

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
	<p>required to enter India in a time bound period for completion of registration formalities.</p> <p>We note from our discussions with stakeholders that the registration in respect of ships has been found to be cumbersome and time consuming. Further, upon acquisition of foreign ships, we understand that the requirement to ensure that such ship is brought to an Indian port within 6 months is an impediment to the ships economic activity and therefore registration in India appears to be a less attractive proposition.</p>	<p>incorporation/ registration of company, including SEZ approval, and other relevant approvals and compliances.</p> <ul style="list-style-type: none"> – IFSCA and DG Shipping may set up a dedicated help desk for IFSC financial products and services that provides prompt responses to investor/service providers’ queries including by digitization of helpdesks/ chatbots. – For provisional registration of foreign vessels, an exemption may be sought from M/o Shipping and DG Shipping to relax the mandatory requirement of bringing such ships to an Indian port within 6 months. The said relaxations shall apply to the entities registered within IFSC who are acquiring foreign ships for registration therein. The verification of the vessel can be done through Authorized Independent Inspection companies. 	
Flagging of ships	<p>DG Shipping has imposed restrictions on Indian entities flagging their vessels outside India. In a nutshell, the restrictions imposed are as follows:</p> <ul style="list-style-type: none"> (a) tonnage flagged outside India shall not exceed its tonnage owned under the Indian flag. Such tonnage will be measured in accordance with the Merchant Shipping (Tonnage Measurement of Ships) Rules, 1987 (“Indian Controlled Tonnage”); and (b) for those entities flagging vessels outside India, 50% of crew (officer/ratings combined) engaged on vessel as per safe manning document or actual deployment (whichever is higher), shall be Indian crew. Further, those operating on Indian coast or offshore fields, 	<p>DG Shipping may introduce a new category titled Indian-IFSC-controlled tonnage, offering certain relaxations to help overcome challenges and impediments in existing regime including:</p> <ul style="list-style-type: none"> (a) The company should be incorporated in India and register itself with IFSCA as a IFSC unit. (b) A Foreign company which is a subsidiary of an IFSC unit should set up and register a branch in IFSC as IFSC unit. Place of Effective Management (POEM) of foreign company should be in IFSC. (c) Indian Group companies be freely permitted to opt for either Indian flag or foreign flag of a Flag State which has not been banned by DG shipping for safety or security considerations. (Indian company as well as branch of foreign subsidiary 	DG Shipping

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
	<p>shall engage trainees, officers, cadets as per Tonnage Tax Scheme whereby training commitment shall be as per said Scheme, if applicable. If the laws of another flag state mandate minimum crew requirements, such foreign crew may be engaged to the extent required (“Crew Restrictions”)</p> <p>As per DGS Order 10 of 2014 dated July 23 2014, DG Shipping/ M/o Shipping have <i>inter alia</i> imposed restrictions relating to flagging of ships owned by Indian entities outside the country.</p> <p>This DGS Order was introduced mainly to enable Indian controlled tonnage to get access to finance and business abroad, subject to set restrictions. Given shipping industry stagnation over the last years, it has aimed to encourage growth of Indian flag tonnage, which has not kept pace with growth of EXIM trade. But the conditions imposed on Indian Controlled Tonnage, including Crew Restrictions, has caused Indian entities to move offshore to overcome such requirements.</p> <p>Basis discussions with stakeholders, Indian Controlled Tonnage and Crew Restrictions make the Indian market uncompetitive as compared to other jurisdictions. Most Indian entities prefer setting up offshore to freely acquire vessels.</p>	<p>together shall herein after be referred to as “Indian Group Companies”.)</p> <p>(d) Crewing and flag requirement to be mandated by IFSCA/ DG Shipping only if Indian Group Companies are involved in India imports-exports or India coastal trade/ Offshore fields. Refer to long form of the Report for conditions.</p> <p>(e) Indian tonnage registered in DTA zone may wish to register under IFSC regime. Indian-flagged vessels to be considered for transition to IFSC regime, provided that</p> <ol style="list-style-type: none"> a. Vessel is presently deployed in global cross trades (not carrying Indian origin or destination cargoes) or falls in the category of a specialised vessel (for research and exploration, etc.) b. Vessel size is 15,000 dwt or more c. Vessel age is not more than 15 years <p>(f) De-boarding, port clearances and immigration clearances of foreign crew on such vessels when they touch any Indian port shall be as per applicable instructions of DG Shipping.</p> <p>This will be a new category of vessels to be separately registered under DG Shipping, distinct from India-controlled tonnage category, and should be treated accordingly. As a result of allowing such units to opt for a flag of their choice, M/o Shipping and DG Shipping requirements of such units from complying with DG Order 10 of 2014 in so far as Indian Controlled Tonnage and Crew Restrictions are concerned will not be applicable.</p>	
Licensing Requirements	Chartering of both Indian and foreign vessels for the purpose of Indian trade is governed by mechanism set out by MSA and DG Shipping vide	In respect of ROFR Circular, M/o Shipping and DG Shipping may take the following into consideration when ROFR is exercised:	DG Shipping

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
	<p>various circulars issued from time to time. As per Section 406 and 407 of MSA, a license would have to be obtained from DG Shipping for chartering Indian and foreign vessels for coastal trade. Further, vide DGS Circular No. 02 of 2021 dated 14 January 2021 (“ROFR Circular”) rules on right of first refusal were introduced for favouring <i>inter alia</i> Indian built and owned ships.</p> <p>Ship chartering requires a license from DG Shipping, subject to scope of chartering activities not falling within exemptions set out in notifications/ office orders issued by DG Shipping. Further, in view of ROFR Circular, priority in licensing is given to ships which are Indian owned, Indian flagged and Indian built over foreign ships.</p> <p>Basis the discussions with stakeholders, it is seen that such licensing requirements are time consuming and cumbersome. Such license takes 2 to 3 days, which is commercially uncompetitive.</p>	<p>(a) If DTA India flagged vessel is L1 in bidding, then tender be awarded to it and no ROFR is given for IFSC vessels.</p> <p>(b) If IFSC India flagged or IFSC foreign flagged vessel is L1 in bidding, then tender be awarded to IFSC vessel by waiving ROFR for India DTA vessels. This waiver will not apply to until 01 April 2023, without extension as it will erode the competitiveness of GIFT City entities vis-à-vis foreign players.</p> <p>(a) If a Foreign flag vessel is L1, tender be awarded as per existing ROFR and price preference. IFSC flagged vessels may participate in ROFR; however, if DTA Vessel matches the L1, then tender be awarded to DTA Vessel, failing which tender may be awarded to IFSC-flagged vessel. IFSC Vessels do not get right to price-linked subsidy/ preference.</p> <p>(b) IFSC unit could contract DTA India-flagged vessels for participating in tenders.</p> <p>Provided however that if an IFSC Unit is participating in the tender, then it’s overseas parent, if any, cannot participate in it. Related parties cannot participate simultaneously in it.</p>	
Import of bulk cargo	By virtue of OM No. SC-18013/1/2013-ASO-I dated 8 Sept 2015, PSUs need to obtain a no-objection certificate (“ NOC ”) from DG Shipping, and seek approval of administrative ministry concerned to engage in import of bulk cargoes and importing of bulk cargoes, both dry and liquid, will have to be made on FOB/ FAS basis.	<ul style="list-style-type: none"> – PSUs to set up ‘freight desk’ operations at IFSC-GIFT for all chartering requirements – Requirement of waiver by two Ministries to be replaced by a confirmation by freight/operational desk of PSU set up in IFSC that the freight terms offered by seller are more competitive with those obtained by PSU. 	PSUs / DG Shipping
Monitoring mechanism on payments/ dues of	Compliances of ships with IMO/ Paris MOU and other standards are assessed and performance rating/ grading are periodically announced. For	The debtor shall maintain and submit to IFSCA on a monthly basis, details of dues paid/payable by such debtor in respect of rentals/ lease payments, taxes, and amounts owed to the	IFSCA

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
<p>the debtor – Promoting Brand Indian-Flag and Brand IFSCA</p>	<p>example, Indian-Flag is ranked 43 in “Grey List” of the Paris MOU by Port State Controls, and Indian Register of Ships (IRS), a Recognised Organisation to carry out surveys and inspections on behalf of DG Shipping (Administrator) has been graded with “Medium-level” performance. Such ratings and gradings affect the terms of ship finance offered by financiers, priority berthing and other port facilities for Indian-flag vessels. It is vital that concerted efforts are made to shore up the reputation and credibility of the regulator(s) in ensuring compliances to technical, financial and commercial requirements for India-IFSC vessels.</p> <p>Ships are mobile assets. A ship owned by one can be financed and/or operated by others anywhere in the world. To minimise arrests of India-IFSC ships over unpaid dues, it is vital to establish a register containing relevant information on interests/ charges, priorities of various interests/ charges, mortgages/ liens, chargees/ mortgagors, statutory and other payments/ dues of the debtor/ lessee of India-IFSC assets, etc.</p> <p>Given large value investment in such assets, the regulator must have full knowledge of value of the ship and its fiscal and financial compliances against outstanding debt throughout its lifecycle and any statutory and other dues from its operations. The lender should also be able to inspect the asset and be sure that the value of its collateral is sufficient to cover its debt.</p>	<p>Government, and any other statutory and other dues to authorities across the world, as may be notified by the IFSCA, in respect of a vessel under an international or domestic interest, in the manner as prescribed by the IFSCA. This online “Registry of Interests in IFSC Assets” should be developed by IFSCA, and compliances thereto shall be submitted by the debtor/lessee on a monthly basis by all debtor/lessee till the time such vessel is under a lease contract or otherwise in the possession of such debtor/lessee.</p> <p>The registered creditor/charge/mortgagor, on his request, shall be provided with a copy of such record relevant to him, which may be relied upon by him for the purposes set out in the lease contract, including reexport of the vessel upon lease termination or otherwise.</p> <p><i>The debtor shall maintain and submit to IFSCA on a monthly basis, records of details of dues paid and payable by such debtor in respect of taxes, or any amount owed to the Government, or any other dues, as may be notified by the IFSCA, in respect of a ship under an international interest or domestic interest registered with IFSCA, in the manner as prescribed by the IFSCA and shall be so maintained and submitted till the time such ship is in the possession of such debtor. The creditor shall on request at any time and from time to time, be provided with a copy of such record of dues relevant to him maintained by the IFSCA, which record may be relied upon by the creditor for the purpose set out in the lease agreement, including of the reexport of the ship upon lease termination, etc.</i></p>	

SHORT FORM OF THE RECOMMENDATIONS

7.2. Tax Recommendations

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
DIRECT TAX			
SHIP OPERATORS			
Payments of hire charges to non-resident under charter agreements is currently taxed as royalty	Payments of hire charges to non-resident under charter agreements is currently taxed as royalty and is liable to deduction of tax at source @10% under section 195 of the ITA.	Any income of a non-resident by way of royalty or hire charges on account of vessel lease should be exempt from tax similar to aircraft leasing. As a corollary, there should be no withholding tax obligation under section 195 of the ITA on account of such payments.	M/o Finance, CBDT
Remove withholding tax on freight paid by Indian company to vessel leasing and owning companies in the IFSC	Freight paid by Indian companies are subject to withholding tax @ 2% (plus applicable surcharge and education cess) under section 194C of ITA. IFSC Units are entitled to a 10-year tax holiday for 100% of their income. They will be required to file tax return and reclaim the excess taxes withheld resulting in cash flow issues. Similar payments to non-resident entities are however not subject to tax due to tax treaties between India and other countries.	Freight paid by Indian charterers to vessel leasing and owning companies in the IFSC should not be subject to withholding tax during the applicable 10-year tax holiday period.	M/o Finance, CBDT
SHIP OWNERS			
Capital gains tax on transfer/sale of Vessel or transfer/sale of partnership	Currently sale of vessels by a leasing company in an IFSC or sale of partnership interest or shares of SPV holding vessels in an IFSC attracts capital gains tax	Exempt tax on capital gains arising on transfer/sale of vessels or transfer/sale of partnership interest/shares of SPV holding the vessels.	M/o Finance, CBDT

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
interest/shares of SPV holding the vessels.	on the capital gain in the hands of the IFSC units under section 45 and 50 of the ITA.		
Simplify Tonnage Tax Regime	<p>Company opting for Tonnage tax regime is required to credit 20% of their book profit derived from the business to the Tonnage Tax Reserve Account.</p> <p>Amounts transferred to the reserves cannot be distributed as dividends nor can they be utilized for purchase of any asset outside India. They must necessarily be utilized for purchase of ship within 8 years and such asset cannot be sold for 3 years from its purchase.</p> <p>Moreover, interest income on such reserves is subject to tax as income from other sources under the ITA.</p> <p>The regime also prescribes minimum training requirement in respect of trainee officers as specified by DG Shipping.</p> <p>Non-compliance of any of the conditions results in exclusion from the regime for 10 years.</p>	<p>Simplify the qualifying conditions for opting the tonnage tax regime for the ship owners in IFSC:</p> <p>The definition of qualifying company to include an Indian company set-up as a unit in IFSC or a foreign company which is a subsidiary of an Indian company set up in an IFSC.</p> <p>The definition of qualifying Ship shall also include the ships owned by overseas subsidiary of the IFSC unit which is the holding company.</p> <p>No requirement to credit 20% of their book profit derived from the business to the Tonnage Tax Reserve Account.</p> <p>No minimum training requirement in respect of trainee officers employed by ship owning companies in IFSC.</p> <p>Reduction in the period of exclusion from the regime on non-qualification for availing tonnage tax regime from 10 years to 5 years.</p>	M/o Finance, CBDT
Exempt tax on dividend received from a unit set-up or established in an IFSC in the hands of non-resident shareholders	<p>Erstwhile the dividend declared, distributed, or paid by an IFSC unit was not subject to Dividend Distribution Tax (DDT) and also exempt in the hands of shareholders.</p> <p>With effect from 1 April 2020, the dividend income is taxable in the hands of resident shareholders under section 56 of the ITA and under section 115A</p>	<p>Dividends paid by company in IFSC should not be taxed in the hands of the non-resident shareholder.</p> <p>Exemption should also be provided from any withholding tax on such dividend income.</p>	M/o Finance, CBDT

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
	<p>of the ITA in case of non-resident shareholders. This Dividend income is subject to withholding tax.</p> <p>However, no specific carve out was made for the dividend income earned by shareholders of the company, being an IFSC unit. Tax incidence is shifted from payer to recipient of dividend.</p>		
INDIRECT TAX			
SHIP OPERATORS			
<p>Exempt services of ocean freight provided by companies in IFSC to a foreign consignor for transportation of goods in vessel from outside India to India (Import freight services)</p>	<p>Indian company providing import freight services to a foreign consignor is subject to 5% IGST on the freight charges and such IGST is a cost in the overall value chain.</p>	<p>In order to make shipping operators at par with foreign consignors, exemption should be granted on such services provided by companies in IFSC.</p> <p>[As a matter of process, decision will be taken by GST Council, which is to be implemented by Central and State Governments]</p>	<p>M/o Finance, CBIC</p>
<p>GST on services of ocean freight provided by companies in IFSC to a foreign consignor for transportation of goods in vessel from India to outside India</p>	<p>Supply of services of transportation of goods in vessels for export of goods is exempt upto 30 September 2021.</p>	<p>Amend notification to provide exemption on export freight services indefinitely.</p>	<p>M/o Finance, CBIC/ GST Council</p>

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
(Export freight services)			
IGST exemption on ocean freight, Inland Haulage charges and other ancillary services in relation to transportation of goods in vessel for shipments from one country to another (both outside India) to Indian customers	Supply of services of transportation of goods by vessel from one country to another (both outside India) to Indian customers is subject to IGST at the rate of 5%.	Considering that the goods are moving from one country to another (both outside India), exemption should be provided on such services.	M/o Finance, CBIC/ GST Council
Provide clarification on registration to be taken at various ports	At present, in absence of any clarification in GST law, certain ports are insisting on registration at all those ports	For ease of business and considering that ship operators in IFSC are not debarred from availing benefit of zero-rate, there should be a clarification provided that ship operators are not required to obtain registration at different ports	M/o Finance, CBIC/ GST Council
SHIP OWNERS			
IGST exemption on import of vessels when imported by Indian ship owners	Ship owners in IFSC unit have to pay IGST on import of vessel. It takes long time to set off (utilize) the IGST credit impacting cash flow of the Indian shipping companies.	In order to reduce working capital burden, ship owners in IFSC should be provided exemption of IGST on import of vessels	M/o Finance, CBIC/ GST Council
Shift liability of GST under reverse charge mechanism on charter hire services by ship	Ship owners in IFSC providing charter hire services to ship operators in India will have to charge GST on forward charge basis.	In order to bring the ship owners in IFSC at par with foreign ship owners and also considering that IFSC may not have adequate input tax credits resulting into discharging the	M/o Finance, CBIC/ GST Council

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
owners in IFSC to ship operators in India		GST liability in cash, services by ship owners in IFSC to ship operators in India should be liable to GST under RCM	
GST on bunker fuel imported with the vessel	Supply of kerosene oil PDS, bunker fuels for use in ships or vessels, namely, IFO 180 CST, IFO 380 CST and Marine Fuel 0.5% (FO) are taxable at the rate of GST at 5%	Since the charter hire services are taxable at 5% GST with restriction of input tax credit on inputs /goods, bunker fuel increases the cost due to restriction on availment of input tax credit. Hence, the restriction on inputs should not be applied on bunker fuel or the supply of bunkering for ship operators/owners in IFSC shall be exempted under GST	M/o Finance, CBIC/ GST Council

7.3. SEZ Recommendations

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
Exemption from Net Foreign Exchange Earning Related Requirement as per SEZ Act and Rules	Since all IFSC units are mandated to achieve positive Net foreign Exchange earning cumulatively for a period of 5 years from the date of commencement of operations.	Ship leasing and related business in IFSC should be exempted from Net Foreign Exchange Earning requirement as ship leasing business cannot be net foreign Exchange earner in 5 years period.	M/o Commerce
Dispense requirement of ships and related equipment to enter SEZ area physically	As per current provisions of SEZ Act and Rules, it is required to have goods physically entered into SEZ premises in order to avail exemption provided under SEZ Law.	Exemption should be provided for ship leasing and related business for bringing in goods physically into SEZ premises as GIFT City does not have sea-port.	M/o Commerce
Requirement of Separate Office space and lease for each Unit	As per current provisions of SEZ Act and Rules, it is required to have separate SEZ premises allotted for each unit and lease deed to be registered, which increases the costs for such entities in IFSC.	Exemption should be provided from the requirement of having separate office for each unit	M/o Commerce

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
Format of Application form i.e., Form F-SEZ	SEZ Act and Rules require Form F to be submitted, which is not relevant to IFSC Unit operations.	Draft revised application Form for ship leasing along with other types of IFSC entities.	M/o Commerce
Purchase of Ships and Leasing in Foreign Jurisdiction and incorporating payment settlement system on the lines of EDPMS/ IDPMS	This model is not captured in current regulations under SEZ Act and Rules and therefore specific provision to enable this needs to be incorporated in SEZ provisions.	Issue separate guidelines may be issued to enable such business in IFSC. Additionally, in order to keep a check on inflow and outflow of Foreign Currency by IFSC Unit so that dirty money does not flow into the system a similar mechanism like EDPMS/IDPMS system may be developed in IFSC.	M/o Commerce
Format of Bond Cum Legal Undertaking, reporting formats in SEZ to be amended	Existing formats of Bond, MPR, APR etc. does not capture IFSC Unit especially Ship leasing business requirement well and there are many fields which are not applicable to such business.	Revised formats of reporting, Bond etc. to be prepared to enable IFSC business requirement to be captured well and at the same time monitoring can be done in a proper manner.	M/o Commerce

7.4. Financial Recommendations

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
BANKS			
Allowing banks to hold more than 30% shares in a company	As per section 19(2) of BR Act, banking companies are not allowed to hold more than 30% of shares of a company whether as pledgee, mortgagee or absolute owner.	While financing to be the extent permitted under law, relaxations to be provided in respect of Section 19(2) of BR Act to permit the pledge and ownership of upto 100% shares of a special purpose vehicle for ship finance.	M/o Finance, RBI
DTA tonnage to have access to ship finance from GIFT IFSC	Setting up of a ship finance eco system at GIFT IFSC can provide capital to DTA tonnage	DTA tonnage to have access to ship financing from GIFT IFSC entities (banks, NBFCs, AIFs)	IFSCA, M/o Finance, RBI

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
NON-BANKING FINANCIAL COMPANIES (“NBFCs”)			
Notify guidelines for setting up NBFC in IFSC to undertake vessel financing/ leasing from IFSC	<p>FEMA IFSC Regulations recognize NBFC as a category of companies that may set up operations</p> <p>Presently, NBFCs may set up operations in IFSC as a Finance Company under IFSC Finance Company Regulations. But RBI has not issued any specific framework/ guidelines governing the establishing and operation of NBFCs in IFSC, as done for IBU regulations for banks.</p>	<p>Setting up of a branch office in IFSC by an NBFC in India should be permitted.</p> <p>ODI investment by NBFC should be under automatic route.</p>	RBI/IFSCA
ALTERNATIVE INVESTMENT FUNDS (“AIF”)			
Removal of restriction on Foreign Portfolio Investors (“FPIs”) investing in category I and Category II AIFs	Regulation 20 of the SEBI (FPI) Regulations, 2019 (as amended) prescribes the types securities that FPIs shall invest in, which <i>inter alia</i> expressly does not include Category I and II AIFs	Amend AIF Regulations to create a separate category of AIFs for investments in ship leasing companies or amend the existing regulatory framework of Category- I or II AIFs to permit greater concentration of investments in entities engaged in ship financing/ leasing.	SEBI
Provide clarification on categories of investors that can invest in an AIF operating out of IFSC	<p>SEBI (International Financial Services Centre) Guidelines, 2015 (SEBI (IFSC) Guidelines) does not clarify the categories of investors that would be permitted to invest in IFSC AIFs, given that the term ‘institutional investors’ as referred to in Clause 22(1)(iii) is not defined.</p> <p>Eligible resident individuals are permitted to invest upto USD 250,000 per annum into an overseas AIF as per the Liberalised Remittance Scheme. These limits restrict the ability of AIFs located in IFSC to raise funds from</p>	<p>Provide clarification on types of institutional investors contemplated under the SEBI (IFSC) Guidelines.</p> <p>Provide additional relaxation under the Liberalised Remittance Scheme for Indian residents to invest in AIF operating in an IFSC.</p>	SEBI and RBI

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
	domestic High Net Worth Individuals (“HNIs”), and consequently their participation in ship financing.		
Investment by a domestic AIF into a Leasing Company operating in IFSC	<p>A domestic AIF is permitted, subject to prior approval from SEBI, to invest up to 25% of its investible funds of each scheme in equity and equity linked instruments of offshore venture capital undertakings (i.e. overseas unlisted entities). There is an overall cap of USD 1,500 million on overseas investments by all AIFs in India by virtue of the SEBI Circular dated July 03, 2018 read with Circular dated May 21, 2021</p> <p>SEBI Circular dated October 01, 2015 also does not clearly permit AIFs to invest in overseas debt instruments (whether listed or unlisted).</p>	<p>(a) SEBI to clarify under SEBI Circular dated October 1, 2015 and RBI to clarify under Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulations, 2004 (“FEM (TIFS) Regulations”), the position on investment by AIFs in IFSC (whether such investment is domestic or offshore);</p> <p>(b) RBI (under FEM (TIFS) Regulations) to provide relaxation to the overall cap of USD 1,500 million or specify non-applicability of the overall cap (in respect of overseas investments by all AIFs in India) for AIFs targeting investments in entities engaged in ship financing/ leasing out of IFSC.</p> <p>(c) RBI to amend FEM (TIFS) Regulations to permit investments by AIFs in debt instruments (whether listed or unlisted) issued by ship leasing/ financing entities set up in IFSC.</p>	SEBI and RBI
PENSION FUNDS			
Investment by pension funds	<p>Pension funds cannot invest in the equity of entities.</p> <p>Pension funds are not permitted to invest funds of subscribers, outside India, either directly or indirectly. However, it is unclear whether this restriction would also apply to investment by pension funds into (a) leasing entities established in IFSC, or (b) domestic Category I or II AIFs which in turn provide finance to leasing entities established in IFSC.</p>	<p>(a) Pension Fund Regulatory and Development Authority (PFRDA) to clarify under the PFRDA Act that pension funds are permitted to invest into domestic AIFs, even if they may use funds for investments into ship financing/ leasing entities located in IFSC, or that investment into IFSC entities would not be considered as overseas investment by pension funds.</p>	PFRDA

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
		<p>(b) As regards investments by pension funds in AIFs, PFRDA may issue a clarification that entities owning vessels or engaged in ship financing are ‘infrastructure entities’ as per para (ii) of Circular No. PFRDA/2017/18/PF/2 dated May 04, 2017</p> <p>(c) Amend investment guidelines to allow pension funds to invest in equity or debt instruments of companies.</p>	
INSURANCE COMPANIES			
Removing restriction on investment in ship leasing by insurance companies	<p>Under Section 27A (4) of Insurance Act, 1938 (Insurance Act), insurance companies are not permitted to invest in private limited companies.</p> <p>Restriction under Section 27A (4) is a blanket restriction and neither Insurance Regulatory and Development Authority of India (IRDAI) nor Central Government is empowered to relax this through regulatory or executive action. A relaxation of this restriction would require a legislative amendment. However, under Section 2CA, Central Government has the power to relax the restriction for insurers in a SEZ. GIFT City. IFSC is a SEZ.</p>	Issue notification under Section 2CA of the Insurance Act, 1938 to exempt insurance companies in IFSC from the investment restriction provisions under Section 27A (4) of the Insurance Act, 1938.	IRDAI / M/o Finance
Categories of investment by insurance companies	<p>Insurance Act read with associated Insurance Regulations contains an exhaustive list of investments that an insurance company is permitted to make. This list does not accommodate investments in ship leasing companies (of the type being considered here).</p> <p>Currently, only certain items as mentioned in the exhaustive list come close to our current requirements, but do not offer a viable solution</p>	Consequent amendments to the list of permitted investments under the IRDAI (Investment) Regulations, 2016, to relax investment by insurers in equity and listed debt securities, and permit investment in unlisted debt securities of private companies undertaking ship leasing.	IRDAI / M/o Finance

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
Financing of entities engaged in ship financing/ ship leasing located in an IFSC by insurance companies set up in IFSC.	IRDAI (Registration and Operations of IIO) Guidelines, 2017 (Insurance IIO Guidelines) prescribes that the sole object of IFSC Insurance Offices (IIO) shall be to exclusively carry on insurance or reinsurance business from an IFSC and such entity shall not engage itself in any business other than those permitted by IRDAI	IRDAI to amend the IRDAI (Registration and Operations of IIO) Guidelines, 2017 by permitting insurance companies set up in IFSC to invest in entities engaged in ship financing/ leasing in an IFSC.	IRDAI / M/o Finance
Removal of restriction on investment of funds abroad	<p>Under Section 27E of the Insurance Act, insurance companies are not permitted to invest funds of policyholders outside India either directly or indirectly.</p> <p>It is unclear from the wording of Section 27E whether it would apply to investment by an insurance company into ship leasing companies established in IFSC.</p> <p>Insurance companies in India are permitted to invest freely, out of their funds abroad (not domestic policyholder money) without prior approval of the RBI subject to (i) statutory requirement of any host country concerned, and, (ii) IRDAI guidelines if any and in accordance with applicable FEMA regulations relating to investment abroad. It is unclear if this provision would apply to investments by insurers into ship financing/ leasing entities through the IIOs using its funds outside India.</p>	<p>Clarification to be issued under the Insurance Act that investment of policyholders' funds into IFSC will not be regarded as overseas investments.</p> <p>Alternately, M/o Finance may notify under S.2CA of the Insurance Act that insurance companies in IFSC are exempted from the restriction on overseas investment.</p>	IRDAI / M/o Finance
MUTUAL FUNDS			
Financing of entities engaged in ship	Mutual funds are not allowed to invest more than 10%-12% of its NAV in rated debt instruments, 10%-25% of	Amend SEBI (Mutual Funds) Regulations, 1996 to create a separate category of mutual funds for investments in ship leasing companies OR to permit greater concentration of	SEBI / M/o Finance

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
financing/ leasing by mutual funds	their NAV in unrated debt instruments and 5%-10% of their NAV in unlisted equities.	investments in entities engaged in ship financing/ leasing in an IFSC.	
Scope of overseas investment by mutual funds	As per RBI Circular dated September 26, 2007 on Overseas Investment by Mutual Funds – Liberalization, mutual funds are not permitted to invest in overseas unlisted equity/equity linked instruments and foreign debt instruments.	RBI to amend FEMA (Transfer or issue of any Foreign Security outside India) Regulations, 2004 to permit investments by mutual funds in unlisted equity/equity linked instruments, and foreign debt instruments issued by entities engaged in ship leasing set up in IFSC.	RBI / M/o Finance
Categories of investors that can invest in a mutual fund operating out of IFSC	<p>A mutual fund operating in an IFSC can accept investments from the categories of investors prescribed under SEBI (International Financial Services Centers) Guidelines, 2015 (SEBI IFSC Guidelines) which include (a) person resident outside India, (b) non-resident Indian, (c) institutional investor resident in India, and (d) person resident in India having a net worth of at least USD 1 million, to the extent allowed in the Liberalized Remittance Scheme i.e. an investment of up to a maximum of USD 2,50,000. These limits restrict the ability of mutual funds located in IFSC to raise funds from domestic HNIs, and consequently their participation in ship financing.</p> <p>It is unclear which categories of investors (as identified under FEM (TIFS) Regulations) would be permitted to invest in IFSC mutual funds, given that the term 'institutional investors' is not defined under SEBI guidelines nor the said foreign exchange regulations.</p>	<p>(a) Provide clarification on types of institutional investors contemplated under the SEBI IFSC Guidelines.</p> <p>(b) Provide additional relaxation under RBI's Liberalised Remittance Scheme for Indian residents to invest in mutual funds operating in an IFSC.</p>	SEBI and RBI / M/o Finance
EMPLOYEES PROVIDENT FUND ORGANISATION (“EPFO”)			

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
Investment of provident funds by EPFO	Under notification dated April 23, 2015 by M/o Labour and Employment, EPFO is not permitted to invest funds into private companies nor domestic AIFs.	Issue a notification to permit investments in companies engaged in ship financing/leasing set up in IFSC, and in AIFs.	M/o Labour and Employment
EXTERNAL COMMERCIAL BORROWINGS (“ECBS”)			
Restrictions on ECBS under RBI Master Directions – ECBS, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers (“ ECB Master Directions ”) in respect of – (a) All in cost ceiling (b) Minimum Average Maturity Period (c) Participation in Domestic Debt	As per ECB Master Directions, the following are the restrictions: (a) All-in-cost for ECBS are capped at LIBOR (or equivalent benchmark rate) plus 450 bps spread; (b) Minimum Average Maturity Period (Para 2.1(V) of Part I) is between 3-7 years depending on purpose of loan. Call and put options shall not be exercisable prior to completion of minimum average maturity. (c) Further, foreign branches/ subsidiaries of Indian banks cannot advance ECBS for the purpose of refinancing domestic debt.	Issue specific directions under Section 11 of Foreign Exchange Management Act, 1999 (FEMA Act) to provide specific exception/ relaxation for entities engaged in ship financing from the restrictions in so far as all-in cost and minimum average maturity are concerned. Further, offshore branches of Indian banks may be permitted to refinance domestic debt through ECBS.	RBI / M/o Finance
Granting of ‘infrastructural status’ to Vessels	RBI vide circular dated November 20, 2012, as amended from time to time has defined infrastructure lending and the list of items included under the infrastructure (“ RBI Infrastructure Circular ”). Vessels are not included as an infrastructure sub-sector list. By virtue of inclusion thereof, they will be able to	In the exercise of its power under Section 35A of the Banking Regulation Act, 1949, to pass a notification including “vessel” in “infrastructure”. The said inclusion of “vessel” should also be incorporated into the ‘Harmonised Master List of Infrastructure Sub-sectors’ bearing number F. No. 13/1/2017- INF dated April 26, 2021. This definition of vessel should be aligned with the	M/o Finance, RBI

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
	<p>avail long-term funding at competitive rates notably since the asset life is 15-25 years</p> <p>Globally and in India, risk capital allocation for projects classified as infra, makes them more capital efficient. Assets like FPSO, FLNG, FSRU typically do not trade and move all the time and have long term take or pay contracts, qualifying them for Infra more easily and also being project specific, show less volatility in their market value (as they are largely the cash flow risk of the chartering counter party)</p>	<p>proposed definition under Section 3(d)(vi) of the IFSCA Act, 2019.</p>	
National Investment and Infrastructure Fund (“NIIF”)			
<p>Setting up of strategic fund investing in transport infrastructure</p>	<p>NIIF is a sovereign wealth fund registered as an AIF for the purpose of providing long-term funding to infrastructure related projects. NIIF is currently managing three funds, with an estimated corpus as follows:</p> <ul style="list-style-type: none"> – Master Fund – INR 16,000 crore – Funds of Fund – INR 5,000 crore; and – Strategic Fund - within INR 10,000 crore and continuing to attract sizeable funds. <p>While the Master Fund and Funds of Fund are focussed on investing in airports, ports, roads, renewable energy and other such infrastructural sectors, the Strategic Fund is a private equity and sector agnostic fund. NIIF and the funds it invests in do not address greenfield capital-intensive industries such as ship leasing, aircraft leasing, etc. being developed</p>	<p>Create a strategic fund investing in transport infrastructure, so as to aid greenfield capital-intensive industries such as ship and aircraft leasing being developed in India-IFSC. This fund could also support decarbonising the shipping sector by specifically addressing new technology vessels and other green infrastructure greenfield initiatives.</p>	<p>NIIF/ D/o Economic Affairs</p>

SHORT FORM OF THE RECOMMENDATIONS

7.5. Other General Recommendations

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
STATUTORY MORTGAGE			
Enforcement of mortgages to be handled by a special commercial court	Section 51 of the MSA makes a distinction between ships having a sole mortgagee and ships having more than one mortgagee. Where there is only one mortgagee, the mortgagee may sell the ship without approaching the High Court. However, for more than one mortgagee, any steps to recover the amounts due to the mortgagee would require the intervention of the High Court, thereby restricting the scope of self-help remedies.	Enforcement of mortgages to be handled by a special commercial court – Please see key recommendations relating to dispute resolution mechanism. Further, amendment of Section 49 (with respect to priority of mortgages) to provide that in respect of mortgages registered within the IFSC, upon receipt of a no-objection certificate from other mortgagees, the priority of mortgages can be determined by agreement between the parties recording the same and not on the basis of its recording in IFSC page of DG Shipping registry or sub-registry (as the case may be) and in the absence of any agreement, the priority shall be determined as presently provided under Section 49 of the MSA.	DG Shipping, M/o Shipping
DISPUTE RESOLUTION			
Non-applicability of insolvency and bankruptcy code, 2016 (as amended from time to time) (“IBC”) and Arbitration and Conciliation Act, 1996 (as amended)	Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the “ Admiralty Act ”) provides that the exclusive jurisdiction in respect of maritime claims and liens vests with High Courts. However, we note from our discussions with stakeholders that the present judicial system and the proceedings before the High Court with respect to the arrest of ships is time consuming.	The following options for dispute resolution mechanism can be exercised: Option 1: dispute relation to maritime and shipping should be subject to the jurisdiction of Gujarat International Maritime Arbitration Centre (GIMAC) Option 2: Arbitration under the aegis of Singapore International Arbitration Centre (SIAC).	DG Shipping, M/o Shipping / IFSCA

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
<p>(the “Arbitration Act”) to the arrest of vessels</p>		<p>Option 3 – Maritime disputes and claims and matters relating to enforcement of vessel mortgages and commercial disputes to be handed by a special commercial court constituted within the IFSC.</p> <p>The legislation to be enacted should also limit the supervisory jurisdiction of the Gujarat High Court under Article 227 of the Constitution, and clarify that they override the Admiralty Act with respect to vessels owned, operated or chartered by IFSC units.</p>	
STAMP DUTY			
<p>Exemption of stamp duty for instruments relating to ship leasing, owning and financing in IFSC not available under the Gujarat Special Economic Zones Act, 2004 (“Gujarat SEZ Act”)</p>	<p>Section 3 of the Indian Stamp Act, 1899 (“ISA”) provides that no duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the developer or unit¹ or in connection with the carrying out of the purposes of the SEZ.</p> <p>Section 21 of the Gujarat SEZ Act exempts levy of stamp duty and registration fees on loan agreements, credit deeds and mortgages executed by the SEZ unit. However, there is no express exemption provided with respect to other instruments (including instruments executed pursuant to ship leasing and financing activities). While the Indian Stamp Act, does provide for an exemption, it is advisable to amend the Gujarat SEZ Act also to provide the necessary clarity.</p>	<p>Amend Section 21 of Gujarat SEZ Act for the following:</p> <p>(a) to include an exemption for stamp duty on loan agreements, credit arrangements and security documents including pledges, hypothecations etc. executed in favor of entities based in the IFSC; and</p> <p>(b) to include an exemption for the following – ship building and construction contracts, sale and purchase agreements of ships, financing agreements and security documentation, insurance contracts, charter hire contracts, ship operating and fuelling contracts, dry-docking and maintenance contracts, crewing contracts, ship demolition contracts and/or any other contracts and agreements related to ship owning, ship operating, ship leasing and ship financing.</p>	<p>Government of Gujarat</p>

¹ ‘Unit’ means a unit set up by an entrepreneur in a SEZ and includes an existing Unit, an Offshore Banking Unit and a Unit in an IFSC, whether established before or established after commencement of the SEZ Act;

SHORT FORM OF THE RECOMMENDATIONS

8. LONG FORM OF THE RECOMMENDATIONS

8.1. Regulatory Recommendations

S. NO	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
FINANCIAL PRODUCT					
1	SHIP LEASING				
	<p>Background:</p> <p>Section 12(1) of the IFSCA Act, 2019 empowers the IFSCA to “develop and regulate the financial products, financial services and financial institutions in the IFSC”. In exercise of their powers, the IFSCA has passed, inter alia, the IFSCA (Finance Company) Regulations, 2021 and the IFSCA (Banking) Regulations, 2020. Presently, the term ‘ship lease’ has been defined by the IFSCA (Finance Company) Regulations, 2021 to mean financial leases, operating leases and any hybrids in respect thereof of ships or ocean vessels and engines of ships or ocean vessels or any other part thereof. However, ship lease is not notified as a ‘financial product’.</p>				
1.1	<p>Notification of vessel leasing as a financial product</p> <p>Ship lease has not been notified as a financial product under the IFSCA Act, 2019</p>	<p>Section 3(d) of the IFSCA Act, 2019 has defined “financial products” as follows:</p> <p><i>“financial product” means—</i></p> <p>(i) securities;</p> <p>(ii) contracts of insurance;</p> <p>(iii) deposits;</p> <p>(iv) credit arrangements;</p> <p>(v) foreign currency contracts other than contracts to exchange one currency for another that are to be settled immediately;</p> <p>(vi) any other product or instrument that may be notified by the Central Government from time to</p>	<p>As per the IFSCA (Finance Company) Regulations, 2021, ship lease (including financial and operating leases) may be undertaken by finance companies registered in IFSC as a core activity under Regulation 5(ii)(d) and a non-core activity under Regulation 5(iii)(k).</p> <p>However, since such activity is only recognised by the IFSCA (Finance Company) Regulations, 2021, other entities registered within the IFSC</p>	IFSCA	<p>Vessel leasing (including chartering) will need to be notified as a ‘financial product’ by notification of the Central Government under Section 3(d)(vi) of the IFSCA Act.</p> <p>Financial entities located in IFSC can undertake such activities if their home country regulator does not expressly bar it.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>time.</i></p> <p>Under Regulation 5 of IFSCA (Finance Company) Regulations, 2021, Finance Companies in IFSC are permitted to carry out financial leases for ship lease and operating lease to the extent permitted under the framework for operating leases.</p> <p>IBUs established under Regulation 3 of IFSCA (Banking) Regulations, 2020, may undertake any or all activities mentioned under clause (e) of sub-section (1) of Section 3 of the Act or Section 6 of BR Act, 1949, except those expressly prohibited by IFSCA. While equipment lease is notified under Section 6 of BR Act², this is understood to be limited to financial lease and not operating lease. Similarly, equipment lease services provided by IBUs will only be limited to financial leases. Activities under clause (e) of sub-section (1) of Section 3 of IFSCA Act, 2019 are financial services related to “financial products”.</p> <p>While leases may be said to be broadly covered under “credit arrangements”, to provide express clarity, ‘vessel lease’ should be notified as a financial product under the IFSCA Act, 2019.</p> <p>Alternatively, ‘operating lease of any equipment’ may be notified as financial product. IFSCA may, at its discretion, enable industry-wise operating lease through a suitable framework.</p>	<p>cannot presently undertake activities relating to the same.</p> <p>While the IFSCA (Banking) Regulations, 2020 permit IBUs to carry out notified activities, this would be limited to “equipment leasing” as notified by the RBI, i.e. financial leases.</p>		<p>The framework for ship operating lease should be notified.</p>
1.2	<i>The term ‘ship lease’ as defined by the IFSCA</i>	The definition of ‘ship lease’ as per Section 2(m) of the IFSCA (Finance Company) Regulations, 2021 is	Although ship leasing has been defined under the IFSCA (Finance Company) Regulations, 2021, the	IFSCA	The term “vessel”, “ship” and “vessel lease(s) should be defined in the IFSCA (Finance Company)

² Master Circular - Para Banking Activities dated July 01, 2015 bearing number DBOD No.FSD.BC.19/24.01.001/2015-16

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p><i>(Finance Company) Regulations, 2021 does not include charters typically used in the shipping industry including time charters, voyage charters, bareboat charters etc.</i></p>	<p>as follows: <i>“Ship Lease” includes operating and financial lease and any hybrid of operating and financial lease of ships or ocean vessels and engines of ships or ocean vessels or any other part thereof”</i></p> <p>Further, since the definition is only used in the IFSCA (Finance Company) Regulations, 2021, it does not apply to other IFSC entities.</p>	<p>definition is not exhaustive of the kind of transactions seen in the shipping market.</p> <p>Further, the definition may be incorporated in the IFSCA Act, 2019 itself, so that it applies to all entities in IFSC and not only finance companies.</p>		<p>Regulations, 2021 as set out in Key Takeaways below:</p>
1.3	<p><i>Other ancillary services such as vessel operation, management, crewing and training and maintenance and management activities to be included in the ‘Framework for enabling Ancillary services at IFSC’ dated February 10, 2021</i></p>	<p>The ‘Framework for enabling Ancillary services at IFSC’ dated February 10, 2021 sets out a list of permissible ancillary activities as per Paragraph C therein. Paragraph C (v) of the said framework allows the IFSCA to notify other services from time to time.</p>	<p>Some of the ancillary services in relation to the shipping industry are not covered within the heads of permissible activities as set out in Paragraph C(v) of the ‘Framework for enabling ‘Ancillary services at the IFSC’ dated February 10, 2021. In this regard, the ancillary services to the shipping industry such as crewing and training, operation and maintenance, management activities and commercial, technical and financial marine support services would have to separately be notified by the IFSCA as per Paragraph C(v) of the said framework.</p>	IFSCA	<p>The ‘Framework for enabling Ancillary services at IFSC’ dated February 10, 2021 should also include marine ancillary services including crewing and training, operation and maintenance and management activities, and also commercial, technical and financial marine support services.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p>Key takeaways:</p> <ul style="list-style-type: none"> Vessel leasing (including chartering) will need to be notified as a ‘financial product’ by the Central Government under Section 3(d)(vi) of the IFSCA Act, 2019. Accordingly, the term “vessel”, “ship” and “vessel lease(s)” in the IFSCA (Finance Company) Regulations, 2021 should be defined as follows: <ul style="list-style-type: none"> <i>“Vessel” - includes every description of watercraft used or capable of being used in the marine environment, such as ship, boat, sailing vessel, fishing vessel, submersible, semi-submersible, hydrofoils, non-displacement crafts, amphibious crafts, wing-in-ground crafts, pleasure crafts, barges, lighters, Mobile Offshore Drilling Units, Mobile Offshore Units, or of any other description, or any part thereof, and shall include inland water vessels and coasting vessels, but does not include fishing or sailing watercraft.</i> <i>“Ship” includes any watercraft, used or capable of being used in navigation by its own propulsion, in, above, or under the water but does not include fishing or sailing watercraft.</i> <i>“Vessel lease(s)” shall include financial and/or operating lease, all types of time charter, voyage charter, space charter, joint charter, slot charter, bare-boat charter and/ or any other form of charter or hire of vessel, container-box leasing, any hybrid thereof for the purposes of shipping and navigation and for matters connected or incidental thereto.</i> The framework for ship operating lease should be notified. The ‘Framework for enabling Ancillary services at IFSC’ dated February 10, 2021 read with circular June 10,2021 should also include other marine ancillary services including crewing and training, operation and maintenance and management activities, and also commercial, technical and financial marine support services. Entities who own vessels and who intend to carry on the business of ‘vessel lease’ will be entitled to register as ‘financial companies’ and will be able to undertake the financial product viz., vessel leasing. There is no separate mention of ship owning or acquisition in any of the above as such transactions are inherent to all the above activities and therefore will be covered under ‘financial product’. 				
SHIPPING REGULATIONS					
1.	REGISTRATION REQUIREMENTS				
	<p>Background:</p> <p><i>The registration of vessels is governed by Part V of the MSA read with the Merchant Shipping (Registration of Indian Ships) Rules, 1996 (as amended from time to time) and various orders of the Director General of Shipping (“DG Shipping”) issued from time to time. Registration of certain kinds of vessels for operating in the inland waters is also governed by the Inland Vessels Act, 1917 and fishing vessels and harbour-craft operating in the coastal waters is governed by the Coasting Vessels, Act</i></p>				

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
					<p>1838 (to the extent applicable). We note from our discussions with stakeholders that the registration in respect of ships has been found to be cumbersome and time consuming. Further, upon acquisition of foreign ships, we understand that the requirement to ensure that such ship is brought to an Indian port within 6 months is an impediment to the ships economic activity and therefore registration in India appears to be a less attractive proposition.</p>
1.1	<p>Registration Process under the MSA</p>	<p>Section 22 of the MSA dealing with the mandatory registration of ships <i>inter alia</i> states as follows:</p> <p><i>(1) Every Indian ship, unless it is a ship which does not exceed fifteen tons net and is employed solely in navigation on the coasts of India, shall be registered under this Act.</i></p> <p><i>(2) No ship required by sub-section (1) to be registered shall be recognised as an Indian ship unless she has been registered under this Act.</i></p> <p>Section 21 of the MSA clarifies that the term Indian ship (as also referred to under the aforesaid Section 22) shall mean:</p> <p><i>For the purposes of this Act, a ship shall not be deemed to be an Indian ship unless owned wholly by persons to each of whom any of the following descriptions applies:—</i></p> <p><i>(a) a citizen of India; or</i> <i>(b) a company or a body established by or under any Central or State Act which has its principal place of business in India; or</i> <i>(c) a co-operative society which is registered or deemed to be registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law relating to co-operative societies for the time being in force in any State.</i></p> <p>– Registration requirements in respect of Indian Ships is set out in Merchant Shipping (Registration of</p>	<p>From the combined reading of Sections 21 and 22 of the MSA, the only ships that are allowed registration under the MSA are Indian ships.</p> <p>It may be noted that the erstwhile requirement of obtaining the prior permission of the DG Shipping as a prerequisite to the registration of Indian ships has been done away with vide Office Memorandum bearing number SD-11018/1/97-MD dated March 5 2002. By virtue thereof, the process for registration before the DG Shipping has been substantially simplified.</p> <p>As regards the registration and acquisition of foreign vessels, judicial precedents suggest that after a ship has obtained provisional registration, they are required to enter into India in a time bound period for completion of registration formalities.</p>	<p>DG Shipping, M/o Shipping</p>	<p>DG Shipping in consultation with the MOS may provide clarification by way of notification/ circular that all registrations and annual compliances for an entity in the IFSC should be made online or through IFSC authorized agents/operators (including Authorized Economic Operators defined elsewhere by other Indian regulators) which may be displayed on the International Financial Services Centre Authority (IFSCA) website.</p> <p>Ship Registration should happen in a time bound manner.</p> <p>DG Shipping in consultation with the MOS may also enable an improvised Spice+ for the IFSC which allows for a single window and time-bound approval system for incorporation/registration of company including Special Economic Zone (SEZ) approval, and other relevant approvals and associated compliances.</p> <p>IFSCA and DG Shipping may set up a dedicated help desk for IFSC</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p>Indian Ships) Rules, 1960 as amended in 1994, 1997 and vide various office memoranda issued by DG Shipping from time to time. As per Rule 3 of Merchant Shipping (Registration of Indian Ships) Rules, 1960 (as amended), documents accompanying an application for registration shall be as follows:</p> <p><i>Every application for registry of a ship under section 26 of the Act shall be accompanied by the following documents, namely:</i></p> <p>(a) <i>the declaration of ownership;</i></p> <p>(b) <i>the builder's certificate, that is to say, a certificate signed by the builder of the ship and containing a true account of the proper denomination and of the tonnage of the ship as estimated by him and of the time when and the place where she was built; and</i></p> <p>(c) <i>if the ship has been purchased, the instrument of sale under which the property in the ship was transferred to the applicant.</i></p> <p>– As regards the registration requirements foreign vessels being acquired and registered under the MSA, the same is governed by Section 40 read with Rule 12 of the Merchant Shipping (Registration of Ships) Rules, 1960, which reads as follows:</p> <p><i>Section 40 - (1) If at any port outside India a ship becomes entitled to be registered as an Indian ship, the Indian consular officer there may grant to her master on his application a provisional certificate containing such particulars as may be prescribed in relation to the ship and shall forward a copy of the</i></p>			<p>financial products and services that provides prompt response to investor/service providers queries including by digitization of helpdesks through chatbots.</p> <p>With respect to the provisional registration of foreign vessels, an exemption may be sought from the M/o Shipping and DG Shipping to relax the mandatory requirement of bringing such ships to an Indian port within 6 months. The said relaxations shall apply to the entities registered within the IFSC who are acquiring foreign ships for registration therein. The verification of the vessel can be done through Authorized Independent Inspection companies.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>certificate at the first convenient opportunity to the Director-General.</i></p> <p><i>(2) Such a provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date or until the arrival of the ship at a port where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect.</i></p> <p><i>Rule 12 - If any ship is built or acquired out of India and becomes the property of persons qualified to own an Indian ship, the owner or master of the ship shall apply to the Indian Consular Officer at the nearest port for the issue of a provisional certificate of Indian registry and such officer may, on production of satisfactory proof of ownership, grant the same to the owner or master.</i></p>			
<p>Key Takeaways:</p> <p>The following steps may be taken to make ship registration (including registration of companies/ entities for that purpose) efficient:</p> <ul style="list-style-type: none"> • All registration requirement and annual compliances for a company in the IFSC should be made online or through IFSC authorized agents/operators (including [Authorized Economic Operators defined elsewhere by other Indian regulators]) which may be displayed on the International Financial Services Centre Authority (IFSCA) website. • Improvised Spice+ for the IFSC which allows for a single window and time-bound approval system for incorporation/registration of company including Special Economic Zone (SEZ) approval, and other relevant approvals and associated compliances. • IFSCA and DG Shipping may set up a dedicated help desk for IFSC financial products and services that provides prompt response to investor/service providers queries. • All registration requirements and compliances as prescribed by DG Shipping in respect of vessels being registered by companies incorporated in the IFSC may be made online through a single window clearance system. 					

LONG FORM OF THE RECOMMENDATIONS

S. NO	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
					<ul style="list-style-type: none"> All registration requirements and compliances in respect of vessels being registered by companies incorporated in IFSC (including in respect of vessels being registered under Inland Vessels Act, 1917 and Coasting Vessels Act, 1838 (to the extent applicable)) may be made online through a single window clearance system, so as to enhance the speed of registration. Vessels registered by companies in IFSC may be accepted under the register at sea by accredited surveyors worldwide. In view of the fact that units within the IFSC are non-resident entities, a clarification may be sought from the DG Shipping and MOS for IFSC Units to be allowed to own 100% of the Indian flag vessels With respect to the provisional registration of foreign vessels, an exemption may be sought from the MoS and DG Shipping to relax the mandatory requirement of bringing such ships to an Indian port within 6 months. The said relaxations shall apply to the entities registered within the IFSC who are acquiring foreign ships for registration therein. The verification of the ship can instead be carried out through Authorized Independent Inspection companies.
2.	Flagging of Vessels				
	<p>Background:</p> <p>The DG Shipping has imposed restrictions on Indian entities flagging their vessels outside India. In a nutshell, the restrictions imposed are as follows:</p> <p>(a) the tonnage flagged outside India shall not exceed its tonnage owned under the Indian flag. Such tonnage will be measured in accordance with the Merchant Shipping (Tonnage Measurement of Ships) Rules, 1987 (referred to as the “Indian Controlled Tonnage”); and</p> <p>(b) for those entities flagging vessels outside India, 50% of the crew (officers and ratings combined) engaged on the vessel, as per the safe manning document or actual deployment (whichever is higher), shall be Indian crew. Further, for those operating on the Indian coast or Indian offshore fields, shall engage trainees, officers, cadets as per the Tonnage Tax Scheme whereby the training commitment shall be as per the Tonnage Tax Scheme, if applicable. In the event that the laws of another flag state mandate minimum crew requirements, such foreign crew may be engaged to the extent required (referred to as the “Crew Restrictions”).</p>				
	Indian Controlled Tonnage and Crew Restrictions make the Indian market uncompetitive compared to other jurisdictions. As	<p>– As per DGS Order 10 of 2014 dated July 23 2014, the DG Shipping in consultation with the Ministry of Shipping has inter alia imposed restrictions relating to flagging of ships owned by Indian entities outside the country:</p> <p>(a) <i>The concerned Indian ship-owning company shall, at a minimum, maintain the level of its Indian flag tonnage as on 01 April, 2014.</i></p> <p>(b) <i>The tonnage flagged outside India, by an Indian entity at any given time, shall not exceed its owned tonnage under the Indian flag.</i></p>	The said DGS Order 10 of 2014 was primarily introduced to enable and facilitate Indian controlled tonnage to get access to finance and business abroad, subject to the restrictions imposed. In view of the growth of the Indian shipping industry stagnating over the last years, the DGS Order 10 of 2014 has attempted to encourage the growth of Indian flag tonnage, which has not kept pace with the	DG Shipping	<p>DG Shipping should introduce a new category titled ‘Indian IFSC controlled tonnage’, offering certain relaxations to help overcome challenges and impediments in existing regime including:</p> <p>(a) The company should be incorporated in India and</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p>a result, most Indian entities prefer setting up offshore vehicles to overcome these restrictions so as to being able to freely fly the flag of choice on their vessel.</p>	<p>(c) <i>The owners of the ship(s) so flagged abroad shall make a specific commitment towards engagement of Indian crew, and creation of a structured shipboard training slots by indexing them to the tonnage tax training commitment, as detailed below:</i></p> <p>(i) <i>A minimum of 50% of the crew (officers and ratings combined) engaged on the vessel as per the Safe Manning Document, or actual deployment, whichever is higher, shall be Indian crew holding relevant Indian certificates.</i></p> <p>(ii) <i>The vessel, if operating on the Indian coast or Indian offshore fields, shall engage trainee cadets/ officers in accordance with the provisions of the Indian Tonnage Tax Scheme in force irrespective of whether the company avails of tonnage tax benefits or not [under the Income Tax Act 1961, in force]. The trainees so engaged shall be distributed equally (to the extent possible) between the navigational and engineering sides.</i></p> <p>(iii) <i>In case the law of the flag state of the vessel mandate an engagement of crew from the country concerned, or local provisions mandate use of local crew of the nationality where the vessel is employed, such foreign crew may be engaged on board to the extent required.</i></p> <p>(iv) <i>The training commitment stipulated under sub paras (iii) above shall be over and above the training commitment as applicable under the Indian tonnage tax</i></p>	<p>growth of EXIM trade. However, the conditions imposed vide the said Order of Indian Controlled Tonnage including the Crew Restrictions has caused Indian entities to move offshore to overcome such requirements.</p>		<p>register itself with IFSCA as a IFSC unit.</p> <p>(b) A Foreign company which is a subsidiary of IFSC unit and having a place of effective management should set up and register a branch as a IFSC unit.</p> <p>(In respect of the above, Indian company as well as branch of foreign subsidiary together shall hereinafter be referred to as “Indian Group Companies”.)</p> <p>(c) Indian Group Companies are to be freely permitted to opt for either the Indian flag or foreign flag of a Flag State which has not been banned by DG Shipping for safety or security considerations.</p> <p>(d) Crewing and flag to be mandated by IFSCA/ DG Shipping only if Indian Group Companies are involved in India imports-exports or India coastal trade/ offshore fields as stated below in key takeaways.</p> <p>(e) Indian tonnage registered in DTA zone may wish to</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>scheme, if the ship owner avails of the tonnage tax scheme for the vessel so registered under the foreign flag.</i></p> <p><i>(d) The company availing of this scheme shall forward the details of all vessel(s) so registered under the foreign flag, tonnage owned by the company under the Indian flag, and the details of deployment of Indian crew and trainees, to the Tonnage Tax Cell of the Directorate General of Shipping, Govt. of Indian, Mumbai, on 1st April and 1st October every year.</i></p> <p><i>While chartering under Section 406 and 407 of the Merchant Shipping Act, such ships shall be treated as a new category of ships i.e. they shall be given the Right of First Refusal next in the hierarchy after Indian flagged ships.</i></p>			<p>register under IFSC regime. Indian-flagged vessels to be considered for transition to IFSC regime, provided that</p> <p>a. Vessel is presently deployed in global cross trades (not carrying Indian origin or destination cargoes) or falls in the category of a specialised vessel (for research and exploration, etc.)</p> <p>b. Vessel size is 15,000 dwt or more</p> <p>c. Vessel age is not more than 15 years</p> <p>(f) De-boarding, port clearances and immigration clearances of foreign crew on such vessels when they touch any Indian port shall be as per applicable instructions of DG Shipping.</p>
<p>Key Takeaways:</p> <p><i>DG Shipping should introduce a new category titled 'Indian IFSC controlled tonnage', offering certain relaxations to help overcome challenges and impediments in existing regime including:</i></p> <p><i>(i) The company should be incorporated in India and register itself with IFSCA as a IFSC unit.</i></p>					

LONG FORM OF THE RECOMMENDATIONS

S. NO	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS				
	<p>(ii) Indian tonnage registered in DTA zone may wish to register under IFSC regime. Indian-flagged vessels to be considered for transition to IFSC regime, provided that</p> <p>a. Vessel is presently deployed in global cross trades (not carrying Indian origin or destination cargoes) or falls in the category of a specialised vessel (for research and exploration, etc.)</p> <p>b. Vessel size is 15,000 dwt or more</p> <p>c. Vessel age is not more than 15 years</p> <p>(iii) A Foreign company which is a subsidiary of an IFSC unit should set up and register a branch in IFSC as a IFSC unit. The place of effective management of the foreign company should be in IFSC</p> <p>(Indian company as well as branch of the foreign subsidiary together shall herein after be referred to as “Indian Group Companies”.)</p> <p>(iv) Indian Group companies to be freely permitted to opt for either the Indian flag or the foreign flag of a Flag State which has not been banned by DG shipping for safety or security considerations.</p> <p>(v) Crewing and the flag to be mandated by the IFSCA/DG Shipping only if the Indian group companies are involved in India reserved imports or India coastal trade, as follows-</p>								
					<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Proposals for Participation in PSU Bulk Import Freight</th> <th style="width: 50%;">Proposals for Participation in Coastal Cargo</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • If DTA India flagged vessel is L1 in bidding, then the tender is to be awarded to it and no extension of ROFR for IFSC vessels • If IFSC vessel is L1 in bidding, then the tender is to be awarded to IFSC vessel, waiving the requirement of ROFR for India DTA vessels. This waiver will not apply to until 01 April 2023, and any extension thereto will erode the competitiveness of GIFT City entities vis-à-vis foreign players. • If a non-IFSC foreign flagged vessel is L1, tender is to be awarded as per existing ROFR and/or price preference. IFSC India flagged vessels to participate in ROFR; however, if DTA vessel also matches L1, then tender is to be awarded to DTA vessel; failing which, tender is to be awarded to IFSC vessel. IFSC Vessels do not get right to price subsidy/ preference. • Related parties cannot participate simultaneously in the tender • A Qualifying IFSC Entity for the purposes of bidding: </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Reciprocal fair and equitable arrangements with specific foreign flag states • A Qualifying IFSC Entity for the purposes of coastal trade is an entity which meets all the following criteria: <ul style="list-style-type: none"> ○ At least 50 percent of its total fleet by deadweight (either directly or through its SPVs or joint ventures or subsidiaries in India or overseas) should be India flagged with IFSC tagging ○ At least 50% of total crew in each vessel to be of Indian nationality ○ At least 1 Indian cadet for training onboard ○ No requirement for tonnage reserve funds/ IACS Class / Manning Stds. ○ Tonnage tax rates as per the then prevailing rate after the tax holiday period. </td> </tr> </tbody> </table>	Proposals for Participation in PSU Bulk Import Freight	Proposals for Participation in Coastal Cargo	<ul style="list-style-type: none"> • If DTA India flagged vessel is L1 in bidding, then the tender is to be awarded to it and no extension of ROFR for IFSC vessels • If IFSC vessel is L1 in bidding, then the tender is to be awarded to IFSC vessel, waiving the requirement of ROFR for India DTA vessels. This waiver will not apply to until 01 April 2023, and any extension thereto will erode the competitiveness of GIFT City entities vis-à-vis foreign players. • If a non-IFSC foreign flagged vessel is L1, tender is to be awarded as per existing ROFR and/or price preference. IFSC India flagged vessels to participate in ROFR; however, if DTA vessel also matches L1, then tender is to be awarded to DTA vessel; failing which, tender is to be awarded to IFSC vessel. IFSC Vessels do not get right to price subsidy/ preference. • Related parties cannot participate simultaneously in the tender • A Qualifying IFSC Entity for the purposes of bidding: 	<ul style="list-style-type: none"> • Reciprocal fair and equitable arrangements with specific foreign flag states • A Qualifying IFSC Entity for the purposes of coastal trade is an entity which meets all the following criteria: <ul style="list-style-type: none"> ○ At least 50 percent of its total fleet by deadweight (either directly or through its SPVs or joint ventures or subsidiaries in India or overseas) should be India flagged with IFSC tagging ○ At least 50% of total crew in each vessel to be of Indian nationality ○ At least 1 Indian cadet for training onboard ○ No requirement for tonnage reserve funds/ IACS Class / Manning Stds. ○ Tonnage tax rates as per the then prevailing rate after the tax holiday period.
Proposals for Participation in PSU Bulk Import Freight	Proposals for Participation in Coastal Cargo								
<ul style="list-style-type: none"> • If DTA India flagged vessel is L1 in bidding, then the tender is to be awarded to it and no extension of ROFR for IFSC vessels • If IFSC vessel is L1 in bidding, then the tender is to be awarded to IFSC vessel, waiving the requirement of ROFR for India DTA vessels. This waiver will not apply to until 01 April 2023, and any extension thereto will erode the competitiveness of GIFT City entities vis-à-vis foreign players. • If a non-IFSC foreign flagged vessel is L1, tender is to be awarded as per existing ROFR and/or price preference. IFSC India flagged vessels to participate in ROFR; however, if DTA vessel also matches L1, then tender is to be awarded to DTA vessel; failing which, tender is to be awarded to IFSC vessel. IFSC Vessels do not get right to price subsidy/ preference. • Related parties cannot participate simultaneously in the tender • A Qualifying IFSC Entity for the purposes of bidding: 	<ul style="list-style-type: none"> • Reciprocal fair and equitable arrangements with specific foreign flag states • A Qualifying IFSC Entity for the purposes of coastal trade is an entity which meets all the following criteria: <ul style="list-style-type: none"> ○ At least 50 percent of its total fleet by deadweight (either directly or through its SPVs or joint ventures or subsidiaries in India or overseas) should be India flagged with IFSC tagging ○ At least 50% of total crew in each vessel to be of Indian nationality ○ At least 1 Indian cadet for training onboard ○ No requirement for tonnage reserve funds/ IACS Class / Manning Stds. ○ Tonnage tax rates as per the then prevailing rate after the tax holiday period. 								

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<ul style="list-style-type: none"> ○ At least 20% of its total fleet by deadweight (either directly or through its SPVs or joint ventures or subsidiaries in India or overseas) should be India flagged with IFSC tagging ○ At least 25% of total crew in each India flagged and foreign flagged vessel to be of Indian nationality ○ At least 1 Indian cadet for training onboard ○ No requirement for tonnage reserve funds/ IACS Class/ Manning Stds. ○ Tonnage tax (after tax holiday period) at the then prevailing rates 		<ul style="list-style-type: none"> ○ All vessels which are controlled by a Qualifying IFSC Entity , to be treated on par with Indian ships for the purpose of coasting trade (by DGS through an order in exercise of its powers under S. 407(3) of the MSA) under section 407 (1 2) of MSA , subject to the following conditions: <ul style="list-style-type: none"> ▪ Vessel is controlled by Qualifying IFSC Entity ▪ Vessels under this category shall not do continuous coasting for more than 30 days, except when the last voyage is extended due to unforeseen circumstances ▪ Vessel under foreign flag if deployed in coating is provisionally flagged to India flag when performing coastal voyage(s) 		
	<p>(vi) De-boarding, port clearances and immigration clearances of foreign crew on such vessels when they touch any Indian port shall be as per applicable instructions of DG Shipping.</p> <p>This is a new category of vessels to be registered under DG Shipping, which is separate from the India controlled tonnage category and should be treated accordingly. As a result of allowing such units to opt for the flag of their choice, the MOS and DG Shipping requirements of such units from complying with DG Order 10 of 2014 in so far as the Indian Controlled Tonnage and the Crew Restrictions are concerned will not be required.</p>				
3.	Licensing Requirements				
	<p>Background:</p> <p>The chartering of both Indian and foreign vessels for the purpose of Indian trade is governed by the mechanism set out by the MSA and the DG Shipping vide various circulars issued from time to time in this regard. As per Section 406 and 407 of the MSA, a license would have to obtained from the DG Shipping for chartering of Indian and foreign vessels, respectively, for coastal trade. Further, the DG Shipping has also vide DGS Circular No. 02 of 2021 dated January 14, 2021 (referred to as the “ROFR Circular”) introduced rules relating to the right of first refusal which are favoring <i>inter alia</i> Indian built and owned ships.</p>				
	Licensing requirements are time consuming and cumbersome. The said license	<p>– The licensing requirements in respect of Indian coasting trade are as per Section 406 and 407 of the MSA, being extracted as follows:</p> <p>406. Indian ships and Chartered ships to be licensed.— (1) No Indian ship and no other ship chartered by a citizen of India or a company or a co-</p>	The chartering of ships requires a license from the DG Shipping, subject to the scope of the chartering activities not falling within exemptions issued by the notifications and the office orders issued by the DG	DG Shipping/ M/o Shipping	M/o Shipping and DG Shipping may take the following into consideration when ROFR is exercised: (a) If DTA India flagged vessel is L1 in bidding, then the tender

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p>adds a delay of 2 to 3 days in obtaining a license which makes it commercially uncompetitive.</p>	<p><i>operative Society shall be taken to sea from a port or place within or outside India except under a licence granted by the Director-General under this section: Provided that the Central Government, if it is of opinion that it is necessary or expedient in the public interest so to do, may, by notification in the Official Gazette, exempt any class of ships chartered by a citizen of India or a company or a co-operative Society from the provisions of this sub-section.</i></p> <p><i>(2) A licence granted under this section may be</i></p> <p><i>(a) a general licence;</i> <i>(b) a licence for the whole or any part of the coasting trade of India; or</i> <i>(c) a licence for a specified period or voyage.</i></p> <p><i>(3) A licence granted under this section shall be in such form and shall be valid for such period as may be prescribed and shall be subject to such conditions as may be specified by the Director-General.</i></p> <p>407. Licensing of ships for coasting trade— <i>(1) No ship other than an Indian ship or a ship chartered by a citizen of India or a company or a co-operative society which satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21, shall engage in the coasting trade of India except under a licence granted by the Director-General under this section.</i></p> <p><i>(2) A licence granted under this section may be for a specified period or voyage and shall be subject to such conditions as may be specified by the Director-General.</i></p>	<p>Shipping in this regard. Further, in view of the ROFR Circular, priority in licensing is given to ships which are Indian owned, Indian flagged and Indian built over foreign ships.</p>		<p>is to be awarded to it and no ROFR is given for IFSC vessels.</p> <p>(b) If IFSC India flagged or IFSC foreign flagged vessel is L1 in bidding, then the tender is to be awarded to IFSC vessel by waiving the requirement of ROFR for India DTA vessels.</p> <p>(c) If a Foreign flag vessel is L1, the tender is to be awarded as per the existing ROFR & price preference. IFSC vessels may participate in the ROFR; however, if DTA Vessel matches the L1, then the tender is to be awarded to the DTA Vessel, else tender may be awarded to IFSC flagged vessel. IFSC Vessels do not get right to price preference.</p> <p>(d) IFSC unit could contract DTA India flagged vessels for participating in tenders.</p> <p>Provided however that if an IFSC Unit is participating in the tender, then it's overseas parent, if any, cannot participate in the tender. Related parties cannot participate simultaneously in the tender.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>(3) The Central Government may, by general or special order, direct that the provisions of sub-section (1) shall not apply in respect of any part of the coasting trade of India or shall apply subject to such conditions and restrictions as may be specified in the order.</i></p> <p>– Further to the licensing requirements under Section 406 and 407 of the MSA above, the DG Shipping has issued the ROFR Circular in respect of ships being chartered through the tendering process. As per paragraph 21 read with paragraph 21.3.4 of ROFR Circular, ROFR will be applicable to bidders in the following priority:</p> <ol style="list-style-type: none"> <i>1. India-built, India-flagged, India Owned</i> <i>2. Foreign-built, India-flagged, India-Owned</i> <i>3. India-built, Foreign-Flagged, Foreign-Owned</i> <p>– Further, paragraph 21.3.5 and 21.3.6 of the ROFR Circular prescribes a price range within which persons exercising their right of first refusal shall be entitled to win the bid, which states as follows:</p> <p><i>“21.3.5. Further, RoFR shall be applicable to all inquiries for in-charter of foreign flagged vessels with in a 20% margin of purchase preference (price band) i.e. the maximum extent to which the price quoted by an Indian Company may be above the L1 for the purpose of purchase preference.</i></p> <p><i>21.3.6. In case none of the bidders eligible to exercise RoFR matches the L1 quote, then the charter shall be awarded to the L1 bidder.”</i></p> <p>– Pursuant to the licensing requirements, relaxations have been introduced by the DG Shipping through</p>			

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p>various notifications and office orders which deviates from the licensing requirements in respect of Indian and foreign vessels under Section 406 and Section 407 of the MSA, respectively. Some of the relaxations introduced vide notifications and orders of the DG Shipping are summarised below:</p> <p><i>Relaxations with respect of Indian vessels:</i></p> <p>Notification dated May 21, 2018 - as per the said notification, Section 406 shall not apply to ships chartered by citizens of Indian or a cooperative society registered in India and which are inter alia engaged in – (a) the transportation of EXIM laden containers for transshipment; and (b) the transportation of empty containers from one port of India to another port, so long as – (i) the container is consigned through a Bill of lading to or from a foreign port for transshipment at an Indian port; (ii) the container is loaded or unloaded for transshipment purposes; and (iii) the container has an adequate arrival or departure manifest.</p> <p>Notification dated May 22, 2018 – as per the said notification, Section 406 shall not apply to coastal movement of agriculture, fishery, farm produce and horticulture commodities, subject to the aforesaid cargo contributing to atleast 50% of the cargo onboard the ship.</p> <p>1. <i>Cabotage Policy applicable to Foreign vessels:</i> Relaxations have been introduced to enable foreign vessels undertaking coasting trade, which deviates for the license requirements under Section 407 of the Merchant Shipping Act, 1958 (referred to as the “Cabotage Policy”). They are follows:</p>			

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p>General Order No 1 of 2018 dated May 21, 2018 – as per the said notification, Section 407(1) shall not apply to – (a) foreign flag ships engaged, in full or part, for transportation of EXIM laden containers for transshipment; and (b) empty containers are exempted from the application of Section 407(1) so long as – (i) the container is consigned through a Bill of lading to or from a foreign port for transshipment at an Indian port; (ii) the container is loaded or unloaded for transshipment purposes; and (iii) the container has an adequate arrival or departure manifest.</p> <p>General Order No. 2 of 2018 dated May 22, 2018 – as per the said order, exemptions have been provided to foreign vessels engaged in the movement of agriculture, horticulture, fisheries, animal husbandry commodities within India, subject to the restriction that such cargo must contribute to atleast 50% of the total cargo.</p> <p>General Order No. 3 of 2018 dated June 22, 2018 – as per the said order, exemptions have been provided for foreign vessels engaged in coastal movement of fertilisers, subject to the restriction that such cargo must contribute at least 50% of the total cargo. Further, General Order No. 4 of 2018 dated September 10, 2018, sets out an illustrative clarification in respect of fertilisers being transported under the said exemption.</p> <p>Circular No. SW-17011/2/2016-CT dated August 08, 2016 – foreign flag vessels carrying passengers are exempt from Section 407(1) to the extent that they are allowed to call at more than one Indian port upto 05.02.2024.</p>			

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p>Key takeaways:</p> <p><i>The MOS and DG Shipping may consider the following steps to be taken into consideration when the right of ROFR is exercised, the implementation of which would attract various market players to the Indian shipping industry:</i></p> <p>In respect of the ROFR Circular, the MOS and DG Shipping may consider the following to be taken into consideration when the right of ROFR is exercised:</p> <p>(a) If DTA India flagged vessel is L1 in bidding, then the tender is to be awarded to it and no ROFR is given for IFSC vessels.</p> <p>(b) If IFSC India flagged or foreign flagged vessel is L1 in bidding, then the tender is to be awarded to IFSC vessel by waiving the requirement of ROFR for India DTA vessels, with the provision for waiver coming into effect no later than April 1, 2023.</p> <p>(c) If a Foreign flag vessel is L1, the tender is to be awarded as per the existing ROFR & price preference. IFSC India flagged vessels may participate in the ROFR; however, if DTA Vessel matches the L1, then the tender is to be awarded to the DTA Vessel, else tender may awarded to IFSC flagged vessel. IFSC Vessels do not get right to price preference.</p> <p>(d) IFSC unit could contract DTA India flagged vessels for participating in tenders.</p> <p>Provided however that if an IFSC Unit is participating in the tender, then it's overseas parent if any cannot participate in the tender. Related parties cannot participate simultaneously in the tender.</p>				
4	<p>Import of Bulk Cargo</p>				
	<p>For import of bulk cargo, government departments and PSUs are required to obtain no-objection certificates from M/o Shipping.</p>	<p>Office Memorandum bearing number SC-18013/1/2013-ASO-I dated 08 September, 2015, Para. 2(a)(i) requires that all government department/ PSUs importing bulk cargoes, both dry and liquid, will continue to be made on FOB/ FAS basis and shall remain subject to the extant Government policy notified vide the Office Memorandum of the DG Shipping 11011/1/194-ASO-II/Vol.III dated 15th November, 2001 and in case of any departure therefrom, prior permission and no-objection certificate must be obtained from the Ministry of Shipping, on a case to case basis, with the approval of the concerned administrative Ministry/ Department.</p>	<p>By virtue of the said circular, PSUs would have to obtain an NOC from the DG Shipping as well as seek the approval of the concerned administrative Ministry/ Department to import on C&F basis, effectively transferring the control of chartering to the seller.</p>	<p>DG Shipping</p>	<p>The requirement of waiver by the two ministries to be replaced by a confirmation by the freight/operational desk of the PSU setup in IFSC, stating that the freight terms offered by the seller is more competitive than that obtained by the PSU.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
<p>Key Takeaways:</p> <ul style="list-style-type: none"> • <i>PSUs to set up 'freight desk' operations at IFSC-GIFT for all chartering requirements</i> • <i>Requirement of waiver by two Ministries to be replaced by a confirmation by freight/operational desk of PSU set up in IFSC that the freight terms offered by seller are more competitive with those obtained by PSU.</i> 					
5	<p>Monitoring mechanism on payments/ dues of the debtor – Promoting Brand Indian-Flag and Brand IFSCA</p>	<p>Relevant IMO Instruments– all the applicable requirements for Recognized Organizations have been captured in a single IMO mandatory instrument, namely, the Code for Recognized Organizations (RO Code) which entered into force on 1 January 2015, under MARPOL annexes I and II, SOLAS 1974 and the 1988 Load Line Protocol.</p> <p>Provisions of The Paris MOU on Port State Control on is a harmonized system of common, documented standards and procedures for the ship inspection and also a common database for the inspected ships of its constituent Port States. There are 8 other MOUs, besides the United States Coast Guard maintains a tenth port State control regime.</p>	<p>It is proposed to impart brand value to India flagged vessels.</p> <p>It is also felt that Indian-flag be made the flag of choice for vessels involved in international trade for India-IFSC vessels. This can be done by adopting the correct tonnage tax structure and giving options to the users without compromising on safety and security standards, while furthering employment of Indian seafarers. A strong, effective, proactive and commercially-oriented and responsive flag administration and proper ensuring of compliances of the provisions of Port State Controls and IMOs instruments is vital. The performance of regulatory functions and regulatory oversight in an efficient and disciplined manner would surely ensure that Indian flag upgrades itself from its present position at 43 (“Grey List”) to the “White List”, and at the same time, the India Administration’s Recognised Organisations (Indian Registry of Ships) upgrades itself</p>	<p>IFSCA / DG Shipping</p>	<p>Compliances of ships with IMO/ Paris MOU and other standards are assessed and performance rating/ grading are periodically announced. It is vital that concerted efforts are made to shore up the reputation and credibility of the regulator(s) in ensuring compliances to technical, financial and commercial requirements for India-IFSC vessels.</p> <p>Further, ships are mobile assets. A ship owned by one can be financed and/or operated by others anywhere in the world. To minimise arrests of India-IFSC ships over unpaid dues, it is imperative to establish a register containing relevant information on interests/ charges, priorities of various interests/ charges, mortgages/ liens, chargees/ mortgagors, statutory and other payments/ dues of the debtor/ lessee of India-IFSC assets, etc.</p>

LONG FORM OF THE RECOMMENDATIONS

S. NO	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
			<p>from “Medium-level” performance (rating and assessment in 2020) to the “High-Level”. Without doubt, these measures will give a significant filip to the Indian-Flag being the preferred flag for vessels plying in international trade, besides ensuring that exercise of this choice brings financial, fiscal and commercial benefits to the ship owner/ lessor in India-IFSC or to a Wholly-owned-Subsidiary with POEM established in India-IFSC by a foreign ship owner/lessor.</p>		<p>Given the large value investment in such assets, regulator must have full knowledge of the value of the ship and its fiscal and financial compliances against outstanding debt throughout its lifecycle and any statutory and other dues from its operations. Lender should also be able to inspect the asset and be sure that the value of its collateral is sufficient to cover its debt.</p>
<p>Key Takeaways:</p> <ul style="list-style-type: none"> • <i>Flag State / Registry – Regulatory Performance and Ratings</i> <p><i>“The debtor shall maintain and submit to IFSCA on a monthly basis, records of details of dues paid and payable by such debtor in respect of taxes, or any amount owed to the Government, or any other dues, as may be notified by the IFSCA, in respect of a ship under an international interest or domestic interest registered with IFSCA, in the manner as prescribed by the IFSCA and shall be so maintained and submitted till the time such ship is in the possession of such debtor. The creditor shall on request at any time and from time to time, be provided with a copy of such record of dues relevant to him maintained by the IFSCA, which record may be relied upon by the creditor for the purpose set out in the lease agreement, including of the reexport of the ship upon lease termination, etc.”</i></p> <ul style="list-style-type: none"> • <i>Commercial Reputation: In IFSC-GIFT City, the authorities would need to maintain a clear connect with markets. IFSCA is requested to maintain ultimate control in terms of discipling companies, should it be required after investigation by them. Conversely, the authorities can maintain a confidential record of global companies defaulting worldwide (in line with the Baltic Exchange / BIMCO practices) in order to give such feedback to member companies.</i> • <i>Brand Promotion:</i> <ul style="list-style-type: none"> • <i>Together with Indian Maritime University, Gujarat Maritime University and other institutions, like IIM Ahmedabad, IIT Gandhinagar, National Physical Laboratory, National Institute of Design, and Pandit Deendayal Energy University, the hub has the potential to emerge as a front runner in new thoughts and ideas across the spectrum of maritime activities. This has to be nurtured/ promoted by the authorities and hub.</i> 					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
					<ul style="list-style-type: none"> • <i>Holding regular global events, presentations, and meetings at the hub, and attending such events at others are important for brand promotion. Overseas Indian Missions, Invest India and such other organizations could be properly briefed, for suitably marketing the opportunity worldwide.</i>

8.2. Tax Recommendations

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
DIRECT TAX					
1	Ship Operators:				
1.1	<p>Hire charges</p> <p>Payments of hire charges to non-resident under charter agreements is currently taxed as royalty and is liable to deduction of tax at source @10% under section 195 of the ITA.</p>	<p>Section 10 of the Income-Tax Act, 1961 provides exemptions to various kinds of income which the Central Government deems necessary.</p> <p><i>Section 10(4F) of the ITA states:</i></p> <p><i>“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 International Financial Services Centre as referred to in sub-section (1A) of section 80LA, if the unit has commenced its operations on or before the 31st day of March, 2024.</i></p> <p><i>Explanation—For the purposes of this clause, "aircraft" means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof;” ...”</i></p>	<p>Royalty payable by a unit located in an IFSC on account of leasing of aircraft to foreign enterprises is exempt from tax.</p> <p>Similar exemption should be extended on payment of hire charges paid for vessel leasing from IFSC.</p>	M/o Finance, CBDT	<p>There is no such specific exemption for an IFSC unit carrying out vessel leasing activity.</p> <p>As contracts are tax bearing contracts, the entire liability has to be borne by ship operators making the business unviable from India</p>
	Suggested amendment language				

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p>Insert clause (4G) of section 10</p> <p><i>“(4G) any income of a non-resident by way of royalty or hire charges, on account of vessel lease in a previous year, paid by a unit of an International Financial Services Centre as referred to in sub-section (1A) of section 80LA.</i></p> <p><i>Explanation – For the purpose of this clause,</i></p> <p><i>(a) “vessel” and “vessel lease” means vessel and vessel lease as defined in the International Financial Services (Finance Company) Regulations, 2021</i></p> <p><i>(b) “hire charges” means any amount payable with respect to hire and use of the vessel and demurrage charge or handling charge or any other amount of similar nature.</i></p>			
1.2	<p>Remove withholding tax on freight payments paid by Indian charterers to vessel leasing and owning companies in IFSC</p>	<p>Section 194C of the ITA states that:</p> <p><i>“(1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—</i></p> <p><i>(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;</i></p> <p><i>(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,”</i></p> <p><i>of such sum as income-tax on income comprised therein.</i></p>	<p>Freight payments made by Indian charterers are subject to withholding tax @ 2% under section 194C of the ITA.</p>	<p>M/o Finance, CBDT</p>	<p>Freight paid by Indian charterers to vessel leasing or owning companies located in an IFSC should not be subject to withholding tax during the applicable 10-year tax holiday period.</p>
	<p>Suggested amendment language:</p>				
	<p>Notification pursuant to powers conferred in section 197A (IF) to exempt withholding tax on payments on account of freight made to shipping units located in the IFSC claiming tax holiday on its income under Section 80LA of the Act</p> <p>MINISTRY OF FINANCE (Department of Revenue) (CENTRAL BOARD OF DIRECT TAXES) NOTIFICATION</p>				

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p>NEW DELHI, THE _____, 2021; No. ____/ 2021-INCOME-TAX</p> <p><i>S.O. (E).-In exercise of the powers conferred by sub-section (1F) of section 197A of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said 'Act'), the Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on any payments on account of freight made by an Indian company to vessel leasing or owning companies located in an IFSC eligible to claim deduction under sub-section (1A) of the section 80LA of the Act.</i></p> <p><i>2. This notification shall come into force from the date of its publication in the Official Gazette.</i></p> <p>Conditions:</p> <p><i>1. The Indian company shall report the above payments in the statement of deduction of tax as referred to in sub-section (3) of section 200 of the said Act.</i></p> <p><i>2. This notification shall come into force from the date of its publication in the Official Gazette.</i></p>				
2	Ship Owners				
2.1	<p>Capital gains tax on Transfer/ sale of Vessel or transfer/ sale of partnership interest/ shares of SPV holding the vessels</p>	<p>Section 45 of the ITA states that:</p> <p><i>(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place."</i></p> <p>Section 80LA(2) of the ITA states that:</p> <p>...</p> <p><i>(1A) Where the gross total income of an assessee, being a Unit of an International Financial Services Centre, includes any income referred to in sub-section (2), there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such income, of an amount equal to one hundred per cent of such income for any ten consecutive assessment years, at the option of the assessee, out of fifteen years, beginning with the assessment year relevant to the previous year in which the permission, under clause (a) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949) or permission or registration under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or [any other relevant law was obtained].]</i></p>	<p>Gains arising on transfer/ sale of vessels or transfer/ sale of partnership interest/ shares of SPV holding the vessels attracts capital gains tax under Section 45 of the ITA</p>	<p>M/o Finance, CBDT</p>	<p>Exempt tax on capital gains arising on transfer/sale of vessels or transfer/sale of partnership interest/shares of SPV holding the vessels.</p> <p><i>Currently sale of vessels by a leasing company in an IFSC or sale of partnership interest or shares of SPV holding vessels in an IFSC attracts capital gains tax on the capital gain.</i></p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p>(2) The income referred to in sub-section (1) [and sub-section (1A)] shall be the income—</p> <p>...</p> <p>(c) arising from the transfer of an asset, being an aircraft, which was leased by a unit referred to in clause (c) to a person, subject to the condition that the unit has commenced operation on or before the 31st day of March, 2024.</p>			
<p>Suggested amendment language:</p>					
<p>Amend sub-section (2) of section 80LA:</p> <p>(2) The income referred to in sub-section (1) and sub-section (1A) shall be the income—</p> <p>(a) ...</p> <p>(b) ...</p> <p>(c) from any Unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone;</p> <p>(d)</p> <p>(e) arising from the transfer of an asset, being a vessel, which was leased by a unit of an International Financial Services Centre referred to in clause (c) to a person, or transfer of, shares of or interest in partnership of, a unit of an International Financial Services Centre, which is engaged in the business of leasing of vessels.</p> <p>Explanation: For the purpose of this clause, Vessel shall have the meaning assigned to it in the Explanation to Clause (4G) of section 10.</p>					
3	<p>Tonnage Taxation</p>				
3.1	<p>Qualifying Company</p> <p>The qualifying conditions for a company opting tonnage tax regime is</p>	<p>Section 115VC of the Act states that,</p> <p>For the purposes of this Chapter, a company is a qualifying company if—</p> <p>(a) it is an Indian company;</p> <p>(b) the place of effective management of the company is in India;</p> <p>(c) it owns at least one qualifying ship; and</p> <p>(d) the main object of the company is to carry on the business of operating ships.</p> <p>Explanation.—For the purposes of this section, "place of effective management of the company" means—</p>	<p>Any company to qualify for tonnage taxation regime in India has to comply with conditions under section 115VC of the ITA.</p>	<p>M/o Finance, CBDT</p>	<p>Insert separate qualifying conditions for IFSC controlled tonnage</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	complex compared to other maritime best practices.	<p>(A) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or</p> <p>(B) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.</p>			
Suggested amendment language:					
<p>Insert sub-Section (2) to Section 115VC</p> <p>For the purpose of this chapter, a company will be a qualifying company if –</p> <p>(a) it is an Indian company set-up as a unit in International Financial Services Centre or a branch a foreign company (which is a subsidiary of an Indian company) set up in an International Financial Services Centre;</p> <p>(b) the place of effective management of the Indian company & the foreign company is in IFSC;</p> <p>(c) it owns at-least one qualifying ship; and</p> <p>(d) the main object of the company is to carry on the business of operating ships.</p> <p>Explanation.— For the purposes of this sub-clause,—</p> <p>(1) a foreign company (which is a subsidiary of an Indian company) and having a branch in an International Financial Services Centre will also be regarded as a qualifying company provided that it fulfills the conditions mentioned in clause (b),(c) and (d) above.</p> <p>(2) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005)</p>					
3.2	Qualifying Ship	<p>Section 115VD of the Act states that,</p> <p>For the purposes of this Chapter, a ship is a qualifying ship if—</p> <p>(a) it is a sea going ship or vessel of fifteen net tonnage or more;</p> <p>(b) it is a ship registered under the Merchant Shipping Act, 1958 (44 of 1958), or a ship registered outside India in respect of which a licence has been issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 (44 of 1958); and</p> <p>(c) a valid certificate in respect of such ship indicating its net tonnage is in force,</p>	Any company to qualify for tonnage taxation regime in India has to possess a qualifying ship in compliance with conditions under	M/o Finance, CBDT	Qualifying Ship will be as per section 115-VD of the ITA and shall also include the ships owned by overseas subsidiary of the IFSC unit which is the holding company.

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>but does not include—</i></p> <p>(i) <i>a sea going ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;</i></p> <p>(ii) <i>fishing vessels;</i></p> <p>(iii) <i>factory ships;</i></p> <p>(iv) <i>pleasure crafts;</i></p> <p>(v) <i>harbour and river ferries;</i></p> <p>(vi) <i>offshore installations;</i></p> <p>(vii) <i>[***]</i></p> <p>(viii) <i>a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.</i></p>	<p>section 115VD of the Act.</p>		
<p>Suggested amendment language:</p>					
<p>Amend Section 115VD</p> <p><i>For the purposes of this Chapter, a ship is a qualifying ship if—</i></p> <p>(a) <i>it is a sea going ship or vessel of fifteen net tonnage or more;</i></p> <p>(b) <i>it is a ship registered under the Merchant Shipping Act, 1958 (44 of 1958), or a ship registered outside India in respect of which a licence has been issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 (44 of 1958); and</i></p> <p>(c) <i>a valid certificate in respect of such ship indicating its net tonnage is in force.</i></p> <p><i>Explanation.— For the purposes of this section,—</i></p> <p>(a) <i>The qualifying ships shall include, the ships owned or chartered by foreign company [which is a subsidiary of an Indian company set-up in an International Financial Services Centre and having a branch in an International Financial Services Centre] and includes even part of the ship which is chartered by it in an arrangement such as space charter, slot charter of joint charter.</i></p> <p>(b) <i>"International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).</i></p>					
3.3	Tonnage Tax Reserve	<p>Section 115VT (1) of the Act states that,</p> <p><i>"A tonnage tax company shall, subject to and in accordance with the provisions of this section, be required to credit to a reserve account (hereafter in this section</i></p>	<p>Company opting for Tonnage tax regime is required to credit 20% of</p>	<p>M/o Finance, CBDT</p>	<p>Exempt ship owning company set-up in IFSC from the requirement to credit 20% of their book</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>referred to as the Tonnage Tax Reserve Account) an amount not less than twenty per cent of the book profit derived from the activities referred to in clauses (i) and (ii) of sub-section (1) of section 115V-I in each previous year to be utilised in the manner laid down in sub-section (3):</i></p> <p><i>Provided that a tonnage tax company may transfer a sum in excess of twenty per cent of the book profit and such excess sum transferred shall also be utilised in the manner laid down in sub-section (3).</i></p> <p><i>Explanation.—For the purposes of this section, "book profit" shall have the same meaning as in the Explanation to sub-section (2) of section 115JB so far as it relates to the income derived from the activities referred to in clauses (i) and (ii) of sub-section (1) of section 115VI.'</i></p>	<p>their book profit derived from the business to the Tonnage Tax Reserve Account as per the provisions of section 115VT of the ITA.</p>		<p>profit derived from the business to the Tonnage Tax Reserve Account.</p>
<p><i>Suggested amendment language:</i></p>					
<p><i>Insert sub-section (7) to Section 115VT</i></p> <p><i>Notwithstanding anything contained in this section, the provisions of this section shall not apply to a company qualifying under sub-section (2) of Section 115VC</i></p>					
3.4	<i>Minimum Training Requirement</i>	<p>Section 115VU of the Act states that,</p> <p><i>(1) A tonnage tax company, after its option has been approved under sub-section (3) of section 115VP, shall comply with the minimum training requirement in respect of trainee officers in accordance with the guidelines framed by the Director-General of Shipping and notified in the Official Gazette by the Central Government.</i></p> <p><i>(2) The tonnage tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping along with the return of income¹⁴ under section 139 to the effect that such company has complied with the minimum training requirement in accordance with the guidelines referred to in sub-section (1) for the previous year.</i></p> <p><i>(3) If the minimum training requirement is not complied with for any five consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the fifth</i></p>	<p>The tonnage taxation regime prescribes minimum training requirement in respect of trainee officers as specified by DG Shipping under section 115VU of the ITA.</p>	M/o Finance, CBDT	<p>No minimum training requirement in respect of trainee officers employed by ship owning companies in IFSC.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<i>consecutive previous year in which the failure to comply with the minimum training requirement under sub-section (1) had occurred.</i>			
	Suggested amendment language:				
	Insert sub-section (4) to Section 115VU <i>Notwithstanding anything contained in this section, the provisions of this section shall not apply to a company qualifying under sub-section (2) of Section 115VC</i>				
3.5	Period of exclusion from Tonnage Tax regime	Section 115VS of the Act states that “A qualifying company, which, on its own, opts out of the tonnage tax scheme or makes a default in complying with the provisions of section 115VT or section 115VU or section 115VV or whose option has been excluded from tonnage tax scheme in pursuance of an order made under sub-section (1) of section 115VZC, shall not be eligible to opt for tonnage tax scheme for a period of ten years from the date of opting out or default or order, as the case may be.”	Non-compliance of any qualifying condition results in exclusion from the regime for 10 years (section 115-VQ of ITA)	M/o Finance, CBDT	<i>Reduction in the period of exclusion from the regime on non-qualification for availing tonnage tax regime from 10 years to 5 years.</i>
	Suggested amendment language:				
	Insert Explanation to section 115VS Explanation. — <i>For the purposes of this sub-clause,—</i> <i>In case of an Indian company set-up as a unit in International Financial Services Centre or a foreign company which is a subsidiary of an Indian company and having a branch set up in an International Financial Services Centre, the provisions of sub-section (1) above section shall apply as if for the words "ten years", occurring therein, the words "five years" had been substituted.</i> <i>(a) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);</i>				
4	General recommendations:				
4.1	Tax on Dividend	Section 115-O(8) of the Act stated that, “Notwithstanding anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an	With the deletion of section 115-O, dividend paid to shareholders of	M/o Finance, CBDT	Specific exemption to be provided on dividend paid to non-resident shareholder of a company

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<i>International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017, out of its current income 89[or income accumulated as a unit of International Financial Services Centre after the 1st day of April, 2017], either in the hands of the company or the person receiving such dividend”</i>	companies in IFSC are subject to tax at ordinary rates in their hand under section 56 of the Act in case of Indian Shareholders and under section 115A of the Act in case of non-resident shareholders.		set-up or established in IFSC. In order to offer a level playing field comparable with offshore financial jurisdictions, dividends paid by company in IFSC should not be subject to any dividend distribution tax nor should the dividends be taxed in the hands of the non-resident shareholder.
Suggested amendment language:					
<p>Insert proviso to amend section 10(34)</p> <p>“any income by way of dividends referred to in section 115-O:</p> <p>Provided that nothing in this clause shall apply to any income by way of dividend chargeable to tax in accordance with the provisions of section 115BBDA :</p> <p>Provided further that nothing contained in this clause shall apply to any income by way of dividend received on or after the 1st day of April, 2020 other than the dividend on which tax under section 115-O and section 115BBDA, wherever applicable, has been paid;</p> <p>Provided further that nothing contained in the second proviso shall apply to any income by way of dividend received by a non-resident shareholder from a unit set-up or established in an International Financial Services Centre.</p>					
INDIRECT TAX					
1	Ship Operators				
1.1	GST on charter hire (Ocean)	Entry 9965 in Notification 8/2017 – Integrated Tax (Rate) dated 28-06-2017 stipulates that:	Supply of services of transportation of goods in vessel	M/o Finance, CBIC	Amend notification to specifically exempt services of ocean freight

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS				
	freight) Income - Import freight services	<p>(ii) Transport of goods in a vessel subject to IGST at the rate of 5%, if credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken</p> <p>Hence, an Indian company providing shipping services to a foreign consignor to transport cargo from outside India to India (import freight services) is subject to 5% IGST on the freight charges and such IGST is a cost in the overall value chain.</p> <p>Similar services if provided by foreign shipping operator to a foreign consignor, IGST is not applicable</p>	is subject to IGST at the rate of 5%		provided by companies in IFSC to a foreign consignor for transport from outside India to India in order to make shipping operator in IFSC at par with the foreign shipping operator				
Suggested amendment language:									
<p>Exempt GST on ocean freight income (import freight) of an Indian company providing shipping services to a foreign consignor to transport cargo from outside India to India</p> <p>"Nil" rate of GST on leasing of vessel by Indian ship operators to Indian companies</p> <p>Sample language for IGST Notification provided below, where Notification no. 09/2017 dated 28 June 2017 (which provides exemption to various services) would have to be amended:</p> <p>Notification - Integrated Tax (Rate):</p> <p><i>In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 684(E), dated the 28th June, 2017, namely:-</i></p> <p><i>In the said notification, -</i></p> <p><i>i) in the Table, -</i></p> <p style="padding-left: 40px;"><i>(a) after serial number [] and the entries relating thereto, the following shall be inserted namely:-</i></p> <table border="1" style="margin-left: 40px; width: 100%;"> <tr> <td style="width: 5%; text-align: center;">[]</td> <td style="width: 15%;">Chapter 99</td> <td style="width: 60%;">Services by way of transportation of goods by a vessel from customs station of clearance from a place outside India to a place in India for ship operators in IFSC</td> <td style="width: 15%; text-align: center;">Nil</td> </tr> </table>						[]	Chapter 99	Services by way of transportation of goods by a vessel from customs station of clearance from a place outside India to a place in India for ship operators in IFSC	Nil
[]	Chapter 99	Services by way of transportation of goods by a vessel from customs station of clearance from a place outside India to a place in India for ship operators in IFSC	Nil						

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
1.2	<i>GST on charter hire (Ocean freight) Income - Export freight services</i>	<p>Entry 9965 in Notification 8/2017 – Integrated Tax (Rate) dated 28-06-2017 stipulates that:</p> <p><i>(ii) Transport of goods in a vessel subject to IGST at the rate of 5%, if credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken</i></p> <p>GST on the above services was exempted by way of Notification 9/2017- Integrated Tax (Rate) read with Notification 4/2020 –Integrated Tax (Rate) upto 30 September 2021, which reads as below:</p> <p><i>20B. Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is exempted upto 30 September 2021*</i></p> <p>GST Council in its forty-fifth meeting has recommended the exemption upto 30 September 2022 and now the exemption on export ocean freight services have been extended upto 30 September 2022 vide Notification No. 07/2021- Integrated Tax (Rate) dated 30 September 2021.</p>	Supply of services of transportation of goods in vessels for export of goods is exempt upto 30 September 2022	M/o Finance, CBIC	Amend notification to provide exemption on export freight services indefinitely.
<i>Suggested amendment language:</i>					
<p><i>Exempt GST on ocean freight income (export freight) of an Indian company providing shipping services to a foreign consignor to transport cargo from India to outside India</i></p> <p>Exemption of GST on export freight services which is granted by way of notification every year should be provided without sunset clause for IFSC units</p> <p>Sample language for IGST Notification provided below, where Notification no. 09/2017 dated 28 June 2017 (which provides exemption to various services) would have to be amended:</p> <p><i>Notification - Integrated Tax (Rate):</i></p> <p><i>In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 684(E), dated the 28th June, 2017, namely:-</i></p> <p><i>In the said notification,-</i></p>					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	i) <i>in the Table-</i>				
	20B	Heading 9965	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India	Nil	
1.3	<i>GST on Ocean freight and Inland Haulage charges for shipments from one country to another (both outside India) to Indian customers</i>	Section 12 of the Integrated Goods and Services Tax Act, 2017 stipulates that: <i>(8) The place of supply of services by way of transportation of goods, including by mail or courier to: (a) a registered person, shall be the location of such person</i>	Supply of services of transportation of goods by vessel to Indian customers is subject to IGST at the rate of 5% even when the movement of goods is from one country outside India to another country outside India	M/o Finance, CBIC	Shipping operators in IFSC to be treated at par with foreign shipping operator by providing an exemption of IGST on such services. This would require amendment in Section 12(8) of IGST Act that in case of transport of goods from one country to another country (both outside India), place of supply should be the destination of goods, OR exemption to be provided on such services when transportation of goods is from one country to another (both outside India)
	<i>Suggested amendment language</i>				
	<i>Exempt GST on Charter Hire and other services like Inland Haulage Charges, post congestion charges, etc. for shipments from one country to another (both outside India) to Indian customers</i> "Nil" rate of GST on ocean freight and other related services when provided to Indian companies for shipments outside India				

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS												
	Sample language for IGST Notification provided below, where Notification no. 09/2017 dated 28 June 2017 (which provides exemption to various services) would have to be amended: Notification - Integrated Tax (Rate): <i>In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 684(E), dated the 28th June, 2017, namely:-</i> <i>In the said notification,-</i> i) <i>in the Table, below entry shall be added after entry 20B:</i>																
	20C	Heading 9965	All services provided in relation to transportation of goods by a vessel from one country to another (both outside India)	Nil													
2	Ship Owners																
2.1	IGST exemption on import of vessels is not available when imported by an Indian shipping company	Entry 551 of Notification 50/2017-Customs as amended from time to time exempts import of vessels from Basic Customs Duty (BCD) if certain specified conditions are met by the importer. Integrated Goods and Services Tax (IGST) is not exempted, and hence taxable at scheduled rate of 5%. It takes a long time to set off (utilize) the IGST credit impacting cash flow of the Indian shipping companies. The relevant extract is provided below:	M/o Finance (Central Government) has exempted BCD applicable on import of vessel, subject to certain conditions	M/o Finance, CBIC	Under this option, Import IGST should be made "Nil". <table border="1"> <tr> <td>IGST</td> </tr> <tr> <td>Nil</td> </tr> </table> Basis these changes, taxes on import of vessel will be made "Nil" when imported by an Indian ship owner. This would require an amendment of Notification 50/2017-Customs by the Ministry	IGST	Nil										
IGST																	
Nil																	
		<table border="1"> <thead> <tr> <th>Sl. No.</th> <th>Chapter, Section, or Heading</th> <th>Description of Goods</th> <th>Standard Rate (BCD)</th> <th>IGST</th> <th>Condition No.</th> </tr> </thead> <tbody> <tr> <td>551.</td> <td>8901</td> <td>All goods (excluding vessels and other floating structures as are imported for breaking up)</td> <td>Nil</td> <td>-</td> <td>84</td> </tr> </tbody> </table>	Sl. No.	Chapter, Section, or Heading	Description of Goods	Standard Rate (BCD)	IGST	Condition No.	551.	8901	All goods (excluding vessels and other floating structures as are imported for breaking up)	Nil	-	84			
Sl. No.	Chapter, Section, or Heading	Description of Goods	Standard Rate (BCD)	IGST	Condition No.												
551.	8901	All goods (excluding vessels and other floating structures as are imported for breaking up)	Nil	-	84												

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS												
		<p><i>“Conditions:</i></p> <p><i>84. If the vessels and other floating structures are intended to be broken up after their importation, the importer shall present a fresh bill of entry to the Commissioner of Customs, and thereupon such goods shall be chargeable with the duty which would be payable on such goods as if they were entered for home consumption, under section 46 of the Customs Act, 1962 (52 of 1962), on the date of the presentation of such fresh bill of entry, for the purposes of break-up of such goods</i></p>			of Finance (central government), on the recommendation of the GST Council												
<p>Suggested amendment language:</p>																	
<p>Exemption of Import IGST on import of vessel by Indian ship operators:</p> <p>Language for notification to be issued under the Customs Act, 1962 and Customs Tariff Act, 1975 amending Notification no. 50/2017 dated 30 June 2017.</p> <p>Notification to be issued by the Central Government exempting IGST where vessel is imported into India by an Indian ship operators</p> <p><i>In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 50/2017- Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 785(E), dated the 30th June, 2017, namely:-In the said notification, after entry 551, following entry shall be inserted, -</i></p> <table border="1" data-bbox="241 1023 1742 1088"> <tr> <td>551A.</td> <td>8901</td> <td>All goods (excluding vessels and other floating structures as are imported for breaking up)</td> <td>Nil</td> <td>Nil</td> <td>84 and 84A</td> </tr> </table> <p><i>(b) in the Annex, after condition No. 84, the following condition shall be inserted, namely: -</i></p> <table border="1" data-bbox="241 1153 1541 1219"> <tr> <td>84A</td> <td colspan="5">If the vessel is imported by ship operators in IFSC for providing services of transportation of goods in vessel</td> </tr> </table>						551A.	8901	All goods (excluding vessels and other floating structures as are imported for breaking up)	Nil	Nil	84 and 84A	84A	If the vessel is imported by ship operators in IFSC for providing services of transportation of goods in vessel				
551A.	8901	All goods (excluding vessels and other floating structures as are imported for breaking up)	Nil	Nil	84 and 84A												
84A	If the vessel is imported by ship operators in IFSC for providing services of transportation of goods in vessel																
2.2	GST – Charter hire services to ship	Entry 9966 in Notification 8/2017 – Integrated Tax (Rate) dated 28 06-2017 stipulates that:	Ship owners in IFSC may not have adequate input tax credits and may have to	M/o Finance, CBIC	Services provided by ship owners in IFSC to ship operators in India should												

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS				
	operators in India Import of vessels	(ii) <i>Time charter of vessels for transport of goods subject to IGST at the rate of 5%, if credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken</i> Ship owners in IFSC providing charter hire services to ship operators in India will have to charge GST on forward charge basis. If similar services are provided by foreign ship owner to ship operators in India, GST is to be paid by the ship operators in India under reverse charge mechanism (RCM).	discharge the GST liability in cash		be liable to pay GST under RCM				
Suggested amendment language:									
<p><i>GST to be paid under forward charge by ship owners in IFSC providing charter hire services to ship operators in India</i></p> <p>Notification to be issued whereby GST to be paid under reverse charge for charter hire services provided by ship owners in IFSC units to ship operators in India</p> <p>Sample language for IGST Notification provided below, where Notification no. 10/2017 dated 28 June 2017 (which provides for tax to be paid by recipient of service for various services) would have to be amended:</p> <p><i>Notification - Integrated Tax (Rate):</i></p> <p><i>In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table</i></p> <p><i>In the said notification,-</i></p> <p><i>(a) after serial number [] and the entries relating thereto, the following shall be inserted namely:-</i></p> <table border="1" data-bbox="241 1114 1422 1212"> <tr> <td>[]</td> <td><i>Service of time charter of vessels for transport of goods</i></td> <td><i>Any person located in IFSC unit</i></td> <td><i>Any person located in the taxable territory other than non-taxable online recipient</i></td> </tr> </table>						[]	<i>Service of time charter of vessels for transport of goods</i>	<i>Any person located in IFSC unit</i>	<i>Any person located in the taxable territory other than non-taxable online recipient</i>
[]	<i>Service of time charter of vessels for transport of goods</i>	<i>Any person located in IFSC unit</i>	<i>Any person located in the taxable territory other than non-taxable online recipient</i>						
2.3	<i>GST on bunker fuel imported with the vessel</i>	Entry 2710 of Notification No. 1/2017- Integrated Tax (Rate) dated 28-06-2017 stipulates that:	Charter hire services are taxable under GST @ 5% with restriction of input	M/o Finance, CBIC	To avoid the credit leakage in the hands of shipping companies, the restriction on inputs should not be applied on				

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS						
		<i>Supply of kerosene oil PDS, bunker fuels for use in ships or vessels, namely, IFO 180 CST, IFO 380 CST and Marine Fuel 0.5% (FO) are taxable at the rate of GST at 5%</i>	tax credit on inputs /goods. Bunker fuel being used (as inputs/ goods) for ocean import freight supplies carries restriction on availing ITC		bunker fuel or the supply of bunkering for ship operators/owners in IFSC shall be exempted under GST.						
Suggested amendment language:											
<p><i>Exemption of Import IGST on bunker fuel imported with vessel by Indian ship owners</i></p> <p>Language for notification to be issued under the Customs Act, 1962 and Customs Tariff Act, 1975 amending Notification no. 50/2017 dated 30 June 2017.</p> <p>Notification to be issued by the Central Government exempting IGST where bunker fuel is imported into India alongwith the vessel by Indian ship owners</p> <p><i>In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 50/2017- Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 785(E), dated the 30th June, 2017, namely:-In the said notification, after entry 139, following entry shall be inserted, -</i></p> <table border="1" data-bbox="241 1018 1541 1257"> <tr> <td>139A.</td> <td>27</td> <td><i>The following bunker fuels for use in ships or vessels, namely:-</i> <i>(i) IFO 180 CST</i> <i>(ii) IFO 380 CST</i> <i>(iii) Very Low Sulphur Fuel Oil (VLSFO) meeting ISO 8217:2017 RMG380 Viscosity in 220-400 CST standards/Marine Fuel 0.5% (FO)]</i></td> <td><i>Nil</i></td> <td><i>Nil</i></td> <td><i>13 and 13A</i></td> </tr> </table> <p><i>(b) in the Annex, after condition No. 13, the following condition shall be inserted, namely: -</i></p>						139A.	27	<i>The following bunker fuels for use in ships or vessels, namely:-</i> <i>(i) IFO 180 CST</i> <i>(ii) IFO 380 CST</i> <i>(iii) Very Low Sulphur Fuel Oil (VLSFO) meeting ISO 8217:2017 RMG380 Viscosity in 220-400 CST standards/Marine Fuel 0.5% (FO)]</i>	<i>Nil</i>	<i>Nil</i>	<i>13 and 13A</i>
139A.	27	<i>The following bunker fuels for use in ships or vessels, namely:-</i> <i>(i) IFO 180 CST</i> <i>(ii) IFO 380 CST</i> <i>(iii) Very Low Sulphur Fuel Oil (VLSFO) meeting ISO 8217:2017 RMG380 Viscosity in 220-400 CST standards/Marine Fuel 0.5% (FO)]</i>	<i>Nil</i>	<i>Nil</i>	<i>13 and 13A</i>						

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	13A	<i>If the bunker fuel is imported alongwith the vessel by ship operators/owners in IFSC for providing services of time charter of vessels for transportation of goods</i>			
3	General Recommendations				
3.1	Clarification on registration to be taken at various ports	Under the GST law, there is no specific legislation where it has been mentioned that ship operators can take registration in IFSC and registration is not required at all the ports	At present, in absence of any clarification, certain ports are insisting on registration at those ports	M/o Finance, CBIC	There should be a clarification provided that ship operators are not required to obtain registration at different ports. As a result, the ship operators in IFSC are not debarred from availing benefit of zero-rate in case of various services availed at different ports

8.3. SEZ Recommendations

S. No.	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
1.	Net Foreign Exchange (NFE) Earning Related Requirement calculated as per SEZ Rules 53 and monitored as per Rule 54	<i>Rule 53A of the SEZ Rules states that,</i> ‘53A. Exemption: Nothing contained in rule 53 shall apply: <i>a. to a Unit in an International Financial Service Centre set up as Alternate Investment Fund or Mutual Fund to the extent of any inflow of investible funds from investors, any investments made from such investible funds and returns on them inclusive of principal return and any return paid to investors from such investments including the original investment:</i>	Rule 53 of the SEZ Rules provides that a unit in SEZ shall achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five	M/o Commerce	Said amendments are required in entire SEZ Act and Rules, so that NFE requirement is not applicable to Ship Leasing Business as it should be seen as saving in foreign Currency outflow

LONG FORM OF THE RECOMMENDATIONS

S. NO.	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>Provided that the net foreign exchange of a Unit in an International Financial Service Centre set up as Alternate Investment Fund or Mutual Fund shall be determined in combination with the net foreign exchange of the Fund Manager entity to the extent the investible funds of the Alternate Investment Fund or Mutual Fund is being managed by such Fund Manager entity.</i></p> <p><i>b. to a Unit in an International Financial Service Centre set up as an International Financial Service Centre Insurance Office to the extent of the portion of premium income over and above the amount retained for management expenses within the maximum rate stipulated for expenses of management by the Insurance Regulatory and Development Authority under the Insurance Regulatory and Development Authority of India {Registration and Operations of International Financial Service Centre Insurance Offices (IIO)} Guidelines, 2017, Investment made from the said portion of premium income and returns on them, inclusive of principal return and any amount paid towards insurance or reinsurance claims.'</i></p>	<p>years from the commencement of business.</p> <p>Rule 53A of the said rules provides exemption to the NFE criteria to certain entities subject to certain conditions.</p>		which is happening currently from India
Suggested amendment language :					
<p>Insert a new sub-clause 'c' to Rule 53A</p> <p>'53A. Exemption : Nothing contained in rule 53 shall apply:</p> <p>a.</p> <p>b.</p> <p>c. to a Unit in an International Financial Service Centre set up to carry out vessel leasing and related business from IFSC'</p>					
2	Dispense requirement of the vessel being physically required to enter the SEZ area	<p>Notification 64/2017 -Customs dated 5 July 2017 exempts all goods imported by an SEZ unit for undertaking authorized operations.</p> <p>However, to enable this exemption being made available for leasing operations carried out by a leasing company in IFSC, the SEZ legislation is required to be amended</p>	Exemption from customs duty is only available if the goods are physically brought into the SEZ unit	M/o Commerce	Amendment in section 26(1)(a) of SEZ Act and an amendment of the SEZ Rules, 2006 by the Central Government to dispense requirement of vessel being

LONG FORM OF THE RECOMMENDATIONS

S. NO.	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p>Section 26(1)(a) provides that imports by an SEZ unit are exempt from customs duty, only if:</p> <p>(i) Such goods are used for 'authorized operations'; and</p> <p>(ii) Goods are <u>physically brought into the SEZ unit</u>;</p>			physically required to enter the SEZ area (and stay therein)
Suggested amendment language:					
<p>Amend Section 26(1)(a):</p> <p><i>Imports by an SEZ unit are exempt from customs duty, only if:</i></p> <p><i>(i) Such goods are used for 'authorized operations'; and</i></p> <p><i>(ii) Goods are physically brought into the SEZ unit except in the case of vessel leasing and related business set up as IFSC unit.</i></p>					
3.	Requirement of Separate Office space and lease for each Unit	<p>Rule 18(2) and other connected Rules of SEZ Rules, 2006 provides that,</p> <p><i>The Approval Committee shall approve the proposal if it fulfills the following requirements, namely:</i></p> <p><i>(i) Availability of space and other infrastructure support applied for, is confirmed by the Developer in writing, by way of a provisional offer of space:</i></p> <p><i>Provided that the Developer shall enter into a lease agreement and give possession of the space in the Special Economic Zone to the entrepreneur only after the issuance of Letter of Approval by the Development Commissioner:</i></p> <p><i>Provided further that a copy of the registered lease deed shall be furnished to the Development Commissioner concerned within six months from the issuance of the Letter of Approval and failure to do so, the Approval Committee may take action to withdraw the Letter of Approval after giving an opportunity of being heard;</i></p>		M/o Commerce	Requirement of separate office space and lease for each unit to be done away with as this is very important from the perspective to attract global companies to come to IFSC.
Key Takeaways:					
<i>In case of Ship Leasing business from IFSC, requirement of separate office space and other related infrastructure with lease deed requirement should be dispensed with, as for each SPV a separate unit will be required to be created and then it will multiply cost and other efforts with separate lease.</i>					

LONG FORM OF THE RECOMMENDATIONS

S. NO.	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
4.	Format of Application form i.e. Form F in SEZ	Rule 17(1) of SEZ Rules 2006 states that, <i>A consolidated application seeking permission for setting up of a Unit and other clearances, including those indicated below, shall be made to the Development Commissioner, in Form F</i>	Many of the columns under Form F are not applicable to an IFSC unit i.e. Foreign exchange balance sheet, Water and Power requirement, Manpower at each unit level etc.	M/o Commerce	Amend Form-F in line with requirements of an IFSC unit. Until this is changed, there will be challenges in filing new Unit application and will lead to wrong picture.
Key takeaways:					
<p><i>A completely new format of application is required to be derived to cater to requirement and information fulfilment from Ship leasing business perspective. This is required for all IFSC Unit application as existing form F is developed more from the perspective of Manufacturing and General IT / ITES companies.</i></p> <p><i>However, nature of business at IFSC is totally different and therefore many of the sections in Form F are irrelevant or not applicable in the same spirit for IFSC. Refer Annex for suggested Form-F.</i></p>					
5	Purchase of Ships and Leasing in Other Foreign Jurisdiction along with incorporating Payment settlement system on lines of EDPMS/ IDPMS	No specific provision enables this in current regulations. However, for monitoring purposes, Rule 53 is incorporated. In India EXIM transaction payment is routed through IDPMS/ EDPMS system to keep a tab on illegal transactions.	This model is not captured in current provisions of SEZ Act and Rules and therefore specific provisions needs to be incorporated.	M/o Commerce	This will enable overseas business to be carried out from IFSC easily along with monitoring and control mechanism to prevent flow of any sort of illegal transaction into the system.

LONG FORM OF THE RECOMMENDATIONS

S. NO.	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
<i>Suggested amendment language:</i>					
<i>A detailed note on with circular/clarification draft on similar lines of Aircraft Leasing is enclosed herewith as Annex. In ship leasing there will be no physical goods coming in and therefore a monitoring system similar to IDPMS/EDPMS system should be developed.</i>					
6	Format of Bond Cum Legal Undertaking; Reporting formats in SEZ to be amended	Rule 22 of SEZ Rules, 2006 w.r.t. Bond format in Form H, and APR format in Form I Existing formats of Bond, APR (Annual Performance Report) contains information about goods utilization, Bond balance, CIF Value of Imports etc. along with other periodic compliances which is to be submitted through online system like MPR (Monthly progress Reports) which contains information about employment and investment.	-	M/o Commerce	Revised formats of reporting, Bond etc to be prepared to enable IFSC business requirement to be captured well, and for monitoring in a proper manner.
<i>Suggested amendment language:</i>					
<i>All this information will be not applicable to a greater extent for Ship leasing business, instead there is a requirement of different reporting or compliance mechanism. Reports/compliances format being developed by IFSCA shall be treated as sufficient for IFSC Units compliances. Revised format for Annual Performance Report is at Annex 6 herein.</i>					

8.4. Financial Recommendations

S. NO	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
BANKING COMPANIES					
1	Banks not allowed to hold more than 30%	Section 19(2) of the BR Act reads as follows: <i>Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent of the paid-up share</i>	-	M/o Finance, RBI	While financing will be permitted to an extent under law, relaxation to be provided in respect of

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<i>shares in a company.</i>	<i>capital of that company or thirty per cent of its own paid-up share capital and reserves, whichever is less</i>			Section 19(2) of BR Act to permit the pledge and ownership of upto 100% shares of a SPV for ship finance
<p>Key Takeaways:</p> <ul style="list-style-type: none"> • While financing will be to the extent permitted under law, the Central Government may relax the requirements in respect of Section 19(2) of the BR Act to permit banks to pledge and hold upto 100% shares of a special purpose vehicle to enable ship financing activities by amendment of the BR Act. • Indian DTA regime tonnage to have free access to the capital of entities registered and operating from IFSC GIFT-City (banks, NBFCs, AIFs, etc.). The access is for both financing and refinancing of vessels. Better availability of capital is expected to bring down cost of capital and provide access to same, resulting in more tonnage for DTA regime, including coastal and offshore vessels and also inland waterways vessels. 					
NBFCs					
2	<p>IFSC and NBFCs</p> <p>While NBFCs can set up a finance company under the IFSCA (Finance Company Regulations) 2021, prior approval of RBI is required for setting up opening of Branch/ Subsidiary/ Joint Venture/ Representative</p>	<p>FEMA IFSC Regulations, 2015:</p> <p>2(b). 'Financial Institution' shall include:</p> <ul style="list-style-type: none"> • a company, or • a firm, or • an association of persons or a body of individuals, whether incorporated or not, or • any artificial juridical person, not falling within any of the preceding categories engaged in rendering financial services or carrying out financial transactions. <p><i>Explanation: For the purpose of this sub-regulation, and without any loss of generality of the above, the expression 'financial institution' shall include banks, non-banking financial companies, insurance companies, brokerage firms, merchant banks, investment banks, pension funds, mutual funds, trusts, exchanges, clearing houses, and any other entity that</i></p>	<p>FEMA IFSC Regulations recognize 'non-banking financial companies' as a category of companies that may set up operations in IFSC as a financial institution. While presently NBFCs may set up operations in the IFSC as a Finance Company under the IFSC (Finance Company) Regulations, 2021, RBI does not permit opening of branch office overseas.</p>	RBI/ IFSCA	<p>Setting up of a branch office in IFSC by an NBFC in India should be permitted.</p> <p>ODI investment by NBFC should be under automatic route.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	office or Undertaking Investment Abroad by NBFCs	<p><i>may be specified by the Government of India or a Financial Regulatory Authority.'</i></p> <p>Master Circular of RBI on Opening of Branch/Subsidiary/Joint Venture/ Representative office or Undertaking Investment Abroad by NBFCs dated July 01, 2015 states that,</p> <p><i>1. No NBFC shall open subsidiaries/joint ventures/representative office abroad or shall make investment in any foreign entities without obtaining prior approval in writing from the Reserve Bank of India. The application from the NBFC seeking No Objection would be considered subject to these directions.</i></p> <p>In addition to the General Conditions specified in point 2.2 of the Circular, the following specific conditions also apply.</p> <p>2.3 (A) Opening of Branch</p> <p><i>As a general policy, NBFCs shall not be allowed to open a branch abroad. However Non-banking financial companies which have already set up branch(es) abroad for undertaking financial business shall be allowed to continue to operate them subject to complying with the revised guidelines, as applicable.</i></p> <p>(B) Opening of subsidiary abroad by NBFCs</p> <p><i>In case of opening of a subsidiary abroad by the NBFCs, all the conditions as stipulated above shall be applicable. The NoC to be issued by the Bank is independent of the overseas regulators' approval process.</i></p>	Also, prior approval of RBI is needed while making overseas investments by NBFCs in form of subsidiary/ JV/ Representative office/ other investments.		
<p>Key Takeaways:</p> <p><i>Setting up of a branch office in IFSC by an NBFC in India should be permitted. ODI investment by NBFC should be under automatic route.</i></p>					
<p>ALTERNATIVE INVESTMENT FUNDS</p>					
<p>Background:</p>					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
					<ul style="list-style-type: none"> An AIF is a privately pooled investment fund incorporated in the form of a trust or LLP or a company and registered as such with the SEBI. While there are multiple categories of AIFs, a Category I or II AIF (i.e. a sector or area which government or regulators consider as socially or economically desirable OR a private equity fund or a debt fund, respectively that invests primarily in unlisted investee companies according to fund's stated investment objective, is most relevant in this context. In this case, AIF would fund the entity undertaking the ship leasing/ financing activity, and would not undertake leasing activities itself. However, we have considered two scenarios, (i) a Category I or II AIF located in the DTA (i.e. outside the IFSC) financing a leasing company located in the IFSC; and (ii) a Category I or II AIF located in the IFSC financing a leasing company in IFSC. Further, Foreign Portfolio Investors (FPIs) are not permitted to invest in Category I and II AIFs. AIF route is one of the most efficient routes for HNIs to participate in this space. Both person resident outside India and in India are permitted to invest in AIFs. An AIF is set up by a 'sponsor' and the investments are managed by its 'manager' (who can be same as the sponsor). There are 'fit and proper' criteria for both the sponsor and the manager.
3	Restrictions on FPI investing in Category I and II AIFs	<p>Regulation 20 of the SEBI (FPI) Regulations reads as follows:</p> <p><i>A foreign portfolio investor shall invest only in the following securities, namely-</i></p> <p>(a) <i>shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India;</i></p> <p>(b) <i>units of schemes launched by mutual funds under Chapter V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996;</i></p> <p>(c) <i>units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999;</i></p> <p>(d) <i>derivatives traded on a recognized stock exchange;</i></p> <p>(e) <i>units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board;</i></p> <p>(f) <i>Indian Depository Receipts;</i></p>	Regulation 20 of the SEBI (FPI) Regulations, 2019 (as amended) prescribes the types securities that FPIs shall invest in, which <i>inter alia</i> expressly does not include Category I and II AIFs.	SEBI/ M/o Finance	Regulation 20 of the SEBI (FPI) Regulations, 2019 may be relaxed to enable FPIs to invest in Category I and II AIFs (investing in ship leasing and financing entities in the IFSC), by virtue of the powers conferred upon SEBI under Regulation 20(h) of the said regulations.

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p>(g) any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time; and</p> <p>(h) such other instruments as specified by the Board from time to time.</p>			
4	IFSC Considerations	<p>Clause 22(1) of the SEBI (IFSC) Guidelines prescribes that an AIF operating in an IFSC can accept investments from the following categories of investors:</p> <p>(i) person resident outside India (ii) non-resident Indian (iii) institutional investor resident in India eligible under foreign exchange laws to invest funds offshore (to the extent permitted) (iv) person resident in India having a net worth of at least USD 1 million, to the extent allowed in the Liberalized Remittance Scheme i.e. maximum of USD 250,000.</p> <p>Thus, eligible resident individuals are permitted to invest upto USD 250,000 per annum into an overseas AIF as per the Liberalised Remittance Scheme. These limits restrict the ability of AIFs located in IFSC to raise funds from domestic HNIs, and consequently their participation in ship financing.</p>	SEBI (IFSC) Guidelines do not clarify the categories of investors that would be permitted to invest in IFSC AIFs, given that the term ‘institutional investors’ as referred to in Clause 22(1)(iii) is not defined.	SEBI and RBI; M/o Finance	<p>Clarify the categories of investors that would be permitted to invest in IFSC AIFs.</p> <p>Given the limitation on domestic investors investing into an AIF based out of IFSC as described herein, further liberalize the options for Indian HNIs to invest in AIF targeting ship leasing in IFSC.</p>
<p>Key Takeaways:</p> <p>(i) RBI and SEBI should be requested to provide clarification on types of institutional investors contemplated under the SEBI (International Financial Services Centre) Guidelines, 2015;</p> <p>"This is with reference to SEBI (International Financial Services Centers) Guidelines, 2015 which prescribe Categories of investors that can invest in an AIF operating out of IFSC. It is hereby clarified that the following classes of investors (including without limitation) are considered institutional investors:</p> <p>(a) Banks;</p> <p>(b) NBFCs;</p> <p>(c) AIFs;</p>					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p>(d) Pension Funds;</p> <p>(e) Insurance Companies;</p> <p>(f) Foreign Portfolio Investors</p> <p>(g) Hedge Funds; and</p> <p>(h) Any other financial institution."</p> <p>(ii) RBI should be requested to provide additional relaxation under the Liberalised Remittance Scheme for Indian residents to invest in AIF operating in an IFSC.</p> <p>"Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD [●] per Financial Year (April-March) for any current or capital account transaction or a combination of both made in any entity undertaking ship leasing/ financing in IFSC."</p>				
5	Investment by a domestic AIF into a Leasing Company operating in IFSC	Paragraph 2(B) of the SEBI Circular bearing number CIR/IMD/DF/7/2015 dated October 1, 2015 prescribes the guidelines on overseas investments by AIFs.	<p>A domestic AIF is permitted, subject to prior approval from SEBI, to invest up to 25% of its investible funds of each scheme in equity and equity linked instruments of offshore venture capital undertakings (i.e. overseas unlisted entities), which have Indian connection.</p> <p>There is an overall cap of USD 1,500 million on overseas investments by all AIFs in India as per Circular bearing number SEBI/HO/IMD/DFI/CIR/P/2018/103/2018 dated July 03, 2018 read with</p>	SEBI and RBI; M/o Finance	<p>Additional relaxations should be offered on 25% cap applicable to AIFs targeting investments in ship leasing entities located in IFSC.</p> <p>Under FEM (Transfer or Issue of any Foreign Security) Regulations, 2004, provide relaxation to the overall cap of USD 1,500 million or specify non-applicability of the overall cap (in respect of overseas investments by all AIFs in targeting investments India) for AIFs in entities engaged in ship financing/ leasing out of IFSC.</p>

LONG FORM OF THE RECOMMENDATIONS

S. NO	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
			<p>SEBI/HO/IMD/DF6/CIR/P/2021/565.</p> <p>SEBI Circular dated October 01, 2015 also does not clearly permit AIFs to invest in overseas debt instruments (whether listed or unlisted).</p>		<p>Amend FEM (Transfer or Issue of Any Foreign Security) Regulations, 2004 to permit investments by AIFs in debt instruments (whether listed or unlisted) issued by ship leasing entities in IFSC</p>
<p>Key Takeaways:</p> <p>(a) SEBI to clarify under SEBI Circular dated October 1, 2015 and RBI to clarify under FEM (Transfer or Issue of Foreign Security) Regulations, 2004, the position on investment by AIFs in IFSC (whether such investment is domestic or offshore);</p> <p>(b) RBI (under FEMA (Transfer or Issue of any Foreign Security) Regulations, 2004) to provide relaxation to the overall cap of USD 1,500 million or specify non-applicability of the overall cap (in respect of overseas investments by all AIFs in India) for AIFs targeting investments in entities engaged in ship financing/ leasing out of IFSC.</p> <p>Suggested amendment language:</p> <p>"This has reference to SEBI circular dated May 21, 2021 read with July 3, 2018 which had allowed overseas investments by AIFs to the extent USD 1,500 million. In consultation with the RBI it is now decided to exempt AIFs investing in entities engaged in ship financing/ leasing operating out of IFSC from the overall cap of USD 1,500 million."</p> <p>(c) RBI to amend FEM (Transfer or Issue of Any Foreign Security) Regulations, 2004 to permit investments by AIFs in debt instruments (whether listed or unlisted) issued by ship leasing/ financing set up in IFSC.</p> <p>Suggested amendment language:</p> <p>"This has reference to circular dated October 1, 2015 which restricted investments by AIFs in debt instruments. In consultation with the RBI it is now decided to permit investments by AIFs in debt instruments (whether listed or unlisted) issued by ship financing/ leasing entities in IFSC."</p>					
<p>PENSION FUNDS</p>					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
6	<i>Investment by Pension Funds</i>	<p>The National Pension System (NPS) is a national contributory pension fund system available for subscription to all Indian citizens (including non-resident Indians) which is regulated by the Pension Fund Regulatory and Development Authority (PFRDA) under the PFRDA Act, 2013. NPS is managed and operated by pension fund managers known as <i>pension funds</i>. The subscribers to NPS may choose from multiple pension funds and multiple schemes.</p> <p>The pension fund manages schemes notified by the PFRDA in accordance with norms of management of corpus of pension fund, including investment guidelines as approved by the PFRDA from time to time. However, the issues in relation thereto are with respect to the restrictions prescribed by the PFRDA on the investments made by such pension funds.</p> <p>Section 25 of the PFRDA Act, 2013 states that,</p> <p><i>No pension fund shall, directly or indirectly invest outside India, the funds of subscribers.</i></p> <p>Circular No. PFRDA/2017/18/PF/2 dated May 04, 2017 (Investment Guidelines for National Pension Scheme (NPS)):</p> <p><i>The investments in AIF Category I and AIF Category II is allowed subject to satisfaction of the following conditions:</i></p> <p><i>(i) The permitted funds under category I are Infrastructure Funds, SME Funds, Venture Capital Funds and social venture capital funds as detailed in Alternative Investment Funds Regulations, 2012 by SEBI.</i></p> <p><i>(ii) For category II-AIF as per Alternative Investment Funds Regulations, 2012 by SEBI, at least 51% of the funds of such AIF shall be invested in either of the infrastructure entities or SMEs or venture capital or social welfare entities.</i></p> <p><i>(iii) Pension Fund shall only invest only in those AIFs whose corpus is equal to or more than Rs. 100 crore.</i></p>	<p>Pension funds cannot invest in the equity of entities.</p> <p>Pension funds are not permitted to invest funds of subscribers, outside India, either directly or indirectly. However, it is unclear whether this restriction would also apply to investment by pension funds into (a) leasing entities established in IFSC, or (b) domestic Category I or II AIFs which in turn provide finance to leasing entities established in IFSC.</p>	PFRDA	<p>PFRDA may be requested to clarify whether the restriction on pension funds to invest funds of policyholders outside India (either directly or indirectly) would apply to investments by pension funds money into entities established in IFSC or in domestic Category-I or II AIFs that are in turn investing in ship financing/ leasing entities located in IFSC.</p> <p>As regards the investments by pension funds in AIFs, the PFRDA may also issue a clarification that entities owning vessels or engaged in ship financing are ‘infrastructure entities’ as per para (ii) of Circular No. PFRDA/2017/18/PF/2 dated May 04, 2017</p> <p>PFRDA may permit pension funds to invest in equity or debt of companies set up in the IFSC.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>(iv) The exposure to a single AIF shall not exceed 10% of the AIF size.</i></p> <p><i>Investments under this category shall only be in listed instruments or fresh issues that are proposed to be listed.</i></p> <p>In case the scheme corpus reaches INR 1 crore:</p> <p><i>NPS investment have been restricted to 5% of the 'paid-up equity capital' of all the sponsor group companies or 5% of the total Assets Under Management (AUM) under Equity exposure whichever is lower, in each respective scheme and 10% in the paid up equity capital of all the non-sponsor group companies or 10% of the total AUM under Equity exposure whichever is lower, in each respective scheme.</i></p> <p><i>Here, the paid-up share capital means market value of paid up and subscribed equity capital.</i></p>			
<p>Key Takeaways:</p> <p>(a) PFRDA to clarify under the PFRDA Act that pension funds are permitted to invest into domestic AIFs, even if they may use funds for investments into ship financing/ leasing entities located in IFSC, or that investment into IFSC entities would not be considered as overseas investment by pension funds.</p> <p>(b) As regards the investments by pension funds in AIFs, the PFRDA may also issue a clarification that entities owning vessels or engaged in ship financing are 'infrastructure entities' as per para (ii) of Circular No. PFRDA/2017/18/PF/2 dated May 04, 2017</p> <p>Suggested amendment language:</p> <p>"With reference to Section 25 of the PFRDA Act, 2013 in relation to restrictions on investment by insurers (either directly or indirectly) outside India, it clarified that investment by insurers of funds of subscribers in entities established in IFSC [or in domestic Category- I or II Alternate Investment Funds established for investments in or financing of entities set up in IFSCs] shall not be considered as overseas investment."</p> <p>(c) PFRDA to amend the investment guidelines to allow pension funds to invest in equity or debt instruments of companies.</p> <p>Suggested amendment language:</p> <p>"With reference to Investment Guidelines for NPS dated May 4, 2017, it is hereby clarified that pension funds are permitted to invest in equity or debt instruments of both private or public companies that are established in IFSCs"</p>					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
INSURANCE COMPANIES					
	<p>Background:</p> <p>Insurers in India are permitted to invest only a certain portion of their assets or controlled funds, as described under the Insurance Act and the Insurance Regulations framed thereunder, in various categories of investment as prescribed by the IRDAI. This has been analysed in the context of insurance companies funding entities undertaking ship financing/ leasing.</p> <p>There are no restrictions on insurance companies to insure the ship that may be owned by the ship leasing company availing financing from such insurance companies.</p>				
7	<p>Restrictions on investments</p> <p>Under Section 27A(4) of the Insurance Act, insurance companies are not permitted to invest in private limited companies.</p> <p>This restriction is replicated under the Insurance Regulations.</p>	<p>Section 27A(4) of the Insurance Act:</p> <p><i>An insurer shall not out of his controlled fund or assets as referred to in sub-section (2) of section 27 invest or keep invested in the shares or debentures of any private limited company.</i></p> <p>Section 2CA:</p> <p><i>The Central Government may, by notification, direct that any of the provisions of this Act –</i></p> <p><i>(a) shall not apply to insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005; or</i></p> <p><i>(b) shall apply to any insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005 only with such exceptions, modifications and adaptations as may be specified in the notification.</i></p>	<p>The restriction under Section 27A(4) is a blanket restriction and neither the IRDAI nor the Central Government is empowered to relax this through regulatory or executive action. Therefore, a relaxation of this restriction would require a legislative amendment. However, under Section 2CA, the Central Government has the power to relax the restriction for insurers in an SEZ. GIFT City IFSC is an SEZ.</p>	IRDAI / M/o Finance	Central Government, in exercise of its powers under Section 2CA, should relax the provision of Section 27A(4) with respect to investments by insurers in IFSC into ship leasing entities in GIFT City.
8	<p>Categories of investments</p>	<p>Insurance Regulations</p> <p>Regulation 13F:</p>	<p>The exhaustive list prescribed by IRDAI should be amended by</p>	IRDAI / M/o Finance	With the Section 2CA relaxation, IRDAI would need to issue an

LONG FORM OF THE RECOMMENDATIONS

S. NO	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	The Insurance Act read with the associated Insurance Regulations contains an exhaustive list of investments that an insurance company is permitted to make.	<p><i>Every Insurer shall invest its controlled fund as defined under Section 27A / all assets as defined under Section 27(2) of the Insurance Act 1938 as amended from time to time, only within the exhaustive category of investments listed in the guidelines issued by the Authority.</i></p> <p>Currently, only the following items under the exhaustive list come close to our current requirements, but do not offer a viable solution:</p> <ul style="list-style-type: none"> – Corporate Securities- Equity Shares (Ordinary)- Quoted – Corporate Securities- Bonds- (Taxable) – Corporate Securities- Preference Shares – Corporate Securities- Investment in Subsidiaries – Corporate Securities- Debentures – Preference Shares – Short term Loans (Unsecured Deposits) – Term Loans (without Charge) 	IRDAI to include equity/ debt of ship leasing companies of the type being considered here.		amendment to these Insurance Regulations to relax investments in equity and listed debt securities, and permit investment in unlisted debt securities of private companies undertaking ship leasing entities in IFSC.
<p>Key Takeaways:</p> <p>(i) M/o Finance, Central Government to issue notification under Section 2CA of the Insurance Act, 1938 to exempt insurance companies in IFSC from the investment restriction provisions under Section 27A(4) of the Insurance Act, 1938.</p> <p>Suggested amendment language:</p> <p><i>“In exercise of the powers conferred by section 2CA of the Insurance Act, 1938 (4 of 1938), the Central Government hereby directs that the provisions contained in section 27A(4) of the Insurance Act shall not apply to investments by insurers in [ship financing/ leasing entities] established in an IFSC.”</i></p> <p>(ii) Consequent amendments to the list of permitted investments under the IRDAI (Investment) Regulations, 2016, to relax investment by insurers in equity and listed debt securities, and permit investment in unlisted debt securities of private companies undertaking ship leasing.</p> <p>Suggested amendment language:</p> <p><i>“Provided that an insurer is permitted to invest in equity and listed debt securities, and unlisted debt securities of private companies undertaking ship leasing/ financing in IFSC.”</i></p>					
9	Restrictions on business of IIO	IRDAI (Registration and Operations of IIO) Guidelines, 2017 Guideline 6	It is unclear from the wording of this restriction whether	IRDAI / M/o Finance	IRDAI to amend the IRDAI (Registration and Operations of IIO)

LONG FORM OF THE RECOMMENDATIONS

S. NO	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	IIOs (i.e. branches) of insurance companies operating out of IFSC are not permitted to undertake any business other than those permitted by IRDAI	<i>The sole object of the IIO, on being registered with the Authority, shall be to exclusively carry on insurance or reinsurance business from an IFSC. An IIO shall not engage itself in any business other than those permitted by the Authority.</i>	investment activities permitted by IRDAI (as described herein) would be included under activities permitted for IIOs. In order for IIOs to participate effectively in ship leasing/ financing through an entity established for that purpose, IRDAI must issue a separate notification/ circular permitting IIOs to undertake such activities		Guidelines, 2017 to permit insurance companies set up in IFSC to invest in entities engaged in ship financing/ leasing.
<p>Key Takeaways:</p> <p><i>The IRDAI to amend the IRDAI (Registration and Operations of IIO) Guidelines, 2017 by permitting insurance companies set up in IFSC to invest in entities engaged in ship financing/ leasing in an IFSC.</i></p> <p>Suggested amendment language:</p> <p><i>IRDAI to add a proviso to Guideline 6(b) of the IRDAI (Registration and Operations of International Financial Service Centre Insurance Offices (IIO)) Guidelines, 2017:</i></p> <p><i>"(b) The sole object of the IIO, on being registered with the Authority, shall be to exclusively carry on insurance or reinsurance business from an IFSC. An IIO shall not engage in any business other than those permitted by the Authority.</i></p> <p><i>Provided that the IIO may be permitted to invest in entities engaged in ship financing/ leasing. "</i></p>					
10	Prohibition on investment of funds abroad Under Section 27E of Insurance	(i) Insurance Act: Insurance companies in India are permitted to invest freely, out of their funds abroad (not domestic policy holder money) without prior approval of the RBI subject to (i) statutory requirement of any host country concerned, and, (ii) IRDAI guidelines if any and in accordance with	It is unclear from the wording of Section 27E whether it would apply to investment by an insurance company into	IRDAI / M/o Finance	Clarification from IRDAI under the Insurance Act that investment of policy holders' funds into IFSC

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	Act, insurance companies are not permitted to invest funds of policy holders outside India either directly or indirectly	<p>applicable FEMA regulations relating to investment abroad. It is unclear if this provision would apply to investments by insurers into ship financing/ leasing entities through the IIOs using its funds outside India.</p> <p><i>Section 27E</i></p> <p><i>No insurer shall directly or indirectly invest outside India the funds of the policyholders.</i></p> <p>(ii) Master Direction on Insurance issued by the RBI</p> <p><i>Direction 4.7</i></p> <p><i>Insurer in India may invest freely, out of their funds abroad without prior approval of the RBI subject to,</i></p> <p>(i) statutory requirement of any host country concerned, and,</p> <p>(ii) IRDAI guidelines if any and in accordance with applicable FEMA regulations relating to investment abroad.</p>	ship leasing companies established in IFSC. It is necessary to obtain a clarification from IRDAI that this restriction would not apply to investments in ship leasing entities in IFSC (whether or not through the IIO).		<p>will not be regarded as overseas investments.</p> <p>Alternately, M/o Finance may notify under Section 2CA of Insurance Act that insurance companies in IFSC are exempted from the restriction on overseas investment.</p>
<p>Key Takeaways:</p> <p>(i) Clarification from IRDAI under the Insurance Act that investment of policyholders' funds into IFSC will not be regarded as overseas investments.</p> <p>Alternately, M/o Finance may notify under Section 2CA of Insurance Act that insurance companies in IFSC are exempted from the restriction on overseas investment.</p> <p>Suggested amendment language:</p> <p>"It is hereby clarified that investments by insurers into IFSC shall not be regarded as overseas investments."</p> <p>OR</p> <p>"In exercise of the powers conferred by section 2CA of the Insurance Act, 1938 (4 of 1938), the Central Government hereby directs that the provisions contained in section 27E of the Insurance Act shall not apply to investments by insurer into ship financing/ leasing entities in an IFSC."</p>					
<p>MUTUAL FUNDS</p>					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
11	Cap on Investments	<p>Schedule VII of SEBI (Mutual Funds) Regulations, 1996 prescribes restrictions on investments by mutual funds:</p> <p><i>1. A mutual fund scheme shall not invest more than 10% of its NAV in debt instruments comprising money market instruments and non-money market instruments issued by a single issuer which are rated not below investment grade by a credit rating agency authorised to carry out such activity under the Act. Such investment limit may be extended to 12% of the NAV of the scheme with the prior approval of the Board of Trustees and Board of Directors of the asset management company.</i></p> <p><i>1A. A mutual fund scheme shall not invest more than 10% of its NAV in unrated debt instruments issued by a single issuer and the total investment in such instruments shall not exceed 25% of the NAV of the scheme. All such investments shall be made with the prior approval of the Board of Trustees and the Board of asset management company.</i></p> <p><i>11. A mutual fund scheme shall not invest more than 5% of its NAV in the unlisted equity shares or equity related instruments in case of open ended scheme and 10% of its NAV in case of close ended scheme.</i></p>	<p>Mutual funds are not allowed to invest more than 10%-12% of its NAV in rated debt instruments, 10%-25% of their NAV in unrated debt instruments and 5%-10% of their NAV in unlisted equities.</p>	SEBI/ M/o Finance	<p>Introduce amendments to the existing framework for mutual funds, permitting greater exposure to target companies that are ship leasing companies (for instance, special or separate schemes).</p>
12	Scope of overseas investments	<p>As per the A. P. (DIR Series) Circular No.12 dated September 26 2007 - Overseas Investment by Mutual Funds – Liberalization:</p> <p>Mutual Funds not permitted to invest in unlisted equity/equity linked instruments of foreign companies.</p> <p>Further, mutual funds are permitted to invest in foreign debt securities in the countries with fully convertible currencies, short term as well as long term debt instruments with rating not below investment grade by accredited / registered credit rating agencies.</p>	<p>Mutual Funds are not permitted to invest in overseas unlisted equity/equity linked instruments and foreign debt instruments</p>	RBI/ M/o Finance	<p>Amend FEM (Transfer or issue of any Foreign Security outside India) Regulations, 2004 to permit investments by mutual funds in unlisted equity/ equity linked instruments, and foreign debt instruments issued by entities engaged in ship leasing set up in IFSC.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
13	IFSC Considerations	<p>Clause 22(1) of the SEBI (IFSC) Guidelines prescribes that a mutual fund operating in an IFSC can accept investments from the following categories of investors:</p> <ul style="list-style-type: none"> (i) <i>person resident outside India</i> (ii) <i>non-resident Indian</i> (iii) <i>institutional investor resident in India eligible under foreign exchange laws to invest funds offshore (to the extent permitted)</i> (iv) <i>person resident in India having a net worth of at least USD 1 million, to the extent allowed in the Liberalized Remittance Scheme i.e. maximum of USD 250,000.</i> <p>Clause 22(3) of the SEBI (IFSC) Guidelines deals with the type of securities in which any mutual fund operating in an IFSC can invest. A mutual fund operating in IFSC is permitted to invest only in securities which are listed in IFSC or issued by companies incorporated in IFSC or issued by companies belonging to foreign jurisdiction.</p> <p>Clause 22(4):</p> <p><i>An asset management company of a mutual fund operating in IFSC shall have a net worth of not less than USD 2 million which shall be increased to USD 10 million within 3 years of commencement of business in IFSC.</i></p>	<p>SEBI (IFSC) Guidelines do not clarify the categories of investors permitted to invest in Mutual Funds, given that the term ‘institutional investors’ as referred to in Clause 22(1)(iii) is not defined.</p> <p>Eligible resident individuals are permitted to invest upto USD 250,000 per annum in an overseas mutual fund as per Liberalised Remittance Scheme.</p> <p>These limits restrict the ability of mutual funds located in IFSC to raise funds from domestic HNIs, and consequently their participation in ship financing.</p>	SEBI and RBI; M/o Finance	<p>Clarify the categories of investors that would be permitted to invest in mutual funds.</p> <p>Given the limitation on domestic investors investing into an mutual funds based out of IFSC as described herein, further liberalize the options for Indian HNIs to invest in mutual funds targeting ship leasing in IFSC.</p>
<p>Key Takeaways:</p> <p>(a) <i>Amendment of the SEBI (Mutual Funds) Regulations, 1996 to create a separate category of mutual funds for investments in ship leasing companies OR to permit greater concentration of investments in entities engaged in ship financing/ leasing in an IFSC.</i></p> <p>(b) <i>RBI to amend FEMA (Transfer or issue of any Foreign Security outside India) Regulations, 2004 to permit investments by mutual funds in unlisted equity/equity linked instruments, and foreign debt instruments issued by entities engaged in ship leasing set up in IFSC.</i></p> <p>(c) <i>SEBI to provide clarification on types of institutional investors contemplated under the SEBI (International Financial Services Centre) Guidelines, 2015.</i></p>					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>(d) RBI to provide additional relaxation under the Liberalised Remittance Scheme for Indian residents to invest in mutual funds operating in an IFSC.</i></p> <p>Suggested amendment language:</p> <p>1. RBI to issue circular under Regulation 26 of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 stating:</p> <p><i>“This has reference to circular dated September 26, 2007 which restricted investments by mutual funds in unlisted equity/ equity related instruments or debt instruments of foreign companies. It is now decided to permit investments by mutual funds in unlisted equity/ equity linked instruments, and debt instruments issued by entities engaged in ship leasing set up in IFSC.”</i></p> <p>2. SEBI to clarify the meaning of ‘institutional investors’ (after consultations with RBI) and include the following categories of investors:</p> <p>(i) Banks;</p> <p>(ii) NBFCs;</p> <p>(iii) AIFs;</p> <p>(iv) Pension Funds;</p> <p>(v) Insurance Companies;</p> <p>(vi) Foreign Portfolio Investors;</p> <p>(vii) Hedge Funds;</p> <p>(viii) Any other financial institution.</p> <p>3. RBI to amend the Master Direction - Liberalized Remittance Scheme (LRS) and add a new paragraph No.1A to the master directions stating:</p> <p><i>“Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD [•] per Financial Year (April-March) for any current or capital account transaction or a combination of both made in any entity undertaking ship leasing/ financing in IFSC.”</i></p>			
EMPLOYEES PROVIDENT FUND ORGANIZATION					
14	Restrictions on investment by EPFO	Restrictions on investment by Employees Provident Fund Organization (EPFO)	Restrictions on investment by EPFO	M/o Labour and Employment	Restrictions on investment by EPFO
		<p>Key Takeaways:</p> <p><i>Central Government (through M/o Labour and Employment) to issue a notification to permit investments in companies engaged in ship financing/leasing set up in IFSC, and in AIFs.</i></p> <p>Suggested amendment language:</p>			

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p><i>“This is with reference to notification dated 23 April, 2015 which prohibits investments by the Employees Provident Fund Organization (EPFO) in private companies or domestic Alternate Investment Funds. It has now been decided to permit the EPFO to make investments in entities engaged in ship financing/ leasing in IFSC or in domestic Alternate Investment Funds.”</i></p>				
EXTERNAL COMMERCIAL BORROWINGS					
15	<p>Restrictions on External Commercial Borrowings under RBI’s Master Directions – ECBs, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers (“ECB Master Directions”)</p>	<p>As per ECB Master Directions, the following are the restrictions:</p> <ul style="list-style-type: none"> (i) All-in-cost for ECBs are capped at LIBOR (or equivalent benchmark rate) plus 450 bps spread; (ii) Minimum Average Maturity Period (Para 2.1(V) of Part I) is between 3-7 years depending on the purpose of the loan. Call and put options shall not be exercisable prior to completion of the minimum average maturity. (iii) Further, foreign branches/ subsidiaries of Indian banks cannot advance ECBs for the purpose of refinancing domestic debt. <p>The ‘all in cost ceiling’ caps the returns for the lender on ECB financing. However, for a cyclical and capital-intensive industry such as shipping, further flexibility on pricing is required, given the market volatility, vessel age, new technology risk, bespoke structures (leasing- finance and operating, non-recourse) so as to accommodate and provide required flexibility for long economic life assets.</p> <p>The requirement of minimum average maturity requires the term of the facility to have a certain minimum maturity as a result of which lenders do not have flexibility to have shorter tenor loans. Ship financing requires flexibility. For instance, if the underlying vessel for which the funding is availed, is sold, then lenders may be entitled to prepayment which should be enabled without requiring an RBI approval or meeting the MAMP requirements. Similarly, in an event of default, the lender should have the right to get the facility prepaid without an RBI approval and meeting the MAMP requirements. This is also relevant because shipping is a cyclical industry so ship owners should have the flexibility to prepay debt when</p>	<p>ECB is a vital form of financing ship acquisitions and ship leasing, and its enablement would go a long way to developing India IFSC as a leasing financing hub.</p>	RBI	<p>RBI, in its capacity of foreign exchange regulator, can issue specific directions under Section 11 of Foreign Exchange Management Act, 1999 (FEMA Act) to provide specific exception/ relaxation for entities engaged in ship financing from the restrictions in so far as all in cost and minimum average maturity are concerned. Further, offshore branches of Indian banks may be permitted to refinance domestic debt through ECBs.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p>times are good/ they have adequate liquidity. This also helps vessel owners in managing finance on underlying assets.</p> <p>Offshore branches of Indian banks regularly provide ship finance offshore. However, given the restriction on offshore subsidiaries of Indian banks refinancing domestic debt, bank branches in the IBU cannot refinance domestic debt of shipping companies.</p>			
16	<p><i>Vessels should be granted 'infrastructure status' By virtue thereof, they will be able to avail long-term funding at competitive rates which is essential, in view of the fact that its asset life is 15 to 25 years</i></p>	<p>The definition of infrastructure lending and the list of items included under the infrastructure has been notified vide RBI Circular DBOB.BP.BC.No. 58/08.12.014/2012-13 dated November 20, 2012, as amended from time to time (referred to as the "RBI Infrastructure Circular").</p> <p>If vessels owned and financed by or operated by IFSC shipping entities were to be granted 'infrastructure status' and included in the ambit of sub-sectors as per RBI Infrastructure Circular, the benefits would be as follows:</p> <p>(i) It will allow access to long-term funding at competitive rates, since asset life of a vessel is 15-25 years.</p> <p>(ii) Banks will have provisioning benefits since DCCO extension and refinancing will not be treated as restructuring (Circular DBOD.No.BP.BC.85/21.04.048/2009-10 dated March 31, 2010 and DBOD.BP.BC.No.99/21.04.132/2012-13 dated May 30, 2013.)</p> <p>(iii) Banks can also fund equity in certain circumstances (Para 2.3.7.4(i) of the Master Circular on Loans and Advances).</p> <p>(iv) Infrastructure status also allows funding from the proposed DFI for Infrastructure financing.</p>	<p>Vessels are not included as an infrastructure sub-sector listed as per the RBI Infrastructure Circular</p>	<p>M/o Finance, RBI</p>	<p>RBI, in the exercise of its power under Section 35A of the Banking Regulation Act, 1949, to pass a notification including "vessel" in "infrastructure". The said inclusion of "vessel" should also be incorporated into the 'Harmonised Master List of Infrastructure Sub-sectors' bearing number F. No. 13/1/2017- INF dated April 26, 2021. This definition of vessel should be aligned with the proposed definition under Section 3(d)(vi) of the IFSCA Act, 2019.</p>
<p>Key Takeaways:</p> <ul style="list-style-type: none"> Vide the powers conferred under Section 11 of the FEMA Act, 1999, the RBI may liberalize the ECB guidelines so as to relax the requirements in respect of the all-in-cost ceiling, minimum average maturity period and to enable ECB re-financing of domestic debt by offshore branches and subsidiaries of Indian banks. 					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<ul style="list-style-type: none"> Amendment to RBI Infrastructure Circular and the 'Harmonised Master List of Infrastructure Sub-sectors; bearing number F. No. 13/1/2017- INF dated April 26, 2021 for vessels owned and financed by or operated by IFSC shipping entities to be granted 'infrastructure status'. 				
NATIONAL INVESTMENT AND INFRASTRUCTURE FUND					
17	<i>NIIF and the funds it invests in do not address capital intensive industries such as ship leasing, aircraft leasing etc.</i>	<p>NIIF is a sovereign wealth fund registered as an AIF for the purpose of providing long-term funding to infrastructure related projects. The NIIF is currently managing three funds, with an estimated corpus as follows:</p> <p>(i) Master Fund – INR 16,000 crore</p> <p>(ii) Funds of Fund – INR 5,000 crore; and</p> <p>(iii) Strategic Fund - within INR 10,000 crore and continuing to attract sizeable funds.</p> <p>While the Master Fund and Funds of Fund are focussed on investing in airports, ports, roads, renewable energy and other such infrastructural sectors, the Strategic Fund is a private equity and sector agnostic fund.</p>	There are no legal impediments to NIIF setting up such a strategic fund for the transport sector	NIIF/ D/o Economic Affairs	Create a strategic fund investing in transport infrastructure, so as to aid greenfield capital-incentive industries such as ship and aircraft leasing being developed in India-IFSC. This fund could also support decarbonising the shipping sector by specifically addressing new technology vessels and other green infrastructure greenfield initiatives.

8.5. Other General Recommendations

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
STATUTORY MORTGAGE UNDER THE MSA					
	Background:				

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	A statutory mortgage created on a ship or a share therein is governed by the MSA read with the Merchant Shipping (Registration of Ships) Rules, 1960 (as amended) and the orders/ circulars of the DG Shipping. Further, a mortgage or a charge on a vessel is recognised as a 'maritime claim' under Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, questions relating to which exclusively vest with the specified High Courts under the said act.				
1	<p>Issues with statutory mortgages under MSA:</p> <p><i>(a) For two or more registered mortgages, the High Court will have to be approached for obtaining an order of arrest; Mortgages cannot be registered;</i></p> <p><i>(b) for ships which are under construction;</i></p> <p><i>(c) The priority in respect of mortgages is solely determined by the date on which each mortgage is recorded in the ship register under MSA</i></p> <p>Indian jurisdiction is less preferred as compared to other jurisdictions for ship leasing and financing activities by virtue of the stringent and obsolete regulations</p>	<ul style="list-style-type: none"> Section 51 of MSA, dealing with the rights of a mortgagee states as follows: <p><i>(1) Where there is only one registered mortgagee of a ship or share, he shall be entitled to recover the amount due under the mortgage by selling the mortgaged ship or share without approaching the High Court: Provided that nothing contained in this sub-section shall prevent the mortgagee from recovering the amount so due in the High Court as provided in sub-section (2).</i></p> <p><i>(2) Where there are two or more registered mortgagees of a ship or share they shall be entitled to recover the amount due under the mortgage in the High Court, and when passing a decree or thereafter the High Court may direct that the mortgaged ship or share be sold in execution of the decree.</i></p> <p><i>(3) Every registered mortgagee of a ship or share who intends to recover the amount due under the mortgage by selling the mortgaged ship or share under sub-section (1) shall give an advance notice of fifteen days relating to such sale to the registrar of the ship's port of registry.</i></p> <p><i>(4) The notice under sub-section (3) shall be accompanied with the proof of payment of the wages and other amounts referred to in clause (a) of sub-section (2A) of section 42.</i></p> Section 47 of the MSA dealing with the mortgage of ship or share reads as follows: <p><i>A registered ship or a share therein may be made a security for a loan or other valuable consideration, and the instrument creating the security (in this Act called a mortgage) shall be in the prescribed form or as near thereto as circumstances permit, and</i></p> 	<p>Section 51 of MSA makes a distinction between ships having a sole mortgagee and ships having more than one mortgagee. Where there is only one mortgagee, the mortgagee may sell the ship without approaching the High Court. However, for more than one mortgagee, any steps to recover the amounts due to the mortgagee would require the intervention of the High Court, thereby restricting the scope of self-help remedies.</p> <p>As for registration of mortgages, a bare reading of Section 47 of MSA shows that only a ship registered under MSA may act as security for a loan or other valuable</p>	DG Shipping and M/o Shipping	<p>Enforcement of mortgages to be handled by a special commercial court [key recommendations herein relating to dispute resolution mechanism also refer]</p> <p>Amendment of Section 49 (with respect to priority of mortgages) to provide that in respect of mortgages registered within the IFSC, upon receipt of a no-objection certificate from other mortgagees, the priority of mortgages can be determined by agreement between the parties recording the same and not on the basis of its recording in IFSC page of DG Shipping registry or sub-registry (as the case may be) and in the absence of any agreement, the priority shall be determined as presently provided under Section 49 of MSA.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<i>governing the mortgage of ships</i>	<p><i>on the production of such instrument the registrar of the ship's port of registry shall record it in the register book.</i></p> <ul style="list-style-type: none"> Section 49 of the MSA with respect to the priority of mortgages states as follows: <p><i>If there are more mortgages than one recorded in respect of the same ship or share, the mortgagees shall, notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is recorded in the register book and not according to the date of each mortgage itself.</i></p>	<p>construction. As a result, for financing in respect of under construction vessels, alternate security mechanisms would have to be explored.</p> <p>Priority of mortgages are predetermined by MSA and solely based on the date on which such mortgage is recorded, irrespective of any express, implied or constructive notice.</p>		
	<p>Key Takeaways:</p> <ul style="list-style-type: none"> Vessel mortgage registration by IFSC Units to be made through a single window clearance system (similar to the Companies Act, 2013) Enforcement of mortgages to be handled by a special commercial court – Please see key takeaways relating to speedy resolution of disputes Further, amendment of Section 49 (with respect to priority of mortgages) to provide that in respect of mortgages registered within the IFSC, upon receipt of a no-objection certificate from other mortgagees, the priority of mortgages can be determined by agreement between the parties recording the same and not on the basis of its recording in IFSC page of DG Shipping registry or sub-registry (as the case may be) and in the absence of any agreement, the priority shall be determined as presently provided under Section 49 of the MSA. 				
<p>INSOLVENCY AND BANKRUPTCY CODE, 2016, AS AMENDED (“IBC”)</p>					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
2	<i>Non-applicability of IBC to proceedings under the Admiralty Act</i>	<p>The High Court of Bombay has set out the scope of harmonious constructions of IBC and Admiralty Act³, in three scenarios and summarised as follows:</p> <p><i>Scenario 1</i> when admiralty proceedings have been commenced against a vessel and an order of arrest is obtained prior to insolvency proceedings being filed: if the respondents to the admiralty proceedings have furnished security for release of the arrested vessel, then the person filing the admiralty proceedings will be treated as a secured creditor. If proceedings are commenced under the IBC and the resolution plan is approved, then the claim of the person filing the admiralty proceedings will be determined in accordance with the resolution plan. If the CIRP is not successful and the company is ordered to be liquidated, the security provided by the corporate debtor will inure to the sole benefit of the person filing the admiralty proceedings.</p> <p>However, if no security is furnished for release of the arrested vessel by the owner (i.e. corporate debtor) at the time when moratorium is declared, the admiralty suit will not proceed any further. To this end, the RP in respect of the insolvency proceedings can make security be furnished in the admiralty proceedings for release of vessel and if no security is furnished, the vessel continues to be arrested until the end of the CIRP period where the plaintiff will be considered a secured creditor and the 'maritime claim' or 'maritime lien' will operate as a charge on the vessel. Therefore, if security has been furnished by the RP, the vessel will get released, failing which it will not form part of the CIRP process.</p> <p>If the company is liquidated, the Admiralty Act will govern the sale of vessels and all others seeking sale proceeds (as not governed by</p>	<p>IBC has no application to matters falling within the scope of the Admiralty Act. The harmonious construction has been ruled on by the High Court of Bombay.</p> <p>Stakeholders have opined that the present judicial system and the proceedings before the High Court with respect to the arrest of ships is time consuming.</p>	M/o Corporate Affairs and M/o Shipping	An integrated dispute resolution mechanism is recommended. [Key takeaways section below the Arbitration and Conciliation Act refer.]

³ Board of Trustees of the Port of Mumbai v. Barge Madhwa and Ors, 2020 (4) ABR 161

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>the Admiralty Act) can be unsecured creditors or operational creditors, as the case may be</i></p> <p>Scenario 2 <i>i.e. if a moratorium is declared before an admiralty proceedings is filed – there will be no bar on filing the suit since a vessel has a judicial personality. However, upon the RP entering appearance on behalf of the owner of the vessel/ corporate debtor, the suit will not proceed and the admiralty suit may be stayed till such time that CIRP is completed. In such a scenario, the vessel may also be permitted to continue trading during the moratorium period, in the event that trading of the vessel is in the interest of the corporate debtor.</i></p> <p><i>In furtherance thereof, Scenario 1 above shall be applicable i.e. the RP can choose to furnish security for release of the vessel and the interest of the person filing the admiralty proceedings will be governed in accordance with Scenario 1 above. However, an application before the admiralty court may be entertained wherein the said court can consider sale of vessel and retain the proceeds pending the outcome of the CIRP.</i></p> <p>Scenario 3 <i>i.e. if the owner of the vessel is in liquidation at the time when admiralty proceedings is instituted - If arrest of ship is ordered, the vessel can be sold by the Admiralty Court in order to realise the maximum value. The liquidator shall be entitled to defend the suit. Alternatively, once an order of arrest is obtained, the person who has instituted the proceedings would become a secured creditor and be entitled to apply for the sale of the ship and realise his claim in accordance with the provisions applicable to the security interest.</i></p> <p>– The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the “Admiralty Act”) states that “<i>..the jurisdiction in respect of all maritime claims under the Admiralty (Jurisdiction and Settlement of Maritime Claims)</i></p>			

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>Act, 2017 shall vest in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdiction.” Thus, exclusive jurisdiction in respect of maritime claims and liens vests with High Courts.</i></p> <ul style="list-style-type: none"> - A person identified as a financial or operational creditor under the IBC will not be entitled to seek any reliefs before the National Company Law Tribunal if its subject matter is governed by the Admiralty Act. 			
ARBITRATION AND CONCILIATION ACT, 1996 (AS AMENDED) (THE “ARBITRATION ACT”)					
3	<i>Non-applicability of the Arbitration Act to the arrest of vessels</i>	<p>The High Court of Bombay, in its decision relating to the arrest of vessels by an arbitral tribunal⁴, has <i>inter alia</i> held that an application under Section 9 of the Arbitration Act (relating to the grant of interim reliefs) is not maintainable for the arrest of a vessel for obtaining security of an award that may be made in arbitration proceedings.</p> <p>However, such decision was prior to the enactment of the Admiralty Act. Further, the rationale in respect of the aforesaid conclusion was that there is no express legislation which provides that such disputes fall under the subject matter of admiralty jurisdiction. Since the Admiralty Act enacted in 2017 has clarified that the High Courts have the sole power to arrest, we are of the view that an award for arrest by an arbitral tribunal may not be maintainable.</p> <ul style="list-style-type: none"> - In view of the exclusive jurisdiction of arrest of ships being vested with the specific High Courts under the Admiralty Act, an arbitral tribunal cannot order/ award the arrest of vessels. 	Stakeholders have opined that the present judicial system and the proceedings before the high court with respect to the arrest of ships is time consuming	DG Shipping and M/o Shipping	An integrated dispute resolution mechanism is recommended in the section below on Key Takeaways.

⁴ J.S. Ocean Liner LLC v. M. V Golden Progress, 2007(2)ALLMR 367

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<p>Key Takeaways:</p> <p>(a) <i>Option 1: Gujarat International Maritime Arbitration Centre (GIMAC)</i></p> <ol style="list-style-type: none"> 1. <i>All disputes in relation to maritime and shipping should be subject to the jurisdiction of GIMAC.</i> 2. <i>Indian and international arbitrators should be appointed for arbitration.</i> 3. <i>Appeals from the arbitration should lie before a special commercial court set up in IFSC.</i> 4. <i>The special commercial court should be set up by passing a special legislation i.e. the GIFT-IFSC Court Act (similar to the Commercial Court Act, 2015).</i> 5. <i>Any further appeals should be made to the Supreme Court only.</i> <p>(b) <i>Option 2: Arbitration under the aegis of Singapore International Arbitration Centre (SIAC)</i></p> <ol style="list-style-type: none"> 1. <i>SIAC in Singapore will administer the process.</i> 2. <i>The venue of hearing will be at GIFT City and seat will be in Singapore.</i> 3. <i>The award passed by SIAC under this arrangement is considered as a foreign award under Part II of The Arbitration and Conciliation Act, 1996 and can be challenged in India only on limited grounds.</i> <p>(c) <i>Option 3 – Maritime disputes and claims and matters relating to enforcement of vessel mortgages and commercial disputes to be handed by a special commercial court constituted within the IFSC;</i></p> <ol style="list-style-type: none"> 1. <i>Special commercial courts to be constituted under a special autonomous legislation (similar to the Commercial Courts Act, 2015) which will consider all matters relating to vessels (including admiralty matters such as maritime liens)</i> 2. <i>The Special commercial court will also hear challenges to arbitration awards in respect of maritime/ shipping matters;</i> 3. <i>A Court of Appeal shall hear appeals from the courts of first instance on questions of fact and law;</i> 4. <i>Second appeals to lie directly before the Supreme Court;</i> <p>(d) <i>The legislation to be enacted should also limit the supervisory jurisdiction of the Gujarat High Court under Article 227; and Proposed legislation will need to clarify that they override the Admiralty Act with respect to vessels owned, operated or chartered by IFSC units.</i></p>				
STAMP DUTY					

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
<p>Background:</p> <p>Stamp duty is a documentary tax payable on instruments executed in or brought into India. The amount of stamp duty payable on any instrument varies from State to State. Both the Central Government and States have the power to legislate on different aspects of stamp duty. Stamp duty payable for documents executed in Gujarat will be as per the Gujarat Stamp Act, 1958 read with Indian Stamp Act. Indian Stamp Act will be applicable on matters not dealt with the Gujarat Stamp Act.</p>					
4	<p>Stamp duty exemption for instruments relating to ship leasing, owning and financing in the IFSC not available under the Gujarat SEZ Act, 2004.</p>	<p>– <u>Section 21 of the Gujarat SEZ Act provides:</u></p> <p><i>State taxes and levies –</i></p> <p><i>(1) Subject to the provisions of sub-section (1A), all sales and transactions within the processing area of the Zone or in the demarcated area or between the units in the processing area and the demarcated area shall be exempt from all taxes, cess, duties, fees or any other levies under any State law to the extent specified below:</i></p> <p><i>(a) Stamp duty and registration fees payable on transfer of land meant for approved Units in the processing area of the Zone or in the demarcated area.</i></p> <p><i>(b) Levy of Stamp duty and registration fees on loan agreements, credit deeds and mortgages executed by the Unit, industry or establishment set up in the processing area of the Zone or in the demarcated area.</i></p> <p><i>(c) Tax on sales or purchases of goods other than the goods specified in Schedule III of the Gujarat Value Added Tax, 2003, Luxury Tax, Entertainment Tax and other taxes and cess payable on sales and transactions.</i></p> <p><i>(1A) The benefits of exemptions under sub-section (1) shall be available to the Unit or a person on the sales and transactions of</i></p>	<p>Section 3 of ISA provides that no duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the developer or unit⁵ or in connection with the carrying out of the purposes of the SEZ.</p> <p>Section 21 of the Gujarat SEZ Act exempts levy of Stamp duty and registration fees on loan agreements, credit deeds and mortgages executed by the SEZ unit. However, there is no express exemption provided with respect</p>	Government of Gujarat	<p>Amend Section 21 of Gujarat SEZ Act, 2004 for the following:</p> <ul style="list-style-type: none"> – to include an exemption from stamp duty for stamp duty on loan agreements, credit arrangements and security documents including pledges, hypothecations etc. executed in favor of units based in the Gift City; and – to include an exemption for the following - ship building and construction contracts, sale and purchase agreements of ships, financing agreements and security documentation, insurance contracts, charter hire contracts, ship operating

⁵ ‘Unit’ means a unit set up by an entrepreneur in a SEZ and includes an existing Unit, an Offshore Banking Unit and a Unit in an IFSC, whether established before or established after commencement of the SEZ Act;

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>goods which have been actually and physically involved in the movement of goods.</i></p> <p><i>(2) Inputs (goods and services) made to the Units in the processing area of the Zone or in the demarcated area from Domestic Tariff Area shall be exempted from tax on sales or purchases of goods other than the goods specified in Schedule III of the Gujarat Value Added Tax, 2003 and other taxes under the State laws.</i></p> <p><i>(3) The Developer shall also be entitled to the benefits of exemption provided in sub-sections (1) and (2) for the entire Zone.</i></p> <p>– <u>Section 57 of the SEZ Act provides:</u></p> <p><i>“Amendment of certain enactments—</i></p> <p><i>With effect from such date as the Central Government may, by notification, appoint, the enactments specified in the Third Schedule shall be amended in the manner specified therein: Provided that different dates may be appointed on which the amendments specified in the Third Schedule shall apply to a particular Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones.</i></p> <p><u>Section 3(3), ISA states as follows:</u></p> <p><i>Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say –</i></p> <p><i>(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;</i></p> <p><i>(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day</i></p>	<p>to other instruments (including instruments executed pursuant to ship leasing and financing activities). While the Indian Stamp Act, does provide for an exemption, it is advisable to amend the Gujarat SEZ Act also to provide the necessary clarity.</p>		<p>and fueling contracts, dry-docking and maintenance contracts, crewing contracts, ship demolition contracts and/or any other contracts and agreements related to ships owned or leased by Units based in Gift City.</p>

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
		<p><i>and accepted or paid, or resented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and</i></p> <p><i>(c) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India.</i></p> <p><i>Provided that no duty shall be chargeable in respect of-</i></p> <p><i>(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;</i></p> <p><i>(2) any instrument for the sale, transfer or other disposition, either absolutely or byway of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.</i></p> <p><i>(3) any instrument executed, by, or, on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone,</i></p> <p><i>Explanation- For the purposes of this clause, the expressions "Developer", "Special Economic Zone" and "Unit" shall have meanings respectively assigned to them in clause(g), (za) and (zc) of Section 2 of the Special Economic Zones Act, 2005."</i></p>			
	<p>Key Takeaways:</p> <p>To amend Section 21 of the Gujarat SEZ Act, 2004 for the following:</p>				

LONG FORM OF THE RECOMMENDATIONS

S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	<ul style="list-style-type: none"> – to include an exemption for stamp duty on loan agreements, credit arrangements and security documents including pledges, hypothecations etc. executed in favor of entities based in the IFSC; and – to include an exemption for the following - ship building and construction contracts, sale and purchase agreements of ships, financing agreements and security documentation, insurance contracts, charter hire contracts, ship operating and fueling contracts, dry-docking and maintenance contracts, crewing contracts, ship demolition contracts and/or any other contracts and agreements related to ship owning, ship operating, ship leasing and ship financing. <p>Suggested language amendment:</p> <p><i>The Gujarat SEZ Act to be amended by the Government of Gujarat and the following to be added in sub-section 1 of section 21 thereof:</i></p> <p><i>“(d) every instrument executed in connection with loan agreements, credit arrangements and security documents including pledges, hypothecation etc, executed in favour of entities based in the IFSC and specifically in connection with ship building and construction contracts, sale and purchase agreements of ships, financing agreements and security documentation, insurance contracts, charter hire contracts, ship operating and fueling contracts, dry-docking and maintenance contracts, crewing contracts, ship demolition contracts and/or any other contracts and agreements related to ship owning, ship operating, ship leasing and ship financing.”</i></p>				

9. THE NEXT PHASE: SHIPPING ECO-SYSTEM IN IFSC

Gujarat International Finance Tec-City is a Global Financial and IT Services Hub, a first of its kind in India, designed to be at par with benchmarked global financial centres. GIFT City consists of a conducive Multi-Service SEZ (Special Economic Zone) area with notified International Financial Services Centre (IFSC) status, and an exclusive Domestic Tariff Area (DTA) with the associated social infrastructure.

GIFT City is designed as a financial Central Business District (CBD), which is strategically located between Ahmedabad and Gandhinagar in Gujarat, India.

GIFT City provides all the factors required to create a differentiated momentum such as regulatory and supervisory coherence, competitive tax policies, large and deep pool of talent, alternative dispute resolution mechanism besides ancillary services support all at one place.

Gujarat Maritime Board (GMB) has established itself as maritime leader in port development, privatization and specialized cargo handling in India. It has conceived the International Maritime Cluster as a dedicated ecosystem of Ports, Maritime / Shipping and Logistics services providers along with pertinent Government Regulators, in GIFT City. The aim of the cluster is to provide world-class infrastructure to members and to position it as a centre for excellence. GIFT City provides a ready runway for housing the Maritime Cluster and provide allied services relating to shipping industry within India. It provides a competitive tax regime, ease of doing business, state-of-the-art infrastructure and a financial services provider ecosystem.

As a part of the International Maritime Cluster, the Gujarat International Maritime Arbitration Centre (GIMAC) is upcoming to be the first of its kind centre in India that will manage arbitration and mediation proceedings with disputes related to maritime and shipping sector. For this purpose, GMU has signed a Memorandum of Understanding (MoU) with the International Financial Services Centers Authority (IFSCA) for setting up the GIMAC.

GMB has also established the Gujarat Maritime University (GMU) in its endeavour to provide a fillip to this growth by bridging the knowledge gap within the industry.

As a next phase, following are the key activities which may be undertaken:

- Affiliate identified shipping ports to GIFT SEZ so that inspection / rummaging of ships owned or chartered by ship units in GIFT IFSC can be done by Customs officers located at such ports.
- GMB and GIFT City may jointly take the lead to promote Ship Owning, Financing and Ship Leasing activities to take place from GIFT City. This will bring a greater visibility to the zone with new business opportunities and investments.
- Conduct global outreach programmes through roundtables and conferences.

LONG FORM OF THE RECOMMENDATIONS

- Strengthen participation in IMO and Port Control MOUs, especially for standards setting and compliances, and deepen relationships with global maritime community.
- Enter into global financing tie ups.
- Develop sub-sector wise initiatives to identify key asks for the ecosystem, for e.g.: ship-building yards, recyclers, repair and management agencies; ports, ship operators, brokers, lessees, lessors, financiers; end-users including trading entities, cruises, and inland waterways for transportation of goods and passengers; ports.

10. ANNEXES

Annex 1 Constitution of the Committee



F.No : 355/IFSCA/Dev/SL/2021-22 / 241

June 24, 2021

OFFICE MEMORANDUM

Subject : Constitution of Committee on 'Development of Avenues for Ship Financing and Leasing Activities In IFSC'.

The Government of India has notified International Financial Services Centres Authority (IFSCA) to develop and regulate financial services market in the International Financial Services Centre (IFSC) in India. GIFT IFSC is the maiden IFSC in the country.

2. The mandate of IFSCA is to create a world class ecosystem with complete ease of doing business. Further it needs to provide an efficient and facilitative regulatory system comparable with the best jurisdictions in the world, to develop IFSC in India as a preferred global hub for international financial services. Apart from channelizing India's offshore business to the IFSC located at GIFT City and making it the gateway for India centric international financial services, the objective is to make it a global hub for international financial services on the lines of London, Hong Kong, Singapore and Dubai.

3. Considering the above, the Competent Authority has set up a Committee of Experts to formulate a roadmap for developing Ship financing and Leasing with following composition:

- | | |
|--|-------------------|
| (i) Ms. Vandana Aggarwal, former Sr. Economic Advisor, Govt. of India | -Chairperson |
| (ii) Representative of Ministry of Ports, Shipping and Waterways, Govt. of India | -Member |
| (iii) Representative of Directorate General of Shipping | - Member |
| (iv) Representative of Gujarat Maritime Board | - Member |
| (v) Representative of GIFT SEZ Limited | -Member |
| (vi) Representative of Gujarat Maritime University, Gandhinagar | - Member |
| (vii) Shri Suresh Swamy, Partner, PWC | - Member |
| (viii) Ms. Leena Chacko, Partner, Cyril Amarchand Mangaldas | - Member |
| (ix) Shri Amit Oza, Director, Astramar Shipping | - Member |
| (x) Shri Abhishek Pandey, Global Head & MD Shipping Finance, SCB | - Member |
| (xi) Shri Dipesh Shah, Head Development, IFSCA | -Member Secretary |

4. **General Terms of Reference of the Committee are as follow:-**

- (i) To examine global practices in Ship financing and leasing and identify opportunities for the IFSC and provide structure for developing such activities in the IFSC.
- (ii) To examine the existing legal and regulatory framework and conduct a 360-degree review of all the applicable laws and identify changes required to develop avenues for Ship financing and leasing activities in the IFSC.

1

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY

Second & Third Floor, PRAGYA Tower, Block 15, Zone 1, Road 1C, GIFT SEZ, GIFT City,
Gandhinagar-382 355, Gujarat, India. P: +91 79 6180 9800

ANNEXES

- (iii) To examine the direct and indirect tax applicable for Ship financing and leasing in IFSC and identify the changes required along with potential strategies to make Ship financing and leasing activities more attractive in the IFSC.
- (iv) To examine any other issues emanating from existing Shipping policies and laws which may need to be addressed so that Indian entities are better enabled to seize the identified opportunities arising for Ship financing and leasing from the growth and development of the maritime sector.
5. The Committee may also examine and address any other issues which are important though not specifically mentioned in ToR. The Committee may devise its own procedures for conducting its business/meetings/ field visits/ constitution of subgroups etc.
6. The Committee may invite representatives from Ministry, Regulators, Industry for deliberations as may be considered appropriate.
7. The Committee would submit its report along with recommendations within three months.
8. **Meetings:**
- (i) The Committee shall meet at such times and places as it considers expedient.
- (ii) 50% of the existing strength of the Committee shall constitute quorum for its meeting.
- (iii) Chairperson of the Committee shall decide the agenda for the meetings and preside over the meetings of the Committee.
9. **Conduct:**
- (i) No member of the Committee shall communicate to the Press or to any other public media on issues that have been considered or are under consideration of the Committee.
- (ii) A Member, who is directly or indirectly interested in any issue coming up for consideration at a meeting of the Committee, shall disclose the nature of his / her interest at such meeting.
- (iii) A Member shall not take part in any deliberation or discussion of the Committee with respect to such business except to the extent of professional advice if sought by the Committee.
10. **Fee**
- (i) A Member of the Committee shall be entitled to a sitting fee of Rs.10,000/- for a meeting of the Committee, excluding nominees of Government and Government Agencies / organisation.
- (ii) A Member of the Committee shall be entitled to reimbursement of expenses on his travel and accommodation for attending the meetings of the Committee at par with the entitlement of Member, IFSCA.

11. **Secretarial Assistance**

The secretarial assistance will be provided by the IFSCA. Nodal point of contact for any assistance is Shri K. Kundan Krishna, Officer Grade A, IFSCA. (e-mail: kundan.krishna93@ifsc.gov.in)

12. This issues with the approval of the Competent Authority


(Sathyaraj C M)
Deputy General Manager

To,
All members of the Committee.

Copy for kind information with a request to nominate an officer well conversant with the subject:

- (i) Secretary, Ministry of Ports, Shipping and Waterways, Government of India
(ii) MD & Group CEO, GIFT SEZ Limited, Government of Gujarat
(iii) Director General, Directorate General of Shipping, Government of India
(iv) Vice-Chairperson, Gujarat Maritime Board, Government of Gujarat
(v) Dean, Gujarat Maritime University, Government of Gujarat

ANNEXES

F.No : 355/IFSCA/Dev/SL/2021-22
International Financial Services Centres Authority

Office Memorandum

Dated: September 9, 2021

Subject: Revised composition of the Committee on Development of Avenues for Ship Financing and Leasing Activities in IFSC in India

In view of the recent change in the nomination of the members by Gujarat Maritime Board and Gujarat Maritime University, below is the composition of the Committee on Development of Avenues for Ship Financing and Leasing Activities in IFSC in India as on date :

- i. Ms. Vandana Aggarwal, Ex- Sr. Economic Advisor, Govt. of India, Chairperson
- ii. Shri Mandeep Singh Randhawa, Director, Ministry of Shipping, Member
- iii. Shri Nebu Oommen, Ship Surveyor, Directorate General of Shipping, Member
- iv. Shri Kalpesh Vithlani, General Manager (Projects), Gujarat Maritime Board, Member
- v. Shri Sandip Shah, Head – IFSC Department, GIFT SEZ Limited, Member
- vi. Shri Shri G V N Rao, Associate Professor of Law, Gujarat Maritime University, Member
- vii. Shri Suresh Swamy, Partner, PWC, Member
- viii. Ms. Leena Chacko, Partner, Cyril Amarchand Mangaldas, Member
- ix. Shri Amit Oza, Director, Astramar Shipping, Member
- x. Shri Abhishek Pandya, Global Head & MD – Shipping Finance, HSBC
- xi. Shri Dipesh Shah, Head Development, IFSCA, Member-Secretary


(Dipesh Shah)
Member-Secretary

To,

Ms. Vandana Aggarwal, Chairperson of the Committee

ANNEXES

Annex 2 Consultations held with Stakeholders

S. No.	Name	Designation	Organisation
Private Charterers – Held on 23/07/2021			
1	Capt. Attar Singh	Director Shipping	Rashmi Group
2	Capt. S.R Patnaik	Chief Executive Officer	International Shipping & Logistics (Tata)
3	Mr. M. Chakradhar	General Manager – Shipping & Logistics	Welspun
4	Capt. Tarun Kumar	Head, Chartering	IMR Resources
5	Mr. Nitin Mehrotra	General Manager, Shipping	Arcelor Mittal
6	Mr. Abhijit Chaudhary	General Manager, Shipping	JSW
7	Mr. Kiran Fernandes	Head, Chartering	Godavari Ispat
Public Charterers – Held on 27/07/2021			
1	Mr. Mukesh K. Surana	CMD	Hindustan Petroleum Corporation Limited
2	Mr. Shenoy	Director (Refineries)	
3	Mr. Raju Nair	General Manager - Shipping	
4	Ms. Jasmina Maiti	General Manager - Trade	Steel Authority of India Limited
5	Mr. N Balaji	General Manager	MMTC
6	Mr. DK Mohanty	CMD	Rastriya Ispat Nigam Limited
7	Mr. A K Saxena	Director (Operations)	
8	Mr. B Venkatesh	GM, Transport & Shipping	
9	Mr. P. Rama Kishore	General Manager, CSR & CC	Indian Oil Corporation Ltd.
10	Mr. Ramgopal	General Manager - Materials	KIOCL (Kudremukh Iron Ore Company)
Indian Owners – Held on 28/07/2021			
1	Ms. H.K. Joshi	CMD	Shipping Corporation of India
2	Mr. Bharat Sheth	Managing Director	Great Eastern Shipping
3	Mr. G. Shivakumar	CFO	
4	Mr. Rahul Bhargava	Director, Commercial	Essar Shipping
5	Mr. Vijay Chowgule	Chairman	Chowgule Steamship
6	Mr. Dhiraj Pahuja	CEO	Apeejay Shipping
7	Mr. Clayton Pinto	COO	Seven Island Shipping
8	Mr. Hanoz Mistry	VP	Five Star Shipping
9	Mr. Anil Devli	CEO	Indian National Shipowners' Association
Overseas Owners – Held on 29/07/2021			
1	Mr. Ritesh Ramakrishnan	Joint MD	Transworld Shipping, Dubai
2	Capt. S.R. Patnaik	MD	International Shipping & Logistics (Tata), Dubai
3	Mr. Frederik Groth	MD	Swiss Singapore Overseas Enterprises Pte Ltd., Dubai
4	Mr. Gopal Sujan	CMD	Propel Shipping DMCC, Dubai
5	Mr. Ritesh Ramakrishnan	Joint MD	Transworld Shipping, Dubai
6	Capt. Rajiv Tatarbe	Director Comm	Chellaram Shipping, Hong Kong

ANNEXES

S. No.	Name	Designation	Organisation
7	Capt. Narasimham Ranganathan	COO	KC Maritime, Hong Kong
8	Mr. Manoj Gupta	CFO	Tata NYK Shipping Pte Ltd, Singapore
9	Mr. Dhiraj	DGM-Finance	
10	Ms. Shweta Mathur	CFO	Tata Power International Pte. Ltd., Singapore
11	Mr. Randolph D'Souza	Chief, Shipping Operations	Tata Trust Energy Resources Pte Ltd., Singapore
12	Mr. Pranav Vora	CEO, Shipping	Adani Shipping, Singapore
13	Mr. Shiv Shivkumar	Group Executive President, Corporate Strategy & Business Development	Aditya Birla Group (Swiss Singapore Overseas Enterprises, Singapore)
14	Mr. Khalid Hashim	MD	Precious Shipping Public Co. Ltd., Thailand
15	Mr. Gautam Khurana	Director (Finance)	
Overseas Charterers – Held on 05/08/2021			
1	Mr. Deepak Sharma	MD	Bainbridge Navigation, Singapore
2	Capt. Sanjeev Bakshee	MD	Alliance Chartering, Dubai
3	Mr. Swapnil Taparia	Head, Chartering	Swiss Singapore Overseas Enterprises Pte. Ltd., Dubai
4	Mr. Sudhir Satapathy	Vice President	A C T Infraport Ltd., Mumbai
5	Mr. Pradeep S	Head, Shipping	Wilson Universe, Singapore
Container and Freight Associations – Held on 06/08/2021			
1	Capt. Deepak Tewari	Chairman, CLSA	Container Shipping Lines Association- CSLA
2	Mr. Adarsh Hegde	President	Container Freight Station Association of India - CFSAI
3	Mr. Shantanu Bhadkamkar	President, AMTOI	Association of Multimodal Transport operators of India - AMTOI
4	Capt. Sankalp Shukla	Chairman, FOSMA	Foreign owners representatives and ship managers - FOSMA
5	Mr C.S. Murty	Director General	The Federation of ship Agents Association FEDSAI
6	Capt. Amit Wason	President	Maritime Association of Nationwide Shipping Agencies - MANSA
7	Mr. A. V Vijayakumar	Chairman	Federation of Freight Forwarders' Associations in India
8	Mr. Shankar Shinde	Chairman – Elect	
Ship Breakers – Held on 17/08/2021			
1	Mr. Anil Sharma	MD	Global Marketing Systems (GMS), Dubai
2	Mr. Nitin Mehta	CEO	Best Oasis, Dubai / Priya Blue, India
3	Mr. Rakesh M. Khetan	CEO	Wirana Shipping Corp, Singapore
4	Mr. Rajeev Reniwal	Director	Hariyana Shipbreakers, Alang
5	Mr. Anuj Bhargav	Head of IBU	Bank of Baroda
6	Mr. Shailesh Bhala	Senior Executive Officer	FIM Bank Plc, Dubai Branch

ANNEXES

S. No.	Name	Designation	Organisation
7	Mr. Nijoe Joseph	Partner	Stephenson Harwood Middle East LLP, Dubai
8	Mr. Mukesh Patel	Head – Shipping	Shree Ram Group, Alang
Cash Buyers and Financers – Held on 20/08/2021			
1	Mr. Tobias Backer	Co-Founder	Fleetscape Capital, London
2	Mr. Iain Young	Partner	Stephenson Harwood LLP, Singapore
3	Mr. Atteslis Alexis	Co-Head of Europe & Partner	Oak Hill Advisors, London
4	Mr. Julian Proctor	CEO	Purus Marine, London
Indian Capital Providers – Held on 23/08/2021			
1	Capt. Nishant Gupta	AVP, Shipping	Bank of Baroda, New Delhi
2	Mr. Santosh K. Pandey	DGM, OB	State Bank of India, Mumbai
3	Mr. Shardul Thacker	Partner	Mulla & Mulla, Mumbai
4	Mr. Sanjay Jha	Chief Executive	IFSC IBU, ICICI Bank
5	Mr. Saiju Gandhi	Director	Standard Chartered Bank
6	Mr. Lalit Jadhav	CEO	Gift City IBU, Axis Bank
7	Mr. Pushkaranand Jha		State Bank of India
8	Mr. Ashish K. Tripathi		HSBC
Overseas Service Providers – Held on 23/08/2021			
1	Dr. Malini V. Shankar	Vice Chancellor	Indian Maritime University, Chennai
2	Mr. Pradeep Pant	Group Director	Marcura Equities, Dubai
3	Mr. Rajesh Unni	Founder & CEO	Synergy Maritime Group, Singapore
4	Mr. Amitava Majumdar	Managing Partner	Bose & Mitra, Mumbai
5	Mr. Vivek Bhide	Director	Teekay Shipping (India) Pvt. Ltd.
6	Mr. Prasad Gore	Director	PCL Shipping Pvt. Ltd., Mumbai
7	Capt. Sachit Sahooja	Managing Partner	Su-Nav Group, Chennai
8	Capt. Rajat Mehta	MD	
Others – Various days			
1	Mr. Jagmeet Makkar	Chairman	Maritime & Logistic Arbitration Committee at HKCICA
2	Capt. Nitin Dhondh	Managing Director	Angriya Sea Eagle Limited
3	Mr. Jairaj Kumar	Chairman and MD	Ocean Sparkle Limited
4	Mr. Deepak Degadwala	Director	Bernard Schulte Ship Management
5	Mr. Sanjeev Sharma	MD	
6	Admiral B. Kannan	Ex CMD	L&T Shipyard
7	Admiral Shekhar Mittal	Ex CMD/ Current Member	Goa Shipyard / PESB

Annex 3 MCI Notification

No. _____
Government of India
Ministry of Commerce & Industry
Department of Commerce
(SEZ Section)

.....

Dated: The _____, 20__

To,
All Development Commissioners
Special Economic Zones

Subject: Clarification regarding Procurement of Ships/Vessels on outright basis or on lease by IFSC based Lessors from Overseas Jurisdiction and sending it to another foreign Jurisdiction on Lease basis or providing it to any Indian Operators on lease and return thereof-Reg

Sirs,

It is to indicate that International Financial Services Centre which has been approved by the Central Government under sub section (1) of Section 18 of SEZ Act, 2005 (Refer Section 2 (q) of SEZ Act, 2005 at GIFT City-SEZ, Gujarat.

Wherein Government of India constituted Unified Regulator i.e. International Financial Services Centres Authority. Accordingly, International Financial Services Centres Authority (hereinafter referred to as 'IFSCA'), in order to facilitate setting up of the Ships/Vessels Leasing business in International Financial Services Centres (hereinafter referred to as "IFSCs") in India, defined framework for enabling Ships/Vessels operating lease vide its Circular F.No. _____ Dated: _____.

I am directed to say that Units which are approved in IFSCs are facing some difficulties for carrying out Ships/Vessels Leasing business for Import, Re-export, Procurement from within India or Import and leasing outside India etc.

2. The matter has been examined in this department in the light of SEZ Rules 27, 29 and 53 and other relevant provisions of SEZ Rules, 2006. Since Ships/Vessels Leasing business has Unique requirement wherein there could be various business scenarios and in order to facilitate difficulties being faced by such units, it is clarified as under:

- (i) **Outside India to Outside India Transaction:**

ANNEXES

Such lessors located in GIFT SEZ approved as IFSC Unit may import any Ships/Vessels on outright purchase or Lease in model from overseas jurisdiction and sends to other parties in overseas jurisdiction on outright sale or lease out model without filing Bill of entry or any other documents with SEZ customs or Development Commissioner office or in SEZ Online system. However, for reporting in Annual Performance Report ('APR') or any other reporting as per SEZ Act and Rules made thereunder such documents of ownership transfer or lease supported by any Invoice or other documents as the case may be, shall be sufficient.

With this IFSC unit shall be eligible for all exemption, concessions etc as prescribed in SEZ Act and Rules.

(ii) **Outside India to within India Transaction:**

Such lessors located in GIFT SEZ approved as IFSC Unit may import any Ships/Vessels on outright purchase or Lease in model from overseas jurisdiction and delivers the same to Indian lessee in overseas jurisdiction on lease model.

In such case, Indian lessee may be allowed to file Bill of Entry for Import directly at any Landing Station in joint name with IFSC lessors and such Bill of entry and other supporting documents bearing name of IFSC Lessors shall act as valid documents for the purpose of reporting in Annual Performance Report ('APR') or any other reporting as per SEZ Act and Rules.

Indian Lessee while clearing Ships/Vessels for Home consumption will have to pay applicable duties, if any as the case may be and exemption under SEZ Act and Rules shall not be granted and it shall be treated as routine Import into India.

3. All Definitions, meaning related to Ships/Vessels, Lessors, lessee, lease etc shall have exactly the same meaning as defined by IFSCA in its Act, Circulars, Guidelines etc.
4. Any difficulties faced in implementation of this clarification may be brought to the notice of this office immediately.
5. This issues with the approval of competent authority.

Encl: As above

Yours faithfully,

(_____)

Under Secretary to the Government of India

Annex 4 Revised Form-F

FORM-F
Consolidated Application Form for setting up
IFSC Unit in Special Economic Zone
[Prescribed under rule 17]

<ol style="list-style-type: none"> 1. Setting up of IFSC units in Special Economic Zone; 2. Issuance of Provisional NOC for opening of Foreign Currency Bank Account with IBUs 3.
<p>The application should be submitted to the International Financial Services Centre Authority, GIFT City, Gandhinagar in 1 copy along with</p> <ul style="list-style-type: none"> - a crossed Demand Draft of rupees _____ drawn in favour of _____ of the concerned Special Economic Zone, OR - with a reference number of online payments made directly into the account. <p>together with a project report giving details of activities proposed.</p>
<p>Application No. _____ Date: _____ Details of Bank Draft / Online Payment</p> <p>Payment mode (Please tick)</p> <p style="text-align: center;">(1) DD (2) Online Payment</p> <p>Amount Rs. _____ DD No. / Payment ref no _____ Draft date / Payment ref date _____ Drawn on (Name of the Bank) _____ In case of payment through DD, payable at _____</p>
<p>(I) Name of applicant firm / company/Trust (in block letters) _____ Address of the Head Office / Parent Company _____</p>

ANNEXES

Pin Code_____	

Tel.No_____	

Permanent Address_____	E-Mail
Web-Site, _____	if
any_____	
Name of Bank with Address & Account No._____	
Digital Signatures_____	

Income Tax PAN (attach Copy)_____	
(IA) Brief Write up about Applicant Entity/Group:	
(II) Constitution of the applicant firm (Please tick)	
	Public Limited Company
	Private Limited Company
	Partnership
	Proprietor ship
	Trust
	Limited Liability Partnership
	Others (please specify)
(Attach copy of Certificate of Incorporation along with Articles of Association and Memorandum of Association in case of companies and partnership deed in case of partnership firms and Trust Registration Certificate in case of Trust.)	
(III) Name and complete address of each of the Directors/Partners/Proprietor/Settlors, as the case may be with Telephone numbers	

ANNEXES

<p>(IV) Type of activity (As per IFSCA Regulations): <i>(There should be drop down like Aircraft Operating Lease/Ancillary Services/Finance Company/IBU/Capital Market Intermediaries/HO/HIO etc)</i></p> <p>(IVA) Brief About Business Model for proposed IFSC Unit:</p>
<p>(V) Investment in Capital Goods, Office equipment, Laptop, furniture etc _____</p> <ul style="list-style-type: none">- Indigenous _____- Import CIF Value _____- Total (i) + (ii) _____
<p>(VI) Infrastructure requirements:</p> <ol style="list-style-type: none">1. Office space (built up area) in Sq ft. _____2. Address of the proposed office _____
<p>(VII) Employment</p> <ul style="list-style-type: none">- Men- Women
<p>(VIII) Equity Participation including Foreign Investment, if any in case of Private Limited or Limited Company</p> <p>(i) Proposed & Existing</p> <ol style="list-style-type: none">(a) Authorized(b) Subscribed(c) Paid up Capital <p>Note: If it is an existing company, give the break-up of existing and proposed capital structure.</p> <p>(ii) Pattern of shareholding in the paid-up capital (Amount in Rupees)</p> <ol style="list-style-type: none">i. Foreign holdingii. Non Resident Indian company / Individual holding

<ul style="list-style-type: none"> ○ Repatriable ○ Non-repatriable iii. Resident holding iv. Total Equity <p>Remarks</p> <p>(IX) Equity Participation including Foreign Investment, if any in case of Limited Liability Partnership, Partnership, Proprietorship, Trust etc</p> <p>(iii) Proposed & Existing (a) Capital/Settlers Initial Contribution (In case of AIF as Trust)</p> <p>Note: If it is an existing entity, give the break-up of existing and proposed capital structure.</p> <p>(iv) Pattern of capital (Other than Trust) (Amount in Rupees)</p> <ul style="list-style-type: none"> i. Foreign holding ii. Non Resident Indian company / Individual holding <ul style="list-style-type: none"> ○ Repatriable ○ Non-repatriable iii. Resident holding iv. Total Equity
<p>(X) Foreign Exchange Balance sheet:</p> <ul style="list-style-type: none"> 1. Foreign Exchange inflow in first 5 years 2. Foreign Exchange outgo in first 5 years 3. Net Foreign Exchange earning <p>Note: (A separate Annex for each type of activity is to be enclosed depending on the entity)</p> <ul style="list-style-type: none"> - Foreign exchange inflow shall include_____ - Foreign Exchange outgo shall include_____
<p>(XI) Other information</p> <ul style="list-style-type: none"> (i) Whether the applicant or any of the partner/Director who are also partners/Directors of another company or firms its associate concerns

are being proceeded against or have been debarred from getting any License/Letter of Intent/Letter of Permission under Foreign Trade (Development and Regulation) Act, 1992 or Foreign Exchange Management Act, 1999 or SEZ Act, 2005 or any other Act of Law for the time being in force.

- (ii) Whether the applicant has been issued any other license under SEZ Act and Rules or by IFSCA. If so, give full particulars, namely reference number, date of issue, items of Service and progress of implementation of each project.

UNDERTAKING

I/We hereby declare that the above statements are true and correct to the best of my/our knowledge and belief. I/We shall abide by any other condition, which may be stipulated by the Development Commissioner. I/We fully understand that any Permission Letter/Approval granted to me/us on the basis of the statement furnished is liable to cancellation or any other action that may be taken having regard to the circumstances of the case if it is found that any of the statements or facts therein furnished are incorrect or false.

An undertaking on letter head duly sworn by the authorized signatory of the company in support of the above information is enclosed.

Signature of the Applicant _____

Name in Block Letters _____

Designation _____

Full Official address _____

Tel. No. _____

e-mail Address _____

Web-Site _____

Full Residential address _____

Full Residential address _____

Place _____

Date _____

Official Seal / Stamp _____

ANNEXES

Annex 5: Revised Annual Performance Report Format

ANNUAL PERFORMANCE REPORT FOR IFSC UNITS

Submission Date: _____

Request ID : _____

[1]	Name of Unit		
	Period Of Reporting	FY:	
		Year of the Block Period:	
		FULL APR FROM _____ to _____	
	LOA No.		
	LOA Date	[dd/mm/yyyy]	
	IFSCA Approval No.		
	IFSCA Approval Date	[dd/mm/yyyy]	
	Approved Items of Service Activity		
	Unit Address		
	Unit Contact Person Name		
	Unit Contact Person Contact No.		
	Unit Contact Person Email id		
	Date of Commencement of Activity	[dd/mm/yyyy]	

[2]	EXPORT (INFLOW)	(Rs. In Lakhs)
	(a) Foreign Exchange Inflow during the year	0.00
	(b) Value of supplies made under Rule 53A ('a' to 'k')	0.00
	(c) Total value of Foreign Exchange Inflow for the year under report (a+b)	0.00
	(d) Cumulative value of Foreign Exchange Inflow for the five year period	

[3] IMPORT/OUTFLOW: (Rs. in Lakhs)

[A] Capital Goods/Consumables		[Rs. in Lakhs]
(i)	Year-wise CIF value of capital goods/consumables imports & spares till end of the year under report (including lump sum payment for technical know-how)	0.00
(ii)	Value of imported Capital Goods/Consumables and spares received from other units in SEZ / IFSC / EOU / EHTP / STP during the year	0.00
(iii)	Total (i) + (ii)	0.00
(iv)	Value of imported Capital Goods/Consumables and spares transferred to other units in SEZ / IFSC / EOU / EHTP / STP during the year	0.00
(v)	Total value of imported Capital Goods/Consumables and Spares during the year (iii) - (iv)	0.00
(vi)	Proportionate amortized value of imported capital goods taken for NFE calculations as per rule 53 of Special Economic Zone Rules, 2006	0.00

[4]	Other FE Outflow Details	
	Other Outflow of Foreign Exchange (Royalty, Technical know-how fee, repatriation of Dividend /Profits, Payment of Sales Commission, Interest on overseas borrowings, etc) during the year	0.00
[5]	Total outflow [4.A.(h) + 4.B.(vi) +5]	0.00
[6]	Net Foreign Exchange Earning For The Year [3.(c) -6]	0.00
[7]	Net Foreign Exchange Earning position at the end of previous year	0.00
[8]	Cumulative Net Foreign Exchange Earning for the five year period [7 + 8]	0.00
[9]	Value Addition Achievement during the year (applicable for Gem & Jewellery Units)	0.00

PART B

[1]	Capital structure of the enterprise	
[A]	In case of Private Limited/Limited Company	
	(i) Authorised Capital [Rs. In Lakhs]	
	(ii) Subscribed capital [Rs. In Lakhs]	
	(iii) Paid Up capital [Rs. In Lakhs]	

ANNEXES AND APPENDICES

[B]	In case of Partnership Firm/Limited Liability Partnership Firm or Proprietorship firm	
	(i) Partners Capital/Firm Capital [Rs. In Lakhs]	
[C]	In case of Trust and Others	
	(i) Total Corpus/Assets Under Management Amount (Rs. In Lakhs)	

[2]	Other Information		
	(1) External commercial borrowing		
	External commercial borrowing pending at the end of last year		
	(a) Less than three years (Amount in \$)		0.00
	(b) More than three years (Amount in \$)		0.00

[3]	Pending Foreign Exchange Inflow Realization Details beyond 9 Months time			
	Name of the Client/Recipient of Service	Invoice No./Document Ref. No.	Date	Amount Pending for Realization (Rs. In Lakhs)

[4]	Employment Details			
		Direct	Indirect	Total
	Men	0	0	0
	Women	0	0	0

(SIGNATURE)
with Seal of Co.

Note: The information given in the formats for Annual Performance Reports should be authenticated by the authorised signatory of the unit and certified by a Chartered Accountant or Cost Accountant.

BIBLIOGRAPHY AND REFERENCES

- 1 mmrda.maharashtra.gov.in/documents/10180/6108130/3.pdf/60a72578-724f-4f76-8cd7-b2565c66e810
- 2 [www.ics.org.uk/media/461124/hkg_maritime_leasing_paper_\(eng\)_1_may_2018.pdf](http://www.ics.org.uk/media/461124/hkg_maritime_leasing_paper_(eng)_1_may_2018.pdf)
- 3 en.wikipedia.org/wiki/Steamship
- 4 en.wikipedia.org/wiki/Flag_of_convenience
- 5 The Belen Quezada, in August 1919, was the first foreign ship to be re-registered in the Panamanian registry, and was employed in running illegal alcohol between Canada and USA during Prohibition.
- 6 en.wikipedia.org/wiki/Flag_of_convenience
- 7 en.wikipedia.org/wiki/Flag_of_convenience
- 8 amp.en.google-info.in/402049/1/flag-of-convenience.html
- 9 The Liberian open registry, founded in 1948, was the brainchild of Edward Stettinius, who had been Franklin D. Roosevelt's Secretary of State during World War II. Stettinius created a corporate structure that included The Liberia Corporation, a joint-venture with the government of Liberia. The corporation was structured so that 25% of its revenue would go to the Liberian government, another 10% went to fund social programs in Liberia, and the remainder returned to Stettinius' corporation. The Liberian registry was created at a time when Panama's registry was becoming less attractive for several reasons including its unpopularity with USA's labour movement and European shipping concerns, political unrest in Panama, and increases in its fees and regulations. On 11 March 1949, Greek shipping magnate Stavros Niarchos registered the first ship under the Liberian flag, World Peace. When Stettinius died in 1949, ownership of the registry passed to the International Bank of Washington, led by General George Olmsted. Within 18 years, Liberia grew to surpass the United Kingdom as the world's largest register.
- 10 faolex.fao.org/docs/pdf/niu136349.pdf
- 11 amp.en.google-info.in/402049/1/flag-of-convenience.html
- 12 [www.eylaw.com.hk/Publication/vwLUAssets/EY-shipping-industry-almanac-2016/\\$FILE/EY-shipping-industry-almanac-2016.pdf](http://www.eylaw.com.hk/Publication/vwLUAssets/EY-shipping-industry-almanac-2016/$FILE/EY-shipping-industry-almanac-2016.pdf)
- 13 <https://www.incometaxindia.gov.in/Pages/i-am/domestic-company.aspx?k=Tonnage%20Tax>
- 14 www.dgshipping.gov.in/Content/viewNotice.aspx?noticeid=99
- 15 <https://www.dgshipping.gov.in/Content/viewNotice.aspx?noticeid=99>
- 16 <https://www.dgshipping.gov.in/writereaddata/ShippingNotices/202102111122292962122DGSCircular-2of2021-SD-.pdf>
- 17 Brazil [http://transpetro.com.br/en_us/transpetro-institucional/business-areas/maritime-transportation/transpetro-fleet.htm],
Indonesia [<https://www.pertamina.com/en/shipping-business-line>],
Malaysia [<https://www.misc.com.my/about/>],
Vietnam [https://www.pvtrans.com/en_US/ourboats]
- 18 <https://www.bp.com/en/global/bp-shipping.html>.
- 19 <https://maritimecluster.org/wp-content/uploads/2020/08/Shipbuilding-Policy-2010.pdf>
- 20 Almost all recycling sale and purchase transactions are quoted in USD per lightship (long) ton, equating to 2,240 pounds (lb) or 1.016 tonnes. Lightship is defined as the extreme displacement of an

unloaded ship, with or without bunkers and lubricants of the main and auxiliary engines, hydraulic oil contained in hydraulic systems, and water needed to fill the ship's boilers up to working level. Lightship excludes crew, passengers, stores, fuel, ballast, potable water, paints, cargo, liquids and constants in the system and all other items not affixed to the vessel. Lightship is relevant for ship recycling transactions because it provides the basis for estimates of the weight of the ship's steel and approximate quantities of various other commercially valuable materials belonging to the vessel that can be obtained from the ship's recycling.

- 21 The recycler usually obtains a Letter of Credit in US dollars for a period of 180 days from his bank, although in some cases it can be for a longer period. For an average sized ship of 10,000 LDT, it might take 100 to 120 days to complete the recycling work. From around the fortieth day from commencement of work and until completion, the recycler sells the ship's metals, machinery, equipment and other materials, and has to contend two key volatilities: (a) domestic steel plate prices; and (b) domestic currency exchange rate with USD.