Investment in India by FIIs, sub-accounts and QFIs
Regulatory regime

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Introduction

Foreign Investment in India can be made through various routes like Foreign Direct Investment (FDI), Portfolio Investment Scheme (PIS), foreign venture capital investment etc. Under the PIS route, investment can be made by Foreign Institutional Investors (FIIs), Sub-accounts of FIIs (where investments are made by the FII on behalf of its Sub-account), Qualified Foreign Investors (QFIs) as well as Non Resident Indians (NRIs).

This flyer covers regulatory regime for foreign investment in India by FIIs, Sub-accounts and QFIs.

Meaning

FII means an institution established / incorporated outside India which proposes to make investment in India. **Sub-Account** means a person resident outside India, on whose behalf an FII proposes to invest in India. FIIs and Sub-accounts have to obtain registration with SEBI and are governed by the SEBI (Foreign Institutional Investors) Regulations, 1995.

QFI means a person who is

(i) resident of a country that is a member of Financial Action Task Force (FATF) or a member of a group which is a member of FATF; and

(ii) resident of a country that is a signatory to IOSCO's MMOU or a signatory of a bilateral MOU with SEBI

QFIs which meet prescribed Know Your Customer (KYC) requirements are permitted to invest through SEBI registered Qualified Depository Participants (QDPs). QFIs are governed by the guidelines / circulars issued by SEBI and RBI.

Eligibility

Following category of investors are eligible to register as FIIs, Sub-accounts or QFIs, subject to meeting fit and proper person norms and other criteria laid down by SEBI.

FII	Sub-account	QFI
The applicant should have track record, professional competence, financial soundness, experience etc. Following category of investors are eligible class for registration as FII: (i) Overseas pension fund, mutual fund, investment trust, insurance company or reinsurance company (ii) International or Multilateral Organization / agency, Foreign Governmental Agency, Sovereign Wealth Fund, Foreign Central Bank (iii) Overseas asset management company, investment manager or advisor, bank or institutional portfolio manager, proposing to make investments in India on behalf of broad based funds and its proprietary funds, if any	Following category of investors are eligible class for registration as a Sub-account: (i) overseas broad based fund or portfolio which is a broad based fund (ii) Proprietary fund of a registered FII; (iii) Foreign Corporate; or (iv) Foreign Individual; or (v) University fund, endowment, foundation, charitable trust or charitable societies which are eligible to be registered as a FII. NRIs are not eligible to apply as Sub-account. A foreign body corporate referred above is required to fulfill the following conditions:- • Its securities are listed on a stock exchange outside India • It has asset base of not less than US $ 2 billion	QFI should not be a person which is: a. resident in a country listed in the public statements issued by FATF on (i) jurisdictions having a strategic Anti-Money Laundering /Combating the Financing of Terrorism (AML/CFT) deficiencies to which counter measures apply, (ii) jurisdictions that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies b. resident in India c. registered with SEBI as FII or Sub-account or FVCI.

(iv) Trustee of a trust established outside India, and proposing to make investments in India on behalf of broad based funds and its proprietary funds, if any.	• It has an average net profit of not less than US $ 50 million during the 3 financial years preceding the date of the application.
(v) University fund, endowments, foundations or charitable trusts or charitable societies etc.	Foreign individuals referred to above are required to fulfill the following conditions:- • Networth of not less than US $50 million • Holds the passport of a foreign country for at least 5 years • Holds a certificate of good standing from a bank • Is the client of the FII or any other entity which belong to the same group as the FII for a period of at least 3 years.

Investment restrictions

Investment restrictions

Investment by FIIs, Sub-accounts and QFIs are subject to the Government of India guidelines. Below are broad investment avenues and limits:

FII (including Sub-account)	QFI
FIIs and Sub-accounts can invest only in the following securities: (i) securities in the primary and secondary markets including shares, debentures and warrants of companies unlisted, listed or to be listed on stock exchange in India (ii) mutual funds units, units of Collective Investment Scheme (iii) dated Government Securities. (iv) derivatives traded on stock exchange. (v) commercial paper (vi) security receipts issued by securitization/ asset reconstruction companies (only FII are allowed to invest). (vii) Indian Depository Receipts	QFIs can invest in Equity Shares / Corporate Debt – listed or to be listed, units of Mutual Fund **Equity shares** Total shareholding of a single QFI not to exceed 5% and all QFIs taken together not to exceed 10% of paid up equity capital of the company at any point of time subject to sectoral caps. **Corporate Debt** Purchase and sale of corporate debt is permitted for listed or to be listed corporate debt. In case of purchase of corporate debt to be listed, the listing must be completed within 15 days from the date of issue.
Total holding by each FII/ Sub-account cannot exceed: • 10% of the total paid-up equity capital or • 10% of the paid-up value of each series of convertible debentures issued by an Indian company	Investment in Corporate Debt Securities is permitted without any lock-in or residual maturity clause

Total holding by a foreign corporate or individual as Sub-account not to exceed more than 5% of the total issued capital of the company.

Total holdings of all FIIs/ Sub-accounts of FIIs put together cannot exceed 24% of paid-up equity capital or paid up value of each series of convertible debentures. The limit of 24% can be increased upto the sectoral cap/ statutory ceiling as applicable to the Indian company by passing board resolution followed by special resolution at the general meeting.

FIIs, QFIs and long-term investors registered with SEBI - Sovereign Wealth Funds, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks are allowed to invest upto US $ 25 billion in Government Securities and upto US $ 51 billion in Corporate Debts.

Offshore Derivative Instruments (ODIs) / Participatory Notes (P-Notes)

ODI has been defined to mean any instrument by whatever name called which is issued overseas by a FII against underlying securities held by it that are listed or proposed to be listed in India.

- No FII can issue or otherwise deal in ODIs, directly or indirectly, unless such ODIs are issued:
  a. only to persons who are regulated by an appropriate foreign regulatory authority;
  b. after compliance with ‘know your client’ norms.
- FII shall ensure that no transfer of ODIs is made to any person other than a person regulated by an appropriate foreign regulatory authority.

Sub-accounts and QFIs are not allowed to issue ODIs.

Registration

Particulars	FII	Sub-account	QFI
Registration fees	US$ 5,000/- for block of 3 years	US$ 1,000/- for block of 3 years	Fees as may be charged by QDP
Validity of registration	Permanent unless suspended or cancelled by SEBI.	Permanent – linked with the registration of FII	Permanent

Hedging

FIIs can approach Authorised Dealer Banks (AD Bank) for hedging their currency risk on the market value of entire investment in equity and/or debt in India provided that the FII's global outstanding hedges plus the derivatives contracts cancelled across all AD category banks is within the market value of its investments.

QFIs are permitted to hedge their currency risk on account of their permissible investments with the AD Bank with whom they are maintaining the Rupee Account for the purpose of investment.

Foreign Portfolio Investors (FPI) – A new regime in the offing!

With an aim to attract foreign investment in India, simplify compliance requirements and have uniform guidelines for various categories of foreign investors like Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs), SEBI has, at its Board meeting held on 5 October 2013, approved the Draft SEBI (Foreign Portfolio Investors) Regulations, 2013 (FPIs Regulations). FPIs Regulations have been framed by SEBI keeping in view the provisions of SEBI (Foreign Institutional Investors) Regulations, 1995, QFIs framework and the recommendations of the "Committee on Rationalization of Investment Routes and Monitoring of Foreign Portfolio Investments" which was formed under the Chairmanship of Mr. K. M. Chandrasekhar, whose report was accepted by SEBI at its Board Meeting held on 25 June 2013.

The FPIs Regulations would be effective from the date yet to be notified by SEBI.

Salient Features of the SEBI (Foreign Portfolio Investors) Regulations, 2013 are as under:

Foreign Portfolio Investors

- In order to provide for uniform entry norms for foreign portfolio investors in India, existing FIIs, Sub Accounts and QFIs shall be merged into a new investor class termed as Foreign Portfolio Investors (FPIs).
- FPIs will be required to seek registration with Designated Depository Participants (DDPs) authorized by SEBI. DDPs will be empowered to register FPIs on behalf of SEBI. The applicant FPIs need to meet risk based Know Your Client (KYC) requirements and obtain registration in any one of the following categories based on their risk based KYC:
  a. Category - I – this would include Government and Government related entities such as Foreign Central Banks, Sovereign Wealth Funds, Multilateral Organizations / Agencies.
  b. Category - II - this would include appropriately regulated broad based funds such as Mutual Funds, Investment Trusts, Insurance / Reinsurance Companies, other broad based funds; appropriately regulated entities such as Banks, Asset Management Companies, Investment Managers / Advisors, Portfolio

Managers; University Funds, Pension Funds and University related Endowments already registered with SEBI as FII/Sub Account.

c. Category - III – All other foreign investors investing in India under Portfolio Investment Scheme (PIS) route (not included in above 2 categories) such as Endowments, Charitable Societies / Trust, Foundations, Corporate Bodies, Trusts, Individuals, Family Offices, etc.

- The registration granted to FPIs by the DDPs on behalf of SEBI shall be permanent unless suspended or cancelled by SEBI

The details of the KYC requirements needed for registration are detailed in Annexure.

Transition rules

- All existing FIIs and Sub Accounts may continue to buy, sell or otherwise deal in securities under the FPI regime.
- All existing QFIs may continue to buy, sell or otherwise deal in securities till the period of 1 year from the date of notification of FPIs regulation by SEBI. In the meantime, they may obtain FPI registration through DDPs.

Investment avenues

- FPIs shall be allowed to invest in all those securities, wherein FIIs are allowed to invest.
- Category I and Category II FPIs shall be allowed to issue, or otherwise deal in ODIs, directly or indirectly. Such ODIs can be issued only to persons who are regulated by an appropriate foreign regulatory authority after ensuring compliance with KYC norms.

Designated Depository Participants

- DDP shall be an Authorized Dealer Category-1 bank authorized by Reserve Bank of India (RBI), Depository Participant (DP) and Custodian of Securities registered with SEBI.
- Depository shall forward the application of DDP along with its recommendation to SEBI for grant of approval.

- SEBI registered Custodian of Securities shall be deemed to be DDP subject to conditions.
- SEBI approved Qualified Depository Participant not meeting the DDP eligibility criteria may operate as DDP for a period of 1 year.
- DDPs shall carry out necessary due diligence and obtain appropriate declarations and undertakings before registering FPIs.

We can assist you in

- Planning strategies for Foreign Investors
  - Structuring of funds
  - Optimal route for investing into India from tax and regulatory perspective
- Assistance in obtaining registration as FII / Sub-Account :
  - Preparation and filing of application for registration with SEBI
  - Representation before SEBI
- Assistance in application and obtaining FIPB Approval, where applicable

Annexure

Document Type		Category - I	Category - II	Category - III
Entity Level	Constitutive Documents	Required	Required	Required
	Proof of Address	Required Power of Attorney, mentioning the address, is acceptable as address proof	Required Power of Attorney, mentioning the address, is acceptable as address proof	Required - Address proof other than Power of Attorney should be submitted.
	PAN Card	Required	Required	Required
	Financials	Exempt	Exempt	Risk based - Financial data sufficient.
	SEBI Registration Certificate	Required	Required	Required
	Board Resolution	Exempt	Required	Required
	KYC Form	Required	Required	Required
Senior Management (Whole Time Directors/ Partners/ Trustees/ etc.)	List	Required	Required	Required
	Proof Of Identity	Exempt	Exempt	Entity declares on letterhead - full name, nationality and Date of Birth OR Photo-identity proof'
	Proof of Address	Exempt	Exempt	Declaration on letter head
	Photographs	Exempt	Exempt	Exempt
Authorized Signatories	List & Signatures	Required - List of Global Custodian (GC) signatories can be given in case of Power of attorney to GC	Required - List of GC signatories can be given in case of Power of attorney to GC	Required
	Proof Of Identity	Not required	Not required	Required
	Proof of Address	Not required	Not required	Not required

Document Type		Category - I	Category - II	Category - III
	Photographs	Not required	Not required	Required
Ultimate Beneficial Owner ('UBO')	List	Exempt	Required - Can declare "no UBO over 25%"	Required
	Proof Of Identity	Exempt	Exempt	Required
	Proof of Address	Exempt	Exempt	Exempt
	Photographs	Exempt	Exempt	Exempt

Glossary

AD – Authorized Dealer
ADR – American Depository Receipts
AML – Anti-Money Laundering
CFT – Combating the Financing of Terrorism
DDP – Designated Depository Participant
FDI – Foreign Direct Investment
FATF – Financial Action Task Force
FII – Foreign Institutional Investor
FIPB – Foreign Investment Promotion Board
FPIs – Foreign Portfolio Investor
GC – Global Custodian
IOSCO - International Organization of Securities Commissions
KYC – Know Your Customer
NRI – Non Resident Indian
ODI – Offshore Derivative Instruments
PAN – Permanent Account Number
P-Notes – Participatory Notes
QDP – Qualified Depository Participant
QFI – Qualified Foreign Investor
RBI – Reserve Bank of India
SEBI – Securities Exchange Board of India

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- Global Employer Service
- Indirect Tax

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- Deloitte India Tax is ranked as a Tier 1 organization in the International Tax Review rankings 2013 for the fourth consecutive year
- Deloitte India Transfer Pricing is ranked as Tier 1 organization in the World Transfer Pricing 2014 rankings by International Tax Review
- Prashant Deshpande, Krupa Venkatesh and M.S. Mani recognized as leading Indirect Tax advisors 2013 by International Tax Review
- Sunil D. Shah, K R. Sekar, Rajiv Anand recognized as Leading Tax Controversy Leaders 2013 by International Tax Review
- Parikshit Datta , Samir Gandhi and Shanto Ghosh are recognized as leading Transfer Pricing Advisors 2013 by Euromoney
- K.R. Sekar, Vipul Jhaveri and Prashant Deshpande have been recognized as leading tax professionals in the 2012 Guide to the World's Leading Tax Advisors

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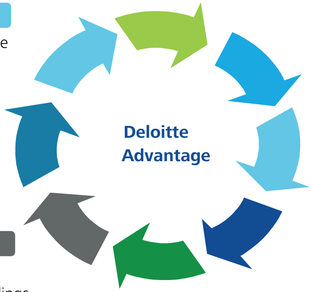

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