

IN BRIEF

FOREIGN DIRECT INVESTMENT (FDI) POLICY RECALIBRATED: AMENDMENTS TO THE FRAMEWORK FOR LAND-BORDER SHARING COUNTRIES



Introduction

India's foreign investment regime has, over the past few years, evolved in response to shifting geopolitical, economic, and strategic considerations. The introduction of Press Note 3 of 2020 marked a significant tightening of oversight on investments from countries sharing land borders with India, particularly in the backdrop of pandemic-era vulnerabilities.

With the issuance of Press Note 2 of 2026, the Government has now revisited certain aspects of this framework, introducing definitional clarity and procedural refinements. The changes signal a calibrated approach—one that seeks to retain regulatory oversight, while addressing interpretational uncertainties that had emerged in practice.

I. Press Note 3 of 2020: Erstwhile Framework

In order to curb opportunistic takeovers/ acquisitions of Indian companies due to the COVID-19 pandemic, the Government of India had amended the

¹ Press Note 3 (2020 Series), Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, dated April 17, 2020.

FDI Policy vide Press Note 3 of 2020 (PN3)¹, issued by the Department for Promotion of Industry and Internal Trade (DPIIT), *inter-alia* stating that an entity of a country, which shares land border with India (LBC) or where the beneficial owner of an investment into India is situated in or is a citizen of any such LBC, could invest only under the Government route.

Given the lack of clarity around the definition and thresholds for “beneficial owner”, the regime was interpreted as a de-facto blanket approval requirement, capturing even marginal non-controlling participation from LBC-based investors, causing delays and deal uncertainty across a large number of cross-border transactions.

II. Press Note 2 of 2026: Revised Framework

Through Press Note 2 of 2026 (PN2) of March 15, 2026, the Government of India approved amendments to the FDI Policy framework by making certain notable amendments as under:

Definition of “Beneficial Owner”: PN2 now incorporates a formal definition of “beneficial owner”, having the same meaning as defined under the Prevention of Money-laundering Act, 2002², read with the criteria as stipulated under the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (PML Rules).

The PN2 framework states that beneficial ownership of the investment shall be construed to be vested in a LBC, if a citizen of, and/ or an entity incorporated or registered in a LBC, has the ability to *inter-alia* directly or indirectly, hold rights/ entitlements:

- (i) in excess of the applicable thresholds prescribed under Rule 9(3) of the PML Rules over an investor entity which is incorporated or registered in a country other than a country sharing land border with India;

It may be noted that Rule 9(3) of the PML Rules prescribes the applicable thresholds for identifying the beneficial owner and, inter-alia, provides that where the client (investor) is a company, the beneficial owner is the

² “Beneficial owner” means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.

natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest³ or who exercises control⁴ through other means.

It may be noted that Rule 9(3) of the PML Rules further provides that where no natural person is identified, the beneficial owner is the relevant natural person who holds the position of senior managing official. The said rule also contains criteria for determining beneficial owner where the client (investor) is a partnership firm, unincorporated association or body of individuals, trust etc.

OR

- (ii) which enable such citizen(s) and/ or entity(ies) to exercise control over the investor entity referred above;

OR

- (iii) which enable such citizen(s) and/ or entity(ies) to exercise ultimate effective control over the investee entity in any manner.

The press release posted on March 10, 2026, by Press Information Bureau, *inter-alia*, mentions that proposals for LBC investments in specified sectors/ activities of manufacturing in capital goods, electronic capital goods, electronic components, polysilicon and ingot-wafer, shall be processed and decided within 60 days.

III. Practical Implications

Prior to the introduction of PN2, certain authorized dealer banks informally relied on the thresholds under the PML Rules, and, in some cases, treated non-controlling beneficial ownership below 10% by a LBC investor as being an investment eligible under the automatic route. Notably, this approach was not expressly supported under the PN3 framework and remained an interpretational position adopted in practice. PN2 now appears to formalise and codify this threshold within the FDI regime. Our consistent view with respect to PN3 has been that even a minimal shareholding from a LBC - down to a single share - would trigger the requirement for prior Government approval under PN3. Against this backdrop, the recent change should be viewed not as a mere clarification, but as a substantive relaxation, particularly in recognizing thresholds and distinctions around passive or non-controlling investments.

The codification of the beneficial owner threshold removes a long-standing interpretive ambiguity that had led to inconsistent application by authorised dealer banks, pertaining to various cross border transactions.

It appears that where LBC investors hold non-controlling beneficial ownership of up to 10%, may now be permitted to invest in India under the automatic route, subject to the applicable sectoral caps, entry routes, and prescribed reporting requirements.

³ “Controlling ownership interest” means ownership of or entitlement to more than ten percent of shares or capital or profits of the company.

The 60-day approval window for investments in specified sectors/ activities with more than 10% LBC participation, reflects a policy intent to facilitate and expedite such investments to help companies enter into collaborations to expand manufacturing in India and to help companies enter into joint ventures to access technologies and integrate with global supply chains. This aligns with the pattern observed since 2020, where approvals have been selective and sector-sensitive, reflecting national security and strategic considerations.

Conclusion

The amendments introduced through Press Note 2 of 2026 represent a measured evolution of the existing FDI framework rather than a departure from its underlying policy objectives. By aligning key definitions with established legal standards and providing greater procedural certainty, the revised framework aims to enhance consistency in implementation.

As the regime continues to balance investment facilitation with strategic considerations, the practical impact of these changes will unfold through their application across transactions and sectors in the coming months.

This newsletter has been contributed by:

Jay Badola, Partner, Dua Associates, Gurugram

For further information contact:

Jay Badola, Partner, Dua Associates, Gurugram

Email: jbadola@duaassociates.com

Stay connected with Dua Associates
www.duaassociates.com

Disclaimer: This newsletter is for information purposes only. Nothing contained herein is purported to be or is intended as legal advice and the reader should seek formal legal advice before acting on any information or views expressed herein. Receipt of this newsletter shall not be construed as an attempt to advertise or solicit business in any manner whatsoever. For private circulation to the addresses only. This is not Spam mail. You have received this mail because you have either requested it and/or your name has been added to our subscriber mailing list.

⁴ “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.