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NEWS ALERT

13 August 2026

Key Changes proposed under the draft Foreign Exchange Management (Foreign Investment) Rules, 2026[1]

The Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ('NDI Rules') currently constitute the principal framework governing foreign investment in India through non-debt instruments, including equity instruments, investment vehicles, downstream investments, pricing guidelines, transfers and related matters.

On 21 July 2026, the Reserve Bank of India ('RBI') released the draft Foreign Exchange Management (Foreign Investment) Rules, 2026 ('Draft Rules') for public consultation. The Draft Rules propose to replace the NDI Rules in their entirety and introduce several structural, conceptual and operational changes to India's foreign investment regime. The key changes proposed are summarised below:

- **Replacement of NDI Rules, 2019**

  The Draft Rules seek to completely supersede the NDI Rules, 2019 rather than amend them. The proposed framework adopts a principles-based structure comprising core rules supplemented by annexures dealing with operational and policy matters.

- **Concepts under the Draft Rules**

  a. Introduction of a Uniform Concept of Eligible Investee Entity

  Under the NDI Rules, different categories of investee entities were addressed separately under various schedules.

[1] Press Release dated 21 July 2026

The Draft Rules introduce a single, consolidated definition of eligible investee entity, comprising companies or body corporates incorporated in India; LLPs; Investment vehicles registered with SEBI; partnership firms and proprietary concerns.

b. Definition of Equity

The NDI Rules adopted an instrument-based approach and defined ‘equity instruments’ by expressly listing instruments such as equity shares, compulsorily convertible preference shares, compulsorily convertible debentures and share warrants.

The Draft Rules replace this concept with a broader definition of ‘equity’ which includes:

- Instruments classified as equity by the eligible investee entity (other than an investment vehicle) as per applicable accounting standards;
- Units of an investment vehicle as per SEBI regulations; and
- Participating interest or right in oil fields or mines of an Indian company or Limited Liability Partnership (‘LLP’)

c. Foreign Investment in Equity - Direct and Indirect

The NDI Rules treated foreign investment and downstream investment as distinct concepts.

Under the Draft Rules, ‘Foreign Investment in Equity’ includes investment made by a person resident outside India (‘PROI’) both:

- directly and
- indirectly through a Foreign Controlled Entity (‘FCE’) or certain specified non-resident entities.

d. Replacement of Foreign Owned or Controlled Company with FCE

The NDI Rules relied on the concept of a Foreign Owned or Controlled Company (‘FOCC’), generally determined by:

- ownership of more than 50% of equity instruments; or
- control through board appointment rights or policy-making powers.

The Draft Rules replace FOCC with the concept of FCE. Under the Draft Rules:

- Relevant sectoral regulators, in consultation with the Central Government (‘CG’), are empowered to prescribe ownership and control definitions.

- Where no sector-specific definitions are prescribed, ownership and control are to be determined in accordance with the applicable law governing the relevant entity.

e. Uniform 10% Threshold for FDI and FPI

Under the NDI Rules, FDI covered:

- Any foreign investment in an unlisted company and
- Any investment constituting 10% or more of the post-issue paid-up equity capital of a listed company.

Whereas, FPI meant investment of less than 10% in a listed company.

The Draft Rules simplify these definitions:

- FDI - Any foreign investment of 10% or more in the equity of an company or LLP, irrespective of listing status.
- FPI - Any foreign investment of less than 10% in the equity of a company or LLP.

Simplified Investment Framework

The NDI Rules contained separate schedules governing different categories of investors and investee entities.

The Draft Rules consolidate the investment framework primarily under Rules 6A and 6B, read together with Annexures II and III.

The prescribed modes of acquisition/issue of equity include subscription to an issue of equity, purchase of equity, gifts between natural persons, pledge, swap transactions etc.

Rationalised Pricing Framework

Rule 21 of the NDI Rules prescribed separate pricing provisions for issuance and transfer of equity instruments.

The Draft Rules simplify the pricing framework as follows:

- Listed companies and investment vehicles - Pricing to be determined in accordance with applicable SEBI regulations.
- Public companies listed on an international stock exchange - Pricing to be determined in accordance with Annexure I (Direct Listing framework).
- All other cases - Pricing to be determined using any accepted pricing methodology on arm's length basis, being duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant.

Direct Listing on International Stock Exchanges

The Draft Rules under Annexure I retain the framework for direct listing of Indian public companies on international stock exchanges, The framework is largely aligned with the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024.

Onus of Compliance - Shared Responsibility

The Draft Rules place responsibility for compliance on all, the foreign investor, the eligible investee entity as well as the transferor/transferee, as applicable.

Annexures to the Draft Rules

The Draft Rules are accompanied by three Annexures:

- Annexure I - Framework for Direct Listing of Equity of Companies Incorporated in India on International Stock Exchanges;
- Annexure II - Reference to the FDI Policy issued by the Government of India (as amended from time to time);
- Annexure III - Framework for RBI regulations, directions, circulars, and instructions applicable to foreign investment or transfer thereof.

While Annexure I sets out the proposed framework for direct overseas listing of equity, Annexures II and III currently do not prescribe detailed requirements. Further clarity is expected either as part of the final Rules or through separate notifications.

- **Transitional Provision**

  The Draft Rules state that they will supersede the NDI Rules, 2019. Accordingly, actions validly undertaken under the existing regime prior to the notification of the Draft Rules are intended to remain unaffected.

The foregoing outlines some of the key changes proposed under the Draft Rules. The final Rules are expected to be notified following consideration of stakeholder comments, which may be submitted until 31 August 2026.

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Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

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