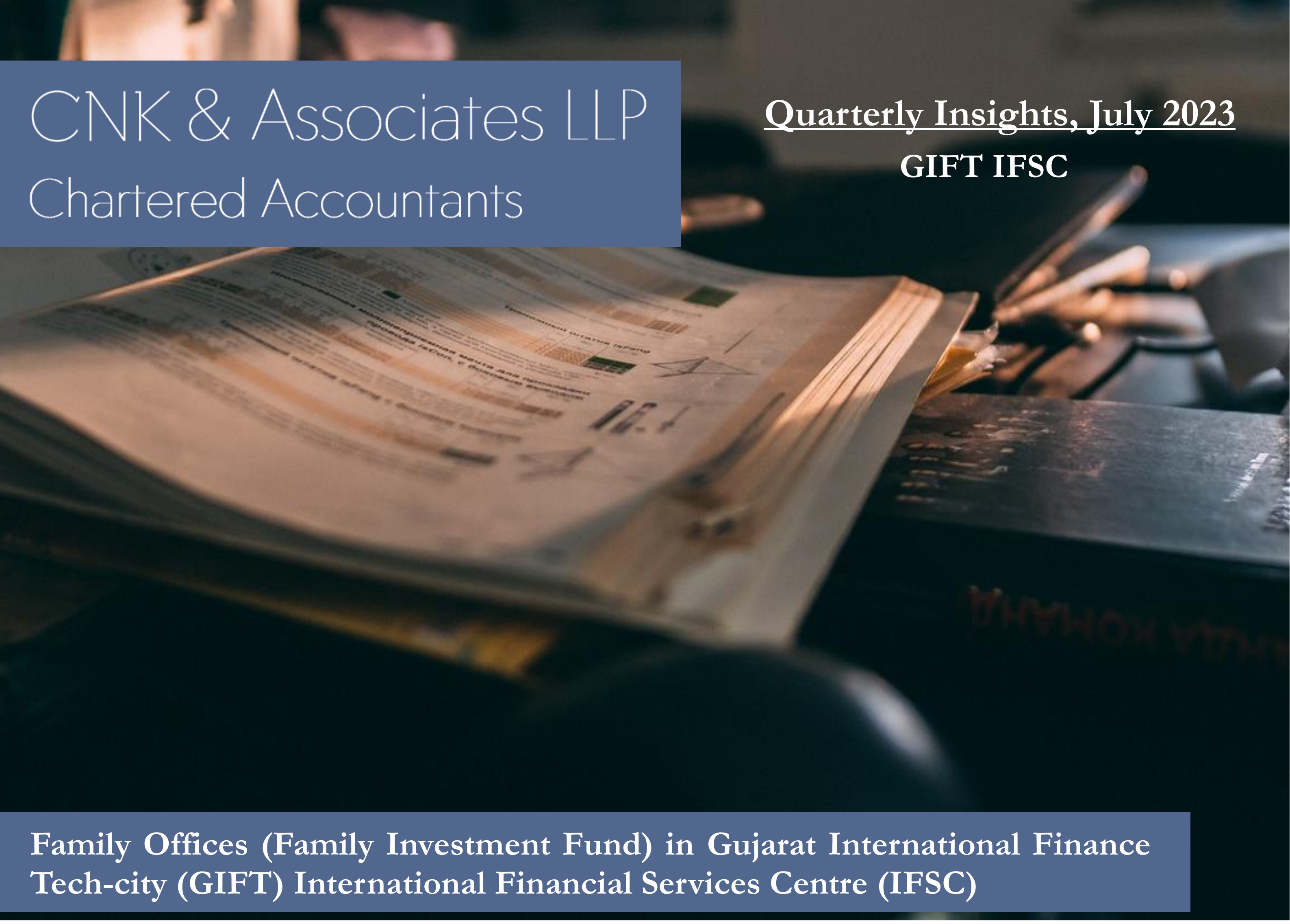

CNK & Associates LLP

Chartered Accountants

Quarterly Insights, July 2023

GIFT IFSC

Family Offices (Family Investment Fund) in Gujarat International Finance Tech-city (GIFT) International Financial Services Centre (IFSC)

INDEX

Background – Family Offices

The modern-day concept of family offices started in the 19th century with wealthy businessmen such as J. P. Morgan setting up offices to take care of their family assets. Typically, family offices are not as pervasive in developing countries as they are in the developed world. However, the recent bull market in the past few years in India, both public and private asset classes has brought a wave of liquidity for many business families, prompting a rush to start family offices. With India's growing wealth, a large number of wealthy Indian families have set up family offices to take care of the family's money. The issue in India is the contemporary tax and foreign exchange regulations, which made it extremely difficult for the Indian families to set up base for their family offices in India. Thus, it became a common practice for the Indian families to set up their family office in an overseas jurisdiction like Dubai or Singapore, which would provide them with more lucrative tax and foreign exchange regulations as compared to those prevailing in India.

To overcome the above limitations and restrictions and make India attractive for such investments, the government has permitted setting up of family offices in the GIFT City. The concept is introduced as *'Family Investment Fund'* **(FIF)** which allows a single family or an entity in which members of the single-family exercise control and have substantial economic interest (at least 90%) to set up a self-managed fund which can pool money and invest in permissible securities and financial products.

FIF can be set up as a company, limited liability partnership **(LLP)** or contributory trust and is regulated through International Financial Services Centres Authority **(IFSCA)** (Fund Management) Regulations, 2022.

Overview of FIF in GIFT IFSC

1) Definitions: -

- Family investment fund means a self-managed fund pooling money only from a single family and has been set up in terms of these regulations;
- Single family means a group of individuals who are the lineal descendants of a common ancestor and includes their spouses and children;

2) Single Family Office (SFO) or FIF – which are more "in-house" and manage the assets and wealth of a single-family group. FIF manages the wealth of a private family with no public money, or any third-party funds being solicited.

3) Minimum Corpus - A FIF in IFSC should have and maintain a minimum corpus of USD 10 million within a period of 3 years from the date of obtaining certificate of registration.

4) Open or Close Ended - FIF could be open ended or close ended, depending upon the requirements of the family.

5) Net Worth - There is no minimum Net Worth requirement criteria, so far as FIF is concern

6) Borrowings - FIF may borrow funds or engage in leveraging activities as per their risk management policy.

7) Investment Professional - The FIF should have at least 1 investment professional with prescribed qualifications and with minimum experience of at least 5 years.

8) Permissible Investments - Subject to other provisions of these regulations, a FIF may invest money only in:
   - Securities issued by the unlisted entities
   - Securities listed or to be listed or traded on stock exchanges in IFSC, India or foreign jurisdictions
   - Money market instruments
   - Debt securities
   - Securitized debt instruments, which are either asset backed or mortgage-backed securities
   - Other investment schemes set up in the IFSC, India and foreign jurisdiction
   - Derivatives including commodity derivatives
   - Units of mutual funds and alternative investment funds in India and foreign jurisdiction

- Investment in LLPs
- Physical assets such as real estate, bullion, art, etc.
- Such other securities or financial product /assets or instruments as specified by the Authority.

Earlier, a 'single family' definition would only mean individual family members, limiting investment in the FIF to the $250,000 limit of each individual member of the family under the liberalized remittance scheme (LRS). To promote the setup of FIF in IFSC, the IFSCA, vide circular dated 1st March 2023 allows an Indian non-individual entity to be considered a single family provided that the members in the family have at least 90% economic interest in such entity, and is allowed to invest up to 50% of its net worth into the FIF.

CNK Comments

Allowing investment by non-individual entities has really opened up the feasibility of setting up family offices in GIFT City and enables it to compete with other suitable jurisdictions for family offices. This in turn would allow individuals to free up the $250,000 personal remittance limit for other purposes as well as allow substantial investments in the FIF through the family-owned entities. Further, companies that do not satisfy the 3-year profitability criteria for outbound investments can also invest in IFSC even though for FEMA purposes, such investment is also considered as an outbound investment.

FIF would be entitled to 100% income tax exemption for a period of 10 consecutive years out of 15 years, if the income of FIF is characterised as business income. However, FIF may be subject to minimum alternate tax (MAT) / alternate minimum tax (AMT) as the case may be, and the same so paid will be available as credit in subsequent years. It also has the advantage of GST exemptions and liberal exchange control regulations. FIF has also been allowed to take leverage in foreign currency from banks located in GIFT City – given that such loans are expected to be available at affordable rates, it is a great alternative to sourcing high-cost funds from India. As a welcome step, the RBI has recently allowed a longer repatriation window of 180 days, instead of 15 days, for funds lying unutilised in foreign currency accounts in IFSC. However, one should be mindful that using LRS for investing in FIF would attract TCS @ 5% till 30th September 2023 and 20% w.e.f. 1st October 2023. While TCS, being adjusted against the final taxes, is not an additional cost, the same is bound to impact the cash flows.

One has to identify the place of business in GIFT City, obtaining letter of allotment from developers and incorporating FIF entity in form of company, LLP or Trust, followed by getting approval from SEZ authority or IFSCA authority. Further, from a substance perspective, FIF needs to have at least 1 principal officer in GIFT City who will be responsible for overall activities of the FIF. One also needs to take care about compliances and disclosure requirements of Fund Management Entity **(FME)**.

Fund structures are gaining popularity among wealthy individuals in India as optimum structures to help with wealth planning, investments, and tax management. Family offices are viewing GIFT City, India's first IFSC, for the purpose of facilitating global investments in a structured manner, especially in light of recent news reports wherein certain reservations have been raised for setting up family offices abroad under Foreign Exchange Management Act,1999 (FEMA) regulations. Since there are income tax and GST exemptions, no FEMA restrictions, GIFT City seems lucrative options for Family office, which is simple yet effective arrangement to manage large volume of funds for a small group of individuals.

In addition, these funds have been allowed to share economic interests with employees, directors, and other non-family members. Overall, this could help slow down the flow of capital into other countries as the family office space in India continues growing. Overall, the emergence of FME Regulations allowing formation of FIF in the GIFT City is forward looking and is bound to gain traction among the families looking for setting up of their family office.

Disclaimer and Statutory Notice

www.cnkindia.com

CNK & Associates LLP
Chartered Accountants

Mumbai

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road, Churchgate, Mumbai 400 020, India
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G Road, Vile Parle (East), Mumbai 400 057, India
Tel: +91 22 6250 7600

Bengaluru: +91 80 2535 1353
Chennai: +91 44 4384 9695
Vadodara: +91 265 234 3483
Ahmedabad: +91 79 2630 6530
GIFT City: +91 79 2630 6530
Delhi: +91 11 2735 7350
Pune: +91 20 2998 0865
Dubai: +971 4 3559533
Abu Dhabi: +971 4 3559544