

## Foreign Direct Investment: Government specifies the criteria for identifying 'beneficial ownership' of foreign investment into India

Pursuant to the release of Press Note 2 (2026 Series) on March 15, 2026 (“**PN 2**”), the Government of India has moved swiftly to notify amendments to the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“**NDI Amendment Rules**”). The NDI Amendment Rules specify the criteria to identify the ‘beneficial ownership’ of foreign direct investment (“**FDI**”) flowing into India and are particularly relevant in the context of FDI from Countries Sharing Land Borders with India (“**Land Bordering Countries**”). The Department for Promotion of Industry and Internal Trade (“**DPIIT**”) has also issued a revised Standard Operating Procedure (“**Revised SOP**”) for proposals where prior foreign exchange approval of the Government of India is required (“**Government Approval**”). This Revised SOP, among others, provides for expedited Government Approval for investments in critical manufacturing sectors from Land Bordering Countries.

### Background

1. In terms of Press Note 3 (2020 Series) dated April 17, 2020 (“**PN3**”): (a) any entity from a Land Bordering Country; or (b) where the beneficial owner of an investment in India is situated in or is a citizen of such a country, had to obtain Government Approval.
2. The PN3 regime did not clarify the thresholds and parameters for constituting beneficial ownership, or the level at which beneficial ownership must be assessed. This gap led to varying interpretations. Many relied on the concept of ‘significant beneficial ownership’ under the Companies (Significant Beneficial Owners) Rules, 2018 based on a questionnaire under the earlier standard operating procedure. Without a formal clarification, applicants filed numerous approval applications which caused delays and uncertainty. In practice, this ambiguity pushed investors to adopt conservative filing strategies.

### Introduction of the criteria for determining beneficial ownership

1. The NDI Amendment Rules align the concept of ‘beneficial owner’ with the framework under the Prevention of Money Laundering Act, 2002. It provides that a ‘beneficial owner’ must be determined in accordance with the criteria set out under Rule 9(3) of the Prevention of Money Laundering Rules, 2005 (“**PML Rules**”).
2. For a company, Rule 9(3) of the PML Rules states that beneficial owner is an individual who:
  - a) has ‘controlling ownership interest’ i.e., has ownership of, or entitlement to, more than 10% of the shares, capital, or profits of a company; and, or

- b) has 'control' i.e., among others, the right to appoint a majority of directors or otherwise influence management or policy decisions through shareholder rights, management rights, voting arrangements, or similar mechanisms.
3. Accordingly, PN2 read with the NDI Amendment Rules have re-written the restriction on Land-Bordering Countries, such that the following investment-proposals require prior Government Approval:
- a) FDI from an entity incorporated in a Land-Bordering Country or FDI by a citizen of Land-Bordering Country;
  - b) FDI from an investor-entity not incorporated in Land-Bordering Country ("**Non-LBC**") where a citizen of or an entity incorporated in a Land-Bordering Country has 'control' and, or 'controlling ownership interest' in the investor-entity; or
  - c) FDI from an entity incorporated in a Non-LBC where a citizen of or an entity incorporated in a Land-Bordering Country exercises 'ultimate effective control' over the Indian company. Neither the NDI Amendment Rules, nor the PML Rules define 'ultimate effective control'.
4. The NDI Amendment Rules further clarify that the "*residency of the beneficial owner*" is not relevant to this analysis. This is different from the restriction under PN3 where an interpretation was possible that 'residency' also mattered.
5. **Deemed beneficial owner:** Rule 9(3) of the PML Rules also provides that where no natural person can be identified to exercise 'control' or 'controlling ownership interest', the beneficial owner is the relevant natural person who holds the position of 'senior managing official'. The term 'senior managing official' is not defined in the PML Rules. The applicability of this deeming provision in the context of PN2 remains to be seen.
6. **Listed companies:** Rule 9(3)(f) of the PML Rules states that the requirement to identify and verify the identity of the beneficial owner would not apply where the investor-entity in question or the owner of the controlling interest, is an entity listed on a stock exchange in India, or is listed on stock exchange in jurisdictions notified by the Central Government, or is a subsidiary of such listed entities. The Ministry of Finance has notified- (a) USA; (b) Japan; (c) South Korea; (d) United Kingdom excluding British Overseas Territories; (e) France; (f) Germany; (g) Canada; and (h) International Financial Services Centre in India, as the countries under Rule 9(3)(f) of the PML Rules.
7. **Limited Liability Partnerships ("LLPs"):** It is noteworthy that, although the PML Rules provide distinct beneficial ownership tests for companies, partnership firms and trusts, they do not contain a dedicated framework for LLPs. Given that an LLP is a body corporate, it does not fit squarely within any of the prescribed categories. Nevertheless, as a necessary precaution, investor entities are advised to review and apply the tests that are relevant to their ownership structure.

## Processing of Government Approval and timelines

1. DPIIT has published the Revised SOP for FDI proposals that require Government Approval. It sets out the procedure for reviewing these proposals.
2. Under the Revised SOP, the application for Government Approval must be filed with the Foreign Investment Facilitation web-portal of the National Single Window System. Once the application has been made, the DPIIT assigns the proposal to the relevant ministry(ies)/departments. Where the application is in connection with the FDI from Land-Bordering Countries, such application will additionally be forwarded to Ministry of External Affairs, Ministry of Home Affairs for security clearance and the Reserve Bank of India, for their comments. If these ministries or bodies do not send comments, they are presumed to have none.
3. The Revised SOP has updated the time limit for each step in the approval process. The approving authority must grant the approval within 12 (twelve) weeks. An additional 2 (two) weeks is made available in case the approving authority proposes to reject the application.

## Expedited approval mechanism for FDI in 'manufacturing' sectors from Land-Bordering Countries

1. The Revised SOP promises to review FDI proposals emanating from Land-Bordering Countries in the manufacturing sector within 60 (sixty) days of the approval-application. The FDI proposal must relate to manufacturing of:
  - a) capital goods;
  - b) electronic components;
  - c) polysilicon, and ingot-wafer production;
  - d) advanced battery components;
  - e) rare earth permanent magnets; and
  - f) rare earth processing.

The Revised SOP sets out a detailed list of the manufacturing sectors that qualify for expedited approval.

2. It is pertinent to note that the Revised SOP does not dilute India's objective of screening investments connected to Land-Bordering Countries. It provides an expedited approval process for investments in certain strategically important manufacturing sectors.
3. Even in such cases, the Indian company must be owned and controlled by resident Indian citizens.

## Conclusion

The NDI Amendment Rules move India's FDI regime towards greater predictability and transparency by addressing the long-standing uncertainty that frequently delayed transactions and prompted conservative filing practices. From an mergers and acquisition perspective, the key impacts are as follows:

1. **Certainty for passive/minority investors:** Investors incorporated in a Non-LBC (particularly, private equity funds, sovereign wealth funds and publicly traded investment vehicles) will not require Government Approval where a citizen or entity from a Land-Bordering Country holds only a non-controlling stake of up to 10%.
2. **Enhanced reporting of control rights:** In the approval-form, certain additional disclosures are required. The Revised SOP requires disclosure of "*control rights including board appointment rights, veto rights and any other right granting direct or indirect control or ultimate effective control*", to the Government authorities. Whether veto rights constitute 'control' and, or 'ultimate effective control' needs to be assessed on a case-to-case basis.
3. **Greater certainty for listed acquirers:** It appears that investors that are listed entities or have controlling interest from listed entities from notified jurisdictions, are exempted from identifying the beneficial owners of FDI proposals.
4. **Encourages FDI into manufacturing:** By promising to approve FDI proposals from Land Bordering Countries in the 'manufacturing' sector within 60 (sixty) days of the application, the Government has signaled its intention to enhance India's manufacturing attractiveness.

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