

UPDATE

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Changes to FDI policy for investments from land bordering countries

Introduction

On 10 March 2026, Union Cabinet approved changes to the guidelines on investments from countries sharing land border with India (“**Press Release 2026**”). As a background, Press Note No. 3 (2020 Series) was issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry (“**Press Note 3**”) during the COVID-19 pandemic to control by an entity which was either directly or indirectly owned by a country that shares land border with India under approval route. Indirect control by investors from land bordering countries was restricted through the usage of the term “beneficial ownership”, which was undefined in Press Note 3. This resulted in largescale ambiguities and lingering uncertainty for investors, especially private equity and venture capitalists, who may have investors from land bordering countries, holding minority investments. Further, the timelines for obtaining approval from the government was also long drawn.

With the new Press Release 2026, the Government clarified certain aspects which were earlier left for interpretation. A summary of the existing framework under Press Note 3 and the proposed changes to the regulatory landscape are set out below.

A. Original position under Press Note 3 sought to be amended

In the absence of guidance on the definition of ‘beneficial ownership’ under Press Note 3, the industry largely relied upon the definition of the term under other statutory acts and rules, such as the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, the Reserve Bank of India’s KYC Directions, and the Companies (Significant Beneficial Owners) Rules under the Companies Act, 2013 in synchronization with the authorised dealer banks. These aforementioned acts and rules broadly specify a threshold of 10% ownership of shares, voting rights, or entitlement to profits to define ‘beneficial ownership’. However, in practice, it differed on the conservative approach adopted by several authorised dealer banks.

B. Revised Position under Press Release 2026

Press Release 2026 now includes the definition of “beneficial owner” by linking it to the 10 percent threshold. It is noteworthy, that with the introduction of this definition, only indirect investments (and not direct investment) through entities in land-bordering countries has been eased. Press Note 3 does not lift any restrictions on direct investment by entities in land-bordering countries, and only seems to remove the practical impediment faced by global funds or larger groups entities which may have an insignificant ownership (i.e., less than 10%) by entities in land-bordering countries.

To streamline the process, the Press Release 2026 has also provided for a timeline of 60 days for expedited clearance of government approvals for investments in certain specific sectors /activities of manufacturing in capital goods, electronic capital goods, electronic components, polysilicon and ingot-wafer, with a

maximum non-resident shareholding of 49%. It has been clarified that the list of sectors / activities may be updated in future.

C. Way forward

The market participants have been seeking clarity on the thresholds since Press Note 3 was introduced. At present, Press Release 2026 symbolises mere policy decisions of the Government and substantive amendments will be required in the FDI policy framework for this policy decision to acquire legal effect.

By bring in clarity on the indirect holding threshold, the Government has clarified its intention to relax the policy. However, in order to attract more investors who intend to make bona fide investments in the country, Government should further soften its stance on Press Note 3. For example, the expeditious approval requirements should apply to all key sectors. Further, it will help if director appointment restrictions and security clearance requirements are eased too. Press Release 2026 has also not clarified if these proposed changes would cover previous transactions or applications that has been undertaken prior to this notification. Therefore, it remains to be seen how developments will unfold with regard to Press Note 3.

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