

Regulatory Hotline

July 28, 2016

REGULATORY ALERTS

- Union Cabinet increases the limit for foreign investments in stock exchanges from 5% to 15% for selected foreign institutions.
- Union Cabinet allows the foreign portfolio investors to acquire shares of a stock exchange through initial allotment.

In continuation of its endeavour to liberalise the existing foreign direct investment ("FDI") regime in India, the current government has announced numerous important policy related clarifications / directives relating to the FDI in India. Nishith Desai Associates, continuing with its practice of highlighting important regulatory changes, is bringing you this alert which provides a brief overview of certain key regulatory announcements with our comments.

INCREASE IN FOREIGN INVESTMENT LIMITS IN A STOCK EXCHANGE

Pursuant to the announcement made by Hon'ble Finance Minister Shri Arun Jaitley earlier this year during the Union Budget (2016 - 2017) speech, the Union Cabinet ("Cabinet") chaired by Hon'ble Prime Minister Shri Narendra Modi has given its approval for raising the foreign shareholding limit in a recognised stock exchange from 5% to 15% for foreign owned and controlled stock exchanges, depositories, banking companies, insurance companies and public financial companies.

Currently, Regulation 17(3) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporation) Regulations, 2012 ("SECC Regulations") states that no person resident outside India shall, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than 5 per cent of the paid up equity share capital in a recognised stock exchange.

Similarly, Regulation 17 (2) of SECC Regulations restricts residents in India from acquiring or holding more than 5 per cent of the paid up equity share capital in a recognised stock exchange, directly or indirectly, either individually or together with persons acting in concert. However, the proviso to that regulation states that selected residents in India may acquire or hold, either individually or together with persons acting in concert, upto 15 per cent of the paid up equity share capital in a recognised stock exchange.

Stock exchanges, depositories, banking companies, insurance companies and public financial institutions, that are residents in India, are permitted to invest in recognised stock exchanges upto 15 per cent of the paid up equity share capital. On similar lines, the Cabinet with an objective to enhance the global competitiveness of Indian stock exchanges has allowed foreign owned and controlled stock exchanges, depositories, banking companies, insurance companies and public financial institutions to acquire shares of a recognised stock exchange to the limit of 15 per cent of its paid up equity share capital.

FOREIGN PORTFOLIO INVESTORS MAY ACQUIRE SHARES OF A STOCK EXCHANGE THROUGH INITIAL ALLOTMENT

Another welcome change made by the Cabinet is to allow the foreign portfolio investors ("FPI") to acquire shares of a recognised stock exchange otherwise than through secondary market i.e. by initial allotment.

Currently Regulation 17 (4) (c) of the SECC Regulations prohibits FPIs from acquiring shares of a recognised stock exchange otherwise than through secondary market. Further, it explains that if the recognised stock exchange is not listed, an FPI may acquire its shares through transactions outside of a recognised stock exchange provided it is not an initial allotment of shares and if the recognised stock exchange is listed, the transactions by a foreign institutional investor shall be done through the recognised stock exchange where such shares are listed.

Given that BSE Ltd. has already sought an in-principle approval from Securities and Exchanges Board of India ("SEBI") to list its securities and National Stock Exchange of India Limited too, in a press release issued on June 27, 2016 has expressed the desire to go for listing, this could be a perfect opportunity for the FPIs to invest in shares of the two exchanges during their respective initial public allotment.

ANALYSIS

While the above said changes have been approved by the Cabinet, we shall have to wait for it to be incorporated by the Department of Industrial Policy & Promotion through a Press Note. Subsequently, the same would have to be reflected in the corresponding regulations issued by the SEBI, by way of an amendment.

- Prashant Prakhkar, Kishore Joshi & Pratibha Jain

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