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Tax Flash News



24 July 2026

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RBI releases draft foreign investment rules to replace the existing NDI Rules, 2019

Executive summary

On 21 July 2026, the Reserve Bank of India ('the RBI') released the draft Foreign Exchange Management (Foreign Investment) Rules, 2026 ('2026 Rules' or 'draft Rules') for stakeholder comments.[1] The draft Rules are proposed to supersede the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ('NDI Rules, 2019').

The proposed draft Rules seek to establish a simplified and future-ready regulatory framework by rationalising applicable provisions, aligning them with the Foreign Direct Investment Policy ('FDI Policy') and reducing compliance complexities. The draft Rules promotes ease of doing business through greater clarity, procedural efficiency and operational flexibility, while maintaining necessary regulatory safeguards.

Public comments on the draft have been invited up to 31 August 2026, after which a final notification is expected in the Official Gazette.

[1] Press Releases - Reserve Bank of India – As accessed on 24 July 2026

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Key highlights

(a) Simplified architecture and terminology

- The draft Rules lays down the core definitions for the proposed regime, including eligible investee entity, equity, foreign investment in equity, FDI, Foreign Portfolio Investment ('FPI'), Foreign Controlled Entity ('FCE'), entry routes, sectoral cap, sectoral conditions, etc.
- It adopts a broad concept of eligible investee entities covering Indian companies, body corporate, Limited liability partnership ('LLP'), SEBI-registered investment vehicles, partnership firms, and proprietary concerns, while excluding societies and trusts. Importantly, the draft distinguishes FDI as foreign investment of 10 per cent or more in equity of company/ LLP; FPI as investment of less than 10 per cent in equity of company or LLP.
- The term 'equity instruments' is proposed to be replaced with a single, broader concept of 'equity', covering instruments classified as equity under applicable accounting standards, units of investment vehicles as per the respective SEBI Regulations, and participating interest or right in oil fields or mines.
- The concept of a Foreign Owned or Controlled Company ('FOCC') is proposed to be replaced by Foreign Controlled Entity ('FCE').

(b) Framework governing acquisition, issuance and transfer of equity

- A person resident outside India or FCE may make foreign investment on a repatriation or non-repatriation basis through multiple permitted routes, including subscription to an issue, purchase, gift, pledge, transfer by erstwhile Overseas Corporate Bodies ('OCBs'), depository receipts, National Pension subscription by eligible NRI/OCI investors, and transactions on International Stock Exchanges ('ISE').
- An eligible investee entity can issue equity to a non-resident or FCE, subject to the conditions prescribed in Annexure I (Direct Listing of Equity of Companies Incorporated in India on ISE), Annexure II (Foreign Investment Policy (FDI policy) of the draft Rules and operational requirements prescribed under Annexure III of the draft Rules.

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- A person resident outside India may transfer equity of an eligible investee entity to a resident by way of sale, gift, or pledge. The draft Rules further recognises share swap structures, including swap of an equity of an Indian company or equity capital of a foreign company. It proposes to permit an investment vehicle to issue units to a non-resident against swap of equity of a Special Purpose Vehicle ('SPV') proposed to be acquired by it.

(c) Conditions applicable on foreign investments

All foreign investments must comply with the FDI Policy. The draft Rules also provides that:

- Foreign investment by a FCE would be required to comply with sectoral conditions where specifically prescribed under the FDI Policy.
- Certain foreign investors must comply with SEBI registration requirements for investment on recognized stock exchange in India.
- The requirement to comply with entry routes, sectoral caps and sectoral conditions would not apply to bonus or rights issues where the shareholding pattern of foreign investors remains unchanged.
- Investments through rupee vostro accounts to follow applicable RBI directions.
- FPI holding of 10 per cent or more of the equity in a company to be reclassified as FDI, subject to FDI conditions and directions issued by RBI and SEBI.
- Investments on a non-repatriation basis are proposed to be exempt from the conditions applicable for foreign investments except that they remain barred in prohibited sectors.

(d) Pricing guidelines

Pricing at the time of foreign investment and transfer shall be determined as follows:

- A company listed on a recognised stock exchange in India or an investment vehicle shall be at a price determined in accordance with the relevant SEBI Regulations.
- A public company listed on an international stock exchange shall be determined in accordance with the conditions prescribed in Annexure-I of the draft Rules.
- In all other cases shall be determined as per any internationally accepted pricing

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methodology for valuation on an arm's length basis.

- Rights issues are proposed to be exempt from pricing guidelines.

(e) Annexure to draft Rules

- The draft Rules are supplemented by three Annexure, which would form an important part of the proposed framework and provide the operational and policy backbone to the main rules.
- Annexure I – This annexure provides framework on direct listing of equity of companies incorporated in India on International Stock Exchanges Scheme.
- Annexure II – This annexure refers to the FDI Policy issued by the Government of India (as amended from time to time).
- Annexure III – The annexure provides framework on regulations, directions issued by the RBI, applicable on foreign investment or transfer thereof.
- The draft Rules merely provide broad references to the applicability of the existing FDI Policy and RBI's regulatory framework. However, Annexure II and III do not presently set out detailed operational, compliance, reporting or procedural requirements. Additional guidance is expected to be provided through the final Rules and/or separate notifications, directions and regulations issued by the Government and RBI.

(f) Onus of compliance

The draft Rules places the responsibility for compliance on all relevant parties, namely the foreign investor, the eligible investee entity, and the transferor/transferee, as applicable.

(g) Powers of the RBI

The RBI is designated as the authority to administer the rules and issue regulations, directions, circulars, instructions, clarifications, payment norms, and reporting requirements. At the same time, interpretation of the foreign investment policy, including sectoral caps, sectoral conditions, and entry routes, will remain with Department for Promotion of Industry and Internal Trade ('DPIIT'), Government of India, thereby clearly separating operational regulations from policy control.

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Our comments

At a policy level, the draft Rules do not appear to signal a substantive shift in India's FDI investment framework. Sector-specific caps, entry routes and conditionalities are proposed to be retained through the Annexure II (FDI policy) to the draft Rules. The proposed changes seem to be aimed at streamlining the regulatory architecture by consolidating concepts and reducing overlap between the foreign exchange framework administered by the RBI and the broader FDI policy administered by DPIIT.

That said, several proposed changes will need a careful reading once finalised particularly the 10 percent voting rights limb added to the 'control' test, equity swaps, and the consolidated overseas-listing conditions. Investors with layered holding structures, existing FCEs/FOCCs, or plans involving swaps or overseas listings should assess these provisions against their current structures and consider making submissions during the comment window (open until 31 August 2026).



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