

Unwrapping the GIFT Story in India

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The Gujarat International Finance Tec-City (or GIFT City, as it is more popularly known) was accorded its international financial services centre status in 2015. Whilst it started gaining traction ever since, the Government has been working “laboriously” since the last couple of years to transform the scrubland in the Indian state of Gujarat to an avant-garde international financial services district along the lines of similar international centres.

India has so far had an almost notorious reputation for being a regulatory and fiscal quagmire and whilst measures are always in the works to disentangle the tripwires, the process of formulating legislative amendments is of course quite protracted and even once the blueprint is formulated, difficult to implement given the sheer size of the country. Slightly unsurprisingly, India continues to be ranked at 63 of 190 in terms of the Doing Business 2020 report by the World Bank – quite behind other countries in the region such as Singapore, Taiwan, Hong Kong and Malaysia.

To be able to start with as clean a slate as possible, GIFT City was set up as a bespoke haven to promote the financial services sector, which would have a clearer and more business-friendly legal framework, all with a smorgasbord of tax related exemptions and concessions. Importantly, whilst the mainland tax rules apply, GIFT City entities are entitled to a 100 per cent. tax exemption from direct taxes for 10 consecutive years out of 15 years. In addition, no goods and services tax is payable on services exchanged within GIFT City, received by an entity in GIFT City, or services provided from GIFT City to other special economic zones in India or to overseas clients. The cornerstone of GIFT City though is that it is deemed to be an “offshore” jurisdiction by the Reserve Bank of India (**RBI**, India’s central bank). In other words, investments into GIFT City are not subject to the (rather prescriptive) Indian exchange control regulations, providing unprecedented flexibility in terms of inbound investments.

This note analyses some of the key developments that have taken place (or are on the cards) stacking the odds in favour of GIFT City being seriously considered as a “beachhead” for

investments into and out of India in the coming decades.

A unified regulator – IFSCA

At the beginning, the regulations applicable to GIFT City were a mélange of circulars and notifications issued by various Indian sectoral regulatory bodies. Recognising the need to set up a unified regulator, the International Financial Services Centre Authority (**IFSCA**) was set up to subsume all the powers exercisable by the various regulatory bodies in so far as financial products and financial services in the GIFT City are concerned, while retaining only certain basic powers re corporate and tax laws with the mainland regulators. The IFSCA, at its end, has been working hard to assist in the development of the value proposition for GIFT City and is engaging with the stakeholders to iron out any creases on an almost “real-time basis”.

Sector focused reforms

Banking, capital market, asset management, insurance and fintech are some of the core financial activities that are currently being promoted within GIFT City, though the plan is for the scope of services to keep widening as much as possible!

Illustratively, in the banking space, both Indian and foreign banks can set up a banking unit in GIFT City. In fact, five of the top 10 global banks and all top 10 Indian banks have already set up shop in GIFT City. Setting up of global / regional treasury units has also been enabled. Banking units in GIFT City are also expected to be permitted to provide acquisition financing – a critical area which Indian banks have been traditionally prohibited from venturing into. Amendments are also on the anvil

to facilitate the issuance of offshore derivative instruments in respect of Indian securities by banking units in GIFT City, including removing double taxation on the income generated through such instruments.

Another activity that has gained traction is asset management. Close to 55 fund managers have already registered with the IFSCA, which includes most of the notable Indian fund managers. The fund management regime implemented for GIFT City in May 2022 is an improved upon version of the already quite sophisticated alternative investment fund regime applicable in the mainland. Tax-neutral relocation of funds from overseas jurisdictions to GIFT City has also been incorporated into the Indian tax laws accompanied by other indirect tax law related concessions. Other incentives include no caps on outbound investments (thereby enabling GIFT City to act as a funnel for Indian sourced funds investing overseas) and no diversification limits (thereby enabling funds set up in GIFT City to perform the role of an investing vehicle for global investors – something which the Government of India has been working hard to promote). The flexibility to avail subscription line financing for funds in GIFT City though is coming out to be the star attraction for the entire movement.

To encourage the development of a robust capital markets infrastructure, both Indian as well as recognised foreign stock exchanges are eligible to provide the services of a stock exchange in GIFT City. Further, companies incorporated both in GIFT City and in foreign jurisdictions are eligible to list their securities on such GIFT City based stock exchanges. In a significant move, the Indian finance minister also recently announced that Indian companies will be permitted to directly list

on a GIFT City based exchange – currently, Indian companies can raise money abroad only through the depository receipts route. Although discussions have been ongoing for several years now to allow Indian companies to list offshore but nothing of note had happened so far until the announcement to list in the GIFT City. Recently, the Singapore Stock Exchange (**SGX**) also entered into a formal agreement with National Stock Exchange (**NSE**) to operationalise the NSE IFSC-SGX Connect platform, enabling SGX members to trade in dollar-denominated Nifty futures contracts available on the SGX in GIFT City.

The IFSCA has also put in place a framework for fintech entities in GIFT City by providing a sandbox to start-ups with innovative fintech solutions to offer. It has also launched an incentive scheme providing certain eligible fintech entities to avail of various grants (including start-up, proof of concept, and listing support grants).

For the last decade or so, “offshoring” was the buzzword in the start-up community, with several India focused start-ups setting up their holding structures in global financial zones in Singapore, USA, etc. 2023, however, became the year for “onshoring” back to India with several prominent start-ups looking to return to India. To leverage this sentiment, the Indian Government now wishes for these start-ups, and others in India, to set up base in GIFT City. A recently released white paper drafted by a committee constituted by IFSCA on developing GIFT City as a hub for start-ups identified various weak links in the IFSC framework and set out a broad blueprint of legal (permitting raising of capital through means that are yet to be developed on the mainland such as SAFEs, SPACs, VCCs and listing on offshore exchanges), fiscal (tax exemptions for holding

companies in GIFT, exemption from angel tax), and other amendments (decreased personal tax rate to attract high skilled professionals from across the globe) to achieve this.

Other than the mainstream financing activities, the Indian Government has also been exploring developing GIFT City as a hub for other non-core financial services, of which the key ones are aircraft (including training simulation devices) and ship leasing – which have been notified as “financial products” under the IFSC regime. Very recently, India’s (erstwhile) flag carrier, Air India, completed the acquisition of its first aircraft by way of a finance lease transaction through GIFT City. A flurry of ancillary service providers providing accounting, legal and trusteeship services is also thriving to support the other core services.

Dispute resolution

It is well known that litigation in India is not for the faint hearted! To be truly at par with its international counterparts, it is imperative that GIFT City has its own independent dispute resolution set-up and the role of the existing (and already overburdened) Indian judiciary is limited or even excluded. Whilst there have also been talks of setting up an international arbitration centre in GIFT since last year, there has been no real development in this regard nor has the plan for setting up a separate court system of its own come about as yet. This, therefore, remains a space where various participants are adopting a “wait and watch” approach around to see how it develops.

Long way to go, but a sure-fire proposition?

As is the case with any nascent legal and regulatory regime, whilst there is a constant need to debug and course correct rules and regulations, what is promising is that new regulations are indeed being issued almost on a fortnightly basis to deal with all of this and more.

As such, geo-politically and economically it does seem that India's moment has arrived on the world stage and the development of GIFT City is likely to play a significant role in the entry routes, structures and approaches that international investors are likely to adopt in accessing a sub-continent's worth of opportunity that seemingly awaits them.

This material is for general information only and is not intended to provide legal advice.

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