UPDATES

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# Navigating new horizons: Changes to foreign investment regulations in the Indian space sector

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***This update covers:***



## 1 Background

On 4 March 2024, the Indian government issued Press Note 1 of 2024 (**Press Note**) liberalising foreign investments in the space sector. The Press Note amends India's Consolidated Foreign Direct Investment Policy (**FDI Policy**) and will take effect once amendments to Schedule I of the Foreign Exchange Management Act (Non-Debt Instrument) Rules, 2019 (**NDI Rules**) are notified.

In this update, we discuss key changes introduced through the Press Note to the existing FDI framework in the space sector and its implications on global players currently doing business in India or those planning to set up operations in India.

The Indian government has liberalised the policy framework for foreign investments in the space sector, by permitting investments through the automatic route for certain activities subject to specified thresholds. This development, aimed at attracting and easing investments into this fast-growing sector, is yet to come into effect.

## 2 Analysis

Prior to the Press Note, the FDI Policy permitted up to 100% foreign direct investment (**FDI**) with *prior* government approval in a single category "*Satellites –*

*establishment and operations, subject to the sectoral guidelines of the Department of Space/ISRO*". This, read with the erstwhile Satellite Communications Policy, 1997 and the norms, guidelines and procedures for its implementation issued thereunder (together, **Erstwhile Policy**), only provided for the establishment and operation of '*Indian Satellite systems*' (**ISS**), i.e., systems which were informed, coordinated, registered, and notified by the Indian administration in accordance with the International Telecommunication Union (**ITU**) Radio Regulations.

While the Erstwhile Policy did not define the terms '*establishment*' or '*operation*', it set out the procedure for issuing licenses for these activities. Indian registered entities with foreign investment (subject to the FDI Policy) were permitted to apply for the establishment and operation of an ISS by filing an application through the Indian administration to the ITU. While the scope of the activities that could be carried out under such license was not explicitly provided, it was understood to also include '*landing rights*', which are permissions that operators must obtain for their satellite to be used in a particular country, and in order to distribute or market their satellite capacity. Operating licenses for providing broadcasting or telecommunication services, if any, were to be obtained separately from the relevant authorities.

While the Erstwhile Policy did envisage limited participation by foreign or private entities (such as the lease of INSAT capacity to foreign or private parties or allowing the limited use of foreign satellites for services in India), Indian satellites were provided preferential treatment. Further, no private entities were authorised to establish and operate an ISS under the old regime.

In April 2023, the Erstwhile Policy was replaced by the Indian Space Policy 2023 (**Space Policy**), permitting non-governmental entities (**NGEs**), i.e., private entities, to undertake end-to-end activities in the space sector. This included establishment and operation of space objects, ground-based assets and related services such as communication, remote sensing, navigation, etc. Under the Space Policy, NGEs could offer national and international space-based communication services, establish and operate ground facilities for the functioning of space objects, use Indian and/or non-Indian orbital resources to establish space objects, establish and operate remote sensing satellite systems within and outside India, and disseminate satellite-based remote sensing data.

This marked a significant departure from the position over the last two decades where satellite operations were largely under the government's domain and private parties would leverage existing state satellite capacity to undertake their operations. (To read our update on the Space Policy, click here.)

In the same vein, and following in the footsteps of the Space Policy, the Press Note now permits FDI in various activities under the automatic route, i.e., without any prior government approval, up to specified thresholds in *three* categories:

| | Sector/Activity | Permitted investment under automatic route |
|---|---|---|
| 1. | Satellites - Manufacturing and Operation, Satellite Data Products and Ground Segment and User Segment | Up to 74% |
| 2. | Launch Vehicles and associated systems or sub-systems, creation of spaceport for launching and receiving spacecraft | Up to 49% |

| | Sector/Activity | Permitted investment under automatic route |
|---|---|---|
| 3. | Manufacturing of components and systems/sub-systems for satellites, ground segment, and user segment | Up to 100% |

We have discussed these categories in further detail below.

## 2.1 Category 1: Satellites – Manufacturing and Operation, Satellite Data Products and Ground Segment and User Segment

FDI in these activities is permitted up to 74% under the automatic route. Beyond 74%, government approval is required. Compared to the Erstwhile Policy, which used the term '*Establishment and Operation*', the Press Note uses the term '*Manufacturing and Operation*'. It is defined as "*end-to-end manufacturing and supply of satellite and/or payload, establishing the satellite systems including control of in-orbit operations of the satellite and payloads.*" While the terms '*establishing*' and '*operations*' have been retained in the definition, the terms '*end-to-end manufacturing*' and '*supply*' have also been introduced. This brings much needed clarity for entities proposing to carry out end-to-end manufacturing and supply activities in the space sector, as they have now been explicitly included in this category.

Entities involved in the reception, generation or dissemination of earth observation or remote sensing data and data products (including APIs) have also been brought within this category under '*Satellite data products*'. Notably, data products that did not involve operation of satellites under the erstwhile regime (such as products and technologies permitted under the Geospatial Guidelines, 2021) and were considered to be under the 100% automatic route, may also now require FDI approval if their foreign holding exceeds 74%. This may require restructuring for entities which are currently engaged in such activities in India.

Ground segment and user segment have also been clarified as *supply* of satellite transmit/receive earth stations (such as gateways, telemetry, tracking and command (TTC) stations, satellite control centres (SCC) etc.), and user ground terminals, and therefore entities involved in the sale of these segments will also be covered under this category.

Any satellite telecommunication activities that involve the *use* of such ground or user segments to provide telecommunication services appear to fall outside the scope of this category and are likely to be permitted under the 100% automatic route, as they are governed under the telecom sector by the Department of Telecommunications.

## 2.2 Category 2: Launch vehicles and associated systems or sub-systems, creation of spaceport for launching and receiving spacecraft

Activities pertaining to launch vehicles and their components that are designed to operate or be placed in a spacecraft or in suborbital trajectories are permitted up to 49% FDI under the automatic route and require government approval beyond 49%. This will also be applicable to the creation of space ports or launch sites, which is the base from which the spacecraft is launched, and the facilities involving devices for transportation to and from outer space. Given this, foreign ownership will be limited to a minority share in the ownership and control of the Indian companies carrying out such activities. This appears to be stemming from the national security concerns that may be relevant for launch vehicles and related spaceports.

### 2.3 Category 3: Manufacturing of components and systems/sub-systems for satellites, ground segment, and user segment

Manufacturing and supply of electrical, electronic and mechanical components, systems or subsystems for satellites, ground segment, and user segment have been liberalised and up to 100% FDI in these activities is permitted under the automatic route. The intent here appears to be to distinguish these activities from category 1, i.e., end-to-end manufacturing and supply, which is subject to 74% FDI, and only allow the manufacturing of non-sensitive components which are electrical, electronic and mechanical in nature. This also seems to be aligned with the government's Make in India and Atmanirbhar Bharat initiatives as this will provide a much-needed boost to the supply chain in India and encourage the manufacturing of satellites' components in India. Interestingly however, the erstwhile regime did not explicitly include this within '*Establishment and Operations*', and therefore this brings much needed clarity for entities proposing to operate in this sector.

## 3 Grandfathering of existing investments

While the Press Note specifically segregates sectoral caps for each of the above activities, it is yet to be seen whether existing foreign investments in Indian companies operating across the above business verticals will be grandfathered or whether such companies will need to align their foreign shareholding and investment with the updated FDI Policy.

This will be especially relevant for entities whose activities could have previously been argued to be under the 100% automatic route (such as satellite data products), but now are only permitted FDI up to 74% under the automatic route. Notably, the FDI Policy specifically permits 100% FDI under the automatic route in activities or sectors that are not listed thereunder or under the NDI Rules. In light of this, it will be interesting to see if the government will look to provide clarity on this aspect. For instance, when changes to FDI in digital media were introduced, the government had issued a clarification requiring entities with existing FDI exceeding 26% to take necessary steps to bring down the foreign investment to 26% within prescribed timelines.

## 4 Outlook

Historically, the space sector in India has been inaccessible to private participation and foreign investment. The restrictions around foreign investment in this sector have followed India's FDI Policy in other sectors such as defence and telecommunications, given their criticality and impact on national security.

The Press Note marks a significant shift from the previous restrictions, and it has come at a time of unprecedented growth in India's space sector, when the Indian space economy is set to grow from around USD 8.4 billion to USD 44 billion by 2033. Such liberalisation of FDI in the space sector may significantly boost domestic capabilities and technology, particularly in the private sector which has seen several examples of successful commercialisation of space activities in recent years. It may open doors for complete ownership, incentivise foreign companies to set up manufacturing units in India, and attract investments in building advanced ground support networks.

However, the impact of the Press Note on the industry is yet to be seen. For instance, it will be interesting to see how companies/start-ups engaged in activities falling under multiple categories (such as an entity carrying out manufacturing of both satellites and launch vehicles) would restructure their businesses to comply with the FDI limits.

The Indian government is yet to issue a notification to bring this liberalisation into effect. It is expected that such notification may also clarify some of the issues identified above, along with specifying any additional sectoral conditions, if applicable.