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C&M Alert: Amendment of FDI Policy to track opportunistic investments on account of COVID-19

The Government of India has undertaken several measures to minimize the impact of the ongoing COVID-19 pandemic. In a recent move, the Government of India has, via a press note dated 17 April 2020 (**Press Note**) issued by the Department for Promotion of Industry and Internal Trade (**DPIIT**), Ministry of Commerce and Industry proposed changes in the Foreign Direct Investment Policy (**FDI Policy**) to ensure that foreign investors from certain countries do not take undue advantage of the economic impact of COVID-19 on Indian companies.

The FDI Policy currently permits a non-resident entity to invest in India without prior government approval except in certain specified sectors/activities and above certain thresholds. However, a citizen of Bangladesh/ Pakistan or an entity incorporated in Bangladesh/ Pakistan can invest only under the Government approval route.

The Press Note revises the above-mentioned position and states that investments from countries sharing a land border with India will be subject to Government approval route.

The Press Note provides that:

- (i) an investment by an entity of a country sharing a land border with India, or
- (ii) if the beneficial owner of such investment is either situated in or is a citizen of country sharing land border with India, then such investment,

shall be subject to prior government approval.

Further, the Press Note provides that if a transfer of ownership of any existing or future foreign investment in an entity in India, directly or indirectly, results in either of the restrictions mentioned above, such transfer will also require Government approval.

The amendments proposed in the Press Note imply that foreign investments under the FDI Policy from countries such as China, in addition to those from Pakistan or Bangladesh, will now require prior Government approval. It remains to be seen whether FPI (Foreign Portfolio Investments, which now include the erstwhile foreign institutional investments (FIIs) will be similarly restricted.

It may be noted that the above amendment will come into effect from the date when a notification pursuant to the requirements of Foreign Exchange Management Act, 1999 is issued by the Government of India.



Should you have any queries or comments on this alert or how COVID 19 may affect your business or transactions, please visit our [LinkedIn page](#) or drop a line to our COVID – 19 task force at covid19@chandhiok.com. You may also reach out to:



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