

Register now for your free, tailored, daily legal newsfeed service.

Register

Find out more about Lexology or get in touch by visiting our [About](#) page.

Foreign Investment in India: The 2026 Reset

Trilegal

India | August 13 2026

The year 2026 has seen the most substantial recalibration of India's foreign direct investment (**FDI**) framework since the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (**NDI Rules**) were notified. In the first seven months of the year: the insurance sector has been opened to 100% foreign ownership under the automatic route; the restrictions on investments from countries sharing land borders with India (**LBCs**) introduced during the COVID-19 pandemic have been clarified and eased; the repatriable portfolio investment route previously reserved for non-resident Indians (**NRIs**) and overseas citizens of India (**OCIs**) has been extended to all foreign individuals; a limited exception has been carved out of the prohibition on FDI in inventory-based e-commerce; and the Reserve Bank of India (**RBI**) has released draft Foreign Investment Rules which are proposed to replace the NDI Rules. This update summarises each of these developments and their implications for investors, Indian companies and deal teams.

1. 100% Foreign Investment in the Insurance Sector

The Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Act, 2025, which amended the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the Insurance Regulatory and Development Authority Act, 1999, was notified on 21 December 2025, and its principal provisions came into force on 5 February 2026.^[1] The key change is the increase in the permissible foreign investment in Indian insurance companies from 74% to 100%. The amendments also raise the threshold for prior approval of the Insurance Regulatory and Development Authority of India (**IRDAI**) for transfers of shares from 1% to 5% of paid-up equity capital and introduce one-time registration for insurance intermediaries.

In parallel, the Indian Insurance Companies (Foreign Investment) Rules, 2015 were amended with effect from 30 December 2025. Among other changes, the amended rules removed the requirement that a majority of the directors and key managerial persons of an insurer with foreign investment be resident Indian citizens.

The Department for Promotion of Industry and Internal Trade (**DPIIT**) gave effect to the change in the FDI Policy through Press Note 1 (2026 Series) dated 9 February 2026. The corresponding amendments to the NDI Rules were notified by the Ministry of Finance on 2 May 2026.^[2]

The position now is that: (i) foreign investment of up to 100% is permitted in Indian insurance companies and insurance intermediaries under the automatic route^[3]; and (ii) an Indian insurance company with foreign investment must have at least one resident Indian citizen among its chairperson, managing director and chief

executive officer.^[4] Foreign investment in the Life Insurance Corporation of India remains separately capped at 20% under the automatic route.

2. Clarification and Easing of Restrictions on Investments from Land Border Countries

On 10 March 2026, the Union Cabinet approved changes to the FDI framework governing inbound investments from LBCs.^[5] Pursuant to this, on 15 March 2026, DPIIT issued Press Note 2 (2026 Series)^[6] (PN2) which provides long-awaited clarity on the determination of a “beneficial owner” in the context of the restriction on investments from LBCs that was introduced through Press Note 3 of 2020 (PN3)^[7], and the circumstances in which such investments may proceed without Government approval. PN2 has been operationalised by an amendment to the NDI Rules notified on 1 May 2026.^[8]

PN3 was introduced in 2020 to curb opportunistic takeovers or acquisitions of Indian companies due to the economic vulnerabilities caused by the COVID-19 pandemic. Under the PN3 regime, an investment by an entity of an LBC, or where the beneficial owner of an investment into India was situated in or was a citizen of any such country, could be made only under the Government route, and any direct or indirect transfer of ownership of any existing or future FDI resulting in the beneficial ownership falling within this restriction also required prior Government approval. A recurring source of ambiguity was that “beneficial owner” was not defined for this purpose: although other statutory frameworks contained beneficial ownership or related ownership and control tests, the FDI framework did not specify which standard would apply, leading market participants and AD banks to adopt divergent approaches. PN2 resolves this by recasting the restriction into three distinct limbs and specifying how beneficial ownership is to be determined.

Following the introduction of PN3, recorded direct FDI inflows from China remained limited. According to DPIIT data, China accounted for only approximately USD 133.82 million of FDI equity inflows into India between April 2020 and December 2025, representing around 0.04% of total FDI equity inflows into India during that period.^[9]

The key changes introduced by PN2 and the amended NDI Rules are outlined below.

1. Recalibration of the LBC Nexus Test

Government approval is now required where: (i) the investor is an entity or citizen of an LBC; (ii) the beneficial owner of an investment into India is a citizen of an LBC; or (iii) the beneficial ownership of an investment is vested in an LBC.^[10] In place of the earlier, broader “situated in or is a citizen of” formulation, the test is now a structured, ownership and control-based inquiry: the first limb looks at the investor itself, the second at the natural persons standing behind the investor, and the third at where the ownership and control of the investment ultimately vest.

2. Identifying the “Beneficial Owner”

For the purposes of the second limb, the beneficial owner of an investment into India is the beneficial owner of the investor entity (itself incorporated or registered outside an LBC), identified in accordance with the tests prescribed under India’s anti-money laundering legislation.^[11] In the case of a company, the beneficial owner is the natural person who, acting alone or together with others, ultimately owns or controls the company, whether through ownership of, or entitlement to, more than 10% of its shares, capital or profits, or through control exercised by other means, including the right to appoint a majority

of the directors or to control the management or policy decisions of the company through shareholding, management rights, shareholders' agreements or voting agreements. Where the natural person so identified is a citizen of an LBC, the investment will require prior Government approval.

3. Vesting of Beneficial Ownership in an LBC

The newly introduced third limb looks past individual citizens to where the ownership and control of an investment ultimately vest. Beneficial ownership of an investment will be treated as vested in an LBC where one or more citizens or entities of an LBC, directly or indirectly, and whether acting alone or together: (i) hold rights or entitlements over the investor entity in excess of the 10% ownership threshold; (ii) exercise control over the investor entity; or (iii) exercise ultimate effective control over the Indian investee entity in any manner.^[12] Considering that this is an "or" test, satisfying any one of the three conditions is sufficient to attract the Government approval requirement; an LBC investor holding less than 10% may accordingly still be caught where it exercises control.

Illustration: A fund incorporated outside the LBCs proposes to invest in an Indian company. An entity of an LBC holds 8% of the fund, but has the right to appoint a majority of the members of the fund's governing body. Although the 10% ownership threshold is not met, the control condition is satisfied; beneficial ownership of the investment would accordingly be treated as vested in an LBC, and prior Government approval would be required.

The significance of this formulation is that PN2 does not merely introduce a numerical ownership threshold. This is particularly relevant for global private equity and venture capital funds, pooled investment vehicles and multi-layered offshore structures, where deal teams will still need to assess whether board rights, affirmative voting rights, veto rights, management rights, side-letter arrangements or other contractual protections could amount to control in the PN2 context.

4. Reporting Framework for Investments Not Requiring Prior Approval

Where none of these limbs is attracted (that is, where LBC ownership remains within the 10% threshold and there is no control over the investor entity or ultimate effective control over the Indian investee entity), the investment may proceed under the automatic route, subject to applicable sectoral caps, entry routes and attendant conditions. This should ease transaction execution for global funds and offshore investment vehicles with limited, non-controlling upstream exposure to LBC investors. Even in such cases, however, PN2 introduces a reporting requirement: investments into India from investor entities having any direct or indirect ownership by a citizen or entity of an LBC will be subject to reporting requirements specified by the RBI.

5. Expedited Processing for Specified Manufacturing Sectors

Alongside the changes described above, the Cabinet press release of 10 March 2026 also announced expedited processing of investments from LBCs in specified manufacturing sectors within a period of 60 days. Pursuant to this, DPIIT has issued the Standard Operating Procedure for Processing FDI Proposals on 4 May 2026 (**SOP**),^[13] which prescribes a 60-day fast-track approval process for investments in (i) capital goods manufacturing, (ii) electronic capital goods and electronic components manufacturing, (iii) polysilicon and ingot-wafers, (iv) advanced battery components, (v) rare earth permanent magnets, and (vi) rare earth processing. The 60-day timeline is available where LBC

investors hold up to 49% of the capital or voting rights of an Indian investee entity engaged in the specified sectors, provided majority shareholding and control remain, at all times, with resident Indian citizens or Indian entities owned and controlled by resident Indian citizens.

This may be viewed as a targeted facilitation measure rather than a general relaxation of the PN3 approval requirement. Although these manufacturing sectors may otherwise permit higher levels of foreign investment under the NDI Rules, the expedited process is conditioned on preserved Indian ownership and control. In practice, this would facilitate minority, non-controlling LBC participation in Indian-controlled joint ventures, while majority acquisitions or control-shifting structures fall outside its scope.

3. Portfolio Investment Route Extended to All Foreign Individuals

The Foreign Exchange Management (Non-Debt Instruments) (Third Amendment) Rules, 2026, notified on 12 June 2026^[14], extend the repatriable portfolio investment route under Schedule III of the NDI Rules, previously available only to NRIs and OCIs, to all individuals resident outside India. Such individuals may now invest in listed Indian companies through recognised stock exchanges without registering as foreign portfolio investors, subject to an individual limit of less than 10% and an aggregate limit of 24% for all investors under the route. A breach of these limits must be rectified within the prescribed period, by divesting the excess or reclassifying the holding as FDI in compliance with the applicable conditions, failing which the entire investment in the company is treated as FDI.

4. FDI Permitted in Export-Focused Inventory E-Commerce

On 23 July 2026, DPIIT issued Press Note 3 (2026 Series) (**PN3 of 2026**), permitting foreign investment in inventory-based e-commerce entities engaged exclusively in the export of goods manufactured or produced in India.^[15] This is a limited exception to the long-standing prohibition on FDI in the inventory-based model. PN3 of 2026 will take effect from the date of the corresponding amendment to the NDI Rules, which is awaited.

5. On the Horizon: The Draft Foreign Investment Rules, 2026

Pursuant to the Union Budget 2026-27 announcement of a comprehensive review of the NDI Rules, and based on the recommendations of a committee constituted by the Central Government, the RBI released the draft Foreign Exchange Management (Foreign Investment) Rules, 2026 (**Draft Rules**) for public consultation on 21 July 2026, with comments invited until 31 August 2026.^[16] The Draft Rules are proposed to be notified by the Ministry of Finance under Section 46 of the Foreign Exchange Management Act, 1999 (FEMA) in supersession of the NDI Rules, and would be the most significant structural change to the framework since 2019.

The RBI has described the objectives of the exercise as a simplified and principle-based framework, alignment with the FDI Policy through a clear demarcation of procedural provisions from policy and sector-specific requirements, enhanced ease of doing business, and a future-ready, investee-neutral and investor-neutral architecture.

The key features of the Draft Rules are set out below.

1. Compact, Investee-Centric Architecture

The Draft Rules replace the schedule-based, investor-centric structure of the NDI Rules with four short chapters and three annexures, including the foreign investment policy itself. They apply to foreign investment in the equity of an “eligible investee entity”. This term covers most Indian investee forms, including companies, LLPs, SEBI-registered investment vehicles, partnership firms and proprietary concerns, with a common set of conditions applying across categories in place of the differential regimes under the NDI Rules.

2. “Equity” Defined by Accounting Classification

The enumerated list of “equity instruments” under the NDI Rules (equity shares, compulsorily convertible preference shares, compulsorily convertible debentures and share warrants) is replaced by a definition of “equity” comprising instruments classified as equity by the investee entity under applicable accounting standards, units of investment vehicles, and participating interests or rights in oil fields or mines. Instrument characterisation will therefore follow accounting classification, and the treatment of convertible instruments whose terms may result in liability or compound classification under applicable accounting standards will need careful assessment when structuring.

3. Purely Quantitative Divide between FDI and Portfolio Investment

FDI is defined as foreign investment of 10% or more in the equity of a company or LLP, and foreign portfolio investment as foreign investment below that threshold, delinking the classification from the listing status of the investee entity and the mode of acquisition. Foreign portfolio investment on a recognised stock exchange in India that results in a person resident outside India holding 10% or more of the equity of a company may be reclassified as FDI, subject to compliance with the applicable conditions and directions issued by the RBI and SEBI.

4. Indirect Foreign Investment Recast: The FCE Concept

The downstream investment framework of the NDI Rules is replaced by the concept of a “foreign controlled entity” (FCE), being a resident company, LLP or investment vehicle owned or controlled by a person resident outside India. Ownership and control are to be determined in accordance with the stipulations of the relevant sectoral regulator, in consultation with the Central Government, such as IRDAI's ownership and control stipulations for insurers. In the absence of such stipulations, they are to be determined under the law governing the entity, such as the Companies Act, 2013 (**Companies Act**) for companies or the applicable SEBI regulations for SEBI-registered investment vehicles.

“Foreign investment” includes investment made indirectly through an FCE, as well as investment through a person resident outside India that is owned or controlled by, or under common ownership or control with, the investor. For this purpose, ownership means a beneficial holding of more than 50%, while control includes the right to appoint a majority of directors or control management or policy decisions, including through shareholders' agreements or voting agreements that confer 10% or more of the voting rights.

The 10% formulation is a notably low threshold when compared with the qualitative control tests under the Companies Act and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. It would bring minority investors within the control net merely because a shareholders' or voting

agreement entitles them to exercise 10% or more of the voting rights, even where they do not have the right to appoint a majority of directors or otherwise direct management or policy decisions. The final rules would benefit from clarification on the intended scope of this limb.

Significantly, investment by an FCE is required to comply with the conditions of the foreign investment policy only in sectors specifically prescribed for this purpose. This represents a material departure from the generally applicable downstream investment regime under the NDI Rules.

5. Conditions, Registration and Pricing

Foreign investment must comply with the foreign investment policy, and investment on a recognised stock exchange in India requires registration under the applicable SEBI regulations, subject to exemptions for individuals, foreign central banks and persons notified by the RBI, codifying at the level of the rules the recent opening of the listed market to all foreign individuals. Notably, investments on a non-repatriation basis are exempt from these conditions altogether, other than the prohibition on investment in prohibited sectors. The Draft Rules do not, on their face, confine the non-repatriation route to NRIs and OCIs, in contrast with Schedule IV of the NDI Rules; whether this is a deliberate widening or a gap to be addressed in the final rules or the RBI's directions remains to be seen.

The Draft Rules will be finalised after public consultation, and comments may be submitted through the RBI's "Connect 2 Regulate" portal or by email until 31 August 2026. Given the breadth of the proposed changes, from the redefinition of "equity" and the quantitative FDI threshold to the relocation of sectoral policy into the foreign investment policy, the final rules are likely to have a material impact on foreign investment structuring, documentation and compliance practice.

Conclusion

The recent changes reflect a clear, though selective, liberalisation of India's foreign investment regime. Sectoral caps have been raised, longstanding restrictions narrowed and investor eligibility widened, while the controls that remain are increasingly framed through defined ownership, control, reporting and verification requirements. The result is a more facilitative regime that preserves targeted regulatory scrutiny while improving access to capital and transaction certainty. For promoters and investors, this creates an opportunity to revisit capital raises, ownership structures and M&A strategies that may previously have been constrained by the erstwhile framework.

The practical impact of these reforms will depend on the interpretation of the new control tests, the implementation of the revised reporting architecture, the conditions ultimately prescribed for export-focused inventory e-commerce and the final form of the replacement Foreign Investment Rules, on which the consultation closes on 31 August 2026. Until these issues are settled, foreign investors and Indian investee entities should continue to examine upstream ownership, governance rights and control arrangements carefully when determining the applicable entry route and compliance requirements.

Separately, in February 2026, the RBI overhauled the External Commercial Borrowing framework under the Foreign Exchange Management (Borrowing and Lending) (First Amendment) Regulations, 2026, removing, among other liberalisations, the requirement that offshore lenders be based in FATF- or IOSCO-compliant jurisdictions.

Taken together, the changes point to a broader policy shift towards facilitating cross-border capital participation through targeted liberalisation, while retaining focused safeguards in areas of regulatory sensitivity.

Trilegal - Kosha Thaker and Adit Munshi

If you would like to learn more about our firm and areas of expertise, please feel free to drop in your queries [here](#).

Interested in contributing?

Get closer to winning business faster with Lexology's complete suite of dynamic products designed to help you unlock new opportunities with our highly engaged audience of legal professionals looking for answers.

Learn more

Resources

Daily newsfeed | Panoramic | Research hubs | Learn | In-depth | Lexy Find | Scanner |
Contracts & clauses

Lexology Index

Find an expert | Reports | Research methodology | Submissions | FAQ | Instruct Counsel |
Client Choice 2025

More

Lexy AI | About us | Legal Influencers | Firms | Blog | Events | Popular | Lexology Academic |
Lexology Talent Management

Legal

Terms of use | Cookies | Disclaimer | Privacy policy

Contact

Help centre | Contact | RSS feeds | Submissions

[Login](#) | [Register](#)

 Follow on X |  Follow on LinkedIn



© Copyright 2026 LBR trading as Centellic