



# *FDI in Defence sector - Foreign investments by multilateral bank or fund of which India is a member | RBI granted more powers on export & import of currency | Ease of doing business measures on export of goods and services norms*

INSIGHTS

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The Central Government has enforced the changes introduced by the Press Note 4/2020, dated September 17, 2020 in the defence sector, and has clarified its stand on foreign investments by multilateral bank or fund of which India is a member.

Additionally, the Reserve Bank of India (RBI) has introduced certain changes with respect to: (a) giving further powers to RBI to regulate export and import of currency; and (b) to further enhance the ease of doing business and quicken the approval process, more powers have been delegated to the Authorised Dealer Category – I banks (AD banks) in areas related to export of goods and services.

The key changes are provided herein below:

## **A. Foreign investments by multilateral bank or fund of which India is a member | Revised sectoral cap in the defence sector**

- The Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules) were amended on April 22, 2020, to make the following changes in relation to foreign investment by persons of countries which share land border with India:
  - An entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval;
  - 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;
  - In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of the above provisos, such subsequent change in beneficial ownership shall also require government approval.

The Central Government has now amended the NDI Rules to provide that 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.

- The Press Note 4/2020, dated September 17, 2020 (Press Note 4/2020, [available here](#)) had revised the sectoral cap in the defence sector in addition to introducing certain other changes. Those changes were to come into effect from the date of relevant notification under the NDI Rules. Now, the Central Government has notified those changes whereby FDI in defence sector is allowed upto 74% under automatic route as compared to earlier 49%. FDI beyond 74% will be through Government route wherever it is likely to result in access to modern technology or for other reasons to be recorded. The above relaxations is subject to certain further conditions as more particularly provided in the notification.

Aforementioned changes have been enforced vide the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2020, dated December 8, 2020 ([available here](#)).

## **B. RBI granted powers to regulate import / export of Indian currency notes of Government of India and/or of RBI, and/or foreign currency**

The Foreign Exchange Management (Export and Import of Currency) (Second Amendment) Regulations, 2020 dated December 3, 2020 ([available here](#)), has permitted the RBI, in public interest and in consultation with the Central Government, to restrict the amount of Indian currency notes of Government of India and/or of RBI, and/or foreign currency, that a person may bring into or take outside India and prescribe such conditions as it may deem necessary.

## C. Ease of doing business | AD banks delegated more powers related to matters on export of goods and services

RBI has decided to delegate more powers to the AD category I banks (**AD Banks**) in the following areas, to further increase the ease of doing business and quicken the approval process, vide circular dated December 04, 2020 ([available here](#)) (**Circular**):

- AD Banks have been permitted to consider the request from any export / import constituents, for set off of outstanding export receivables against the import payables, not only from / to the same overseas buyer / supplier but also with their overseas group / associate companies. This has been allowed either on net basis or gross basis, through an in-house or outsourced centralized settlement arrangement, however, subject to certain terms and conditions as given in the Circular.
- While permitting refund of export proceeds of goods exported from India on account of poor quality, there have been instances where re-importing of goods in India has not been possible as the exported goods were either auctioned or destroyed in the importing country. Accordingly, AD Banks have been permitted to consider such requests, subject to such terms and conditions as stated in the Circular.
- AD Banks may now regularize direct dispatch of shipping documents, irrespective of the value of export shipment, subject to certain conditions as more particularly stated in the Circular. Earlier, there was a limit on the value of export shipment of USD 1 million per export shipment.
- The procedure with respect to write-off of unrealized export bills has been further simplified by RBI, to provide greater flexibility to the AD Banks and to reduce the time taken for such approvals, as more particularly mentioned in the Circular.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com)

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