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May 1, 2026

DEPARTMENT OF ECONOMIC AFFAIRS

FDI rules set the beneficial owner test for land-border approval

S.O. 2174(E) substitutes rule 6(a) of the NDI Rules: when land-border investment needs Government approval, and how beneficial ownership is tested.

THE DEPARTMENT OF Economic Affairs, Ministry of Finance, issued notification S.O. 2174(E), dated May 1, 2026, making the Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2026. It was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), No. 2093, dated May 2, 2026. The Central Government made the rules under clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999, and they come into force on the date of their publication in the Official Gazette. The notification substitutes clause (a) of rule 6 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (the NDI Rules). The new clause allows subscription, purchase or sale of equity instruments of an Indian company "in the manner and subject to the terms and conditions as specified in Schedule I", subject to the provisos below. The notification also replaces "government approval" with "Government approval" in clause (6) of rule 2. It is signed by Alok Tiwari, Joint Secretary, under F. No. 1/4/2026-EM.

KEY FACTS

AUTHORITY

Department of Economic Affairs

PUBLISHED

May 1, 2026

ISSUED BY

Department of Economic Affairs, Ministry of Finance

DOCUMENT

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The first proviso reads: "an entity or a citizen of a country, which shares land border with India, or where the beneficial owner of an investment into India is a citizen of any such country, or where the beneficial ownership of an investment is vested in any such country, shall invest only under the Government route specified in sub-clause (ii) of clause (a) of paragraph (3) of Schedule I". The second says a citizen of Pakistan or an entity incorporated in Pakistan shall invest only under the Government route, in sectors or activities other than "defence, space, atomic energy and such other sectors or activities prohibited for foreign investment". The third covers later changes: where a transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, results in the beneficial ownership falling within the restriction of clauses (i) and (ii), "such subsequent change in beneficial ownership shall also require prior Government approval".

Explanation 1 says "beneficial owner of an investment into India" means the beneficial owner of the investor entity incorporated or registered in a country other than a country which shares land border with India. It gives "beneficial owner" the meaning in clause (fa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (PMLA), "determined as per the criteria specified under sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005". Explanation 2 says the beneficial ownership of the investment "shall be construed to be vested in a country sharing land border with India" where a citizen of such a country, or an entity incorporated or registered in it, "has the ability to directly or indirectly, individually 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" of any of three kinds. (A) Rights "in excess of the applicable thresholds specified in sub-rule (3) of rule 9" of those 2005 Rules over an investor entity incorporated or registered in a country other than a land-border country. (B) Rights that enable it to exercise control over that

investor entity. (C) Rights that enable it to exercise "ultimate effective control over the Investee entity in any manner".

The fourth proviso says a Multilateral Bank or Fund of which India is a member "shall not be treated as an entity of a particular country nor shall any country be treated as the beneficial owner of the investments of such Bank or Fund in India". A further proviso says investments into India from an investor entity "(i) having any direct or indirect ownership by a citizen or an entity of a country sharing land border with India; and (ii) not requiring prior Government approval under the provisions of this clause, shall be subject to reporting requirements specified by the Reserve Bank". Explanation 3 treats the issue or transfer of "participating interest or right" in oil fields by Indian companies to a person resident outside India as foreign investment, which must comply with the conditions specified in Schedule I.

The notification does not reproduce the clause it replaces. It does not state the thresholds in rule 9(3) of the 2005 Rules or set out the Reserve Bank's reporting requirements, and it does not refer to any press note or to the FDI Policy. A later notification, S.O. 3030(E) of June 12, 2026 (the Third Amendment Rules), left rule 6 unchanged but let any individual person resident outside India, on repatriation basis, buy or sell equity instruments of a listed Indian company under rule 12 and Schedule III and transfer equity instruments under rule 13, with prior Government approval where the investment or transfer results in transfer of ownership or control of the listed Indian company to entities or citizens of a land-border country, or the beneficial owner of such investment is a citizen of such a country, and with "beneficial owner" given the same PMLA meaning.

Issued by	Department of Economic Affairs, Ministry of Finance
Document	Notification S.O. 2174(E), the Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2026
Dated	May 1, 2026
Published	Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), No. 2093, May 2, 2026
Takes effect	The date of publication in the Official Gazette; the Gazette is dated May 2, 2026
Amends	Rule 6, clause (a), of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (substituted); rule 2, clause (6) ("Government approval")
Applies to	Investment into India by an entity or citizen of a country sharing a land border with India, or where the beneficial owner is a citizen of such a country, or the beneficial ownership is vested in such a country

Route	Government route only, under sub-clause (ii) of clause (a) of paragraph (3) of Schedule I
Beneficial owner	As in section 2(1)(fa), Prevention of Money-laundering Act, 2002, determined under rule 9(3), Prevention of Money-laundering (Maintenance of Records) Rules, 2005
Beneficial ownership vested in a land-border country	A citizen or entity of that country has the ability, directly or indirectly, individually or cumulatively with others, to hold rights or entitlements above the rule 9(3) thresholds over an investor entity of another country, or that enable control over that investor entity, or ultimate effective control over the investee entity
Later change in beneficial ownership	Prior Government approval where a transfer of existing or future FDI brings the beneficial ownership within the restriction
Reporting to the Reserve Bank	Investments into India from an investor entity having any direct or indirect ownership by a citizen or entity of a land-border country, and not requiring prior Government approval: subject to reporting requirements specified by the Reserve Bank
Multilateral Bank or Fund	Of which India is a member: not treated as an entity of a particular country, and no country treated as the beneficial owner of its investments in India
Pakistan	A citizen of Pakistan or an entity incorporated there: Government route only, outside "defence, space, atomic energy" and other sectors or activities prohibited for foreign investment
Legal basis	Clauses (aa) and (ab), section 46(2), Foreign Exchange Management Act, 1999
Later	S.O. 3030(E), June 12, 2026, the Third Amendment Rules: any individual person resident outside India may, on repatriation basis, buy or sell equity instruments of a listed Indian company (rule 12, Schedule III) and transfer equity instruments (rule 13); prior Government approval where this results in transfer of ownership or control of the listed company to land-border entities or citizens, or the beneficial owner is a citizen of such a country (same PMLA meaning)
Signed by	Alok Tiwari, Joint Secretary
File number	F. No. 1/4/2026-EM

The notification (PDF, 723 KB)

Source: Gazette of India, CG-DL-E-02052026-272196.

Checked against the official copy on October 28, 2026.

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