

## GIFT CITY

# Insights - The IFSCA (Informal Guidance) Scheme, 2024

The International Financial Services Centre Authority (“IFSCA/Authority”) has by way of a circular announced the IFSCA (Informal Guidance) Scheme, 2024 (“Scheme”). This initiative is expected to offer clarity and regulatory support to various stakeholders operating within IFSC or intending to establish a presence within the IFSC. The Scheme comes into effect from 1 January 2025.

The highlights of the Scheme are as under:

### Objective of the Scheme

The primary objective is to provide a mechanism for seeking guidance on the application of legal and regulatory provisions, helping units in IFSC to make informed and compliant decisions before proceeding with business activities or transactions. Further, the Scheme intends to make sure that the units in IFSC are well-equipped to meet regulatory expectations, thus promoting ease of doing business within the IFSC.

### Eligibility

A person who is:

- licensed, registered, recognised or authorised by the Authority; or

- intending to undertake a business transaction in relation to financial products or financial services regulated by the Authority; or
- desirous of setting up a Unit in IFSC; or
- such other person as may be specified/permitted by the Authority.

### Types of Informal Guidance

Informal Guidance may be sought in the following manner:

#### a. No-Action Letters:

It indicates whether the Department would or would not recommend any action to the Authority under applicable laws, if the proposed activity, business, or transaction described in the request is carried out.



These letters provide assurance to entities on the likelihood of enforcement actions associated with proposed business transactions.

#### **a. Interpretive Letters:**

In this form of guidance, the Department can provide an interpretation of:

- specific provision of the Act, Rules, Regulations, Guidelines or Circulars administered by the Authority;
- Circulars, Directions, or Guidelines issued by regulatory bodies such as RBI, SEBI, IRDAI, or PFRDA prior to the Authority's establishment, and presently administered by the Authority;
- Other legal provisions of any act, Rules, Regulations, Guidelines or Circulars administered by the Authority, in the context of a proposed activity/ business/ transaction related to financial products or financial services or in a specific situation based on facts.

### **Application Requirements and Process**

Eligible Applicants are required to adhere to the following:

#### **b. Details to be disclosed**

The application shall include a comprehensive disclosure and analysis of all relevant and material facts.

The application is required to address the applicable legal provisions relevant to the request and demonstrate their link to the applicant's current or proposed activity.

#### **c. Type of Guidance**

The application must clearly specify whether it is submitted for a 'No-Action Letter' or an 'Interpretive Letter'.

#### **d. Submission Method**

Application is required to be submitted electronically through the *Single Window IT System (SWITS)* of the Authority.

Until SWITS is operational, applications are required to be sent via email to the *nodal coordination cell* of the Authority at [igdesk@ifsc.gov.in](mailto:igdesk@ifsc.gov.in)

#### **e. Fees:**

The application is required to be accompanied with fees of USD 1,000, comprising 75% as guidance fees and 25% as processing fees.

The Guidance Fees is refundable, if the application is not accepted.

#### **f. Timeline for disposal of Application:**

The relevant Department of the Authority shall provide a response within 30 days from the receipt of application.

The applicant shall respond to Department's communication within 15 days or as extended. Failure to respond could result in rejection of the application.

### **Rejection by the Department**

The Department may not entertain applications seeking Informal Guidance where:

- the query is general or lacks sufficient details;
- the query is based on hypothetical situations;
- the applicant has no direct or proximate interest;
- the applicable legal provisions are not cited;
- a similar no-action or interpretive letter has already been issued on a substantially similar question;



- an investigation or enforcement action is already underway;
  - the issue is pending before a Court or Tribunal (sub-judice);
  - policy concerns require that the Department does not respond to the query;
  - in such other cases as the Department deems fit.
- A No-Action or Interpretive Letter reflects the concerned Department's views and is not binding on the Authority, though the Authority may act in accordance with it.

### Action against unlawful means

If the Department determines that guidance was obtained through fraud or misrepresentation, it may declare the guidance to be *non-est*, and the applicant's case will be treated as if no guidance was issued.

### Confidentiality and Publication

- All guidance issued under this Scheme will be published on the Authority's website.
- If an applicant requests confidentiality due to the sensitivity of proposed business decisions or transactions, the guidance will remain confidential for 90 days from the date of issuance.
- The Department may redact names or details upon applicant's specific request before publication.

### Dhruva Comments

The Scheme provides stakeholders with a mechanism for obtaining guidance on issues that require further clarity.

The guidance is a welcome process which should enable units/applicants gain a better understanding at the initial stage of a transaction.

### Legal Standing and Limitation

- A letter issued by the Department under this Scheme:
  - does not constitute a conclusive decision or order by the Authority.
  - Is not appealable
- The Authority is not liable for any loss or damage due to delayed or unanswered requests, or differing views from a previous issued letter.

### Contributors

K Venkatachalam  
[k.venkatachalam@dhruvaadvisors.com](mailto:k.venkatachalam@dhruvaadvisors.com)

Paras Sheth  
[paras.sheth@dhruvaadvisors.com](mailto:paras.sheth@dhruvaadvisors.com)

Juhi Aswani  
[juhi.aswani@dhruvaadvisors.com](mailto:juhi.aswani@dhruvaadvisors.com)



## ADDRESSES

### GIFT City

Dhruva Advisor IFSC LLP  
Pragya Accelerator, Unit FF 36,  
Block 15, GIFT SEZ,  
Gandhi Nagar- 382355, Gujarat, India.  
Tel: +91 7878577277

### Mumbai

1101, One World Centre,  
11th Floor, Tower 2B,  
841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

402, 4th Floor, Venus Atlantis,  
100 Feet Road, Prahladnagar,  
Ahmedabad 380 015  
Tel: +91 79 6134 3434

### Bengaluru

Lavelle Road, 67/1B,  
4th Cross, Bengaluru,  
Karnataka – 560001  
Tel: +91 90510 48715

### Delhi / NCR

305-307, Emaar Capital Tower-1,  
MG Road, Sector 26, Gurgaon  
Haryana - 122 002  
Tel: +91 124 668 7000

### New Delhi

1007-1008, 10th Floor, Kailash Building,  
KG Marg, Connaught Place,  
New Delhi – 110001  
Tel: 011 4514 3438

### Pune

305, Pride Gateway,  
Near D-Mart, Baner,  
Pune - 411 045  
Tel: +91 20 6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal – 700016  
Tel: +91 33 66371000

### Abu Dhabi

Dhruva Consultants  
1905 Addax Tower, City of Lights,  
Al Reem Island,  
Abu Dhabi, UAE  
Tel: +971 26780054

### Dubai

Dhruva Consultants  
Emaar Square Building 4, 2nd Floor,  
Office 207, Downtown,  
Dubai, UAE  
Tel: +971 4 240 8477

### Singapore

NeoDhruva Consultants  
#16-04, 20 Collyer Quay,  
Singapore 049319  
Tel: +65 9144 6415

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
[dinesh.kanabar@dhruvaadvisors.com](mailto:dinesh.kanabar@dhruvaadvisors.com)

### Punit Shah (Mumbai)

[punit.shah@dhruvaadvisors.com](mailto:punit.shah@dhruvaadvisors.com)

### Mehul Bheda (Ahmedabad / GIFT City)

[mehul.bheda@dhruvaadvisors.com](mailto:mehul.bheda@dhruvaadvisors.com)

### Vaibhav Gupta (Delhi/ NCR)

[vaibhav.gupta@dhruvaadvisors.com](mailto:vaibhav.gupta@dhruvaadvisors.com)

### Sandeep Bhalla (Pune)

[sandeep.bhalla@dhruvaadvisors.com](mailto:sandeep.bhalla@dhruvaadvisors.com)

### Aditya Hans (Bengaluru / Kolkata)

[aditya.hans@dhruvaadvisors.com](mailto:aditya.hans@dhruvaadvisors.com)

### Nimish Goel (Middle East)

[nimish.goel@dhruvaadvisors.com](mailto:nimish.goel@dhruvaadvisors.com)

### Dilpreet Singh Obhan (Singapore)

[dilpreet.singh@dhruvaadvisors.com](mailto:dilpreet.singh@dhruvaadvisors.com)

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