Qualified Foreign Investors entry in the Indian Capital Markets

"The Indian Government has recently permitted Foreign Investors termed as Qualified Foreign Investors ***("QFIs")*** who meet prescribed Know Your Customer ***("KYC")*** requirements to directly invest in the Indian equity market. This move is aimed to widen the class of investors, attract more foreign funds, reduce market volatility and to deepen the Indian Capital Market,". The Indian Government had already permitted QFIs access to the Indian Mutual Fund Schemes pursuant to the Indian Budget announcement in 2011-12. The Reserve Bank of India ***("RBI")*** has now permitted QFI's to invest on repatriation basis under the Portfolio Investment Scheme ***("PIS" route)*** similar to Foreign Institutional Investors ***("FIIs")*** in equity shares listed on the recognized stock exchanges and in equity shares offered to public in India.

Both the Securities and Exchange Board of India ***("SEBI")*** and the RBI have issued separate circulars to operationalise the QFI Scheme. A few highlights of the QFI Scheme are enumerated below:

Eligibility Criteria :

Only QFIs from jurisdictions which are compliant with Financial Action Task Force standards and with which SEBI has signed Multilateral Memorandum of Understanding under the International Organization of Securities Commission's shall be permitted to invest in equity shares under this Scheme. The Government has clarified that retail investors and trust from Gulf countries including Oman, Kuwait, Bahrain, UAE and Qatar will have direct access to equities. Further, in order to qualify as a QFI, the person should not be registered with SEBI as a Foreign Institutional Investor ***("FII")*** or a sub-account.

QFIs are permitted to :

1. Purchase:
2. Equity shares in public issues, to be listed on recognized stock exchanges in India;
3. Listed equity shares through SEBI registered stock brokers, on recognized stock exchanges in India;
4. Equity shares against rights issues.
5. Sell equity shares which are held in their demat account through SEBI registered stock brokers;
6. Receive:
7. Bonus shares or receipt of shares on stock split/ consolidation;
8. Equity shares due to amalgamation, demerger or such other corporate actions, subject to the investment limits;
9. Dividends;
10. Tender Equity shares in:
11. Open offer in accordance with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
12. Open offer in accordance with SEBI (Delisting of Equity Shares) Regulations, 2009 and
13. Buy-back by listed companies in accordance with SEBI (Buyback of Securities) Regulations, 1998.

QFI Demat Account :

A QFI can open only one demat account with any of the SEBI registered Qualified Depository Participants *("DP")* and can purchase and sell equity shares through that DP only. The DP shall ensure that the same set of ultimate/end beneficial owners are not allowed to open more than one demat account as QFI. A QFI can however open trading accounts with one or more SEBI registered stock brokers. Entities having opaque structure i.e. the details of ultimate/ end beneficiary are not accessible or where the beneficial owners are ring fenced from each other or where the beneficial owners are ring fenced with regard to enforcement shall not be allowed to open demat account as QFI.

QFI Investment Limits :

The individual and aggregate investment limit for QFIs is 5% and 10% respectively of the paid up equity capital of the Indian company at any point of time. These limits are over and above the FII and NRI investment ceilings prescribed under the PIS route for foreign investment in India. In the event of breach, the QFIs due to whom the limit is breached shall mandatorily divest excess holdings within three working days of such breach.

Purchase and Sale mechanism :

The QFI can place a purchase order with the DP mentioning all the prescribed details and remit the inward remittances from the designated overseas bank account of the QFI to the single rupee pool account maintained with the DP. The DP shall forward the purchase offer and the money to the SEBI registered stock broker as per the instructions of the QFI. The DP will ensure that the equity shares purchased on behalf of QFI are credited into the demat account of that QFI on the pay-out date. Likewise, on receipt of instructions from QFI regarding sale, the DP will place an order for sale of equity shares. The sale proceeds are required to be remitted to the designated bank's overseas account of the QFI within 5 working days, unless any fresh purchase of equity is made out of such receipts. Any actions such as dividend received (including dividend received on Indian Mutual Funds), buy back, delisting of shares etc. wherein the pool account maintained with the DP is credited with funds, such funds must be remitted to the designated bank overseas account of the QFI within 5 working days, unless any fresh purchase of equity is made out of such receipts.

Governing Laws :

The transaction of QFIs, for all purposes will be treated at par with that of Indian non-institutional investors with regard to margins, voting rights, public issue etc. However the QFI shall at all the times, in relation to his activities as QFI, subject themselves to the extant Indian laws, rules, foreign exchange regulations, and guidelines issued from time to time. An express undertaking to this effect shall be obtained by the DP.

The QFI Scheme may be fine tuned further with the advent of time and special circumstances. However the entry of QFIs as an eligible investor class in the Indian capital market is a welcome move and a positive step towards increasing foreign inflow into the country.

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External Commercial Borrowings (ECB) Policy – Liberalization and Rationalization

On a review of the policy related to ECB and keeping in view the announcements made in the Union Budget for the Year 2012-13, the Government has decided to further rationalize and liberalize the extant guidelines as under:

i. **Enhancement of Refinancing limit for Power Sector**

Indian companies in the power sector now permitted to utilize 40 per cent of the fresh ECB raised towards refinancing of the Rupee loan/s availed by them from the domestic banking system, under the approval route, subject to the condition that at least 60 per cent of the fresh ECB proposed to be raised should be utilized for fresh capital expenditure for infrastructure project(s).

ii. **Maintenance and Operation of Toll systems for Roads and Highways**

ECBs permitted for capital expenditure under the automatic route for the purpose of maintenance and operations of toll systems for roads and highways provided they form part of the original project.

iii. **Civil Aviation Sector**

Airline companies registered under the Companies Act 1956 and possessing scheduled operator permit license from the DGCA for passenger transportation are now eligible to avail ECB for working capital. The ECB with an average maturity of 3 years will be permitted based on the cash flow, foreign exchange earnings and its capacity of airline companies to service the debt. The ECB for working capital is however required to be raised within 12 months from date of issue of the RBI circular i.e. 24th April 2012. The Government has put in place an overall ECB ceiling for the entire civil aviation sector at USD 1 billion and the maximum permissible ECB that can be availed by an individual airline company is USD 300 million. This limit can be utilized for working capital as well as for refinancing of the outstanding working capital Rupee loan.

The Securities and Exchange Board of India (“SEBI”) issues rules for Algorithmic Trading

SEBI, the capital market regulator has issued broad Guidelines on Algorithmic Trading (“Algo”) in order to put checks and balances in place for high-frequency trading. Algo uses mathematical models and powerful computers to order trades at lightning fast speeds as opposed to manually punched trades. SEBI has put in place minimum levels of risk control such as price check, quantity check, order value check, cumulative open order value check etc on stock brokers desirous of placing orders generated using Algos. The exchanges are required to ensure that all algorithmic orders are routed through brokers servers located in India which have appropriate risk-control mechanism to address the risk emanating from Algo.

Listing Norms for Small and Medium Enterprises Exchange (“SME”)Bourse

The Bombay Stock Exchange ***(“BSE”)*** had on 13th March 2012 launched the BSE SME Exchange and it has now issued eligibility Norms for Listing on BSE SME Exchange / Platform and migration norms from BSE SME to main board of BSE. Accordingly to the Listing norms, a company should have net tangible assets of at least INR 1 crore and net worth (excluding revaluation reserves)of at least INR 1 crore based on the latest audited financial results. It should have a track record of distributable profits for at least two years of preceding three financial years and each year should be 12 month long. Further, the Company seeking listing should not consider extraordinary income for the purpose of calculating distributable profits. In the event this norm is not followed, the net worth of the Company should be at least INR 3 crores. The listing norms further require that the post-issue paid up capital of the company shall be at least Rs. 1 crores and the company shall mandatorily facilitate trading in demat securities and enter into an agreement with both the depositories.

>Any Company applying for a shift from SME platform to the main board of BSE is required to satisfy the eligibility criteria specified in 26(1) of SEBI (ICDR) Regulations, 2009 either at the time of initial listing on SME platform or at the time of seeking migration to Main Board subject to further conditions.

Standardized Lot Size for Small and Medium Enterprises Exchange/Platform

The Securities and Exchange Board of India (“SEBI”) in 2010 prescribed a framework for setting up of a stock exchange/trading platform by a recognized stock exchange having nationwide trading terminals for Small and Medium Enterprises (“SMEs”). SEBI has now decided to standardize the lot size for Initial Public Offer (“IPO”) proposing to list on SME exchange/platform and for the secondary market trading on such exchange/platform. The standardize price band and lot size are :

Sr No	Price Band (INR)	Lot Size (No of Shares)
1	Upto 14	10000
2	More than 14 upto 18	8000

3	More than 18 upto 25	6000
4	More than 25 upto 35	4000
5	More than 35 upto 50	3000
6	More than 50 upto 70	2000
7	More than 70 upto 90	1600
8	More than 90 upto 120	1200
9	More than 120 upto 150	1000
10	More than 150 upto 180	800
11	More than 180 upto 250	600
12	More than 250 upto 350	400
13	More than 350 upto 500	300
14	More than 500 upto 600	240
15	More than 600 upto 750	200
16	More than 750 upto 1000	160
17	Above 1000	100

The final basis of the allotment in minimum lots and in multiples of minimum lot size shall be decided by the Registrar to Issue in consultation with Merchant Bankers, Issuer and the Stock Exchange. The secondary market trading lot size shall be the same as the IPO lot size at the application/allotment stage.

Income Tax makes disclosure of Foreign Assets mandatory

The Central Board of Direct Taxes ("CBDT") has vide a recent notification stipulated that Indian residents including those not ordinarily resident in India will need to disclose their foreign assets, foreign Bank accounts, overseas financial holdings and immovable properties whilst filing their Income Tax returns. Indian residents who hold signing authority for any accounts located outside India will also need to disclose their overseas assets. Further Individuals with income over INR 10 Lakhs or foreign assets will now be required to file electronic returns.

Investment by Foreign Venture Capital Investors ("FVCIs") liberalized

The Government has permitted FVCIs to invest in eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an Indian Venture Capital Undertaking or Venture Capital Find, units of schemes /funds set up by Venture Capital fund) by way of private arrangement/purchase from third party subject to stipulated terms and conditions. SEBI registered FVCIs have also been permitted to invest in securities of recognized stock exchanges subject to provisions of the SEBI (FVCI) Regulations 2000.

New Committee to decide Drug Approvals

The Health Ministry has set up a new Committee i.e. The New Drug Advisory Committee ("NDAC") to approve new drugs. The NDAC replaces the Drug Controller General of India ("DCGI") who was the sole approver of new drugs in the Country. The NDAC will oversee the work of 12 committees whose responsibility is to review the files submitted by the industry and give approvals within 6 weeks. The NDAC has the final say for approving or rejecting new drugs.

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