBUs), experienced significant growth in customer credit and total assets.[10]

Furthermore, the derivative market at the GIFT IFSC expanded by nearly 40%, reflecting increased market participation and strategic portfolio enhancements by IBUs.[11] Overall, GIFT IFSC's recent trends and transactions underscore its emergence as a thriving international financial hub, attracting diverse financial activities and fostering a robust global financial ecosystem.

5 https://giftsez.com/gift-sez-ltd.aspx.

6 IFSCA Annual Report 2022-23, available at: https://ifsca.gov.in/Document/ReportandPublication/ifsca-annual-report-2022-23_english10082023064856.pdf, page 29.

7 IFSCA Annual Report 2022-23, available at: https://ifsca.gov.in/Document/ReportandPublication/ifsca-annual-report-2022-23_english10082023064856.pdf, page 31.

8 IFSCA Annual Report 2022-23, available at: https://ifsca.gov.in/Document/ReportandPublication/ifsca-annual-report-2022-23_english10082023064856.pdf, page 32.

9 IFSCA Annual Report 2022-23, available at: https://ifsca.gov.in/Document/ReportandPublication/ifsca-annual-report-2022-23_english10082023064856.pdf, page 42.

10 IFSCA Annual Report 2022-23, available at: https://ifsca.gov.in/Document/ReportandPublication/ifsca-annual-report-2022-23_english10082023064856.pdf, page 14.

11 IFSCA Annual Report 2022-23, available at: https://ifsca.gov.in/Document/ReportandPublication/ifsca-annual-report-2022-23_english10082023064856.pdf, page 16.

International Financial Services Centres Authority ('IFSCA')

I. Introduction to IFSCA Act 2019

During the Union Budget 2018, the finance minister first announced that the Government would establish a Unified Authority for regulating all the financial services in the IFSCs in India. As a next step, the Government approved the establishment of a unified authority for regulating all financial services in IFSCs through International Financial Services Centres Authority Bill, 2019 ("**IFSCA Bill**"). The IFSCA 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 ("**IFSCA Act**").[1] The IFSCA Act sets up a unified authority to act as a single-window for regulating various financial activities in the IFSC.

II. Key Features of the IFSCA

i. **Composition of the IFSCA**: The IFSCA consists of a Chairperson and one Member, each to be nominated by the RBI, the SEBI, the IRDA and the Pension Fund Regulatory and Development Authority ("**PFRDA**") respectively, two members to be nominated by the Government and two other whole-time or full-time or part-time members.

ii. **Functions of the IFSCA**: The IFSCA regulates financial products (such as securities, deposits or contracts of insurance), financial services, and financial institutions operating from the GIFT IFSC. Specifically, since several entities had already been licensed by SEBI, RBI, IRDA or PFRDA ("**Domestic Regulators**") to operate out of the IFSC, prior to the establishment of the IFSCA, the IFSCA Act clarified that the IFSCA would henceforth have jurisdiction over such entities. However, the IFSCA Act also sets out that the IFSCA must follow all processes which were applicable to such financial products, financial services, and financial institutions under their respective laws as issued or enforced by the relevant Domestic Regulator. Accordingly, the IFSCA's mandate includes regulating financial institutions newly operating from the GIFT IFSC, as well as financial institutions operating in the GIFT IFSC prior to the establishment of the IFSCA. Till such time the IFSCA passes new regulations, all financial products, services and institutions in the GIFT IFSC are governed by the pre-existing frameworks set up by Domestic Regulators.

   Other functions of the IFSCA include: (i) regulating any other financial products, financial services, or financial institutions in the GIFT IFSC, which may be notified by the Government, and (ii) recommending any other financial products, financial services, or financial institutions to the Government, which may be permitted in the GIFT IFSC.

iii. **Powers of the IFSCA**: All powers exercisable by each of the Domestic Regulators under their respective acts and regulations (see Figure 3) are to be solely exercised by the IFSCA in the GIFT IFSC in so far as the regulation of financial products, financial services and financial institutions that are permitted in the GIFT IFSC are concerned.

1 https://ifsca.gov.in/Viewer?Path=Document%2FLegal%2F59-ifsca-act-2019_mol-j09092020074609.pdf&Title=The%20International%20Financial%20Services%20Centres%20Authority%20Act%2C%202019&Date=19%2F12%2F2019.

International Financial Services Centres Authority ('IFSCA')

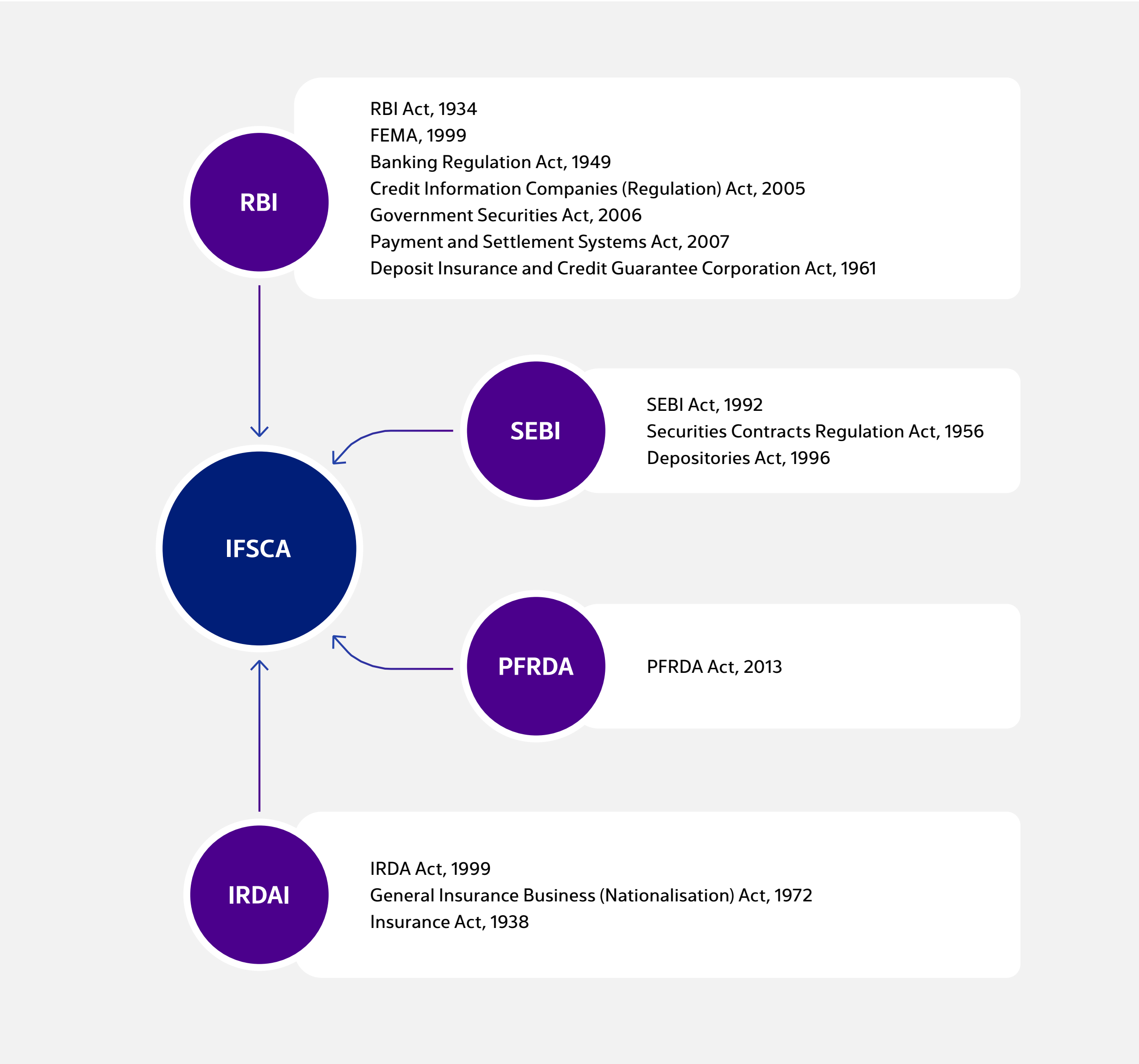

Figure 3

iv. **Grants by the Government**: The Government may, after due appropriation made by Parliament by law in this behalf, make to the IFSCA grants of such sums of money as the Government may think fit for being utilized for the purposes of the IFSCA.

v. **Fund of IFSCA**: The IFSCA Act provides for settlement of the IFSCA Fund. The following items will be credited to the IFSCA Fund: (i) all grants, fees and charges received by the IFSCA, and (ii) all sums received by the IFSCA from various sources, as decided by the Government. The IFSCA Fund will be used for: (i) salaries, allowances and other remuneration of members and employees of the IFSCA, and (ii) expenses incurred by the IFSCA.

vi. **Performance review committee**: The IFSCA is required to constitute a Performance Review Committee to review its functioning consisting of at least two members of the IFSCA. Such Performance Review Committee reviews whether: (i) the IFSCA has adhered to the provisions of the applicable laws while exercising powers or performing functions, (ii) the regulations made by the IFSCA promote transparency and best practices of governance, and (iii) the IFSCA is managing risks to its functioning in a reasonable manner. The Performance Review Committee must undertake a review at least once in a financial year and submit a report of its findings to the IFSCA which shall forward a copy along with an action taken, if any, pursuant to such report to the Government within a period of three months from the date of receipt of the report.

vii. **Transactions in foreign currency**: The transactions of financial services in the GIFT IFSC shall be done in the foreign currency as specified by the IFSCA in consultation with the Government.

viii. **Exemption from taxes**: The IFSCA Act provides that the IFSCA 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 IFSCA and stated that the head office of the IFSCA would be situated in Gandhinagar, Gujarat.[2]

Shr. K. Rajaraman, former telecom secretary has been appointed as the Chairman of the IFSCA. The establishment of a unified financial regulator for the IFSC is a key factor in driving GIFT IFSC as the premier jurisdiction for international financial institutions to access global markets.

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

Legal Regime

The power to establish an IFSC in an SEZ is provided under the Special Economic Zones Act, 2005 ("**SEZ Act**"). Section 18(1) of the SEZ Act provides that the Government may approve the setting up of an IFSC in an SEZ and prescribe requirements for set up and operation of such IFSC. It is also provided that the Government shall approve only one IFSC in an SEZ.[1]

The IFSCA Act, passed under the aegis of the SEZ Act, further provides that any provisions of any Central Act (or the rules or regulations passed thereunder) may be deemed inapplicable, or may be made applicable only with certain exceptions, modifications and adaptations, with respect to financial products, financial services or financial institutions in an IFSC, by way of notification of the Government.[2]

Accordingly, while the Foreign Exchange Management Act, 1999 (and the rules and regulations issued thereunder) ("**FEMA**") governs all transactions between persons resident in India and overseas, the Government passed the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015 ("**FEM (IFSC) Regulations**") in order to specifically carve out entities set up in the GIFT IFSC.

The FEM (IFSC) Regulations provide that any financial institution (or branch thereof) set up in the GIFT IFSC:

i. will be treated as a person resident outside India; [3]

ii. will conduct business with Indian and foreign residents in a foreign currency; [4] and

iii. will not be subject to other FEMA regulations applicable to persons incorporated in India.[5]

Accordingly, any entity set up in the GIFT IFSC and registered with the IFSCA is deemed to be a resident outside of India for FEMA purposes and must conduct its business in foreign currency.

While entities set up in the GIFT IFSC are treated as non-resident for FEMA purposes, it is imperative to note that till such time there is no specific exclusion or carve out, all other Indian laws continue to be applicable. For example, a company or limited liability partnership ("**LLP**") set up in the GIFT IFSC still needs to be incorporated under the Companies Act, 2013 or LLP Act, 2008 and is regulated by the Ministry of Corporate Affairs ("**MCA**"). Similarly, all entities in the GIFT IFSC are subject to income-tax as per the Income-tax Act, 1961, and therefore regulated by the Ministry of Finance ("**MoF**"). As the IFSC is also an SEZ, any entity set up in the GIFT IFSC must also get an SEZ approval and is regulated by the Ministry of Commerce and Industry ("**MoCI**") (see Figure 4).

1 Proviso to Section 18(1) of the SEZ Act.

2 Section 31(1) IFSCA Act, 2015.

3 Regulation 3 of the FEM (IFSC) Regulations.

4 Regulation 4 of the FEM (IFSC) Regulations.

5 Regulation 5 of the FEM (IFSC) Regulations.

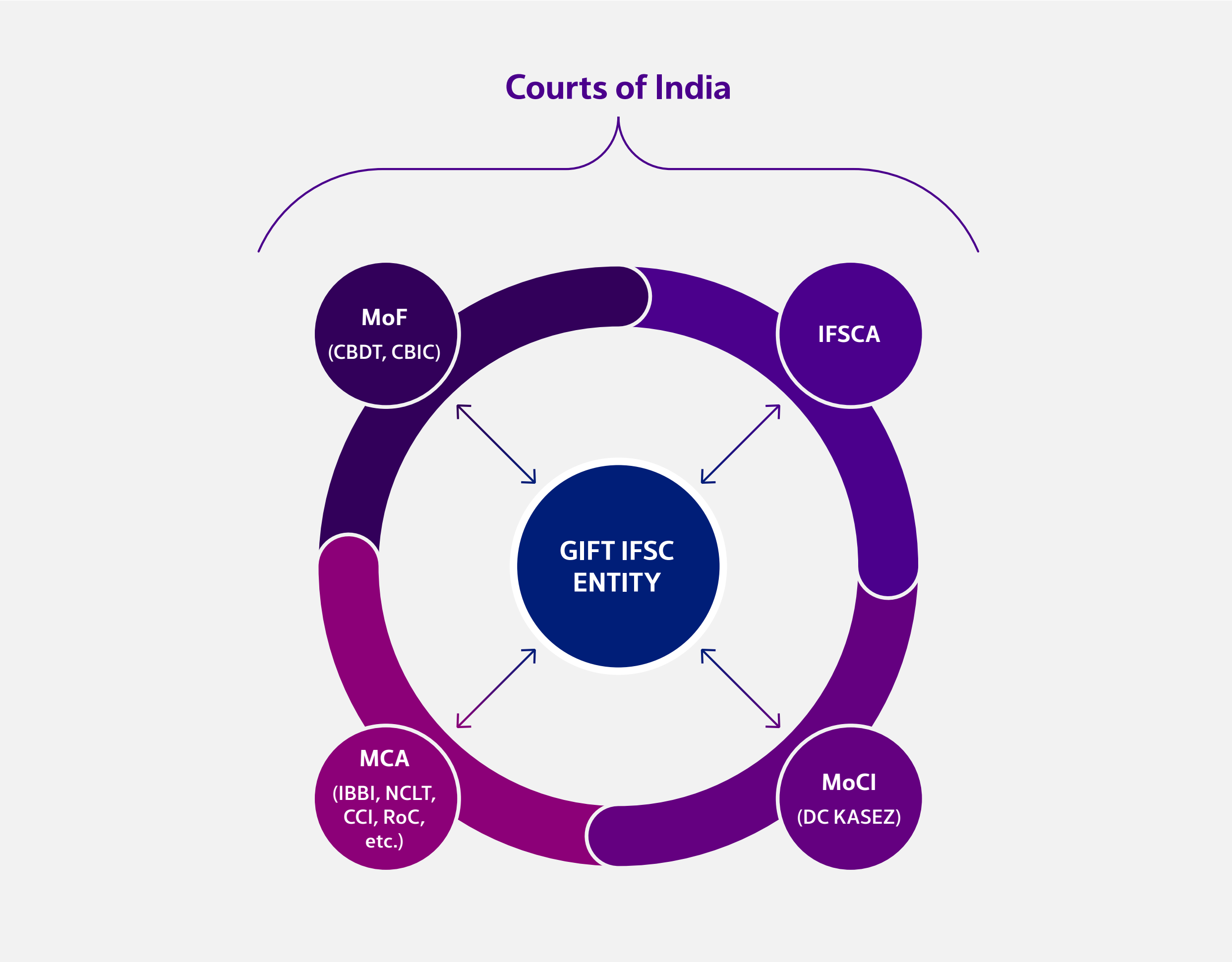

Figure 4

Further, all contracts continue to be governed by the Indian Contracts Act, 1872, and all disputes still currently fall within the competent court of law in India. For an overview of the steps involved in setting up an entity in the GIFT IFSC, please refer to *"Annexure 1"*.

Having said that, in order to achieve the Government's vision of bringing offshore business back to India, several amendments have been made to the existing Indian legal framework applicable to entities set up in the IFSC to ensure that such entities are afforded similar administrative flexibility, taxation and ease of business as they would find in competing jurisdictions like Mauritius or Singapore.[6] (Please refer to *"Annexure 2"* and *"Annexure 3"* for amendments made to the Companies Act, 2013 and Income-tax Act, 1961, respectively.

Moreover, to streamline the approval process and facilitate business operations for businesses planning to establish offices in the GIFT-IFSC the Government, vide notification dated February 28, 2024, vested the powers of the Development Commissioner under the SEZ Act of 2005 to the IFSCA.[7]

6 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.

7 https://ifsca.gov.in/Document/Developments/Section_31_SEZ.pdf

I. Fund Formation

On April 19, 2022, IFSCA issued the International Financial Services Centre Authority (Fund Management) Regulations, 2022 ("**FM Regulations**")[8], which significantly reformed the fund regime in the GIFT IFSC. The FM Regulations signal the Government's intention to move away from its initial approach of aligning the funds regime in the GIFT IFSC with that of the Securities and Exchange Board of India, and towards adopting a more global standard for fund formation and regulation.

While the FM Regulations have some similarities with the SEBI (Alternative Investment Fund) Regulations, 2012 ("**AIF Regulations**"), there are major differences between the governance models. Notably, (i) the FM Regulations govern the fund management entity (or fund manager) ("**FME**") directly rather than the fund itself and therefore (ii) allow such FMEs to offer a range of services more expansive than those allowed to managers of AIFs.

In the context of fund formation in the GIFT IFSC, IFSCA repealed all applicable SEBI regulations when it passed the FM Regulations.[9] The FM Regulations further empower IFSCA to relax strict enforcement of any requirements of the FM Regulations for reasons to be recorded in writing, in the interest of development of financial markets in IFSC.

The IFSCA has also been granted the power to exempt any persons from operation or all or any of the requirements of these regulations for a period of 18 months. Such exemption may be provided for furthering innovation in aspects relating to testing new products, strategies, processes, services, business models, use of technology, etc. in live environment of regulatory or innovation sandbox in the financial markets.

FMEs set up in GIFT IFSC can, in addition to managing the typical PE/VC investment fund:[10]

i. **Offer portfolio management services**:[11] Such services may be offered to persons resident outside India, (ii) non-resident Indians, (iii) non-individual residents in India[12] and (iv) individuals resident in India.[13] FMEs operating as portfolio managers from the GIFT IFSC are permitted to invest in securities and financial products in the GIFT IFSC, India or a foreign jurisdiction;

ii. **Manage exchange traded funds ("ETF(s)")**: ETFs must mandatorily be listed and traded on a recognized stock exchange. These include equity index based ETFs, debt index based ETFs, commodity based ETFs, hybrid ETFs, actively managed ETFs, and other ETFs as may be approved by IFSCA;[14]

iii. **Act as family investment funds ("FIF(s)")**:[15] FIF(s) are self-managed funds that pool money only from a single family;[16]

8 Regulation 148 of the IFSC (Fund Management) Regulations, 2022.

9 Section 28C, Securities and Exchange Board of India Act, 1882.

10 The types of services allowed to be offered by an FME depends on the registration it holds.

11 Regulation 73 of the FM Regulations.

12 Who are eligible under FEMA to invest in funds offshore, to the extent of outward investment permitted.

13 Who are eligible under FEMA to invest funds offshore, to the extent allowed under the liberalized remittance scheme of the RBI.

14 Regulation 61 of the FM Regulations.

15 Regulation 104 of the FM Regulations.

16 Meaning a group of individuals who are the lineal descendants of a common ancestor and includes their spouses (including widows and widowers, whether remarried or not) and children (including stepchildren, adopted children, ex nuptial children) according to Regulation 2(1)(jj) of the FM Regulations.

iv. **Manage investment trusts**: Such investment trusts include real estate investment trusts (“**REIT(s)**”) and infrastructure investment trusts (“**InvIT(s)**”), both of which may raise funds through (i) a public issue with units listed on a recognized stock exchange in the GIFT IFSC, (ii) private placement with units listed on a recognized stock exchange in the GIFT IFSC or (iii) private placement without listing on a stock exchange.[17]

In a few instances, the FM Regulations also impose additional requirements on FMEs as compared to SEBI vis-à-vis AIFs. For example, FMEs managing AUMs above USD 3 billion must establish environmental, social and governance (**“ESG**”) policies and disclose their method of identifying and managing material sustainability risks.[18]

A comprehensive guide to setting up fund management entities in the GIFT IFSC, particularly with respect to PE/VC investment strategies, can be found in Chapter *Setting up Funds in GIFT IFSC* of this paper.

II. International Banking Units in IFSC

The IFSCA, under the International Financial Services City Authority (Banking) Regulations, 2020 (“**Banking Regulations**”) allows Indian banks[19] and foreign banks[20] to set up an international banking unit (“**IBU**”) in the GIFT IFSC upon obtaining the necessary registration with the IFSCA.

The IBUs are allowed to meet some of their regulatory requirements, such as the minimum base capital and liquidity and a no-objection letter from the bank’s home regulator, through their parent bank.[21]

Once duly licensed by the IFSCA, IBUs are allowed to undertake any of the activities mentioned under Section 3(1)(e) of the IFSCA Act and Section 6 of the Banking Regulation Act, 1949.[22] This includes:

i. Acceptance of deposits;

ii. Borrowing from and lending to (a) other Banking Units, (b) the parent bank of the Banking Unit or (c) banks outside the GIFT City;

iii. Corporate and / or retail lending;

iv. Providing trustee services;

v. Credit enhancement;

vi. Underwriting;

vii. Acting as a portfolio manager;

viii. Providing investment advisory services; and

ix. Trading and clearing member of a stock exchange.

17 Regulation 82 of the FM Regulations.

18 Regulation 71 of the FM Regulations.

19 Regulation 2(1)(f) of the Banking Regulations, an Indian Bank means any bank incorporated or established under any Act and includes a wholly owned subsidiary of a foreign bank incorporated in India, but does not include a co-operative bank.

20 Regulation 2(1)(c) of the Banking Regulations, means a banking company incorporated or established outside India.

21 Regulation 3(3) of the Banking Regulations.

22 Regulation 13 of the Banking Regulations.

III. FinTech in IFSC

One of the major objectives of creating the GIFT IFSC is to ensure that India becomes a USD 5 trillion economy by 2027. To achieve such an end, the IFSCA has taken several initiatives to promote the establishment and development of financial technology in the GIFT IFSC.

For example, IFSCA notified the International Financial Services City Authority Fintech Incentive Scheme, 2022 which governs all fintech entities set up in the IFSC ("**FinTech Scheme**").[23]

The FinTech Scheme and its accompanying guidelines,[24] together (the "**Framework**") apply to all eligible domestic and foreign[25] fintechs looking to be licensed as FinTech Entities[26] by the IFSCA. Entities must meet the following requirements[27] to apply:

i. Indian Applicants

- Registration with the Department for Promotion of Industry and Internal Trade as a start-up entity relating to FinTech; or
- Incorporation as a company under the Companies Act, 2013, or as a limited liability partnership under the Limited Liability Partnership Act, 2008 or a 'Branch' of an Indian company or LLP in the IFSC; or
- The entity is working directly or indirectly in the ecosystem regulated by a domestic financial sector regulator.

ii. Foreign Applicants

- The entity must be from a FATF compliant country or jurisdiction.

Thereafter, the IFSCA takes a call on whether the applicant is eligible to be licensed, looking to whether the applicant (i) proposes to use technology in its core product or service, business model, distribution model or methodology to solve the problem being targeted and has (ii) a deployable solution/ working product and a revenue earning track record in at least one of the last three financial years.[28]

23 notified vide Gazette Notification number IFSCA/2021-22/GN/022, dated February 2, 2022.

24 IFSCA Circular F.No. 521/IFSCA/FinTech/FE Framework/2022-23, dated April 27, 2022 and the Framework for FinTech Entity in the International Financial Services Centres F.No. 521/IFSCA/FinTech/FE Framework/2022-23.

25 2(j) of the Framework for FinTech Entity in the International Financial Services Centres: means a non-resident entity from outside India engaged in the FinTech activity.

26 2(f) of the Framework for FinTech Entity in the International Financial Services Centres: means all or any of the domestic financial services regulators namely the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India and the Pension Fund Regulatory and Development Authority.

27 4(i) and (ii) of the Framework for FinTech Entity in the International Financial Services Centres.

28 5 and 6 of of the Framework for FinTech Entity in the International Financial Services Centres.

FinTech Entities may offer solutions/services of one of the following varieties:

i. **Fintech** — that which results in new business models, applications, processes, or products in financial services regulated by the IFSCA. Fintech may take the following forms depending on the sector:

Banking	Capital Markets and Funds Management	Insurance
▪ Remittance and payments	▪ Crowd funding	▪ InsurTech
▪ Digital lending	▪ Personal finance	▪ Innovative technologies for insurance life cycle
▪ Buy now pay later	▪ WealthTech	▪ Digital innovation for global health insurance cover
▪ Crowd lending	▪ RoboAdvisory	▪ Innovation in commercial insurance
▪ Digital bank (neo banking/ challenger bank)	▪ Sustainable finance products	▪ Open insurance
▪ Open banking	▪ Alternate trading platforms	▪ Embedded insurance

ii. **Techfin** — that which provides an advanced or emerging technology solution in allied areas/activities which aids financial products, financial services and financial institutions. Allied areas/activities include:

- Agri Tech
- Accelerators
- Climate/Green/Sustainable Tech
- Defence Tech
- Regulatory Tech
- Space Tech
- Supervisory Tech
- Technology Solution Supporting Digital Banking (example Core Banking etc.)
- Technology solution aiding Trade Finance
- Solutions/Services for BFSI Domain Leveraging:
  - i. Artificial Intelligence/Machine Learning/
  - ii. Big Data
  - iii. Biometrics
  - iv. Chatbots
  - v. Cyber Security
  - vi. Digital Identity/KYC/AML/CFT
  - vii. Distributed Ledger Technology
  - viii. Fraud Detection/Prevention
  - ix. Internet of Things (IoT)
  - x. Longevity Finance
  - xi. Metaverse including Augmented Reality and /or Virtual Reality
  - xii. Quantum Tech
  - xiii. Web 3.0

Sandboxes

A unique feature within the GIFT IFSC which encourages innovation is the availability of sandboxes. Sandboxes, generally and in the GIFT IFSC, aim to replicate a landscape to test new ideas against certain controlled conditions, including regulatory or real-time/market considerations. The IFSCA works with applicants within the sandbox framework to provide exemptions under existing rules and regulations.

IV. Capital Markets and Securities

The IFSCA encourages capital market solutions for foreign and domestic entities looking to either act as intermediaries, issuers or investors in the GIFT IFSC under its framework of regulations.

A. Regulation of Capital Market Intermediaries

International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021 ("**Capital Market Regulations**") governs capital market intermediaries in the GIFT IFSC. Such intermediaries must be present in the GIFT IFSC through a branch[29] or the formation of a company, limited liability partnership, or other forms as may be permitted by IFSCA.

Registered capital market intermediaries, to the extent they are incorporated in the IFSC, rather than operating out a branch in the IFSC,[30] can conduct and participate in cross-border business in India or foreign capital markets.

At the outset, prospective capital market intermediaries are bifurcated into those which must[31] obtain registration under the Capital Market Regulations prior to commencing operations in the GIFT IFSC, and those which have the option[32] to register if they so desire.

29 Proviso to Regulation 5(1) of the Capital Market Regulations: a capital market intermediary can only be set up through a branch if the intermediary is already registered or regulated in India or a foreign jurisdiction for conducting similar activites.

30 Regulation 63(1) of the Capital Market Regulations.

31 Regulation 3(1) of the Capital Market Regulations: broker dealers, clearing members, depository participants, investment bankers, investment advisers, custodians, distributors and any other categories of intermediaries as may be specified by the IFSCA from time to time.

32 Regulation 3(2) of the Capital Market Regulations: credit rating agencies, debenture trustees, account aggregators and other categories of intermediaries as may be specified by the IFSCA from time to time.

Overall, the following activities are permitted for capital market intermediaries:

- Broker dealers;
- Clearing members;
- Depository participants;
- Investment bankers;
- Investment advisers, custodians;
- Distributors; and
- Any other categories of intermediaries as may be specified by the IFSCA from time to time.

The IFSCA considers the grant of the capital market intermediary license after accounting for the adequacy of the proposed licensee's infrastructure and past experience with the activity for which it desires a license, financial credit worthiness, fit and proper person criteria and net worth requirements.[33] Once the capital market intermediary has been granted a license by IFSCA, it also has to abide by the regulations applicable to its intermediary sub-category under Chapter IV: Specific Obligations and Responsibilities.[34]

B. The GIFT IFSC Stock Exchanges

Currently, there are two stock exchanges recognised by the IFSCA in the GIFT IFSC:

1. India International Exchange IFSC Limited ("**India INX**"), launched in January 2017.
2. NSE IFSC Limited (NSE International Exchange) ("**NSE IFSC**") launched on June 5, 2017.

Both stock exchanges operating in the GIFT IFSC allow extended trading hours as compared to those currently offered by the NSE and BSE in India, and the listing of securities by foreign issuers, in line with the regulations governing capital markets in the IFSC. A possible indicator of success of the capital markets regime in GIFT IFSC may be the recent re-brand of the Singapore SGX Nifty to GIFT NIFTY, and accompanying transfer of derivative contracts worth around $7.5 billion to GIFT IFSC.[35]

C. Issuance and Listing of Securities

Indian, foreign or GIFT IFSC-incorporated entities companies may list their securities on a stock exchange in the GIFT IFSC in accordance with the International Financial Services Centres Authority (Listing) Regulations, 2024 ("**Listing Regulations**").

33 Regulation 8 of the Capital Market Regulations.

34 Of the Capital Market Regulations.

35 SGX Nifty repbranded GIFT Nifty; trading volumes to shift from Singapore to Gujarat published on The Indian Express June 20, 2023, available at: https://indianexpress.com/article/business/gx-nifty-rebranded-gift-nifty-trading-volumes-to-shift-from-singapore-to-gujarat-8673457/.

A prospective issuer must:[36]

- be incorporated or set up in India, a foreign jurisdiction or the GIFT IFSC, in accordance with the relevant laws of its home jurisdiction;
- operate in conformity of its constitution; and
- be eligible to issue such securities or other financial products, that are proposed to be listed on the recognised stock exchange, in conformity with the relevant laws of its home jurisdiction;

The GIFT IFSC bars issuers from listing on its capital markets if the issuer, any of its promoters, controlling shareholders, existing shareholders or directors is a willful defaulter, fugitive economic offender or debarred from accessing the capital market.[37]

Per the Listing Regulations, issuers may access capital markets in the GIFT IFSC through traditional methods such as initial public offerings (“**IPOs**”), follow-on public offerings (“**FPOs”**), preferential issues, rights issues, issue of depository receipts and debt securities. The Listing Regulations also provide a framework for listing of special purpose acquisition companies (“**SPACs**”), listing of securities by small and medium enterprises, certain securities without public offer, Indian securities, by start-ups and of ESG debt securities.

On January 24, 2024 the Government of India notified the Companies (Listing of Equity Shares in Permissible Jurisdiction) Rules 2024 and Foreign Exchange Management Act (Non-Debt Instruments) Amendment Rules, 2024 (“**Direct Overseas Listing Framework**”). Under the Direct Overseas Listing Framework, certain Indian companies are now allowed to directly list their equity on the international exchanges in the GIFT IFSC. The Direct Overseas Listing Framework, along with amendments[38] made to the Securities Contracts (Regulation) Act, 1956 facilitates streamlined access to global capital markets for Indian companies through the GIFT IFSC.

V. Insurance Intermediary Offices

The insurance and reinsurance business in the GIFT IFSC is regulated by the IFSCA in accordance with a comprehensive legal framework, including: (i) IFSCA (Registration of Insurance Business) Regulations, 2021 (“**RIB Regulations**”), (ii) IFSCA (Re-insurance) Regulations, 2023 and (iii) IFSCA (Insurance Products and Pricing) Regulations, 2022, collectively, (the “**Insurance Framework**”).

36 Regulation 6(1) of the Listing Regulations.

37 Regulation 6(2) of the Listing Regulations.

38 Ministry of Finance, Notification dated August 28, 2024 (F. No. 1/2/2024-PM).

Both, (i) Indian insurers and reinsurers and (ii) foreign insurers and reinsurers may apply to the IFSCA to be registered as an IFSC Insurance Intermediary Office (“**IIO(s)**”).[39] Once approval has been granted, an IIO may carry on the following businesses[40] in any freely convertible foreign currencies other than the Indian Rupee:

- Life insurance business;
- General insurance business;
- Health insurance business;
- Reinsurance business; and
- Other insurance or reinsurance businesses as may be specified by the IFSCA.

IIOs registered as place of business of Indian insurer, branch office of foreign insurer or re-insurer shall be permitted to transact in such classes of business which is permitted by the said IIO’s supervising authority in their home country.[41]

In the performance of these businesses, the IIIOs are also regulated with respect to the marketing and advertising of their services.

VI. Finance Companies

A Finance Company or a Finance Unit (if it is set up as a branch) under the IFSCA (Finance Company) Regulations, 2021 (“**Finance Company Regulations**”) is a financial institution incorporated to deal in certain permissible activities, similar to those of an NBFC. A Finance Company (or Finance Unit) is not permitted to accept public deposits.

Finance Companies may be set up as either subsidiaries, joint ventures or newly incorporated companies. In order to register as a Finance Company, the entity must satisfy applicable minimum capital/owned funds/net worth criteria depending on the category(ies) of activity undertaken.[42] Alternatively, to register as a Finance Unit, the entity must provide and maintain a minimum owned fund on an unimpaired basis depending on the category(ies) or activity undertaken.[43]

39 Regulation 3(1)(s) of the IFSCA (Insurance Intermediary) Regulations, 2021: a financial institution referred to in clause (c) of sub-Section (1) of Section 3 of the Act that is registered with the Authority to carry on the activities of an intermediary or insurance intermediary as may be specified by the Authority.

40 Regulation 10 of the RIB Regulations.

41 Proviso to Regulation 10 of the RIB Regulations.

42 Regulation 3(5)(1) of the Finance Company Regulations.

43 Regulation 3(5)(2) of the Finance Company Regulations.

Finance Companies and Units in the GIFT IFSC may undertake the following permissible activities, classified into core and non-core activities:

i. Core Activities

- Lending, by way of loans, commitments, guarantees, credit enhancements, securitisation, financial leases, and sale and purchase of portfolios;
- Factoring and forfeiting of receivables;
- Undertake investments, including subscribing, acquiring, holding, ro transferring securities or such other instruments as permitted by the IFSCA;
- Buying or selling derivatives;
- Global/regional corporate treasury centres; and
- Other activities as permitted by IFSCA.

ii. Non-core Activities

- Merchant banking;
- Authorized person;
- Registrar and share transfer agent;
- Trusteeship services;
- Investment advisory services; and
- Portfolio management services, and others as mentioned under Regulation 5(1)(iii) of the Finance Company Regulations.

Notably, once an entity has obtained a certificate of registration for a particular activity under another IFSCA regulation, the entity may carry out such authorized activity as a Finance Company or Unit without seeking fresh registration under the Finance Company Regulations.[44]

VII. Aircraft and Ship Leasing

Aircraft and ship leasing in the GIFT IFSC are activities permitted under the Finance Company Regulations. To operate such businesses, entities must register themselves as Finance Companies under the Finance Company Regulations and meet the additional requirements as detailed below.

A. Aircraft Leasing

In addition to being a registered Finance Company, the entity must (i) maintain a minimum capital requirement[45] and (ii) also be engaged in the business of providing aircraft or helicopter (or their engines, other parts or ground control equipment) under an operating lease, financial lease or hybrid of the two leases.[46]

44 Regulation 3(1) of the Finance Company Regulations.

45 Part II, E of the Framework for Aircraft Lease issued by the IFSCA, F. No. 172/IFSCA/Finance Company Regulations/2022-23/01.

46 Framework for Aircraft Lease issued by the IFSCA, F. No. 172/IFSCA/Finance Company Regulations/2022-23/01.

If the lessor obtains an operating lease, it may undertake the following activities:

- Operating lease, sale, leaseback, purchase, novation, transfer and assignment for aircrafts;
- Operating lease for aircraft ground support equipment;
- Asset management support services for assets owned or leased out by the entity (or its wholly-owned subsidiary); or
- Other related and permitted activities.

If the lessor obtains a finance lease, it may undertake the following activities:

- Financial lease or a hybrid lease for an aircraft lease arrangement, including sale, leaseback, purchase, novation, transfer, assignment;
- Financial lease or a hybrid lease for aircraft ground support equipment;
- Activities permitted under the operating lease; or
- Other related and permitted activities.

B. Ship Leasing

In addition to being a registered Finance Company, an entity desirous of operating a ship leasing business in GIFT IFSC must maintain a minimum capital requirement.[47] Once licensed, the entity will be able to:

If the lessor obtains an operating lease, it may undertake the following activities:

- Operating lease;
- Voyage charters, contract of affreightments, employment in shipping pools and all other legal commercial transactions for employment of ships;
- Asset management support services for assets owned or leased out by the entity or by its wholly owned subsidiary set up in IFSCs in India;
- Sale and lease back, purchase, novation, transfer, assignment; or
- Other related and permitted activities.

If the lessor obtains a finance lease, it may undertake the following activities:

- Financial lease;
- Hybrid of financial and operating lease;
- Activities permitted under an operating lease; or
- Other related and permitted activities.

47 Part I, F of the Framework for Ship Leasing issued by the IFSCA F. No. 496/IFSCA/FC/SLF/2022-23/001.

VIII. Book-keeping, Accounting, Taxation and Financial Crime Compliance Services

IFSCA notified the IFSCA (Bookkeeping, Accounting, Taxation, and Financial Crime Compliance Services) Regulations, 2024 ("BATF Regulations"), on June 6, 2024, pursuant to the Government of India's notification dated January 18, 2024 which recognized book-keeping, accounting, taxation and financial crime compliance services as 'financial services' under Section 3 of the IFSCA Act.

The BATF Regulations create a distinctive opportunity for companies to supply non-resident clients with services in bookkeeping, accounting, taxation, and financial crime compliance from the GIFT IFSC, effectively and efficiently. Additionally, this initiative is anticipated to enhance GIFT IFSC's status as a major international center for BATF services and support job growth in the IFSC area.

IX. Foreign Universities in GIFT IFSC

In the 2022-23 Union Budget, the Hon'ble Finance Minister of India announced a proposal to allow foreign universities and institutions to offer courses in financial management, fintech, STEM, and more at GIFT IFSC. Governed by IFSCA, this initiative aims to establish a physical presence for these institutions at GIFT IFSC, outside the jurisdiction of India's domestic education regulations. The IFSCA, through a notification on October 11, 2022, introduced IFSCA (Setting up and Operation of International Branch Campuses and Offshore Education Centers) Regulations, 2022 for setting up International Branch Campuses and Offshore Education Centers in GIFT IFSC.

These regulations enable foreign universities and educational institutions to operate independently under the purview of the IFSCA in India for the first time, offering courses in permissible subject areas such as financial management, technology, and engineering.

Taxation Regime

In order for GIFT IFSC to achieve the intended success, the Government has provided several tax incentives in relation to the GIFT IFSC. A brief summary of the tax incentives has been provided below:

I. General Direct Tax Incentives

i. **Tax holiday for units in IFSC**: Section 80LA of the Income Tax Act, 1961 ("**ITA**") provides that units of the 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 GIFT IFSC unit was obtained ("**Tax Holiday**").

ii. **Computation of income**: While computing income of non-resident, Section 115A(4)[1] 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 GIFT IFSC should be able to take full benefit of Tax Holiday under Section 80LA of the ITA.

iii. **Reduced minimum alternate tax and alternate minimum tax**: Section 115JB[2] and 115JC provide 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%, instead of 15%, and alternate minimum tax ("**AMT**") at the rate of 9% instead of 18%, respectively.[3]

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 the GIFT 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.[4] 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. **Exemption for interest income**: Section 10(15)(ix) provides for an exemption of interest income received by a non-resident from a unit located in GIFT IFSC for borrowings done after 1st September 2019.

vi. **Beneficial rate for dividend income**: Section 115A provides for a reduced tax rate of 10% on dividend income received by a non-resident from a unit located in GIFT IFSC.

vii. **Withholding tax exemption**: Section 197A provides that the central government may notify certain categories of payments on which no withholding tax is required.

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1 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.

2 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'.

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

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

The government notified various payments made by a 'payer' to a person being a unit in GIFT IFSC to be exempt from the requirement to withhold tax. Some of these exempt payments are:

- Professional fees paid to a fund management entity in IFSC
- Dividend payment to a broker dealer
- Investment advisory fees to an investment advisor
- Commission income paid to a fintech entity

  These exemptions can only be availed if the payee furnishes a statement in prescribed form to the payer detailing the years adopted as tax holiday, and the payor furnishes a statement to the payee in prescribed form detailing the payments on which no deduction was made in light of the above notification.

More specific direct tax incentives applicable to Fund structures set up in the GIFT IFSC are provided in Chapter *Family Offices in GIFT IFSC*. For key tax incentives applicable to GIFT IFSC structures other than Funds please refer to *"Annexure 3"*.

II. Indirect Tax Incentives[5]

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")** is exempt on supply of goods or services to a unit in IFSC and supplies between GIFT IFSC entities;

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);

vii. **Electricity Duty / Registration Fees**: Exemptions / reimbursements under the Gujarat State Industrial and IT Policy. New IT policy;

viii. **Stamp duty**: The Government of Gujarat has also exempted stamp duty in respect of the instruments of transaction in RSE and depositories established in GIFT IFSC.[6] Further, an exemption has also been granted for documents executed by or in favour of GIFT IFSC entities;[7] and

ix. **Commodities transaction tax** is not leviable on GIFT IFSC entities.

5 https://www.giftgujarat.in/business/ifsc?tab=Tax%20Incentives.

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

7 Section 3(c)(3) of the Indian Stamp Act, 1899.

Setting up Funds in GIFT IFSC

I. Setting Up a Fund Manager

As previously discussed in Chapter *Legal Regime*, the IFSCA (Fund Management) Regulations, 2022 (“**FM Regulations**”), the Fund Management Regulations primarily governs the fund manager as opposed to the fund. This facilitates smoother and quicker fund launches allowing fund managers to suitably manage investor (LP) expectations. This also ensures ease of doing business for the fund managers as a single registration would facilitate multiple activities.

The FM Regulations classify FMEs into three (3) categories. Each category has varying capacities of the kinds of schemes it may launch. For instance, for managers who are looking to launch AIF type schemes in the GIFT IFSC may consider a Registered FME (Non-retail) license. Specifically, for venture capital managers, depending on commercial requirements, an Authorised FME license may be preferred over a Registered FME (Non-retail). Depending on the license obtained, the FME is permitted to launch relevant schemes / carry out activities as described below.

Type of Scheme / Service	Authorised FME	Registered FME (Non-retail)	Registered FME (Retail)
1. Venture Capital Scheme	✓	✓	✓
2. Family Investment Fund	✓	✓	✓
3. Restricted Schemes	×	✓	✓
4. Special Situation Funds	×	✓	✓
5. Private Investment Trusts	×	✓	✓
6. Portfolio Management	×	✓	✓
7. Retail Schemes	×	×	✓
8. Exchange Traded Funds	×	×	✓
9. Public Investment Trusts	×	×	✓

Essentially, IFSCA has taken a risk-based approach with respect to the categorization of FME registration, whereby a Registered FME (Non-Retail) is permitted to undertake the activities of an Authorised FME, and a Registered FME (Retail) is permitted to undertake activities of both a Registered FME (Non-Retail) and an Authorised FME. This Chapter will focus on the legal, regulatory and tax framework governing Authorised FMEs and Registered FMEs (Non-retail) as these registrations are applicable to fund managers managing PE / VC funds in the IFSC.

An entity seeking registration with IFSCA as an Authorised FME or Registered FME (Non-Retail) (together referred to as "**FME**") must fulfil the following conditions in order be granted registration by the IFSCA:

i. **Legal Form**: The FME must be incorporated in GIFT IFSC, whether as a (i) company, (ii) limited liability partnership ("**LLP**") or (iii) a branch of either a company or an LLP, subject to the parent entity already being registered and/or regulated by an Indian or foreign financial sector regulator for conducting similar activities.

   If the FME has been set up as a branch, it shall be required to comply with certain additional conditions, such as:

   i) Adequate ring-fencing of the branch's operations in GIFT IFSC;

   ii) Compliance with the minimum net worth requirement of USD 75,000 (Authoised FME) and USD 500,000 (Registered FME (Non-Retail)) which may be maintained at the parent level; and

   iii) Maintenance of the minimum capital requirement at the parent's jurisdiction, subject to such capital being always earmarked for the GIFT IFSC branch.

ii. **Appointment of Principal Officer and KMPs**: Every FME must designate a Principal Officer who is responsible for the overall activities of the FME, including with respect to fund management, risk management and compliance ("**Principal Officer**").[1] A Registered FME (Non-Retail) must also appoint an additional key managerial personnel ("**KMP**") as the Compliance and Risk Manager who is responsible for compliance with the FM Regulations and the necessary risk management policies and practices. Registered FMEs (Non-Retail) are also under the obligation to appoint other personnel commensurate to the size of its operations and activities.[2]

   All KMPs, including the Principal Officer and Compliance Officer, are required to have experience of at least 5 years in activities pertaining to securities market or financial products. In addition to this experience criteria, the KMPs are also required to fulfil a professional qualification criteria as specified in the FM Regulations.[3] The appointment of and changes to KMPs is subject to prior approval of IFSCA.

iii. **Substance**: The FME must satisfy the following substance requirements:

   - The Principal Officer, Compliance Officer and KMP appointed must be based out of the GIFT IFSC.
   - The FME must have the necessary infrastructure such as adequate office space, equipment, communication facilities and manpower to effectively discharge its activities under the FM Regulations. While the FM Regulations do not specify the details of such requirements, it is stated that the infrastructure arrangements must be proportional to the size of the operations being undertaken in the GIFT IFSC.
   - The proposal on the portfolio composition shall be initiated by a person who is based in office of the FME in the IFSC. This should not preclude the FME to allocate its non-IFSC based employees to research and analyse appropriate investment opportunities for the relevant fund(s)/scheme(s), where such reports would then be ultimately taken to the officers based in IFSC for such officers to design the final proposal on portfolio composition by the board / designated partners / decision-making investment committee (as applicable).

1 Regulation 7 of the FM Regulations.

2 Regulation 7(2) of the FM Regulations.

3 Regulation 7(4)(a) of the FM Regulations.

iv. **Fit and Proper**: the FME, its Principal Officer, KMP(s), directors/partners/ designated partners and controlling shareholders must all be fit and proper persons, at all times. As such, all the aforementioned entities and/or persons are required to have a record of fairness and integrity and should not have been disqualified in the manner set out under the FM Regulations.[4]

v. **Net Worth**: In order to ensure the FME is equipped to deal with the intricacies of managing one or more schemes, the FM Regulations require that the FME maintain a net worth of (i) USD 75,000 for Authorised FMEs and (ii) USD 500,000 for Registered FMEs (Non-Retail) at all times.[5] As mentioned above, entities operating in GIFT IFSC through a branch may maintain this net worth at the parent level so long as the branch is provided with adequate funds to run its day-to-day operations.[6]

Additionally, the FME Contribution (as defined below) made by the FME will be included to calculate and meet the net-worth requirements of FMEs.[7]

IFSCA has specified certain consequences of non-compliance with this minimum net worth requirement by way of its circular dated February 16, 2024.[8] Accordingly, FMEs whose net worth falls below the required minimum shall not be able to (i) launch new schemes in GIFT IFSC or (ii) onboard new clients towards or undertake new business activities with respect to the activities permitted under the FM Regulations.[9]

vi. **Borrowing**: Unlike SEBI AIF's, schemes launched by FMEs may borrow funds or engage in leveraging activities, provided that the intention to undertake such leverage (and the maximum amount) by the scheme is disclosed in the placement memorandum, and that the FME has a comprehensive risk-management framework in place. Any deviation from such disclosure is subject to the consent of two-third investors by value.[10]

vii. **Co-investment**: Unlike SEBI AIFs, schemes launched by FMEs may co-invest in investments permissible under the FM Regulations through a special purpose vehicle (“**SPV**”) or a segregated portfolio by issuing a separate class of units, subject to certain conditions as specified under the **FM Regulations**.[11]

While co-investment through an SPV is permitted, the IFSCA has announced that it will provide a separate framework under which such SPVs will be regulated. Accordingly, while an SPV may be able to undertake leverage for co-investment, it is difficult to analyse the effect of this provision in the absence of the framework to be announced by IFSCA. While the provisions also allow a separate class of units to be issued by the main scheme for tracking co-investments (rather than an SPV), due to the absence of legal ring-fencing among different classes of units of a fund / scheme, LPs may prefer a separate co-investment vehicle.

viii. **Computation of NAV**: FMEs must compute the NAV of each (i) venture capital scheme, annually[12] and (ii) restricted scheme, monthly in case of open-ended schemes and half-yearly in case of close-ended schemes.[13]

The procedure and methodology to calculate NAV should be fully documented, and subject to regular verification and amendment, as required.

4 Regulation 9 of the FM Regulations.
5 Second Schedule of the FM Regulations.
6 Regulation 5(2)(b) of the FM Regulations.
7 Regulation 2(3) and Regulation 40(3) of the FM Regulations.
8 Circular F. No. IFSCA-IF-10PR/1/2023-Capital Markets/2, dated February 16, 2024 on Maintenance of Net Worth by Fund Management Entity.
9 Circular F. No. IFSCA-IF-10PR/1/2023-Capital Markets/2, dated February 16, 2024 on Maintenance of Net Worth by Fund Management Entity.
10 Regulation 25 of the FM Regulations.
11 Regulation 29 and Regulation 41 of the FM Regulations.
12 Regulation 27 of the FM Regulations.
13 Regulation 39 of the FM Regulations.

ix. **Private Placement Memorandum / Offering Document**: Unlike SEBI, IFSCA does not provide a template private placement memorandum which must be adhered to. Instead, the FM Regulations, require that certain disclosures including but not limited to investment objective, targeted investors, proposed corpus, investment style and strategy, investment methodology, proposed tenure, proposed fees and expenses, among other things be made in the offering document submitted with IFSCA.[14]

Separately, the FM Regulations require the FME and its fiduciaries to disclose to the investors the portfolio of the scheme (i) annually within one month of the end of the financial year for authorized schemes, (ii) quarterly within one month from the end of the quarter for restricted schemes, and any other suitable material information, immediately.[15]

x. **FME Contribution**: Similar to a Sponsor Contribution under the AIF Regulations, the FM Regulations require that the FME or its associate maintain a specified, minimum contribution in proportion to the targeted corpus ("**TC**") of its scheme ("**FME Contribution**") as specified below:

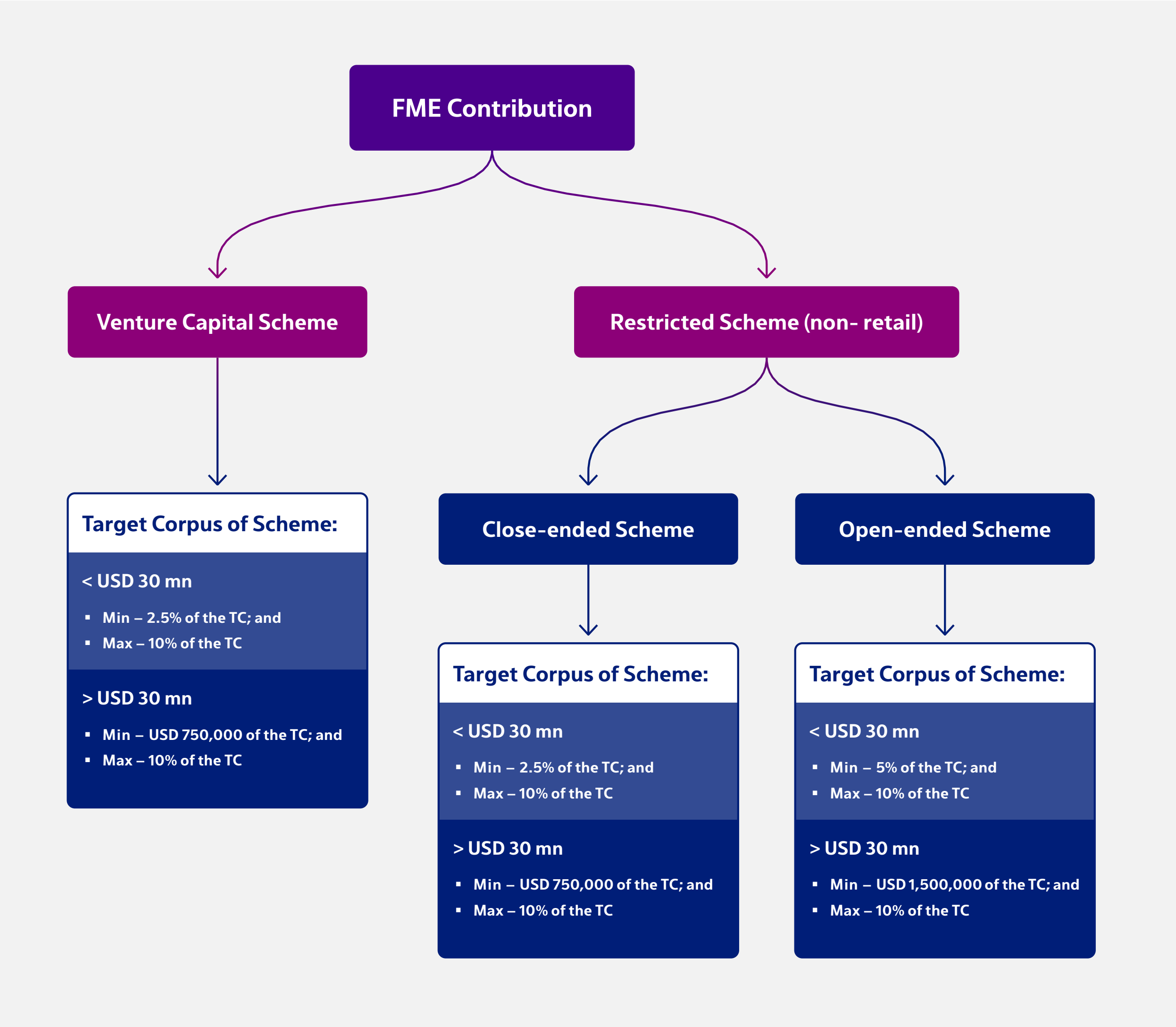

Figure 5

14 Regulation 24 and Regulation 36 of the FM Regulations.

15 Regulation 24 and Regulation 36 of the FM Regulations.

The TC of a scheme is estimated by the GP in its PPM and other offering documents. The exact raising of the entire TC cannot be guaranteed due to both internal (first time GP, no track record) and external (macro-economic issues, global pandemic, political upheaval) factors which may only be estimated. Accordingly, this provision creates a large scope for confusion among industry participants. Further, the confusing phrase 'continuing interest' from the AIF Regulations has been carried over into the FM Regulations under a different brand of 'shall be ... maintained on an ongoing basis'.

Linking FME Contribution to TC and requiring that it be maintained on an ongoing basis are provisions which seem to have been carried over from the AIF Regulations, and clarity with respect to both would need to be provided in order to promote greater certainty to GPs and LPs alike. IFSCA may consider issuing a clarification that the requirement will be considered satisfied if the FME and / or its associates maintain an irrevocable (but transferable as per the FM Regulations) commitment into the scheme of the minimum amounts, and contribute such amounts in a proportionate manner alongside the LPs.

Further, the FM Regulations require investment of the FME Contribution to be made into the scheme within 45 days (extendable). The reference to 45 days seems ambiguous as it has not been pegged to any date (such as the date of drawdown from other investors).

The introduction of a cap on FME Contribution could be a matter of commercial concern in cases where the GP wants (or is expected by its anchor LPs) to allocate a higher proprietary capital into the scheme. Despite all the other progressive efforts, this change moves GIFT IFSC's needle farther ay from global standards on sponsor commitment. The only relief is the ability to waive the FME Contribution requirement for Venture Capital Schemes and Restricted Schemes (Non-Retail) with the permission of at least 2/3rd of LPs in the scheme by value or at the discretion of the GP if 2/3rd of the LPs are accredited investors, or if the scheme is a fund-of-fund investing in schemes with similar requirements.[16] Schemes established, incorporated or registered outside India and relocated to the GIFT IFSC are also exempt from FME Contribution.[17]

For a snapshot of all requirements for the setting up of Authorised and Registered (Non-Retail) FMEs, please refer to *"Annexure 5"*.

II. Launching a Scheme

Venture Capital Schemes and Restricted Schemes (non-retail) can be set up as trusts, limited liability partnerships or companies in IFSC. While the 'Variable Capital Company' framework was presented to IFSCA by an expert committee constituted in this regard for funds in the GIFT IFSC,[18] currently there are no enabling provisions in the FM Regulations for allowing schemes to be set up as Variable Capital Companies.

Venture Capital Schemes are classified as Category I AIFs whereas Restricted Schemes are divided into three categories, similar to the AIF Regulations, as Category I / II / III AIFs depending on type of investments sought to be made.

For a snapshot of all requirements for Venture Capital Schemes and Restricted Schemes, please refer to *"Annexure 6"*.

16 Regulation 28 and Regulation 40 of the FM Regulations.

17 Regulation 40 of the FM Regulations.

18 Report of the Expert Committee on Feasability of Variable Capital Company in IFSC in India is available at: https://ifsca.gov.in/Document/ReportandPublication/vcc-report-final-version-18062121062021111219.pdf.

A. Venture Capital Schemes

Investment Strategy: Authorised FMEs may launch only Venture Capital Schemes (“**VCS**”), which primarily invest in unlisted securities of start-ups, emerging or early-stage venture capital undertakings mainly involved in new products, new services, technology or intellectual property right based activities or a new business model or other schemes which invest in such entities, including angel funds.[19] For the purpose of income tax, the FM Regulations classify VCS as ‘venture capital fund’ under Category I AIF.[20] In other words, the same tax treatment which is afforded to Category I AIFs registered with SEBI is also afforded to Venture Capital Schemes launched by an FME registered with IFSCA.

Green Channel: In order to fast track VCF applications, the Authorised FME is permitted to file the private placement memorandum (“**PPM**”) or offering document under the green channel. Under the green channel, the FME can immediately (but no later than 6 months from filing) launch the VCS without waiting for IFSCA comments or approval.[21]

Eligible investors: A VCS shall have less than 50 (fifty) investors, which may fall under one of the following categories:[22]

i) Investors investing at least USD 250,000 (two hundred and fifty thousand dollars);

ii) Accredited investors; or

iii) Employees, directors or designated partners of the FME investing at least USD 60,000 (sixty thousand dollars).

Investment Restrictions: The corpus of a VCS must be between USD 5 million (five million dollars) and USD 200 million (two hundred million dollars).[23] They may invest in their associates subject to the prior approval of 75% of the investors in the scheme by value,[24] and are required to invest at least 80% of their assets under management in investee companies incorporated for less than 10 (ten) years or other venture capital schemes.[25]

Nature and Tenure: VCSs are required to be closed ended, with the decided tenure of a given scheme being at least 3 (three) years. The FME may extend the tenure of a given venture capital scheme by up to 2 (two) years subject to the approval of 2/3rd of the investors by value of their investment in the scheme. An extension of the scheme’s tenure beyond the 2 (two) years provided for in the FM Regulations may be available to the FME subject to the express consent of *all* the scheme’s investors, and the opportunity to exit for any non-consenting investors.[26]

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19 Regulation 18(1) of the FM Regulations.

20 Regulation 18(2) of the FM Regulations.

21 Regulation 19 of the FM Regulations.

22 Regulation 20 of the FM Regulations.

23 Regulation 23(1) of the FM Regulations.

24 Regulation 23(2) of the FM Regulations.

25 Regulation 23(3) of the FM Regulations.

26 Regulation 21 of the FM Regulations.

B. Restricted Schemes (Non-retail)

Investment Strategy: A Restricted Scheme (non-retail) ("**Restricted Scheme**") may be launched by a Registered FME (non-retail) ("**Registered FME**"). While the FM Regulations treat all Restricted Schemes on par, the ITA provides a different taxing regime for AIFs classified as Category I / II / III AIFs. In order to ensure that Restricted Schemes set up in the GIFT IFSC are provided the same tax benefits as AIFs set up under SEBI, Regulation 30 of the FM Regulations classifies close-ended Restricted Schemes as either Category I / II / III AIFs based on their investment strategy as follows:

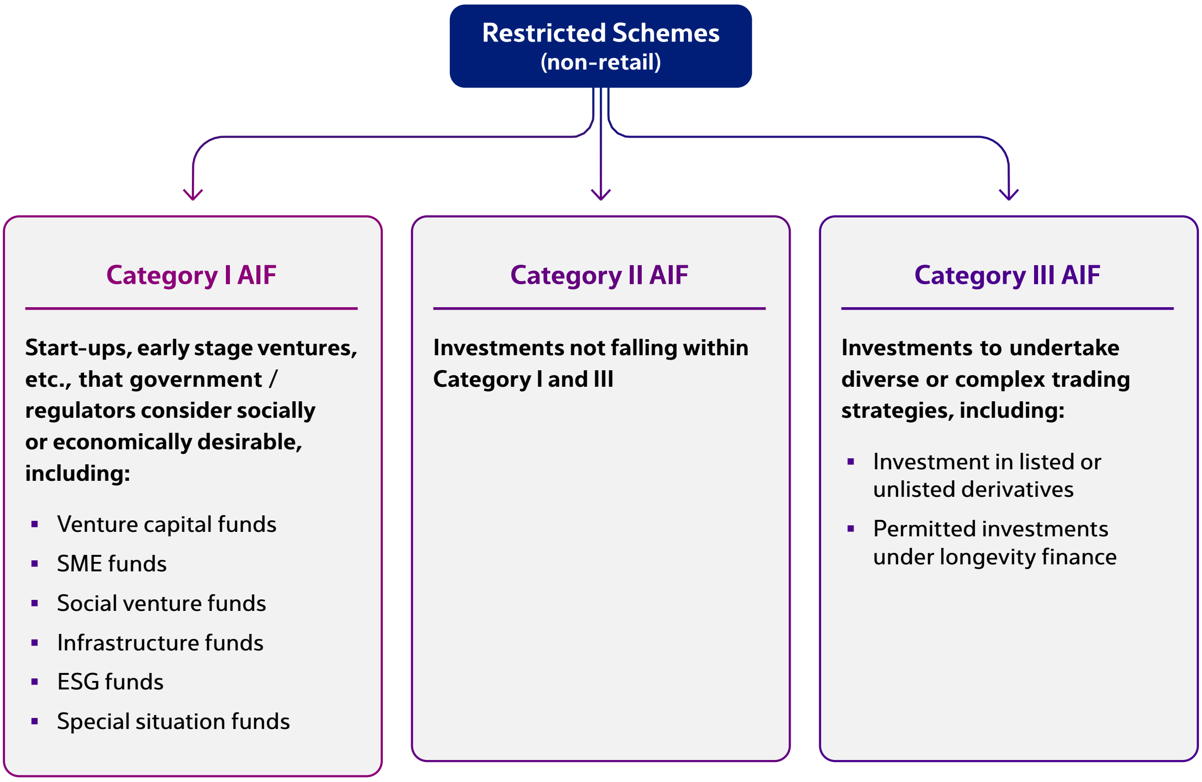


Figure 6

Private Placement Memorandum: In order to launch a Restricted Scheme a Registered FME must file a PPM or offering document along with the applicable application fees with IFSCA at least 21 (twenty-one) working days prior to the launch of the scheme. Once IFSCA receives the PPM, it has another 21 (twenty-one) days to communicate any comments it may have to the FME. These comments must be incorporated into the PPM before the launch of the scheme. Any material changes to the PPM must be immediately communicated to IFSCA.[27]

27 Regulation 31(1) and (2) of the FM Regulations.

The PPM as filed with IFSCA is valid for 6 (six) months from such date, within which the scheme should be launched.[28]

Green Channel: Pursuant to the circular dated April 05, 2025 issued by IFSCA, all Restricted Schemes (Non-retail) may now be launched under the green channel. Prior to the circular, only (i) Authorized FMEs launching venture capital schemes and (ii) Restricted Schemes (Non-Retail) soliciting money only from accredited investors, were permitted to apply under the green channel. Registered FMEs (Non-Retail) were required to wait 21 days after filing of their PPMs for comments from IFSCA before launching their respective schemes. The circular's expansion of the green channel now allows Restricted Schemes (Non-retail) to open for subscriptions from investors immediately upon filing the PPM with IFSCA, without the need to wait for IFSCA's comments on the PPM.

Nature and Tenure of Scheme: Restricted Schemes may be launched as open ended or close ended schemes. In case of a close ended scheme, the maximum tenure (with one year being the minimum possible tenure) and the target corpus sought should be disclosed in the PPM. The FME may extend the tenure of a given restricted scheme by up to 2 (two) years subject to the approval of 2/3rd of the investors by value of their investment in the scheme. An extension of the scheme's tenure beyond the 2 (two) years provided for in the FM Regulations may be available to the FME subject to the express consent of *all* the scheme's investors, and the opportunity to exit for any non-consenting investors.[29] In order to avail Category I or Category II AIF taxation, the Restricted Scheme must be close-ended.

Investment Restrictions: A Restricted Scheme must have a corpus of at least USD 5 million (five million dollars).[30] An open-ended Restricted Scheme may invest up to 25% of the corpus of the scheme in securities of unlisted companies.[31] Additionally, the Restricted Scheme may invest in its associate subject to the prior approval of 75% investors in the scheme by value.[32]

Eligible investors: A Restricted Scheme should have less than 1,000 (one thousand) investors, which may fall under one of the following categories:[33]

i. Investors investing at least USD 150,000 (one hundred and fifty thousand dollars);

ii. Accredited investors; or

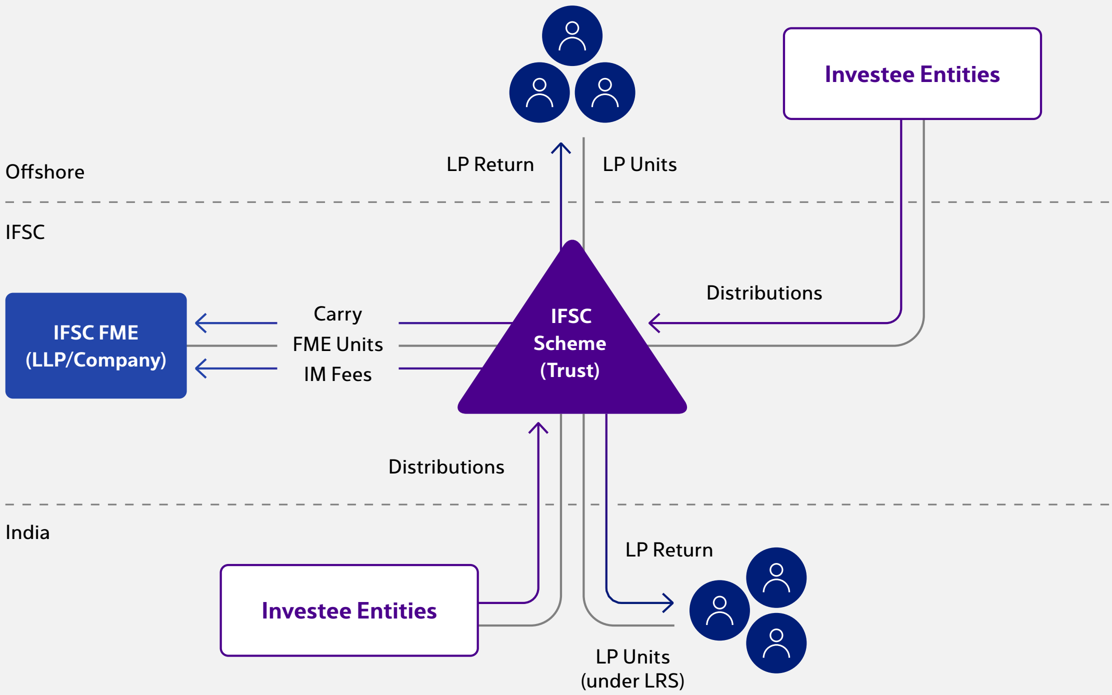
iii. Employees, directors, designated partners or partners of the FME investing at least USD 40,000 (forty thousand dollars).

Permissible investments: The FM Regulations provide an illustrative list of instruments in which Restricted Schemes specifically venture capital schemes, may invest, including securities issued by unlisted entities, money market instruments and debt securities[34] subject to the investment objective of the said scheme and the disclosures in the placement memorandum.

Close-ended Restricted Schemes may also invest up to 20% of the corpus in other physical assets such as real estate, bullion, art or any other physical asset that IFSCA may allow over time.[35]

28 Proviso to Regulation 31(2) of the FM Regulations.
29 Regulation 33 of the FM Regulations.
30 Regulation 35(2) of the FM Regulations.
31 Regulation 35(1) of the FM Regulations.
32 Regulation 35(3) of the FM Regulations.
33 Regulation 32 of the FM Regulations.
34 Regulation 22(1) of the FM Regulations.
35 Regulation 34(3) of the FM Regulations.

Structure: The following diagram depicts a basic structure for a scheme launched by an Authorised and / or Registered FME (Non-Retail):



* Variations to this structure (eg. setting up unified structure, having an offshore sponsor entity, etc.) are also possible depending on commercial requirements. Further, it may not be possible to have Indian resident LPs in a strategy which invests back into India.

Figure 7

III. Key Regulatory Considerations

A. Overseas Investment Framework

Any entity set up in the GIFT IFSC and registered with the IFSCA is treated as a non-resident for FEMA purposes. Accordingly, while transactions between a GIFT IFSC entity and a non-resident are not governed by FEMA, transactions between the GIFT IFSC entity and an Indian resident are subject to FEMA restrictions.

Specifically, Indian resident investors either setting up an FME or investing in a scheme launched by an FME are subject to the Foreign Exchange Management (Overseas Investment) Rules, 2022 ("**OI Rules**")[36] read with the Foreign Exchange Management (Overseas Investment) Regulations, 2022 ("**OI Regulations**")[37] and the Foreign Exchange Management (Overseas Investment) Directions, 2022 ("**OI Directions**")[38] (together, the "**OI Framework**").

The OI Framework sets out the general conditions for Indian resident entities and individuals to remit money outside India ("**General OI Conditions**"). Such investment can be either by way of Overseas Direct Investment ("**ODI**") or Overseas Portfolio Investment ("**OPI**").

As per the OI Rules, ODI means investment through acquisition of unlisted equity capital of such entity, or through subscription as a part of the memorandum of association of a foreign entity.[39] ODI by an Indian resident entity is subject to 400% of such entity's net worth per financial year.[40] OPI, on the other hand, is defined as investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in the GIFT IFSC.[41] Additionally, an Indian entity's ability to make OPI is restricted to 50% of its net worth as on the date of its last audited balance sheet.[42] Schedule 5 of the OI Rules provides certain exemptions for investments made into an entity set up in the GIFT IFSC.

Setting up an FME by a Resident Entity

Paragraph 2(1)(iii) of Schedule I of the OI Rules provides certain conditions required to be satisfied by an Indian entity engaged in financial services activity intending to invest in a non-IFSC foreign entity engaged in financial services. One such condition is that the Indian entity must *inter-alia* obtain approvals from the financial services regulator in India as well as the regulator in the jurisdiction in which the ODI is intended to be made ("**NOC**"). Accordingly, if such Indian entity were to set up a fund overseas (in a jurisdiction other than the GIFT IFSC), it would need to get NOCs from both SEBI and the overseas regulator in order to capitalize the fund manager under the ODI route. However, Paragraph 2(i) of Schedule 5 of the OI Rules provides that the requisite NOCs de deemed granted / approved within 45 days from the date the application for NOC is filed. Accordingly, an Indian entity engaged in financial services intending to set up an FME in the GIFT IFSC is still required to file for NOC; however, the NOCs will be deemed approved 45 days from filing.

The time efficiencies introduced with respect to the NOC is a welcomed relief to Indian fund managers who must wait for both SEBI and overseas regulators' NOCs before remitting funds offshore. Specifically, in the context of SEBI, these NOCs can take up to several months to be approved, which has caused significant delays in the capitalization of the fund manager in overseas jurisdictions. On the contrary, the deemed approval in IFSCA acts as an additional safeguard to prevent prolonged delays. This provision is also an important step towards ease of doing business in India and should help enable setting up offshore structures in the IFSC with greater speed.

36 https://rbidocs.rbi.org.in/rdocs/content/pdfs/GazetteRules23082022.pdf.

37 https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12380&Mode=0.

38 https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT110B29188F1C4624C75808B53ADE5175A88.PDF.

39 The definition of ODI under the OI Rules also includes or (ii) investment in 10% or more of the paid-up equity capital of a listed foreign entity, or (iii) Investment of less than 10% in equity capital, but with control, of listed foreign entity.

40 Paragraph 3 of Schedule 1, OI Rules.

41 Rule 2(1)(s) of the OI Rules.

42 Paragraph 1(3) of Schedule, OI Rules.

Moreover, Paragraph 2(2) of Schedule I of the OI Rules provides that an Indian entity not engaged in financial services activity in India intending to make ODI in a non-IFSC foreign entity engaged in financial services (other than banking and insurance companies) needs to have posted net profits during the preceding 3 financial years ("**Profitability Criteria**"). However, Paragraph 2(ii) of Schedule 5 exempts such Indian entity from having to satisfy the Profitability Criteria. In other words, an Indian entity not engaged in financial services intending to set up an FME need not have posted net profits. In fact, this exemption makes it possible for even newly incorporated entities in India to set up FMEs in the GIFT IFSC without RBI approval. This further increases the attractiveness of the GIFT IFSC for Indian GPs looking to set up offshore funds as compared to foreign jurisdictions such as Mauritius or Singapore for which the Profitability Criteria must be met.

Setting up an FME by a Resident Individual

As per the General Conditions under the OI Framework, resident individuals are only permitted to make ODI into operating entities (located in any overseas jurisdiction other than the IFSC) not engaged in financial services activity.

Considering that overseas funds/ manager should qualify as an entity engaged in financial services, this restriction prohibits Indian resident individuals from making ODI (i.e., setting up) into overseas funds/ managers. However, Paragraph 2(iv) of Schedule 5 specifically permits Indian resident individuals to make ODI (with control) into the GIFT IFSC entities, including those which are engaged in financial services activities (other than banking or insurance), provided that the GIFT IFSC entity does not have a subsidiary or a step-down subsidiary outside the GIFT IFSC (i.e. in India or any other jurisdiction). Accordingly, it may be possible for resident resident individuals to set up FMEs in the GIFT IFSC.

The ODI provisions for both resident entities and individuals seek to incentivize resident Indians (particularly Indian GPs) to give serious consideration to the GIFT IFSC as a potential jurisdiction to set up their offshore funds as opposed to those jurisdictions typically favoured like Singapore or Mauritius.

ODI by an Indian resident individual should be under the Liberalised Remittance Scheme ("**LRS**"), and subject to a cap of USD 250,000 per financial year.[43]

Investing in a Scheme by a Resident Entity or an Individual

The OI Framework permits resident individuals and listed entities to make OPI into regulated[44] funds overseas (not in the IFSC). However, it does not allow such investment to be made by unlisted entities.

Paragraph 2(iii) of Schedule 5, permits all persons, including listed and unlisted entities,[45] and individuals resident in India to make contributions in an investment fund or vehicle set up in the GIFT IFSC as OPI.

This better situates GIFT IFSC funds (when compared to an unlisted overseas fund) to receive investments from unlisted Indian entities because such entities are not permitted to invest in any overseas fund other than one situated in the GIFT IFSC.

43 Paragraph 1 of Schedule 3, OI Rules.

44 The overseas fund may be regulated itself or through its manager.

45 Section (e) of paragraph (ix) clarifies that even an unlisted entity can make OPI into an IFSC fund, whereas only listed entities and individuals can make OPI into an overseas regulated fund (not in the IFSC).

Similar to investment by way of ODI, OPI by a resident individual should be under the LRS route, and subject to a cap of USD 250,000 per financial year, whereas OPI by a resident entity is subject to a cap of 50% of its net-worth.[46]

B. Roundtripping

Prior to the introduction of the OI Framework, the RBI did not define 'round tripping' as such; however, the essence was captured in the response to FAQ 64 of the ODI FAQs (as previously available on the RBI website) which neither permitted an Indian party to set up Indian subsidiary(ies) through its foreign wholly owned subsidiary / joint venture, nor allowed an Indian party to acquire a wholly owned subsidiary or invest in a joint venture that already had direct / indirect investment in India under the automatic route. In other words, 'round tripping' is a process by which money leaves India only to be reinvested back into India. A round tripping structure is an overseas structure which allows for such reinvestment back into India.

The said prohibition on round tripping structures and the uncertainty on whether such transactions would receive RBI's blessings, were, to an extent, done away with by the OI Rules. Regulation 19(3) of the OI Rules permits a round tripping structure, provided that such structure is limited to having two layers of subsidiaries.

However, keeping in mind the Government's objective of using the GIFT IFSC to onshore offshore structures, it may not be possible to set up a fund in the GIFT IFSC which raises money from Indian residents and invests that corpus back into India. This may be seen as a structure better suited for mainland India, and registered and regulated with SEBI as an AIF as opposed to a GIFT IFSC Scheme.

C. Investment into Indian Securities

As the GIFT IFSC Scheme is classified as a non-resident under FEMA, such Scheme would be required to invest into Indian securities under the Foreign Direct Investment (“**FDI**”), Foreign Portfolio Investor (“**FPI**”) and / or Foreign Venture Capital Investor (“**FVCI**”) route. For investment under the FPI and FVCI routes, the scheme would be required to register with SEBI in addition to registered with IFSCA.

D. Accredited Investors

Accredited investors are individuals that are expected to be better aware of and have the wherewithal to understand and withstand the risks associated with their investments. IFSCA has the authority to delineate the eligibility criteria for accredited investors under Regulation 2(1)(c) of the FM Regulations.

The FM Regulations specifically (i) exempt accredited investors from meeting any minimum investment thresholds and (ii) exempt FMEs from making FME Contributions where the scheme only has accredited investors.

46 Paragraph (1)(1) of Schedule 2, OI Rules.

While contribution by accredited investors offers schemes some flexibility in compliance with prescribed conditions (as mentioned above), it also places additional responsibilities on the FMEs managing such schemes. For example, FMEs are obliged to put in place adequate procedures and internal policies to ensure accreditation per the set eligibility criteria. This obligation to ensure accreditation extends through the life of the scheme (and the accredited investor's commitment to the scheme) and even beyond — as records on verification of accreditation status are required to be maintained by the FME for at least six years after the relationship between the FME and the accredited investor is terminated.[47]

IFSCA has recently notified[48] criteria by which to identify accredited investors. A summary of the thresholds prescribed under the IFSCA notification is provided in *"Annexure 3"*.

IV. Investment under the FPI Route

A. FPI Regime in India

SEBI regulates and governs FPIs under the provisions of the SEBI (Foreign Portfolio Investors) Regulations, 2019, ("**FPI Regulations**"), the Master Circular for FPIs, Designated Depository Participants ("**DDPs**") and Eligible Foreign Investors ("**EFIs**") ("**FPI MC**"), and the various circulars that are issued by SEBI from time to time (together "**FPI Laws**").

An FPI registered with SEBI is permitted to invest in the following:

a. Shares, debentures and warrants issued by a body corporate, listed or to be listed on a recognized stock exchange in India,

b. Units of schemes floated by mutual funds under Chapter V, VI-A, and VI-B of the Mutual Fund Regulations, 1996;

c. Units of scheme floated by a Collective Investment Scheme in accordance with CIS Regulations, 1999;

d. Derivatives traded on a recognized stock exchange;

e. Units of REITs, InvITs and units of Category III AIFs registered with SEBI;

f. Indian depository receipts;

g. Any debt securities or other instruments as permitted by the RBI for FPIs to invest in from time to time; and

h. Any such other instruments specified by SEBI from time to time.

An investment limit of less than 10%of the total paid-up equity capital on a fully diluted basis of the Indian company is imposed on FPIs (including their investor group). This means that an FPI (along with its investor group) is permitted to invest only upto 9.99% of the total paid-up equity capital on a fully diluted basis of the Indian company.

47 2(c) of Circular F. No. IFSCA-IF-10PR/1/2023-Capital Markets, dated January 25, 2024 on Accredited Investors in IFSC.

48 Circular F. No. IFSCA-IF-10PR/1/2023-Capital Markets, dated January 25, 2024 on Accredited Investors in IFSC.

B. Category of FPI

GIFT IFSC Schemes looking to make portfolio investment in the securities set out above are required to obtain FPI registration from SEBI. Such schemes are typically launched as Restricted Schemes (Non-retail) and filed before the IFSCA as Category III AIFs. This is because the strategies employed by such schemes are akin to Category III AIFs, which employ diverse or complex strategies.

The FPI Regulations categorize FPIs into two categories — Category I and II, with the former including 'entities from FATF member countries which are appropriately regulated funds'. As an applicant incorporated or established in an IFSC is deemed to be appropriately regulateda GIFT IFSC scheme is eligible to procure a category I FPI registration from a DDP on behalf of SEBI.

C. Relaxations for Constituents of GIFT IFSC Scheme Registered as an FPI

Under the FPI Laws, Non-Resident Indians ("**NRIs**"), Overseas Citizens of India ("**OCIs**") and Resident Indian ("**RI**") individuals (NRIs, OCIs and RIs, together read as "**Permitted Investors**") are not eligible to be FPI applicants, although they are permitted to be constituents of FPIs, subject to compliance with certain conditions, including the following:

Individual and Aggregate Cap: While the contribution of a single NRI/ OCI/RI is capped at less than 25% of the total corpus of the FPI, the aggregate contribution has been restricted to below 50% of the FPI corpus.

Control: Permitted Investors are barred from exercising control[49] over the FPI, subject to certain conditions, including if the FPI's manager is appropriately regulated and registered as a non-investing FPI with SEBI.

Vide an amendment to the FPI Regulations dated June 26, 2024, and the subsequent issuance of a circular on June 27, 2024[50], the above restrictions were relaxed for FPIs based in IFSCs in India and regulated by IFSCA. Pursuant to these relaxations, FPIs in the GIFT IFSCA are provided the flexibility of having up to 100% aggregate contribution by Permitted Investors in their corpus, subject to the condition that at the time of seeking registration, the FPI applicant submits a declaration stating its intention of having an aggregate contribution of Permitted Investors, of 50% or more in its corpus, to its DDP, along with adherence to either of the following routes:

a. **Route 1**: The copies of Permanent Account Number ("**PAN**") cards of all such Permitted Investors, identified on a look through basis, along with their economic interests in the FPI are to be submitted with the respective DDP. In case of a constituent not having a PAN, a declaration to the effect, along with the copies of prescribed identity documents, *viz*., Indian passport, OCI Card, Aadhaar Card, etc. ("**ID Documents**") are furnished to the DDP by the FPI.

   In case of non-individual constituents of such FPIs, which are controlled directly or indirectly by one or more Permitted Investors, or where the Permitted Investors together hold 50% or more ownership or economic interest on a full look through basis, the FPI is required to provide the PAN (or suitable declaration and identity document) of such Permitted Investors, along with the percentage of ownership / economic interest / control of the Permitted Investors in (a) the non-individual entity and (b) the FPI, to their DDPs.

49 Regulation 2(1)(f) of the FPI Regulations defines 'control' to include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

50 Circular on Participation by NRIs, OCIs and Resident Indian individuals in SEBI registered FPIs based in IFSC in India, available at: https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jun-2024/1719504315540.pdf#page=1&zoom=page-width,-16,843.

b. **Route 2**: Alternatively, IFSC based FPIs have the option of not providing any of the above-mentioned documentation if they fulfil the following conditions:

- The Investment Manager (“**IM**”) satisfies the FME eligibility requirements, as specified by SEBI.
- The IM takes the investment decisions independently, with no say of the investors.
- The contributions are pooled in a single FPI vehicle, with no side vehicles.
- The FPI should have a common portfolio, with the investors having pari passu and pro rata rights in the FPI.
- The FPI should have at least 20 investors and none of the investors should hold more than 25% stake in its corpus.
- The FPI should not invest more than 20% of its corpus in the equity shares of a single Indian investee company.
- The IM should be an AMC of a SEBI registered mutual fund, sponsored by an RBI regulated bank or its IFSC based subsidiary/branch.

D. Relocation of FPIs to IFSC

To promote GIFT IFSC and to enhance ease of doing business for foreign investors in India (including GIFT IFSC), the FPI MC permits a one-time ‘off-market’ transfer of securities in case of relocation of FPIs to IFSC. To avail of this, the FPI is required to approach its DDP for approval of the transfer of its securities in the resultant fund, which may be provided by the DDP after appropriate due diligence.

V. Key Income-tax Considerations

A. Direct Tax

Status of IFSC Fund: While an entity in the GIFT IFSC including an FME and its scheme is treated as a person resident outside India from a foreign exchange control perspective, for income-tax purposes, such entities are considered to be persons resident in India. This makes structuring of a GIFT IFSC entity require careful consideration.

Taxability of management fee earned by the FME: The FME set up in GIFT IFSC may take the benefit of the Tax Holiday under Section 80LA of the ITA whereby the FME receives a 100 % tax holiday on all management fees. Further, the FME should be subject to a reduced rate of MAT / AMT of 9%. If the FME is set up as a company, it may not be subject to MAT at all, subject to certain conditions.

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 the GIFT IFSC structures given that the FME may be eligible for Tax Holiday under Section 80LA of the ITA in case of business income.[51]

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

This combined with the GST exemption makes the GIFT IFSC management structure an attractive **model** for Indian GPs wanting to access the global market.

Indian GP involvement permissible without PE/ POEM risks: One of the major tax considerations Indian GPs face when setting up a fund overseas is that their involvement in the management of such fund risks triggering (i) the establishment of a place of effective management (POEM) in India for the overseas fund; and / or (ii) creating a permanent establishment in India for the overseas fund.
In either case, the overseas fund is exposed to taxation in India, in addition to any tax it may be subject to in its host jurisdiction (ie. double taxation). However, as the GIFT IFSC entity is already a tax resident of India, Indian GP participation does not create an PE or POEM risk, and as the GIFT IFSC entity is already subject to Indian taxation there is only one layer of taxation.

Passthrough Status: Similar to Category I and II AIFs, the GIFT IFSC Schemes which qualify for Category I or Category II AIF classification are granted pass through status under Section 115UB of the ITA. Accordingly, any investment made by the GIFT IFSC Scheme is deemed to have been made directly by the underlying investor in the Scheme, and income generated thereon taxed accordingly.

Taxability on income from overseas investment: 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.[52] Therefore, income received by non-resident investor from overseas investment made by Category-I or Category-II classified GIFT IFSC entity 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 the GIFT 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 GIFT IFSC entity as per provisions of the ITA.[53]

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 GIFT IFSC entity 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 the GIFT IFSC entity;
- Tax has been deducted at source and remitted to the Central Government by the specified fund as per the rates under section 194LBB of the ITA; and
- The non-resident furnishes the specified details (like name, email ID, contact number, address in resident country etc.) to the GIFT IFSC entity.

Exemption of certain income of Specified Funds: Section 10(4D) of the ITA exempts certain income accrued or arisen to or received by a fund classified as a Category-III AIF in the GIFT IFSC of which all units are held by non-residents other than units held by sponsor or manager ("Specified Fund").

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

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.

Such exempt income includes income accrued or arisen to or received by the Specified Fund as a result of transfer of the Specified Securities,[55] on a recognised stock exchange located in GIFT IFSC ("RSE") where consideration for such transfer is paid in convertible foreign exchange. The section also exempts any income of a Specified Fund(i) as a result of transfer of securities (other than shares in a company resident in India); (ii) from securities issued by a non-resident which does not accrue or arise in India; or (iii) from a securitization trust which is chargeable under the head "Profits and gains of business or profession". This income is exempt to the extent it is received or arisen to a non-resident, or is attributable to units held by a non-resident or the investment division of offshore banking unit.

Further, Section 23FBC of the ITA provides that any income accruing, arising or received by a unit holder of a specified fund on the transfer of such units should be exempt from taxation.

While FPIs have their own taxing regime under the ITA, since an FPI having only non-residents investors and set up as a Restricted Scheme (Non-retail) under sub-category of Category III AIF should also qualify as a Specified Fund, it may be possible to take the position that the exemptions offered under Section 10 of the ITA should be applicable to such FPIs.

Tax Neutral Relocation of offshore Fund to GIFT IFSC:

- Exempt from capital gains arising on transfer of shares of Indian companies and other Indian securities held by an offshore fund to an IFSC Fund.
- Under Section 47 (viiac) / (viiad) of the ITA, Exemption from capital gains tax from transfer by a shareholder / unit holder, in a relocation, of capital asset being share / unit held by him in the offshore fund in consideration for share / unit in the GIFT IFSC entity.
- Under Section 10(23FF) of the ITA, exemption from capital gains tax arising or received by a non-resident investor, on account of transfer of shares of an Indian company by the resultant fund (IFSC Fund) which were acquired by the resultant fund pursuant to relocation and where the capital gains on such transfer would originally not been subject to tax had the relocation not taken place.
- Corresponding exemption provided under Section 56(2)(x) of the ITA, subject to the condition that at least 90% shares/units/interest of the fund management entity of the resultant fund and the investment manager entity of the offshore fund are held by the same person(s)/entity(s) provided that a minimum of 90% of the aggregate shares/units/interest of the investment manager entity of the offshore fund was held by such person(s)/entity(s).

B. GST

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 FMEs in the GIFT IFSC should be exempt from GST. This should enhance the corpus available for investment by the GIFT IFSC entity.

55 As per Section 47(viiab) of the ITA, Specified Securities means those set out: (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 an AIF; (f) bullion depository receipt with underlying bullion; (g) unit of investment trust; (h) unit of scheme; (i) unit of exchange traded fund launched under the FM Regulations; (j) global depository receipts, (k) rupee denominated bonds of an Indian company, and (l) derivatives.

It is important to note that exemption from GST will be available only if the manager sets up a branch / company in the GIFT IFSC. The exemption from GST may be available only to the extent of activities carried out in the GIFT IFSC and hence may impact the availability of the benefit of the exemption.

VI. Benefits of Unified GIFT IFSC Structure

A Unified Investment Structure comprises of (i) an Alternative Investment Fund ("**AIF**") set up as a trust or limited liability partnership or company in India, used to pool the monies of domestic investors and (ii) an offshore feeder vehicle used to pool the monies of the offshore investors ("**Feeder**"). The Feeder invests primarily in the AIF ("**Unified Structure(s)**").

While Unified Structures are not required under law, they are often employed by fund managers raising commitments from offshore investors given the structures' ability to provide the fund manager and the offshore investors with certain flexibilities.

While the likes of Mauritius, Singapore, the United States and the Netherlands have been popular jurisdictions for setting up the Feeder in Unified Structures, the flexibilities allowed to GIFT IFSC funds have made the GIFT City an emerging choice among fund managers pooling funds from Indian and offshore investors. Among others, GIFT IFSC Feeders enjoy:

i. Cost efficiency: setting up an FME (and launching schemes as necessary) in the GIFT IFSC can be substantially more cost efficient when compared to establishing a Feeder entity in other jurisdictions such as Singapore;

ii. Elimination of POEM/PE risk: as discussed earlier in this chapter, funds set up in offshore jurisdictions by Indian GPs/managers (and their involvement in the management of these offshore funds) raise substantial POEM/PE concerns, ultimately exposing the fund to Indian taxation in addition to taxes in its home jurisdiction. However, using the GIFT IFSC as the Feeder jurisdiction eliminates any POEM/PE concerns given the GIFT IFSC entity is considered an Indian resident for tax purposes and is therefore only taxed in India;

iii. Light touch regulatory framework on par with global best practices: the FM Regulations provide a light touch framework significantly less restrictive than SEBI's regulation of AIFs in India. FMEs and their schemes, subject to their categorization under the FM Regulations, enjoy unique advantages, allowing them to:

   - borrow and undertake leverage without limits subject to certain conditions;
   - invest in as little as one investee company;
   - offer co-investment opportunities through segregated portfolios;
   - exempt the minimum contribution of the manager;
   - invest in assets such as real estate, bullion or art; and
   - launch the fund through a fast-track green channel which does not require the manager to wait for IFSCA's comments on the draft placement memorandum.

   This flexibility offered by IFSCA and the FM Regulations is in line with global standards and the Government's intent to make the GIFT IFSC a world-class financial and business district.

iv. Tax benefits: a fund set up in the GIFT IFSC offers an edge over certain other jurisdictions given that management fees in the hands of the investment manager (i.e., the FME) are not subject to corporate income tax. Moreover, some jurisdictions levy a form of service tax on the management fees paid. Feeders set up in the GIFT IFSC, however, have the added comfort of operating in a jurisdiction that does not levy GST on management services.

These benefits have led to the GIFT IFSC seeing an uptick in Feeders pooling monies from offshore investors looking to invest in the burgeoning Indian market, while offering the best of offshore fund structures as well as AIFs.

VII. Snapshot Comparison of Offshore Funds Vis-à-vis IFSC Schemes Launched by FMEs

SN	Parameter	Offshore Fund	IFSC Scheme
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:
		▪ Income earned by offshore investors from offshore investments are not taxable in India
			Resident in India.
			Category I and II AIFs:
			▪ All income (except for business income) of GIFT IFSC entity exempt at GIFT IFSC entity level
			▪ Income from Indian investments:
			  ▪ 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 offshore investment not taxable in India.
			Category III AIF (with only non-resident investors except sponsor/manager)
			▪ Income taxed at fund level, no Indian taxation at the investor level.
			▪ Income from Indian investments:
			  ▪ Exemption granted with respect to income from (i) transfer of Specified Securities (ii) securitization trust under PGBP (on non-resident units)
			  ▪ Dividend and interest income taxed at 10%
			  ▪ Long term capital gains taxed at 12.5%
			  ▪ Short term capital gains u/s 111A taxed at 20%
			  ▪ Any other short term capital gains taxed at applicable slab rate
			▪ Income from offshore investments:
			  ▪ Exemption granted to capital gains, dividends and interest income

3	**Investment route**	FDI / FPI / FVCI route; FPI / FVCI license required.	FDI / FPI / FVCI route; FPI / FVCI license required.

SN	Parameter	Offshore Fund	IFSC Scheme
4	**Restrictions on investment outside India**	No such restrictions.	No such restrictions.
5	**Permanent Establishment ("PE") risk due to Indian resident GPs**	In case of an India focused investment fund, the risk of constitution of PE in India is present.	No such risk, the FME is considered to be a tax resident in India in any case.
6	**Investment by Indian individuals**	Permitted to invest as OPI under LRS to the extent of USD 2,50,000 subject to the investment fund being regulated by the overseas regulator.	Permitted to invest as OPI under LRS to the extent of USD 2,50,000.
7	**Investment by Indian**	Listed entities permitted to invest as OPI subject to fund being regulated. Unlisted Indian institutional investors are not permitted to invest in overseas funds.	Listed and unlisted entities are permitted to invest in an IFSC scheme as OPI up to 50% of net worth.
		No ODI in overseas funds by Indian institutional investors.	
8	**Establishing manager entity with Indian resident GPs**	Offshore manager along with an Indian advisor on cost plus arrangement.	Indian GPs participate through FME set up in IFSC.
9	**Taxation of manager / advisor entity**	Income of Indian advisor to be subject to tax in India at applicable corporate tax rate.	The FME may take 100% tax holiday on business income under section 80LA of the ITA, subject to 9% AMT / MAT (if applicable). Appropriate structure for cash repatriation to parent / head office outside the GIFT IFSC can be explored.
10	**Indirect transfer tax**[56]	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).	Indirect transfer provisions do not apply to Category-I / Category-II AIFs subject to fulfilment of certain conditions.
11	**GST**	The advisor fee earned by Indian advisor chargeable to GST @ 18%.	Management fee earned exempt from GST. Also exempt from performance fees (for Cat III) and exempt from advisory fees. However, the issue of splitting management fee with FME and non-IFSC manager (if any) may arise.

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 FME in GIFT IFSC.	Cost of setting GIFT IFSC entity is relatively low:
			▪ Application fee: USD 2,500
			▪ Registration fee: Authorised FME (except FIF): USD 5,000 Registered FME (Non-retail): USD 7,500
			▪ Scheme fee:
			  ▪ Venture Capital Scheme: USD 7,500
			  ▪ Cat I GIFT IFSC entity: USD 7,500
			  ▪ Cat II GIFT IFSC entity: USD 15,000
			  ▪ Cat III GIFT IFSC entity: USD 22,500

56 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.

Family Offices in GIFT IFSC

I. What Is a Family Office and Can I Set One Up in GIFT IFSC?

While family offices in India have only started gaining traction in the last few years, family offices as a concept are not new. In fact, in Europe the concept originated in the sixth century with royalty using stewards to help manage their wealth and family affairs. In the US, high net worth families have been using these structures since the early 1800s. In modern times, a family office in these jurisdictions is generally treated as a one-stop shop for all the family's needs. They manage everything from the family's estate planning to health care and education related requirements, with investment activities being just one part of a larger portfolio of services offered to the family.

In India, the landscape is a little different. While some large family offices may provide a more comprehensive portfolio of services, generally family offices are thought of as the investment arm or wealth management entity for the family. It is in this limited context that IFSCA has issued its framework for Family Investment Funds ("**FIF**"), whereby FIFs can only act as investment vehicles for the family and are not intended to be used to meet the family's succession planning or other requirements.

II. A Light-touch Framework

IFSCA introduced the framework for Family Investment Funds ("FIFs") under the FM Regulations. While the FM Regulations provide detailed conditions for fund managers and the funds they launch (as set out in Chapter *Setting up Funds in GIFT IFSC*), a light-touch approach has been afforded to FIFs.

A. Self-managed Pooling Vehicle

For example, a typical private equity scheme in the IFSC is required to be managed by a separate FME. This means that two entities are required to be set up, one to act as the fund manager and register as a FME with IFSCA under the FM Regulations, and another to act as the pooling vehicle (ie. the scheme or fund). However, as per the FM Regulations, FIFs are *self-managed pooling vehicles*.[1] Accordingly, only one entity is required to be set up, and this entity obtains registration as an Authorised FME (please refer to Chapter *Setting up Funds in GIFT IFSC* for details on Authorised FMEs) under the FM Regulations as well as acts as the pooling vehicle for the family. The ability to structure an FIF using just one entity is a simple, but valuable facility which helps significantly reduce cost and compliance burden for the family.

Moreover, while other Authorised FMEs must be set up as either companies or LLPs (or a branch thereof), FIFs may also be set up contributory trusts. If the FIF is set up as a contributory trust, the investors in the FIF must also be beneficiaries of the trust. Further, such beneficiaries and their beneficial interest must be fixed and identifiable in the Trust Deed at all times.[2]

1 Regulation 2(n), FM Regulations.

2 Regulation 104, FM Regulations.

The ability to set up the FIF as a trust allows families the flexibility to use a cost-effective structure, which is also tax efficient and subject to fewer regulatory compliances as compared to companies and LLPs. However, families intending to use a trust structure should keep in mind potential foreign exchange implications of appointing an Indian-resident trustee. Typically, any fund set up in the GIFT IFSC is treated as a non-resident for foreign exchange purposes and therefore investments made by these funds are not subject to the conditions prescribed under FEMA. However, under the Trusts Act, 1882, it is the *trustee*, and not the trust (ie. the FIF) which is considered the legal and beneficial owner of all property held in the trust. Accordingly, RBI could take the view that as the assets held in the FIF are owned by an Indian-resident trustee, that all overseas investments should be subject to FEMA. Interestingly, this issue does not arise with respect to other funds structured as trusts in GIFT IFSC because in all other cases, IFSCA mandates that only institutional trustees located in GIFT IFSC can act as trustees to such funds. In such a scenario the trustee itself is also a non-resident by virtue of being incorporated in the IFSC, and accordingly foreign exchange conditions are not applicable.

B. Pooling Funds from a Single Family

Once set up, the FIF is only permitted to pool funds from a single family. While the original definition of 'single family' under the FM Regulations had been limited to a group of individuals all being lineal descendant of a common ancestor (and their spouses and children[3]); it was later expanded[4] to also include entities such as sole proprietorship firms, partnership firms, companies, limited liability partnerships, trusts and body corporates, in which the family exercises control and directly or indirectly holds substantial economic interest.[5]

The decision to allow FIFs to raise funds from entities was instrumental for developing a workable fund-raising framework. Prior to this change, FIFs could only raise funds from individual family members who could remit a maximum of only USD 250,000 per year under LRS. However, while the revised definition of 'single family' now also includes trusts, Indian families should keep in mind that FEMA does not currently permit trusts to remit money overseas. Accordingly, families who currently house their wealth in domestic trust structures for succession planning purposes will need to consider alternative structures for remitting funds to their FIF in GIFT IFSC.

The FIF can also accept contributions from its employees, directors, or other persons providing services to the FIF, if: (i) the same is permitted under the FIF's internal policy as a reward for providing services to the FIF; or (ii) the contribution is being taken in order to align the interests of such person with the interests of the FIF.[6] However, such contribution should only be accepted for the limited purpose of granting economic interest and should not exceed (in aggregate) 20% of the FIF's profits.[7]

3 The definition includes widows and widowers, whether remarried or not, and stepchildren, adopted children, ex nuptial children.

4 IFSCA Circular No. F. No. 333/IFSCA/FIF/2022-23, dated March 01, 2023.

5 Substantial economic interest' means at least 90% economic interest which may include (i) percentage of shareholding in a company with share capital; or right to exercise control in case of a company without share capital; (ii) percentage share of profits in case of partnership firm and limited liability partnership; (iii) percentage of beneficial interest specified in trust deed in case of a determinate trust; or pro-rata share in the trust property in case of an indeterminate trust.

6 IFSCA Circular No. F. No. 333/IFSCA/FIF/2022-23, dated March 01, 2023.

7 IFSCA Circular No. F. No. 333/IFSCA/FIF/2022-23, dated March 01, 2023.

The flexibility to allow employees and directors of a fund manager to contribute to a fund in order to participate in its profit share is market standard across both AIFs set up in India as well as funds set up abroad. However, considering that the FIF is intended to operate as a self-managed fund, where the management is likely to reside with individual family members who are anyway permitted to contribute to the FIF, it will be interesting to see whether families setting up FIF structures will take advantage of this added flexibility.

C. Net-worth and Target Corpus

Another aspect of IFSCA's light-touch regime is that FIFs do not need to satisfy the net worth requirement (USD 75,000) applicable to other Authorised FMEs. Moreover, funds managed by Authorised FMEs typically have a minimum investor contribution of USD 250,000; however, no such minimum is prescribed for investors of an FIF.[8] Instead, an FIF is required to have a minimum target corpus of USD 10 million (within the first three years of launch).[9]

Although the USD 10 million corpus can be built up over the first three years of the FIF's launch, where family members are funding the FIF directly, each individual is subject to a cap of USD 250,000 under the LRS route. This may cause some difficulties for families who do not wish to bring multiple family members into the FIF structure as contributors. In such case, the family may consider using existing group companies / LLPs or setting up a new structure for funding the FIF — both options have a range of considerations to keep in mind.

D. Permissible Investments

The FM Regulations specifically allow FIFs to invest in a wide array of assets, including (but not limited to):

- Unlisted, listed or to-be listed securities
- Debt securities;
- Other investment schemes set up in the IFSC, India and foreign jurisdiction (including mutual funds and AIFS in India or abroad);
- Derivatives including commodity derivatives;
- Investment in LLPs; and
- Physical assets such as real estate, bullion, art, etc. [10]

However, families should keep in mind that FIFs should only be used for undertaking overseas *portfolio investments*. Accordingly, while IFSCA may be comfortable with an FIF investing in physical assets, like real estate, art, etc. as a part of a larger portfolio which includes other asset types, an FIF set up only for investment into physical assets for self-use may not be permitted. Similarly, FIFs set up to fund overseas associates or group companies may not be permitted. Moreover, investment back into India through an FIF which is funded from India is not permissible.

8 Regulation 104(2), FM Regulations.

9 Regulation 104(3), FM Regulations.

10 Regulation 106, FM Regulations.

III. Why GIFT IFSC and Not Overseas?

A. Investment by Way of OPI

Recent changes to India's foreign exchange regulations have made it relatively more difficult for families to invest overseas. As mentioned in Chapter *Setting up Funds in GIFT IFSC*, under the new OI Rules, investment into unlisted securities can generally only be done through the ODI route. However, individuals are not permitted to make ODI in foreign entities engaged in financial services activities. As overseas family offices acting as pooling vehicles for making investments may be considered foreign entities engaged in financial services activities, individual family members should not be permitted to set up such family investment structures in overseas jurisdictions like Singapore by way of ODI. That being said, the OI Directions, clarify that investment by Indian resident individuals (and listed entities) into overseas funds which are regulated by a financial services regulator of the host jurisdiction is permissible by way of OPI.

Accordingly, individuals (and listed entities) are permitted to make OPI in overseas funds which are regulated. However, most of the common jurisdictions for setting up family offices like Singapore and Delaware do not typically regulate funds, but only the fund managers. Moreover, unlisted entities are entirely prohibited from making OPI in overseas funds, whether regulated or not.

The OI Rules provide a more favourable regime for remittance into GIFT IFSC. Specifically, Schedule 5 of the OI Rules provide that any investment into pooling vehicles set up in GIFT IFSC should be treated as OPI. This makes it possible for families to either individually, or through their listed or unlisted group entities, remit funds to an FIF in GIFT by way of OPI. The FIF can then freely make global investments without being subject to FEMA restrictions. Such OPI investment by individuals should be through the LRS with a cap of USD 250,000 per individual per financial year, and a cap of 50% of net worth per financial year for listed and unlisted entities.

A summary of permissible OPI into GIFT FIFs and overseas family offices is provided in the table below:

OPI by Indian Residents	GIFT City FIF	Overseas Family Office (Fund)	
		Regulated	Unregulated
Indian resident Individual	☺	☺	☹
Unlisted Indian Entity	☺	☹	☹
Listed Indian Entity	☺	☺	☹

B. FIFs by Non-Residents

FIFs set up in the GIFT IFSC are not only a means for Indian residents to invest their capital overseas. FIFs may also be set up by persons resident outside India, including Non-Resident Indians ("**NRIs**"), Overseas Citizens of India ("**OCIs**") and foreign nationals.

The fact that FIFs are considered non-residents under FEMA allows for an unrestricted flow of capital between overseas jurisdictions and GIFT City. This provides non-resident families the freedom to set up and capitalize FIFs in GIFT City without being subject to FEMA restrictions that would otherwise govern the flow of capital into India. It also means that returns earned by the FIF can be freely repatriated from GIFT City to the overseas jurisdiction in which the non-resident family members live.

A unique advantage available to FIFs set up and capitalized entirely by non-residents is the ability for such FIFs to invest not just globally, but also into India. While this is not an option available to FIFs set up and / or capitalized by resident Indians (due to round-tripping concerns), an FIF pooling non-India sourced money may invest in India through investment routes available under FEMA (i.e. Foreign Portfolio Investment ("**FPI**"), Foreign Direct Investment ("**FDI**"), Foreign Venture Capital Investment ("**FVCI**"), External Commercial Borrowing ("**ECB**"), etc.).

In fact, specifically with respect to funds in GIFT City registered as FPIs, SEBI has allowed for increased participation in such FPIs by NRIs, OCIs and resident Indian individuals ("**Permitted Investors**"). The current regulatory framework for all FPIs (other than those set up in the GIFT IFSC) only allows up to 50% aggregate participation of Permitted Investors in FPIs. SEBI's recent circular allows up to 100% participation by Permitted Investors in FPIs set up in the GIFT IFSC. This relaxation should permit non-resident families to invest in listed securities under the FPI route through an FIF set up in the GIFT IFSC, which they would otherwise be unable to do through an FPI set up in any other offshore jurisdiction.

The unrestricted flow of funds between offshore jurisdictions and GIFT IFSC, combined with its proximity to the Indian market and cost advantages over other popular hubs like Singapore and Dubai, can make the GIFT IFSC an attractive jurisdiction for non-resident families to set up their investment funds.

IV. Key Income-tax Considerations

Unlike other private equity funds set up under the FM Regulations, the taxation of an FIF is not governed under Section 115UB of the ITA, which grants pass through status to all qualifying funds regardless of legal form. Instead, an FIF's taxation is determined by whether it is set up as a trust, LLP or company. For example, in the case of an FIF set up by an Indian resident family and investing entirely in offshore portfolio investments, if the FIF is set up as a fixed interest trust, contributions made to the trust by investor beneficiaries as well as distributions from the trust to its investor beneficiaries should be tax exempt. Capital gains earned by the FIF should be taxed in the hands of the trustee as a representative assessee of the investor beneficiaries in the same manner and to the same extent as such income would have been taxed in the hands of the relevant investor beneficiary.

If the FIF is instead set up as an LLP, long term capital gains earned by the FIF should be taxable at the rate of 12.5% (plus applicable surcharge and cess); however, subsequent distributions to partners should be tax exempt. Accordingly, in both the trust and LLP structures there should be only one level of tax (ie. in the hands of the FIF itself, and not on further distribution to family members).

By comparison, typically offshore family offices are also structured in jurisdictions which provide for only one layer of taxation — generally, at the time of distribution from the family office to the Indian family members (or their group companies). When such distribution is in the nature of dividends or short-term capital gains (where shares are held for less than 24 months) the income should be taxable at the relevant income slab rates of the individuals (or corporate tax rates for entities). Distributions in the form of long-term capital gains (where shares are held for 24 months or more) should be taxed at 20% (plus applicable surcharge and cess).

IFSCA's light-touch regulatory framework for FIFs, coupled with foreign exchange provisions which promote investment into IFSC funds and a tax regime comparable with popular offshore jurisdictions has made GIFT IFSC into an appealing jurisdiction for Indian families who want access to global markets. However, considering the many nuances of both the FM Regulations as well as India's foreign exchange regulations, it becomes critical to ensure that an appropriate structure is designed with respect to the FIF itself as well as how it will be funded from India.

Conclusion

The government and all the regulatory agencies have been working in unison to enable the GIFT IFSC to offer business and a 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 IFSC 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.[1] In addition, India is one of the fastest growing economies in the world. It is regarded as one of the most attractive destinations for foreign investment. India's appeal 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 the GIFT IFSC in India.

Having said the above, notably, the GIFT IFSC 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 Government has mustered tremendous effort to boost the development of the GIFT IFSC, it has not achieved significant popularity yet. However, the recent tax and regulatory clarifications / relaxations should provide a stimulus for further development of the GIFT IFSC in India and enable bringing back of financial services and transactions that are currently carried out in offshore jurisdictions to India. This should also generate significant employment in the GIFT IFSC as well as the financial sector in India as a whole. Further, appropriate utilization and allocation of land should also provide an immediate boost for business activities in the GIFT IFSC. The establishment of IFSCA to act as a single window for regulating activities in the GIFT IFSC should help build investor confidence through consistency, transparency and clarity in policy measures.

There clearly lies a lot of business potential in the GIFT IFSC. Given that India has been late to enter the IFC regime, a collaborative effort from both the Government and industry should help GIFT City reach its intended heights.

1 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.

Annexure 1

Steps to Set Up an Entity in the GIFT IFSC

The following are the steps required to be undertaken to set up an entity in the GIFT IFSC:

1. **Obtain Provisional Letter of Allotment from a Developer for an office space in GIFT IFSC ("PLOA")**
2. **Incorporate the entity (i.e., company/ LLP) using the address in the PLOA ("GIFT IFSC Entity") and obtain PAN**
3. * **GIFT IFSC Entity applies for Unit SEZ approval with the Development Commissioner ("DC") of GIFT SEZ**
4. * **GIFT IFSC Entity applies for registration with IFSCA under the relevant IFSC regulation**
5. **Attend (virtually) Unit Approval Meeting ("UAM") held by DC** (usually the UAM happens twice a month, but this is subject to availability of the DC)
6. **SEZ Unit Approval Granted**
7. **IFSCA approval granted (subject to SEZ Unit approval)**
8. **Execute bond cum legal undertaking ("BLUT") and submit with the DC**
9. **Obtain all required corporate registrations (i.e., RCMC, GST, IEC, Eligibility Certificate, etc.)**
10. **Operations can commence after GIFT IFSC Entity establishes the requisite:**
    - i. **Infrastructure** (i.e., office fittings, electricity, etc.)
    - ii. **Employees**
    - iii. **Assets** (i.e., equipment, laptops, etc.)
    - iv. **WiFi**

* Steps 3–4 may be done in parallel, however.

Annexure 2

Amendments Made to the Companies Act, 2013 for Companies Incorporated in the GIFT IFSC

1. Financial year: Under Section 2(41), the financial year of a private company set up in the GIFT IFSC ("**IFSC Company**") which is a subsidiary of a foreign company may be same as the financial year of its holding company without separate approval of the NCLT.

2. Company nature: Under Section 3(2), an IFSC Company is permitted to operate only as a company limited by shares — companies limited by guarantee or unlimited companies are not permitted.

3. Name: An IFSC Company should have suffix as "International Financial Service Company" or "IFSC" as part of its name. IFSC Entities cannot use only the typical 'Private Limited' suffix.

4. Objects: The memorandum of association of an IFSC Company should state the company's object as being to (i) undertake financial services activities as permitted under the SEZ Act and Rules and (ii) act in accordance with the license to operate as granted by IFSC centre located in an approved multi services Special Economic Zone

5. Registered office ("**RO**"):

   a. IFSC Companies must have their RO at IFSC located in GIFT IFSC, where they are licensed to operate at all times.

   b. IFSC Companies have 60 days to furnish details of their RO to the Registrar of Companies ("**RoC**") from the date of their respective incorporation, as opposed to the 30 days given to private companies set up in India. This relaxed timeline applies to subsequent change of address of RO as well.

   c. IFSC Companies require the approval of board of directors by way of a board resolution to shift their registered office from one location to another, even within the GIFT IFSC.

6. Authentication of documents, proceedings and contracts: An IFSC Company's board may authorise an external person/consultant to represent and authenticate/execute documents & contracts on its behalf, in addition to KMP, officer and employee typically allowed.

7. Exemption from Sections 42 (3) and (7): These exemptions allow IFSC Companies to simultaneously float multiple private placement offers rather than wait for the completion of an earlier offer before floating a new offer for private placement of securities.

   Additionally, IFSC Companies do not need to maintain PAS5 or file it with the RoC.

8. Timeline to allot shares extended up to 90 days: In the case of private placement of securities, an IFSC Company is permitted to allot securities up to a period of 90 days from date of receipt of subscription amount. In case of non-IFSC Companies, the timeline is 60 days from date of receipt of subscription amount.

9. Different timelines for issuance of certificates: IFSC Companies have a common 60 days' time period for delivering/issuing certificates of all securities to the subscribers for incorporation/ allotment/transfer/ transmission. This is different from non-IFSC Companies, which have different timelines for issuance of incorporation/allotment certificates, transfer or transmission, endorsement and issuance of debenture certificate, each.

10. Extension of time for charge registration: IFSC Companies, upon application, may be granted an extension of 300 days to register a newly created charge, subject to payment of the appliable additional fees. This is a significant relaxation from non-IFSC Companies which may only be granted an extension of 30 days.
11. Relaxation of timeline in filing the declaration of creation of beneficial interest: IFSC Companies may take up to 60 days to file declarations of creation of beneficial interest (from receipt of such declaration) with the RoC, as opposed to the 30 days afforded to non-IFSC Companies.
12. Inapplicability of Section 92 (3): IFSC Companies do not need to upload a copy of their annual return on their website (if any). Further, the web-link of such annual return is not required to be disclosed in the board's report of such companies.
13. EGMs are permitted to be conducted outside India: IFSC Companies (irrespective of whether they are wholly owned subsidiaries of a foreign entity or not) are allowed conduct Extraordinary General Meetings ("EGMs") at any place within or outside India by obtaining consent for the same from all the shareholders. This is a considerable relaxation from non-IFSC Companies, which may only conduct EGMs outside India if the Indian company is a wholly owned subsidiary of a foreign entity.
14. Timeline to file certain resolutions (incl. special resolutions) and agreements is extended up to 60 days: IFSC Companies have 60 days to file prescribed resolutions and agreements in eform MGT14 with the RoC, as opposed to non-IFSC Companies which have 30 days to do the same.
15. In-applicability of Section 118(10): The Secretarial Standards as notified by ICSI for conducting board and shareholders meetings are not applicable to IFSC Companies.
16. Relaxation on the Board's report disclosures: IFSC Companies are not required to disclose information prescribed under Section 134(3) in their Board's report if such information already forms a part of the financial statements.
17. Corporate Social Responsibility ("CSR") Relaxations: IFSC Companies are not subject to CSR provisions for a period of 5 years from the date of commencement of their respective business.
18. Internal audit related exemptions: IFSC Companies can choose not to comply with internal audit requirements under Companies Act, 2013 by having an express provision to that effect in their Articles of Association.
19. Appointment of auditor: IFSC Companies have 30 days to intimate the RoC of appointment of statutory auditor, as opposed to the 15 days granted to non-IFSC Companies. Additionally, the limitation of the maximum term for appointment of an auditor prescribed under Section 139 does not apply to IFSC Companies.
20. Removal of auditor: The Central Government has 60 days to confirm the removal of the auditor of an IFSC Company upon its application. The removal will be deemed to be approved upon the expiry of the 45-day period, allowing the IFSC Company to appoint a new auditor at a general meeting convened within 3 months from the date of expiry of those 60 days.
21. Resident director related relaxation: IFSC Companies do not need to appoint a resident director in their first financial year and are required to do so only from subsequent financial years.
22. Nominee director related relaxation: Irrespective of whether the articles of association provides for it or not, IFSC Companies can have on its board the nominee directors appointed by institution or company or body corporate as per any law or under an agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company. Non-IFSC Companies can also have such nominee directors however, subject to their articles.

23. Additional time for filing of appointment of directors/KMPs: IFSC Companies have 60 days to file eform DIR-12 for the appointment of directors/KMPs to be filed with the RoC. Non-IFSC Companies only have 30 days to make this filing.

24. Board meeting related relaxation: IFSC Companies may conduct their first board meeting within a period of 60 days from their date of incorporation and must conduct at least one board meeting in each half of a calendar year. This is a relaxation from non-IFSC Companies which must hold their first Board meeting within 30 days of incorporation and must hold a minimum of 4 board meetings in every calendar year with a gap between 2 consecutive meetings not exceeding beyond 120 days.

25. Board can exercise its powers by passing circular resolutions: For certain matters/powers specified in Section 179, in case of non-IFSC Companies, the board has to exercise those powers/approve those matters only by passing the resolutions at the meeting and not through resolutions passed by circulation. However, in case of IFSC Companies, the board can choose to exercise these powers by passing the circular resolutions as well.

26. Relaxation from Section 186(1): This provision restricts a company from making investment through not more than two layers of investment companies. This does not apply to IFSC Companies.

27. Restriction under Section 186(2) and the disclosure norms under Section 186(3) will not apply to IFSC Companies: IFSC Companies are simply required to pass the board resolution either in a meeting or through circulation for making investing/extending loan/guarantee/security of any limits, and do not need to obtain shareholders' approval on crossing threshold limit.

28. Section 186 (5) requires the board to pass a resolution for making investment/loans/guarantee/ security and such resolution need to be approved by all the directors at a meeting. However, for IFSC Companies, such unanimous approval of the board of directors can be obtained either in a meeting or through circular resolution.

29. Exemptions granted under Section 384 (2) and (4): IFSC Companies have the same exemptions with respect to annual return (Section 92) and registration of charge (Section 82) as applicable to the foreign entities having place of business in GIFT IFSC.

Annexure 3

Specific Direct Tax Incentives for IFSC Structures Other than Funds

A. Securities Listed on an IFSC Exchange

i. 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.

ii. 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 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. The withholding tax on such interest income in respect of monies borrowed by it from a source outside India as referred above shall apply at the rate of 9% on issue made after July 1, 2023.

iii. 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 rate of 12% and 20%, respectively, irrespective of payment of securities transaction tax.

iv. 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 notified[1] 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 and derivatives are hereinafter collectively referred to as “**Specified Securities**”.

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

B. Offshore Banking Units (OBU) in the IFSC

Exemption of any income accrued or arisen to, or received to the investment division of OBU from tax: Under Section 10(4E) of the ITA, exemption of any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an OBU located in IFSC from tax, subject to the following conditions:[2]

- The OBU holds a valid registration certificate under the relevant IFSC regulations;
- The non-deliverable forward contracts are not entered into by the non-resident through its PE in India.

C. Aircraft Leasing

i. Tax holiday on income arising on transfer of aircraft or aircraft engine by a aircraft leasing unit located in IFSC to a domestic company engaged in the business of operation of aircraft, before such transfer subject to condition that the Unit has commenced operation on or before the March 31, 2025;

ii. Under Section 10(4H), exemption of any income of a non-resident or a unit of an IFSC (engaged primarily in the business of leasing of an aircraft) from transfer of equity shares of a domestic company being a unit of an IFSC (engaged primarily in the business of leasing of an aircraft) subject to condition that the latter Unit has commenced operation on or before the March 31, 2026;

iii. Under Section 10(4F), exemption of any income of a non-resident by way of royalty or interest, on account of lease of an aircraft in a previous year, paid by a unit of an IFSC if the unit (i) is eligible for deduction under the Section 80LA of the ITA for that previous year; and (ii) has commenced its operations on or before the March 31, 2025.

iv. Under Section 10(34B) of the ITA, exemption of dividend income of an IFSC unit primarily engaged in the business of leasing of an aircraft (“**Payee**”) from another IFSC unit primarily engaged in the business of leasing of an aircraft (“**Payor**”).

v. Correspondingly, no deduction shall be made on dividends paid[3] as referred under Section 10(34B), provided that the following conditions are satisfied: [4]

   - Payee furnishes a declaration to the payor that dividend income received was eligible for exemption;
   - Payor does not deduct tax after receiving such statement from the payee, and furnish a statement in the prescribed format detailing the payments on which tax has not been deducted to the income tax authority.

2 Notification G.S.R. 514(E), dated 17th July, 2023 [CBDT Notification No. 50 of 2023], available at: https://incometaxindia.gov.in/communications/notification/notification-50-2023.pdf.

3 Section 194 of the ITA requires deduction.

4 Notification S.O. 3254E, dated 20th July, 2023 [CBDT notification No. 52 of 2023], available at: incometaxindia.gov.in/communications/notification/notification-52-2023.pdf.

vi. No deduction of tax shall be made on lease rental payments (as would be ordinarily required under Section 194-I of the ITA) made by a person (“**lessee**”) to a person being an IFSC unit (“**lessor**”), provided that the following conditions are fulfilled: [5]

- Lessor furnishes a declaration to the lessee detailing the deductions claimed under Section 80LA in the previous years (of the opted 10 years of tax benefit);
- Lessee shall not decuct tax after receiving the declaration and furnish a statement in the prescribed format detailing the payments on which tax has not been deducted to the income tax authority; and
- The rental payments are with respect to the previous year corresponding to the 10 year period for which tax holiday is availed.

D. Ship Leasing

i. Tax holiday on income arising on transfer of ship which was leased by a Unit located in IFSC subject to condition that the Unit has commenced operation on or before the March 31, 2025;

ii. Exemption of any income of a non-resident by way of royalty, on account of lease of a ship in a previous year, paid by a unit of an IFSC if the unit has commenced its operations on or before the March 31, 2025.

E. Income Received from IFSC Capital Market Intermediaries

Exemption for income received by a non-resident from activities notified by the Central Government: Section 10(4G)(ii) provides an exemption for any income received by a non- resident from activities notified by the Central Government. The Central Government has notified activity of investment in a financial product by such non-resident in accordance with a contract entered into with a capital market intermediary, being an IFSC unit. The income from such investment should be received in the account of the non-resident maintained with the Offshore Banking Unit of such International Financial Services Centre. Financial product has been defined to mean:

- Securities;
- Contracts of insurance;
- Deposits;
- Credit arrangements;
- Foreign currency contracts other than contracts to exchange one currency for another that are to be settled immediately.

5 Notification S.O. 3451€, dated 1st August, 2023 [CBDT notification No. 57 of 2023], available at: https://incometaxindia.gov.in/communications/notification/notification-57-2023.pdf.

F. Income Received by non-resident from IFSC Portfolio Managers

Section 10(4G) provides an exemption for any income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an IFSC OBU, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

G. Income from Offshore Derivative Instruments or Over-the-Counter Derivatives

Section 10(4E) ITA exempts any income which accrues or arises to or is received by a non-resident as a result of (i) transfer of non-deliverable forward contracts, offshore derivative instruments or over-the-counter derivatives entered into with an offshore banking unit ("**OBU**") of an IFSC from tax; and (ii) any income distributed from such OBU (subject to the OBU having already paid tax under Section 115AD on such income).

Annexure 4

Summary of Eligibility Criteria for Accredited Investors

Accredited investors are classified as such in GIFT IFSC based on the following criteria:

A. Individuals, Sole Proprietorships, One Person Companies and any other legal form comprising of only a natural person

1. Income criteria: Annual gross income in the preceding financial year not less than USD 200,000, with a reasonable expectation of reaching similar income level in the current financial year; **or**
2. Net Assets Criteria (to be based on an individual's financial position on a date not older than 6 months) — Net assets not less than USD 1 Million, where the primary residence value not included, and at least USD 500,000 in financial assets, which may including:
   - Demand and time deposits with banks and financial institutions in IFSC, India, or foreign jurisdictions.
   - Investments in capital market products as per specified Circular.
   - Any other product specified by the Authority.

   The above-mentioned Income Criteria and Net Asset Criteria together referred to as "**Eligibility Criteria**").
3. Joint Investment Criteria: In case of joint investments by (i) parent(s) and their child(ren), or (ii) spouses, such investments may be considered to have been made by Accredited Investors if the following conditions are met:
   - In case of (i) — at least one person should independently fulfill the eligibility criteria and such person should be responsible for the investment decisions
   - In case of (ii) — combined income/ net worth should meet the eligibility criteria

B. Partnership Firms

1. Partner Criteria: Each partner independently meeting applicable Eligibility Criteria; **or**
2. Net Worth Criteria: Net worth should not be less than USD 5 Million and the person(s) responsible for managing trust assets meet the applicable Eligibility Criteria.

C. Body Corporates (Including LLPs)

1. Net Worth Criteria — Net worth not less than USD 5 Million; **or**
2. Constituent Criteria — All constituents independently meeting applicable Eligibility Criteria.

   Here, constituents means shareholders in case of a company, partners in case of a limited liability partnership, etc.

D. Trusts

1. Beneficiary Criteria — Each beneficiary meeting applicable Eligibility Criteria; **or**
2. Net Worth Criteria — Net worth not less than USD 5 Million and the person(s) responsible for managing trust assets meet the applicable Eligibility Criteria.

Entities Deemed as Accredited Investors are as follows:

1. Government and Government-Related Investors:
   - Central banks, sovereign wealth funds, or agencies of India and foreign jurisdictions.
   - Entities controlled or at least 75% owned, directly or indirectly, by such Government and Government-related investor(s).
2. Multilateral Agencies, Supranational Agencies, or Similar International Organizations;
3. University Funds, Pension Funds and Provident Funds:
   - Set up in IFSC, India, or foreign jurisdiction.
4. University related Endowments:
   - Of such universities that have been in existence for more than five years.
5. Investment Schemes and Funds:
   - Venture Capital Schemes, Restricted Schemes, Retail Schemes, Exchange Traded Funds, and Investment Trusts in IFSC.
   - Schemes or funds in India or foreign jurisdictions, regulated with no single investor holding more than 33% beneficial interest.
6. Family Investment Funds and Regulated Vehicles:
   - Family investment funds in IFSC.
   - Similar regulated vehicles in India or foreign jurisdictions.

7. Licensed/Authorized Entities by IFSCA or Financial Sector Regulator:

   A body corporate or entity, acting on its own account or on account of Accredited Investor clients, which is licensed, authorized, recognized, or registered by IFSCA, or permitted by a financial sector regulator, as any of the following,

   - Banking unit
   - Finance company or finance unit
   - Fund management entity
   - Stock exchange
   - Depository
   - Clearing corporation
   - Custodian
   - Investment bank
   - Investment adviser
   - Debenture trustee
   - Broker dealer
   - Clearing member
   - Credit rating agency
   - Depository participant
   - Global regional corporate treasury center
   - Insurance offices
   - Any other entity specified by the Authority.

Annexure 5

Snapshot of Requirements for FMEs in IFSC

The FM Regulations provide the following with respect to FMEs:

SN	Parameter	Authorised FME	Registered FME (Non-Retail Funds)
1	**Legal form**	Company, LLP, or Branch thereof. FME operating as branch structure to comply with additional requirements.	
2	**Schemes**	▪ Venture Capital Schemes ▪ Family Investment Fund	▪ Venture Capital Schemes and Restricted Schemes
3	**Permissible activities**	▪ Managing schemes investing in start-ups or early-stage ventures through Venture Capital Scheme. ▪ Managing Family Investment Fund investing in securities, financial products and such other permitted asset classes	▪ Managing Venture Capital and Restricted Schemes investing in securities, financial products and such other permitted asset classes; ▪ Portfolio Management Services (including for multi-family office); ▪ Investment manager for Investment Trust (REITs and InvITs) offered under private placement; ▪ All activities permitted for Authorised FMEs.
4	**Minimum net worth**	▪ USD 75,000	▪ USD 500,000
5	**Minimum experience**	▪ Sound track record and general reputation of fairness and integrity in all its business transaction ▪ Employ such employees who have relevant experience.	
6	**Other requirements**	▪ The FME, its principal officer, directors/ partners/ designated partners, key managerial personnel and controlling shareholders shall fulfil the requirements of being fit and proper, at all times ▪ Fulfilment of necessary infrastructure requirements	
7	**Minimum number of directors**	NA	NA
8	**Minimum number of KMP**	1 principal officer	2 KMPs — 1 principal officer and 1 compliance and risk manager

Annexure 5

SN	Parameter	Key Managerial Personnel		
9		**Principal Officer**	**Compliance and Risk Manager**	**Fund Manager**
	Types of FME	▪ Authorised FME ▪ Registered FME (Non-Retail), and ▪ Registered FME (Retail).	▪ Registered FME (Non-Retail) and ▪ Registered FME (Retail)	▪ Only Registered FME (retail).
	Duties	▪ Responsible for overall activites of the FME, including but not limited to fund management, risk management and compliance	▪ Responsible for monitoring regula-tory compliance, and ensuring suitable risk management policies and practices are in place ▪ Redressal of investor grievances	▪ Responsible for fund management
	Experience	▪ A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, law, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognised by the Central Government or any State Government or a recognised foreign university or institution or association; or a certification from any organization or institution or association or stock exchange which is recognised/ accredited by Authority or a regulator in India or Foreign Jurisdiction; and ▪ Experience of at least five years in related activities in the securities market or financial products including in a portfolio manager, broker dealer, investment advisor, wealth manager, research analyst or fund management.		
	Substance	▪ The KMPs shall be based out of the IFSC. ▪ The proposal on the portfolio composition shall be initiated by a person who is based in office of the FME in the IFSC. ▪ Other personnel commensurate to the size of operations and activities of the FME to be appointed.		

Annexure 6

Snapshot of Requirements for Schemes in IFSC

The FM Regulations provide the following with respect to FMEs:

SN	Parameter		Venture Capital Schemes	Restricted (Non-Retail)
1	**Corpus**		Min — USD 5 million Max — USD 200 million	USD 5 million
2	**Structure**		Only close ended schemes	Either open ended or close ended
3	**Minimum tenure** (closed-ended)		3 years	1 year
			Extension of close ended scheme up to 2 years permissible with 2/3rd investors' approval. Further extension beyond 2 years may be considered subject to express consent of investors and exit opportunity shall be provided to remaining investors.	
4	**Minimum number of investors**		Max. 50	Max. 1,000
5	**Minimum investment amount** for eligible investor		USD 250,000	USD 150,000
6	**Minimum investment amount** for employees / directors of AIF or employees / directors of manager of AIF		USD 60,000	USD 40,000
	Investment restrictions	Start-ups	At least 80% of AUM in investee companies incorporated for less than 10 years	NA
		In Associated Entities	Permissible, subject to prior approval of 75% investors in the scheme by value	
		Diversification	NA	
		In Unlisted Entities	NA	Open-ended: Max 25% of the corpus Closed-ended: NA

Annexure 6

SN	Parameter	Venture Capital Schemes	Restricted (Non-Retail)
7	**Minimum manager / sponsor commitment** (in form of investment and not by waiver of management fees)	Close ended scheme with targeted corpus of less than USD 30 million: ▪ Minimum: 2.5% of targeted corpus, ▪ Maximum: 10% of targeted corpus Close ended scheme with targeted corpus of more than USD 30 million: ▪ Minimum: USD 750,000, ▪ Maximum: 10% of the targeted corpus Open ended scheme with targeted corpus of less than USD 30 million: ▪ Minimum: 5% of targeted corpus, ▪ Maximum: 10% of targeted corpus Open ended scheme with targeted corpus of more than USD 30 million: ▪ Minimum: or USD 1,500,000, ▪ Maximum: 10% of targeted corpus	
8	**Exemption from continuing interest by FME**	▪ Consent of at least 2/3rd of the investors by value; or ▪ at least 2/3rd of the investors are accredited investors; or ▪ the scheme is a fund of fund investing in a scheme with similar requirements	
9	**Computation and disclosure of NAV**	▪ Yearly ▪ Within 1 month of end of FY	▪ Open ended: Monthly ▪ Close ended: Half yearly
10	**Leverage**	Permissible, subject to disclosure in the PPM and comprehensive risk management framework	
11	**Co-investment**	Permitted, subject to certain conditions	

Annexure 6

The fee schedule for registration as an is provided below:

SN	Parameter	Fee (USD)
1	Application fee	2,500
2	Registration fee for Authorised FME	5,000
3	Registration fee for Registered FME (Non-Retail)	7,500
4	Registration fee for Registered FME (Retail)	10,000
5	Registration fee for Family Investment Fund	15,000
6	Fee for filing placement memorandum / offer document of a Venture Capital Scheme	7,500
7	Fee for filing placement memorandum / offer document of a Category I Alternative Investment Fund	7,500
8	Fee for filing placement memorandum / offer document of a Category II Alternative Investment Fund	15,000
9	Fee for filing placement memorandum / offer document of a Category III Alternative Investment Fund	22,500
10	Retail Scheme	22,500

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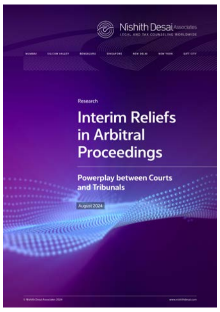

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