



Key Updates:

- Revision of automatic FDI limits to 74% up from 49%, subject to conditions.
- Scrapping of the requirement of Government approval for FDI upto 49%
- Introduction of national security clause.

Detailed Update:

Introduction

The Government of India on September 17, 2020 issued Press Note No. 4 of 2020 (“**PN 4**”) revising the [Foreign Direct Investment \(“FDI”\) policy](#) governing the Defence sector. PN 4 contains the landmark decision to allow upto 74% FDI under the automatic route, announced by the Finance Minister in May, 2020 as a part of the Government’s economic package to stimulate the economy.

Erstwhile Policy

The earlier policy permitted Foreign Investment upto 49% under the automatic route in the Defence sector, and any Foreign Investment greater than 49% required Government approval. Further, where the proposed investment was to result in a “*change in the ownership pattern*” or involved a “*transfer of stake by existing investor to new foreign investor*”, Government approval was mandatory.

These requirements have been liberalized under the revised policy notified by PN 4.

Revised FDI Limits and Entry Routes

The government has allowed the revised higher levels of FDI, i.e. 74%, under the automatic route only to “*companies seeking **new** industrial licenses*”.

In other cases, investments **upto 49%** in “*Company not seeking industrial license or which already has Government approval for FDI in Defence*” only requires submission of a post-facto “*declaration with the Ministry of Defence in case [of] change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change*”. This is a significantly more liberal approach as opposed to the erstwhile policy which required Government approval for this type of investment.

However, FDI beyond 49% in companies “*not seeking industrial license or which already have Government approval for FDI in Defence*” is subject to Government approval, and the regular process of filing an FDI application to the Department of Promotion of Industry and Internal Trade should apply.

In this Issue

Introduction

Erstwhile Policy

Revised FDI Limits and Entry Routes

New National Security clause

Effective Date



New National Security clause

The revised policy states that “*Foreign Investments in the Defence Sector shall be subject to scrutiny on grounds of National Security*”. The introduction of the new national security clause provides broad powers to the Government to review “*any foreign investment in the Defence Sector that **affects or may affect** national security.*”

As before, FDI in this sector continues to be subject to security clearance by the Ministry of Home Affairs.

Effective Date

The changes will come into effect from the date of the notification under Foreign Exchange Management Act, 1999 in this regard.

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In this Issue

Introduction

Erstwhile Policy

Revised FDI Limits and Entry Routes

New National Security clause

Effective Date

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