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Law Decoded for *Entrepreneurs*

Regulatory Framework of the Gujarat International Financial-Tech (GIFT) City: A Primer



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Glossary of Terms

Term	Description
AIFs	Alternate Investment Funds
BUs	Banking Units
DTAs	Domestic Tariff Areas
FEMA	Foreign Exchange Management Act, 1999
GIFT	Gujarat International Financial Tech City
GIHCs	Global In-House Centres
IAs	Investment Advisers
IFSC	International Financial Services Centres
IFSCA	International Financial Services Centres Authority
IIOs	IFSC Insurance Offices
INR	Indian Rupees
IRDAI	Insurance Regulatory Development Authority of India
KYC	Know-Your-Customer Norms as prescribed by the Reserve Bank of India
MIIs	Market Infrastructure Institutions
NBFCs	Non-Banking Financial Companies
PFRDA	Pension Fund Regulatory and Development Authority
PMLA	Prevention of Money Laundering Act, 2002
RBI	Reserve Bank of India
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
USD	United States Dollar



VCUs	Venture Capital Undertakings
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Introduction

The current mobility of financial investments by potential institutions and individual investors into different jurisdictions is contingent on several factors, one of which is the overall restrictions on entry to the jurisdiction itself. Several countries have adopted various strategies to boost foreign investment into their domestic enterprises and boost the overall entry of foreign currency denominated transactions. As a result, different innovations have also emerged with respect to promotion and most importantly, sustenance of foreign investment, with the most prominent example being setting up of Special Economic Zones (**SEZs**). In such physically demarcated areas, specific activities are given exemptions from various financial barriers such as tax holidays and simultaneous support from the Government, thereby enabling enhanced or increased Foreign Direct Investment.

The Government of India has taken a strong step further by focussing on the activity of investment itself through the identification and development of a physical location in Gujarat with a wide range of benefits being granted to such investors alongwith the support services. This area, termed as the Gujarat International Financial Tech City (**“GIFT City”**) is proposed to operate under the guise of International Financial Services Centres (**“IFSCs”**), similar to its other jurisdictional counterparts of New York, Tokyo, London and Singapore. GIFT City through IFSCs, focuses on liberalizing the mobility of funds by promoting banking, financial and capital markets centric activities. GIFT City was established in 2015 with the aim of becoming the Indian destination for foreign investment funds, supported by state-of-the-art infrastructure facilities and the best support services.

GIFT City has been the focal point of subsequent financial budgets announced by the Central Government providing a wide range of tax and other financial benefits to investors taking the route of investment by establishing their physical presence in India at GIFT City. In order to match the pace of the growing promotion of GIFT City, the relevant regulators such as the Reserve Bank of India (**RBI**), Securities and Exchange Board of India (**SEBI**) and the Insurance Regulatory and Development Authority of India (**IRDAI**) released and updated multiple regulations pertaining to IFSCs. These regulations and the requisite permissions, approvals and licenses under then have become the key framework applicable to establishing and operating the financial entities in GIFT City. This IFSC Framework, however, is a part of the overall SEZ Framework, including the SEZ Act, 2005 and the SEZ Rules, 2006. Section 18 of the SEZ Act, 2005 gives the Government the power to establish certain IFSCs in these SEZs. GIFT City is also demarcated as a multi-level SEZ offering developed cutting-edge support infrastructure to the IFSC units.

Therefore, there are primarily two sets of entities that can operate in GIFT City, first is through establishing an IFSC unit, with the only limitation with respect to it being the type



of activity and its respective regulator. The other support service activities are covered under the GIFT SEZ, with the process of establishment and authorization being granted by the respective Development Commissioner. ***As of March 2021, GIFT City is operational with twelve Indian leading banks, one foreign banking unit and two international exchanges set up clocking in foreign currency transactions exceeding USD 25 Billion and a daily average trading volume of USD 4 Billion.*** The GIFT IFSC has been ranked third in the Global Financial Services Index 22 and is anticipated to complete its current development projects by 2025.

The following Primer is an attempt to explain the set of regulations, focussing more on the IFSC Unit framework and the respective regulatory norms of the RBI and SEBI. The primer will also explain the increased incentives given to the various types of investors, the application formats and the relevant documentation required for properly establishing and operating enterprises in GIFT City.



Composition and Powers of the IFSC Authority

The primary regulator of the financial units in the IFSC area of GIFT City is the IFSC Authority, established and functioning under the **IFSC Authority Act, 2019**. The primary role of this authority is to **regulate financial product and service providers in the IFSC** by creating regulations and working with existing regulators such as the RBI, SEBI and IRDAI. The other important provisions of the IFSC Authority Act are the definitions of financial services and financial products, the composition of the Authority and the powers of the Authority.

The **definition of financial services** includes:

- a) Buying, selling, or subscribing to a financial product,
- b) Acceptance of deposits;
- c) Safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
- d) Effecting contracts of insurance;
- e) Offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
- f) Exercising any right associated with a financial product or financial service;
- g) Establishing or operating an investment scheme;
- h) Maintaining or transferring records of ownership of a financial product;
- i) Underwriting the issuance or subscription of a financial product;
- j) Providing information about a person's financial standing or creditworthiness;
- k) Selling, providing, or issuing stored value or payment instruments or providing payment services;
- l) Rendering or agreeing to render advice on or soliciting for the purposes of buying or selling financial products or providing any of the abovementioned services.

Consequently, the definition of financial products includes securities, contracts of insurance, credit arrangements, deposits, foreign currency contracts other than contracts to exchange one currency for another that are to be settled immediately; and any other product or instrument that may be notified by the Central Government from time to time. Therefore, any corporate entity engaging in business involving the above set of services can apply as an IFSC Unit to the IFSC Authority.

The composition of the IFSC Authority represents the dynamic inclusion of all possible regulators, with there being one member nominated each by the RBI, SEBI, IRDAI and the Pension Fund Regulatory and Developmental Authority. Other members are the Chairperson appointed by the Central Government, two members from the Ministry of Finance and two other members appointed by the Central Government on the recommendation of the Selection Committee. The Selection Committee so referred shall consist of such members as constituted by the Central Government in the prescribed manner. The Chairman and the additional two members nominated by the Central Government will act as whole-time members of the IFSC Authority. The members so

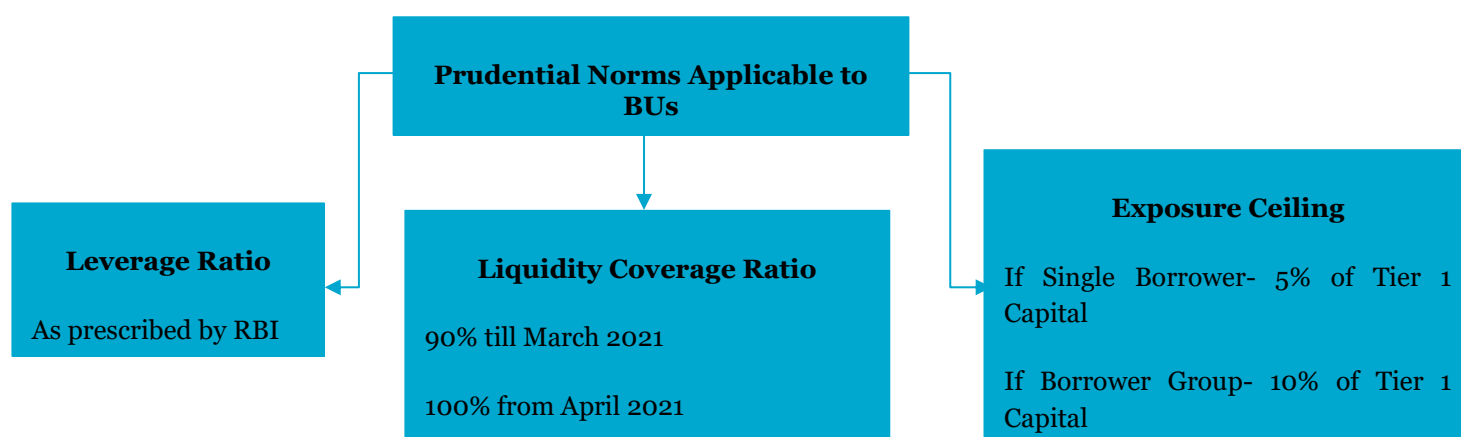


appointed shall be persons of ability, integrity and standing having knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which in the opinion of the Central Government is useful to the authority.

Examples of the exercise of the regulatory powers of the IFSC Authority can be showcased by the multiple notifications passed by the Authority pertaining to the registration and operating conditions of IFSC Units, which are as follows:

1. International Financial Services Centres Authority (Banking) Regulations, 2020

- 1.1. The primary purpose of this Regulation is to provide the framework for establishing and operating **Banking Units in the IFSC**, along with the relevant prudential norms to be followed. The setting up of a Banking Unit requires a license from the IFSC Authority under these regulations, which can be granted to both Indian and Foreign banks provided certain conditions are satisfied with at the time of application, which can only be made by the Parent Bank. First the Parent Bank has to showcase that it can provide a minimum capital of USD 20 Million, which has to be unimpaired and maintained at all times. Second, the Parent Bank has to furnish a no-objection certificate granted by its home regulator, which in the case of Indian Banks is the RBI, stating that it can establish a BU in the IFSC. Third, an undertaking has to be provided by the Parent Bank stating that it will provide liquidity to the BU whenever required by it.
- 1.2. If the IFSC Authority cannot grant a license to the applicant, it will provide the applicant with the reasons for declining the license and 30 days' time to rectify the application. Each Parent Bank is allowed to set-up only one BU in an IFSC.
- 1.3. The BUs are exempted from maintaining any Cash Reserve Ratio and the Statutory Liquidity Ratio, excluding the deposits raised from Qualified Individuals and Resident Individuals which is subject to certain restrictions as and when they are notified by the IFSC Authority. For the purposes of IFSCs, a Qualified Individual/Resident Individual means an individual resident outside of India/ or of India having a net worth of not less than USD 1 million or equivalent in the preceding financial year, which is to be determined in a manner as and when notified by the IFSC Authority.





- 1.4. With respect to the operations of these BUs, the currency for conducting business is supposed to be freely convertible foreign currency. The BUs are permitted to open, hold and maintain foreign currency accounts with Qualified Individuals, Corporate Entities or institutions which are resident inside and outside of India. Qualified Resident Individuals are also permitted, however the transactions contemplated and maintenance of capital/ current accounts is supposed to be as per the Liberalized Remittance Scheme of the RBI. Cash transactions in foreign currency are not permitted by the IFSC Authority for BUs.
- 1.5. In further definition of Financial Services and Products under the IFSC Authority Act, the **following financial activities are permissible**:
- a) Lend in the form of loans, trade finances and acceptances, commitments and guarantees, carry out credit enhancement, credit insurance, and sale and purchase of portfolios;
 - b) Undertake inter-bank borrowings and lending, investments, including subscribing, acquiring, holding, underwriting or transferring securities or such other instruments, as may be specified by the Authority, as principal or agent;
 - c) Extend Post-Shipment Export Credit in foreign currency, or engage in factoring and forfaiting of export receivables, subject to the guidelines specified by the Authority;
 - d) Undertake equipment leasing, including aircraft leasing;
 - e) Participate in derivative transactions:
 - i. enter into over the counter derivative contracts for its asset liability management requirements;
 - ii. undertake over the counter derivative contracts for its own account or for its corporate or Qualified Individual clients;
 - iii. transact in Interest Rate and Currency Derivatives in INR, with settlement in foreign currency, listed on a Stock Exchange;
 - iv. undertake derivative or forward contracts in gold for hedging its gold investments;
 - v. offer non-deliverable currency contracts involving INR, or otherwise, to persons resident outside India and Banks in India having presence in the IFSC.
 - f) Operate as a Foreign Portfolio Investor:
 - i. If the Parent Bank of a Banking Unit is registered with Securities and Exchange Board as a Foreign Portfolio Investor, such Banking Unit may carry on activities as a Foreign Portfolio Investor in the IFSC without any separate registration requirement from the Authority but subject to filing an intimation with the Authority in the form and manner as specified by the Authority;
 - ii. If the Parent Bank of a Banking Unit is not registered with Securities and Exchange Board, such Banking Unit may carry on activities as a Foreign Portfolio Investor in IFSC after obtaining registration from the Authority in the form and manner as specified by the Authority;
 - iii. Such Foreign Portfolio Investor may offer Segregated Nominee Account Structure for routing orders of foreign investors;
 - g) Function as a trading member for trading in interest rate or currency derivatives or as a professional clearing member for clearing and settlements in any derivative segment;



- h) Offering Portfolio Management services to person resident either inside or outside of India;
 - i) Offering Investment Advisory services to person resident either inside or outside of India.
- 1.6. The BUs are also mandated to follow the Know Your Customer guidelines issued by the RBI, following the reporting requirements as per the Prevention of Money Laundering Act, 2002 and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. There are certain provisions which are yet to be elaborated through notification by the IFSC Authority such as reporting requirement of certain information by the BUs and maintenance of books of accounts, records and documents. The BUs, however are permitted to maintain certain rupee accounts for administrative and statutory expenses. In case of any default of these regulations by the BUs, the IFSC Authority may take any action it may deem fit, which may include the suspension of the license granted to the BU.

2. International Financial Services Centres Authority (Global In-House Centres) Regulations, 2020

- 2.1. As per these regulations, the term “Global In-House Centres” refers to those entities providing **support services either directly or indirectly** for carrying out a financial service in respect to a financial product to the following non-residential financial institutions:
- a) Banks
 - b) NBFCs
 - c) Investment Banks
 - d) Insurance and Re-insurance Companies
 - e) Funds
 - f) Brokerage Firms
 - g) Stock Exchanges
 - h) Financial Intermediaries
 - i) Depositories
 - j) Custodians
 - k) Clearing Houses
- 2.2. These GIHCs are permitted to set up a unit under the IFSCs provided they satisfy two criterias. First, they must exclusively cater to its financial services group where the entities are located in Financial Action Task Force (“**FATF**”) compliant jurisdictions and second, the support services should be for the purpose of a financial service for a financial product. If the IFSCA is satisfied with the GIHCs, then it will grant registration to the GIHCs. In the process of doing so, the IFSCA may ask for additional information, and it will not reject any application without giving the potential GIHC an opportunity to be heard.
- 2.3. The GIHCs are permitted to offer services to non-residential entities only, with certain exception for those entities which have relocated their supervisory staff to India, as



long as the said number of personnel does not exceed 20% of the total workforce. The GIHCs are permitted to only conduct transactions in freely convertible foreign currency, with INR being used only for administrative and statutory expenses. The GIHCs are required to comply with the reporting requirements as and when they are notified by the IFSCA, however, such reporting is to be done only in USD, unless otherwise specified. The IFSCA has the power to revoke the registration of the GIHCs in case of non-compliance with the regulation or take any action it may deem fit.

3. International Financial Services Centres Authority (Bullion Exchange) Regulations, 2020

3.1. The following regulations have been adopted to **regulate bullion exchange and clearing corporations** which may operate through a business unit in the IFSC. The Regulations provide for the mandatory requirement of registration by these two entities with the IFSCA and have to satisfy the following criteria:

- a) Be a company limited by shares;
- b) Be demutualized, meaning ownership of the applicant is segregated from the trading and clearing rights;
- c) Have a net worth of 30 million USD, to be maintained on a continuing basis;
- d) Have its directors and its shareholders, who hold or intend to hold shares, be fit and proper;
- e) Satisfy the requirements relating to ownership and governance structure specified in these regulations;
- f) Have requisite capability including its financial capacity, functional expertise and infrastructure.
- g) Have the necessary infrastructure for the orderly execution of trades;
- h) Have an online screen-based trading system;
- i) Have an online surveillance capability which monitors positions, prices and volumes in real time so as to ensure market integrity;
- j) Have the adequate infrastructure to list bullion depository receipts for trading on its platform, if applicable;
- k) Have the necessary capability to have a comprehensive network of trading members and has adequate facility to admit and regulate its members;
- l) Have the necessary arrangements to establish connectivity with its trading members and bullion clearing corporation;
- m) Have an adequate Consumer Education and Protection Fund;
- n) Have a consumers' grievance redressal mechanism and arbitration mechanism to resolve disputes arising out of trades and its settlement;
- o) Have a facility to disseminate information about trades, quantities and quotes in real time to at least two information vending networks which are accessible to consumers;
- p) Have an adequate systems' capacity supported by a business continuity plan including a disaster recovery site to ensure fair and equitable access;
- q) Have in its employment, sufficient number of persons having adequate professional and other relevant experience.



- 3.2. At the time of application for registration to the IFSCA, the governing body of either the bullion exchange or clearing corporation must submit details mentioning the constitution, powers of the management and the office bearers, member admission procedure, and the requisite bye-laws. Based on the information submitted, the IFSCA will grant the registration provided the bye-laws comply with the criteria mentioned above and the registration will be subjected to renewal after a time period to be notified by the IFSCA. The IFSCA may also provide for certain additional regulations and requirements pertaining to the entities which will also have to be complied with in order to sustain the registration.
- 3.3. For Bullion Exchanges, the IFSCA mandates that a proper written agreement must be entered into between the Exchange and the Bullion Clearing Corporation in compliance with a format to be notified by the IFSCA and shall also include the settlement of disputes through an arbitration mechanism.
- 3.4. The Regulations also provide for a proper list of functions which can be exercised by a Bullion Exchange, which are as follows:
- a) regulating the bullion contracts;
 - b) regulating the working of the bullion trading members, and such other intermediaries who may be associated with the bullion exchange;
 - c) establishing and enforcing good delivery standards;
 - d) prohibiting fraudulent and unfair trade practices in the bullion market;
 - e) promoting consumers' education and training of intermediaries of bullion market;
 - f) calling for information from, undertaking inspection, conducting inquiries and audits of the bullion trading members, intermediaries and other persons associated with the bullion exchange;
 - g) levying fees or other charges for carrying out the purposes of this regulation;
 - h) setting standards of quality, quantity and other parameters and means of verification of such standards;
 - i) setting standards for vaulting and transport of bullion.
- 3.5. For bullion clearing corporations, since at the time of registration, the bye-laws of the corporations are checked by the IFSCA, the payment and settlement of transactions are to be undertaken in accordance with the netting or grossing procedure prescribed in the bye-laws. The bullion clearing corporation also have the right to recover from clearing members under the settlement functions the collateral, assets and deposits of the clearing members on a priority basis over any other claim.
- 3.6. There are certain general conditions imposed on the two entities with respect to their shareholding patterns. For Bullion Exchanges, if in case they are operating through a subsidiary or through the main entity in the IFSC, the Bullion Exchange must itself control 51% of the equity shareholding. For the remainder of the shares, there are two limits set, first is of 5% for individuals and second of 15% for financial institutions, with the second limit being subject to Central Government approval. The Exchange must ensure that all the shareholders are fit and proper, put into position monitoring mechanisms that ensure compliance with the shareholding limit, ensure timely record keeping and make disclosures to the IFSCA. The Bullion Exchange must seek the



approval of the IFSCA for any individual which may gather voting rights for shareholding exceeding the 5% threshold.

3.7. The Exchange and Clearing Corporation, both, are required to ensure that their Board of Directors comply with the Code of Conduct prescribed by the IFSCA, a compliance officer is appointed and the following statutory committees are constituted:

- a) a functional committee, comprising of member and core settlement guarantee fund committee;
- b) a grievance redressal committee;
- c) a nomination and remuneration committee;
- d) an oversight committee, comprising of standing committee on technology;
- e) an advisory committee;
- f) a regulatory oversight committee;
- g) audit committee;
- h) a risk management committee.

3.8. Apart from the above governance compliances, the Exchange is required to create a Consumer Education and Protection Fund, the manner of which will be notified by the Authority. The Clearing Corporation is required to set up a Fund for Guarantee of Settlement of Trades, to whom the exchange, clearing corporation, trading and clearing members will contribute to and will be relied upon in the event a clearing member fails to meet their obligations. Both the Exchange and Clearing Corporation are required to put into place policy framework ensuring equal, transparent, and unrestricted access to all persons without any bias being exercised by their associates.

3.9. The Regulations also provide for the mandatory requirement of registration of Bullion Depositories, the criteria contingent on the depository having the following:

- a) net worth of not less than 15 million USD, on a continuous basis;
- b) bye-laws and legal documents are consistent with the objective of the bullion depository and for protection of the interest of consumers;
- c) entered into an agreement with a vault manager which has necessary infrastructure, standards, for safe storage of bullion and its security;
- d) established standards of encrypted transmission and reconciliation mechanisms for electronic communications of data between the bullion depository, participants, issuers and issuers' agents;
- e) the physical or electronic access to the premises, facilities, automatic data processing systems, data storage sites and facilities including back up sites and facilities and to the electronic data communication network connecting the bullion depository, participants, issuers and issuers' agents is controlled, monitored and recorded;
- f) made adequate arrangements including insurance for indemnifying the beneficial owners for any loss that may be caused to such beneficial owners by the wrongful act, negligence or default of the bullion depository or its participants or agents or of any of their employees.

3.10. All bullion depository receipts are required to be maintained in a dematerialized format, with the Depository having the obligation to register the name of the transferee



after receiving intimation of transfer of the depository receipt. These receipts must contain the following particulars:

- a) Bullion depository receipt number;
- b) vault registration number and date up to which it is valid;
- c) name of the vault and its complete postal address;
- d) name and address of the depositor;
- e) date of issue of the bullion depository receipt;
- f) statement that the bullion received shall be delivered to the beneficial owner thereof;
- g) rates of storage charges and handling charges;
- h) description of the bullion with particulars of quantity and grade;
- i) market value of the bullion at the time of deposit;
- j) private marks of depositor on the bullion, if any;
- k) name of the insurance company indemnifying for fire, flood, theft, burglary, misappropriation, riots, strikes or terrorism;
- l) date and signature of the vault manager or his authorised agent;

3.11. The Depositories are considered to be the registered owner for the purposes of effecting the transfer for the actual beneficial owner, the details of such beneficial owners being recorded in the form of an index in a proper register by the Depository. In case of any negligent or wrongful act, the Depository shall be responsible for the damages and loss caused to the bullion and shall indemnify the beneficial owner for the same.

3.12. The three main entities mentioned, the Exchange, Clearing Corporation and Depository are required to submit an annual net worth certificate obtained from their statutory auditor to the IFSCA. These three entities are required to maintain a website where they publish their bye-laws and any information required to be disclosed to the public under these regulations as well. They are also required to maintain books of record in a format to be prescribed by the IFSCA and pay a regulatory fee to the IFSCA which is also to be notified.

4. International Financial Services Centres Authority (Finance Company) Regulations, 2021

4.1. The following regulations cover those financial entities **which are not Banking Units yet provide the same type of financial activities** as described under the IFSCA Act, referred to as a Finance Company. These regulations also apply to Financial Units, which are the branches of financial institutions established as per the provisions of these regulations. The IFSCA categorizes three types of activity which the Finance Company or Unit can undertake, first is Permitted Specialized Activities, second is Permitted Core Activities and lastly Permitted Non-Core Activities. The current list of activities prescribed in the regulations are as follows:

Table 1.1: Activities undertaken by the Finance Company or Unit

Permitted Specialised	Permitted Core Activities	Permitted Non-core Activities
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Activities		
Credit enhancement	Lend in the form of loans, commitments and guarantees, securitisation, and sale and purchase of portfolios	Merchant Banking;
Factoring and forfaiting of receivables	Undertake investments, including subscribing, acquiring, holding, or transferring securities or such other instruments, as may be permitted by the Authority	Authorised person
any other specialised activity as may be permitted by the Authority.	Undertake equipment leasing	Registrar and Share Transfer Agent
	Carry out financial lease transactions for aircraft lease and ship lease	Trusteeship Services
	Buy or Sell derivatives	Investment Advisory Services
	Global/Regional Corporate Treasury Centres	Portfolio Management Services
		Distribution of mutual fund units
		Distribution of insurance products
		Function as trading and clearing members or professional clearing member of exchanges and clearing corporations set up in IFSC
		Transactions permitted under the Framework for Aircraft Operating Lease, as specified by the Authority
		Transactions permitted under the Framework for Ship Operating Lease, as may be specified by the Authority
		Asset Management support services permitted under the Framework for Enabling Ancillary Services as specified by the Authority

4.2. The Finance Company or Unit are also eligible to undertake aircraft lease transactions, which are to be in conformity with the Cape Town Convention and Protocol. In case the Company or Unit intend to carry out either single or multiple non-core activity, it must ensure that these are conducted through separately identifiable departments, maintain a firewall between this and other departments so as to ensure no conflict of interest and create a Board policy for any consumer grievance redressal. The Company or Unit can engage with non-residents and residents of India, subject to the provisions of FEMA. The Company or Unit are not allowed to engage in any speculative transactions.

4.3. The IFSCA imposes a mandatory requirement of a certificate of registration for the purposes of setting up and operating a Finance Company or Unit. The Finance Company or Unit can be set-up either as a Joint Venture or as a newly incorporated company as per the Companies Act, 2013. In case the services provided are one or more non-core activities, then the form of entity can also be a LLP or a Trust. The ultimate parent company or the investing entity must be engaging in a regulated financial activity and must to furnish a no-objection certification from the said domestic regulator at the time of registration. The parent company/ investing entity must also be from a FATF Compliant jurisdiction and ensure adherence with the international standards for money laundering by the FATF.



4.4. The final requirement for registration is that the Finance Company or the Parent of the Finance Unit must ensure that they maintain a **Minimum Owned Fund** of the value corresponding to the proposed activities to be undertaken as prescribed in the table 1.2 below:

Table 1.2: Minimum Owned Fund Requirement

S. No.	Activity	Minimum Owned Fund Requirement
1.	Undertaking only operating lease transactions for aircraft lease	USD 0.2 Million or equivalent amount in any other freely convertible currency
2.	Undertaking one or more of the non-core activities.	USD 0.2 Million or equivalent amount in any other freely convertible currency or any such amount as may be required to seek specific registration for a proposed non-core activity.
3.	Undertaking to act as facilitators of core activities as and when permitted by the Authority	
4.	Undertaking any of the permissible activities, if operating without customer interface.	
5.	Undertaking one or more core activities with or without non-core activities.	USD 3 Million or equivalent amount in any other freely convertible currency.
6.	Undertaking specialised activities with or without core or non-core activities.	USD 5 Million or equivalent amount in any other freely convertible currency.

Here the term “Owned Fund” is calculated on the basis of the paid-up-capital and free reserves balance in share premium account and capital reserves representing surplus arising out of sale proceeds of assets, as reduced by accumulated loss balance, book value of intangible assets and deferred revenue expenditure.

4.5. In case the application for obtaining the registration certificate is rejected by the IFSCA, the applicant must be informed the reasons for rejection and be provided with 30 days time period to rectify the said mistake. In the process of doing so, the IFSCA can also grant provisional registrations to the Finance Company or Units as well, which may be revoked as per the directions of the IFSCA.

4.6. The prudential regulations and the liquidity coverage ratio (maintained on a stand-alone basis) are yet to be notified by the IFSCA. However, the Finance Company or Unit are required to maintain a minimum Capital Ratio of 8% of its regulatory capital to its risk-weighted assets. The two entities are also required to maintain an exposure ceiling of not more than 25% of their available eligible capital base, which can be exceeded on IFSCA approval. If in case the Company or Unit is engaged with the activities prescribed in S. No 1 to 4 of the Table 1.2, then they are exempted from these requirements, provided that they can submit a prudential policy approved by their Board of Directors and comply with any such criteria to be notified by the IFSCA.



- 4.7. The Company or Unit have to prescribe with the same KYC norms and PMLA provisions applicable to BUs, as mentioned in Paragraph 1.6 above. The Company or Unit must ensure that all their transactions are in freely convertible foreign currency and that their balance sheets are maintained only in USD. They are however allowed to maintain a separate INR account for the purposes of administrative or statutory expenses.
- 4.8. The Company or Unit are required to be in adherence with the Corporate Governance guidelines to be notified by the IFSCA, and ensure that in case of any mergers, acquisitions, takeover, change in control or any resulting change of more than 20% of the total share capital are subject to the approval of the IFSCA. If in case the Company or Unit is engaged with the activities prescribed in S. No 1 to 4 of Table 1.2, then they are exempted from these requirements, provided that they can submit a prudential policy approved by their Board of Directors and comply with any such criteria to be notified by the IFSCA.

5. International Financial Services Centres Authority (Market Infrastructure Institutions) Regulations, 2021

- 5.1. Similar to the Bullion Exchange regulations, the IFSCA has also prescribed certain regulations for **stock market exchanges, clearing corporations and depositories**, collectively referred to Market Infrastructure Institutions/MIIs. An important legislation referred to in these Regulations is the Securities Contract (Regulations) Act, 1956, specifically relying on the charter documents required by the MIIs mentioned in the legislation. There are primarily three sets of requirements to be complied with, first are the general requirements, second are the shareholding requirements and lastly the net worth requirement of USD 3 Million to be maintained at all times.
- 5.2. The **general requirements** for both a stock exchange and a clearing corporation are as follows:
- a) the applicant is a company limited by shares;
 - b) the applicant is demutualised;
 - c) the applicant, its directors and its shareholders who hold or intend to hold shares, are fit and proper persons as specified in these regulations;
 - d) the applicant satisfies the requirements relating to the ownership and governance structure specified in these regulations;
 - e) the applicant satisfies the net worth requirements specified in these regulations;
 - f) the applicant satisfies the requisite capability including its financial capacity, functional expertise and infrastructure.

There are also certain **additional requirements** to be complied with by the MIIs, which are listed as follows:

Table 1.3: Additional Requirements to be complied by MIIs

Stock Exchange	Clearing Corporations	Depositories
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Necessary infrastructure for the orderly execution of trades	Necessary infrastructure to ensure timely clearing and settlement of trades	Satisfaction of net-worth requirements specified in these regulations
Online screen-based trading system	Adequate risk management mechanism	The bye-laws and legal documents are consistent with the objective of the depository and protecting the interest of investors
Online surveillance capability which monitors prices, volumes and positions in real time so as to ensure market integrity	Settlement procedure including netting, novation and guarantee for settlement of trades in place, which is in accordance with the manner specified by the Authority	Automatic data processing systems with protection against unauthorised access, alteration, destruction, disclosure or dissemination of records and data;
Adequate infrastructure to list securities for trading on its platform, wherever applicable	Capacity to establish a fund to guarantee settlement of trades	A network through which continuous electronic means of communications are established between the depository, participants, issuers and issuers' agents secured against unauthorised entry or access
Necessary capability to have a comprehensive network of trading members and has adequate facility to admit and regulate its members	Necessary capability to have a wide network of clearing members and has adequate facility to admit and regulate its members	Standard transmission and encryption formats for electronic communications of data between the depository, participants, issuers and issuers' agents
Necessary arrangements to establish connectivity with its trading members and clearing corporation	Connectivity with the depositories, clearing banks, stock exchange and clearing members	Physical or electronic access to the premises, facilities, automatic data processing systems, data storage sites and facilities including back up sites and facilities and to the electronic data communication network connecting the depository, participants, issuers and issuers' agents is controlled, monitored and recorded
Adequate investor grievances redressal mechanism and arbitration mechanism to resolve disputes arising out of trades and its settlement	Adequate systems' capacity for on-line/real time risk management of trades cleared and settled and is supported by a suitable business continuity plan including a disaster recovery site	Detailed operations manual explaining all aspects of its functioning, including the interface and method of transmission of information between the depository, issuers, issuers' agents, participants and beneficial owners
Facility to disseminate information about trades, quantities and quotes in real time to at least two information vending networks which are accessible to investors	Sufficient number of persons' in its employment having adequate professional and other relevant experience to the satisfaction of the IFSCA	Adequate procedures and facilities to ensure that its records are protected against loss or destruction and arrangements have been made for maintaining back up facilities at a location different from that of the depository
Adequate systems' capacity supported by a business continuity plan including a disaster recovery	Necessary arrangements for grievance redressal and dispute resolution arising out of clearing and settlement	Adequate arrangements including insurance for indemnifying the beneficial owners for any loss that may



site	of trades	be caused to such beneficial owners by the wrongful act, negligence or default of the depository or its participants or of any employee of the depository or participant
Sufficient number of persons in its employment having adequate professional and other relevant experience	Agreement with a depository and with a recognised stock exchange in respect of clearing and settlement of the trades	

5.3. Based on the above general and additional requirement, the IFSCA may grant registration to the applicant for a permanent period of one year subject to timely renewal based on further compliance with the regulations. An example of such further compliance is the shareholding requirement for these MIIs as stated in Table 1.4 below.

Table 1.4: Shareholding Requirement for MIIs

Stock Exchange	Clearing Corporations	Depositories
A minimum of 26% of the total shareholding has to be maintained by a recognized stock exchange in India or a Foreign Jurisdiction, or	A minimum of 26% of the total shareholding has to be maintained by a recognized stock exchange or a clearing corporation in India or a Foreign Jurisdiction, or	A minimum of 26% of the total shareholding has to be maintained by a depository in India or a Foreign Jurisdiction, or
A consortium of MIIs located either in India, a Foreign Jurisdiction or An IFSC holding minimum 51% of the total shareholding. However, in this consortium, a recognized stock exchange (in either jurisdiction) must hold minimum 51% of the total shareholding.	A consortium of MIIs located either in India, a Foreign Jurisdiction or An IFSC holding minimum 51% of the total shareholding. However, in this consortium, a recognized stock exchange (in either jurisdiction) must hold minimum 51% of the total shareholding.	A consortium of MIIs located either in India, a Foreign Jurisdiction or An IFSC holding minimum 51% of the total shareholding. However, in this consortium, a recognized stock exchange (in either jurisdiction) must hold minimum 51% of the total shareholding.
Apart from the above, individuals residing in either India, abroad or in an IFSC are also allowed to hold shareholding provided that they must either individually or with persons acting together not hold more than 25% of the total shareholding.	Apart from the above, individuals residing in either India, abroad or in an IFSC are also allowed to hold shareholding provided that they must either individually or with persons acting together not hold more than 25% of the total shareholding.	Apart from the above, individuals residing in either India, abroad or in an IFSC are also allowed to hold shareholding provided that they must either individually or with persons acting together not hold more than 25% of the total shareholding.

The MIIs are required to have shareholding monitoring framework in place and the shareholding has to be disclosed to the IFSCA within 15 days of every quarter ending, providing the list of the ten largest shareholders and the list of shareholders having acquired shares in the said quarter. Listing of MIIs also requires the approval of the IFSCA.



- 5.4. The MIIs are required to be in compliance with the corporate governance norms as prescribed under the Principles for Financial Market Infrastructures by Committee on Payments and Market Infrastructures (**CPMI**) and International Organization of Securities Commissions (**IOSCO**). The Board of Directors of these entities are also supposed to adhere to the Code of Conduct as prescribed by the IFSCA. These entities are also required to separate their regulatory department from their other departments.
- 5.5. Like Bullion exchanges, the stock exchange is required to establish an Investor Education and Protection Fund, as prescribed by the IFSCA. The Clearing Corporations are required to establish a Settlement Guarantee Fund which is to be utilized in case any clearing member defaults in their obligation. The minimum corpus of this fund is to be either USD 1 Million or such amount determined on the basis of a monthly stress test value, whichever is higher. The stock exchanges are allowed to determine their trading hours based on a cost-benefit analysis, however the upper limit for the same is 23 hours and 30 minutes in a day and the settlement has to be done at least twice a day. The two entities are also required to have a sound risk management system in place as well in line with the CPMI and IOSCO principles.
- 5.6. The approval of the IFSCA is required for a multitude of actions by the Stock Exchange or Clearing Corporation, for example, any disbursement of profits or deployment of funds; amendment to any constitutional documentation or bye-laws, the netting and grossing procedure require the approval of the IFSCA. These two organizations are also required to maintain equal, non-discriminatory, transparent and fair access without any bias towards associate entities.
- 5.7. Additionally, the MIIs are required to maintain a website publishing information regarding their bye-laws, membership application procedure, general information about their functions and any other information they are obliged to publish under these regulations. The MIIs are also required to appoint a compliance officer, maintain and furnish returns, annual statements and particulars to the IFSCA.
- 5.8. These regulations also exempt the MIIs established in these IFSCs from complying with certain existing laws, such as the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 and the SEBI (Depositories and Participants) Regulations, 2018. It also exempts the application of Chapter 2 of the SEBI (IFSC) Guidelines, 2015 on these MIIs.



Regulations Applicable of the Reserve Bank of India on IFSC Banking Units

6. Foreign Exchange Management (IFSC) Regulations, 2015

- 6.1. These regulations which were notified by the RBI prior to the establishment and creation of the IFSCA and the IFSCA Banking Regulations offer a rudimentary understanding of three basic elements. First, is the definition of a Financial Institution, which is considered to be a company; a firm; a body of individuals not incorporated or any artificial judicial person disbursing financial services.
- 6.2. Second, is the direct categorization of all such financial institutions, now referred to as Bus, as a person resident outside of India, implying the application of multiple FEMA Regulations over a domestic entity engaging with these IFSC BUs, such as the FEMA (Transfer or Issue of Security to Person Resident Outside of India) Regulations, 2017.
- 6.3. Third is the further delegation of determining the type of business and the relevant obligations or compliances to the relevant regulators. Here apart from SEBI and the IRDA, two other regulators have also been considered such as the Forward Market Commission and the Pension Fund Regulatory and Development Authority. However, the Regulations do state that these entities have to engage in foreign currency transactions only, subject to additional provisions given by their respective regulators.

7. Scheme for Setting up of IFSC Banking Units

- 7.1. The original scheme published by the RBI on April 1, 2015 had been superseded by the IFSCA Banking Regulations, 2020 however through this Scheme, the RBI provides for the procedure and certain additional details which Indian Banks and Foreign Banks already present in India have to comply with for getting the RBIs permission. These refer to BUs as IFSC Banking Units or IBUs which will be treated at par with other Foreign banks. The permission of the RBI will be granted as per the approval procedure under Section 23(1) of the Banking Regulation Act, 1949.
- 7.2. The banks eligible under this Scheme are those private and public Indian banks permitted to deal in foreign exchange, with the limitation of only one IFSC unit being allowed to be set-up. These IBUs have to maintain a capital of USD 20 Million or in any other currency of equivalent value. The IBUs are exempted from compliance with the Credit Reserve Ratio and the Statutory Liquidity Ratio prescribed by the RBI.
- 7.3. In addition to the permitted BU activities provided for under Paragraph 1.5 above, the Scheme provides for certain additional clarifications for the purpose of the following activities.



- a) RBI has not prescribed any limit for short-term liabilities from banks. However, the IBUs must maintain LCR as applicable to Indian banks on a stand-alone basis and strictly follow the liquidity risk management guidelines issued by RBI to banks.
 - b) IBUs are not allowed to open savings accounts. They can open foreign currency current accounts of units operating in IFSC and of non-resident institutional investors to facilitate their investment transactions. They can also open foreign currency current accounts (including escrow accounts) of their corporate borrowers subject to FEMA Regulations. However, IBUs cannot raise liabilities from retail customers including high net worth individuals (**HNIs**).
 - c) No cheque facility will be available for holders of current accounts in the IBUs. All transactions through these accounts must be undertaken via bank transfers.
 - d) IBUs are permitted to undertake factoring/forfeiting of export receivables.
 - e) IBUs are allowed to open foreign currency escrow account of Indian resident entities to temporally hold subscriptions to the GDR/ADR issues until issuance of the Receipts. After GDRs/ADRs are issued, the funds should immediately be transferred to the client's account outside the IBU and cannot be retained by the bank in any form including in long term deposits.
 - f) An IBU can be a Trading Member of an exchange in the IFSC for trading in interest rate and currency derivatives segments that the banks operating in India have been allowed to undertake as per the extant RBI directions.
 - g) An IBU can become a Professional Clearing Member (PCM) of the exchange in the IFSC for clearing and settlements in any derivative segments. This shall be subject to the parent bank complying with certain prudential norms, existence of Board approved effective risk control measures and margin requirements prescribed by either the RBI or commodity brokers.
 - h) IBUs are allowed to extend facility of bank guarantees and short-term loans to IFSC stock broking/commodity broking entities subject to the provisions of the Master Circular on Statutory Restrictions on Loans and Advances.
- 7.4. Certain other clarifications provided are that the deposits of IBUs will not be eligible to be covered by the deposit insurance and the loans and advances given to the IBUs by the parent bank will not be considered as Net Bank Credit for the purposes of priority sector lending obligations.



Guidelines and Incentives by the Securities and Exchange Board of India to IFSC Units

8. SEBI (IFSC) Guidelines, 2015

- 8.1. Similar to the RBI Regulations vis-à-vis the IFSCA Banking Regulations, the IFSCA MIIs Regulations, 2021 have provided the major framework for stock exchanges, clearing corporations, depositories and intermediaries. These Guidelines however provide for certain additional clarifications and supplement the role of SEBI with respect to such IFSC operations by these MIIs and their interactions with domestic companies of India. While the eligibility criteria and requirements have been superseded by the IFSCA Regulations mentioned in Paragraph 5 above, the relevant MIIs are required to seek the approval of the SEBI as well for establishing a unit in the IFSC.
- 8.2. The first clarification provided is with respect to the issue or raising of capital by companies located in the IFSC, which is permitted provided that such issue must be in a currency other than INR. For domestic companies, they must abide with the Foreign Currency Depository Receipt Scheme, 2014 and for foreign companies they must comply with the Companies Act, 2013 and the SEBI (Issue of Capital and Depositories Requirements) Regulations, 2009.
- 8.3. IFSC entities are allowed to issue debt securities provided that the issuer is not barred by its home regulator, none of its directors have been found guilty of any economic offence and the issuer is eligible to issue debt security as per its constitutional documents. In case of private placement of debt securities, the minimum prescribed subscription amount is USD 100,000/- (US Dollars One Hundred Thousand) or equivalent currency amount. The issuer at the time of issue of debt securities must obtain a credit rating from a recognized rating agency, enter into an agreement with a depository or a custodian and ensure proper reporting of the financial statements as per IFSR/US GAAP/ IND AS reporting standards as applicable at their place of incorporation.
- 8.4. For investment into mutual funds or alternate investment funds, the investor has to comply with the following criteria:
- a) A person should either be resident outside of India or a non-resident Indian;
 - b) Institutional investors in India are eligible to invest in offshore funds under FEMA;
 - c) In case it is a person resident in India, they must have a net worth of USD 1 million in the preceding financial year and must be eligible to make offshore investments as per the FEMA regulations and the Liberalized Remittance Scheme;
 - d) All investments made must be in foreign currency only.



- 8.5. Any AIF or mutual fund in an IFSC is permitted to invest in securities listed in an IFSC, issued by companies in an IFSC or issued by foreign companies. For mutual funds, the asset management company of the fund must have a minimum net worth of USD 2 million which will be increased to USD 10 million after 3 years of operations.
- 8.6. Lastly as per a recent SEBI circular, the stock exchanges established in IFSCs are allowed to list Investment Trusts and Real Estate Investment Trusts, subject to three listing requirements. First, these Trusts must be incorporated in permissible jurisdictions as per the PMLA and any such Government notification pursuant to the PMLA. Second, these trusts must be regulated by a securities regulator in their home jurisdiction, and lastly, they must also be listed on an international stock exchange as provided below:
- a) United States of America -NASDAQ, NYSE
 - b) Japan-Tokyo Stock Exchange
 - c) South Korea- Korea Exchange Inc.
 - d) United Kingdom excluding British Overseas Territories-London Stock Exchange
 - e) France -Euronext Paris
 - f) Germany -Frankfurt Stock Exchange
 - g) Canada -Toronto Stock Exchange

9. Operating Guidelines for AIFs in IFSC

- 9.1. These Guidelines are a part of the overall framework SEBI had put into position for various other entities that may offer financial services in an IFSC and clarifies the compliance and applicability of the pre-existing Indian legislations. For AIFs, the registration procedure to operate in GIFT, for example, is the procedure mentioned in the SEBI (AIF) Regulations, 2012, with the same three-tier categorization of the AIFs being followed for these purposes as well.
- 9.2. In addition to the qualifications mentioned in Paragraph 8.4 and 8.5 above, each scheme of the AIF must have a minimum value of USD 3 million, and the minimum investment value from an investor is USD 150,000/- (USD 40,000/- in case the investor is an employee of the AIF). An AIF is also permitted to invest in other AIFs in either the IFSC or India, subject to the SEBI (AIF) Regulations.
- 9.3. For Sponsors or Managers of AIFs, they are required to have a minimum continuing interest in the AIF to the tune of 2.5% of the total fund corpus or USD 750,000/-, whichever is lower. For Category-III funds, the minimum continuing interest is 5% or



USD 1.5 Million, whichever is lower. For Angel Funds, the minimum continuing interest is 2.5% or USD 80,000/-, whichever is lower (not including the waiver of management fee). The Managers or Sponsors of existing AIFs are permitted to set up either a branch in the IFSC or establish themselves in the IFSC through incorporating a company or LLP in the IFSC. For Managers and Sponsors to be set up, they must do so either in the form of incorporating a company or a LLP in the IFSC. In case the corpus of the AIF crosses USD 70 million, the Managers or Sponsors are required to appoint a custodian registered with SEBI for the safekeeping of securities.

9.4. For Angel Funds, the minimum corpus requirement is USD 750,000/-, with the investor requirements being that an individual investor must have a minimum net worth of USD 300,000/- (excluding their residence) and a body corporate must have a minimum net worth of USD 1.5 million. These Angel Funds are required to accept a minimum investment of USD 40,000/- up to a period of 5 years. The investments by Angel Funds must not exceed USD 1.5 million and be a minimum of USD 40,000/-, and shall invest in only those venture capital undertakings having a turnover of less than USD 3.75 Million as per the DIPP Guidelines and SEBI (AIF) Regulations. The promoters of these VCU in which the Angel Funds are investing must have turnover less than USD 45 Million.

10. Operating Guidelines for Investment Advisers in IFSCs

- 10.1. These guidelines clarify the application of the SEBI (Investment Advisers) Regulations, 2013 to the IAs set up in an IFSC. These can be set-up in the form of a separate entity either as a company or as a LLP, provided that the promoters are recognized by their home regulator, which in the case of India is SEBI, for the purposes of disbursing financial services.
- 10.2. There are further qualification criteria mentioned in these regulations for the partners and representatives of the applicants, imposing the need for educational qualification in the form of degrees in finance, business management, amongst others from recognized foreign or domestic educational institutions. Also, these individuals are required to have a minimum experience of 5 years of dealing with financial products, fund management or investment advisory services. Lastly, these partners and representatives require a certification on investment advisory from a financial institution recognized by their home regulator. For individuals advising on Indian financial products, the certification must be from a National Institute of Securities Market (**NISM**) accredited institution.
- 10.3. The minimum net worth requirement for an IA Applicant is USD 1.5 Million, which in case the IA is a subsidiary, is to be maintained by the subsidiary itself. For overseas investors, the net worth certificate has to be provided by a certified chartered accountant or equivalent as per their jurisdiction along with a valid credit score. The IAs are also required to conduct internal audits and compliance checks as prescribed under the SEBI (IA) Regulations from either a chartered accountant or company secretary or equivalent designation as per the home regulations.



Brief Overview of Insurance Providers in IFSC

Apart from the regulations provided by the IFSCA, SEBI and RBI, the IRDAI has also released certain set of guidelines regarding the provisions of insurance and support services in an IFSC.

11. IRDAI (IFSC) Guidelines, 2015

- 11.1. These regulations provides the framework of setting up insurance offices in an IFSC, referred to as IIOs and draw reference and application of the Insurance Act, 1938. All Indian Insurers are eligible to set-up IIOs, and for foreign insurance companies, they must adhere to the following requirements:
 - a) They are registered or licensed for doing insurance or reinsurance business;
 - b) They have been duly authorized by their home regulator for setting up the IIO;
 - c) They have been in continuous operations during the preceding 5 years;
 - d) They have the net owned funds as prescribed by the Insurance Act and have a satisfactory track record in respect of regulatory or supervisory compliance.
- 11.2. Upon compliance with the eligibility requirement and additional conditions as prescribed by the IRDAI, the applicant may be granted a Certificate of Registration. The applicant must commence operations within 6 months of receiving the certificate. The applicant is also required to maintain an assigned capital of INR 10 Crore in Government Securities or deposits with Scheduled Banks in India at all times during the registration period.
- 11.3. The IIOs are only permitted to carry out the following activities:
 - a) Accept reinsurance business of all classes of business within the SEZ and from outside the country
 - b) Accept reinsurance business from the insurers operating in the DTA in accordance with the IRDAI Regulations on reinsurance.
 - c) Direct insurance business through underwriting specified direct insurance business of foreign jurisdictions or direct businesses. In case such direct insurance business is offered, the IIOs cannot cover business in DTAs.
- 11.4. The IIOs must comply with the KYC and Anti-Money Laundering guidelines issued by the IRDAI and the FEMA, 1999 along with the reporting requirements of financial statements and business reporting as prescribed by the IRDAI.



12. IRDAI (Registration and Operations of IIOs) Guidelines, 2017

- 12.1. In addition to the above guidelines, these Guidelines of 2017 provide for certain additional clarifications. First is classification of the business of IIOs into four categories or subclasses:
- a) Life Insurance Business
 - b) General Insurance Business
 - c) Health Insurance Business
 - d) Reinsurance Business
- 12.2. The applicant is also required to maintain a Net Owned Fund as prescribed by the Insurance Act at all times. There is an additional criterion for Indian insurers of having a satisfactory track record of regulatory compliance. Also, there are certain grounds provided for revocation or suspension of the registration certificate, such as operating in a manner detrimental to the interests of the policy holders, violation or non-compliance with any provisions of the regulations, unfair trade practices, etc. Lastly, these Guidelines of 2017 prescribe an application fee of INR 50,000 to be paid at the time of application and INR 1 Lakh as an annual fee to be paid to the IRDAI.

13. IRDAI (IFSC Intermediary Insurance Office) Guidelines, 2019

- 13.1. These regulations cover the remaining ancillary services that can be offered in the insurance business, providing the applicant, the following business categories as an options:
- a) Insurance Broker
 - b) Corporate Agent
 - c) Surveyor and Loss Assessor
 - d) Third Party Administrator- Health Services
- 13.2. The applicants must be eligible to set up an IIO and the same terms and conditions for granting the certificate of registration shall be applicable as mentioned in Paragraph 13 above. Upon grant of registration, the applicant must commence operations within 3 months of such grant.



Basic Taxation Benefits of GIFT City

The mixture of state-of-the-art infrastructure and the overlapping classification of the Special Economic Zone of Kandla, has enabled multiple incentives to be offered to financial enterprises and companies for operating from the GIFT City. The primary benefits are taxation oriented. These include a range of benefits on income tax, goods and services tax and a mixture of state subsidies for utilities, which are applicable for both investors and different business units set up. The term “business units” here refers to the IFSC Units undertaking business of banking, capital markets, insurance and information technology. These also include Non-IFSC Units which are directly established under the SEZ, which may include trading, warehousing, research and development services, call centres, data processing amongst other support services. The distinction between the two types of units emerges from the application of the benefits, contingent on the relevant approval by the regulatory authority to only the IFSC business units and the investors, as follows:

14. General Exemptions to BUs and Investors

14.1. Business Units in IFSC:

- a) Income tax:
 - i. 100% tax exemption for 10 consecutive years out of 15 years
 - ii. MAT / AMT @ 9% of book profits applies to Company / others setup as a unit in IFSC. MAT not applicable to companies in IFSC opting for new tax regime.
 - iii. From 01 April 2020, dividend income distributed by Company in IFSC to be taxed in the hands of the shareholder.
- b) Goods and Services Tax:
 - i. No GST on services –
 - ii. received by unit in IFSC,
 - iii. provided to IFSC / SEZ units or Offshore clients,
 - iv. GST applicable on services provided to DTA
- c) Other taxes duties:
 - i. State Subsidies- Lease rental, PF contribution, electricity and charges

14.2. Investors:

- a) Income tax:
 - i. Interest income paid to non-residents,
 - ii. Monies lent to IFSC units not taxable,
 - iii. Long Term Bonds & Rupee Denominated Bonds listed on IFSC exchanges taxable at lower rate of 4%



- iv. Transfer of specified securities listed on IFSC exchanges by a non-resident or Category III AIF located in IFSC not treated as transfer - Gains accruing not chargeable to tax in India,
 - v. Specified securities include Bond, GDR, Foreign currency denominated bond, Rupee-denominated bond of an Indian company, Derivatives, Unit of a Mutual Fund, Unit of a business trust, Unit of Alternative Investment Fund and Foreign currency denominated equity share of a company
- b) Exemption from Obtaining PAN
- i. In case the investor is a non-resident and does not earn any income in India other than from transfer of capital assets. These assets include capital assets listed on a registered stock exchange located in the IFSC. The investor may be required to submit their contact details, residential address details and the Tax Identification Number provided by the home regulator of the Investor.
- c) Goods and Services Tax:
- i. No GST on transactions carried out in IFSC exchanges
- d) Other taxes duties:
- i. Exemption from Security Transaction Tax, Commodity Transactions Tax, stamp duty in respect of transactions carried out on IFSC exchanges.

15. Additional Exemptions to AIFs

15.1. Apart from the benefits mentioned in general above, there are certain additional benefits provided to parties engaging with units operating as AIFs in IFSC:

a) Category I and II AIFs:

- i. Considered Tax Pass for income tax purposes (as applicable to Indian AIFs)
- ii. Income to non-residential investors from offshore investment through AIFs is not taxable in India
- iii. Non-resident investors not required to obtain PAN or file income tax returns provided that they only earn income from Category-I and II AIFs, that too the AIF has deducted tax while distributing the amount to non-residential investors.

b) Category III AIFs:

- i. Tax exemption for income received by Category III AIFs from transfer of GDRs, rupee denominated bonds of Indian company, derivatives, foreign currency denominated bond, unit of a Mutual Fund, unit of a business trust,

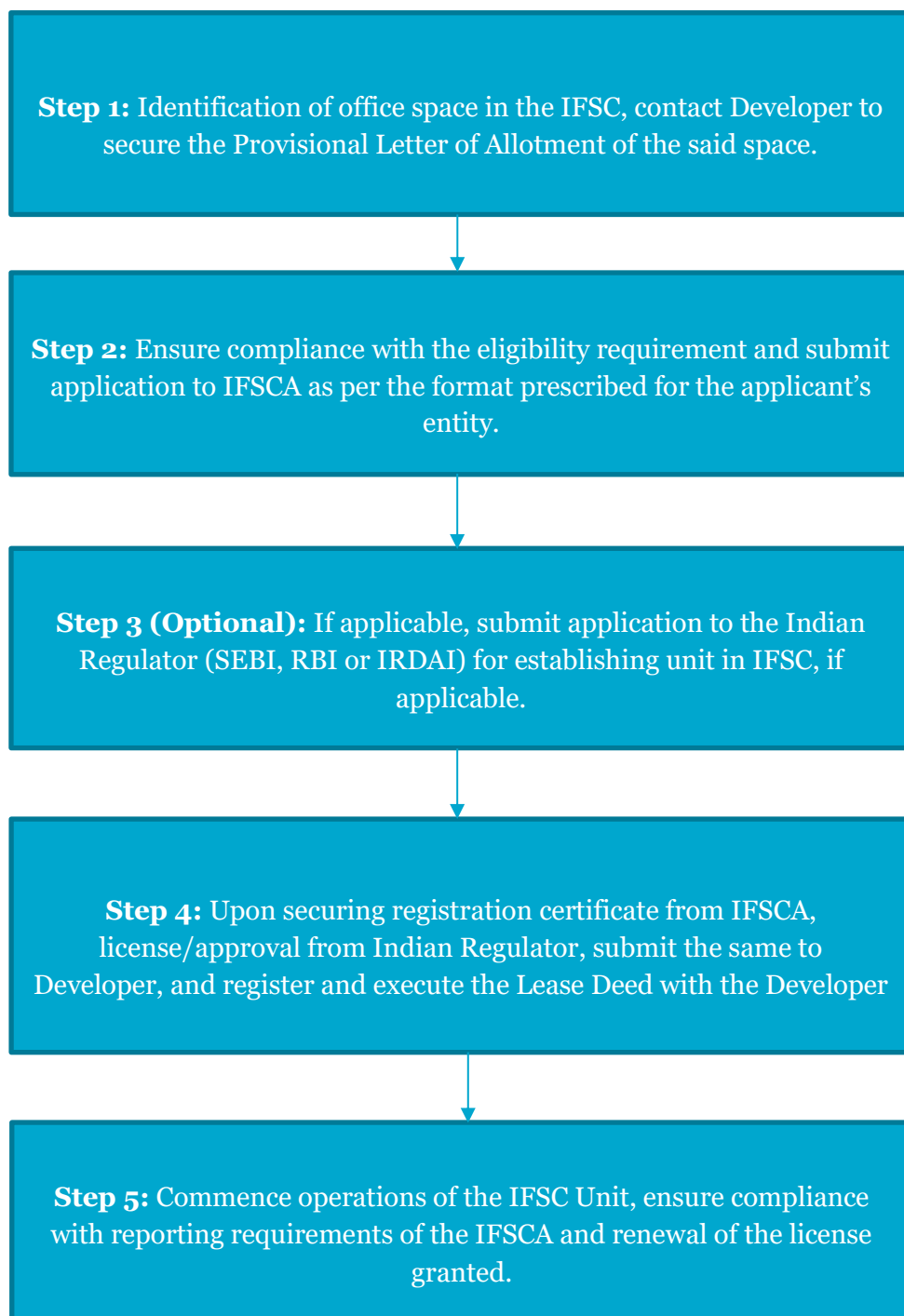


foreign currency denominated equity share of a company or unit of AIF on recognised stock exchange located in IFSC.



General Application Procedure for IFSC Units

Considering the above guidelines as a regulatory checklist, the application procedure is as follows:





Conclusion

The current trend of regulations by the IFSCA highlighted in this Primer showcases the regulatory shift emerging from a further consolidation of statutory power by the IFSCA. Prior to its establishment, each regulator such as the RBI or SEBI had in place a proper framework for reporting and requirements from the respective applicant. However, with the introduction of these new regulations, there emerges a duality of reporting until such earlier frameworks are repealed by either the IFSCA or the Regulator itself. In our understanding, this transitional period towards a single regulator may take some additional time but upon completion will offer a seamless establishment and operational experience for enterprises in GIFT City.

This transitional period, however, creates several regulatory questions and are completely dependent on the proactive approach of the IFSCA for their resolution. One such concern or question is of dispute resolution. Most of the IFSCA regulations provide for an internal alternative dispute resolution mechanism and entail an indirect push towards arbitration between the various entities operating in the GIFT IFSC. Yet the escalation matrix for any appeals from such mechanisms is something that has not been clarified in the IFSCA Act or any subsequent notifications. If the trial courts or the High Court of Gujarat are to be involved in such instances, then the appeal of “foreign territory” may be diminished as the standard concerns with the length of adjudication may arise.

The powers of the IFSCA are only limited to penalization and extend to imposing fines or cancelling recognition documentation, yet do not give the power to take any other asset-based punitive measure as compared to SEBI. There are two potential solutions that can be considered for this situation, first is the IFSCA assuming adjudicatory power as a quasi-judicial forum, enabling complaints to be filed before it regarding the actions of certain IFSC units. Second is a territorial jurisdiction-based adjudication forum to be established which may mirror the tribunal format, that is separate from the IFSCA to showcase independent functioning. In this second option, orders or decisions of the IFSCA can also be challenged and therefore a holistic, open and streamlined dispute resolution mechanism can be considered. With increasing number of stakeholders establishing operations in GIFT City, this concern may be resolved in the near future by the IFSCA.

Generally, as evident from the multitude of taxation benefits offered and the methodology of defining the relations of IFSC units with corporate enterprises in India, GIFT City is a strong initiative forwards towards channelizing foreign funds into the Indian domestic economy. Despite the pandemic and its recurring effects on the physical developmental progress, if the regulatory progress can keep up with the same pace, GIFT City will only increase its overall appeal to both foreign and domestic investors.



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