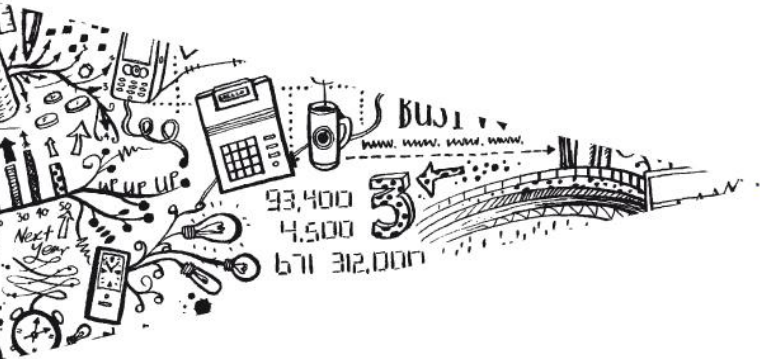


16 January 2012

EY Regulatory Alert

Qualified Foreign Investor route of foreign investment in equity shares



Background

The Ministry of Finance, Government of India, through Press Release issued on 1 January 2012 decided to allow Qualified Foreign Investors (QFIs) to directly invest in Indian equity markets, attract more foreign funds, reduce market volatility and to deepen the Indian capital market.

The Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI) vide circulars¹ issued on 13 January 2012, have now prescribed the scheme for investment by such QFIs in equity shares (Scheme).

This alert summarizes the key aspects of the Scheme.

Salient features

The salient features of the scheme as outlined in the Circulars are as follows:

Permitted Securities

QFIs are limited to do the following activities:

- ▶ Purchase of equity shares in public issues, to be listed on recognized stock exchange
- ▶ Purchase of listed equity shares through SEBI registered brokers, on recognized stock exchanges in India

- ▶ Sale of equity shares which are held in their demat account through SEBI registered brokers
- ▶ Purchase of equity shares against rights issue
- ▶ Receipt of bonus shares or receipt of shares on stock split/consolidation
- ▶ Receipt of equity shares due to amalgamation, demerger or such other corporate actions, subject to the investment limits
- ▶ Receipt of dividends
- ▶ Tender equity shares in open offer as per the SEBI(Substantial Acquisition of shares and Takeovers) Regulations, 2011 or SEBI (Delisting of equity shares) Regulations, 2009 or SEBI (Buyback of Securities) Regulations, 1998

Investment and remittance restrictions

- ▶ The individual and aggregate investment limit for QFIs shall be 5% and 10% respectively of the paid-up capital of the Indian company. These limits shall be over and above the FII and NRI investment ceilings prescribed under the Portfolio Investment Scheme route for foreign investment in India. However, the QFI limits will be within the composite sectoral caps under the extant Foreign Direct Investment (FDI) policy.

- ▶ Purchase of equity should be carried out within five working days of the foreign inward remittances through normal banking channels, failing which said funds would have to be repatriated back to the QFI's designated overseas bank account.

- ▶ The sale proceeds as well as the dividend payments (if received in the single rupee pool bank account), received in this single rupee pool bank account, would also be repatriated to the designated overseas bank account of the QFI within five working days of having been received in the single rupee pool bank account.

- ▶ Within these five working days such receipts could be utilized for the purposes of fresh purchases of equity shares, if so instructed by the QFI.

- ▶ The DP will be responsible for withholding applicable tax on account of profits or gains or dividends or any other income accruing to or received by QFI before making any re-investment /repurchase or repatriation /remittance to the QFI and remit and report the same to the tax authorities

Opening of Demat and Bank accounts

- ▶ The DP can open a separate single rupee pool bank account with an AD Category - 1 bank in India.

¹ RBI/2011-12/347, A.P. (DIR Series) Circular No. 66 and CIR/ IMD/FII&C/3/2012

- ▶ A QFI shall be allowed to open only one demat account with any of the qualified DPs. The QFI shall make purchase and sale of equities through that DP only. No bank account would be allowed to open a bank account in India.
- ▶ QFIs can, however, open trading accounts with one or more SEBI registered brokers.
- ▶ QFIs can transact only through one designated overseas bank account and such bank account should be based in a country which is compliant with Financial Action Task Force (FATF) standards and is a signatory to Multilateral Memorandum Of Understanding (MMOU) of International Organization of Securities Commission (IOSCO) **(the said countries are listed in the Alert)**.
- ▶ QFIs will have to obtain a Permanent Account Number (PAN) - a tax id number before investing in Indian shares.
- ▶ The DP shall ensure that QFIs meet all KYC as per norms prescribed by SEBI.
- ▶ QFIs shall not issue offshore derivative instruments/participatory notes.
- ▶ The transactions of QFIs, for all purposes, shall be treated at par with that of Indian non-institutional investors with regard to margins, voting rights, public issues etc.
- ▶ Responsibility has been casted on the DP to ensure the following:
 - ▶ same set of ultimate /end beneficial owner(s) are not allowed to open more than one demat account; and
 - ▶ the ultimate beneficial owner is not resident in India.

Other conditions

- ▶ The QFI shall transact in Indian equity shares only on the basis of taking and giving delivery of shares purchased or sold
- ▶ Each transaction of the QFI shall be cleared and settled on a gross basis

List of signatories to the MMOU of IOSCO

| | | |
|------------------------|---------------------------------------|-------------------|
| Albania | Denmark | Kenya |
| Alberta | Dubai | Republic of Korea |
| Australia | Estonia | Liechtenstein |
| Austria | Finland | Lithuania |
| Kingdom of Bahrain | Former Yugoslav Republic of Macedonia | Luxembourg |
| Belgium | France | Malaysia |
| Bermuda | Germany | Maldives |
| Brazil | Greece | Malta |
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| British Virgin Islands | Hong Kong | Montenegro |
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