

CORPORATE LAW UPDATE

An official update on the Foreign Exchange Management Act, 1999



Amendment in FDI Policy

The Department for Promotion of Industry and Internal Trade under the Ministry of Commerce and Industry, Government of India vide Press Note No. 3 of 2020 series dated April 17, 2020 amended para 3.1.1 of the FDI policy as contained in Consolidated FDI Policy, 2017 to prevent direct or indirect opportunistic takeovers and acquisitions of Indian companies amid the Covid-19 pandemic by neighbouring countries.

Present Position	Revised Position
Foreign Direct Investment (FDI) under automatic route is permitted except in sectors which are prohibited	FDI under automatic route is permitted except in sectors which are prohibited
FDI from following countries is restricted as mentioned below: <ol style="list-style-type: none"> 1. Citizen or Entity incorporated in <u>Bangladesh</u> can invest only with prior approval of the Government. 2. Citizen or Entity incorporated in <u>Pakistan</u> can invest only with prior approval of the Government, in sectors/activities other than defense, space, atomic energy and sectors/activities prohibited for foreign investment 	FDI from following countries is restricted as mentioned below: <ol style="list-style-type: none"> 1. Prior Government approval would be required for <u>Investment in India</u> for entities of a country which <u>shares land border with India</u> or where the beneficial owner of an investment into India is situated in or is a citizen of any such country 2. Prior approval of Government of India for <u>transfer of ownership of any existing or future FDI</u> in an entity in India, <u>directly or indirectly</u>, resulting in the beneficial ownership transfer to country which shares land border with India

Impact

1. Prior approval of Central Government would be required for issue of equity instruments against FDI received from entities/citizens in Countries sharing land borders with India or the ultimate beneficial owner of such investment is situated in entity or is a citizen of these countries.

2. Similarly transfer of ownership or beneficial ownership of existing/future FDI in equity instrument of an Indian company from entities/citizens of other countries to entities or citizens of Countries share land borders with India would require prior approval of Central Government

3. No change in Investment guidelines for FDI from Pakistan

4. The aforesaid changes are effective April 22, 2020, the date of publication in the Official Gazette. Any amount received towards investment in shares from such countries prior to April 22, 2020 will be under Automatic Route subject to sectoral caps

5. These provisions are also applicable for investments / transfer of investments in LLP

6 Branch office (BO), Liaison office (LO) and Project offices (PO) are out of the purview of these provisions

JCSS Comments

1. Aforesaid restrictions are applicable only to Foreign Direct Investments and hence following investments are out of the purview of these provisions:
 - Investments from Foreign Portfolio Investors
 - Investments from Venture Capitals / Private Equity Funds
2. Investment by entities in Hong Kong and Macao which are regions administered by China will also need prior Government approval for investment in India.
3. Transfer of shares from a Non-Resident to another Non- Resident having investment directly or indirectly in such countries would require prior approval from the Government of India. As a result, Indian Companies with FDI have to monitor transfer of shares of overseas listed parent / shareholders to such countries and prior approval of the Government of India would be required for such transfers.
4. Government approval may take anywhere between 3-6 months.
5. FDI will be credited into the bank account only if there is a Government approval.

Contacts us



INDIA & SOUTHEAST ASIA

SRIKANTH SRINIVASAN
Corporate Law & FEMA Advisory
srikanths@jcsglobal.com



VINUTA V U
Corporate Law & FEMA Advisory
vinuta@jcsglobal.com



ask@jcsglobal.com

+65 3159 4150 | +81 345 720 787 Ext 510 (日本語)

JCSS
Delivering
Transparency

INDIA SINGAPORE JAPAN INDONESIA