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Company Law

March 18, 2026

Press Note 3 2020 Amended – Shift from hard line stance to accommodative stance

Executive Snapshot

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

Salient features of PN3 guidelines:

- 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.
- Any transfer of ownership of any existing or future FDI in an entity in India resulting in the beneficial ownership falling within the aforesaid jurisdiction(s) also require Government approval.

Background

Union Cabinet vide its Meeting on March 10, 2026 approved change in guidelines on investment from countries sharing land border with India ("LBCs").

As per the amended guidelines:

- "Beneficial Owner" ("BO") definition introduced, as prescribed under Prevention of Money Laundering Rules, 2005
- "Non-controlling investment" specified, meaning Beneficial Ownership of up to 10 percent in an entity incorporated in India by a body corporate / individual originating from countries sharing land border with India
- Any non-controlling investment by an LBC will be covered under "Automatic Route"
- Proposal clearance mechanism and timeline of 60 days introduced to expedite approval of investment in specified manufacturing sectors / activities.

The key amendments are as under:

Particulars	Press Note 3 (2020)	Amendment to Press Note 3	KCM Remarks
Beneficial Owner ("BO")	No definition given	<p>Definition and criteria for determination of "Beneficial Owner" to be taken as per the <i>Prevention of Money Laundering Rules, 2005</i>.</p> <p>[As per Prevention of Money Laundering Rules, 2005: Beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of more than ten per cent or who exercises control through other means]</p>	The definition removes ambiguity in respect of which provisions to follow for determining beneficial ownership.
Non-controlling investment	N.A.	<p>Non-controlling investment means:</p> <p>Beneficial Ownership of up to 10 percent by Entities from countries sharing land border with India ("LBC")</p>	Addition of this provision for the purpose of determining cases to be covered under Automatic Route is a welcome approach.
Test of Beneficial Ownership	N.A.	To be applied at the investor level	Removes ambiguity
Automatic Route / Government Approval Route	<p>All investments were under the Government Approval Route.</p> <p>No concept of controlling stake.</p>	<ul style="list-style-type: none"> ➤ The non-controlling investment by LBCs will fall under "Automatic Route" subject to: <ul style="list-style-type: none"> ▪ <i>Applicable Sectoral Caps</i> ▪ <i>Entry Routes</i> ▪ <i>Attendant Conditions</i> ➤ Controlling Investment - "Government Approval Route" 	Introduction of controlling stake for the purpose of determining investment criteria – Automatic or Approval route gives clarity for investment
Reporting requirements for non-controlling investment by LBCs	Obtain prior government approval	Reporting of relevant information / details by the Indian entity to Department for Promotion of Industry and Internal Trade ("DPIIT").	New requirement under the "Automatic Route" for non-controlling investment by LBCs

Particulars	Press Note 3 (2020)	Amendment to Press Note 3	KCM Remarks
Expedited clearance of investments	No concept of expedited clearance	The proposal to be processed and decided within 60 days for the specific sectors / activities (as mentioned below)	Specific timelines provided for greater transparency and faster turnaround time for clearance of cases.
Sectors / activities specified for expedited clearance	No concept of expedited clearance, hence no sectors / activities specified	<p>Manufacturing of:</p> <ul style="list-style-type: none"> ▪ Capital goods ▪ Electronic capital goods ▪ Electronic components ▪ Polysilicon and ▪ Ingot-wafer <p>[Note: The majority shareholding and control of the Indian entity will be with the resident Indian citizen (s) and/or resident Indian entity (ies) owned and controlled by resident Indian citizen (s), at all times]</p>	Specific sectors defined as key sectors which will be given preference for the purpose of investment in India.

KCM Comments

The amended guidelines provide the much-needed clarity for the Indian entities desiring FDI investment from the LBCs by introducing definition of Beneficial Ownership. The relaxation in the PN3 guidelines is a welcome relief to Indian entities whose funding requirements were stalled on account of restrictions. The move is going to provide a fresh impetus to FDI from countries sharing land border with India, especially China. The move seems to have come at an opportune time when our FDI inflows were tapering down. The change in the hardline stance could also be a result of the rapidly changing geo-political situation which has escalated as a result of the USA, Israel and Iran conflict. The changes in the guidelines and the interpretation of certain key definitions will go a long way in improving the FDI inflows in the country and smoothen the process of further investment in the country. This action seems to be a pre-cursor to going back on the original stance prior to introduction of PN3, but it will take some time for the Government to revert to the original position.

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



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