



REVISION IN FDI POLICY

The Government of India has reviewed the FDI policy for curbing opportunistic takeovers / acquisitions of Indian companies due to the current COVID-19 pandemic and amended para 3.1.1 of extant FDI policy as contained in Consolidated FDI Policy, 2017 as under:

Present Policy

A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defense, space, atomic energy and sectors/activities prohibited for foreign investment.

Revised Policy:

A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, 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, can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a), such subsequent change in beneficial ownership will also require Government approval.

The term “beneficial owner” has not defined in the Press Note. An issue may arise as to whether one has to consider the immediate or the ultimate beneficial ownership of investors proposing to invest in Indian entities. While there is sufficient jurisprudence on the term “beneficial owner” in the context of international tax laws, the said interpretation may not be relevant, considering the context of the Press Note. It may be advisable to act with caution before any investment decisions are taken and in appropriate cases, obtain due clarification from the Indian Government.