

SAFAL

SHIP ACQUISITION, FINANCING AND LEASING



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REPORT OF THE COMMITTEE

ON

**DEVELOPMENT OF AVENUES FOR SHIP
ACQUISITION, FINANCING AND LEASING
FROM IFSC IN INDIA**

28 OCTOBER 2021



FOREWORD

The Committee on Development of Avenues for Ship Acquisition, Financing and Leasing Activities from the International Financial Services Centres (IFSC) in India was constituted by the International Financial Services Centres Authority (IFSCA) vide its Office Memorandum No. 355/IFSCA/Dev/SL/2021-22/241 dated 24 June 2021. Its constituent members were from the government, regulators, private sector experts, academia, financial institutions, legal and tax consultants.

Working towards the fulfilment of its mandate, the Committee carried out a 360-degree review and examination of the existing legal and regulatory regime in IFSC in India for ship acquisition, financing, and leasing. The IFSC regime was compared with those of global top-ranking marine hubs. It further identified challenges and impediments to the realisation of India's shipping sector's growth potential. Focus remained on enablement of cost-effective and competitive delivery of shipping services on ships owned and leased from India-IFSC. A holistic consideration covered all types of ships, that is, those deployed for the transportation of goods and passengers across the seas, along India's vast coastline, from/to offshore fields and islands, as well as along inland waterways. The amenability to lease financing of non-weaponised defence ships (transport, fuelling vessels, tugs, barges, etc.) and those deployed in civil leisure activities like cruises was also briefly assessed.

The Committee also developed a ship-owning and financing model, for which the detailed work was done by Price Waterhouse & Co LLP. The assumptions made in the model were finely filtered and confirmed during interactions with industry and ship financiers. The model compared the cost of capital, cost of operations and tax costs and help gauge the overall implications of the suggested asks in this Report.

Gujarat Maritime Board (GMB) has established itself as maritime leader in port development, privatization and specialized cargo handling in India. It has conceived the Gujarat Maritime Cluster (GMC) as a dedicated ecosphere of Ports, Maritime / Shipping and Logistics services providers along with regulators, in GIFT City. GMB has also established the Gujarat Maritime University (GMU) in its endeavour to provide a fillip to this growth by bridging the knowledge gaps within the industry. IFSCA has signed a Memorandum of Understanding (MOU) with GMU to promote the Gujarat International Maritime Arbitration Centre (GIMAC), which is to be set up at GIFT House¹.

The synergies with the mandate of the Committee were assessed to be real.

Multiple consultations held with industry experts, segmented into three inter-twined tiers in the shipping ecosystem in India and abroad, complemented the abovesaid examination. Public and private sector, and allied classification societies, etc. were consulted. Interactions were thus held with ship-builders, maintenance, repair, and overhaul organisations, and ship recyclers/ breakers in the first part, ship financiers (bankers, non-bank financial institutions, alternate financiers, cash buyers) in the second part, and entities

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from the commercial trade segment comprising of ship owners, charterers, lessors, ship brokers, and industry associations in the third part.

Stakeholder were unanimous that India has to plan for an accelerated presence in global shipping markets with suitable foreign investments. Apart from acting as a hedge against large freight bills of India's mercantile trade, holding significant control in global maritime bankable assets can also offer the industry potentially higher returns on investments. Indian trade industry has to be equipped with the best tools available to manage and mitigate freight risks, while Indian capital has to be provided an opportunity to participate in this large and profitable global segment with added skills and dexterity. These interactions also reaffirmed that India-IFSC has certain inherent cost advantages for enterprise established therein and offers the right platform for developing a ship acquisition, financing and leasing ecosystem.

The interactions revealed a few competing claims of stakeholders in domestic jurisdiction. These will arise perforce whenever an India-offshore regime is created to help Indian entities compete with global marine hubs flush with global best practices. Such asks were put to the tests of balance of considerations and of developing avenues which strength and offer competitive advantage holistically to Indian enterprises participating in end-to-end value chains. Germane to the matter is that existing domestic industry stands to fully benefit from a host of new ship financing and leasing avenues sought to be developed from India-IFSC. Ship leasing and financing from IFSC will buttress the efforts being put in to build up the shipping sector in India.

The objective of the Committee has unambiguously remained enabling the seeding of a robust **Ship Acquisition, Financing And Leasing (SAFAL)** regime at India-IFSC. A crucial element is making it future-proof, so that it can steadily ride the tailwinds of innovations over time towards decarbonisation through "green financing", besides carrying a self-sustaining impetus in its engine-room for the medium to long terms.

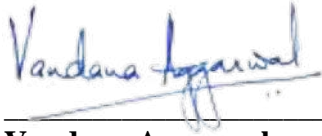
For this to happen, India must develop a world-class globally integrated ecosystem, where expertise and tools to fulfil the objectives are available. Presence of a vibrant ship finance regime with foreign participation will enable India to keep abreast of sector developments and access to global capital and talent. Understanding of complex global sea trade, its interplay with traders and end-users and ability to tap into the expertise of seasoned industry players will allow India's strategic planners to better appreciate the threats and opportunities that international shipping presents.

In conclusion, the Committee has thus developed a set of critical and necessary changes required to be made in the legal and regulatory framework, including in direct and indirect taxes and other duties, and in the export-import provisions relating to ships, ship finance and shipping services in India-IFSC.

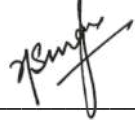
The Report also provides policy makers with suitable inputs by way of detailed drafts of the proposed regulatory and legal changes. It draws out the way forward for realising the true transformational potential of India's shipping industry. This may also be an opportune time for the shipping ministry to brand the India flag appropriately. Adopting the theme of 'Greening the Blue Ocean' could fit well with the Maritime India Vision 2030.

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The Report is submitted herewith to the IFSCA.



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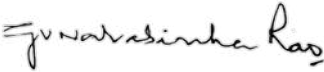
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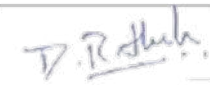
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Note: Members have served on this Committee ad personam. Comments, views, analysis and/or examination herein are neither attributable to, nor are the recommendations binding upon, the organisations to which the Members belong.

Dated: 28-10-2021



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The Committee would like to convey its deep gratitude to all the stakeholders and industry experts, most of whom are recalled in Annex 3 hereto, for appreciating our need for speed and rallying with us in providing written inputs, supplemented with discussions and clarifications at very short notice.

No words can do justice to the multifaceted support provided by Himanshu Jain and K. Kundan Krishna from the IFSC Authority to the Committee right from its constitution to until the submission of this Report.

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ABBREVIATIONS AND ACRONYMS

AIF	Alternative Investment Funds
BR Act	Banking Regulation Act, 1949
BCD	Basic Customs Duty
CAGR	Compound Annual Growth Rate
Central Government	Government of India, acting through the relevant ministry or administrative wing
CGST	Central Goods and Services Tax
Companies Act	Companies Act, 2013
CST	Central Sales Tax
DDT	Dividend Distribution Tax
DMCC	Dubai Multi Commodities Centre
DTA	Domestic Tariff Area
DTAA	Double Taxation Avoidance Agreement
DWT	Dead Weight Tonnage
EDPMS	Export Data Processing and Monitoring System
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FEMA IFSC Regulations	Foreign Exchange Management (International Financial Services Centre) Regulations, 2015
GAAR	General Anti Avoidance Rules
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GIFT	Gujarat International Finance Tec-City
GIMAC	Gujarat International Maritime Arbitration Centre
GMB	Gujarat Maritime Board
GMU	Gujarat Maritime University
GSA	Gujarat Stamp Act, 1958
GRT	Gross Registered Tonnage
GST	Goods and Services Tax
HNIs	High Net Worth Individuals
IDPMS	Import Data Processing and Monitoring System
IFC	International Finance Centre
IFSC	International Financial Services Centre
IGST	Integrated Goods and Services Tax
IIO	International Financial Service Centre Insurance Offices
ILFC	International Lease Finance Corporation
INR	Indian Rupees
Insurance Act	Insurance Act, 1938
Insurance Regulations	IRDAI (Investment) Regulations, 2016
INViTs	Infrastructure Investment Trusts
IFSCA	International Financial Services Centres Authority

ABBREVIATIONS AND ACONYMNS

IRDAI	Insurance Regulatory & Development Authority of India
ISA	Indian Stamp Act, 1899
ITA	Income Tax Act, 1961
LIBOR	London Interbank Offered Rate
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
Master Directions (Financial Services by Banks) Directions, 2016)	Master Directions - Reserve Bank of India (Financial Services provided by Banks)
MOF	Ministry of Finance
MRO	Maintenance, Repair and Overhaul
MSA	Merchant Shipping Act, 1958
MoU	Memorandum of Understanding
M/o	Ministry of
NAV	Net Asset Value
NBFC	Non-Banking Financial Company
NCLT	National Company Law Tribunal
NFE	Net Foreign Exchange
NIIF	National Infrastructure Investment Fund
NOC	No-Objection Certificate
NPS	National Pension Scheme
ODI	Overseas Direct Investment
OEM	Original Equipment Manufacturer
PFRDA	Pension Fund Regulatory and Development Authority
PSU	Public Sector Units
RBI	Reserve Bank of India (i.e. the central banking regulator in India)
RCS	Regional Connectivity Scheme
RFP	Request For Proposal
RoFR	Right of First Refusal
SARFAESI	Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002
SEBI	Securities and Exchange Board of India (i.e. regulator for the securities market in India)
SEBI (AIF) Regulations	SEBI (Alternative Investment Funds) Regulations, 2012
SEBI (IFSC) Guidelines	SEBI (International Financial Services Centres) Guidelines, 2015
SEZ	Special Economic Zone
SEZ Act	Special Economic Zones Act, 2005
SGST	State Goods and Services Tax
SPC	Special Purpose Company
SPV	Special Purpose Vehicle
TEU	Twenty-Foot Equivalent Unit
T&C	Terms and Conditions
USD	United States Dollar
VAT	Value Added Tax
WHT	Withholding Tax

1. EXECUTIVE SUMMARY

Maritime transport is the backbone of international trade and the global economy. Around 80% of global trade in goods by volume and over 70% by its value is carried on ships across the seas and handled at ports worldwide. Concentration of capital, aided by liberal taxation and regulation, has created global shipping hubs specializing in various activities.

Shipping is essential to India. Nearly half of India's border is covered by sea, with a coastline of about 7,517 km, with 12 major and 205 minor ports. India is also strategically located on the world's shipping routes. Ministry of Shipping has estimated that about 95% of India's goods trade by volume and 70% by value is done through maritime transport. India has a significant exposure to maritime freight rate. Seaborne freight is estimated to be USD 85 billion annually. The share of Indian ships in carrying India's export-import cargo was about 6.53% in FY 2019-20. Each year India is estimated to pay about USD 75 billion seaborne freight to foreign shipping companies. India is thus well placed to step up its investment in the shipping industry.

The financial call for promoting ship acquisitions, financing and leasing from India is readily established. An estimated about USD 3 billion in debt financing for India owners is financed mostly by international financiers currently². About 61% of India's fleet holds a National India flag (15m out of 25m DWT). Based on the current global order book of scheduled commercial vessels, over 3,000 vessels are on order at a value of about USD 200 billion (fair market value)³. Yet, there is serious room for growth – China has 340m DWT tonnage or 16% global market share, while India has 25m DWT tonnage or 1% global market share.

Among the main other considerations to give a concerted push to the establishment of a domestic leasing industry on the pattern of what has been recently done successfully for aircraft – another large mobile bankable asset – is that ship industry holds the key to push the success of “Make in India” initiative, due to the high dependence on connectivity and supply chain, with high output and employment multipliers for the Indian economy. Furthermore, the market share in financing the industry stands presently captured by foreign lessors and financiers, and of late sizeably by Chinese leasing and financing companies. Ship lease finance is a highly profitable avenue, and shipping being a least-polluting form of commercial transport, is critical in the decarbonization efforts. An effective ship financing eco system with adequate risk capital can also be permitted to invest in tonnage in domestic tariff area, ensuring adequate funding for tonnage operating there.

Despite a clear-cut strategic and existential case for establishing and growing the business of shipping from India, many leading shipowners, and operators have chosen leading international maritime centres in India's vicinity, notably, Dubai DMCC, Hong Kong, and Singapore, as their base. These hubs attract companies by offering an integrated and holistic shipping services platform, covering maritime finance, technology, insurance, arbitration and dispute resolution, shipbroking, crew training, and ship management in their respective

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jurisdictions. Maritime cities are benchmarked on factors such as Shipping Centers, Maritime Finance, Maritime Law and Arbitration, Maritime Technology, Ports and Logistics.

Singapore is the top-ranking maritime capital of the world. Despite the “new normal” in traditional commercial shipping and economic stresses due to a still-weak offshore services’ market, Singapore has been able to evolve in order to retain its top-rank. All of its pillars supporting its Marine Centre are strong and resilient, enabling it to outperform other cities which are close competitors. In the Middle East, India and Africa region, Dubai is the leading maritime center and at a global level, now ranked ninth.²

Figure 1: The leading maritime capitals of the world, 2019

RANK	SHIPPING	FINANCE AND LAW	MARITIME TECHNOLOGY	PORTS AND LOGISTICS	ATTRACTIVENESS AND COMPETITIVENESS	OVERALL RANK
1	SINGAPORE	LONDON	OSLO	SINGAPORE	SINGAPORE	SINGAPORE
2	ATHENS	NEW YORK	LONDON	ROTTERDAM	COPENHAGEN	HAMBURG
3	HAMBURG	OSLO	HAMBURG	HONG KONG	LONDON	ROTTERDAM
4	HONG KONG	HONG KONG	BUSAN	SHANGHAI	ROTTERDAM	HONG KONG
5	SHANGHAI	SINGAPORE	TOKYO	HAMBURG	HAMBURG	LONDON

Source: Menon Economics and DNV GL publication

India lags far behind these global leaders in building a base for commercial enterprise. Costs of financing – borrowing and insurance (hull, cargo, and protection and indemnity, P&I) – are unfavourably high compared to international counterparts notably in London and Singapore which offer highly competitive rates. Financing and insuring ships is a specialised area; Indian agencies (banks, insurance companies, pension funds, alternate capital and others) lack exposure to maritime finance and insurance, and hence tend to be non-risk takers or impose lengthy, time-consuming procedures. Besides, India’s tax regimes by and large are not encouraging to shipping industry on par with the tax regimes of Singapore, Malta, Cyprus, and Panama where the majority of the international carriers are registered. The tax burden on seafarers sailing on foreign ships is nil as they are exempted from paying income tax, whereas their counterparts are obliged to pay all taxes. Similarly, the GST provisions on ship building, ship managing, bunkering, repairing (spare parts, for instance) etc. are skewed in favour of foreign entities, rendering Make-in-India unattractive.

Shipping as a global industry has cyclical ups and downs where the asset value gets linked to global charter hire rates. Indian entrepreneurs, in the context of other industries, have not considered investing in shipping sector as a safe heaven. Hence India, which has a huge export-import trade, is a country of charterers and not shipowners thereby resulting in a substantial spend of around USD 75 billion annually for chartering foreign flag vessels for India’s international trade. It is heart-wrenching to find that on registering of ships, industry finds it easier and more expedient to resort to Flags of Convenience (Panama, Marshall Islands, Liberia etc.) rather than flagging in India. Through the avenues of development of leasing which is suggested here, it is proposed to impart brand value to India flagged vessels.

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

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and giving options to the users without compromising on safety and security standards, while furthering employment of Indian seafarers. A strong, effective, proactive 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/ oversight in an efficient and disciplined manner would ensure that Indian flag upgrades itself from its present position at 43 (“Grey List”) to the “White List”, and that the India Administration’s Recognised Organisations (Indian Registry of Ships) also upgrades from “Medium-level” performance (rating and assessment in 2020) to the “High-Level”. Without doubt, these measures will give a significant fillip 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.

Another hindrance is the lack of monetary incentives provided to the Indian shipping industry. Countries such as South Korea, Norway and China have dedicated maritime fund structures to incentivise ship owners. While some countries facilitate foreign entities to purchase newly-built ships in local shipyards, others provide advice and structures to enable shipowners to finance capital for the purchase of new vessels. In India, shipbuilders are now incentivised since December 2015 by the Financial Assistance Policy for Indian Shipyards under the Sagarmala Project. It provides financial assistance to Indian Shipyards for shipbuilding contracts signed between 01 April 2016 to 31 March 2026. This incentive appears to be in tune with monetary structures adopted by countries across the globe.

Another impediment is the lack of domestic financial institutions specializing in ship finance which has meant a high rate of interest being offered to shipowners. While such interest rates may not be prohibitive to bigger shipowners such as Shipping Corporation of India, they tend to dissuade small shipowners. Additionally, smaller shipowners do not usually have access to foreign lender banks and if they do, they may also be met with extremely high interest rates. All this works towards dissuading Indian parties from entering into or continuing in the Indian shipping industry. It has been recommended herein that a part of the current tonnage in domestic tariff area can also be permitted to be set up in the India-IFSC regime, provided that such tonnage is primarily deployed on international trade routes and meets the set criteria for age and size and/or specialised vessels.

While India has a limited home-owned fleet, there are deep-rooted maritime traditions and thousands of Indian nationals represented at many of the top maritime players – shipping companies and financing institutions supporting the maritime cluster. Those who have set up owned fleets have established the owning companies in other jurisdictions as the tax, regulatory and legal regime covering the maritime market in India is deemed to be too expensive, with extensive bureaucratic red-tapes as compared to other countries. Despite obvious human resources strengths elsewhere, within India there are markedly inadequate commercial skills and understanding of shipping markets which restricts the ability of Indian shipping to go beyond low end back-office functions or highly labour-intensive tasks.

Among India’s strengths are its established common law system, world-class ports, proximity to major sources of and markets for goods, and a young, well-educated, creative and motivated workforce. India has the potential to build a base for commercial principals. If more of these principals are attracted to India, related service providers will follow. Many

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tonnage providers around the world continue to search for an Asian base of operations. At the same time, many Chinese vessel leasing companies with all or part of their fleet based or registered outside China in low tax jurisdictions are looking to housing their offshore ownership operations in respectable jurisdictions with a stable tax and legal environment. All these activities present a real opportunity for India.

One step to attract maritime players to set up business in India is to make it easier for commercial principals to move their key employees to IFSC, to facilitate the interaction between various different government departments and regulators.

Traditional sources of capital from the shipping banks are shrinking, making their loans more expensive and harder to obtain, forcing many shipping companies to turn to alternative sources of finance. Export credit agencies (“ECAs”) in shipbuilding nations provide guarantees for facilities arranged by banks or direct lending. Some of these ECAs could be attracted to conduct their shipping business from IFSC or have ECA-related transactions arranged by banks based in IFSC. The Export Credit Guarantee Corporation of India (ECGC) could also design a scheme for securing monthly lease rental dues from lessees for IFSC-lessors, say for 90-days, and thereby add a new financing market altogether for ships built in India to start with.

Fostering the development of ship leasing, financing and owning in IFSC will also serve as foundation for unleashing the employment and output multipliers on the shipping industry and the Indian economy.

Thus, the time is ripe for India to seize the opportunities being created also by the global crisis to promote a shipping ecosystem that can create and sustain companies that are benchmarked against the best globally and be able to compete and profit by participating in the global maritime play. It is time to align India's shipping sector with global centres like Singapore, Hong Kong and Dubai and carve its place in global cross trades, besides leveraging and securing gainful transactions for its marketplace. It is proposed that the concept of IFSC, conceived for financial services, be naturally extended to ship acquisition, financing and leasing (SAFAL) products and services along the lines of the successful recent extension to aircraft acquisition, financing and leasing.

In conclusion, the Committee has carried out a 360-degree review and examination of the extant regulatory framework affecting such activities. It also drew upon industry insights revealed through multiple consultations with a wide spectrum of stakeholders. It has, thus, worked out avenues for seeding ship acquisitions, financing and leasing in the IFSC in India. The critical and necessary legal and regulatory changes and solutions recommended herein have been presented both in short-form analysis of the problem and justification for change as well as in detailed long form analysis which also contains the draft texts of solutions, for the consideration of the competent authority concerned. A bird’s eye view of the principal recommendations is provided below:

Authority	Change w.r.t.	Recommendations
IFSCA	Financial Product definition	<ul style="list-style-type: none">Notify vessel-leasing activity as ‘financial product’ to enable ship leasing entity to set up unit in IFSC

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Authority	Change w.r.t.	Recommendations
		<ul style="list-style-type: none"> Alternatively, notify ‘operating lease of any equipment’ as financial product. IFSCA may enable industry-wise operating lease through an appropriate framework
IFSCA	Operating Framework	<ul style="list-style-type: none"> Develop framework for vessel-operating lease Amend ‘Framework for enabling Ancillary Services at IFSC’ to include certain ancillary services relating to vessel financing and leasing
IFSCA	IFSC Exchanges	<ul style="list-style-type: none"> Dedicated platform for Shipping on IFSC Exchanges Bunker derivatives to be offered to manage volatility in Bunker and Freight prices Provide special regime for INViTs set up in IFSC including trading of such INViTs on IFSC exchanges
DG Shipping	Registration of vessels	<ul style="list-style-type: none"> Steps may be taken to make ship registration (including registration of companies/ entities) efficient. Permit registration of current tonnage in domestic tariff area to be set up in India-IFSC regime, provided that it is primarily deployed on international trade routes and meets the set criteria for age, size, vessel type
DG Shipping	Flagging	<ul style="list-style-type: none"> Introduce a new category titled ‘Indian IFSC controlled tonnage’, offering certain relaxations
DG Shipping	Licensing	<ul style="list-style-type: none"> Modify ROFR notification for vessel-chartering by PSUs for bulk imports to include provisions for IFSC vessels
DG Shipping	Import of bulk cargo	<ul style="list-style-type: none"> Replace the requirement of sequential waiver by two Ministries by a confirmation of competitiveness of freight terms offered by seller by freight/operational desk of PSU set up in IFSC Permit PSUs to shift chartering activity to a ‘freight desk’ office at GIFT City
IFSCA	Debt and Statutory Dues Monitoring	<ul style="list-style-type: none"> Introduce an online monitoring platform by IFSCA for promoting timely fiscal and financial payments and thereby preventing ship repossession / attachments by priority interest holder/ mortgagor under defaults on dues by debtor/lessee
DG Shipping, M/o Shipping	Statutory Mortgages	<ul style="list-style-type: none"> Provide for enforcement of mortgages by a special commercial court
DG Shipping, M/o Shipping	Dispute resolution	<ul style="list-style-type: none"> Some legislative changes for speedy resolutions of disputes related to maritime claims and matters
Government of Gujarat	Stamp Duty	<ul style="list-style-type: none"> Exempt stamp duty for instruments relating to ship acquisition, financing and leasing in IFSC
IRDAI	Insurance Act, 1938	<ul style="list-style-type: none"> Exempt insurance companies in IFSC from investment restriction provisions Remove restriction on investment of funds abroad
IRDAI	IRDAI Investment Regulations, 2016	<ul style="list-style-type: none"> Enable investment by insurers in equity and listed debt securities and permit investment in unlisted debt securities of private companies undertaking vessel leasing
IRDAI	Insurance IIO Guidelines	<ul style="list-style-type: none"> Permit insurance companies in IFSC to invest in entities engaged in vessel financing/leasing in an IFSC

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Authority	Change w.r.t.	Recommendations
M/o Commerce	SEZ laws	<ul style="list-style-type: none"> Exempt ship leasing and related business in IFSC from Net Foreign Exchange Earning requirement as ship leasing business cannot be NFE earner in 5-years period Exempt ship leasing and related business from bringing in goods physically into SEZ as GIFT City does not have seaports, and notify ports as SEZ for IFSC vessels Exempt IFSC units from requirement of having separate office for each unit, for cost-effectiveness for such entities Develop revised application form for ship leasing IFSC entities; consider issuing separate guidelines to enable such business in IFSC Develop a mechanism similar to EDPMS/IDPMS system to monitor inflows/outflow of foreign currency by IFSC Unit to control influx of ‘dirty money’ Revise formats of reporting, Bond, etc. to enable EODB for IFSC business, and its due monitoring
M/o Finance, CBIC	Goods and Service Tax	<ul style="list-style-type: none"> Nil rate services of ocean freight provided by IFSC unit to a foreign consignor for transportation of goods in vessel from outside India to India Exempt services of ocean freight provided by IFSC unit to a foreign consignor (on export freight services) Nil rate ocean freight and 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 Provide clarification on registrations at various ports Nil rate IGST on import of vessels by Indian ship owners Shift liability of GST under RCM on charter hire services by ship owners in IFSC to ship operators in India Nil rate GST on bunker fuel imported with the vessel
M/o Finance, CBDT	Income tax	<ul style="list-style-type: none"> Exempt from tax any income of a non-resident by way of royalty or hire charges of vessel lease by IFSC unit Exempt withholding tax requirement on freight paid by Indian charterer to IFSC vessel leasing and owning unit Exempt tax on capital gains arising on transfer/sale of vessel or transfer/sale of partnership interest/shares of SPV holding the vessel Exempt tax on dividends paid by IFSC unit in the hands of non-resident shareholder
NIIF, D/o Economic Affairs	Strategic Fund	<ul style="list-style-type: none"> Create a Strategic Transport Infrastructure Fund – greenfield funding in IFSC TOR of this fund could promote decarbonising the shipping sector by funding new technology vessels and other green infrastructure initiatives
RBI	ECB Master Directions	<ul style="list-style-type: none"> Ease restrictions and enable ECBs for vessel financing and ship chartering Permit offshore branches of Indian banks to refinance domestic debt through ECBs

EXECUTIVE SUMMARY

Authority	Change w.r.t.	Recommendations
RBI	FEMA (TIFS) Regulations	<ul style="list-style-type: none"> Permit investments by mutual funds in unlisted equity/ equity linked instruments and foreign debt instruments issued by IFSC units engaged in vessel leasing
M/o Finance, RBI	BR Act	<ul style="list-style-type: none"> Allow banks to hold more than 30% shares in a company
M/o Finance, RBI	BR Act	<ul style="list-style-type: none"> Grant 'infrastructure' status to vessels
RBI, IFSCA	FEMA NBFC Regulations	<ul style="list-style-type: none"> Permit NBFCs to set up a branch office in IFSC. ODI investment by NBFC to be under automatic route.
SEBI, RBI	SEBI (IFSC) Guidelines	<ul style="list-style-type: none"> Provide clarification on categories of investors that can invest in AIF operating out of IFSC
SEBI, RBI	FEM (TIFS) Regulations	<ul style="list-style-type: none"> Clarify the position on investment by AIFs in IFSC whether such investment is domestic or offshore Provide relaxation on overall cap of USD 1,500mn or specify non-applicability of overall cap for AIFs targeting investment in IFSC unit for vessel financing and leasing Amend regulations to permit investment by AIFs in debt instruments issued by ship leasing/ financing IFSC unit
SEBI, RBI	FEM (TIFS) Regulations, SEBI (IFSC) Guidelines	<ul style="list-style-type: none"> Provide clarification on types of institutional investors covered under SEBI IFSC Guidelines. Provide additional relaxation under LRS for Indian residents to invest in mutual funds operating in IFSC.
SEBI	SEBI (FPI) Regulations	<ul style="list-style-type: none"> Remove restrictions on FPIs investing in Category-I and II AIFs
SEBI	SEBI (Mutual Funds) Regulations, 1996	<ul style="list-style-type: none"> Amend regulations to create a separate category of mutual funds for investments in ship leasing IFSC units or permit greater concentration of investments in IFSC units engaged in ship financing/ leasing Provide relaxation under LRS for Indian residents to invest in mutual funds operating in an IFSC
PFRDA	PFRDA Act	<ul style="list-style-type: none"> Clarify that pension funds are permitted to invest in domestic AIFs, even if they may use funds for investments in ship financing/ leasing IFSC units, or that investment in IFSC units would not be considered as overseas investment by pension funds Issue a clarification that entities owning vessels or engaged in ship financing are 'infrastructure entities' Amend investment guidelines to allow pension funds to invest in equity or debt instruments of IFSC units
M/o Labour & Employment	EPFO Act	<ul style="list-style-type: none"> Issue a notification to permit investment in AIFs and IFSC units engaged in ship financing/ leasing
ECGC	New Scheme	<ul style="list-style-type: none"> Design a scheme for securing monthly lease rental dues from lessees for IFSC-lessors, say for 90-days

MARITIME TRANSPORT SERVICES AND INFRASTRUCTURE SUPPLY



In early 2020, the world fleet totalled **98,140 ships** of 100 gross tons and above **2,061,944 thousand dwt** of capacity

Ship types representing largest proportion of global fleet value



FREIGHT RATES



Blank sailing and other capacity-management measures applied to adapt supply capacity to reduced demand for seaborne trade and allow freight rates to remain strong

- Third quarter of 2020: capacity-reduction measures pursued in container shipping, although demand picking up, keeping freight rates on the rise.
- Sustaining these measures for a long period during recovery may lead to dysfunctions in the sector, undermining performance of shippers and global supply chains.



Lockdown repercussions, geopolitical events, oil price fluctuations and increased use of vessels for floating storage --> higher freight rates (March-April 2020)



Oversupplied market and shock of negative demand from China, owing to the outbreak of the pandemic, pulled down dry bulk freight rates

FLEET CHARACTERISTICS

Average fleet age



Average vessel sizes



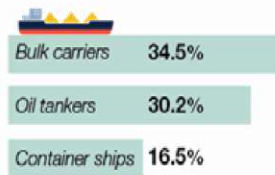
Ships built 20 years ago vs Ships built in the last 4 years

Oil tankers 9 times bigger
 Container ships 4 times bigger
 General cargo ships 3 times bigger
 Bulk carriers twice as big

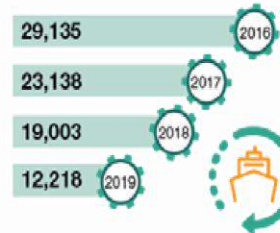
FLEET GROWTH

Newbuildings

65,911,000 gross tons delivered in 2019 of which:



Decreasing global volumes of ship recycling tonnage (thousand gross tons)



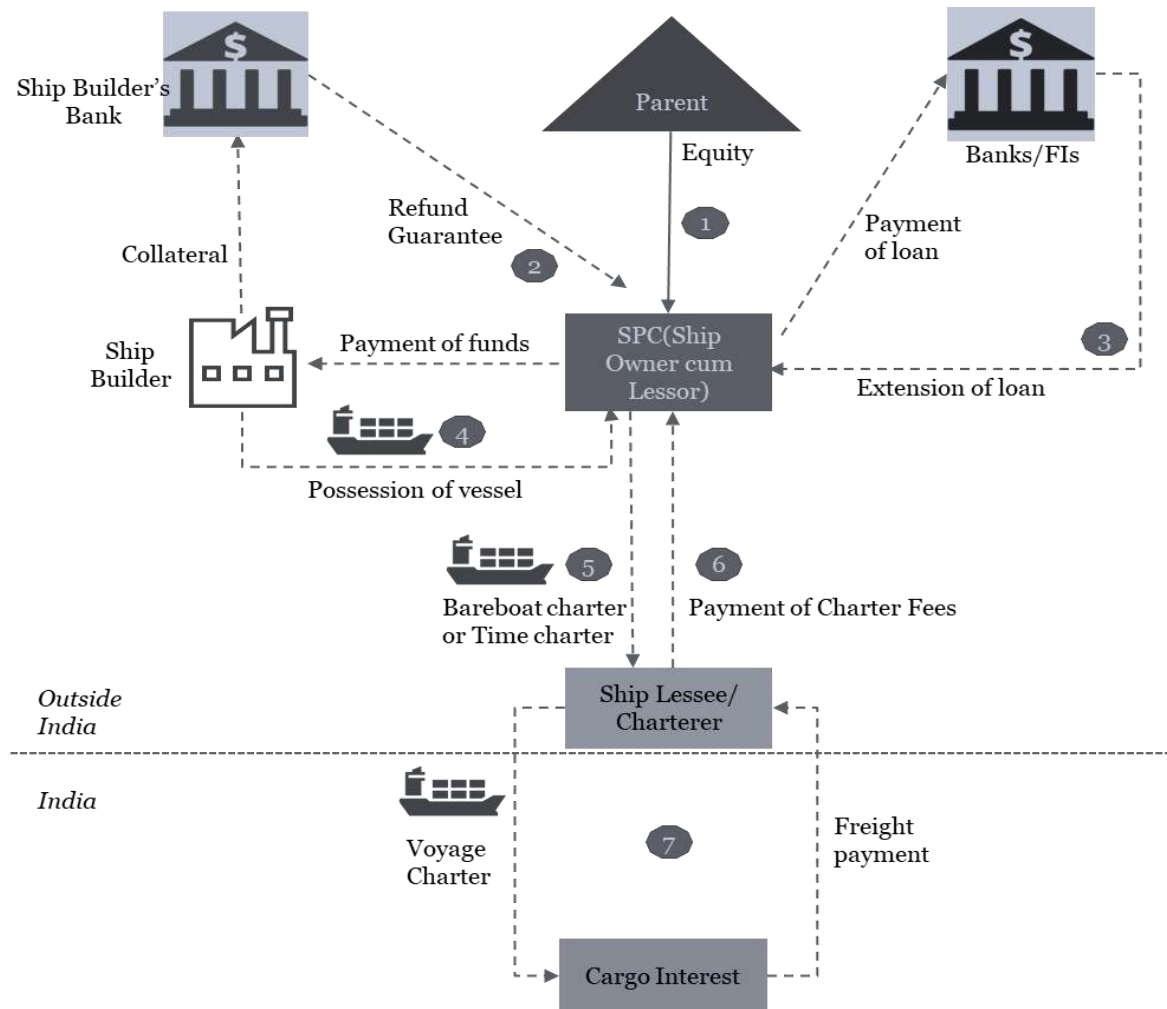
COVID-19 crisis: container shipping industry sustained earnings as carriers applied discipline and strict capacity management

2008–2009 crisis: freight rates reached dramatic lows, as carriers sought to gain greater market shares through scale and capacity expansion, leading to great losses in container shipping trade

Source of Snapshot: UNCTAD Review of Maritime Transport, 2020

2. SHIP OWNING, FINANCING, OPERATING STRUCTURES

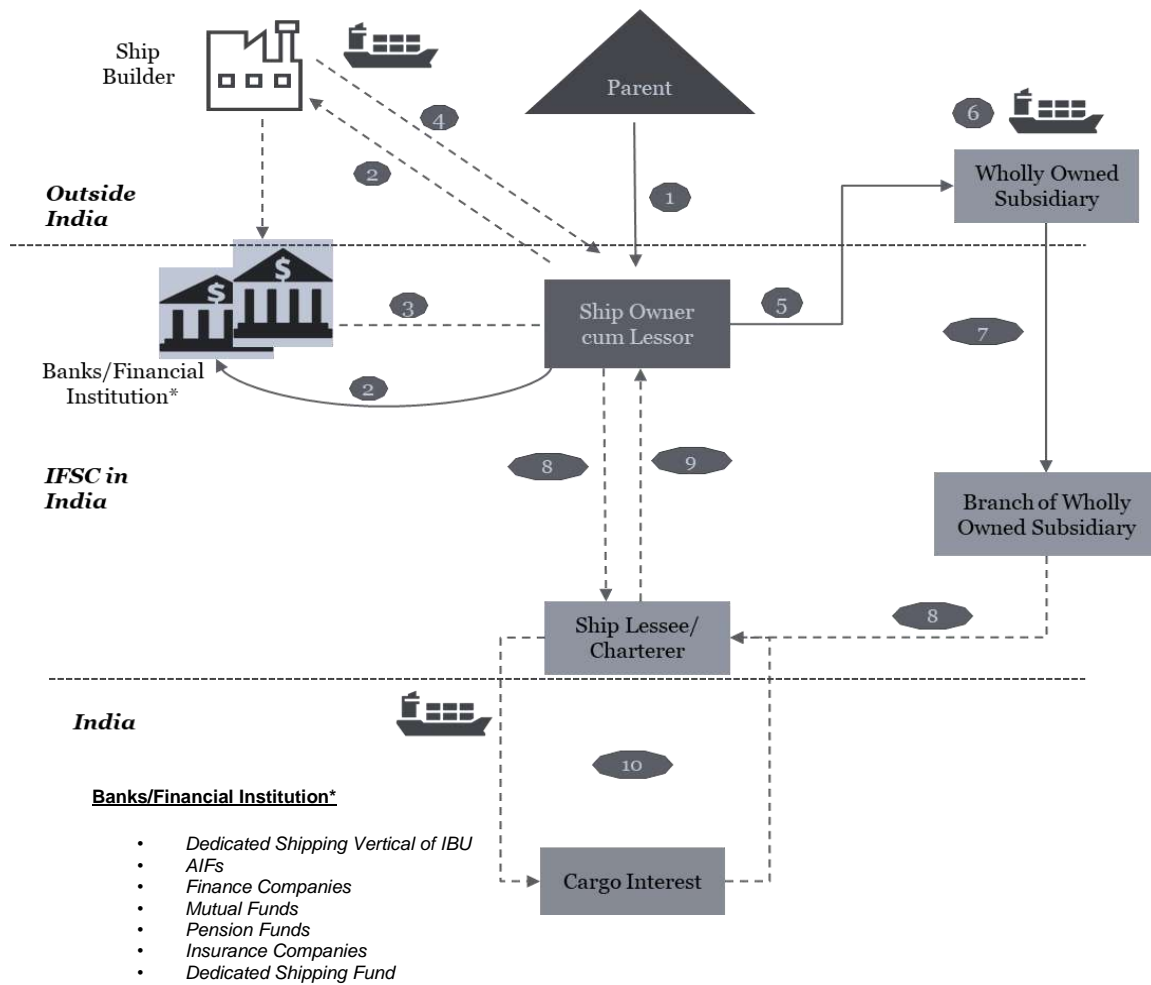
2.1. Typical Ship Owning and Leasing Structure



Key Mechanics:

1. Parent company sets up a SPC – ship owning-cum-leasing entity.
2. Parent company negotiates the terms and conditions with ship builder and SPC obtains guarantee from ship builder's bank.
3. Ship owner borrows funds from bank/financiers for purchase of vessel and completes necessary documentation.
4. SPC takes possession of vessel on payment to ship builder.
5. Ship lessee charts vessel on bareboat/time charter basis from SPC.
6. Ship lessee pays charter fees in return for bareboat/time charter.
7. Ship lessee operates the vessel on voyage charter basis in lieu of freight payments.

2.2. Typical Ship Owning and Leasing Structure – IFSC Model



Key Mechanics:

1. Ship Owning entity will be set up in IFSC by an overseas parent.
2. Parent company negotiates T&C with Ship Builder and Ship Owner obtains guarantee from Ship Builder’s bank. Ship Builder’s bank can be in IFSC.
3. Ship Owner borrows funds from its bank/financiers for purchase of vessel and completes necessary documentation.
4. SPV takes possession of vessel on payment to Ship Builder.
5. IFSC Ship Owning entity to prefer Indian-Flag, but otherwise be freely permitted to opt for foreign flag of a Flag State subject to certain conditions. ‘Infrastructure status’ to be granted for vessels owned and financed by or operated by IFSC shipping entities and India-Flagged.
6. In case preference for Indian-Flag is not exercised, Ship Owning entity will set up a wholly owned overseas subsidiary in foreign jurisdiction, e.g. Panama. Overseas subsidiary in Panama to own ship with Panama flag.
7. Foreign company which is a subsidiary of an IFSC unit will be set up a branch in IFSC as a IFSC unit. Place of effective management (POEM) of foreign company will be in IFSC.
8. Ship Lessee charts vessel on bareboat/time charter basis from Ship Owner in IFSC or Wholly Owned Subsidiary in Panama as the case may be.
9. Ship Lessee in IFSC pays charter fees in return for the bareboat/time charter.
10. Ship Lessee operates the ship on voyage charter basis in lieu of freight payments.

2.3. Transaction Structures

A suite of potential ship financing options for different needs

Structure	Senior Debt			Bond Financing	Leasing Structures		
Options	<u>Option 1</u> Pre-delivery Bridging Loan	<u>Option 2</u> Post-delivery Commercial Loan	<u>Option 3</u> Export Credit Agency (ECA) Backed Loan	<u>Option 4</u> Project Bond	<u>Option 5</u> Sale & Lease-back / Finance Lease	<u>Option 6</u> Japanese Operating Lease with Call Option (JOLCO)	<u>Option 7</u> Chinese Leasing Company (CLC)
Financing Amount (% Loan-to-Value)	Upto [70]%		Upto [80]%	[70%] with debt sized benchmarked on contracted cash flows	[85-90%]		
Tenor (years)	Less than [3] years	[7 to 12] years	Upto [14] years	Upto [14] years	Upto [12] years Tend to be longer than unsecured commercial loan		
Considerations	Suitable to part finance pre-delivery milestones	Pricing and tenor would be relatively expensive and shorter, given no ship security Execution will be much faster	ECAs typically need 3-6 months of lead time for approvals Dependent on the shipyard location or country where equipment or services are sourced	More flexible compared to standard senior debt financing as it would typically have less restrictive incurrence covenants compared to maintenance covenants on senior debt Will require external rating	Pricing is much more competitive; tenor and financing quantum can be stretched given there is a ship security Execution can take longer given the involvement of the third party Purchase option is expected to be exercised Strong preference for vessels to be registered under the flag of convenience (for ex. Singapore/ Hongkong) Only a few CLCs have an appetite for tankers (especially VLCCs)		

• Senior Debt Structures

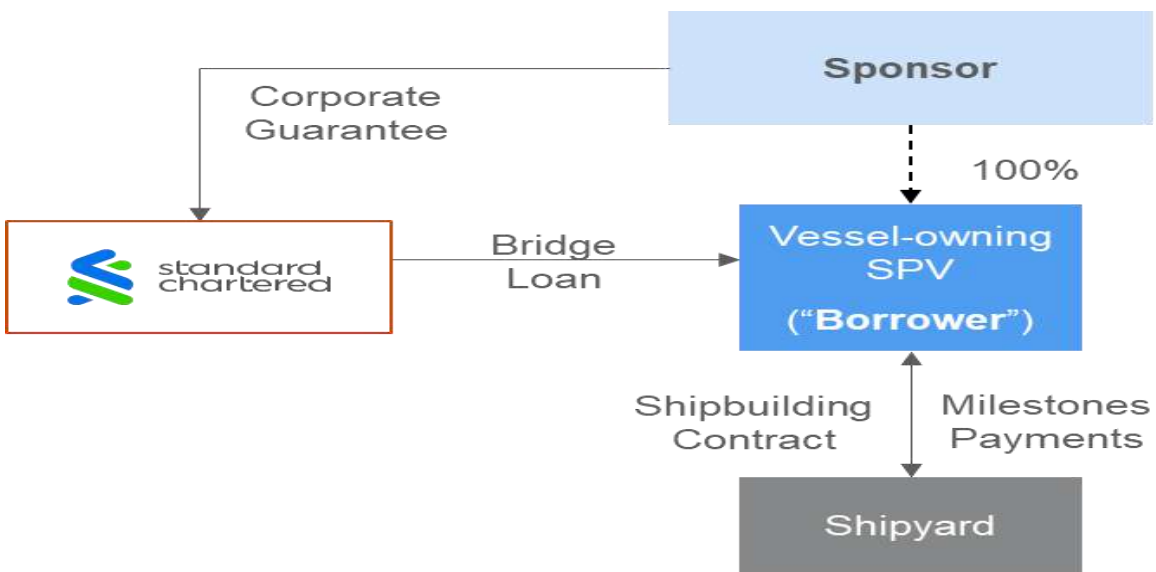
Option 1: Pre-delivery Bridging Loan

Key Considerations

- 1 In case additional time is required to secure the desired financing structure, a short-term bridge could be considered to finance the upcoming milestones payments
- 2 Bridge financing can be executed very swiftly as opposed to a pre-and-post delivery financing

Indicative Terms & Structures

Borrower	Special purpose company (“SPV”), Vessel-owning entity, wholly-owned subsidiary of Sponsor
Lender	Standard Chartered Bank
Facility	USD-denominated Term Loan Facility to finance vessels’ acquisitions or milestones payments to Shipyard
LTV	Up to [70]%
Tenor	Less than [3] years
Availability Period	From the date when all conditions precedent have been satisfied up to the date falling [3] months prior to final maturity date
Drawdown	Multiple drawdowns during Availability Period in accordance with pre-delivery instalment payments to Shipyard
Repayment	Bullet repayment upon drawdown of post-delivery financing
Other Terms and Conditions	<ul style="list-style-type: none"> • Corporate Guarantee from Sponsor • Negative Pledge over Borrower’s Assets • Sponsor to retain majority ownership and control over Borrower • Subordination of shareholders’ loan • Covenants to be agreed



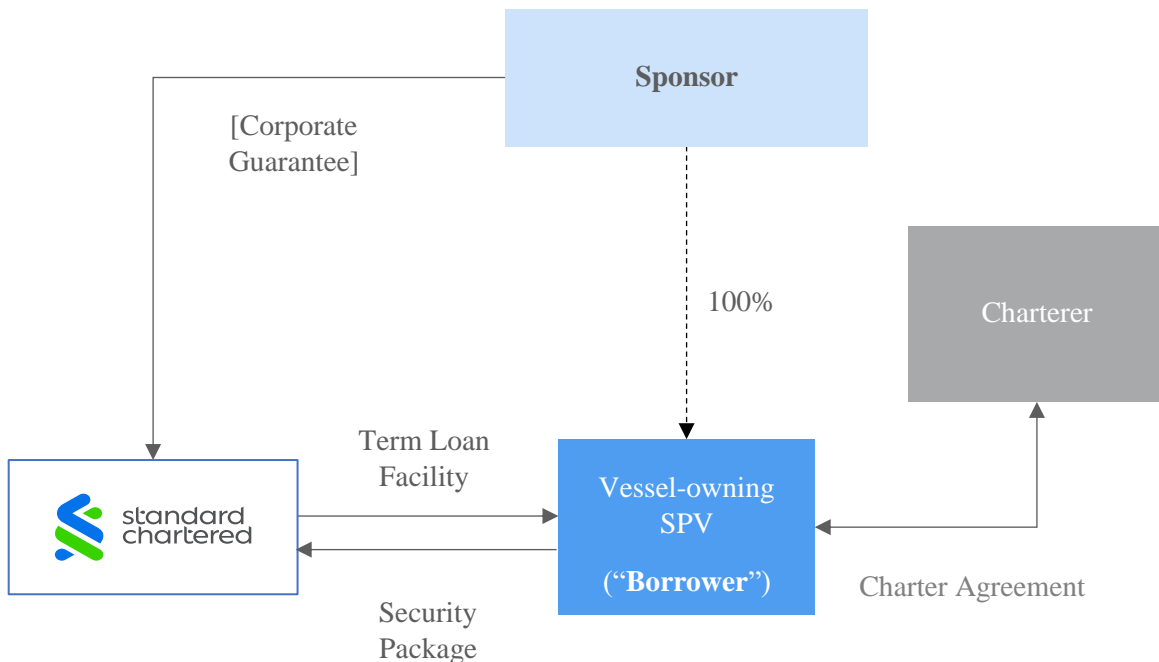
Option 2: Post-delivery Commercial Loan (Full/Limited Recourse)

Key Considerations

- 1 Full control over the use and ownership of the Vessels and minimum/no difference in the balance sheet treatment in comparison to finance lease
- 2 Relatively fast execution on the back of no third-party involvement and more straight forward risk assessment/ due diligence/ simpler documentation

Indicative Terms & Structures

Borrower	Special purpose company (“ SPV ”), Vessel-owning entity, wholly-owned subsidiary of Sponsor
Lenders	Standard Chartered Bank and other financial institutions acceptable to Borrower
Facility	USD-denominated Senior Secured Term Loan Facility to finance vessels’ acquisitions or milestones payments to Shipyard
LTV	Up to [70]% of Vessel(s) aggregate CMV
Tenor	[7 to 12] years
Repayment	Amortising Repayments
Security Package	Including but not limited to: (i) Mortgage over Vessels, (ii) Charge over project accounts (earnings account and debt service reserve account), (iii) Pledge over Borrower’s shares, (iv) Manager’s undertaking, (v) Assignment over Charter Agreements. (vi) Assignment over Vessels’ earnings, insurance and requisition compensation
Other Terms and Conditions	<ul style="list-style-type: none"> • Sponsor to retain majority ownership and control over Borrower • Subordination of shareholders’ loan • Covenants to be agreed



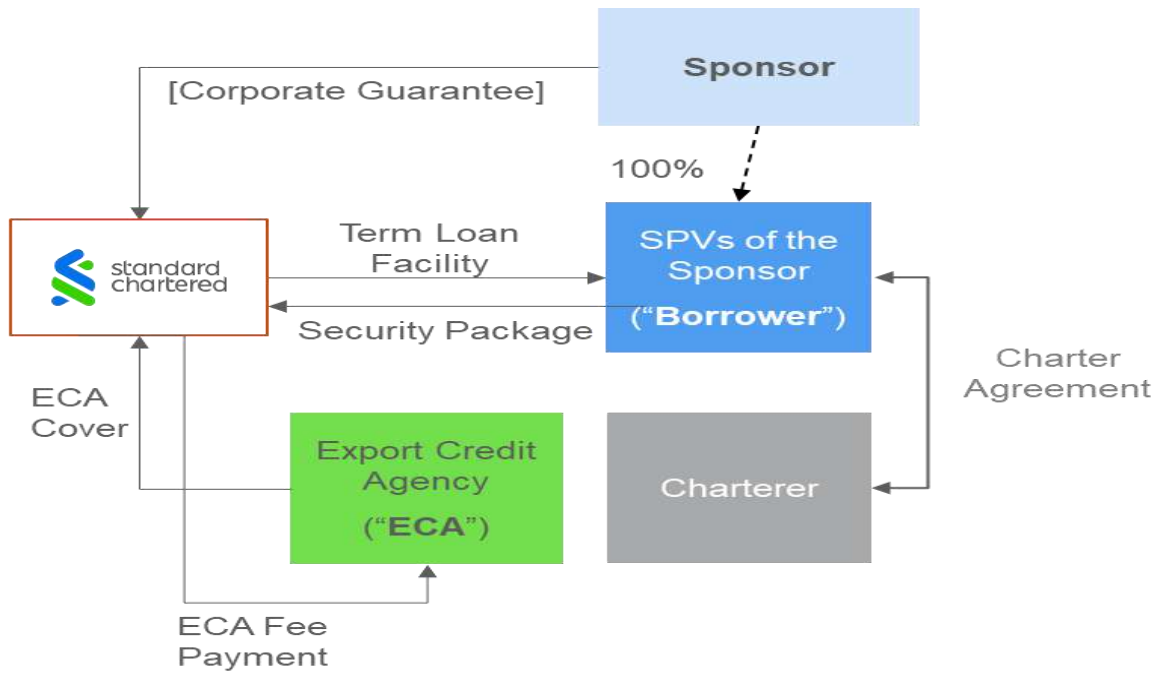
Option 3: Export Credit Agency (“ECA”) Backed Loan

Key Considerations

- 1 All-in blended pricing would likely be more competitive than purely commercial loan seeing as ECAs would offer substantial credit enhancement to the overall structure of financing
- 2 Tapping into new source of liquidity, provided by the ECA from where the shipyard is located

Indicative Terms & Structures

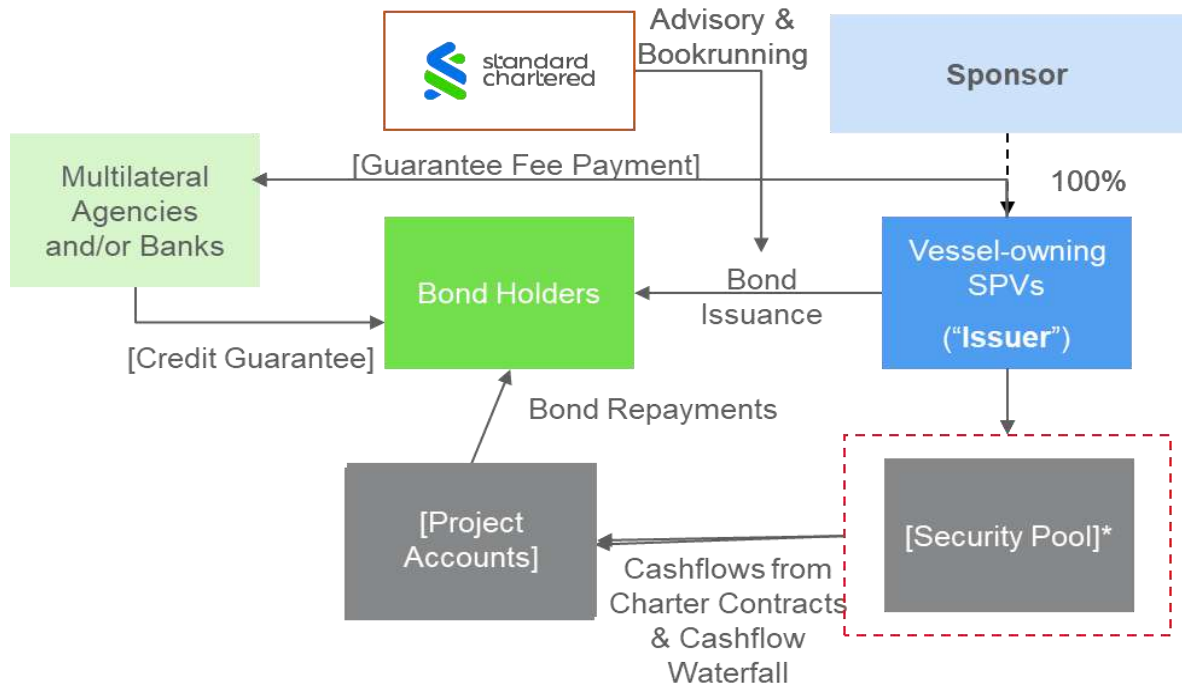
Borrower	Special purpose company (“SPV”), Vessels owning entity, wholly-owned subsidiary of Sponsor
Lenders	Standard Chartered Bank and other financial institutions acceptable to Borrower
Facility	USD-denominated Term Loan Facility and USD-denominated ECA-backed Term Loan Facility
Export Credit Agency	Suitable Export Credit Agency (“ECA”) to be partnered
LTV	Up to [80]% of Vessel(s) aggregate CMV
Tenor	Upto [14] years
Repayment	Amortising Repayments
Security Package	Including but not limited to: (i) Mortgage over Vessels, (ii) Charge over project accounts (earnings account, debt service reserve account), (iii) Pledge over Borrower’s shares, (iv) Manager’s undertaking, (v) Assignment over Charter Agreements. (vi) Assignment over Vessels’ earnings, insurance and requisition compensation
Other Terms and Conditions	<ul style="list-style-type: none"> • Sponsor to retain majority ownership and control over Borrower • Subordination of shareholders’ loan • Covenants to be agreed



• **Bond Financing Options**

Option 4: Project Bond

Key Considerations	
1	More freedom to operate compared to senior debt as there are typically less restrictive incurrence covenants compared to maintenance covenants seen in senior debt
2	Loan tenors can be much longer than a typical term loan and would typically be unsecured in nature
Indicative Terms & Structures	
Issuer	Wholly-owned subsidiaries of Sponsor
Issue Format	Reg S, Fixed/Floating Rate Notes
Tenor	Up to [•] years
Coupon/ Yield	[TBD]%
Use of Proceeds	[Refinancing of bridge loans / financing of capex payments and funding of transaction costs and expenses]
Security for Bond	Unsecured
Benchmark	[SOFR]
[Credit Guarantor]	[If present, multilateral agencies and/or banks]
[Credit Guarantee Security Pool]	Including but not limited to: (i) Mortgage over Vessels, (ii) Charge over project accounts (earnings account, debt service reserve account), (iii) Pledge over Borrower's shares, (iv) Manager's undertaking, (v) Assignment over Charter Agreements. (vi) Assignment over Vessels' earnings, insurance and requisition compensation
[Credit Guarantee Fee Payment]	[TBD]



* Security pool would be made exclusively available to credit guarantors. Bond itself will be unsecured

• Leasing Structures

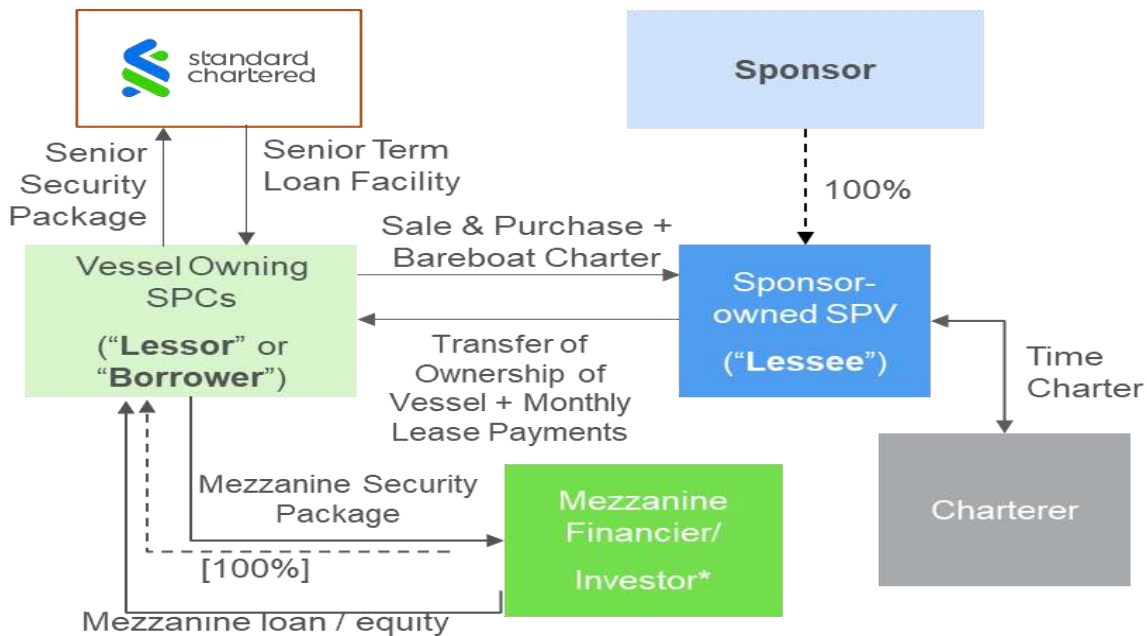
Option 5: Sale & Leaseback / Finance Lease

Key Considerations

- 1 Pricing is much more competitive; tenor and financing quantum can be stretched given the ships can be mortgaged
- 2 Sponsor will be able to tap into this new source of liquidity and replicate this structure across its entire fleet to diversify its liquidity sources

Indicative Terms & Structures

Lessor / Borrower	SPC set up by Leasing Company to own the Vessels or orphan SPC, depending on leasing structure.
Lessee	Wholly-owned subsidiary of Sponsor
LTV	[85-90%]
Tenor	Tend to be longer than unsecured commercial loan
Repayment	Amortising Lease Repayments
Purchase Option	To be agreed
Charter	<ul style="list-style-type: none"> ▪ Time Charter: Acceptable time charter party between lessee and charterer which ensures that there is sufficient earnings for Borrower to repay the scheduled P+I at all times. ▪ Bareboat Charter: Acceptable hell or high water bareboat charter between lessee and lessor ▪ Tenor of Charter to match loan/lease tenor
Other Terms and Conditions	<ul style="list-style-type: none"> ▪ Typical standard security package (including mortgage over vessels, charge over accounts, assignment of time charters, managers' undertaking, assignment over vessels' earnings and insurances and requisition compensation, among others) ▪ Sponsor to retain majority ownership and control over Lessee ▪ Any other requirements from leasing company/ partner ▪ Purchase option at tenor-end (or interim purchase option) to be agreed



* This could be either a mezzanine financier, equity provider (in a JOLCO structure outlined in next slide) or leasing company (such as CLC outlined in subsequent slide). Ownership of Lessors will be dependent on final structure.

Option 6: Japanese Operating Lease with Call Option (“JOLCO”)

Key Considerations

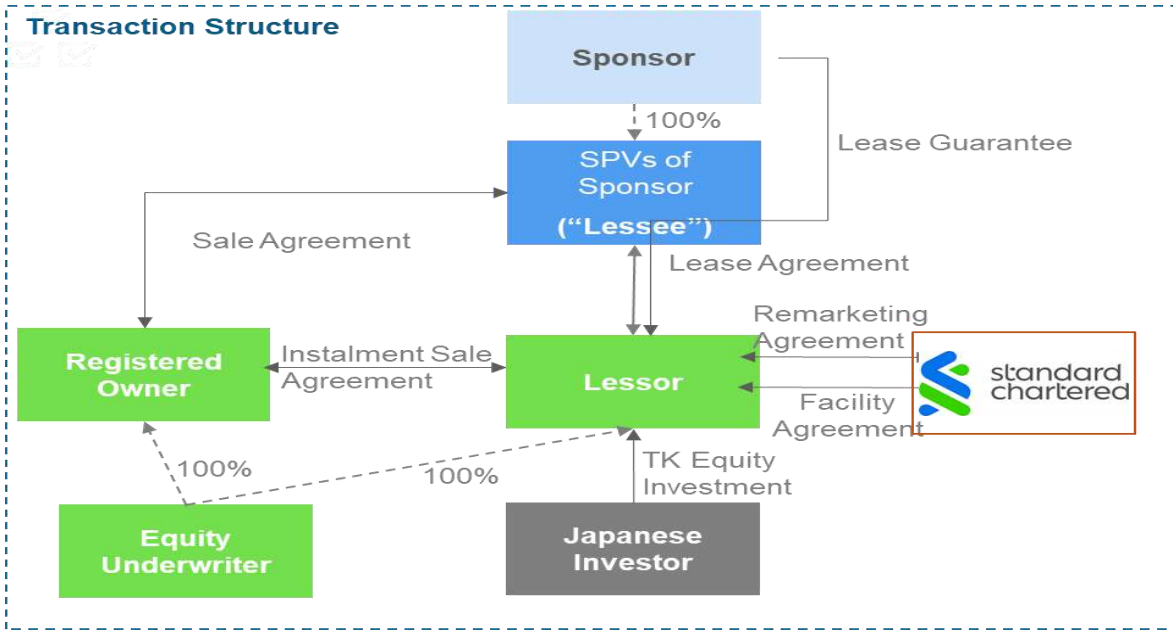
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|---|--|
| <p>1 High leverage at a very competitive pricing and a purchase option (at a pre-determined fixed price and on a specific date) which might provide residual value upside.</p> | <p>2 Freeing up equity for Sponsor upon delivery of Vessels on the back of Japanese investors' involvement. Japanese partners are silent/ limited partners that are represented by Equity Underwriter throughout the tenor of financing</p> |
|---|--|

Indicative Terms

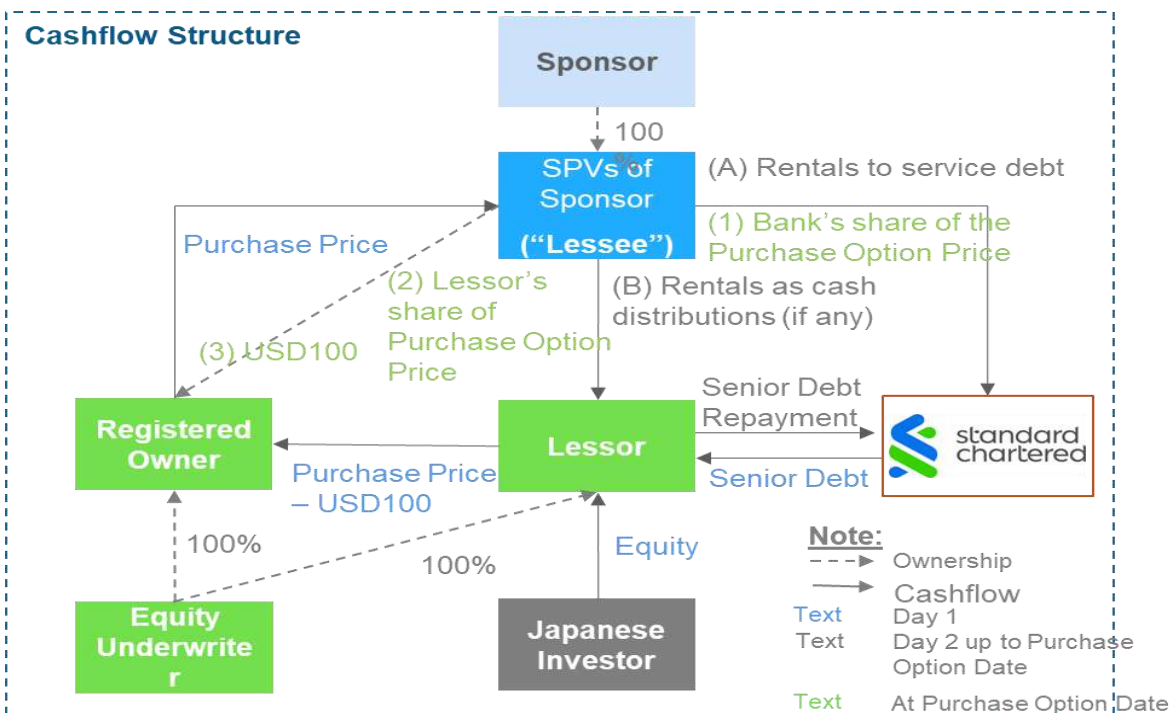
Lessee	[●], wholly-owned subsidiary of Sponsor
Lessor / Senior Debt Borrower	[●], Japanese SPV, wholly-owned subsidiary of Equity Underwriter and established under Tokumei Kumiai (“TK”) structure
Lease	Japanese Operating Lease with Call Option (“JOLCO”)
Registered Owner	[●], wholly-owned subsidiary of Equity Underwriter, set up to acquire Vessels from Lessee at Purchase Price
Purchase Price	[85-90%] of Vessel(s) aggregate CMV
Purchase Option	Option for Lessee to buy back Vessels on a specified purchase option date at end of Year [●] from Registered Owner at Purchase Option Price
Repayments	Amortising Lease Repayments
Tenor	[TBD]

Equity Underwriter	[●]
Equity Amount	[10-20]% of Vessel(s) aggregate CMV
Senior Debt Structure	Senior secured term loan facility in favor of Lessor
Senior Debt Facility Amount	[70-75%] of Vessel(s) aggregate CMV
Senior Debt Lenders	Standard Chartered Bank and other financial institutions acceptable to Borrower
Senior Debt Terms and Conditions	<ul style="list-style-type: none"> • Typical standard security package (including mortgage over vessels, charge over accounts, assignment of time charters, managers’ undertaking, assignment over vessels’ earnings and insurances and requisition compensation, among others) • Sponsor to retain majority ownership and control over Lessee • Any other requirements from leasing company/ partner

SHIP OWNING, FINANCING, OPERATING STRUCTURES



1. A direct sale between Lessee and Registered Owner is executed followed by immediate Instalment Sale Agreement between Registered Owner and Lessor. Registered Owner (and therefore, Instalment Sale Agreement) is part of the structure to allow Lessee to flag the vessel where convenient (given that Lessor needs to be based in Japan)
2. Lessor and Lessee enter into a Lease Agreement of up to [•] years. Lessee is allotted a pre-agreed Purchase Option. Lessor enters into a Facility Agreement with Bank and security package includes, but not limited to, (i) from Registered Owner, mortgage over Vessels provided by Registered Owner; and (ii) from Lessor, assignment over Lease Agreement, earnings, insurances and pledge over accounts.
3. Remarketing Agreement: In case of a Lessee's default, if requested, Bank can be appointed by Lessor to act as Agent to recover Vessel. In other words. Bank would have access to Vessel as if it were a direct loan arrangement.



1. Lessor is funded by Debt from Bank and Equity from Investor underwritten by Equity Underwriter.
2. Registered Owner acquires Vessels for Purchase Price from Lessee. Lessor acquires Vessel for Purchase Price minus USD 100 from Registered Owner through the Instalment Sale Agreement.
3. Lease rentals are paid quarterly in arrears. Rentals have been split in 2 components: (A) Rentals to service debt and (B) Rentals to pay cash distributions (if any) to Japanese Investors. The (A) Rentals are payable in an account with and pledged to Bank.
4. At Purchase Option Date, Lessee pays (1) Bank's share of Purchase Option Price, which is equivalent to Senior Debt outstanding amount, (2) Lessor's share to Lessor and (3) USD 100 to Registered Owner.

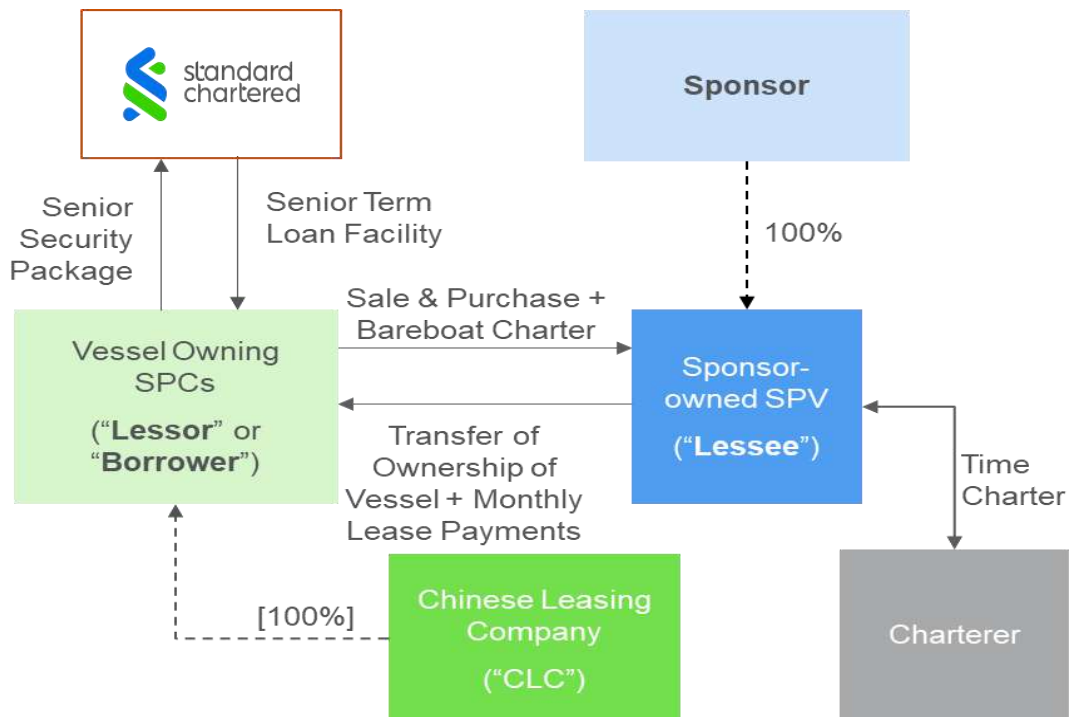
Option 7: Chinese Leasing Company (“CLC”)

Key Considerations

- 1 Higher LTV, and full underwrite by CLC. However, approvals can take c.3 months.
- 2 Not all CLC houses can do tankers, only a handful of names can do tankers (especially VLCCs) due to potential reputational risk associated with a potential oil spill

Indicative Terms & Structures

Seller / Lessee	Wholly-owned subsidiary of Sponsor
Buyer/Lessor/ Borrower	SPV, wholly-owned subsidiary of CLC
Lenders	Standard Chartered Bank and other financial institutions acceptable to the Borrower
Charter	<ul style="list-style-type: none"> ▪ Time Charter: Acceptable time charter party between lessee and charterer which ensures that there is sufficient earnings for Borrower to repay the scheduled P+I at all times. ▪ Bareboat Charter: Acceptable hell or high water bareboat charter between the lessee and lessor ▪ Tenor of the Charter to match the loan/lease tenor
Purchase Price	[85-90]% of the Vessel(s) aggregate CMV
Repayment	Amortising Lease Repayments minus Purchase Obligation
Other Terms & Conditions	<ul style="list-style-type: none"> ▪ Typical standard security package (including mortgage over vessels, charge over accounts, assignment of time charters, managers’ undertaking, assignment over vessels’ earnings and insurances and requisition compensation, among others) ▪ Sponsor to retain majority ownership and control over Lessee ▪ Any other requirements from leasing company/ partner



2.4. Ship Finance, Global

Ship finance is the ability to fund ships with the asset as collateral. It requires a deep knowledge of the shipping market, business plan of borrower, and ability to repossess the asset and operate it for a period if required. Ship finance can be characterised as a highly skilled and niche segment of financing.

The complexity and effect of being wrong in predicting the market was amply demonstrated by the lasting impact of the 2008-09 global financial crisis on almost all sectors of financing, but especially so for ship finance. The non-existing ‘value’ generated by western banks by packaging and marketing complex mortgage derivatives had created a large amount of credit in the market which actually did not exist, but distorted valuations of assets globally after pushing freight rates to historical highs. The valuations and freight rates came crashing down once mark-to-market valuation was undertaken after defaults in US mortgage markets.

Figure 2: Dramatic increase in valuation of a Panamax Dry Bulk Vessel



Several large banks, particularly the European banks which had historically dominated the market for ship finance, decided strategically to withdraw from the sector, or at least shrink their books significantly, given heavy losses during the shipping sector crisis in 2008-09. They have been selling their shipping portfolios or allowing existing loans to amortise and not taking on new business. As a result, portfolio sales have become an increasingly prominent feature of the market. A number of these sales have been announced publicly.

In terms of volumes and trends, top-40 banks' lending to shipping fell from USD 300.7bn in 2018 to USD 294.4bn in 2019, the lowest level since the global crisis in 2008. Chinese banks also continued to mark a small gradual decline in terms of direct, bilateral bank ship finance. However, Chinese leasing is increasing its exposure from USD 52.5bn in 2018 to USD 59.2bn in 2019. The growth of the global fleet continues to be funded from non-banking sources, such as leasing, alternative lending, private equity from funds and investors.

Following the substantial reduction in availability of financing from traditional banks, ship-owners are increasingly having to turn to alternative financing sources. This is particularly the case for small to medium-sized ship-owners, as traditional lenders are generally focusing on larger shipping clients due to regulatory and risk management requirements. Resultantly,

SHIP OWNING, FINANCING, OPERATING STRUCTURES

ship-owners are now increasingly interested in structures such as high-yield bonds, convertible debt, capital and operating leases, as well as preferred equity structures.

Figure 3: Dramatic increase in valuation of a Panamax Dry Bulk Vessel

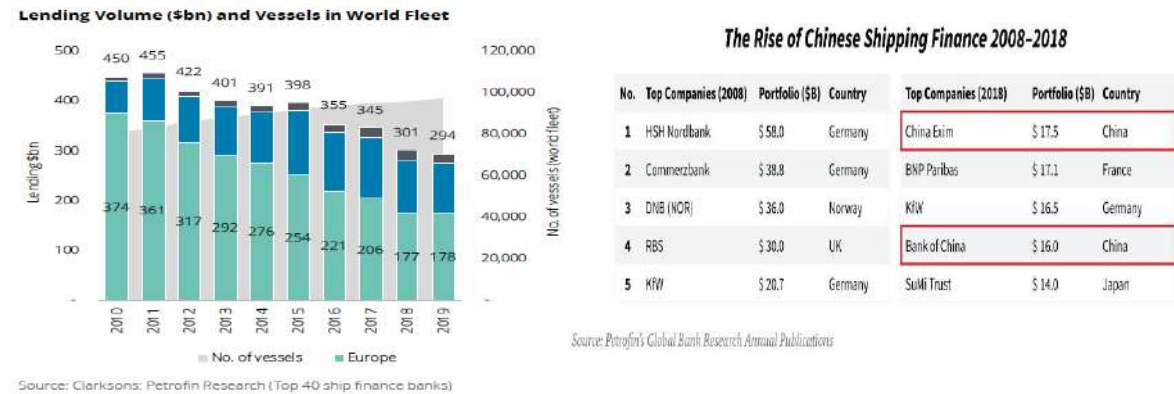
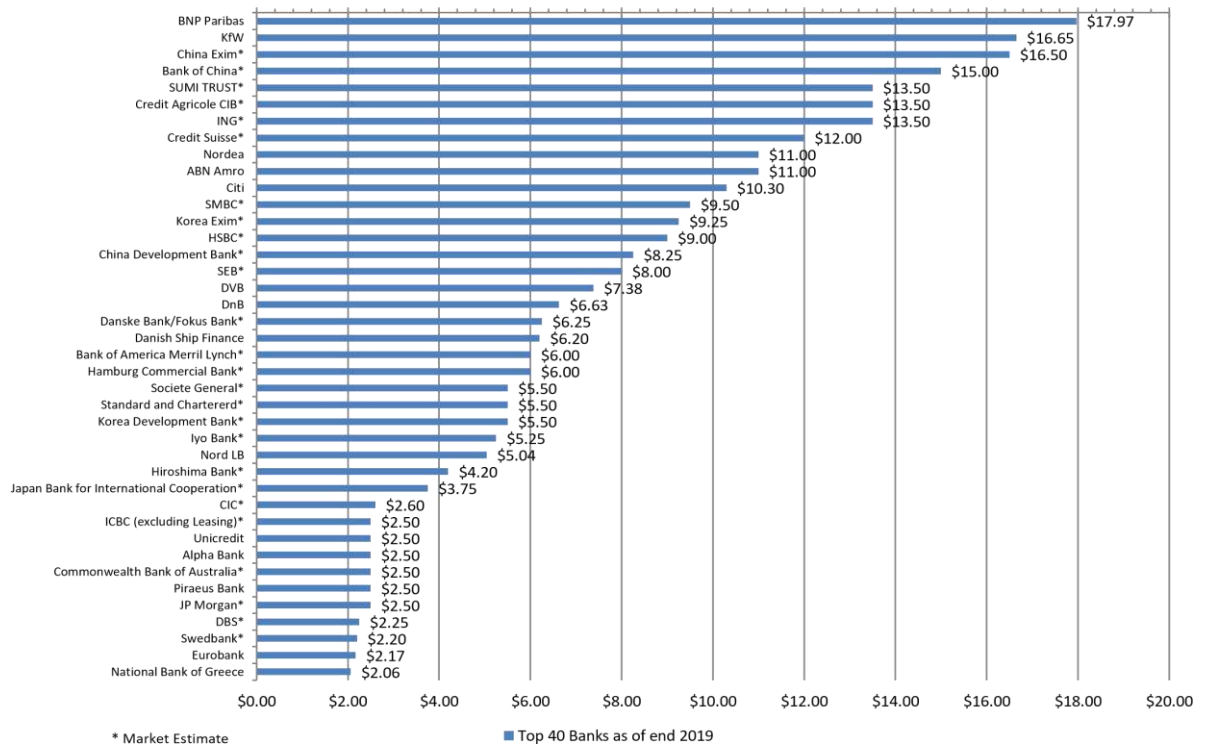


Figure 4: Global Bank Shipping Portfolios – as of end 2019 (in USD bn)

(end 2018: \$300.7, end 2017: \$345, end 2016: 355.25bn)

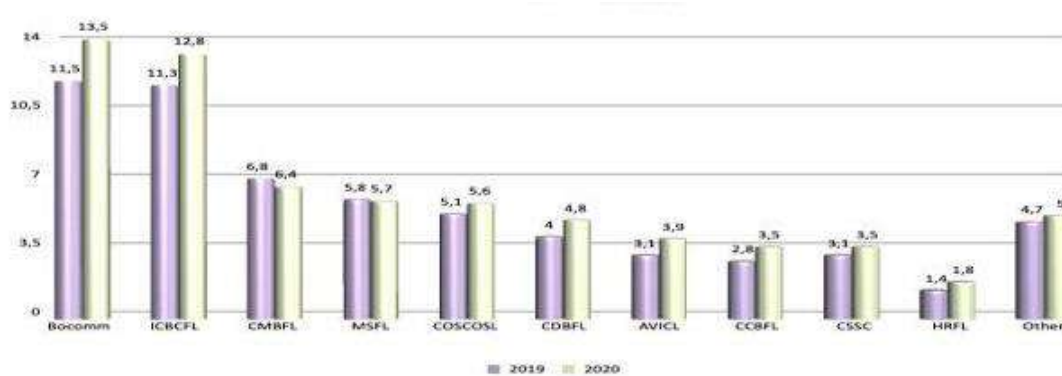


The last few years have seen some of the larger players within the shipping market turning to the capital markets in order to meet their funding requirements. Many of these transactions have involved the US and Norwegian capital markets, with the Norwegian bond market being seen as particularly favourable for shipping assets. The London markets are also actively looking to attract more shipping listings.

The entry of private equity has prompted discussion around its long-term role in the shipping industry. Many private equity funds initially entered into joint ventures with ship-owners. A number of equity funds are buying loans from traditional banks at a large discount.

With the rapid development and growth of China over the last 20 years and especially in the last decade, the Chinese financial sector grew initially to serve Chinese shipping clients and local ship-building, and subsequently international clients on an international basis. Most of the Chinese banks developed their own leasing subsidiaries which have come to dominate the global shipping leasing business.

Figure 5: Top-10 Chinese Lessors by Shipping Portfolio in 2020 (in USD bn)



Source: *Smarine*

It is interesting to observe that the Asian banks (mainly Chinese banks) have receded by 6.45% over the preceding year, compared to the rise of Chinese Leasing by 12.8% in 2019. Chinese banks appear to have reduced their direct lending. Increased Chinese lending was extended via bank leasing subsidiaries or via independent leasing companies.

Financial ship leasing is a process by which one party (lessee) obtains the full operational use and control of a fixed asset (ship) for which they must pay a series of rentals to the owner (lessor) of the ship for an agreed period. There are different types of ship leasing transactions with the most common being: the operating lease and finance lease. Their structures and terms are also significant from an accounting treatment perspective. In terms of residual value, a finance lease is a risk, where at the end of the lease period the residual risk (ship) is transferred to the lessee, whereas with an operating lease the residual risk (ship) stays with the lessor.

For a very capital-intensive industry such as shipping, liquidity management is an important motivator. Leasing transactions tend to have higher lending to asset ratios which reduces the capital requirements per transaction. In addition, the loan profile is longer than bank finance, thus often achieving a lower breakeven despite the higher lending ratio. Leasing provides better funding diversification especially given the departures over the last decade of many large shipping banks which has restricted funding choice. With operating leases too, the risk of technological obsolescence is mitigated. Lastly, leases are possible at times of economic difficulty to release valuable resources or to reduce debt servicing requirements via sale-and-leaseback structures.

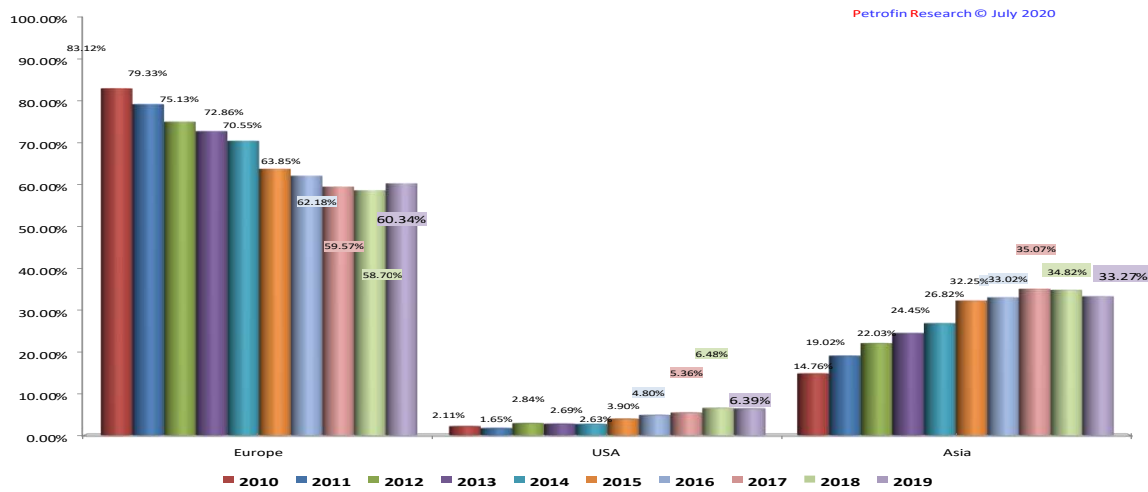
Overall financing costs for the lessee, though, have tended to be higher than those of banks and leases are more complex and require more time to conclude. Due to lack of familiarity and inability to have physical meetings between lessors and potential clients, reaching an agreement is often assisted by a financial boutique that specialize in specialised Japanese/Chinese leasing. All in all, there are significant benefits to the lessee.

SHIP OWNING, FINANCING, OPERATING STRUCTURES

For lessors, leases offer an attractive risk / return profile, ability to lend larger amounts and achieve sizeable financial leverage, tax benefits, and possibility of residual value speculation.

A schematic representation of a typical sale and leaseback structure covering both pre- and post-delivery scenarios (under Option-5 above), shows the basic principle that title in the vessel or in the construction contract at pre-delivery stage is transferred to an SPV wholly-owned by the leasing house (by a novation of the construction contract at pre-delivery stage or a memorandum of agreement for sale on a post-delivery only financing). The vessel is then bareboat chartered back to the seller/lessee on “hell and high water” terms by way of a bareboat charter under which the seller/lessee pays regular instalments (often termed as “fixed hire”) equivalent to the financed amount of the vessel over the term of the lease after delivery (normally with a “balloon” purchase option/obligation at the end of the charter period) plus an interest element (often termed as “variable hire”).

Figure 6: Global Bank Shipping Portfolios by Geographic Area, end-2019 (in USD bn)



Looking forward, the COVID-19 pandemic and its resultant major negative impact upon the global economic activity, international trade, and price of oil, has completely changed the scene in 2020-2021. The effect of lockdown and travel restrictions have imposed an enormous strain on some shipping sectors, such as, offshore, cruising and containers which took the brunt, whilst others, such as dry bulk and tanker sector displayed increased volatility. Notably, in all the months of turmoil in the main sectors of dry, wet and containers, there were hardly any insolvencies and for many banks, non-performing loans remained low.

Banks were cautious, although some loan restructuring took place. Fresh bank approvals became more cautious and demanding, with more stringent terms and higher pricing. Chinese leasing companies which were adversely impacted by their exposure to aviation combined with higher cost of US Dollar funding, saw a slowdown in their ship finance activities.

But the situation appears to be stabilising by mid-year 2020 as assessed by Petrofin Research. The focus is on timing and magnitude of the global economic recovery. Dry and wet bulk and containers have already staged recoveries based on inventory and other seasonal and trade route factors and bank lending has started to return across all these main sectors. Alternative capital providers have continued to provide capital and loans but at even higher costs, seeking to take advantage of the difficulties in obtaining finance by some owners and in order to mitigate their higher perceived risk. There are some new entrants consisting of smaller

European, Middle Eastern and Asian banks, mainly supplying their own local clientele, for building up their loan portfolios. **Every crisis hides an opportunity for the intrepid.**

Trade protectionism is an increasing concern which has been shaping shipping sector's recovery. Although newbuilding orders have slowed down globally, it is the demand side that will shape market conditions. Here, India is poised well to seize the opportunities.

2.5. Ship Finance in India

There is no unified policy towards shipping among Indian banks. The variations in policy depend on individual banks' strategy, largely centered on corporate financing, and views as to trade sanctions and prospects for shipping as well as their overall lending limits. The results for 2020 and 2021 would be interesting, capturing the role played by transport sector in meeting emergency healthcare and essential goods and services needs as well as COVID-19 related financial and economic packages provided by governments worldwide.

Interactions with Indian banks indicate that they lack a dedicated shipping desk with the skillset and ability to fund shipping assets. Operationally, the decision on lending is left to relationship managers and there is no specialist input or oversight to the activity. Shipping constitutes a very small percentage of loan portfolio of most banks and several of these are NPAs. The Indian banking system has also been a victim of credit boom/crisis of 2008-09. Many smaller ship-owners who had purchased expensive assets could not service the debt when the markets collapsed.

It is strongly felt that it is time that Indian banks also explore the lucrative options of lease financing for India-IFSC ship owners and ship operators. Many enterprises are now medium-sized and have a good track record of operating ships. They have the necessary market information and expertise to operate vessels commercially. By providing them with tonnage with requisite guarantees on a sale-and-leaseback basis on a second-hand vessel (for instance), the banks can expect a higher effective rate of lending, while retaining control over the asset at all times, as the ship is simply bareboat chartered out to the lessee.

It is imperative that banks develop the expertise to independently evaluate various sectors in terms of cash flow projections and earning scenarios across various sectors in shipping. The banks need to develop the expertise to evaluate business plans and identify trigger points where they should initiate action to safeguard their interests.

Apart from lending to Indian operators under a sale and leaseback arrangements, Indian banks can also explore participating in syndicated loans and structures with good credits. The maritime cluster at India-IFSC-GIFT City is expected to provide banks with both the necessary manpower and the opportunities to participate in global shipping. RBI have also provided attractive liquidity terms to banks in order to enhance the economic recovery and this may support increased ship finance by banks. Ship financing companies can also consider financing and refinancing assets in domestic tariff area. For companies owning and operating coastal, offshore and/or other utility vessels under Indian flag there, the presence of experienced ship financing companies at GIFT IFSC can provide an important source of funding for their shipping operations. Proximity to markets and better understanding of the Indian situation will also help financiers in GIFT IFSC better evaluate and participate in the Indian domestic tariff area tonnage building.

Indian insurance and alternate finance also need to lay at rest their faint-hearted approach to financing large mobile and bankruptcy remote assets like ships. The National Infrastructure Investment Fund (NIIF), a sovereign wealth fund registered as an AIF for the purpose of providing long-term funding to infrastructure related projects, for instance, is most suitably placed to seed the financing of greenfield transport projects such as aircraft and ships lease financing. The NIIF is currently managing three funds, with an estimated corpus as follows:

- Master Fund – INR 16,000 crore
- Funds of Fund – INR 5000 crore; and
- Strategic Fund - within INR 10,000 crore (so far and continuing to attract sizeable funds)

NIIF, and funds it invests in, do not address capital intensive industries such as ship leasing, aircraft leasing etc. While the Master Fund and Funds of Fund are focussed on investing in airports, ports, roads, renewable energy and such infrastructural sectors, the Strategic Fund is a private equity and sector agnostic fund and could be used for lease financing of large transport assets, including aircraft, satellites, ships, metro and rail rolling stock, etc.

NIIF should also be desired to immediately create a strategic fund investing in transport bankruptcy-remote mobile assets, so as to aid capital incentive industries such as ship and aircraft leasing. Such a strategic fund could also target decarbonising the shipping sector by specifically addressing new technology vessels and other green shipping infrastructure initiatives.

Figure 7: Comparative of India’s Tax Regime with that of Major Marine Hubs

Particulars	India	Hong Kong	Singapore	UAE	IFSC in India – Post Change
Corporate Tax Rate	30% plus applicable surcharge and cess. 22% - if opting for the new tax regime	16.5% (reduced to 0% for qualifying ship leasing and 8.25% for non-associated qualifying ship leasing management companies)	17% (0% for ship leasing, Singapore flagged vessels; 5%/10% for ship management and support services) 0% on qualifying shipping income of MSI-AIS company for either: a 10-year renewable period; or a 5-year non-renewable period, with the option of graduating to 10-year renewable award at the end of 5-year period, if qualifying conditions are met	No Corporate Tax	100% tax exemption for 10 consecutive years out of 15 years.
Tonnage tax	Yes. Conditions: Binding period – 10 years	Not Applicable	SGD 0.2 per MT subject to maximum of SGD 10,000	Not Applicable	Yes. Conditions: Binding period – 10 years, Requirement–

SHIP OWNING, FINANCING, OPERATING STRUCTURES

Particulars	India	Hong Kong	Singapore	UAE	IFSC in India – Post Change
	Ship with atleast 15 GRT and registered under MSA Act. 20% of book profits to be transferred to tonnage tax reserve Minimum training requirement				IFSC-controlled tonnage No Tonnage Reserve nor minimum training requirement
Minimum Alternate Tax	Nil – if opting for new tax regime, else 15%	Not Applicable	Not Applicable	Not Applicable	Nil – if opting for new tax regime, else 9%
Withholding Tax– Charter hire payments	Indian entity to foreign entity– paid as royalty or freight charges – 10%/3%	Nil	Nil	Nil	Indian entity to IFSC lessor – Nil IFSC lessee to foreign entity (paid as royalty or freight charges) – Nil
Tax– distribution of profits	Resident Shareholders– 10% Non-resident Shareholders– 20% + applicable surcharge, cess or rates as per DTAA whichever is beneficial	Nil	Nil	Nil	Resident Shareholders– 10% Non-resident Shareholders– Exempt
Customs Duty	Not applicable subject to certain conditions	Nil	Nil	Nil	Not applicable subject to certain conditions
GST– lease rental payments	Nil. Due to an anomaly, GST is paid on forward charge basis	Nil	Nil	Nil	Nil
GST– import of vessel	Yes – 5%	Nil	Nil	Nil	Nil
GST on THC/ Port congestion charge/ Equipment surplus charge/ Others	Yes – 18%	Nil	Nil	Nil	Exempt
Stamp Duty	Applicable	Nil	Nil	Nil	Nil

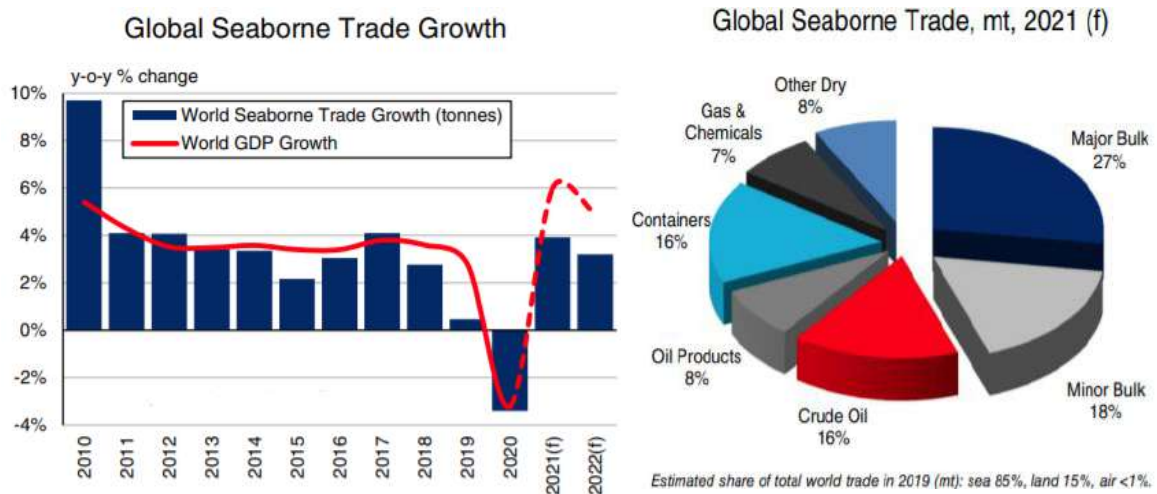
3. GLOBAL SHIPPING SCENARIO

3.1. Global Seaborne Trade

Global seaborne trade is projected to grow by a healthy 3.9% in CY 2021 (4.4% in tonne-miles), with volumes on track to rebound to c.12.0bn tonnes, rising slightly ahead of CY 2019 levels. Major stimulus, vaccination progress and pent-up demand have all provided positive impetus so far. Yet, risks are clear – further Covid-19 pandemic outbreaks, tapering of government support, and signs of cooling growth in China’s vast industrial sector.

- Dry Bulk trade is projected at 3.6% (4.3% in tonne-miles)
- Container trade is projected at 6.3% (6.9% in tonne-miles)
- Tanker trade is projected at 3.1% (2.6% in tonne-miles)
- Gas trade is projected at 5.5% (9.7% in tonne-miles)

Figure 8: Trade Growth (y-o-y %) and Sector Shares in CY 2021 (Projected)



Source: Clarksons Research, August 2021

3.2. Fleet Ownership and Growth

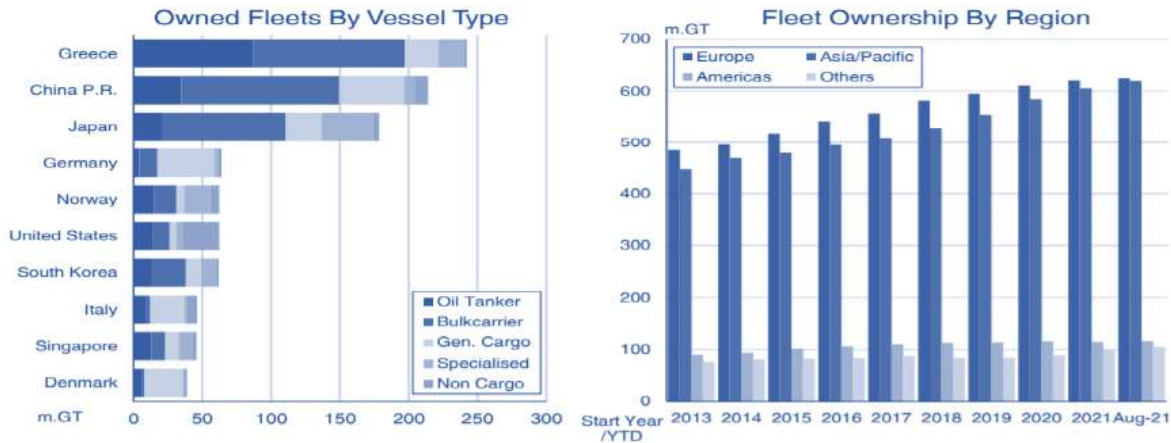
2021 World fleet growth is projected at 3% against a demand growth of 4%. Orderbook as a percentage of fleet is at 9.1% as at 1 September 2021. This is significantly below the 15-year historical average of 24%. Projected fleet growth in 2022-23 is likely at 3-4% levels. Driven by a low orderbook and continued demolition of older tonnage, uneven distribution of fleet growth is being seen. For instance, Gas Carriers and Containerships have ~20% orderbook levels, but demand for these sectors is expected to be a lot higher.

The current fleet of vessels for the Top-10 countries, numbered 45,806 vessels and valued at USD 822bn, accounting for 69% of the total fleet worldwide. The orderbook of vessels placed by these top-10 is 2,170 valued at about USD 153bn., accounting for 55% of the total orders.

GLOBAL SHIPPING SCENARIO

Top 10 Countries are dominated by Europe / Asia, with the exception of USA in sixth place. The top 10 countries account for a large proportion of global fleet – 45% by number of vessels; 69% by GT and Asset Price. By region, Europe is still largest fleet owner, but Asia is catching up quickly. Both regions have >600m GT ownership as of August 2021, accounting for ~85% of the world’s total fleet.

Figure 9: Fleet Ownership by Vessel Type and by Region in CY 2021 (August)



Source: Clarksons Research August 2021

Figure 10: Fleet Ownership by Top-10 countries; Vessel Orderbook as in CY 2021

Country/ Region	Current Fleet, number								Current Orderbook, number							
	Oil Tanker	Bulk-carrier	Gen. Cargo	Specialised	Non Cargo	Total	m.GT	\$bn. ⁶	Oil Tanker	Bulk-carrier	Gen. Cargo	Specialised	Non Cargo	Total	m.GT	\$bn. ⁷
1 Greece	1,399	2,479	702	490	704	5,774	242.3	141.7	83	29	25	46	4	187	14.7	14.3
2 China P.R.	1,422	3,066	2,596	839	2,572	10,495	214.0	149.5	67	178	237	63	151	696	26.0	29.0
3 Japan	936	1,912	2,599	1,611	1,754	8,812	178.5	134.7	23	289	94	77	31	514	20.0	19.0
4 Germany	126	354	1,703	196	476	2,855	63.8	58.4	1	18	61	17	15	112	5.0	7.0
5 Norway	226	339	515	573	1,233	2,886	62.4	65.5	10	15	18	24	56	123	3.9	9.5
6 United States	255	246	339	160	4,004	5,004	62.3	109.7	3	2	4	8	112	129	6.1	35.0
7 South Korea	354	377	663	624	906	2,924	62.0	39.7	21	10	32	41	17	121	8.3	13.1
8 Italy	305	88	460	143	944	1,940	46.2	46.6	3	3	32	8	21	64	4.5	14.9
9 Singapore	726	243	491	450	1,731	3,641	45.8	42.0	27	13	38	31	85	194	7.2	9.5
10 Denmark	183	57	462	116	657	1,475	38.8	34.6	12	6	1	1	10	30	1.1	1.3
Total Top-10	5,932	9,161	10,530	5,202	14,981	45,806	1,016.1	822.4	250	560	542	316	502	2,170	96.8	152.5
Share of World Total	52%	73%	42%	59%	35%	45%	69%	69%	59%	83%	60%	60%	36%	55%	65%	61%

Total Cargo Fleet, m. Dwt	Year End				01-Sep-21		Orderbook & Delivery Schedule					
	2017	2018	2019	2020	No.	m.Dwt	No.	m.Dwt	% Fleet	2021	2022	2023+
CRUDE TANKERS	387.1	389.4	414.8	428.5	2,218	436.8	176	36.8	8.4%	3.8	21.5	11.5
PRODUCTS TANKERS	175.5	178.9	186.8	191.0	9,315	192.9	240	11.9	6.2%	3.9	4.0	3.9
CHEMICAL TANKERS	43.6	45.4	46.7	48.0	3,984	48.6	185	3.4	7.0%	0.9	1.5	1.1
OTHER TANKERS	0.9	1.0	0.9	1.0	423	1.0	6	0.0	0.1%	0.0	0.0	0.0
BULKERS	821.5	845.5	879.0	912.2	12,576	934.2	669	58.1	6.2%	11.8	27.3	19.0
COMBOS	1.4	1.1	0.8	0.9	12	1.1	0	0.0	0.0%	0.0	0.0	0.0
LPG CARRIERS	24.3	24.6	25.6	27.0	1,511	28.0	152	6.2	22.2%	0.6	1.9	3.8
LNG CARRIERS	40.2	44.6	48.1	50.5	664	54.1	162	13.4	24.9%	1.3	3.2	9.0
CONTAINERSHIPS	253.7	266.2	275.0	281.8	5,531	289.0	621	55.3	19.1%	4.7	9.9	40.8
MULTI-PURPOSE	29.4	29.3	29.3	28.9	3,164	29.0	66	1.1	3.8%	0.3	0.7	0.1
GENERAL CARGO	39.0	39.3	39.5	39.8	15,735	39.8	163	1.2	3.0%	0.5	0.5	0.2
RO-RO	6.8	6.9	7.1	7.1	829	7.2	35	0.6	8.6%	0.2	0.2	0.3
CAR CARRIERS	12.5	12.5	12.4	12.2	760	12.3	27	0.5	3.9%	0.1	0.1	0.3
REEFERS	4.8	4.7	4.6	4.6	1,462	4.6	6	0.0	0.7%	0.0	0.0	0.0
OFFSHORE (AHTS/PSV)	9.6	9.6	9.6	9.5	4,480	9.4	185	0.5	5.2%	0.1	0.2	0.2
WORLD CARGO FLEET	1,850.2	1,898.8	1,980.2	2,042.9	62,664	2,088.0	2,693	189.2	9.1%	28.2	70.8	90.1
TOTAL WORLD FLEET	1,933.0	1,983.7	2,065.3	2,128.3	101,546	2,173.2	3,953	193.7	8.9%	29.3	72.6	91.9
TOTAL WORLD FLEET (\$bn)	933.0	952.0	993.7	950.5		1,218.8		251.0	20.6%	36.4	81.1	133.5

Source: Clarksons Research August 2021

3.3. Industry Outlook by Sector

Besides the implications for ship finance and ship leasing evidenced from the vessel orderbook, the market research forecasts were also examined for the near term and long-term earnings outlook for various key players in shipping industry. A very positive outlook with the speedometer in the green for a vast majority of the industry is foreseen as below.

Bulkers:



10y Historical Breakeven Rate = \$11,100/day

Short Term Earnings Outlook = \$17,500/day (+58%)

Long Term Earnings Outlook = \$15,500/day (+38%)

Positive 2021 Fundamentals: Demand Growth +4.6% > Supply Growth +3.4%

Bulker markets are enjoying a strong 2021, with Baltic Dry Index reaching 3,314 points in August 2021, its highest since 2010. Global seaborne dry bulk trade is likely to grow by 4.2% to reach 5.39bn tonnes in CY 2021, supported by rebounding economic and industrial activity and significant government stimulus in key regions. Fleet growth is likely to reach 3.3% in dwt terms this year. Rebounding activity and Covid-19-related disruption has seen a significant share of bulker fleet caught up in congestion, helping to soak up tonnage and reducing 'active' capacity. In future, the balance of fundamentals is supportive.

Crude Tankers:



10y Historical Breakeven Rate = \$18,900/day

Short Term Earnings Outlook = \$21,300/day (+13%)

Long Term Earnings Outlook = \$27,300/day (+45%)

Negative 2021 Fundamentals: Demand Growth +3.1% < Supply Growth +4.6%

The tanker market remains under pressure, with average weighted tanker earnings falling below \$4,500/day in June 2021, the lowest monthly average in over 30 years. Deep OPEC+ supply cuts remain in force, and oil demand continues to experience pressure from Covid-19 pandemic, with seaborne oil trade likely to be c.10% below 2019 levels in H1-2021. But, with OPEC+ crude supply cuts set to ease from August 2021, and global oil demand expected to continue to rebound, crude tanker demand could 4-5% levels in 2022. Combined with a subdued orderbook of 8%, fleet expansion stands at 2% in 2022, which should drive a recovery in the tanker market in the next 18 months.

Product Tankers:



10y Historical Breakeven Rate = \$13,100/day

Short Term Earnings Outlook = \$15,400/day (+17%)

Long Term Earnings Outlook = \$18,100/day (+38%)

Positive 2021 Fundamentals: Demand Growth +8.2% > Supply Growth +3.1%

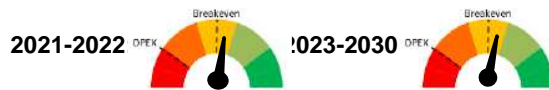
Product tanker demand is expected to improve substantially more than for crude tanker due to refinery closures in US, Europe and Australia. Typically, these countries would import crude for domestic refining. With impending refinery closures, product tanker trade could evolve into longer distances, with rising share of imports from Middle East, India and North Asia. Product tanker market is expected to gradually recover over the next 18 months.



Chemical Tankers:

- 10y Historical Breakeven Rate = \$14,600/day**
- Short Term Earnings Outlook = \$18,300/day (+25%)**
- Long Term Earnings Outlook = \$20,200/day (+39%)**
- Neutral 2021 Fundamentals: Demand Growth +1.0% = Supply Growth +1.0%**

The chemical tanker market has been muted so far in 2021. Prolonged effects of COVID-19 related restrictions combined with extreme winter weather effects in the West have reduced demand between western and eastern hemispheres. Trade was dramatically disrupted when an unusual February 2021 snowstorm hit much of southern USA, sending commodity prices in USA soaring to record levels, reducing potential arbitrage with the international market. As it stands, Q3-2021 should see the balance tip back in the producer’s favour, re-opening the arbitrage and allowing for more long-haul exports for the remainder of the year. Looking ahead, assuming countries recover swiftly from the latest COVID-19 wave, strong trade growth is foreseen in H2-2021 and in CY 2022 with a recovery in chemical tanker earnings.



LNG:

- 10y Historical Breakeven Rate = \$54,400/day**
- Short Term Earnings Outlook = \$56,400/day (+4%)**
- Long Term Earnings Outlook = \$57,600/day (+6%)**
- Neutral 2021 Fundamentals: Demand Growth +10% = Supply Growth +10%**

LNG sector has seen encouraging trends in 2021, with demand rebounding healthily and vessel earnings remaining firm. While market fundamentals appear broadly balanced with both LNG tonne-mile trade and fleet capacity forecast to grow by c.10% in 2021, the short-term market outlook is positive, with demand for LNG expected to remain firm and tight spot vessel availability. Looking ahead to CY 2022, LNG carrier market fundamentals appear positive. While tonne-mile trade growth is currently projected to ease back to 5.2% as USA’s export growth slows, fleet capacity is projected to grow by 4.5% as deliveries moderate.



LPG:

- 10y Historical Breakeven Rate = \$17,900/day**
- Short Term Earnings Outlook = \$23,600/day (+28%)**
- Long Term Earnings Outlook = \$23,000/day (+27%)**
- Positive 2021 Fundamentals: Demand Growth +8% < Supply Growth +6%**

LPG carrier market fundamentals appear broadly balanced, with LPG tonne-mile demand growth of c.8% and LPG carrier fleet capacity growth of c.6% (c.9% VLGC) projected. As such, there is potential for improvement in the VLGC spot market in the remainder of the year, especially with the easing of tensions between the US and China, which has unleashed a renewed surge in shipments between the two countries. Looking to the East, there is also potential for Middle Eastern exports to pick up given the recent OPEC+ decision to ease crude production cuts. Support may also materialize from market inefficiencies. Looking ahead, in 2022, the rate of LPG tonne-mile trade growth is projected to increase to c.5%, partly as OPEC+ cuts are lifted. However, some supply-side pressure may emerge, with LPG carrier fleet growth of c.6% (c.7% VLGC) projected.



Liner Operators:

Positive 2021 Fundamentals: Demand Growth +6.6% > Supply Growth +4.3%

Container shipping markets continued to surge during June and into July 2021, with freight and charter markets soaring even further to new all-time highs. Strong trade volumes and severe logistical disruption and port congestion, against a backdrop of ‘manageable’ supply growth, are continuing to provide extraordinary support, and with potential for disruption to take some time to ‘unwind’, the short-term market outlook remains very positive. Rates are likely to ease from current record levels at some point, as disruption eases and as demand ‘normalises’ with potential for a shift in spending back towards services to provide ‘drag’. Moderate supply growth in CY 2022 could provide support, though robust deliveries in CY 2023 from record ordering in H1-2021 will likely exert downward pressure.



Offshore Vessels:

10y Historical Breakeven Rate = \$14,500/day
Short Term Earnings Outlook = \$12,000/day (-17%)
Long Term Earnings Outlook = \$16,900/day (+20%)
Positive 2021 fundamentals, but from a weak base

The sector is entering the seventh year of its downturn and there is cautiously optimistic in industry that CY 2021 will be the year of the turnaround, not with high freight rates, but there will be signs of improvement. Oil prices are moving in the right direction (\$70/bbl) as of August 2021 and E&P CAPEX is expected to increase by 7% and 22% in 2021 and 2022 respectively. In addition, there is also a positive development in the area of offshore renewables market (windfarms), which is helping existing Offshore Vessel owners pivot their assets in a new and greener direction.

3.4. Historical Imperatives of International Shipping

• Fleet Development

The origin of international shipping is traced to the advent of steam engines for propulsion of ships. The American ship SS *Savannah*, a steamship-sailing hybrid, first crossed the Atlantic Ocean (North America-Europe) in 1819. Suez Canal’s opening in 1869 gave a distance

saving of 3,300 nm (6,100 km; 3,800 miles) from China to London, enabling steamships to obtain a much higher rate of freight and lower insurance premiums for cargos than sailing ships. So successful were the steamers using the Suez Canal that, in 1871, 45 were built in Clyde shipyards alone for Far Eastern trade. The decline of the steamship began after World War II, by when marine diesel engines had also finally matured as an economical and viable alternative to steam power. Most steamships today are powered by steam turbines.³

Britain's merchant fleet, the largest in the world, had a third of the world's merchant ships in 1939, and there were about 200,000 sailors, many drawn from the British Empire – India, Hong Kong, West Africa.⁴ The fleet at World War II's ending, consisted of dry bulk cargo vessels (carried in pallets, bulk, bags, other unitized format) and tankers.

Figure 11: Evolution of Vessels

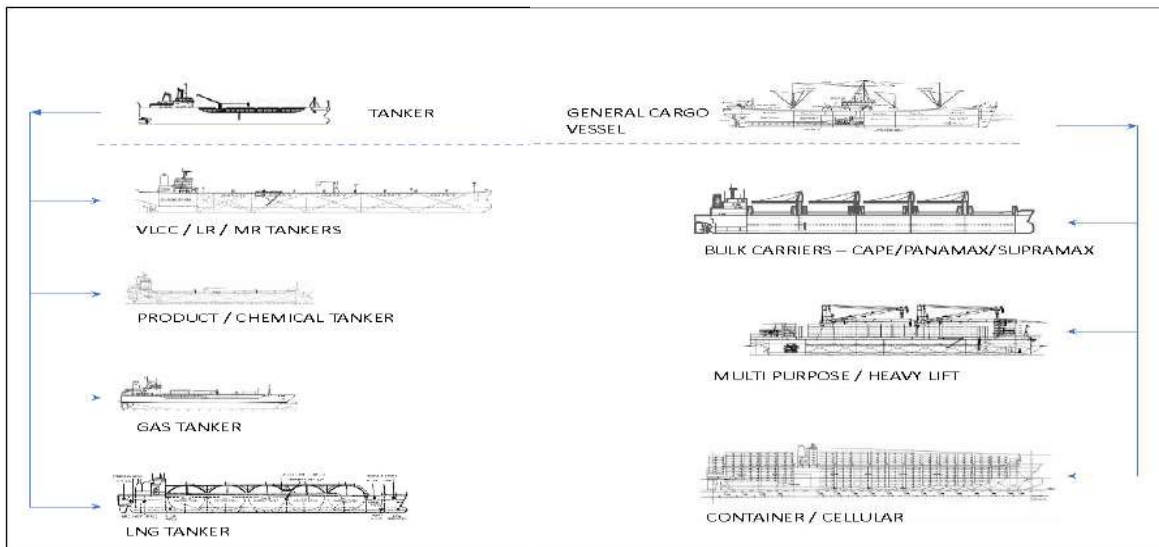
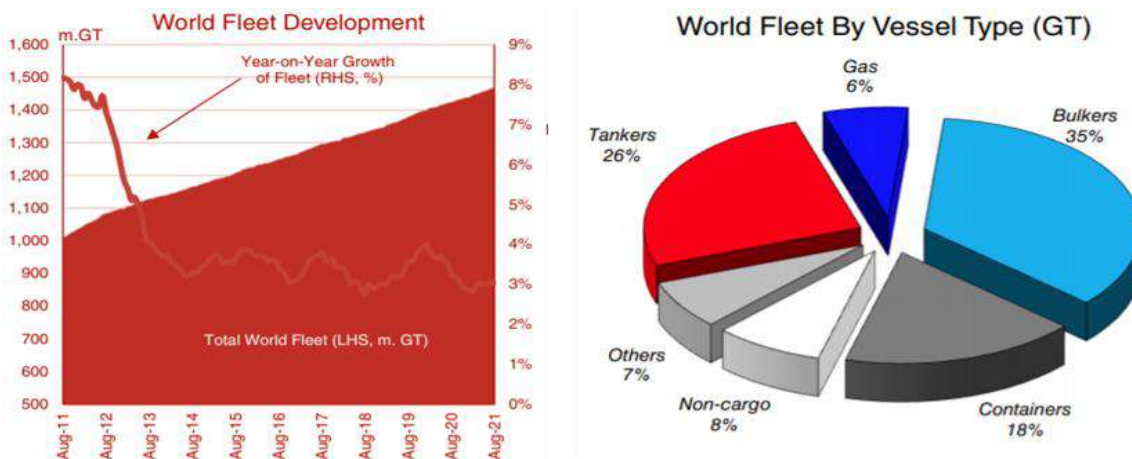


Figure 12: World Fleet by Vessel Type (GT)



Source: Clarksons Research, August 2021

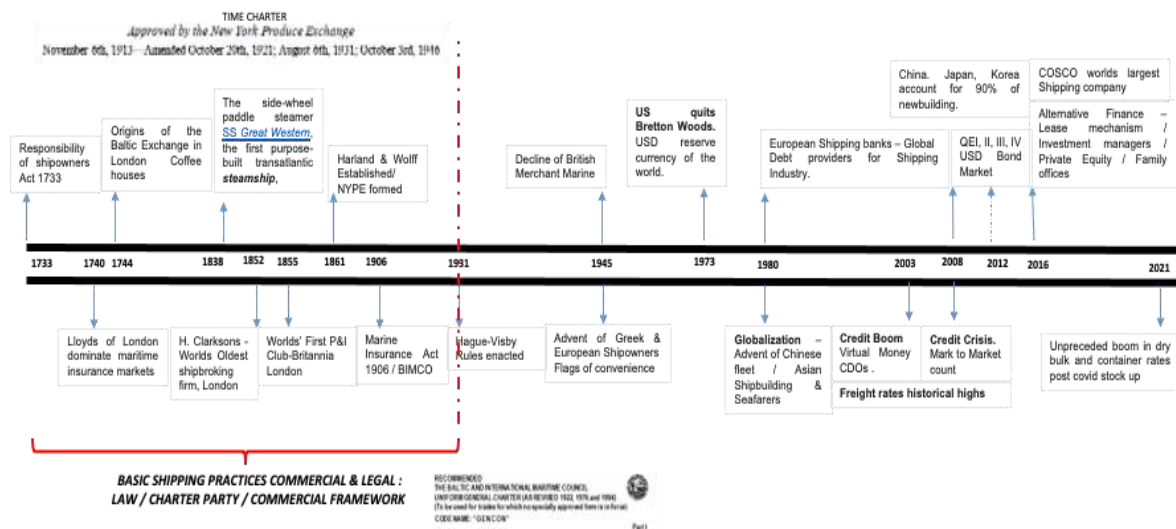
The development of containerisation came about with 58 trailer vans being moved from Newark to Houston in USA in April 1956 aboard the refitted tanker SS *Ideal X* followed by the first TEU container ship, the Japanese *Hakone Maru* from shipowner NYK, which started sailing in 1968 and could carry 752 TEU containers. The establishment of global ‘shipping lines’, with scheduled routes and calls, was distinct from the ‘tramp’ model adopted

by traditional bulk shipping. Tanker trade evolved into specialized vessels carrying products, chemicals and gas carriers. Specialized heavy lift, project cargo vessels and offshore supply vessels also entered the global commercial shipping scenario. Today, container tonnage makes up for 18% of world fleet by GT (measure of cargo space capacity), while gas carriers and another specialized fleet make up for 13% of world capacity.

• **Commercial Developments**

Modern commercial shipping is rooted in technological, legal and commercial developments and advances in Great Britain in the late 18th and early 19th century. Establishment of Lloyds of London as a marine insurance centre by late 18th century helped ship owners and sailors underwrite risks. The Baltic Exchange, a major shipping exchange today, was established in 1744. The first Protection and Indemnity Club (P&I) was set up in mid-19th Century, which covered risks not covered by Lloyds’ market by forming an association of shipowners.

Figure 13: Commercial Developments



Besides great technological strides, ‘load lines’ (the legal limit to which a ship can load cargo) and many other navigation innovations were introduced. Many shipbroking firms were established, some of whom are still in business for an unbroken period of over 200 years – the world’s largest shipping firm today, H. Clarksons & Co. was established in 1852.

Shipyards and ports sprung up in Great Britain, helping it retain world leadership in ship owning, shipbuilding, commercial and legal practices and maritime innovation till WW-II. Britain was eased out by USA, and other centres for shipping emerged. Greek shipowners capitalized on the availability of USA’s surplus merchant tonnage produced during WW-II (Liberty ships and tankers) and emerged as a key ship-owning nation. Adoption of USD as the preferred reserve currency globally and its primacy in international trade ushered in an era of globalization. The commercial and legal practices created and practiced by maritime Britain then, serve as the basic foundation and framework for global shipping today.

At the end of WW-II, the revival of Japanese economy saw shipbuilding migrating from Britain and Europe to Japan and later South Korea.

- With massive Chinese investment in the sector, by 2016, China, Japan and South Korea accounted for 90 per cent of new ships built globally.

- Globalization also gave a boost to world trade, by volume today is roughly 40 times the level recorded in the early days of the GATT (4100% growth from 1950 to 2020).
- World trade values today have ballooned by almost 300 (274) times from 1950 levels.

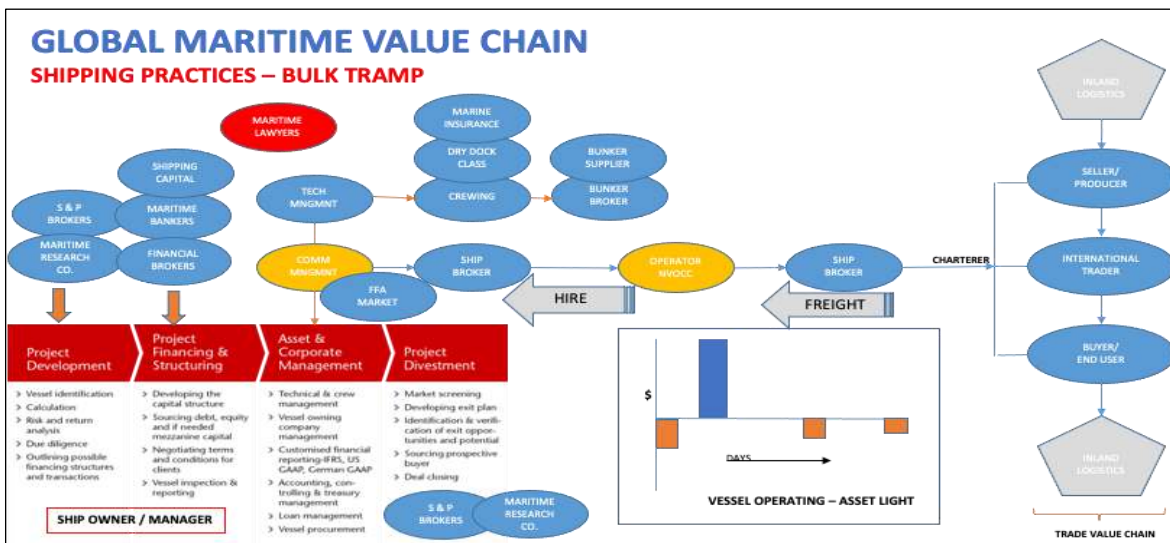
Ship-owning became more fragmented with increase in cargo volumes and more wealth created in Asia after globalization. Dry bulk shipping, with least barriers to entry, is the most fragmented sector, followed by tankers and least in container trade.

Britain and Europe retained commercial, legal and financial hub status, though Singapore and Hong Kong caught up fast. European banks, once the largest providers of shipping debt capital, have reduced their exposure seeing prolonged weak shipping markets after the credit boom and crisis in 2008-09, which distorted valuation and supply-demand balance for a decade. US bond markets entered ship finance in a big way post the crisis, only to retreat with large losses in a few years. COVID 19 further skewed the markets. Currently, Chinese leasing funds have filled the gap with expensive and innovative finance, though ship building remains muted since the historical market lows of 2016-17.

• **Global Maritime Value Chain**

The global shipping marketplace is a now complex interplay of many eco systems, with many players, competing and cooperating with each other to enable efficient transportation of goods and passengers worldwide.

Figure 14: Global Maritime Value Chain



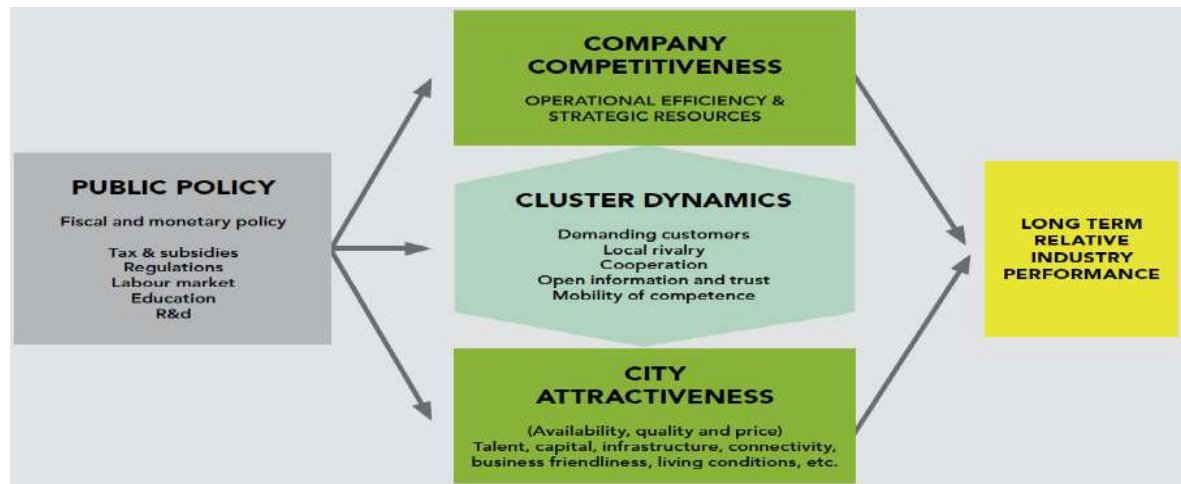
The bulk cargo tramp trade (both dry and tankers) is spread over several jurisdictions. The trade value chain procures shipping services through a shipbroker from either an operator (ship lessee) or from a direct shipowner. The ship owner and lessor may use freight derivatives to hedge freight and bunker risks, while procuring their services again from intermediaries. He may have outsourced commercial and technical management of the ship, while retaining the core function of ship acquisition and financing. Here again, he is likely to use the services of specialist market consultants and intermediaries to understand the markets and to access capital from varied sources like banks, AIFs and other finance providers.

Ship operator is a lessee of vessels, who procure the ship on a ‘wet lease’ (a lease which includes crew and maintenance) from ship owners who own the asset. In the value chain, he brings vital localized expertise and risk-taking ability. Ship operators have the advantage of being asset light and cash positive, as the trade involves receipt of freight after completion of loading of cargo, while the payment to the owners is typically in dollars per day based on the daily hire rate. Ship operators, therefore, profit from the arbitrage of ‘time’ and ‘voyage’ charter differentials, while also taking long term positions in the freight market.

3.5. Global Shipping Scenario Today – Global Maritime Hubs

The primacy of USD and resultant globalization of shipping industry has created distinct shipping activities. Further concentration of capital, aided by liberal taxation and regulation, has created global shipping hubs specializing in these activities. Countries that could not adapt to these changes became net importers of shipping services from established hubs.

Figure 15: Global Maritime Hubs



Source: *The leading maritime capitals of the world 2019 – A Menon Economics and DNV GL publication*

Shipping hubs have developed their own USP. Notable shipping hubs by type of services offered include the following:

- Ship-building: Asian Tigers (China, South Korea, Japan)
- Shipbreaking/Recycling: Cheap labour and demand for steel (India, Bangladesh, Pakistan)
- Ownership: Historical reasons and accumulation of capital (Greece, Switzerland, China)
- Registry / Flag: Jurisdictions with easy regulation and tax policy to attract registration of vessels (Panama, Liberia, Marshall Islands, Malta, Bahamas, etc.)
- Crewing and technical management: Historical reasons (Cyprus, Hong Kong, Singapore)
- Financial: New York, Oslo, Hamburg, Singapore, Hong Kong, Tokyo
- Commercial: Ship leasing companies and associated activities (Singapore, Dubai, Hong Kong)
- Trading / charterers: Strong capital and traders (New York, Switzerland, Singapore, Dubai)

- Services: Broking, legal, educational hubs, with historical advantages and organic developments (London, Singapore, Dubai, Hong Kong)

Participation of hubs in international trade brings huge benefits to the host economy, with tailwinds from output and employment multipliers. Apart from direct payment of tonnage and corporate tax, the hub also brings indirect and induced taxable incomes to the host economy, ranging from individual incomes, incomes generated by employee-specific local spend, manufacturing and services delivery induced by company buys, besides the catalytic impacts from labour-intensive tourism, entertainment, hospitality sectors, IT services, etc.

3.6. Flagging and Taxation

• Ship Registration

Ship Registration serves to document a ship at a registry, gives it the nationality and right to sail under the flag of the country of registration. International law requires that every ship be registered in a country, called its flag state. A ship is subject to the law of its flag state.

A ship's flag state exercises regulatory control over it and is required to inspect it regularly, certify the ship's equipment and crew, and issue safety and pollution prevention documents. Registries may be governmental or private agencies. In some cases, like USA's Alternative Compliance Program, the registry can assign a third party to administer inspections.

Flag of convenience (FOC), a term coined in the 1950s, is a business practice⁵ whereby a ship owner registers a merchant ship in a ship register of a foreign country, and the ship flies the civil ensign of that country. Merchant ships had for long been using false flags as a *ruse de guerre* or on slave ships.

A ship has been registerable in a foreign country since early 1920s, from where regulations on higher wages and working conditions and/or higher taxes applicable in the owners' country may be avoided, for example, stricter crewing standards than those by international norms, or to reduce operating costs.⁶ A register open only to ships of its own nation (a *traditional or national register*), but an *open register* does not have a nationality or residency requirement. Panama, for e.g., offers easier registration (often online) and the ability to employ cheaper foreign labour, and in case of foreign owners, a pay no income taxes.

In brief, the Flag represents the nationality of the vessel. The registered owner will be a company incorporated in the nation where the vessel is flagged. The law of the flag state regulates several important issues like:

- Requisition of vessel in case of national emergency,
- Tax on earnings by the vessel,
- Nationality of the crew,
- Salary and working conditions of the crew, and
- Safety and security (through any classification society).

Since the last five decades, 50% of the world's fleet is flagged with FOC. Key characteristics of FOC (Panama, Liberia, Marshall Islands, Malta, Bahamas, etc.) are:

- Low or Zero taxation on earnings,
- No restrictions on nationality of crew,

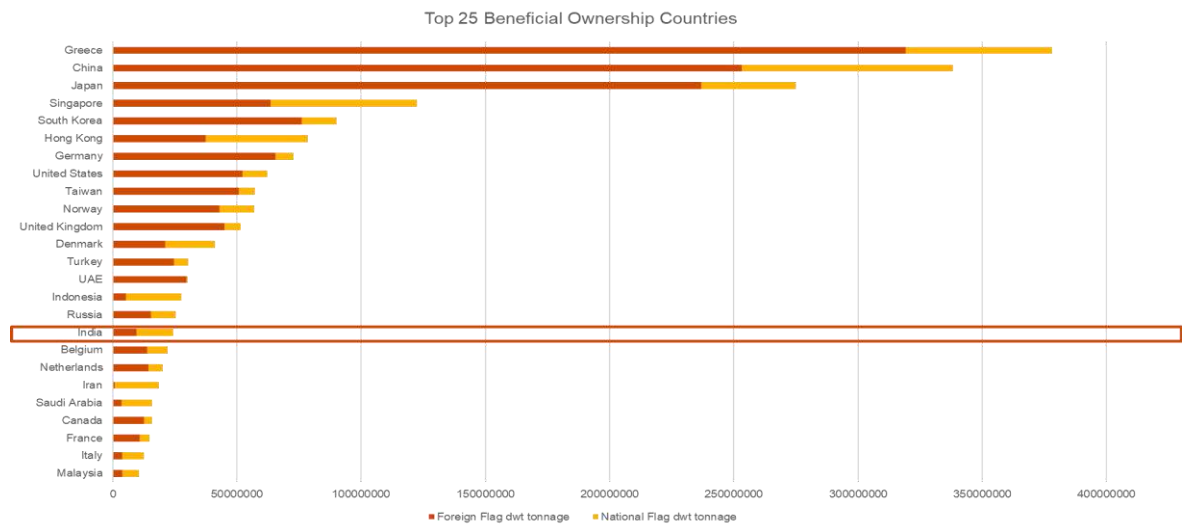
- No restrictions on recourse to specific classification society,
- Lower manning standards as per international norms, as compared to national registries, and
- No requirement for place of effective management to be the flag state.

● **Evolution of international shipping**

Between 1915 and 1922, several laws were passed in USA to strengthen its marine sector and provide safeguards for its mariners, which put USA-flagged vessels at an economic disadvantage. Ships started re-registering in Panama’s open registry from 1919. To sidestep the Seamen’s Act, Panama-flagged ships paid sailors the lower Japanese wage scales.⁷ Early in World War II, transfer of USA-owned ships to Panama’s registry was sanctioned by US government to deliver materials to Britain without dragging USA unintentionally into war.⁸

Date	Event
1919	<i>Belen Quezada</i> flagged in Panama
1948	ITF FOC Campaign begins
1949	<i>World Peace</i> flagged in Liberia
1969	Liberia becomes largest registry ⁹ with maritime funds being 70% of government revenues ¹⁰
1988	Marshall Islands’ open registry
1999	Panama is largest registry
2009	Panama, Liberia & Marshall Islands account for 40% of world fleet in DWT
2021	Panama, Liberia & Marshall Islands account for about 55% of world fleet in DWT, including 61% of bulk carriers and 56% of oil tankers. ¹¹

Figure 16: Top-25 Beneficial Ownerships in August 2021



Source: Clarksons’ Research, August 2021

The use of open registries has since steadily increased. Multiple registries have also been opened, for instance, by Liberia which joined with the Republic of Marshall Islands to develop a new maritime program (International Registries) in 1993. A new registry (Liberian International Ship and Corporate Registry, LISCR) is being operated from Virginia, USA.

The tabular statements and graphs herein show that beneficial ownership of vessels still lies with traditional ship-owning countries, even as owners have flagged out their tonnage to open registries. While initially open registries had poor safety records, they now enjoy good ratings and significantly improved safety levels in collaboration with Classification Societies.

GLOBAL SHIPPING SCENARIO

The data for top-25 beneficial flag states shows that India stands in 17th position, with 61% of its tonnage carried internationally on ships owned and registered in India, and the balance on foreign flags. India ranks at 22nd position among all flag states, with 10.4 m.GT capacity and 1,802 vessels. The average age of vessels is quite high at 19.3 years, and curiously, while the number of vessels flagged in India has increased in the last four years from 1,741 to 1,802 vessels, the tonnage carrying capacity has been declining from 11.2 m.GT to 10.4 m.GT. It is also noteworthy that the Top-10 flag States (7 of whom have open registries) have about 40% of the fleet by numbers but 75% of the world's tonnage capacity.

Figure 17: Breakdown of Flag States, (on 1 August 2021)

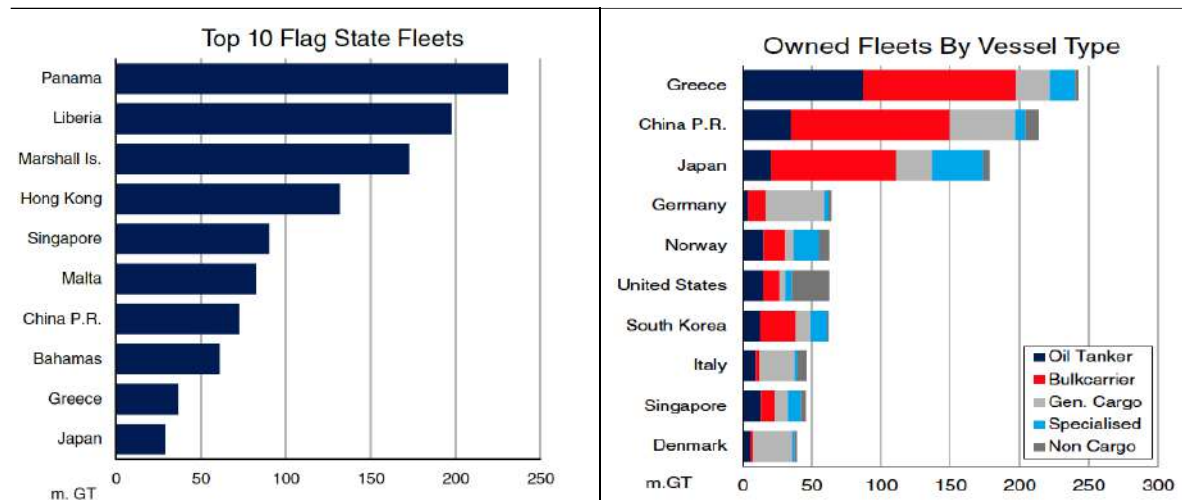
Flag States		Age	No Vessels, end				Million GT, end				01 Aug 21		
			2017	2018	2019	2020	2017	2018	2019	2020	No.	m.GT	
1	Panama	Open	18.7	7,804	7,822	7,887	7,996	218.9	219.2	218.5	227.3	8,071	230.9
2	Liberia	Open	11.6	3,311	3,486	3,720	3,945	142.6	153.7	171.7	185.3	4,122	197.6
3	Marshall Is.	Open	9.6	3,425	3,542	3,685	3,820	147.9	153.1	161.0	168.1	3,929	172.8
4	Hong Kong	Open	11.6	2,623	2,707	2,700	2,718	113.8	125.1	127.4	129.8	2,705	131.8
5	Singapore	Open	10.9	3,436	3,375	3,386	3,312	85.2	86.8	93.0	91.1	3,272	90.3
6	Malta	Open	12.4	2,194	2,171	2,199	2,128	72.8	75.0	80.5	81.9	2,077	82.5
7	China P.R.	National	14.6	6,084	6,342	6,512	6,716	60.1	64.8	67.1	70.3	6,908	72.6
8	Bahamas	Open	15.5	1,377	1,399	1,371	1,326	60.3	62.1	63.3	61.4	1,313	61.1
9	Greece	National	25.9	1,323	1,301	1,302	1,256	41.4	39.8	40.0	37.5	1,235	36.4
10	Japan	National	21.0	5,222	5,264	5,342	5,369	26.3	27.9	29.4	28.7	5,386	29.3
Total Top-10			15.3	36,799	37,409	38,104	38,586	969.3	1,007.6	1,051.8	1,081.4	39,018	1,105.1
Share of World Total				38%	38%	38%	38%	74%	75%	75%	75%	39%	75%
11	Cyprus	Open	15.9	1,010	1,030	1,058	1,053	22.4	22.6	23.1	23.0	1,048	23.4
12	Danish Int'l	International	17.5	536	568	577	601	16.9	20.4	21.1	22.1	609	22.5
13	Indonesia	National	19.9	9,932	10,182	10,453	10,602	17.5	18.6	19.6	20.8	10,654	21.0
14	Madeira	International	12.7	450	483	528	579	15.1	14.6	15.3	16.5	639	18.2
15	Norwegian Int'l	International	14.2	596	620	653	672	15.3	15.6	16.5	17.2	685	17.0
16	Italy	National	28.3	1,364	1,325	1,311	1,296	15.9	15.1	14.6	14.4	1,287	14.3
17	Isle of Man	International	11.0	407	387	348	319	16.5	16.7	14.8	13.5	305	13.2
18	South Korea	National	24.8	1,963	1,986	1,995	2,007	9.8	9.4	10.9	12.5	2,030	12.7
19	Iran	National	26.5	814	819	904	911	3.0	2.9	11.1	11.8	912	11.6
20	United States	National	32.4	3,643	3,639	3,630	3,631	10.6	10.7	10.9	10.8	3,624	10.8
Total 11-20			22.4	20,715	21,039	21,457	21,671	142.9	146.5	157.8	162.6	21,793	164.6
Share of World Total				21%	22%	22%	22%	11%	11%	11%	11%	22%	11%
21	United Kingdom	National	20.6	1,042	1,031	948	925	15.9	15.8	10.7	10.4	914	10.6
22	India	National	19.3	1,741	1,748	1,779	1,803	11.2	10.7	10.6	10.5	1,802	10.4
23	Bermuda	Open	13.8	158	150	140	147	11.3	10.9	10.0	10.5	139	10.3
24	Russia	National	30.5	2,694	2,764	2,820	2,874	7.6	8.0	8.4	9.1	2,890	9.3
25	Malaysia	National	19.0	1,741	1,760	1,782	1,784	8.2	8.5	8.4	8.4	1,777	8.0
26	Saudi Arabia	National	23.5	382	370	375	394	7.7	7.5	7.8	7.7	398	7.6
27	Vietnam	National	18.0	1,828	1,866	1,906	1,934	5.1	5.3	5.7	6.4	1,955	7.2
28	Germany	National	33.1	632	615	609	598	9.5	8.1	8.1	7.4	590	7.1
29	Netherlands	National	20.2	1,219	1,205	1,196	1,196	6.9	6.9	6.8	6.4	1,185	6.4
30	Belgium	National	16.8	193	193	198	201	5.1	6.1	6.2	6.0	203	6.1
Total 21-30			22.7	11,630	11,702	11,753	11,856	88.6	87.7	82.8	82.7	11,853	82.9
Share of World Total				12%	12%	12%	12%	7%	7%	6%	6%	12%	6%
Others			29.7	27,445	27,666	28,116	28,422	105.6	103.9	107.1	112.7	28,524	114.8
Share of World Total				28%	28%	28%	28%	8%	8%	8%	8%	28%	8%
WORLD TOTAL			21.7	96,589	97,816	99,430	100,535	1,306	1,346	1,399	1,439	101,188	1,468
% Growth y-o-y				1.3%	1.3%	1.7%	1.1%	3.4%	3.0%	4.0%	2.8%		

Source: Clarksons' Research, August 2021

There is presently no binding international framework to regulate the registration process itself. The 1986 UN Convention on Conditions for Registration of Ships establishes international standards for registration of vessels in a national registry, including references to the genuine link, ownership, management, registration, accountability and the role of the flag State.¹² However, the Convention has not entered into force.

A direct impact of development of open registry is the response by a national or ‘closed’ registry by creating ‘offshore’ or ‘second’ registry’, also called ‘international registry’. These registries typically involve a traditional closed national registry which has set up another registry, often at a different geographical location within its jurisdiction, which has less onerous requirements of crewing, taxation etc., while attempting to strike a balance between safety and providing more options to the owners. An example of international register is the Danish International Register, which provides for flexible crewing, more options for class and a competitive ‘tonnage tax regime’.

Figure 18: Fleets in Top-10 FOC and Top-10 Beneficial Flag States (August 2021)



Source: Clarksons' Research, August 2021

Figure 19: Comparative Regimes of India-Flag and Key Open Registries

#	Flag	POEM	Crew	Class	Tax	Enforcement
1	Panama / FOC / Open Register	Optional	No Restrictions	No Restrictions	Nil	Easy
2	Malta / FOC / Open Register	Optional	No Restriction	No Restrictions	Nil	Easy
3	Singapore / International Registry / 2 nd Register – Offshore Register	Activity Requirement	No Restrictions / Min Intl crewing standards	International Association of Classification Societies - Class	Tonnage Tax / Approved Incentive Scheme (AIS)	Easy
4	International Registry / Danish International Ship Register	Activity Requirement	Master Danish/EU – can be waived/Min Intl crewing std / Local union agreement	International Association of Classification Societies	Tonnage Tax / No Registration charges	Easy
5	India / National	Compulsory	Indian Crew Only / Indian Union Ag / Indian manning standard	Indian Register of Shipping with dual registration with IACS	Tonnage Tax / Restrictions	Difficult
6	United States / National	Compulsory	US Crew only / US crew agreement / US Crewing standard	ABS only / American built tonnage only	Corporate tax	Easy

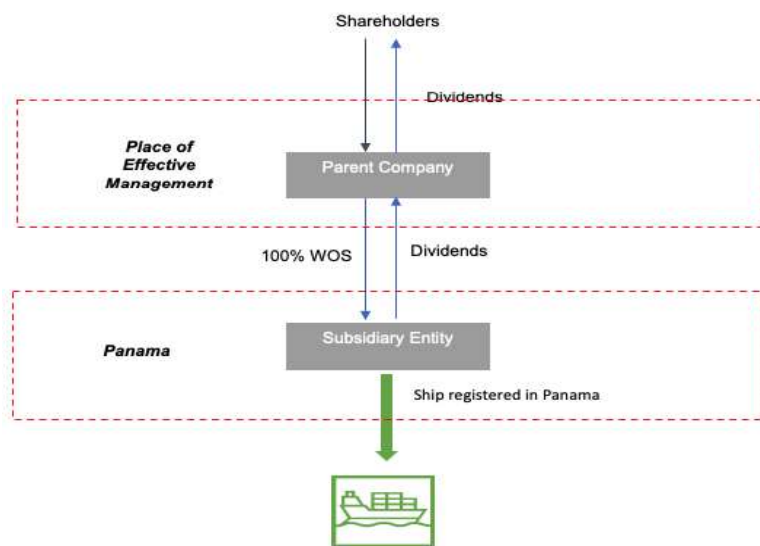
• **Flags and Impact of Taxation on Global Shipping Structures**

(a) **Ship-owners – Flag and Taxation**

The *raison-juste* for developing open registries was higher taxation in ship-owning countries. As economies developed, tax structures changed to respond to different monetary conditions.

At the same time, it was understood that global transportation was a service which could be provided from any jurisdiction and therefore, ship-owning countries developed a unique tax structure, with innovative tax incentives and exemptions, for shipping companies involved in international trade to register their ships with open flag registry while continuing to operate from ‘developed shipping hub’. The system of open registry was developed in order to disconnect the tax and regulatory regime of their country with ship-owning, especially when inflationary pressures were increasing local taxation and egregiously globally, third-world country seafarers were fast replacing European ones. The tax structures range from full exemption from all taxes to tax incentives for ship-leasing companies (e.g., Hong Kong). Appendix A gives the details of exemptions for a shipping company domiciled in its respective jurisdiction and involved in international shipping. The usual structure is for the parent company domiciled in a ‘hub’ to establish a Wholly-owned Subsidiary (WoS) in an open flag state (e.g., Panama), with dividend transfers from WoS (not taxed in ‘hub’ jurisdiction), which also is the Place of Effective Management (POEM) of tonnage. Tax incentives are felt to be so essential that OECD recently excluded shipping from a proposed minimum tax of 15% on all multi-national enterprises operating from signatory countries.

Figure 20: Unique Tax Structure of Open Registries



(b) Ship Operators – Tax Deductible at Source (TDS)

Unlike ship-owning, tax on ship operators is not linked to the flag of the vessel chartered by them. Focus is on tax in the jurisdiction ship operators are domiciled, including income tax and withholding tax. WHT on payments of charter hire and any interest payments are the most important of all, as it is a tax on the turnover of the entity, rather than profits. Established commercial shipping hubs expressly exempt payment of charter hire from WHT.

4. INDIA SHIPPING

The growth of Indian-flag shipping tonnage has not kept pace with the growth of Indian trade needs. This has led to more than 93 per cent of Indian origin or destination international cargoes, and about 39 per cent of total Indian cargoes (including coasting and offshore fields), being carried on foreign-flagged ships, with an annual freight outgo of about USD 75bn. Participation of Indian tonnage in global cross trades is negligible, with hardly any freight and other receivables.

4.1. Development of Indian shipping since independence:

Stage 1: From 1959 to until 1992, Indian shipping was synonymous with Transchart, the chartering arm of Ministry of Surface Transport. Sale and purchase of commodities was channelised through state trading companies like MMTC and STC. Their shipping requirements were attended to by a panel of Indian brokers of Transchart, as shipping was on the restricted list for foreign investment. Transchart chartered vessels only on voyage basis (the most basic form of chartering) on L1 under spot tenders. Prior to 1959, the imports of grains, fertilisers, sugar and other necessities had been handled by ‘India Supply Mission’ offices in London and Washington. **There was no long-term freight management nor attempts to time-charter vessels to bring down the freight.**

Figure 21: Development of Indian Shipping

DECANALIZATION		CREDIT BOOM		HARD CRASH	
1950	1992	2004	2008	2019.....	
COMMODITIES CANALIZED MMTC/STC/MSTC	INDIAN TRADING FIRMS SET UP OVERSEAS SUBSIDIARIES	INDIAN SHIPPING AGENTS / FIRM START VESSEL OPERATING	INDIAN VESSEL OPERATORS= CONTINUED EXPANSION		
TRANSCHART	FIRST EXPOSURE TO GLOBAL CHARTERING; - ESSAR GLOBAL LTD, LONDON - ITC GLOBAL PTE LTD, SINGAPORE - ADANI GLOBAL, DUBAI - SWISS SINGAPORE (BIRLA) - TRIMEX, DUBAI	FIRST EXPOSURE TO GLOBAL OPERATING; - JALDI OVERSEAS / BOTHRA GROUP - SIVA BULK, SINGAPORE - ISL DUBAI - ACT/PROPEL SHIPPING, DUBAI - SIMTRA OVERSEAS, DUBAI - PLATINA BULK, SINGAPORE - TATA NYK, SINGAPORE	CONTINUED EXPANSION OF OPERATORS; - BAINBRIDE, SINGAPORE - EXSQUIRE, SINGAPORE (EX MERCATOR) - AEGIS, DUBAI (CENTURY FLY) - FILMORE, DUBAI - SINGAPORE SHIPPING, SINGAPORE (SPIC)		
Restricted chartering based on L1 bidding.	Formation of India centric Indian commodity trading firms	Indian trading companies (especially iron ore companies) flush with funds	Indian trading companies continue to consolidate	Large industrial companies like Tata, ACC, SAIL user ‘reverse auction’ system for freighting.	
Standardized charter party – limited knowledge of shipping practices	First cautious steps towards vessel chartering and simple time chartering	Reduced dependence on banks leads to Indian ‘shipping intermediaries’ to commence vessel operating	Indian ship operating companies continue to expand outside India, esp. in Dubai & Singapore.	Lack of trained manpower and poor global perception of companies based in India reinforce foreign hub	
Disconnect from world shipping practices of vessel operating, finance, hedging, law	Due to chartering & FOREX restrictions, companies form hubs in Dubai & Singapore. (RBI Reg Ch.8 Rule 88 12/13)	With trading hubs already established in Singapore and Dubai, operators follow them and strengthen the hubs	2013 High court ruling imposing withholding tax on charter hire spells end for operators in India.	Indian Ship operators continue to make Dubai and Singapore their hub.	
Traditional shipowners with equity operate with India centric focus.	Few companies buy ships for tax benefits – Balaji distilleries / India Cement / Sanmar / SPIC –soon exit.	A few cash rich iron ore traders buy ships like MSPL/SKS/Five star bulk. Few like Adani / Tata linked to UMPPs – all expensive purchases	Introduction of tonnage tax in 2004 and including shipping in OGL has no impact on owners in India as eco system ‘hub’ missing.	Overall Shipping ecosystem continues to be poor, with little Indian capital in Shipping, few international owners & players	

Stage 2: Reforms of 1991-92 allowed Indian companies to import and export without intervention of state trading enterprises. Many private firms started with a cautious approach to chartering operations from Dubai, Singapore and London, due to insufficient knowledge and skillset for time chartering, doing mainly basic voyage chartering. A few firms stayed with inhouse cargoes only in time chartering. **Given the restrictions in India for foreign**

outward remittances and prior DG Shipping / INSA approval, firms moved chartering offices to overseas locations, principally to Dubai and Singapore.

Stage 3: The credit super-cycle of 2003-07 placed cash in the hands of Indian shipping entities, including stevedoring companies. Dubai and Singapore rapidly expanded their hubs for Indian shipping. Knowledge of local ports and relationship with traders / exporters / importers allowed these operators to scale up quickly. India-China iron ore trade fuelled Singapore as a major trading and shipping hub, with Indian traders, operators and banks in trade finance. However, in India, uncertainty on WHT on charter hire remittance continued, while remittances' regulations and prior DG/INSA approvals did not encourage Indian enterprise to seize the opportunities. **The ecosystem of shipbrokers, marine insurance companies, maritime lawyers, thus established their base in Dubai or Singapore.**

Stage 4: The consolidation of Indian business in Dubai and Singapore continued. Indian markets lack depth in manpower and knowledge as most offices have moved out. Some foreign operators who were left in India, such as Norden and Oldendorff, also eventually moved out of India to Dubai. Some ship operators operate offices in Navi Mumbai and Noida due to cost considerations and to develop local Indian manpower. **Overall, the Indian eco system for shipping remains weak and under-developed.**

4.2. Indian Shipping Today – Ship-Owning

- **The Indian fleet**

According to Clarksons' Register, Indian tonnage currently totals about 16mn GT with 1,887 vessels and valued at USD 9.1bn or INR 70,000 crore. Another 32 are on order valued about USD 1.1bn (INR 825 crore), which is about INR 26 crore per vessel on order.

A substantial part of India-controlled tonnage is Indian flagged, due to the combined effect of cabotage and 'right of first refusal (ROFR)' available to PSUs and also because dividend from overseas subsidiary is taxed in India. In spite of introduction of 100% FDI in shipping, tonnage tax regime and various incentives like ROFR for Indian cargoes and coastal cargo reservations, there is no appreciable increase in Indian-flagged tonnage. Indian-flag vessels currently in Indian registry of DG Shipping were accessed from the website of DG Shipping.

Figure 22: India-controlled tonnage in international trade, average-size >10,000 dwt

Rank	Owner Group	Total Ships	Total DWT	Avg Size DWT	Age	POEM	Key Aspects
1	Shipping Corporation of India	133	5,358,159	40,592	18.34	India	PSU
2	Great Eastern Shipping	65	3,739,285	57,527	12.28	India	Listed in BSE
3	Seven Islands Shipping	20	1,155,250	57,762	18.17	India	Coastal/PSU trade
4	Adani Group	60	992,235	20,671	10.95	Dubai	International Trade
5	Tolani Group	14	799,001	57,071	15.81	Singapore	International Trade
6	Apeejay Shipping	9	594,569	66,063	16.77	India	Coastal/Flagged out
7	Sanmar Group	9	556,489	61,832	20.27	India	Coastal/PSU trade
8	Pallonji & Co	22	539,404	24,518	11.64	India	Singapore flagged
9	Reliance Industries	32	365,593	11,793	19.31	India	Coastal
10	Essar	28	234,214	8,364	22.61	India	Coastal

However, the tonnage shrinks substantially to 14mn DWT and 392 ships if only ocean-going vessels above the size of 10,000 DWT are considered. Of this, almost 5.3mn DWT and 133 vessels belong to SCI, which is undergoing divestment. Many vessels of the fleet listed above are flagged outside India or controlled overseas. Apart from above, sizeable Indian-controlled tonnage is either flagged out or POEM of vessels is outside India.

- **Analysis of Ship Registration and Indian Flag – Issues and Incentives**

Three acts govern the registration of ships in India: Merchant Shipping Act, 1958 (MSA); Coasting Vessels Act, 1838 (CVA); and Inland Vessels Act, 1917 (IVA).

Seagoing ships not fitted with mechanical means of propulsion are registered with Mercantile Marine Department (MMD) under CVA. Mechanically propelled inland vessels, which includes dumb vessels towed by mechanically propelled vessels, are not permitted to proceed on a voyage or to be used in any service unless they are registered under IVA. Seagoing ships fitted with mechanical means of propulsion of fifteen tons net and above can be registered under Part V of MSA.

Part V of MSA and Registration of Ships Rules, 1960, regulate the registration of an Indian ship. Section 22 of MSA requires that for a vessel to be recognized as an Indian ship, she would have to be registered under MSA. Part V of MSA deals exclusively with registration of Indian ships; Part XV deals with registration of sailing vessels; and Part XVA deals with registration of fishing boats.

Ships are required to be registered only at ports designated as Ports of Registry. At present, Mumbai, Kolkata, Chennai, Cochin, Kandla, Visag, Port Blair and Mormugao have been designated as ports of registry, and Principal Officers of Mumbai, Kolkata, Chennai, Cochin and Kandla, and the surveyor in charge of Vizag, Port Blair and Mormugao have been designated as Registrars of Indian Ships. These Officers are required to maintain a complete record of ships on the register indicating the status of the ship on a particular date.

The Provisional Registration of a ship can be done on the same day as delivery is taken at any foreign port by presenting the Protocol of Delivery and Acceptance and the Bill of Sale for a ship that is built or acquired out of India by a person qualified to own an Indian ship. The owner or master of the ship would have to apply to the Indian consular officer at the port where the ship is located, or at the nearest port, for the issue of a Provisional Certificate of Indian Registry for the ship, and that officer, on production of satisfactory proof of ownership, would grant the provisional registration certificate. Such a Provisional Certificate has all the force of a certificate of registry. The Provisional Certificate is valid for six months or until the arrival of the ship at an Indian port of the registrar concerned, whichever is earlier. The final registration of the ship at a port of registry in India must be effected during the period of validity of the Provisional Certificate. Procedurally, the Registrar of Ships at the Port of Registry in India maintains a page in the Register for the provisional registration of a ship. At the Permanent Registration of the ship, the data are entered on the same page by simply replacing the word Provisional with Permanent. The serial number of the ship granted during provisional registration remains the same. The date of registry is entered in two parts: that is (i) the date of provisional registration and (ii) the date of permanent registration.

In terms of the link between ship registration and flagging, it is seen that a vessel can be registered under the flag of India only if all ten shares of the vessel are held by an Indian entity. It is mandatory that the vessel must wholly belong to an Indian individual/corporation. Joint ownerships are permitted on the condition that all the owners are Indians. While MSA does not specifically prevent an Indian vessel from flagging out, it does require an Indian flag vessel to have its POEM in India. DG, Shipping has also allowed flagging of ships owned by Indian entities outside India, which ships shall be treated in a new category of 'Indian controlled ships'.

An Indian Shipping Company (ISC) has the option to fly a foreign flag and continue its status as India-controlled tonnage only if:

- It is an India-registered shipping company
- At least 50% of its fleet is India-flagged
- Each vessel of foreign flag has at least 50% Indian crew, provided that foreign crew requirements of flag state are met
- Additional cadet / crew structured training slots for each vessel of foreign flag on India coasting and offshore fields to meet requirements of tonnage tax regime
- No negative list of foreign flags has been notified by DG Shipping
- Classification Society will be as per foreign flag state (India-flagged vessels follow the Indian Register of Shipping (IRS) which may include option of joint registration)
- Such ships are eligible for priority over non-Indian ships and are given the ROFR next in hierarchy after Indian-flagged ships.

The above conditions have proven onerous and India-controlled tonnage has not seen the anticipated growth. The issues indicated by stakeholders with Indian-flag vessels are broadly summarised below:

- India tonnage is relatively small and risk of requisition of India flag is high currently
- Restrictions on nationality of crew, mandatorily all Indian, is not viable.
- WHT on salaries of crew on Indian ships
- Higher minimum crewing standards than international norms add to the cost
- Higher relative wages, crew unions
- Uncompetitive tonnage tax regime, although tax rate though prescribed long back, per se may not be prohibitive (tonnage tax reserve fund and Indian crew/cadet training requirements are onerous)
- Financing restrictions:
 - Inadequate local funding
 - Delay in mortgage registration and type of mortgage
- Delays relating to arrest and sale of vessels and cumbersome Indian judicial system
- Flag administration needs overhaul to meet international benchmarks

• **Tonnage Tax**

A tonnage tax is a specific tax for the shipping sector that replaces a regular corporate income tax. The tax base is the net tonnage that a shipping company operates. The most common system consists of tonnage tax schemes with formulas for calculating a fictional profit, the "tonnage tax profit", on which regular corporate tax rates are applied. A different model is

applied in Greece, Cyprus, Malta, Norway and Croatia where special tax rates are applied to ships according to their tonnage such that both tax base and tax rate are different than what the regular corporate income tax would have been. Tonnage tax is levied independently of the actual accounting profits or losses from the exploitation of a vessel.

The tonnage tax has become one of the main maritime subsidy mechanisms in recent decades. While Greece has had a tonnage tax since 1957, many European countries started to introduce a tonnage tax after the Netherlands put one in place in 1996 besides other countries like Japan, South Korea and India. Most of these schemes were motivated by declining competitiveness of the domestic shipping sector, and associated decline in the number of vessels carrying the national flag. Many tonnage tax schemes aim to encourage the repatriation of parts of the shipping fleets that re-flagged to open registries or FOCs. Most tonnage tax schemes, though not all such as of Greece, are optional, so that shipping firms can choose whether they want the regular corporate tax to be applied or tonnage tax regime. Various tonnage tax schemes require firms to fly the national flag, but there are many exemptions. For example, under the EU Maritime Guidelines, shipping companies benefiting from a tonnage tax scheme must generally maintain or increase the share of EEA flag vessel in their fleet. If they do not fulfil that condition, they can no longer include non-EEA flag vessels. This “share requirement” does not apply if the shipping firm operates at least 60% of its tonnage under the flag of an EU member state. Some countries impose additional conditions, e.g. the training of seafarers. In UK, firms are only eligible for tonnage tax benefits if they meet a minimum training obligation, that is, to train or facilitate training of cadets. Some tonnage tax schemes differentiate according to environmental performance (Norway, Portugal), age of the ship (Cyprus) or ship type (Greece). Various countries without tonnage tax have other corporate tax exemptions for shipping companies.

The structuring of India’s tonnage tax scheme is apparently a key reason why India-controlled tonnage flies non-Indian-flags:

- Company opting for Tonnage Tax regime is required to credit 20% of its book profits derived from the business to the Tonnage Tax Reserve Account (section 115-VT of ITA).
- Amounts transferred to the Reserve Account cannot be distributed as dividends nor utilized for purchase of any asset outside India. Given the highly volatile market in vessel valuation, it is a major ask from ship-owning companies to lock in a share of their profits for eight years and use the funds for vessel acquisition only, within the stipulated time.
- Reserves must necessarily be utilized for purchase of ship within 8 years and such asset cannot be sold for 3 years from its purchase. This is irrespective of market conditions, priority of the company, and shareholder objectives.
- Interest income on Reserves is subject to tax as ‘other income’ under section 56 of ITA.
- Regime prescribes minimum training requirement in respect of trainee officers as specified by DG Shipping¹³ under section 115-VU of ITA.
- Non-compliance of any of the conditions results in exclusion from the regime for 10 years as per the provisions of section 115-VQ of ITA.
- Tax regime does not provide from any exemption from capital gain tax on sale of ships. This is a major additional expense for India-based owners as most commercial hubs for international shipping for complete exemption from capital gain tax.

Committee has also received feedback from stakeholders ranging from issues like perceived late registration of mortgage to total amount of mortgage which can be registered. Most owners with Indian capital with ships involved in international trade have shifted the capital and POEM outside India.

It is concluded 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 the employment of Indian seafarers. Some of the options presented by ‘international registries’ like Singapore, Danish International Register etc. may be studied. A strong, effective, proactive and responsive flag administration is sure to ensure that Indian flag is the preferred flag for vessels plying in international trade.

- **Incentives for Indian-flagged vessels**

Presently, there are two major incentives currently for Indian-flagged tonnages:

- **ROFR for Indian flag vessels for bulk import cargoes and associated freight subsidy (DGS Circular No.2 of 2021)**

In Part XIV of MSA entitled ‘Control of Indian ships and ships engaged in Coasting Trade’, the provisions of Section 406 deal with Indian ships and chartered ships to be licensed and while Section 407 deals with licensing of ships for coasting trade in India. The licence is to be granted under Section 406 by DG Shipping for taking to sea from a port or place within and outside India of Indian or other ship by a citizen of India or a company or a co-operative society, and under Section 407 to a ship other than Indian ship or a ship chartered by a citizen of India or a company or a co-operative society for engaging in coasting trade of India.¹⁴

Pursuant to above, DG Shipping promulgated ‘Shipping development Circular 02 of 2002’ on 08-11-2002. ROFR was extended to all import/export cargo though INSA. INSA was granted two working days (except for certain categories of ships where the limit is one working day) to match the lowest bid submitted by a foreign flag vessel.¹⁵ The impact of this provision on Indian shipping is discussed in detail in ship chartering section of the report.

Under the provisions of Circular No. 2 of 2021, the terms for granting license were limited to import tenders only, and chartering of vessels for export of cargo from India was exempted from licensing. Thus, an Indian-flagged vessel has ROFR within a price band of 20 percent, to match the L1 bidder in an international import tender by any importer in India. There are provisions for Indian-owned Indian-flagged vessel and for Indian-built vessels for priority.¹⁶

There is a further incentive for Indian-flag vessels bidding for PSU cargoes in the form of subsidy ranging from 5 per cent to 15 per cent depending on the age of the vessel and the difference between the quotes by L1 and eligible Indian ships during the bid process. The total subsidy over five years is estimated to be INR 1,624 crore. The impact of this provision is discussed in the ship chartering (public sector) section of the Report.

- **Reservation of Coastal Cargo for India-flagged tonnage and Cabotage**

Ministry of Ports, Shipping, and Waterways has vide its various policies, been seeking to encourage the use of Indian-flagged vessels.

As per India's cabotage policy, only Indian-flagged vessels or vessels chartered by an Indian person (i.e. citizen/ company/ co-operative society) operating under a valid license, issued by DG, Shipping under Section 406 or 407 of MSA as the case may be, can carry, *inter alia*, cargo or passengers from one Indian port to another. Foreign-flagged vessels are permitted to carry cargo or passengers only if (i) Indian-flagged vessels of similar specifications are not available, or (ii) if such Indian-flagged vessels of similar specifications, though available, cannot match the price at which the foreign-flagged vessel is available. The license is generally granted for a period of 2-3 years and has to be renewed thereafter.

Before an application for Section 406/407 License is made by an Indian charterer of a foreign flagged vessel, it must be established that no Indian-flag vessel which can meet the specifications and freight of the foreign-flag vessel seeking the license, is available. If an Indian vessel of the same specifications and freight is available for chartering purposes, then the Indian charterer cannot charter a foreign-flag vessel. SDC Circular No. 2 of 2002 provides for ROFR for Indian-flag vessels for all coastal cargoes controlled by both PSUs and private sector companies.

In order to encourage flagging in India and promote the Make-in-India initiative, ROFR for chartering of vessels in open/global tenders, is exercised in the following order, in compliance with DG Shipping's guidelines:

- (i) Indian-built, Indian-flagged and Indian-owned
- (ii) Foreign-built, Indian-flagged and Indian-owned
- (iii) Indian-built, foreign-flagged and foreign-owned.

Provided that all vessels flying the flag of India (i.e., registered in India) up to the date of issue of new circular by DG Shipping, shall be deemed to be Indian-built vessels and will fall in the first category above.

However, in 2018, three General Orders were issued permitting foreign-flag vessels (a) to transport export-import laden containers as well as empty containers, (b) for movement of agriculture, horticulture, fisheries, and animal husbandry commodities, and (c) for movement of fertilizers between two or more Indian ports along the coast without a licence or ROFR to Indian container ships. The objective was to reduce transshipment of India's export-import containers through Colombo port, reduce freight costs for Indian industry, exporters and importers, and increase coastal shipping, while also promoting India's agriculture sector.

In terms of the directions of change, the Draft Merchant Shipping Bill, 2020 uploaded for comments of stakeholders, reveals that in order to promote the use of Indian vessels, it is proposed to widen the eligibility criteria for ownership of Indian-flagged vessels and permit dual-flagging, by permitting registration of vessels chartered on bareboat-cum-demise basis. Moreover, the Draft Bill, proposes to do away with the requirement of procuring a chartering license for Indian-flagged vessel altogether. However, revisions to the Bill are being drafted.

Among the issues which make the Indian-flag uncompetitive for international trade, it is seen that there are only four categories of vessels predominantly register under Indian-flag;

- PSU-controlled
- India-listed and funded in India with heavy dependence on PSU cargoes / ROFR

- Heavy dependence on coastal cargoes
- Foreign-owned and purposely flagged to be on long-term charter with oil PSUs. This category has especially seen noticeable activity off late, with companies opening office in India in order to comply with the requirements of India-flag. Their vessels are placed on long-term charter to Indian oil PSUs for coastal or ‘shuttle model’ of international trade/ liftings thereby ruling out the possibility of any other Indian-flag vessel exercising ROFR against their time-chartered oil tonnage. [This is elaborated in the PSU chartering section of the Report.]

Thus, a very small percentage of Indian-flagged vessels and those with POEM in India participate in global cross trades and trade not controlled by Indian entities. Majority of Indian-flag tonnage and those with POEM in India are engaged in coastal trade, port, offshore field activities, dredging or related brown-water activities. For the Indian economy to truly benefit from shipping and be recognized as a major player in global shipping, it is vital that Indian-flagged ships, and more importantly, ships with POEM in India, prominently and predominately participate in international trades. **A ‘blue water’ merchant fleet controlled by India is an economic imperative.**

It would appear evident that the current incentives have not succeeded in their objective of attracting tonnage to the Indian-flag in any meaningful manner. The restrictions on chartering by Indian entities could be harming the Indian economy by deterring them from grasping the opportunities to trade freely in an open market to obtain the best freight and manage their freight risks. **The answer for Indian-flag lies in engendering a strong proactive, commercially-oriented flag management and putting in place a flag regime that provides a competitive tonnage tax regime while also providing optionality to owners on a range of issues like crewing, class etc.** The measures suggested for building Indian-Flag brand-consciousness in this Report also refer in this regard.

4.3. Ship Chartering

As noted in the section on historical perspectives of Indian shipping, ship chartering in India was mostly controlled by Transchart till the liberalization of imports in 1991-92. However, PSUs continued to be tied up with Transchart till the organization was abolished in 2015 and the control for chartering was handed over to respective PSUs.

Both PSUs and private sector undertakings needed to submit a range of documents to RBI for obtaining permission for effecting remittances. More often than not, this led to delays in remittance of freight / charter hire payments from India, with resulting denting of image of performance efficiencies of Indian charterers. Besides, it added a layer of needless scrutiny.

- **Private Sector**

A major incentive provided to Indian-Flag vide Circular No. 02 of 2002 of DG Shipping, mandates ROFR to INSA through licensing of all foreign-flag vessels chartered by any Indian entity. The Circular allows up to two working days to INSA to revert with either declining the cargo or offering matching freight with Indian flagged tonnage.

Commercial shipping is a highly-networked fast-paced business. Tramp-shipping, both dry and tankers, operate through brokers worldwide who connect ship owners with charterers.

Often, the best freight is obtained at the very last minute and just before the weekends, as vessels which are still not fixed for cargoes tend to compromise on rates at that time. The inability of Indian entities to confirm vessels at such short notice without approvals from DG Shipping/ INSA had a definite effect on their ability to obtain the best freight from markets.

This was realized early by shipping desks of Indian traders. The first migration of chartering business to overseas jurisdictions was seen in mid-1990s. By setting up a WoS in Dubai or Singapore and setting up a chartering desk there, traders were able to avoid both requirements of DG Shipping/ INSA approval and of RBI procedures for remittances of hire/ freight/ demurrage/ settlement, uncertainties and delays from which affected their market reputation. Indian companies based overseas slowly established themselves as 'reputed' charterers, while those still chartering out of India, although experienced and skilled, continued to suffer from delays. During the iron ore boom of 2004-05, most of the Indian iron ore traders also relocated their offices outside India in order to circumvent the onerous chartering requirement.

Promulgation of FEMA in 1999 eased the requirement for documents for remittance of freight and hire payments, but by then Dubai and Singapore had already established competing shipping hubs, replete with the complete eco system of brokers, lawyers, financiers and other players needed to charter vessels. Subsequent DG circulars removed the requirement of DG Shipping/ INSA approval for exports by Indian entities, but it was perhaps a case of 'too little-too late' for Indian shipping.

As on date, there are few India-based private charterers, mostly from end-user industry engaged in coastal trade or in meeting in-house international trade requirements. Almost without exception, these entities charter only on voyage basis and use the 'reverse auction method' of electronic evaluation of bids. Many of them have POEM in India but contractually nominate an entity in Singapore or Dubai for ease of doing business and transactions.

- **Public sector**

While the export sector has been liberalized, import of bulk commodities by PSUs still require providing ROFR to Indian-flag vessels and up to 20% price preference. Globally, national PSUs, especially oil sector companies, have maintained strong presence in shipping.¹⁷

As seen earlier in Indian tonnage section, oil PSU tenders are extremely lucrative for older tonnages, as vessels classed with IRS cannot be rejected on the criteria of age. This has opened an avenue for shipping companies to flag their old tankers in Indian-flag and place them on long-term charter on cost-plus basis to Indian oil PSUs. The cost of maintaining an establishment in India, cost of Indian-flag and their margins are all in built in the charter rate to oil PSUs, effectively resulting in oil companies paying for these added costs.

The oil companies need to have some tonnage under their control for effective international lifting and coastal trade, but if they take non-Indian flag on charter, they can either be left idle and unable to lift their own cargo if an Indian flag vessel was to bid for the cargo, or be completely removed from coastal trade if an Indian flagged vessel was to bid for coastal cargoes. Thus, Indian oil PSUs are willy-nilly forced to pay the additional cost in order to maintain a fleet of Indian-flag vessels to avoid their time-chartered vessels losing out under ROFR to Indian-flagged tonnage. Evaluating the data of tenders floated by a major oil PSU for the last two years shows that Indian-flagged fixtures could be awarded in about 20% of

the cases, of which half were direct fixtures and the other half on ROFR basis, that is, ROFR served only 10% of total tendered fixtures. When a tender in which the bid was matched under ROFR was examined, the final freight rate determined under ROFR by Indian-flag vessel was 35% higher than that of the foreign-flagged L1. In another case, the freight rate bid, unmatched under ROFR, was 42% higher than the foreign-flagged L1. These signal the extent of additional freight costs for crude oil, which would be passed on to the manufacturing and consuming economic segments of India.

As we have seen earlier, managing freight for a large company is a complex mix of owned, time chartered, spot-chartered tonnage, aided by freight and bunker derivatives to create an effective hedge. However, given the current restrictions on the length of time charter for a PSU (3 years) and the restriction of chartering India flag vessels, PSUs resort to simple spot voyage charter for a majority of their import requirement.

Given the volumes of both dry bulk and liquid cargoes moved by PSUs, it is critical that they strengthen the value chain by including long-term charters for global operations and ship-owning. It has been argued that Indian oil companies are not ‘traders’ but ‘refiners’ and ‘distributors’, but given the lack of any major assets, Indian oil PSUs have to be look at as traders with a single captive market. PSUs should ideally enter into long-term offtake agreements with producer companies and develop the capability to ship worldwide in order to fulfil the lifting commitments. An example is British Petroleum, which has shipping expertise to manage and ship global liftings on the strength of its shipping presence.¹⁸ A similar trend is noticed in companies involved in the steel sector overseas.

PSUs also face another hurdle to effectively manage their shipping expenses. As a part of its policy to promote control of shipping, the government has correctly provided guidelines for PSUs to sell on C&F and buy on FOB, whenever possible. By buying on FOB basis for imports, the Indian PSU effectively controls the freight and can benefit from it.

However, it is equally possible that sometime, the seller of goods has better ship arrangement, or a long-term chartered or owned vessel provides better shipping terms. In such an event, for contracting the shipments on C&F basis, the PSU is required to obtain two waivers – one from the administrative ministry concerned and another from the shipping ministry. Given that the person in the system likely to know most about market conditions and rates offered is the freight desk of the PSU, this creates unnecessary procedural delays for the PSU to act quickly and in a commercial manner. For PSUs to effectively move up the shipping value chain, it is important for them to develop various commercial and technical expertise related to commercial shipping. Interface with global shipping is also important, as is the ability to network extensively with brokers, ship owners and other participants in shipping value chain. Given that GIFT IFSC is envisaged as a hub for maritime activities, it would be beneficial for PSUs to shift their chartering activity to a ‘freight desk’ office at GIFT city. This will also facilitate time chartering of vessels and ship acquisitions planned by PSUs.

- **Indian coastal trades**

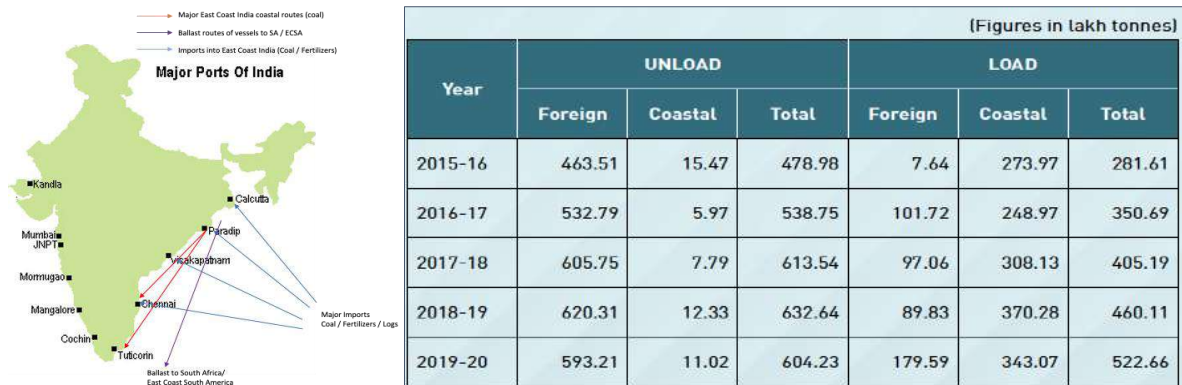
Coastal cargo, both by private sector entities and PSUs, is reserved for Indian-flagged vessels. The shipping development circular 02 of 2002 sets out the procedure for obtaining a ‘coastal license’ when Indian-flagged ships are unable to perform the coastal business.

As with license for chartering of import cargo, the procedure for obtaining the license is time consuming. Two working days are to be provided for INSA to confirm non-availability of Indian tonnage, after which DG Shipping issues the coastal license. Further, the best deals in bulk spot shipping markets are obtained when owners are under pressure to fix – typically on weekends or after vessels have completed cargo operations. Here, speedy decisions would lead to obtaining an optimal rate.

Many PSUs, like oil companies, charter Indian-flag vessels on long term basis to cover their coastal requirement, preferring to pay for ballast leg to the load port (which effectively doubles the freight cost) rather than charter on spot basis.

A good example of how the industry pays more for coastal cargoes is Paradip Port, which is a major loading area for coastal bulk cargoes, with movement of iron ore and coal along the west and east coasts in India. In 2020, the port handled over 35mn tons of coastal cargo. Paradip is also a major port for import of coal and fertilizers. There are many ports near Paradip which are also major import hubs, including Chittagong in Bangladesh. Given that large number of vessels are available near the port, availability of vessels should not be an issue. However, due to the delays associated with fixing a coastal vessel, most of these vessels ballast out to South Africa or east coast South America (during grain-loading season), ignoring the short coastal run which is actually in their ballast leg. This is typically because the tonnage is not able to get the approvals in time.

Figure 23: Paradip Part: International and Coastal Cargoes



Cabotage laws are commonplace and found in some 40 countries – a figure revised later from 91 countries – by the International Transport Workers’ Federation (ITWF) Task Force in its 2018 Report on Cabotage Laws of the World. The laws are geared towards protecting local shipping industries, ensuring the retention of skilled maritime workers, preserving maritime knowledge and technology, promoting safety, and bolstering national security. Many definitions of cabotage exist currently at national, regional and international levels alongside both restrictions of foreign activity and their waivers in domestic coastal trades.

Globally, coastal cargoes account for 12-15 percent of domestic cargoes. In India, with 160mn metric tonnes, it is only 7 percent. There is an urgent need to increase available tonnage for coastal trade and also reduce its freight cost, which is also higher on account of levying of import duty on bunkers besides running segments on ballast. Thus, this can readily be achieved by enabling India-IFSC tonnage, which stands with investments in Indian

tonnage ownership and/or chartering from India-offshore, to participate in coasting, port and offshore field activities without discrimination and at par with DTA tonnage.

4.4. Ship Operating

With technological innovations and availability of capital, a new class of players emerged in shipping. These were ‘ship operators’, equivalent of non-vessel owning cargo carriers (NVOCCs) in container trade. Just as NVOCCs don’t own containers and ships but lease them for carriage of goods contracted by them, ship-operators lease ships to carry the bulk cargoes contracted by them. The owners provide the ship and crew, while the ship-operator as the charterer pays for all voyage-related expenses and pays a daily hire for the time for which the ship is hired.

Figure 24: Ship Operator: Comparative costs by Charter Type

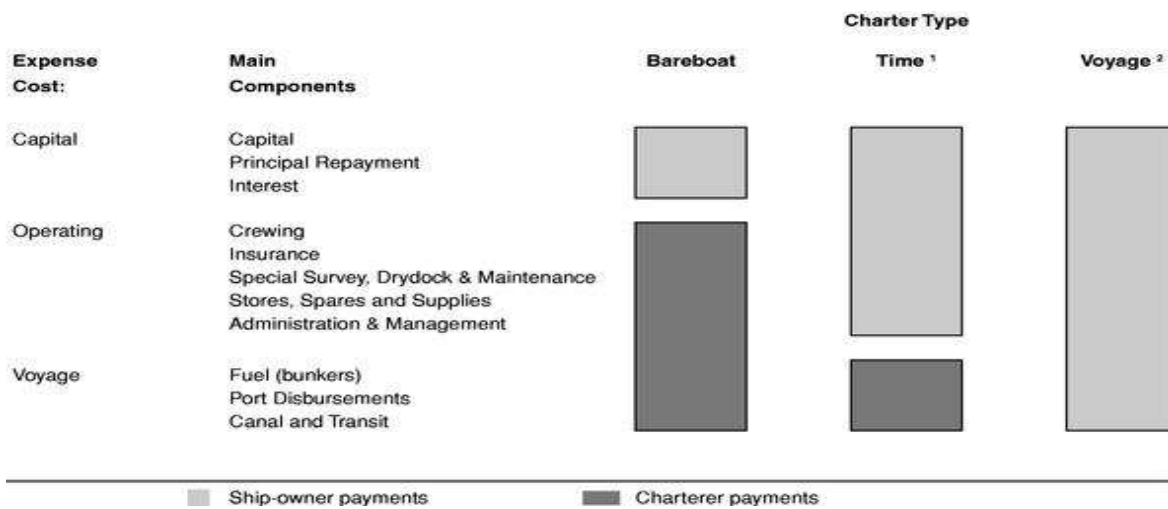
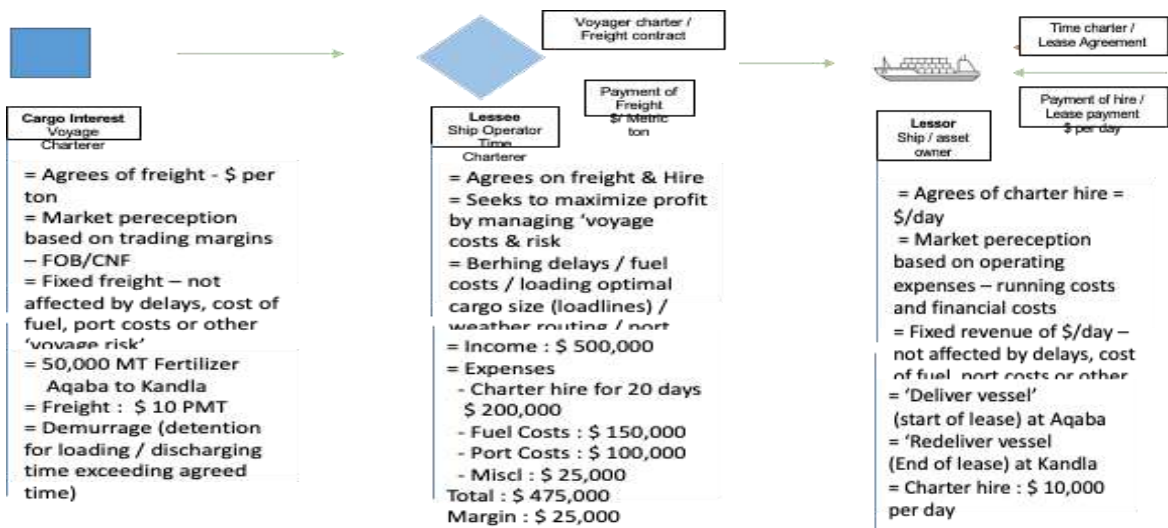


Figure 25: Ship Operator: Comparative costs by various elements of Charter Type



In this example,

- A ship operator ‘books’ a cargo of 50,000 mt of fertilizers from Aqaba to Kandla at USD 10 per metric ton, with total income of USD 500,000.

- He then ‘charters’ a vessel from a vessel owner for ‘one-trip charter’ from Aqaba to Kandla at USD 10,000 per day. Given that total duration including loading-unloading will be 20 days, his total expense on charter hire is USD 200,000.
- He has procured bunkers (fuel) at total fuel cost of USD 150,000 and port charges (both ports) will be USD 100,000. With USD 25,000 miscellaneous expenses, his total expenses including hire payment is USD 475,000, affording him a profit margin of USD 25,000.

Ship operators usually also ‘book’ cargoes forward and later ‘fix’ vessels in order to perform the contract (‘short’ on tonnage). They may also take vessels on long-term charter and fix cargoes for multiple shipments (Contract of Affreightment, CoA). On larger-sized vessels, there is an active market in freight derivatives based on indices of the Baltic Exchange, and many operators actively trade in paper as a part of their business. Most large ship-owners now maintain an active ‘ship operating’ desk, as do many commodity-trading firms.

Globally, commodity-trading has been the main foundation for growth of ship operating. Ship operators working in freight desk of trading firms slowly moved out to venture into their own operations to serve multiple clients and the ship operator industry was born in mid-1980s in South Korea, Japan and many other Asian countries.

In India, ship leasing could not evolve naturally due to canalization of bulk cargoes through government entities like Transchart. From 1959 till it was abolished in 2015, Transchart did not lease any vessel except for specialised tonnages. All vessels were fixed on ‘voyage charter’ using ‘L1’ system of tendering. This system is similar to one adopted by IOC and other oil and non-oil PSUs after the control of chartering was handed over to them in 2015.

Pure Indian ship-operators made their first appearance during the credit boom of 2004-05, when high commodity prices placed excess liquidity in the hands of Indian shippers and suppliers. Many Indian intermediaries, like stevedoring companies and cargo consolidators, moved into ship leasing as pure ship operators. Since the chartering desks of most trading houses had already shifted out to Dubai or Singapore, the operators followed them there, further strengthening the clusters. These hubs were quick to develop local financing and other incentives, hastening the flow of shipping entities from India to these hubs.

The situation is further complicated as legally, there is no clarification on treatment of charter hire for the purposes of WHT. While other global hubs specifically exclude payment of charter hire from WHT, the charter hire payable from India is subject to a WHT and in effect means a tax on turnover of ship operator.

An eco-system which supports ship operating needs to be created, as operators are the basic seed of innovation which further leads to ship owning and creation of related value chain. Ship operating develops skill sets based on keen understanding of shipping markets, valuation, trade routes, technical parameters, etc., which can be scaled up to enable ship finance, management, ship-building and other related high-end activities. It is proposed to provide exemption from WHT on payment of charter hire from India-IFSC to foreign ship-owners. In addition, there is a need to enable financing for ship operators, where advances against freight receivables for contracts with approved clients is available.

4.5. Ship-building

- **Global Scenario**

According to the latest IHS Markit Maritime & Trade newbuilding data, Chinese shipbuilders picked up the lion's share of **shipbuilding** contracts amounting to about 68% of gross tonnage (GT) of all new orders in China in Q3-2021. Fuelled by rising demand, the bulk of these new orders are for container-ships and also amount to 50% of global new orders.

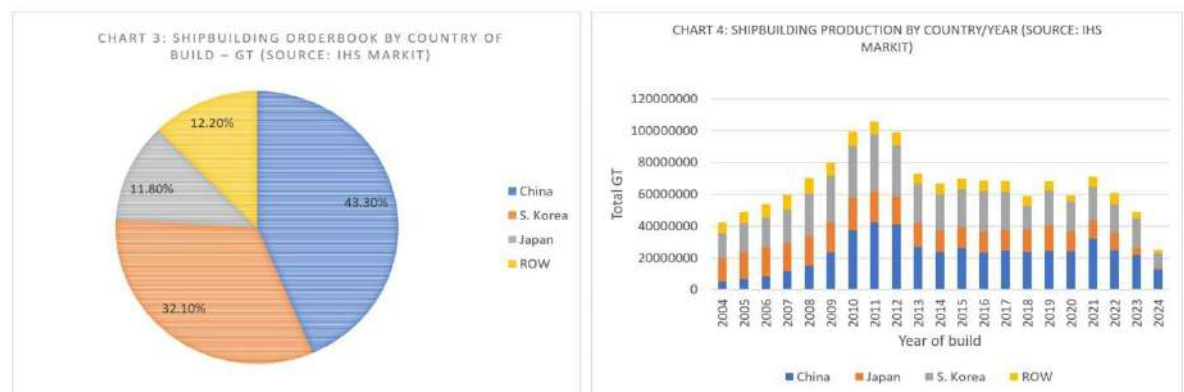
Driven by an exceptional container shipping market which is driving record margins for liner operators, and a requirement for more efficient and less polluting vessels, China and South Korea have been the main beneficiaries of liner shipping order boom. Chinese shipbuilders are also understood to be offering particularly attractive payment terms and financial packages supported by state-owned banks.

In Japan, Nihon Shipbuilding (a joint venture of Imabari Shipbuilding and JMU) picked up orders for a handful of 12,000 teu and 14,000 teu vessels for operations with Ocean Network Express during Q1-2021. However, since then no new box-ship orders have been recorded in Japan. Moreover, having run down a significant amount of shipbuilding capacity in the past decade due to Government policy, Japan's ability to attract major orders now appears limited. The only other significant builder of containerships is currently CSBC Corp of Chinese Taipei which has 4 x 3,000 teu ships on order building for its own account or for resale.

Figure 26: New Ship Orders and Demand for Containerships



Figure 27: China is the world leader in ship-building



China has strengthened its position as the leading shipbuilding nation. It currently has a 43.3% share of the global orderbook, having held the number one spot continuously since 2017. In 2020, China produced 41% of the world's ships by GT with this figure expected to rise to 45% for 2021.

Containerships now make up about 33% of the current orderbook, followed by dry cargo (bulk carrier and general cargo) sector at 22%, tankers at 16.8%, and gas sector (LNG and LPG) at 12.3%. Whilst the cruise and ferry sector presently make up 6.3% of the orderbook this is likely to *reduce* as cancellations of cruise vessels work their way through the system. Meanwhile, the offshore sector comprises 4.6%, ro-ro cargo and PCTC 1.7%, with all other sectors making up 2.7% of the orderbook.

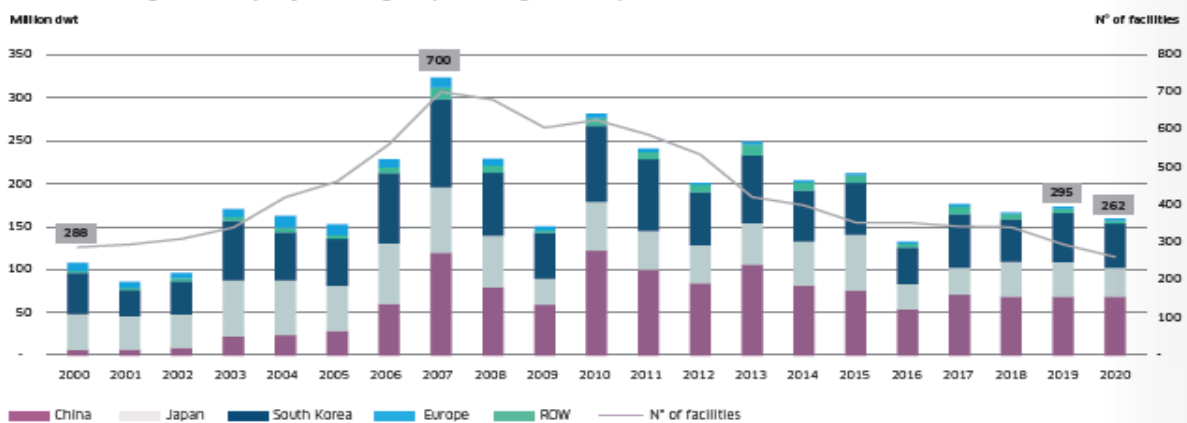
Figure 28: Ship-building Orderbook by Shipping Sectors



Figure 29: Ship-Deliveries in China, South Korea and Japan and Facilities in ROW

Deliveries (million dwt)	2009	2013	2014	2015	2016	2017	2018	2019	2020
China	36.5	43.1	36.0	38.4	36.0	38.7	34.8	36.3	38.1
South Korea	42.9	33.4	24.5	29.2	35.9	30.8	19.0	32.4	24.8
Japan	29.2	25.0	22.4	21.1	21.6	20.2	20.1	24.6	22.5

Active building facilities per year & region (excluding offshore)



Source: BRS Review of Shipbuilding 2021

Increasing demand for containerships are allowing shipyards to increase their contract prices and at least provide an improvement in margins which have been historically low since the fallout from the global financial crisis. Nevertheless, contract prices are still only slightly above those seen during the previous bull market of 2006-08. In addition, recent increases in

steel plate prices, equipment and skilled shipbuilding labour shortages are likely to put further pressure on the global shipbuilding industry.

- **Indian Scenario**

Indian shipbuilding industry suffers from lack of infrastructure and capacity. Within the three shipyards in the public sector, the dry-dock at Cochin Shipyard currently possesses maximum ship-building capacity of approximately 1,10,000 DWT. This will be enhanced to approximately 2,00,000 DWT when the new dry-dock at CSL is commissioned (likely by December 2022). Another four public yards are under Department of Defence Production, all mostly dependent on orders from the Indian Navy, Coastguard and the government.

Figure 30: Ship-building Capacity in India, Company-wise, DWT in thousand MT.

S. No. (1)	Name of The Company (2)	2016-17 (3)	2017-18 (4)	2018-19 (5)	2019-20 (6)
A. PUBLIC SECTOR					
1	Alcock Ashdown (Gujarat) Ltd. @	15.00	15.00	15.00	
2	Cochin Shipyard Ltd.	110.00	110.00	110.00	110.00
3	Garden Reach Shipbuilders & Engineers Ltd.	0.22	-	-	-
4	Goa Shipyard Ltd.	4.50	4.50	4.50	4.50
5	Hindustan Shipyard Ltd.	80.00	80.00	80.00	80.00
6	Hooghly Dock & Port Engineers Ltd.	3.00	3.00	3.00	3.00
7	Mazagaon Dock Shipbuilders Ltd.	**	40.00	40.00	40.00
8	Shalimar Works Ltd.	0.05	0.50	0.50	1.20
B. PRIVATE SECTOR					
9	ABG Shipyard Ltd. @	120.00	120.00		
10	A.C.Roy & Co. Ltd.	1.50	1.50	1.50	1.50
11	A.S. Moloobhoy Pvt. Ltd. @	-	-	-	
12	Bharati Defence & Infrastructure Ltd. @	70.00	70.00		
13	Bristol Boats Pvt. Ltd.	0.05	0.05	0.05	0.05
14	Chidambaram Shipcare Pvt. Ltd.	N.A	N.A	N.A	N.A
15	Chowgule & Co. Pvt. Ltd.	8.00	8.00	8.00	12.00
16	Dempo Shipbuilding and Engineering Pvt. Ltd.	5.50	4.50	4.50	4.50
17	Ferromar Shipping Pvt. Ltd.	2.00	2.00	2.50	2.50
18	Homa Engineering Works	N.A	N.A	N.A	N.A
19	JITF Shipyard Ltd	N.A	N.A	N.A	N.A
20	L&T Shipbuilding Ltd.	*	*	*	*
21	Mandovi Dry Docks		4.50	5.10	5.10
22	Marine Care 'N' Associates				-
23	Marine Frontiers Pvt. Ltd.			0.12	0.12
24	Modest Infrastructure Pvt. Ltd.	3.50	3.50	3.50	3.50
25	N N Shipbuilders And Engineers Pvt Ltd ***	N.A	N.A	N.A	N.A
26	Reliance Naval and Engineering Ltd. @	400.00	400.00	400.00	
27	San Marine				8.22
28	Sea Blue Shipyard Ltd.				0.34
29	Sembmarine Kakinada Ltd.***	50.00	50.00	50.00	50.00
30	Shoft Shipyard Pvt. Ltd.		2.35	2.35	2.35
31	Tebma Shipyards Ltd.	12.00	12.00	5.00	5.00
32	Timblo Drydocks Pvt. Ltd.		7.50	7.50	5.40
33	Titagarh Wagons Ltd.			8.00	8.00
34	Vijai Marine Shipyards		2.90	2.90	2.90
35	West Coast Shipyard Ltd.***			2.20	2.20

Source: Statistics of India's Ship-building & Ship Repair industry 2019-20, Ministry of Ports, Shipping & Waterways, Transport Research Wing

Private sector shipyards can build vessels up to cape size vessels comparable to some of the leading shipyards in the world. Reliance Naval Engineering Ltd. can build vessels up to

400,000 DWT and L&T Shipbuilding, Kattupalli up to 300,000 DWT, which includes large LNG Carriers. Smaller size LNG Carriers, Dredgers and other specialized vessels can be built by other shipyards also in the private sector, such as Shoft Shipyard, Chowgule & Co., Vijai Marine Shipyard, Mandovi Dry Docks, A.C. Roy & Co., Dempo Shipbuilding, etc.

At about 30,000 mt. dwt, the tonnage delivered by these yards in 2019-20 is quite insignificant. The yard orderbook is also low at 118,000 mt. dwt. While adverse market conditions are certainly to be partly blamed for the low performance, it is accepted generally that worker productivity in Indian yards is lower than global standards. There are also issues around import of ship parts and delays in clearances. Till complete ‘shipyard clusters’ are created, import of ship parts for construction needs to be fast tracked to match timelines for accelerated and upscaled shipbuilding in India.

Government has incentivized shipbuilding in India with several supporting policies, notably:

- Support for Indian shipyards for contracts signed during a ten-year period, viz. 2016-2026 under the Shipbuilding Financial Assistance Policy, 2016.
- Settlement of subsidy claims for executed shipbuilding contracts under the old shipbuilding subsidy scheme, 2002-2007, by extending the timeline and budgetary support beyond 31.03.2014 for release of committed liability of shipbuilding subsidy in financial years 2019-20, 2020-21 and 2021-22.
- All Government departments or agencies including CPSUs have to provide ROFR to Indian shipyards while procuring or repairing vessels meant for Governmental or own use till 2025, after which all such vessels will be procured only from Indian shipyards.
- Notified an updated Harmonized Master List of Infrastructure Sub-Sectors to include a new sub-sector “shipyards” under “Transport”, defined to cover floating or land-based facility having requisite facilities for carrying on shipbuilding/ repair/ breaking activities. Infrastructure status would enable Indian shipyards to avail cheaper long-term source of capital and reduce cost disadvantage and invest in capacity expansion.
- Notification No.1 of August 2018 of Make-in-India spells out minimum local content in shipbuilding with the aim of supporting local manufacturers of shipbuilding parts.
- A dedicated ‘shipbuilding policy’ has also been announced by Government of Gujarat¹⁹ to encourage creation of shipbuilding clusters in the state.

These initiatives are likely to bring dividends to the Indian ship-building industry in the near future, and can be dovetailed well with ship lease financing activities from India IFSC.

There is currently a shortage of skilled labour in the shipbuilding industry. Yards in Japan are being priced out due to high labour costs and Japanese yards have now started investing in countries like Vietnam to keep costs down. There is a good opportunity to capture this large capital investment from Japanese yards and also learn global best practices, especially for manpower management, once they set up in India.

Perhaps the weakest link in the entire chain is the market connect of Indian yards. Aggressive marketing and network development with industry end-users would help generate long-term trust and business prospects. Japanese, Korean and Chinese yards have long-term relationships with their clients, which are carefully nurtured by them. Each yard has a strong

marketing team and use a large network of project brokers and intermediaries to keep abreast of opportunities. Project brokers have the necessary expertise to guide the yards and structure transactions. It is important for Indian yards to establish themselves in the world markets and develop close relationships with potential clients and intermediaries. A case in point is the recent order won by Chowgule Shipyard of Goa.

Figure 31: Ships Deliveries and Orderbook by Type of Vessel

Table No. 4 : Size and Number of Ships Delivered					Table- 3: Current Order Book By Types of Vessels as on 31 st March, 2020 (*000 DWT)							
Name of Companies	Ships Delivered				Type Yards	Vessel	Tankers	Dry Cargo	Bulk Cargo	Passengers	Others	Total
	2018-19		2019-20									
	No.	DWT(*000)	No.	DWT(*000)								
(1)	(2)	(3)	(4)	(5)	No.	3	0	4	6	115	128	
A. PUBLIC SECTOR (Total)	17	3.31	27	2.54	Public Sector	DWT	0.86	0	32.00	11.18	25.25	69.29
					No.	5	4	2	6	104	121	
					Private Sector	DWT	5.51	16.88	11.42	0.33	14.87	49.01
B. PRIVATE SECTOR (Total)	24	21.46	51	28.72	Total	No.	8	4	6	12	219	249
					Total	DWT	6.37	16.88	43.42	11.51	40.12	118.30

Source: Statistics of India's Ship-building & Ship Repair industry 2019-20, Ministry of Ports, Shipping & Waterways, Transport Research Wing

To summarize, Indian-built and Indian-flagged vessels are being incentivised and given preference over foreign-flagged and/or foreign-built vessels. This in turn is intended to have the effect of promoting Indian-built as well as Indian-flagged vessels by giving them a relatively high priority for the grant of ROFR as compared to foreign vessels. This would be especially beneficial when it comes to long-term charters with PSUs, viz. IOC, BPL and HPCL, who largely operate through tender mechanism for chartering of vessels for their projects. This move is also in furtherance of the Make-in-India initiative in order to promote ship-building in India. Cochin Shipyard Limited has recently built an 8,000 mt. cargo vessel for JSW Shipping & Logistics (JSW), and managed to launch five vessels at one go including three Floating Border Outpost Vessels for Border Security Force.

It is expected that the triumvirate of regulatory ease and lower tax burden in leasing ships from India-IFSC, facilities and ease of doing business by units set up in SEZ GIFT-City, and the marine ecosystem of Gujarat Maritime Cluster will help connect the shipyards with project brokers, while also providing a range of financing options to the shipyard.

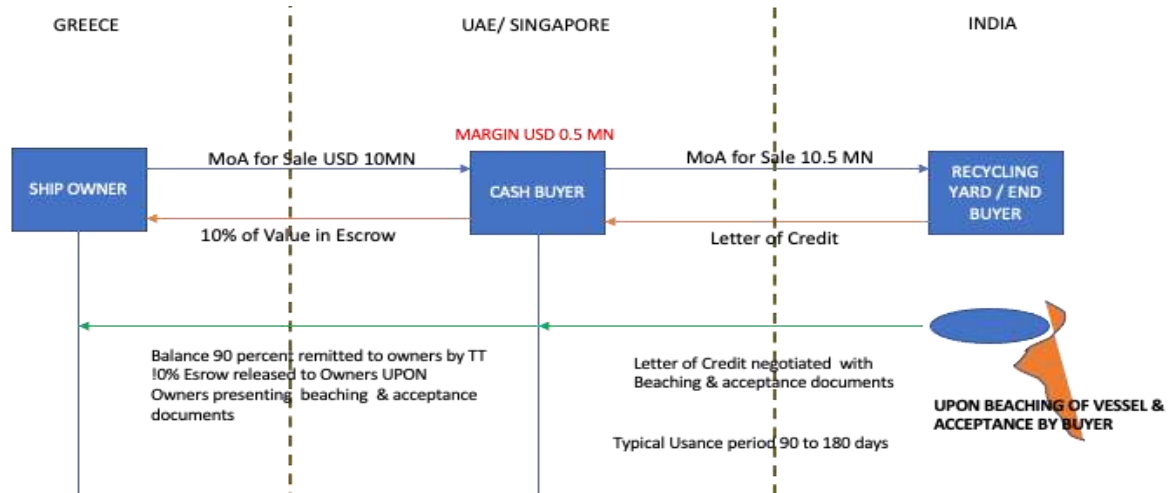
India-IFSC can also enable sale and leasing structures along the lines of JOLCOs and Chinese leasing structures, using a combination of Indian and overseas capital to fund the acquisition of the vessel by the lessor. This can be extended to ship buildings also for those opportunities in India or overseas where the ship operator / lessee requires new ships. The sale and leaseback structure can be created at India-IFSC and involve Indian shipyards for eventual use by India-IFSC controlled operators / lessors.

4.6. Ship Recycling and Repairs, Ship Breaking

When a ship or floating/offshore asset reaches the end of its economic or functioning life (generally 20 years and older), the unit is sold for recycling at one of the 5 major destinations in the world: India, Bangladesh, Pakistan, China, or Turkey. Bangladesh has the largest global

share of recycled tonnage, accounting for more than half of the ships recycled in 2019. Together with India and Turkey, these three countries represented 90.3 per cent of the ship recycling activity in 2019. Bulk carriers constituted most of the recycled tonnage (about one third), followed by container ships and oil tankers.

Figure 32: Ship Recycling: Transaction Structure



The assets are sold / purchased based on the weight of steel. This is known as a per Light Displacement Tonnage²⁰ transaction with most of the constituent parts being melted down for recycling or re-used as follows:

- Ship’s steel is cut into plates, which are re-used in steel/re-rolling mills.
- The main engine, generators, and pumps onboard are resold in the second-hand market.
- Non-ferrous metals from cables and panels are resold intact or extracted for their metals.
- Lifeboats, furniture, galley items, and various other reusables are sold to local fishermen and other surrounding communities.

A shipowner works the sale of a ship for recycling through a ship-broker who specializes in ship recycling and will market the ship to different "Cash Buyers" (i.e., companies that specialize in trading end-of-life ships) on payment of a commission (usually @ 1% of value of sale contract). The sale contract, known as Memorandum of Agreement is entered into. From a financing perspective, it is noteworthy that at no time does the broker own the ship.

Cash Buyers, an invaluable intermediary for ship-owner, have the required expertise in a specialized and a difficult market and intermediate to reduce the shipowner's risk. They purchase ships for cash with a 10 per cent escrow with owners upon signing and balance paid upon beaching and acceptance of vessel (as opposed to by Letter of Credit) and then sell them (usually at a profit) to the recycler, who normally pays the Cash Buyer with a Bank Letter of Credit²¹. The Cash Buyer takes legal ownership of the vessel (albeit for a limited time).

Completion of the sale occurs with the payment of the balance of the purchase price to the shipowner and execution of Protocol of Delivery and Acceptance between the shipowner and the Cash Buyer. Delivery takes place at the anchorage of recycling yard (reflecting a sale on a "delivered basis") or, at an agreed port or anchorage in another country (reflecting a sale on an "as-is, where-is basis"). In either case, the shipowner has to deregister the ship and obtain

a certificate from the flag State authorities showing that the ship has been deleted from their register and that there is no outstanding mortgage.

The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, is aimed at ensuring that ships, when being recycled after reaching the end of their operational lives, do not pose any unnecessary risks to human health, safety, and environment. It addresses many issues around ship recycling, including that ships sold for scrapping may contain environmentally hazardous substances such as asbestos, heavy metals, hydrocarbons, ozone-depleting substances and others. It also addresses concerns raised about the working and environmental conditions at many of the world's ship recycling locations.

In 2015, ship recycling facilities based in India voluntarily came forward to develop the infrastructure by heavily investing in recycling ships the Convention’s guidelines. Class NK was the first classification society that developed guidelines to issue Statement of Compliance (SOC) to recycling facilities. After persistent efforts, four recycling facilities in Alang, India, were issued SOC for the first time in November 2015. Classification societies like Lloyd’s Register, RINA (Italy), Indian Register of Shipping, and Bureau Veritas, came forward and developed guidelines for recycling yards to recycle ships in compliance with the Convention.

Figure 33: Ship Recycling and Number of HK Convention Compliant Yards



Source: GMS newsletter update, Week 42 of 2021.

Due to continued demand of steel and growth of countries where recycling yards are located, ship recycling prices are expected to be stable in spite of high freight market levels. Large tonnage ordered in the credit boom period, and built in 2011 to 2014, is expected to soon come up for demolition, especially with new environmental regulations likely to be enforced by 2030.

In India, in 2018-19, a total of 706 ships were repaired out of which 341 ships were repaired by private sector shipyards and 365 ships by public sector shipyards, as compared to 528 ships repaired in 2017-18. However, the COVID-19 pandemic has disrupted almost every area of the shipping industry, after a promising 2019, with yard closures, logistical challenges and delay in surveys. It is also true that due to the structure of ship recycling industry and involvement of cash buyers, the commercial aspect of ship recycling industry did not fully develop in India. While Alang has now become one of the largest ship recycling yards in the world, the recycling companies in India are tied up with only a few cash buyers, predominantly in Dubai and Singapore. Two of the worlds’ largest cash buyers, controlled by persons of Indian origin are based in Dubai and Singapore respectively.

India-IFSC can play an important role in bringing the cash buyer industry to India. As FEMA is not applicable and with specific tax holidays for IFSC entities, cash buyers will find it easier to be closer to assets and breaking yards. India-IFSC would also need to ensure that IBUs of banks in GIFT City are geared up to serve this opportunity and aggressively market with cash buyers to transit their business from overseas hubs to GIFT-City. As many cash buyers are now actively owning vessels for longer duration of time before scrapping, the comprehensive eco system at IFSC-GIFT City which includes ship owning, will be a major factor in their decision to have a presence.

4.7. Ship management – Crewing/Technical & Indian Crewing

China, the Philippines, Indonesia, the Russian Federation and Ukraine are estimated to be the five largest supply countries for all seafarers (officers and ratings). The Philippines is the biggest supplier of ratings, followed by China, Indonesia, the Russian Federation and Ukraine. China is the biggest supplier of officers, followed by the Philippines, India, Indonesia and the Russian Federation. The inadequacy of private traders and user-industry in the shipping value chain has had a major impact on skilling of Indian manpower. Skillset, like time-chartering, vessel operating, etc. hardly developed in India. It was not till 1995, when Indian trading companies moved out of India, that Indian industry ventured into leasing.

The new *Seafarer Workforce Report* from BIMCO and International Chamber of Shipping cautions that the industry must significantly increase training and recruitment levels if it is to avoid a serious shortage in the total supply of officers by 2026. Given growing demand for Standards of Training Certification and Watchkeeping (STCW)-certified officers, the Report finds that 1.89m seafarers currently serve the world merchant fleet, operating over 74,000 vessels around the globe, but that there will be a need for an additional 89,510 officers by 2026 to operate the world's merchant fleet.

Although there has been a 10.8% increase in the supply of officers since 2015, the current 2021 shortfall of 26,240 STCW certified officers could be due to a reported increase in officers needed on board vessels, with an average of 1.4 officers required per berth. In addition, some officer categories are in especially short supply, notably, officers with technical experience especially at Management Level, and of Management Level Deck Officers in the tanker and offshore sectors. It has also been reported that in the past five years the industry has made progress in reducing officer turnover rates from 8% to 6%, retaining qualified seafarers and increasing the number of years that they serve at sea.

Globally, technical Manager and crewing agencies can be classified in three distinct categories: (a) global technical managers and crewing managers, are large companies with global presence which offer their clients a range of crewing options, and have training academies in the country from where they source crew. They are instrumental in promoting crewing from a particular nation and have long-term relationships with their clients who are shipowners with crewing requirements; (b) regional technical managers, have presence in more than one territory, but without the reach and scale of global technical managers, and (c) local technical managers and crewing agencies, typically have presence only in a single nation, and service a very few exclusive clients.

In India, the crewing agencies are registered by DG Shipping and are issued a Registration and Placement Service License (RPSL), which is issued by an approved classification society.

India-IFSC can provide an ideal platform for global and regional technical managers to establish their offices for technical management, crew recruitment and training. During stakeholder interactions, the issue of enabling a ‘client escrow’ was raised. Funds are received from clients for disbursement of ships’ expenses at regular intervals by managing companies. The accounts are prepared periodically and reconciled with what has been paid by the client. However, there are some issues with tax treatment of arrangement and most companies use offshore accounts to disburse funds received from clients. India-IFSC can enable the ready management of such funds and ensure quick disbursement and efficient banking services for the companies. It has also been proposed that leasing of training aids should be enabled.

4.8. Marine Insurance / P & I Club – IRDAI

Marine insurance is broadly divided into Hull and Machine (H&M) and Protection and Indemnity (P&I) insurance. While H&M is market-driven, P&I has its origins as an insurance undertaken by a group of ship-owners in order to cover third party liability and other risks not underwritten by H&M underwriters. There are also independent insurance companies which offer ‘fixed premium’ and ‘non-mutual’ P&I cover.

Given the relatively small size of Indian fleet and restrictions on movement of funds, none of the global insurance companies transact directly into India. Indian insurance companies place H&M insurance and re-insure with global companies. P&I insurance is undertaken by Indian companies after annual clearance from the regulatory authority, IRDAI, which has an annual approval mechanism for all insurances placed with foreign entities.

Insurance operations from IFSC started in year 2017 and at present there are IFSC Insurance Offices, namely General Insurance Corporation of India (GIC Re), The New India Assurance Company Ltd, and ICICI Lombard, besides the Export Credit Guarantee Corporation of India (ECGC). There are fourteen leading Insurance Brokers operating from IFSC. The Gross Written Premium by IFSC Insurance Offices was around USD 17mn. in 2020.

IFSC insurance entities can undertake dollar-denominated business from within the IFSC, all other special economic zones in India, from foreign countries (which covers foreign to foreign, IFSC to foreign and foreign to IFSC), and domestic insurance and reinsurance business subject to compliance with extant regulatory provisions. Up to 90% retrocession of re-insurance business is permissible.

Given that in absolute terms, substantial H&M and P&I business is underwritten for Indian markets, India-IFSC has the potential to be the regional hub for marine insurance. With the infrastructure and incentives offered in IFSC-GIFT City, insurance companies can set up regional offices and service various countries. It can further be used for re-insurance and investment of funds.

4.9. Inland Waterways

Despite having an extensive network of inland waterways in the form of rivers, canals, backwaters and creeks, freight and passenger transportation by waterways is highly under-utilized in India. Waterways currently contribute around 6% to India's transportation modal mix, which is significantly less than that in developed economies and some of the developing economies as well. India's hinterland connectivity is mainly based on road and rail with

domestic waterways— both coastal shipping and inland waterways—playing a limited role. Waterways are found to be cost effective as well as an environmentally friendly means of transporting freight. In addition to cargo movement, Inland Water Transport (IWT) sector also provide a convenient function in related activities such as carriage of vehicles (on Roll-on-Roll-off mode of cross ferry) and tourism.

The National Waterways Act, 2016 has declared 111 IWs with a total length of 20,275 kms spread across 24 States as ‘National Waterways’ (NWs) to promote shipping and navigation on them. Inland Waterways Authority of India (IWAI) is an autonomous organization constituted on 27 October 1986 under the Inland Waterways Authority of India Act, 1985 which has the primarily responsibility of development, maintenance and regulation of NWs.

Figure 34: Snapshot of Inland Water Transport Sector in India (May 2021)

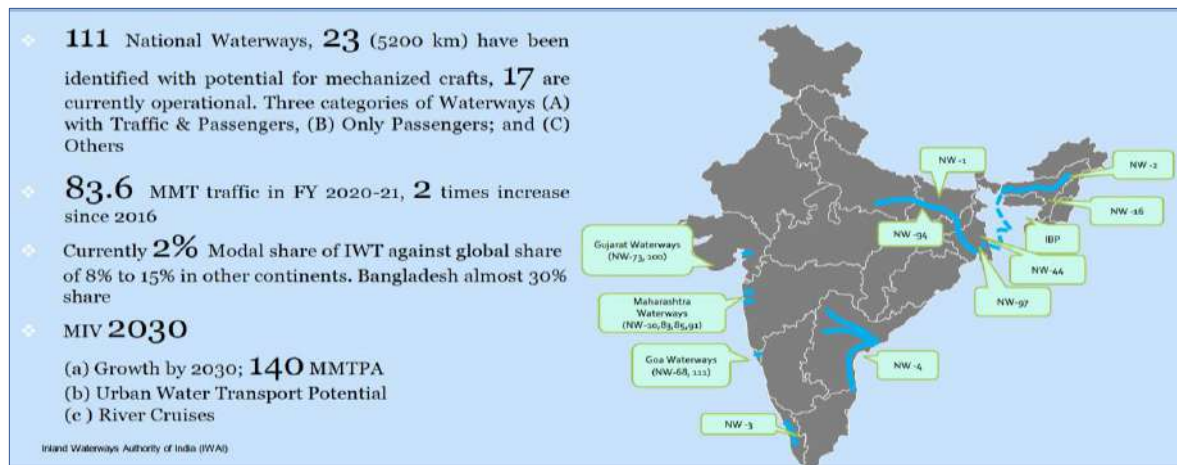
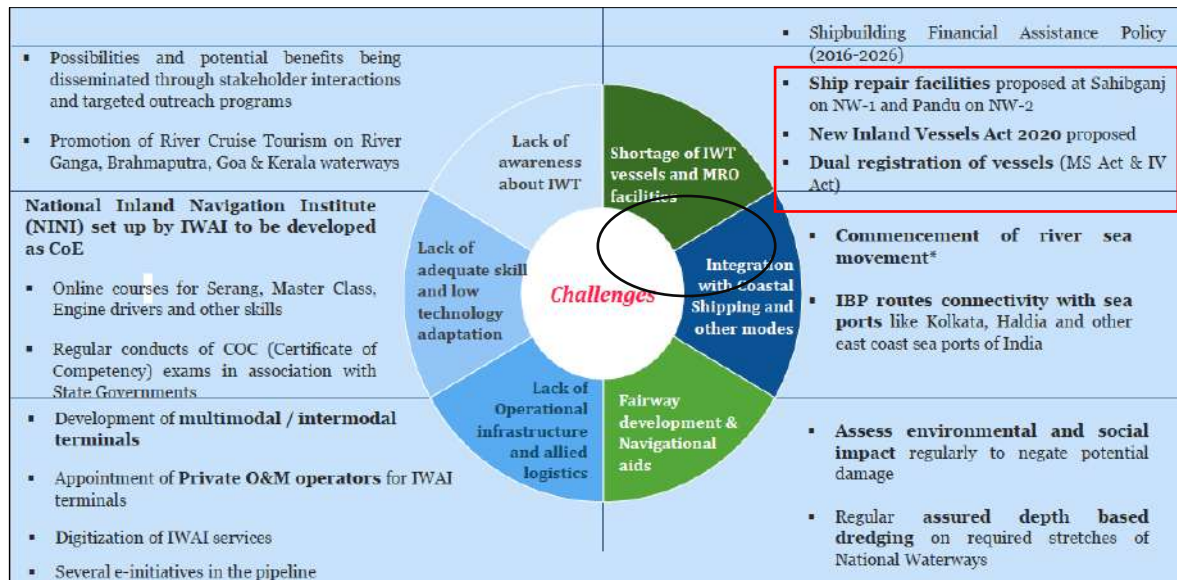


Figure 35: Challenges and Strategies adopted by IWAI



Source: Inland Waterways Authority of India, 18 May 2021

Requirements of IW tonnage provide a valuable opportunity for Indian shipyards to construct IW vessels. Various structures permissible in IFSC-GIFT City like sale and leaseback can also be used by lenders and other capital providers to fund Indian yards. The tonnage can be purchased by operators, end users, traders and other players, with support from IWAI.

4.10. Brand Maritime India

All maritime nations maintain a distinct brand identity in global markets. This includes activities ranging from ‘Maritime Weeks’ (like London Maritime Week, Singapore Maritime Week etc.), marketing global institutions of repute (like the Baltic Exchange, Erasmus Business School, Singapore Maritime Authority, Dubai Maritime Cluster etc.) and technical prowess (global P&I Clubs, Classification Society, Flag etc.).

Brand Maritime India, in the context of IFSC-GIFT City, can be enhanced in many ways. Maritime India has already made its mark in terms of crewing, ship recycling, and technical management of ships. It can be enhanced in the context of flag/registry and the leasing and financing platform at India-IFSC.

- **Flag State / Registry – Regulatory Performance and Ratings**

India’s regulatory performance, which is gauged at two levels, requires concerted initiatives and efforts to improve and upgrade.

First, Port State Control MOU 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 nine such MOUs, besides the regime of USA. After the Paris MOU on Port State Control (of 1982), between 27 participating Maritime Authorities and over 18,000 annual inspections, IMO has supported the establishment of eight other regional port State control regimes, achieving a global maritime network comprising of: (i) Paris MOU: the areas of its responsibility cover the waters of European coastal States and North Atlantic basin from North America to parts of Europe and north Atlantic, (ii) Asia–Pacific Region MOU: Asia and part of the Pacific Ocean, (iii) Latin American MOU, (iv) Caribbean MOU, (v) West and Central Africa MOU, (vi) Black Sea MOU, (vii) Mediterranean MOU: Southern part of Mediterranean Sea, (viii) Indian Ocean MOU, (ix) Riyadh MOU: Persian Gulf; and the US Coast Guard maintains a tenth port State control regime.

Figure 36: ‘Grey List’ under the Paris MOU for 2018-2020

RANK	FLAG	INSPECTIONS 2018-2020	DETENTIONS 2018-2020	BLACK TO GREY LIMIT	GREY TO WHITE LIMIT	EXCESS FACTOR
GREY LIST						
40	Estonia	71	1	9	1	0.01
41	Saudi Arabia	54	1	7	0	0.11
42	Korea, Republic of	68	2	9	1	0.15
43	India	44	1	6	0	0.18
44	Philippines	133	6	15	4	0.19
45	Kazakhstan	34	1	5	0	0.27

Thus, Indian-flag ships entering the waters under regulatory control, for instance, of the Paris MOU are inspected and, if required detained. Based on a methodology specific to this MOU, the Flag State is ranked for ensuring compliances. Indian-flag vessels are currently positioned at rank 43 in the ‘Grey List’ of the Paris MoU. On WGB Lists for 2020, a total number of 70 flags are listed: 39 (White List), 22 (Grey List) and 9 (Black List). The Paris MOU is a definitive one for gauging the ranking or reputation of the Registry / Class. Its ‘White, Grey and Black (WGB) Lists’ present the full spectrum, from quality flags with a consistently low

detention record (White List) to flags with a average performance that are considered high risk (Grey List) or those with poor performance and a very high risk (Black List). It is based on the total number of inspections and detentions during a 3-year rolling period for flags with at least 30 inspections in the period. Flags shown on ‘Grey List’ would be incentivised to improve and move to the ‘White List’. Flags at the lower end of the ‘Grey List’ should be careful not to neglect control over their ships and risk ending up on the ‘Black List’ in the subsequent year(s).

Second, the inspection and survey of ships shall be carried out by officers of the Flag Administration under various IMO instruments. Flag Administration may, however, entrust inspections and surveys either to surveyors nominated for the purpose or to organizations recognized by it. IMO has gathered all applicable requirements for Recognized Organizations 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. This Code serves to assist in achieving harmonized and consistent global implementation of requirements established by IMO instruments for the assessment and authorization of ROs. It provides the criteria against which ROs are assessed and recognized, and gives guidance for monitoring of ROs by Administrations.

Figure 37: Recognised Organisation Performance for 2018-2020

Recognized Organization	RO abbrev	Inspections	Detentions	Low/medium limit	Medium /high limit	Excess Factor	Performance level
American Bureau of Shipping	ABS	5,753	3	133	97	-1.92	High
DNVGLAS	DNVGL	17,859	14	388	326	-1.91	
Lloyd's Register	LR	11,313	11	251	201	-1.88	
Nippon Kaiji Kyokai	NKK	7,811	13	177	135	-1.79	
Bureau Veritas	BV	10,577	22	236	187	-1.75	
Russian Maritime Register of Shipping	RMRS	2,434	4	61	37	-1.72	
RINA Services S.p.A.	RINA	4,756	11	112	79	-1.68	
Korean Register	KRS	1,336	2	36	18	-1.66	
China Classification Society	CCS	815	1	23	9	-1.57	
Turkish Lloyd	TL	370	0	12	2	-1.09	
Polski Rejestr Statkow (Polish Register of Shipping)	PRS	542	1	17	5	-1.07	
Phoenix Register of Shipping	PHRS	591	5	18	6	-0.17	
Croatian Register of Shipping	CRS	142	0	6	0	0.06	
Panama Maritime Documentation Services	PMDS	130	0	6	0	0.08	
National Shipping Adjuster Inc.	NASHA	212	2	8	0	0.21	
Intermaritime Certification Services, ICS Class	ICS	177	2	7	0	0.28	
Indian Register of Shipping	IRS	197	4	8	0	0.51	
Overseas Marine Certification Services	OMCS	134	3	6	0	0.55	
Dromon Bureau of Shipping	DBS	606	13	18	6	0.57	
Panama Shipping Registrar Inc.	PSR	80	2	4	0	0.58	
Macosnar Corporation	MC	117	3	5	0	0.61	
Bulgarian Register of Shipping	BRS	240	6	9	1	0.65	
United Registration and Classification of Services	URACOS	89	3	4	0	0.73	
International Naval Surveys Bureau	INSB	544	14	17	5	0.77	
Maritime Lloyd - Georgia	ML	141	5	6	0	0.84	
Isthmus Bureau of Shipping, S.A.	IBS	138	5	6	0	0.85	

As may be seen, the Indian Register of Shipping (IRS), under such latest assessment, has been rated to have a 'Medium' performance level among the Recognised Organisations.

Apart from several initiatives of DG Shipping, in order to improve and secure top ratings and the high brand value for the Indian Flag and Registry, so that these become the choice that is exercised by shipping industry in India and globally, IFSC-Gift City can also take several measures to improve the reputation and performance of the flag / registry. This can include high performance standards of surveyors/ inspectors and their regular upskilling; greater participation in international standards setting bodies; holding more consultative discussions with reputed technical experts, closer interaction with companies with India-IFSC flag; and putting in place a reward system for companies that fare well in terms of Port State Control inspections and surveys.

- **Commercial Reputation**

It is imperative that a maritime hub ensures that its constituent companies are perceived as professional and solvent. A hub which gets the reputation of promoting all types of companies, including those without requisite professionals and worse, those with short term intentions of defrauding the markets, will not be able to prosper. London has the self-regulated market in the form of the 'The Baltic Exchange', while Singapore, Hong Kong and Dubai have various methods of ensuring the commercial reputation of the maritime hub.

In IFSC-GIFT City, the authorities would need to maintain a clear connect with markets. Those in the global markets who may have reason to complain about the conduct of a member company in execution of any obligation should have a forum to communicate such issues. IFSCA would need to maintain ultimate control in terms of disciplining 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.

- **Brand Promotion**

The maritime hub at IFSC-GIFT City would need to be at the forefront of global commercial, technical and financial maritime thought. 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.

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.

5. FINANCIAL MODELS – COST COMPARISON OF INDIA WITH MAJOR HUBS

The Committee has identified systemic inefficiencies, and options to make ship-acquisition, financing and leasing attractive in IFSC, based on which financial viability was found.

Comparison of transacting out of India-IFSC and Major Global Jurisdictions:

Ship Operating in GIFT IFSC - Financial Model	
Key Assumptions:	
Ship Owner (Owner from a single jurisdiction for all scenarios to compare operating model)	Outside India (Eg: Singapore)
Charterer	India
Ship Operator	Dubai, Singapore, Hong-Kong, IFSC and India
Fixed Trip Route-	Xingang - Gladstone - Singapore - Vizag
Fueling	Singapore in all scenarios
Cargo vessel carrying capacity in MT	79,000
Voyage trip	37.93 (Sea and Port days)
Freight charges - USD per metric tonne	29.65
Hire charges - USD per day	35,000

FINANCIAL MODELS FOR COST COMPARISON

(Amounts in USD)

Particulars	Dubai	Singapore	Hong-Kong	IFSC - Pre	India DTA	IFSC - Post
Revenue						
Freight charges from Indian charterer (a)	23,42,350	23,42,350	23,42,350	23,42,350	23,42,350	23,42,350
GST - for information purpose only	1,17,118	1,17,118	1,17,118	1,17,118	1,17,118	1,17,118
TDS on freight charges	-	-	-	49,189	49,189	-
	(DTAA applicable)					
Less: Hire charges						
Hire Charges (b)	13,27,550	13,27,550	13,27,550	13,27,550	13,27,550	13,27,550
TDS on hire charges	-	-	-	1,47,506	1,47,506	-
Gross up hire charges	13,27,550	13,27,550	13,27,550	14,75,056	14,75,056	13,27,550
Add: GST	-	-	-	-	66,378	-
Less Operating cost:						
Bunker cost						
Consumption of Intermediate Fuel Oil	5,77,344	5,77,344	5,77,344	5,77,344	5,77,344	5,77,344
Consumption of Marine Diesel Oil and Gas Oil	21,353	21,353	21,353	21,353	21,353	21,353
GST on 10% of outstanding IFO,MDO and Gas Oil at Vizag Port	-	-	-	2,993	2,993	-
Total bunker cost (c)	5,98,697	5,98,697	5,98,697	6,01,691	6,01,691	5,98,697
Port Cost						
Cost at Gladstone port	1,00,000	1,00,000	1,00,000	1,00,000	1,00,000	1,00,000
Cost at Vizag port	35,000	35,000	35,000	35,000	35,000	35,000
Total Port cost (d)	1,35,000	1,35,000	1,35,000	1,35,000	1,35,000	1,35,000
Total Other cost (e)	44,279	44,279	44,279	44,279	44,279	44,279
Total Cost (f) = (b) + (c) + (d) + (e)	21,05,527	21,05,527	21,05,527	22,56,026	22,56,026	21,05,527
Total profit per voyage trip (g) = (a) –(f)	2,36,823	2,36,823	2,36,823	86,324	86,324	2,36,823
Less: Corporate tax (h)	-	-	-	-	21,726	-
Profit post tax per voyage trip (i) = (g) – (h)	2,36,823	2,36,823	2,36,823	86,324	64,598	2,36,823
Corporate tax (j)	-	-	-	-	21,726	-
TDS outflow (k)	-	-	-	-49,189	-49,189	-
Tax payable/ (refundable) (l) = (j) - (k)	-	-	-	-49,189	-27,463	-

FINANCIAL MODELS FOR COST COMPARISON

Ship Owning in GIFT IFSC - Financial Model
5-year-old Ultramax - Bulk carrier
Dead Weight – 60,000 MT
Scenario - Lease of 15 years and asset is sold

(Amount in USD)

Particulars	Dubai	HongKong	Singapore	Greece	India - Foreign Flag	India - Indian Flag	IFSC - Foreign Flag Post	IFSC - Indian Flag Post
Estimated Purchase Price of the Vessel (inclusive of GST and stamp duty)	2,50,00,000	2,50,00,000	2,50,00,000	2,50,00,000	2,58,75,000	2,62,50,000	2,50,00,000	2,62,50,000
Interest	23,90,625	23,90,625	23,90,625	13,28,125	49,48,594	50,20,313	37,18,750	39,04,688
Operating Expenses	3,35,07,000	3,35,07,000	3,35,07,000	3,35,07,000	2,34,54,900	3,00,79,650	2,34,54,900	2,34,54,900
Profit before depreciation over a 15-year period	5,59,74,375	5,59,74,375	5,59,74,375	5,70,36,875	6,20,76,506	5,53,80,038	6,33,06,350	6,31,20,413
Profit after taxes on income	3,18,53,984	3,18,53,984	3,18,53,984	3,28,20,232	2,79,07,412	3,07,10,610	3,91,85,959	3,77,94,002
Tax costs								
Income tax costs*	-	-	-	96,252	86,29,350	53,128	-	-
Dividend tax in the hands of resident in a tax free jurisdiction (say, a Dubai resident)	-	-	-	8,91,012	25,81,482	14,96,061	-	-
Capital Gains on sale of Ships	-	-	-	-	4,95,908	4,95,908	-	-
Tax Cost on Indian Crew	-	-	-	-	-	77,745	-	-
GST – Input Credit lost						29,45,169		
Total tax and duties	-	-	-	9,87,264	1,17,06,920	50,68,011	-	-
TDS deducted on charter hire income (cash flow trapped)	-	-	-	-	9,23,265	9,23,265	-	-
Income in hands of the shareholder	3,18,53,984	3,18,53,984	3,18,53,984	3,19,29,221	2,53,25,930	2,92,14,549	3,91,85,959	3,77,94,002

Note: * India owner with Indian flag shall qualify for tonnage tax scheme

FINANCIAL MODELS FOR COST COMPARISON

Tender Contract Model				
Vessel – Star of Emirates				
(Amounts in USD)				
Particulars - Ship Operator	Unit	IFSC – GIFT City	Singapore	India DTA
Total Cargo (A)	MT	79,000	79,000	79,000
Current Freight rate (B)	USD Per MT	29.65	29.65	29.65
Total Voyage Time - Sea and Port days (C)	Days	37.93	37.93	37.93
Total Operator income/day (D) = (A)*(B)/(C)	USD Per day	61,754.55	61,754.55	61,754.55
Less: Commission (E)	USD Per day	772	772	772
Less: Other Operating expenses (F)	USD Per day	21,321	21,321	21,321
Current Revenue per day - Time Charter Equivalent (G) = (D)- (E) - (F)		39,662	39,662	39,662
Less: Hire Charges - Based on sample tender (H)	USD Per day	35,000	35,000	35,000
Net Profit/Loss Per Day (I) = (G)-(H)		4,662	4,662	4,662
<i>Addition/(Saving) in cost of borrowings and tax in the hands of owner vis-à-vis IFSC</i>				
Add/(Less): Interest Cost (Note-1)	USD Per day	291	-	576
Add/(Less): Tax cost	USD Per day	-	-	1,011
Add/(Less): Crew Cost		-	-	1
Add/(Less) : Establishment Cost		(95)	-	(66)
Add/(Less): Other Capital Cost and market considerations - including license fee, registration fee etc.		-	-	1,270
Total Additional cost (J)	USD Per day	196	-	2,793
Revised Hire Charges (K) = (H) + (J)	USD Per day	35,196	35,000	37,793
Revised Net Profit/Loss Per Day		4,465	4,662	1,869
Increase/decrease in freight rate to achieve profit/loss vis-à-vis IFSC (L) = ((J)/(A))* (C)		0.09	-	1.34
Revised Freight rate (M) = (B) + (L)	USD Per MT	29.74	29.65	30.99
Percentage Difference (%) in comparison with Singapore		0.32		4.52
Order Preference		L2	L1	L3
		ROFR-2		ROFR-1

Note-1: For the purpose of this calculation, we have considered the interest cost in IFSC/Singapore/India for 60,000 MT vessel and increased it by a factor of 1.2 to arrive at interest cost for 79000 MT vessel as in this model. That interest cost was for the full life of the asset. We divided that by the number of years and then by the number of days to arrive at per day interest.

Above Model is based on the following recommendations:

- *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.*
- *If IFSC India flagged or foreign flagged vessel is L1 in bidding, then the tender is to be awarded to IFSC vessel, waiving the requirement of ROFR for India DTA vessels.*
- *If a Foreign flag vessel is L1, tender is to be awarded as per the existing ROFR & price preference. IFSC India flagged vessels to participate in the ROFR; however, if DTA Vessel matches the L1, then the tender is to be awarded to the DTA Vessel, else tender awarded to IFSC flagged vessel. IFSC Vessels do not get right to price preference.*
- *IFSC unit could contract DTA India flagged vessels for participating in tenders.*
- *If 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.*

6. CHALLENGES AND BARRIERS TO SHIP LEASE IN INDIA

6.1. Regulatory challenges

The current legal and regulatory framework relating to ship leasing and financing activities in India and IFSC is less favourable than jurisdictions such as Panama, Dubai and Singapore, which are currently the preferred jurisdictions for ship leasing and financing activities. The legal and regulatory impediments may be broadly categorised as follows:

- (i) Amendments required under IFSC regime including operating and financial leases;
- (ii) Issues under the Merchant Shipping Act, 1958 (the “MSA”) relating to registration, licensing, and mortgage requirements, restrictions on cabotage, tonnage, and crew;
- (iii) Security enforcement challenges under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the “Admiralty Act”);
- (iv) Role of market participants, including NBFCs, Banking Units/ Indian Banks/ Foreign Banks, AIFs, Insurance Offices, Mutual Funds, Pension Funds, Employees Provident Fund Organizations; and
- (v) Stamp duty.

• IFSC Regime – Relaxations Required

Ship Leasing

The term “ship leasing” has been defined as per the IFSCA (Finance Company) Regulation, 2021 as follows:

“operating and financial lease and any hybrid of operating and financial lease of ships/ ocean vessels/ engine of ships or ocean vessels or any part thereof”.

However, this is not an exhaustive definition and does not take into consideration bare-boat charter, time charter, voyage charter, slot charter, and/or any other form of charter or hire, including hybrids thereof, of ships/ vessels, which also involves payment of fees, rentals etc. Further, the definitions of the term “ships” and “vessels” as per various enactments is limited.

Financial Lease and Operating Lease

- (a) The term “financial lease” has been defined under Section 2(ma) of the SARFAESI Act, 2002 to mean:

“a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessors right therein to the lessee for a certain time in consideration of payment of agreement amount periodically and where the lessee becomes the owner of such assets at the expiry of the term of the lease or on payment of the agreed residual amount, as the case may be.”

Further, India Accounting Standards (IndAS 17) recognize a financial lease as a lease which transfers “*substantially all the risks and rewards incidental to ownership of the asset*”.

- (b) Regulation 5(ii)(d) of the IFSCA (Finance Company) Regulations, 2021 recognises the financial leasing of ships as a core activity. However, its applicability only extends to finance companies registered under the Regulations. Therefore, other market players (banks, banking units and other entities set up within IFSC) cannot undertake the business of financial leasing of ships.
- (c) With respect to operating leases, Regulation 5(iii)(k) of the IFSCA (Finance Company) Regulations, 2021 recognises ship operating leases as a ‘*non-core activity*’. However, similar to the regulatory impediments in respect of financial leases. since ship leasing has not been notified as a financial product by the IFSCA no services in respect of the same can be undertaken and the restrictions in carrying out ship operating leases are similar to those set out in Para 6.1.1(b) above wherein presently, no other market player can undertake ship operating leases.

- **Law on shipping under the Merchant Shipping Act, 1958**

The MSA and the rules framed thereunder govern *inter alia* the registration, license, transfer, and mortgage of both Indian and foreign ships. Key factors ascertaining the advantages and disadvantages of operating Indian and foreign vessels within India (and IFSC) are as follows:

Registration of Indian vessels and Foreign vessels:

The registration of Indian and foreign 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.

- (a) Registration of Indian vessels – Under Section 22 of the MSA, Indian ships (i.e., ships wholly owned by (a) a citizen; or (b) a company or body established under a central or state act which has principal place of business in India; or (c) a cooperative society registered or deemed to be registered in India) are required to be registered under the MSA. Stakeholders have indicated that the process of registration is time consuming and cumbersome.
- (b) Registration of foreign vessels acquired under the MSA – As per Section 40 read with Rule 12 of the Merchant Shipping (Registration of Indian Ships) Rules, 1960, any ship built or acquired out of India which becomes the property of a person qualified to own an Indian ship, the owner or master is entitled to apply to the Indian Consular Office at the nearest port for provisional registration. However, the ships would have to enter Indian ports within 6 months for completion of registration requirements. We note from our discussions with stakeholders that the requirement to ensure that such ship is brought to an Indian port as per the time period prescribed is an impediment to the ships’ economic activity and therefore registration in India appears to be a less attractive proposition.

Licensing Indian and foreign vessels engaged in coasting trade (including ROFR)

With respect to Indian and foreign vessels being chartered for the purposes of coasting trade, Section 406 and 407 of the MSA mandates that a license be obtained from the DG Shipping. Further, its scheme to encourage the growth of the Indian economy, the DG Shipping has vide DGS Circular No. 02 of 2021 (the “ROFR Circular”) introduced rules relating to the ROFR which are favouring *inter alia* Indian-built and owned ships. This ROFR Circular supersedes all prior circulars issued in this regard and has a material bearing on the licensing restrictions applicable to ships.

- (a) Licensing requirements for Indian vessels – as per ROFR Circular, for vessels being chartered through the tendering process, the right of first refusal will be applicable to bidders in the following priority (Para 21 read with Para 21.3.4 of the ROFR Circular):
- (i) Indian built, Indian flagged, Indian owned;
 - (ii) Foreign built, Indian flagged, Indian owned; and
 - (iii) Indian built, foreign flagged, foreign owned.

Further, the aforesaid ROFR will arise to those bidders whose rate, though not being the lowest, is within 20% of the price quoted by the lowest bidder, commonly referred to as the ‘Margin of Purchase Preference’ (Para 21.3.5 of the ROFR Circular). We understand from our discussion with stakeholders that the said ROFR Circular serves as an impediment to foreign market players to engage in chartering activities in India.

- (b) Licensing requirements for Foreign Vessels – the ROFR Circular is disadvantageous to foreign vessels undertaking Indian coasting trade considering that if Indian entities who have bid in the same category and within the Margin of Purchase Preference, the said foreign vessels will not be awarded the tender. However as per DGS Order 10 of 2014, for foreign vessels acquired/ owned by Indians under the MSA and forming part of the Indian controlled tonnage shall be given priority in the ROFR process and shall within the category of serial number (ii) above. Further, as per DGS Circular No. 5 of 2021 dated February 11, 2021, where a bidder offering a vessel not falling within the ROFR categories gives an undertaking to convert such vessel to the ROFR categories specified therein prior to commencement of operations but later than the price bid opening, such vessels can be considered only if the other bidders falling within such categories has failed to match the lowest price. From the above mechanism, we note that the only way for Indian coasting trade to be a level playing field for Indian and foreign vessels is for foreign vessels to either be owned by Indians or be converted to Indian vessels, both of which are not only stringent requirements but also unviable.

Relaxations imposed in respect of licensing requirements

Relaxations have been introduced for Indian and foreign vessels engaged in coasting trade, which deviate from the licensing requirements under Section 406 and Section 407 of the MSA, respectively. Some of the relaxations introduced vide notifications and orders of the DG Shipping are being summarised as follows:

- (a) Relaxations with respect of Indian vessels:

- (i) 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.
 - (ii) 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 at least 50% of the cargo onboard the ship.
- (b) Cabotage Policy applicable to foreign vessels - Relaxations have been introduced to enable foreign vessels undertaking coasting trade (defined hereinbelow) within ports in India, which deviates for the license requirements under Section 407 of the MSA. The Cabotage Policy is as follows:
- (i) 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
 - (ii) 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 at least 50% of the total cargo.
 - (iii) 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.
 - (iv) 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 up to 05.02.2024.

For the Indian and foreign vessels not being chartered for the purposes specifically exempted as detailed above, licenses would have to be obtained under Section 406 and 407 of the MSA.

We note from our consultations with stakeholders that the said process is cumbersome and time consuming.

Indian controlled tonnage and crew restrictions on Indian and foreign ships:

- (i) For entities acquiring vessels flagged outside India, as per DGS Order 10 of 2014, 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. The advantages of the Indian controlled tonnage are as follows:
 - (a) As per the aforesaid circular, while chartering such ships under Section 406 of 407 (licenses for coasting trade), such ships shall be treated in the new category of Indian controlled ships and shall be eligible for a priority higher than non-Indian ships, thereby falling under the category of serial number (ii) under the ROFR circular.
 - (b) Secondly, as per SD Circular No. 5 of 2016 dated April 1, 2016 read with SD Circular No. 3 of 2015 dated August 28, 2015, the vessels under the Indian Controlled Tonnage are charged a discounted processing fees, licensing fees on a monthly basis.
- (ii) In so far as the crew restrictions are concerned, as per DGS Order 10 of 2014, for those entities flagging vessels outside India, 50% of 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 offshore fields, shall engage trainees, officers, cadets as per the Tonnage Tax Scheme whereby the training commitment shall be as per Tonnage Tax Scheme, if applicable. In the event that laws of another flag state mandate minimum crew requirements, such foreign crew may be engaged to the extent required.

We note from the above that Indian entities engaged in ship owning are required to comply with Indian controlled tonnage and crew restrictions imposed by DG Shipping. As a result, most Indian entities prefer setting up offshore vehicles to circumvent these restrictions while freely being allowed to acquire foreign vessels.

Drawbacks with mortgaging

A statutory mortgage 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 DG Shipping. However, the enforcement of such mortgages is governed by the Admiralty Act whereby specific High Courts are empowered to arrest ships in respect of 'Maritime Claims' and 'Liens', including for enforcement of mortgages.

Under DGS Order 2 of 2002, the following guidelines have *inter alia* been laid down with respect to the mortgage of ships:

- (a) upon entering a mortgage in the registry in respect of a ship which is provisionally registered, the registrar shall issue a letter to the bank/ FI stating that the mortgage

has been recorded on the provisional registration of the ship, which will continue to remain in force even after the ship has been granted permanent registration.

- (b) any second or subsequent mortgage on a ship will be recorded in the register of ships only after a no-objection certificate has been issued from the first or existing mortgage.
- (c) registration, modification or discharge of the mortgage with the registrar of companies shall not be a pre-requisite to registering such mortgage.
- (d) specific drawbacks in respect of the aforementioned system are as follows:
 - Restrictions on Self Help Remedies - Under Section 51 of the MSA, where it is only one mortgagee, the ship may be sold by the mortgagor. However, for two or more registered mortgagees, the High Court will have to be approached. While a mortgagor can approach the High Court for obtaining an order of arrest, the actual possession of vessel will seldom be with lessor, thereby reducing the ambit of self-help remedies.
 - Under construction vessels - Mortgages in respect of ships which are under-construction is not recognised under the aforesaid Section 47 of the MSA. Therefore, lenders would have to seek alternative security pending completion of the construction of the vessel.
 - Priority of Mortgages - Under Section 49 of the MSA, priority of mortgages is solely determined by the date on which each mortgage is recorded in the ship register.

6.2. Tax challenges

Taxation and other fiscal incentives are considered an important factor for the competitiveness of shipping industry. Major shipping hubs enjoy the benefit of a tax-friendly regime where only a nominal tax is levied. Foreign ship operating companies are on much better footing as compared to Indian companies. Indian shipping companies cannot be expected to do well if the Indian tax regime is complex. To retain its competitive edge, India's shipping industry must be brought on par to what prevails in these major hubs.

• Key Direct Tax challenges:

- Lease rental payments made to overseas entities are generally subjected to WHT at the rate of 10%. Overseas ship owners pass on the WHT burden to Indian ship leasing companies which makes ship leasing from Indian shores unviable.
- Overseas remittances from India are cumbersome and are subject to the requirement to obtain Chartered Accountant certificate.
- Payments of freight charges by Indian Charterers are subject to WHT at 2%.
- Any income by way of dividend received from a unit set-up or established in an IFSC is taxable in the hands of non-resident shareholders. As per the erstwhile income-tax laws, the dividend declared, distributed or paid by an IFSC unit was not subject to DDT and also was exempt in the hands of shareholders. Effective 1 April 2020, the tax incidence was shifted from the payer to the recipient of dividend. However, no

specific carve out was made for the dividend income earned by shareholders of the company, being an IFSC unit.

- Gains arising on transfer/sale of vessels or transfer/sale of partnership interest/shares of SPV holding the vessels attracts capital gains tax.
 - Tonnage Tax Scheme is an optional scheme for qualifying Indian shipping company for taxation of income derived from shipping activities. The eligibility conditions such as of maintaining a tonnage reserve, mandatory training requirement in respect of trainee officers, 10 years period of exclusion from the regime on non-qualification for availing tonnage tax regime, etc. makes the regime ineffective. It is suggested that a simplified tonnage tax regime should be introduced for IFSC controlled tonnage. The Indian company as well as its foreign subsidiary having its place of effective management in IFSC should be eligible for the simplified tonnage tax.
- **Key Indirect Tax challenges:**
 - Indian companies providing import freight services to foreign consignor for transportation of goods from outside India to India is subject to 5% IGST on the freight charges. Such IGST is a cost in the overall value chain.
 - There is a sunset clause on exemption for supply of services of transportation of goods in vessels for export of goods upto 30 September 2022 which is being extended every year. For ease of operations and providing benefit on export services, exemption on export freight services should be provided indefinitely.
 - Ship owners who are located overseas and provide charter hire services to ship operators in India are not required to charge GST. It is discharged by the ship operator on RCM basis. However, if the ship owner is located in IFSC it would need to charge GST on forward charge basis resulting in cash flow issues for the operator.
 - 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.
 - There is no specific provision in GST law which states that registration in IFSC will suffice for all locations and entities are not required to take separate registration at every port to avail GST at zero rate on services. Ship operators are therefore required to take registration at every port to avail the benefit of GST at zero rate on services.
 - IGST is applicable on import of vessels and also fuel imported with the vessel. It takes a long time to utilize the IGST credit impacting cash flow of Indian shipping companies. Also, bunker fuel being used (as inputs/goods) for ocean import freight supplies carries restriction on availment of input tax credit.

6.3. SEZ challenges

Though IFSC is subset of SEZ Act 2005 and Rules 2006, the nature and premise of SEZ and IFSC is quite different. SEZs are meant for bringing in more foreign exchange and investment into India. Whereas IFSC is meant to make India a full-fledged finance hub and cause a shift from availing such financial services from other financial centres to IFSC.

Most of the provisions in SEZ Act and Rules are drafted keeping in mind typical manufacturing and service organizations and not from the perspective of Financial Services Industry. Additionally, most of the Rules have not been amended for a long time and the law is mainly governed through Circulars, Clarifications, Instructions. Therefore, there is a need for a complete overhaul of the SEZ Act and Rules from an IFSC perspective.

In respect of ship leasing business to be carried out from IFSC, there are certain key challenges which are required to be addressed to make it more efficient:

- (a) Net Foreign Exchange (NFE) requirement under SEZ Rules states that every unit is required to achieve positive NFE earning over a period of 5 years cumulatively. However, ship leasing business is quite different and it cannot be a NFE earner as per the formulae and mechanism prescribed in SEZ Rules. Ship leasing companies from IFSC should be completely exempted from such requirements. Savings in foreign currency should be equally be regarded as foreign currency earning.
- (b) SEZ provisions mandate that goods procured by SEZ Units should be physically brought to SEZ premises and then customs officers posted in SEZ carries out inspection to check marks and numbers. This condition is impossible to meet as the port is not an SEZ area.
- (c) Separate office and lease deed is required for each unit. Ship leasing entities are likely to have multiple SPVs and requirement to have separate office for each SPV will lead to increase in cost of operations.
- (d) Format of applications and compliance reporting is required to be changed completely to align with ship leasing business as most of the sections of current forms and compliances are not relevant for it.

SEZ Act and Rules have many other provisions which make it less flexible.

6.4. Financial challenges

Maritime financing involves many parties across the financing value chain. Such parties include: Non-Banking Financial Companies (“NBFC”), Pension Funds, Insurance Companies, Mutual Funds, Employees Provident Fund Organization (EPFO), National Investment and Infrastructure Fund (NIIF), and authorised dealers operating under External Commercial Borrowings (ECBs) guidelines.

Whilst India has come a long way in improving its financing infrastructure, this report looks to tap into the existing forementioned framework and pools of liquidity to encourage growth for the ship financing and leasing platform in India.

- **Non-Banking Financial Companies (“NBFC”)**

Additional guidelines required. While NBFCs can set up a finance company under the IFSCA (Finance Company Regulations) 2021, the RBI has not issued guidelines for NBFCs being set up in the IFSC.

Exclusion of FPIs. 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 SEBI. Category I and II AIFs can be

used to fund entities undertaking ship financing / leasing. Using an AIF is the most efficient route for HNIs to participate in this space. However, Foreign Portfolio Investors (FPIs) are not permitted to invest in Category I and II AIFs.

Lack of clarity in existing guidelines. AIFs operating under IFSC can accept investments from a broader remit of investors. However, it is unclear on the specific types of institutional investors contemplated under the SEBI (IFSC) Guidelines, 2015.

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). This raises questions about whether an investment by a domestic AIF into a Leasing Company operating in IFSC is permissible.

- **Pension Funds**

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 pension funds. The subscribers to NPS may choose from multiple pension funds and multiple schemes. The pension fund manages schemes notified by 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 PFRDA on the investments made by such pension funds.

- **Insurance Companies**

Not permitted to invest in ship leasing companies. Under Section 27A(4) of the Insurance Act, insurance companies are not permitted to invest in private limited companies, which include ship leasing companies. This restriction is replicated under the Insurance Regulations.

This restriction also applies to branches of Insurance Companies. IIOs (i.e. branches) of insurance companies operating out of IFSC are not permitted to undertake any business other than those permitted by IRDAI. IRDAI will have to issue a separate notification for IIOs to participate in ship financing / leasing through an entity established for that purpose.

Overseas investments and its relevance to IFSC. Under Section 27E of the Insurance Act, insurance companies are not permitted to invest funds of policyholders outside India either directly or indirectly. Unclear from the wording whether it would apply to investment by an insurance company into ship leasing companies established in IFSC.

- **Mutual Funds**

Low ceiling for ship finance limits. 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. This restriction makes it challenging for mutual funds to gain meaningful ship finance/leasing exposure.

Inability to invest overseas. Mutual Funds are not permitted to invest in overseas unlisted equity/equity linked instruments and foreign debt instruments. Ship financing / leasing is a global business and oftentimes involves foreign debt/equity instruments.

Lack of clarity in existing guidelines. The SEBI (IFSC) Guidelines do not clarify the categories of investors that would be permitted to invest in Mutual Funds, given that the term ‘institutional investors’ as referred to in Clause 22(1)(iii) is not defined. Eligible resident individuals are permitted to invest up to USD 250,000 per annum into an overseas mutual fund as per the Liberalised Remittance Scheme. These limits restrict the ability of mutual funds located in IFSC to raise funds from domestic HNIs, and consequently their participation in ship financing.

- **Employees Provident Fund Organization (EPFO)**

Restrictions on investment by Employees Provident Fund Organization (EPFO) to invest in companies engaged in ship financing and leasing.

- **External Commercial Borrowings (ECBs) guidelines**

Lack of flexibility in pricing and tenor. All-in cost for ECBs is capped at LIBOR (or equivalent benchmark rate) plus 450 bps spread. 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.

Minimum Average Maturity Period 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. The requirement of minimum average maturity is that the term of the facility should have a certain minimum maturity as a result of which lenders do not have flexibility to have shorter tenor loans. Ship financing requires flexibility.

Inability to refinance. Foreign branches/ subsidiaries of Indian banks cannot advance ECBs for the purpose of refinancing domestic debt. 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 IBU cannot refinance domestic debt of shipping companies.

Inability to obtain “Infrastructure” status. Despite having long useful lives of 15 – 25 years, vessels are not granted “infrastructure” status, which will allow access to longer-term funding at more competitive rates

- **National Investment and infrastructure Fund (NIIF)**

The NIIF is a sovereign wealth fund registered as an AIF for the purpose of providing long-term funding to infrastructure related projects. However, the NIIF and the funds it invests in do not address capital intensive industries such as ship leasing, aircraft leasing etc.

- **RBI approvals**

- (i) By virtue of Section 13(1) of the IFSCA Act, the powers exercised by RBI shall not have any application within IFSC. In this regard, all powers generally vested with RBI shall vest with IFSCA for entities registered therein. However, relying on the FEMA (IFSC) Regulation, 2015 and instructions and clarifications on circulars issued under the IFSC (Banking) Regulations, 2020 dated December 24, 2020, it has been clarified that all financial institutions and banking units (including subsidiaries of domestic and foreign banks) shall be treated as persons resident outside India. In respect thereof, the FEMA, 1999 (including regulations, directions etc. issued thereunder) shall be applicable. Further as per the said circular, while the RBI (Interest Rate on Advances) Directions, 2016 shall have no application, the Master Circular on Loans and Advances – Statutory and Other Restrictions dated July 01, 2015 (as amended) shall be applicable to Banking Units. By virtue of the applicability of RBI as stated above, vessels will not be able to avail long term funding at competitive rates since they are not granted ‘infrastructure status’ as per RBI Circular DBOB.BP.BC.No. 58/08.12.014/2012-13 dated November 20, 2012 (as amended) and the ‘Harmonised Master List of Infrastructure Sub-sectors dated April 26, 2021.
- (ii) As per the RBI Master Directions – ECB, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers (the “ECB Master Directions”), the following restrictions are imposed:
 - (a) All-in cost for ECBs is 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 the purpose of the loan. Call and put options shall not be exercisable prior to completion of the minimum average maturity.
 - (c) Further, foreign branches/ subsidiaries of Indian banks cannot advance ECBs for the purpose of refinancing domestic debt.

As for limb (a) above, 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.

As for limb (b) above, 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. However, 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 times are good / they have adequate liquidity. This also helps vessel owners in managing finance on underlying assets.

As for limb (c) above, 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 IBU cannot refinance domestic debt of shipping companies.

6.5. Other General challenges

- **The Admiralty Act vis a vis security enforcement**

SARFAESI Act, 2002 -

As per Section 31(d) of the SARFAESI Act, 2002, the provisions of the act and the remedies available to secured creditors will not be applicable to the creation of security interest in any vessel (as defined under Section 3(55) of the MSA). Further, the High Court of Bombay in ICICI limited v. MFV Shilpa and Others, AIR 2002 Bom 371, Para 12 held that the Debt Recovery Tribunal shall have no jurisdiction to entertain a claim against a vessel on the basis that a vessel is not a living person.

Admiralty Act and its implications on protection of secured creditors versus IBC – The IBC being a relatively new regime, the jurisprudence on the interplay between IBC and Admiralty jurisdiction is yet to be fully settled by the Hon’ble Supreme Court of India. However, the Hon’ble High Court of Bombay, in Board of Trustees of the Port of Mumbai v. Barge Madhwa and Ors, 2020 (4) ABR 161, has set out the scope for harmonious construction of the IBC and Admiralty Act as follows:

- Scenario 1 i.e. when the Plaintiff has commenced admiralty proceedings and obtained an order of arrest prior to insolvency proceedings being file (Para 51) - if the security has been provided for release of such vessel, then the suit ceases to be an action in rem (Para 51.1). However, the suit will not proceed against the furnisher of security, being the corporate debtor in light of Section 14(1)(a) of the IBC. However, the plaintiff will be treated as a secured creditor, whereby the security will be exclusively for the Plaintiff’s claim (Para 51.1) If the CIRP is successful and the resolution plan is approved, then the claim of the plaintiff will be determined in accordance with the resolution plan (Para 51.2). 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 plaintiff (Para 51.3).*
- If no security is furnished at the time when moratorium is declared, the suit will not proceed any further (Para 51.4). To this end, the RP can make security be furnished 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 (Para 51.4).*
- If the company is liquidated, the Admiralty Act will govern the sale of vessels and all others seeking sale proceeds (as not governed by the admiralty act) can be unsecured creditors or operational creditors, as the case may be (under 51.7 and Para 51.10, respectively).*
- Scenario 2 i.e. if a moratorium is declared before a suit for enforcement is filed (Para 52) - there will be no bar on filing the suit since the claim is in respect of the vessel*

and not the corporate debtor. To that extent, the filing of an admiralty suit shall not be hit by the moratorium provisions (Para 52.1). Upon the resolution professional 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 (Para 52.1). 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 (Para 52.2).

- e. In furtherance thereof, the Plaintiff shall be considered a secured creditor and if the resolution plan and the process stated in scenario 1 above shall be applicable (Para 52.3). In the event that the RP chooses to furnish security for release of the vessel, he shall have an overriding obligation to protect the interests of the ships and all payments made in respect of crew wages etc (Para 52.3). Upon an application before the admiralty court, the said court can consider sale of vessel and retain the proceeds pending the outcome of the CIRP (Para 52.3).*
- f. Scenario 3 i.e. if the owner of the vessel is in liquidation at the time when admiralty proceedings is instituted by the Plaintiff in rem for the arrest of the vessel (Para 55) - If arrest of ship is ordered, the vessel can be sold by the Admiralty Court in order to realise the maximum value as such judicial sale shall result in the extinguishment of all maritime liens thereby giving the buyer clear title, unlike via liquidation, thereby appearing to be less attractive (Para 55.3). Further, the liquidator shall be entitled to defend the suit (Para 55.3). Alternatively, once the Plaintiff obtains an order of arrest, he 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 and the Plaintiff (Para 55.4).*

In view of the above, it may be noted that while the aforesaid case aims at harmoniously interpreting both the IBC and the Admiralty Act, an operational or financial creditor for the purposes of the IBC in respect of a vessel or its owner (being the corporate debtor) shall not strictly be entitled to the remedies available under the IBC.

Admiralty Act versus arbitral proceedings - Reliance is placed on the case of JV Ocean Liner LLC v. MV Golden Progress, MANU/MH/0026/2007, Para 64 wherein it was held that an arrest of a ship is a right in rem whereas Section 9 of the arbitration act is an action in personam and therefore cannot be exercised for arrest of ship as security irrespective of whether the arbitration is foreign seated.

Although the Admiralty Act vests the High Courts (as defined therein) with the exclusive jurisdiction to arrest ships and decide matters arising from maritime liens and claims, it may be noted from the discussions with the stakeholders that the present judicial system is time consuming and therefore proves to be prohibitive as compared to other jurisdictions. Further, agitating maritime claims and liens over a vessel is only effective if the time period between the arrest of a vessel and its sale is minimal.

- **Stamp duty**

While as per Section 3(3) the Indian Stamp Act, 1899 instruments executed by, or, on behalf of, or in favour of the developer or unit in connection with the carrying out of purposes an

SEZ, would be exempt from payment of stamp duty, Section 21 of the Gujarat SEZ Act, 2004 which specifically exempts the application of stamp duty and registration fees for instruments executed by a unit, establishment of industry (relating to transfer of land, loan agreements, credit deeds, mortgages etc.), does not *inter alia* include within its ambit an exemption in respect of instruments executed in connection with, on behalf of, or in favour of the unit.

7. SHORT FORM OF THE RECOMMENDATIONS

7.1. Regulatory Recommendations

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
FINANCIAL PRODUCTS			
SHIP LEASING			
Notification of vessel leasing as a financial product	<p>Section 12(1) of the International Financial Services Centres Authority Act, 2019 empowers the International Financial Services Centres Authority to “develop and regulate the financial products, financial services and financial institutions in the IFSC”.</p> <p>In exercise of their powers, the IFSCA has passed, <i>inter alia</i>, 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 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>	<p>Vessel leasing should be notified as a ‘financial product’ by notification of Central Government under Section 3(d)(vi) of the IFSCA Act.</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 an appropriate framework.</p> <p>Additionally, the framework for ship operating lease should be notified.</p> <p>Entities who own vessels and who intend to carry on the business of ‘vessel lease’ will be entitled to register as ‘financial institutions’ and will be able to undertake vessel leasing. There is no separate mention of ship owning or acquisition in the above as such transactions are inherent to all the above activities and therefore will be covered under ‘financial product’.</p>	IFSCA

SHORT FORM OF THE RECOMMENDATIONS

PARTICULARS	BACKGROUND	PROPOSAL	AUTHORITY
Inclusion of charters (time charters, voyage charter, bareboat charters etc.) in the term “ <i>ship lease</i> ”	The definition of ship leasing as defined under the IFSCA Finance Company Regulations is not exhaustive.	The term “vessel”, “ship” and “vessel lease(s)” in the IFSCA (Finance Company) Regulations, 2021 should be defined.	IFSCA
‘Framework for enabling ancillary services at IFSC’ dated February 10, 2021 to be amended to include certain ancillary services	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 5 of the Framework.	The Framework should include other marine ancillary services including crewing and training, operation and maintenance and management activities, and also commercial, technical and financial marine support services.	IFSCA
SHIPPING REGULATIONS			
Registration of vessels	<p>Registration of vessels is governed by Part V of MSA read with relevant rules and orders. Registration of certain kinds of vessels for operating in inland waters is also governed by the Inland Vessels Act, 1917 and fishing vessels and harbour-craft operating in coastal waters is governed by the Coasting Vessels, Act 1838 (to the extent applicable).</p> <p>Only Indian ships are permitted to register under the MSA</p> <p>As regards registration and acquisition of foreign vessels, judicial precedents suggest that after a ship has obtained provisional registration, they are</p>	<p>The following steps be taken to make ship registration (including registration of companies/ entities for that purpose) efficient:</p> <ul style="list-style-type: none"> – DG Shipping in consultation with M/o Shipping may clarify by way of notification/ circular that all registrations and annual compliances for an entity in 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 IFSCA website. – Time-bound Ship Registrations. – DG Shipping and M/o Shipping may enable an improvised Spice+ for IFSC which allows for a single window and time-bound approval system for 	DG Shipping

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>	

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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

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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

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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			
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)	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>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>	M/o Finance, CBIC
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	Supply of services of transportation of goods in vessels for export of goods is exempt upto 30 September 2021.	Amend notification to provide exemption on export freight services indefinitely.	M/o Finance, CBIC/ GST Council

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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

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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

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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

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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

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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

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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

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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

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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”)			

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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

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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>

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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

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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

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SAFAL

Ship Acquisition, Financing and Leasing from IFSC in India

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>
<p>1.3</p>	<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 read with circular June 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>	<p>IFSCA</p>	<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></p> <p><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></p> <p><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> (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> (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>

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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) The concerned Indian ship-owning company shall, at a minimum, maintain the level of its Indian flag tonnage as on 01 April, 2014.</p> <p>(b) The tonnage flagged outside India, by an Indian entity at any given time, shall not exceed its owned tonnage under the Indian flag.</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	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:
					(a) The company should be incorporated in India and

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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) <i>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</i></p> <p style="margin-left: 40px;">a. <i>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.)</i></p> <p style="margin-left: 40px;">b. <i>Vessel size is 15,000 dwt or more</i></p> <p style="margin-left: 40px;">c. <i>Vessel age is not more than 15 years</i></p> <p>(iii) <i>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</i></p> <p style="margin-left: 40px;"><i>(Indian company as well as branch of the foreign subsidiary together shall herein after be referred to as “Indian Group Companies”).</i></p> <p>(iv) <i>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.</i></p> <p>(v) <i>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-</i></p>				
	<p>Proposals for Participation in PSU Bulk Import Freight</p> <ul style="list-style-type: none"> • <i>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</i> • <i>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.</i> • <i>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.</i> • <i>Related parties cannot participate simultaneously in the tender</i> • <i>A Qualifying IFSC Entity for the purposes of bidding:</i> 		<p>Proposals for Participation in Coastal Cargo</p> <ul style="list-style-type: none"> • <i>Reciprocal fair and equitable arrangements with specific foreign flag states</i> • <i>A Qualifying IFSC Entity for the purposes of coastal trade is an entity which meets all the following criteria:</i> <ul style="list-style-type: none"> ○ <i>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</i> ○ <i>At least 50% of total crew in each vessel to be of Indian nationality</i> ○ <i>At least 1 Indian cadet for training onboard</i> ○ <i>No requirement for tonnage reserve funds/ IACS Class / Manning Stds.</i> ○ <i>Tonnage tax rates as per the then prevailing rate after the tax holiday period.</i> 		

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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 coasting 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 be 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

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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>

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		<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>			

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		<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><u>Relaxations with respect of Indian vessels:</u></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><u>Cabotage Policy applicable to Foreign vessels:</u></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>			

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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>			

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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	Import of Bulk Cargo				
	For import of bulk cargo, government departments and PSUs are required to obtain no-objection certificates from M/o Shipping.	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 15 th 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.	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.	DG Shipping	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.

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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>

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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> 					

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					<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><i>Hire charges</i></p> <p><i>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.</i></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>	<p>M/o Finance, CBDT</p>	<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>
	<i>Suggested amendment language</i>				

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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>				

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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>

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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>

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S. No	ISSUE	LEGISLATION CONCERNED	LEGAL CONSIDERATIONS	AUTHORITY CONCERNED	COMMENTS
	complex compared to other maritime best practices.	(A) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or (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.			
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	Section 115VD of the Act states that, For the purposes of this Chapter, a ship is a qualifying ship if— (a) it is a sea going ship or vessel of fifteen net tonnage or more; (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 (c) a valid certificate in respect of such ship indicating its net tonnage is in force,	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>

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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: 80px; width: 60%;"> <tr> <td style="width: 5%; text-align: center;">[]</td> <td style="width: 15%;">Chapter 99</td> <td style="width: 55%;">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: 25%; 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	GST on charter hire (Ocean freight) Income - Export freight services	<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.
Suggested amendment language:					
<p>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</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>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>					

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:</i> <i>(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	<p>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%.</p> <p>It takes a long time to set off (utilize) the IGST credit impacting cash flow of the Indian shipping companies.</p> <p>The relevant extract is provided below:</p> <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	M/o Finance (Central Government) has exempted BCD applicable on import of vessel, subject to certain conditions	M/o Finance, CBIC	<p>Under this option, Import IGST should be made "Nil".</p> <table border="1"> <tr> <td>IGST</td> </tr> <tr> <td>Nil</td> </tr> </table> <p>Basis these changes, taxes on import of vessel will be made "Nil" when imported by an Indian ship owner.</p> <p>This would require an amendment of Notification 50/2017-Customs by the Ministry</p>	IGST	Nil
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														
IGST																			
Nil																			

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 1090"> <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 1220"> <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												

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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>Notification - Integrated Tax (Rate):</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				

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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. <i>to a Unit in an International Financial Service Centre set up to carry out vessel leasing and related business from IFSC'</i></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
		Section 26(1)(a) provides that imports by an SEZ unit are exempt from customs duty, only if: (i) Such goods are used for 'authorized operations'; and (ii) Goods are <u>physically brought into the SEZ unit</u> ;			physically required to enter the SEZ area (and stay therein)
Suggested amendment language:					
Amend Section 26(1)(a): <i>Imports by an SEZ unit are exempt from customs duty, only if:</i> <i>(i) Such goods are used for 'authorized operations'; and</i> <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>					
3.	Requirement of Separate Office space and lease for each Unit	Rule 18(2) and other connected Rules of SEZ Rules, 2006 provides that, <i>The Approval Committee shall approve the proposal if it fulfills the following requirements, namely:</i> <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> <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> <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>		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:					
<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. 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>					
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>					
ALTERNATIVE INVESTMENT FUNDS					
<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>	<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.</p>	<p>SEBI and RBI; M/o Finance</p>	<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) <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;</i></p> <p><i>"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:</i></p> <p>(a) <i>Banks;</i></p> <p>(b) <i>NBFCs;</i></p> <p>(c) <i>AIFs;</i></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	<p>Investment by a domestic AIF into a Leasing Company operating in IFSC</p>	<p>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>	<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>	<p>SEBI and RBI; M/o Finance</p>	<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	Investment by Pension Funds	<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

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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)

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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

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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>					

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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>			

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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>

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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. 					

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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:				

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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>	<p>Government of Gujarat</p>	<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

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- (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

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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

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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 Sujjan	CMD	Propel Shipping DMCC, Dubai
5	Mr. Ritesh Ramakrishnan	Joint MD	Transworld Shipping, Dubai
6	Capt. Rajiv Tatarbe	Director Comm	Chellaram Shipping, Hong Kong

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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

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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:**

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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>

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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	

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<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 _____

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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.