

FDI & FEMA Clarification

Ministry of Finance has issued a notification on December 8, 2020 that provides for following changes:

- It has clarified that Multilateral Bank or Fund (e.g. <https://dea.gov.in/multilateral-institutions-divisions>) of which India is a member will be permitted to make investments under foreign direct investment regime without Government approval. Accordingly, no “beneficial ownership” test will be attributed to such entities as per Press Note 3.

Relevant Background

Press Note 3 of 2020 (from DIPP, Government of India) amended foreign direct investment regime. It required prior Government approval for foreign direct investments by an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country.

The definition of investment and thresholds constituting “beneficial ownership” are not clarified by the press note. In practice though there are certain benchmarks that are being adopted by the authorized dealer banks and allows investments based on declaration from investee companies in this regard.

- FDI limit under the ‘automatic route’ in the Defence Sector has been increased from 49% to 74%. This limit is permitted for companies seeking a new industrial license. Government approval will be required for more than 74% if it is likely to result in access to modern technology or for other reasons.

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