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## Easing of FDI Restrictions for Non-Controlling Stakes from Neighboring Countries

India's foreign investment regime continues to evolve with a focus on greater clarity and consistency. The Foreign Exchange Management (Non-Debt Instruments) Rules, 2026 (the "**2026 Amendment**") notified by the Ministry of Finance on 2nd May 2026, reflects the continuity in this approach. The 2026 Amendment seeks to introduce greater regulation and transparency in areas that have until now been heavily dependent on interpretation, which includes beneficial ownership and indirect transfers of securities.

### Background

India's foreign investment framework is governed by the Foreign Exchange Management Act, 1999 (the "**FEMA**"), read with the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (the "**NDI Rules**"). The NDI Rules govern the regime of foreign direct investment (the "**FDI**") into equity instruments of Indian companies.

On March 15 2026, the Department for Promotion of Industry and Internal Trade, notified the Press Note 2 (2026 Series), which amended the Consolidated FDI Policy, 2020 (the "**Press Note 2**"). The Press Note 2 aimed at clarifying the criteria and thresholds for determining beneficial ownership.

In furtherance of the Press Note 2, the recent notification of the 2026 Amendment, aims to operationalise and strengthen the foreign investment framework. The 2026 Amendment establishes a more codified regime by expressly linking beneficial ownership to current prevailing anti-money laundering laws, expanding the scope of the approval requirement to downstream changes in ownership, and introducing additional reporting obligations. In doing so, it reinforces the existing screening mechanism which enhances regulatory oversight and compliance certainty.

### Beneficial Ownership: Criteria and Thresholds

The 2026 Amendment aligns the concept of 'beneficial ownership' under the NDI Rules with the statutory definition prescribed under the Section 2(1)(fa) of the Prevention of Money-Laundering Act, 2002, (the "**PMLA**") read with Rule 9(3) of the PMLA (Maintenance of Records) Rules, 2005 (the "**PMLA Rules**"). The PMLA framework defines beneficial ownership in a company to trigger when a natural person holds more than ten percent (10%) of shares, capital, or profits, or has the ability to exercise control through other means. The 2026 Amendment further reduces reliance on interpretational guidance and brings in consistency and clarity across statutes.

## Test for Beneficial Ownership

Furthermore, the three-pronged test has been added in Explanation 2 of the Rule 6(a) of the NDI Rules to determine when the beneficial ownership of an investment shall be deemed to be vested in the (i) land bordering countries (the “LBC”) of India; and (ii) an entity incorporated or registered in such LBC of India. As per the amendment under Explanation 2 of the Rule 6(a) of the NDI Rules, the beneficial ownership of an investment shall be construed to be vested in LBC of India, when a citizen or entity of a LBC jurisdiction, has the ability to directly or indirectly, or cumulatively with any other citizen or entity, independently, or collectively with any other citizen or entity, whether acting together or otherwise hold rights or entitlements (a) in excess of the prescribed beneficial ownership threshold under the Rule 9(3) of the PMLA Rules, over an investor entity which is incorporated or registered in a country other than LBC of India; (b) exercise control of the overseas investor entity; and (c) exercise ultimate effective control over the Indian investee entity in any manner.

Additionally, the government approval requirement also extends to transactions stipulating transfer of ownership of any future FDI in an Indian entity, which results in beneficial ownership.

Moreover, with regard to the test embedded under Rule 6(a) of the NDI Rules, any institutions in the nature of a multilateral bank or fund, of which India is a member country, is exempted from being treated as an entity of any particular country. Furthermore, no country shall be regarded as the beneficial owner of investments made by such aforementioned institutions.

It is also pertinent to note that the transfer of ‘participating interest or right’ on oil fields by Indian companies to a person resident outside India would be treated as a foreign investment and shall comply with the conditions of the amended Schedule I of the NDI Rules.

## Conclusion

Consequently, the 2026 Amendment sets up a supplementary compliance layer by imposing reporting requirements specified by the Reserve Bank of India (the “RBI”) in cases of investments, where the investor entity has any **direct** or indirect ownership from a LBC of India which does not require a prior government approval under the NDI Rules. Consequently, a framework is established by the Ministry of Finance which distinguishes between investments that trigger approval requirements and those subject to reporting requirements of RBI, thereby ensuring continued regulatory oversight even in cases falling outside the government route.

It is evident that the aim of the 2026 Amendment is to take a rigorous approach in tracing the ownership and structure of deals involving multi-layered investment vehicles or offshore holding structures. This will ensure a more structured basis for the approval and reporting landscape for FDI under the foreign investment regime of India.