

kcmFlash

Company Laws

May 11, 2026

Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2026 – Easing of FDI from Land Border Countries (“LBC”)

Key Highlights

Foreign Direct Investment (“FDI”), whether by way of subscription, purchase or sale by an entity or a citizen of a country which shares land border with India still continues to be under “**Government Approval**” route.

Expression “beneficial owner” introduced having the same meaning as assigned to it in clause (fa) of subsection (1) of section 2 of the *Prevention of Money-laundering Act, 2002* (15 of 2003), and shall be determined as per the criteria specified under sub-rule (3) of rule 9 of the *Prevention of Money-laundering (Maintenance of Records) Rules, 2005*.

“*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*” as per PN3 2020 series stands amended, with the **deletion of the clause “situated in”**, clarifying that persons residing in Land Border Countries (“LBC”) but not citizens no longer covered under the Government route for FDI.

Threshold limits for Automatic route now clearly defined to permit investments under FDI from investor entities registered in a country other than a country sharing land border with India and having shareholding of up to ten percent (10%).

Clarity provided in terms of beneficial ownership construed to be vested in a country sharing land border with India if such citizen / entity can exercise control over the investor entity or can exercise ultimate effective control over the investee company (i.e.) the Indian Company.

Specific reporting forms / compliances for investment not requiring prior Government approval such entities / citizens to be notified by the Reserve Bank of India.

Background

Government of India released Press Note 3 (2020) dated 17.04.2020 ("PN3"), restraining opportunistic takeovers / acquisitions of Indian companies during COVID-19 pandemic under Foreign Direct Investment ("FDI") route.

PN3 continued for the next nearly six years before the Department for Promotion of Industry and Internal Trade ("DPIIT"), Ministry of Commerce & Industry, Government of India issued Press Note No. 2 (2026 Series) ("PN2") dated March 15, 2026, relaxing some of the provisions while at the same time providing greater clarity on the provisions governing investment from LBCs.

The Central Government has subsequently amended the NDI Rules with the notification of the *Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2026* in the Gazette effective from May 2, 2026.

Amendments in NDI Rules

What doesn't change:

The entity or a citizen of a country sharing land border ("LBC") with India requires prior approval

Beneficial Owner shall be a natural person (s), who alone or together, or through one or more juridical person:

For Company	<ul style="list-style-type: none"> - has more than 10% of shares or capital or profits of the company or - has a right to appoint majority of the directors or control the management or policy decisions through other means.
For Partnership Firm	<ul style="list-style-type: none"> - has more than 10% of capital or profits of the partnership or - has a right to control the management or policy decision through other means.
For Unincorporated Association or Body of Individuals	<ul style="list-style-type: none"> - has more than fifteen per cent of the property or capital or profits of such association or body of individuals.
For Trust	<ul style="list-style-type: none"> - Identification of the author of the trust, the trustee, - the beneficiaries with 10% or more interest in the trust and - any other natural person exercising ultimate effective control over the trust.

from the Government irrespective of proposed holding in the Indian Entity.

Investor Name	Mr. X (LBC citizen) / PQR Co. (LBC entity)
Investee Company	ABC Private Limited
Investment	Government route

Inference: Mr. XYZ / ABC Co. will require prior Government approval for acquiring / sale of stake, irrespective of the limits / percentage of investment or sale thereof.

What changes:

Introduction of expression "Beneficial Owner" -

The amendment has clarified that the term "beneficial owner" shall have the same meaning as assigned to it in clause (fa) of subsection (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003), and shall be determined as per the criteria specified under sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, made under the said Act.

Removal of "situated in" for Individuals -

As per PN3 issued in April 2020: "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."

replaced with

As per Amendment Rules: "An entity or a citizen of a country, which shares land border with India, or where the beneficial ownership of an investment is vested in any such country, shall invest only under the Government route."

The specific condition "situated in" has been omitted in the Amendment Rules so as to provide relief to other than LBC citizens who for some reason or the other are residing in LBC but intend to invest / transfer stake of an Indian entity. This provides a huge relief to many investors who otherwise had no option but to go through the Government route. This amendment is also likely to benefit PEs / VCs who propose to invest in Indian startups and have funding from global sources, including from LBC.

Investment thresholds under Beneficial Owner -

Scenario-I:

Investor Name	XYZ Co. (Non-LBC entity)
Shareholders of XYZ Co.	- 9% by Mr. D, LBC citizen
	- 60% by Mr. E, Non-LBC citizen
	- 31% by PQR LLC, Non-LBC entity
Investee Company	ABC Private Limited
Control by LBC in XYZ Co.	No

Inference: Mr. D, LBC citizen having stake of less than 10% with no control in XYZ Co. falls under the automatic route. The said investment is subject to adherence to sectoral cap, sectoral conditions, pricing guidelines, reporting requirements, etc.

Scenario-II:

Investor Name	OPR Co. (Non-LBC entity)
Shareholders of OPR Co.	- 9% by Mr. G, LBC citizen
	- 60% by Mr. H, Non-LBC citizen
	- 31% by SQY LLC, Non-LBC entity
Investee Company	DEF Private Limited
Control by LBC in OPR Co.	Yes

Inference: The only change in this scenario is LBC citizen having control in OPR Co. As Mr. G controls OPR Co., the same falls under government approval route.

Scenario-III:

Investor Name	UVW Co. (Non-LBC entity)
Shareholders of UVW Co.	- 9% by Mr. Z, LBC citizen
	- 60% by Mr. G, Non-LBC citizen
	- 31% by KLM LLC, Non-LBC entity
Investee Company	ABC Private Limited
Control by LBC in UVW Co.	No
Control by LBC in ABC Pvt. Ltd.	Yes

Inference: Mr. Z, LBC citizen even though has no control in UVW Co. but can control ABC Private Limited post investment by UVW Co. Hence, the same falls under government approval route.

Transfer of ownership -

In case of transfer of ownership of an existing or future FDI in the Investee Company ("Indian entity"), either directly or indirectly, that results in the beneficial ownership triggering the threshold limits of BO, such transfer will also be covered under Government route.

KCM Comments:

Changes introduced by notification of Amendment Rules are in line with the changes recommended vide PN2, March 2026 by the Government of India. This is quite a welcome step and a softening of the hardline stance taken by the Government at the onset of COVID-19 pandemic. This is certainly expected to increase the quantum of investments

under FDI from LBC entities and bring relief with the much needed FDI inflows which have dried up in the last few months. Investments by LBC entities in certain sectors such as capital goods, electronic capital goods, electric components, polysilicon, and ingot-wafer are to be given high priority, with an expedited approval process by reducing the processing time to 60 days.

Certain procedural / operational areas still need to be addressed, and we expect relevant guidance from the respective regulatory authorities in due course. DPIIT is expected to come out with more details on the revised Standard Operating Procedures ("SOP"). Additional reporting compliances to be undertaken under the "automatic route" by the LBC entities is also awaited from the Reserve Bank of India.

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For further analysis and discussion, you may please reach out to us.

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