

UPDATE

This Update has been prepared by Parag Bhide, Saurabh Arora and Sakchi Agarwal.

Additional clarifications to the FDI policy for investments from land bordering countries

Introduction

On 15 March 2026, the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry has issued Press Note No. 2 (2026 Series) ("**Press Note 2**") as an amendment to Para 3.1.1 of the Consolidated FDI Policy Circular of 2020 dated 15.10.2020 ("**FDI Policy**") in furtherance to the press release dated 10 March 2026, wherein the Union Cabinet had approved changes to the guidelines on investments from countries sharing land border with India ("**Press Release 2026**"). Please refer to our update on '[Changes to FDI policy for investments from land bordering countries](#)', where we have discussed the changes sought to be introduced by Press Release 2026.

As a further update, certain prospects have now been clarified in the Press Note 2 and the key clarifications have been set out below.

A. Definition of 'Beneficial Owner' under PMLA Framework

Under the Prevention of Money-laundering Act, 2002 and Rule 9(3) of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 ("**PMLA Framework**"), a "*beneficial owner means an individual who ultimately owns or controls [...] and includes a person who exercises ultimate effective control over a juridical person*".

In case of a company, the beneficial owner is a natural person who has a controlling ownership interest or who exercises control through other means, whether acting alone or together, or through one or more juridical person.

"**Controlling ownership interest**" means ownership of or entitlement to more than 10% of shares or capital or profits of the company, while "control" includes the right to appoint majority of the directors or to control the management or policy decisions (such as through shareholding or management rights or shareholders agreements or voting agreements).

Thus, under the PMLA Framework, the test for beneficial ownership is ascertained through (a) ownership of 10% or more of shareholding of a company; or (b) the right to appoint majority of the directors or to control the management or policy decisions; or (c) 'ultimate effective control'.

It is important to note that the term 'ultimate effective control' has not been defined under the PMLA Framework or any other legislation.

B. *Revised Position under Press Note 2*

Press Note 2 has mirrored the definition of ‘beneficial owner’ provided under the PMLA Framework and has specified that beneficial ownership shall be ascertained to be vested in a country sharing land border with India if a citizen of a country sharing land border with India or an entity incorporated or registered in a country sharing land border with India (hereinafter referred to as “LBC”), has the ability to directly or indirectly, individually or cumulatively, independently or collectively, hold rights/entitlements:

- in excess of the thresholds prescribed under the PMLA Framework (*as defined below*); or
- which enables the LBC to exercise control over the investor entity; or
- which enables the LBC to exercise ultimate effective control over the investee entity.

Thus, in alignment with the position under Press Note 3, the Press Note 2 aims to regulate both direct and indirect investments from LBCs. Further, by incorporating the definition of ‘beneficial owner’ under the PMLA Framework, Press Note 2 read with Press Release 2026 has provided clarity regarding the applicable threshold of ownership at 10% and broadened the tests required to ascertain whether an approval is required or not.

However, Press Note 2 has further specified that ‘control’ continues to remain a trigger to ascertain beneficial ownership of an LBC in an investor entity, despite the shareholding of the LBC being below the threshold of 10% in such investor entity. In effect, Press Note 3 may continue to apply if an LBC holds less than 10% shareholding, but continues to exercise ‘control’ over the investor entity.

Further, introduction of an undefined test of ‘ultimate effective control’ over the Indian investee entity, allows regulators to look beyond shareholding to assess ‘control’ basis the substance of the transaction from a broader perspective.

Press Note 2 has also clarified that investments involving LBCs which do not require government approval shall continue to be subject to reporting requirements under the format specified under the Standard Operating Procedure laid down by the Department for Promotion of Industry and Internal Trade issued on 17 August 2023.

C. *Way forward*

Press Note 2 has formalised the long-awaited clarity sought by market participants on the thresholds for ascertaining ‘beneficial ownership’. While incorporation of the definition from under the PMLA Framework aligns with market practice, however, the inclusion of the tests of ‘control’ at the stage of the investor entity and ‘ultimate effective control’ at the stage of the Indian investee company facilitates a subjective regulatory review.

Therefore, it remains to be seen how developments will unfold with regard to Press Note 2.

This nota bene has been prepared by Parag Bhide, Saurabh Arora and Sakchi Agarwal who can be reached at parag.bhide@aquilaw.com, saurabh.arora@aquilaw.com and sakchi.agarwal@aquilaw.com respectively. This series is only for informational purposes and is not intended for solicitation of any work. Nothing in this series constitutes legal advice and should not be acted upon in any circumstance.