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NAVIGATING GIFT CITY/IFSC REGULATORY ECOSYSTEM: THE CORPORATE AND TAX IMPLICATIONS OF SPECIAL INTERNATIONAL FINANCIAL SERVICES CENTRE LLPS

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INTRODUCTION

India has already taken steps to becoming a global financial hub by establishing Gujarat International Financial Technical-City (GIFT City) which also houses the first International Financial Services Center (IFSC) in India.[1] GIFT City is a unique regulatory and tax regime designed to make the city a compelling destination for international financial institutions, fintech firms and their associated investment funds, insurers and professional service providers, as it looks to challenge existing financial hubs like Singapore and Dubai. The Limited Liability Partnership (LLP) is one of the several business structures that have gained popularity in the IFSC because of its flexibility, limited liability and favorable tax treatment.

However, a business in LLP form within GIFT City has to deal with a specialized legal regime that is very distinct from the one that exists in the regular legal form of LLPs in mainland India. However, businesses need to be familiar with the interaction of corporate laws, industry-specific regulations and tax benefits before deciding to set up in the IFSC.

REGULATORY ARCHITECTURE OF THE GIFT CITY

[1] International Financial Services Centres Authority Act, No. 50 of 2019, § 2(g) (India).

The laws and regulations applicable to GIFT City revolve around the International Financial Services Centres Authority (IFSCA) Act, 2019.[2] The IFSCA is also given powers of the various financial regulators like the Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority of India (IRDAI), Pension Fund Regulatory and Development Authority (PFRDA), relating to the financial activities that are conducted within the IFSC, under the guise of a unified regulator.[3]

It brings a one-stop compliance mechanism and substantially minimizes the regulatory fragmentation. LLPs planning to engage in financial services will need to be registered or authorized by IFSCA based on the nature of their services, including financial services with banking support services, fund management, aircraft leasing, insurance, fintech innovation and capital market services.[4]

Apart from the compliance with IFSCA regulations, LLPs are still subject to the Limited Liability Partnership Act, 2008, Limited Liability Partnership Rules and Companies Act, 2013[5] (if applicable),[6] and other rules and regulations including anti-money laundering and foreign exchange regulations.[7]

WHY LLPS ARE BECOMING A PREFERRED STRUCTURE

The LLP structure is a partnership with the limited liability and legal identity of a company. LLPs have a lower level of compliance requirements that does not affect how the partnership is run and also partners have a significant amount of flexibility in relation to how the partnership can be run.

LLPs provide a number of strategic benefits to businesses in the IFSC:

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[2] International Financial Services Centres Authority Act, No. 50 of 2019 (India).

[3] International Financial Services Centres Authority Act, No. 50 of 2019, §§ 12–13 (India).

[4] International Financial Services Centres Authority, Framework for Authorisation of Entities in IFSC, Notification No. IFSCA/2021-22/GN/REG009 (2021).

[5] Limited Liability Partnership Rules, 2009 (India).

[6] Companies Act, No. 18 of 2013 (India).

[7] Limited Liability Partnership Act, No. 6 of 2009 (India).

- Independence of legal personality and perpetual succession.
- Limited liability for partners.
- Simplified procedure in compliance with companies.
- Flexible profit-sharing arrangements.
- Simplicity of admitting foreign partners and investors.
- Reduced incorporation and running expenses.

LLPs are becoming popular amongst professional service firms, fintech companies, investment firms, and fund management companies because of the flexibility of governance without the formalities of companies.

CORPORATE COMPLIANCE AT IFSC

While compliance for LLPs in GIFT City is comparatively simplified, they have stringent governance requirements. All LLP's are required to keep proper books of Account, return annual information to the Registrar of LLPs, keep statutory records and abide by the requirements of disclosure under the relevant legislations.

As for financial services, there are further obligations under IFSCA regulations. They can be capital requirements, fit and proper requirements for designated partners, reporting requirements, cyber security compliance, risk management and anti-money laundering (AML) requirements, and others.[8]

Foreign Exchange Management Act, 1999 (FEMA) and the regulatory measures provided by the Reserve Bank of India are also to be adhered to for the cross border transactions.[9] The compliance standards are even more important in the case of IFSC entities dealing with foreign clients and investors.

TAX INCENTIVES DRIVING THE GROWTH OF IFSCS

[8] Prevention of Money-laundering Act, No. 15 of 2003 (India).
[9] Foreign Exchange Management Act, No. 42 of 1999 (India).

The Government of India's tax-friendly regime is one of the key reasons for setting up an LLP in GIFT City. Income-tax Act has introduced several incentives to make IFSC entities competitive. Under Section 80LA of the Income Tax Act[10], the eligible businesses can avail 100% deduction of profits for a period of 15 years for the first 10 years.[11] This significantly lowers the overall tax burden in the early years of the business.

In addition, there are a number of exemptions regarding:

- Capital gains from specified transactions.
- Dividend income under certain conditions.
- Offshore derivative transactions.
- Businesses such as aircraft and ship leasing.
- Some securities transactions made with recognized IFSC exchanges.

There's a host of relief on the Goods and Services Tax (GST) framework, too. The majority of services provided to overseas clients are eligible for exemption from withholding tax, which is called zero-rated services, and will enhance the competitiveness of your business internationally.[12]

Moreover, under certain conditions, several IFSC transactions are exempt from Securities Transaction Tax (STT), Commodity Transaction Tax (CTT) and stamp duty, thus cutting down the transaction costs of financial institutions.[13]

THE OPPORTUNITIES AND EMERGING CHALLENGES

The regulatory framework for GIFT City provides unprecedented opportunities, but also new legal and operational issues. As new financial products and technologies are introduced, the

[10] Income-tax Act, No. 43 of 1961, § 80LA (India).
[11] Income-tax Act, No. 43 of 1961 (India).
[12] Central Goods and Services Tax Act, No. 12 of 2017, § 16 read with Integrated Goods and Services Tax Act, No. 13 of 2017 (India).
[13] Finance Act, No. 18 of 2004 (India); Finance Act, No. 17 of 2013 (India).

IFSCA's regulatory guidance is continually growing.[14] As a result, LLPs need to keep themselves informed of the latest changes and updates in the regulations to ensure compliance at all times.

Yet another difficulty is the conflict of the Indian law with best practices in the international arena. The IFSC's mandate is to cater for global markets and, consequently, it is essential for businesses to put in place effective governance frameworks, data protection measures, anti-money laundering controls and corporate risk management systems in accordance with the expectations of the regulators in the world.[15] Moreover, tax incentives are also subject to the condition of the legislation and are subject to periodic legislative changes.

CONCLUSION

GIFT City is one of the boldest of economic reforms in India, and one of the most exciting is becoming it as an international financial services centre. The vision is brought into reality by the LLP model which, apart from being flexible, has limited liability and offers operating efficiency with an enticing tax regime and a consolidated regulatory framework under IFSCA.

The benefits of being an entity within the IFSC, however, come with certain compliance requirements, which need to be carefully planned and monitored through the regulatory process. To form a Special IFSC LLP, the businesses must have a holistic approach and consider various aspects of corporate governance, tax planning, foreign exchange compliance and the regulatory environment for the specific sector.

[14] International Financial Services Centres Authority, International Financial Services Centres Authority (Fund Management) Regulations, 2022.

[15] International Financial Services Centres Authority, Guidelines on Corporate Governance and Compliance Frameworks.