

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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A CRITICAL ANALYSIS OF PRESS NOTE 2 OF 2026 AND INDIA'S REVISED LAND BORDER FOREIGN INVESTMENT FRAMEWORK: LIBERALISATION, OR A NEW COMPLIANCE ARCHITECTURE?

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ABSTRACT

On 15 March 2026, the Department for Promotion of Industry and Internal Trade (DPIIT) issued Press Note No 2 of 2026 (PN2), amending paragraph 3.1.1 of the Consolidated Foreign Direct Investment Policy in relation to investments from countries sharing a land border with India (LBCs). PN2 is the most significant revision of the restrictive framework introduced by Press Note No 3 of 2020 (PN3), which imposed a blanket government approval requirement on all LBC-linked investments. PN2 aligns the definition of beneficial ownership with the Prevention of Money Laundering Act 2002 and the Prevention of Money Laundering (Maintenance of Records) Rules 2005, introduces a 10 per cent threshold below which non-controlling investments from third-country entities with LBC exposure may proceed without government approval, creates a dual-track compliance framework of approval versus mandatory reporting, and commits to 60-day processing for investments in specified manufacturing sectors. These changes were given statutory effect through the Foreign Exchange Management (Non-Debt Instruments) (Amendment) Rules 2026 of 1 May 2026 and operationalised through a revised Standard Operating Procedure of 4 May 2026. This paper critically examines whether PN2 constitutes genuine structural liberalisation or primarily a reconfiguration of compliance obligations. It analyses, in sequence, the specific ambiguities that plagued PN3; what PN2 genuinely resolves and the reasoning behind the choice of the PMLA framework; and what problems persist, including the undefined concept of ultimate effective control, the threshold paradox embedded in the new reporting obligation, the prospectivity gap, and the structural unenforceability of the 60-day commitment. The paper concludes that PN2 is genuine but partial liberalisation: it replaces one species of uncertainty with another, and the net compliance burden on Indian investee companies has on balance increased rather than decreased.

Keywords: *Press Note 2 of 2026, Press Note 3 of 2020, Foreign Direct Investment, Land Border Countries, Beneficial Ownership, PMLA, FEMA, Ultimate Effective Control, DPIIT Reporting, Standard Operating Procedure*

I. Introduction

India's foreign investment architecture rests on a triangulated statutory foundation: the Foreign Exchange Management Act 1999¹ (FEMA), the Foreign Exchange Management (Non-Debt Instruments) Rules 2019² (NDI Rules), and the Consolidated FDI Policy 2020.³ Within this structure, the DPIIT issues executive policy instruments in the form of Press Notes. These instruments carry no formal legislative status under FEMA; they are not subordinate legislation and derive no statutory force from the principal Act, yet they exert comprehensive de facto regulatory authority by directing authorised dealer bank conduct, structuring RBI reporting obligations, and governing the Foreign Investment Facilitation Portal approval process.

Press Note No 3 of 2020 (PN3)⁴ was issued on 17 April 2020, at the peak of the COVID-19 pandemic. Its stated objective was to curb opportunistic takeovers and acquisitions of Indian companies during a period of market stress. In substance, it amended paragraph 3.1.1 of the FDI Policy⁵ to require that any entity of a country sharing a land border with India, or any investment where the beneficial owner was situated in or was a citizen of such a country, could invest in India only through the Government Route, meaning prior government approval was mandatory before any investment could be made.⁶ The restriction applied uniformly to investments from China (including Hong Kong and Macau), Pakistan, Bangladesh, Nepal, Bhutan, Myanmar, and Afghanistan, irrespective of sector, size, or nature of the investment.

Six years on, on 15 March 2026, the DPIIT issued Press Note No 2 of 2026 (PN2), amending paragraph 3.1.1. The changes were given statutory effect through the FEMA NDI (Amendment) Rules 2026 on 1 May 2026 and operationalised through a revised Standard Operating Procedure (SOP) of 4 May 2026. This paper undertakes a granular critical analysis: what structural defects afflicted PN3; what PN2 genuinely corrects and why the PMLA framework was selected as the definitional anchor; and what problems of equal or greater significance remain unresolved or have been freshly created.

¹Foreign Exchange Management Act 1999 (Act 42 of 1999) (FEMA).

²Foreign Exchange Management (Non-Debt Instruments) Rules 2019, GSR 796(E), 17 October 2019 (NDI Rules).

³Department for Promotion of Industry and Internal Trade, Consolidated FDI Policy Circular of 2020 (15 October 2020) (FDI Policy).

⁴Department for Promotion of Industry and Internal Trade, Press Note No 3 (2020 Series) (17 April 2020) (PN3).

⁵*ibid*, para 3.1.1.

⁶PN3 (n 4).

II. The Structural Defects of Press Note 3: A Diagnostic

2.1 The Foundational Defect: Beneficial Ownership Without a Threshold

The central legal dysfunction of PN3 was its deployment of the concept of beneficial ownership as the primary gateway to the government approval requirement, without defining that concept. PN3 required prior government approval where the beneficial owner of an investment was situated in or was a citizen of a land-bordering country but prescribed no threshold for determining when a person beneficially owns an investment, no methodology for tracing ownership through intermediate holding structures, and no guidance on the level of the corporate chain at which the assessment was to be conducted.

This was not a drafting oversight that could be cured by reference to the surrounding legislative architecture. At the time of PN3's issuance in 2020, the Indian regulatory framework contained at least two competing beneficial ownership regimes with materially different thresholds. The Companies Act 2013 prescribed a 10 per cent threshold for identifying significant beneficial owners under the SBO framework. The Prevention of Money Laundering (Maintenance of Records) Rules 2005 (PML Rules)⁷ prescribed a 25 per cent threshold for controlling ownership interest in a company at that time, a threshold that was only brought down to 10 per cent by amendment on 7 March 2023. PN3 adopted neither framework, leaving market participants in a state of irresolvable interpretational uncertainty.

The practical consequence was foreseeable and severe. In the absence of a defined threshold, a large portion of the market defaulted to a zero-threshold interpretation: any direct or indirect ownership linkage to an LBC jurisdiction, however small, was treated as potentially triggering the government approval requirement. The SOP of August 2023⁸ reinforced this reading by requiring disclosure of any direct or indirect LBC ownership without specifying a minimum percentage. The result was that a global fund with a 0.2 per cent indirect Chinese ownership stake like a Chinese national holding a small interest in a Cayman feeder fund that held a position in a Singapore vehicle that invested in an Indian company faced a government approval obligation for the Indian company's FDI. The compliance burden was categorically disproportionate to any plausible national security concern.

The economic impact was visible and measurable. Net FDI inflows fell from \$38.59 billion in

⁷Prevention of Money-Laundering (Maintenance of Records) Rules 2005 (PML Rules), Rule 9(3), as amended by Notification dated 7 March 2023 (reducing the threshold for controlling ownership interest in a company from 25 per cent to 10 per cent).

⁸Standard Operating Procedure for Processing FDI Proposals (17 August 2023) (SOP 2023), Annexure IV.

2022-23 to \$28.014 billion in 2023-24.⁹ The approval machinery compounded the damage: under successive SOPs, approval timelines were aspirational rather than operative, with approvals routinely taking six to twelve months rather than the prescribed 12-week period.¹⁰ For time-sensitive VC and PE transactions where funding rounds close on 30-to-45-day timelines, a six-to-twelve-month government approval process was functionally prohibitive.

2.2 The Multi-Layer Tracing Problem in Fund Structures

A related but analytically distinct problem was the absence of any rule as to how beneficial ownership was to be traced through multi-layered fund structures. A typical global PE or VC fund involves a GP entity, a main fund vehicle, multiple feeder funds across several jurisdictions, and hundreds of limited partners drawn from dozens of countries including, routinely, passive minority LBC-linked investors who have no operational connection to or influence over the fund's India investment decisions.

Under a strict reading of PN3, such a fund seeking to invest in an Indian company faced a structural impossibility. To demonstrate that no beneficial owner was situated in or was a citizen of an LBC, it would need to trace the entire LP chain to the ultimate natural person level, an exercise that is impractical for widely-held global funds and, in the case of funds of funds structures, potentially impossible. The SOP of August 2023 reinforced a conservative interpretation suggesting that any direct or indirect LBC investment, irrespective of shareholding percentage, warranted scrutiny. The market had no authoritative guidance on whether a 0.5 per cent LBC-linked LP in a 500-investor fund triggered the approval obligation for the fund's India portfolio investments.

SEBI partially addressed this in October 2024 through its AIF circular,¹¹ which introduced enhanced due diligence requirements for AIFs where LBC participation crossed specified thresholds, implicitly endorsing a threshold-based approach. But SEBI's circular was sector-specific to AIFs and could not amend the FDI Policy. The underlying PN3 ambiguity remained.

⁹Shriyansh Mishra and Runit Rathore, 'Softening the Borders: Relaxing FDI Norms for Land Border Countries' (India Corp Law, 20 May 2026) <<https://indiacorplaw.in/2026/05/20/softening-the-borders-relaxing-fdi-norms-for-land-border-countries/>> accessed 1 October 2026, citing Indian Express data on net FDI inflows.

¹⁰Nishith Desai Associates, 'India Resets Border FDI Controls: Border Checks Stay, but the Queue Just Got Shorter' (Regulatory Hotline, 19 March 2026) <<https://www.nishithdesai.com/default.aspx?id=15555>> accessed 1 October 2026 (NDA Hotline I).

¹¹SEBI Circular No SEBI/HO/AFD/POD/P/CIR/2024/131 dated 8 October 2024, 'Specific Due Diligence of Investors and Investments of AIFs' (SEBI AIF Circular).

2.3 The Residency versus Citizenship Confusion and Its Downstream Harms

A third dysfunction of PN3, less prominent in commentary but substantively important, was the formulation of its approval trigger. The government approval requirement attached where the beneficial owner was 'situated in or is a citizen of' an LBC. The word 'situated' introduced a residence-based test with consequences that extended well beyond PN3's national security rationale.

A Chinese national who had emigrated permanently to Singapore, Canada, or the United States and who retained no meaningful economic or institutional connection to the Chinese state nonetheless triggered the PN3 approval requirement if they held sufficient indirect ownership in an Indian investee. The regulatory concern underlying PN3, preventing state-proximate Chinese capital from acquiring strategic Indian assets at distressed pandemic-era valuations was not addressed by capturing the diaspora. The residence limb extended PN3's reach to individuals whose connection to the land-bordering state was nominal.

At the corporate level, the residency trigger also created compliance difficulties for Indian companies wishing to grant stock options to employees stationed in LBC jurisdictions. A Bangladeshi national employed in Dhaka who received an ESOP grant from an Indian employer was, on a strict reading of PN3, a beneficial owner 'situated in' Bangladesh -- potentially triggering the government approval requirement for an ESOP worth a few thousand rupees. The disproportionality of this outcome was apparent, but PN3 provided no carve-out.

2.4 The Approval Process as a Structural Barrier

Even where investors accepted the approval obligation and filed through the Government Route, the process itself was a structural deterrent. The SOP of August 2023 prescribed a 12-week processing timeline. In practice, approvals routinely took between six months and a year, and in some cases substantially longer.¹² The approval process required clearances from the Ministry of Home Affairs (security clearance), the Ministry of External Affairs, and the Reserve Bank of India, in addition to the principal Administrative Ministry and DPIIT, each with its own review timelines and no effective coordination mechanism.

For deal-driven investment transactions, this timeline was commercially catastrophic. A VC fund seeking to lead a Series B round in an Indian deep-tech startup on a 45-day execution timeline could not accommodate a six-to-twelve-month government approval process for a Chinese LP holding a 3 per cent interest in the fund. The practical outcome was that LBC-linked investment, including entirely benign global capital with minor passive LBC exposure,

was driven away from India, or restructured through complex and expensive offshore vehicles that added transaction cost without serving any regulatory purpose.

III. What Press Note 2 Resolves: An Honest Assessment

3.1 Why the PMLA Framework Was Chosen, and Whether the Choice Was Sound

The most significant reform introduced by PN2 is the formal definition of beneficial ownership by reference to section 2(1)(fa) of the PMLA¹³ and Rule 9(3) of the PML Rules.¹⁴ This was not an arbitrary or ad hoc choice. Four distinct justifications support it, though each carries its own limitations.

First, the PMLA threshold was already the de facto market standard. Since PN3 provided no threshold, market participants needed a workable reference point, and the 10 per cent PMLA-aligned figure was the most widely applied working standard in practice, particularly by AIF managers and AD banks.¹⁵ PN2's adoption of the PMLA framework is therefore, in substantial part, the formal endorsement of a de facto position that had self-constructed over six years of PN3 ambiguity.

Second, the PMLA framework is institutionally embedded. AD banks, financial institutions, and regulated entities are already subject to PMLA-compliant KYC and UBO identification processes as a matter of routine. They possess the operational infrastructure to apply a PMLA-aligned test. By anchoring the FDI beneficial ownership concept in the same framework, DPIIT has avoided the cost and delay of building parallel compliance systems and has made the FDI screening test legible to the professionals who must apply it.

Third, SEBI had already adopted the same framework for AIFs in October 2024 through its enhanced due diligence circular.¹⁶ PN2's alignment with that approach creates cross-regulatory coherence: the same threshold applies to SEBI-regulated AIFs and to FDI Policy beneficial ownership determinations. This symmetry reduces the scope for arbitrage between regulated investment vehicles and direct FDI.

¹³Prevention of Money-Laundering Act 2002 (Act 15 of 2003) (PMLA), s 2(1)(fa): 'beneficial owner means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.'

¹⁴PML Rules (n 7), Rule 9(3)(i): 'where client is a company, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.' The Note to Rule 9(3)(i) defines 'controlling ownership interest' as ownership of or entitlement to more than 10 per cent of shares or capital or profits, and 'control' as including the right to appoint a majority of directors or control management or policy decisions.

¹⁵NDA Hotline I (n 10). The NDA analysis confirms that the market had adopted a 10 per cent working threshold during the PN3 years and that PN2's adoption of the PMLA framework is a formal endorsement of that de facto position.

¹⁶SEBI AIF Circular (n 11).

Fourth, the PML Rules contain a listed-entity exemption¹⁷ under Rule 9(3)(vi) which provides that where the client or controlling interest holder is listed on a notified stock exchange or is a subsidiary of such a listed entity, UBO identification and verification is not required. This exemption solves, at a stroke, the problem that had previously confronted widely-held multinational companies: a Korean technology conglomerate listed on the KRX with an LBC-linked institutional shareholder holding less than 10 per cent no longer needs to trace the identity of that shareholder's ultimate beneficial owners before investing in India through the automatic route.

There is, however, a critical historical nuance that the PN2 narrative often obscures. When PN3 was issued in April 2020, the PMLA Rules prescribed a 25 per cent threshold for controlling ownership interest in a company -- not 10 per cent. The 10 per cent figure in use during the PN3 years came from the Companies Act 2013 SBO framework, not from the PMLA as it then stood.¹⁸ The market's 10 per cent working standard was therefore a self-constructed hybrid, not a PMLA-derived position. The PMLA was only amended to reduce the company threshold to 10 per cent on 7 March 2023. PN2's adoption of the PMLA framework is thus the endorsement of a standard that the PMLA itself only adopted three years after PN3 was issued, a chronology that exposes the retrospective rationalisation of the threshold choice rather than its principled basis.

Does the PMLA choice actually help? For the principal category of investment affected by PN3's ambiguity, global PE and VC funds with passive, non-controlling, sub-10-per-cent LBC LP participation, the answer is yes and the relief is genuine. A Singapore fund with a 7 per cent Chinese LP holding can now invest in India without government approval, provided the Chinese LP does not exercise control and the investment does not raise ultimate effective control concerns. This was precisely the category most paralysed by PN3, and the PMLA-anchored threshold provides the legal certainty that was wholly absent before.

3.2 The Citizenship Narrowing: A Quiet Reform with Real Consequences

PN2 narrows the scope of the approval trigger in a way that has received insufficient attention.

¹⁷PML Rules (n 7), Rule 9(3)(vi): where the client or the owner of the controlling interest is an entity listed on a stock exchange in India, or is an entity resident in jurisdictions notified by the Central Government and listed on stock exchanges in such jurisdictions, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such entities.

¹⁸Argus Partners (n 16): 'With respect to companies, the Act prescribed an ownership threshold of 10 per cent whereas the PMLA prescribed a higher threshold of 25 per cent to identify beneficial owners. This divergence was subsequently addressed through an amendment to the PMLA dated March 07, 2023, pursuant to which the definition of beneficial owner was revised to reduce the threshold for controlling ownership in case of a company, from 25% to 10%.'

Under PN3, the approval requirement attached where the beneficial owner was 'situated in or is a citizen of' an LBC. PN2 removes the residency limb and limits the trigger to situations where the beneficial owner 'is a citizen of' an LBC.¹⁹

This change is substantively significant in two respects. First, it removes from the approval requirement all non-citizen LBC residents, a Chinese national who has emigrated permanently to Canada, Australia, or Singapore and does not hold Chinese citizenship no longer triggers the approval obligation through the residency limb. The regulatory concern underlying PN3 related to state-proximate capital, and citizenship is a more defensible proxy for that concern than mere physical presence in an LBC.²⁰ Second, it clarifies that Indian companies may grant ESOPs to employees stationed in LBC jurisdictions provided those employees are not LBC citizens, resolving a practical ambiguity that had been a source of unnecessary compliance anxiety for Indian companies with regional operations.

3.3 The Historical PMLA Threshold and the Regulatory Convergence It Represents

The prior PMLA threshold of 25 per cent for companies, and its amendment to 10 per cent on 7 March 2023, is significant not merely as history but as an illustration of the regulatory fragmentation that PN3 inherited and PN2 has partly resolved.²¹ At PN3's issuance in 2020, there were three different beneficial ownership thresholds in simultaneous operation in India: 10 per cent under the Companies Act 2013 SBO framework; 25 per cent under the PMLA; and no threshold under PN3 itself. The PMLA's amendment to 10 per cent in 2023 harmonised the first two. PN2's adoption of the amended PMLA framework in 2026 brings the FDI Policy into alignment with both, for the first time creating a single, coherent threshold applicable across the SBO, AML, and FDI beneficial ownership regimes.

This convergence is a genuine regulatory achievement, even if it was decades in the making. The single threshold reduces the scope for regulatory arbitrage, creates consistent obligations for compliance professionals working across multiple regulatory regimes, and aligns India's FDI beneficial ownership standard with the FATF-derived AML framework that governs beneficial ownership identification in most major jurisdictions.

¹⁹PN2 (n 12), para 3.1.1(a)(i). The revised formulation narrows the prior PN3 trigger from beneficial owners 'situated in or is a citizen of' an LBC, to beneficial owners who 'are citizens of' an LBC.

²⁰Kashyap and others (n 15): 'this small change of moving away from the permanent residence criteria and limiting the same to citizenship of the investor entity may provide relief in certain cases involving non-resident Indians resident in such LBC jurisdictions.'

3.4 Procedural Improvements Under the Revised SOP

Beyond the substantive beneficial ownership reform, the revised SOP of 4 May 2026 introduces several procedural changes that merit acknowledgment. The requirement for physical document submission has been eliminated, producing a fully digitalised process.²² The deemed approval mechanism has been extended to Ministry of Home Affairs comments, previously, MHA could extend its review timeline through intimation to the Administrative Ministry without any outer limit; now, failure to provide comments within prescribed periods results in deemed clearance.²³ Secretary-level approvals before inter-departmental referrals have been removed, reducing internal bureaucratic friction. A time-bound application closure mechanism has been introduced, requiring the Competent Authority to scrutinise applications within one week of filing and issue and respond to queries within defined periods.

These are genuine improvements in process architecture. The deemed MHA approval provision is particularly significant: MHA security clearance has historically been a principal source of timeline overrun in PN3 approval cases, and extending the deemed approval framework to MHA comments has the potential to materially reduce processing times for cases where MHA does not raise substantive security concerns.

IV. What Press Note 2 Leaves Unresolved: Three Structural Problems

4.1 Ultimate Effective Control: An Undefined Concept Introduced Into a Defined Framework

The most legally consequential unresolved problem in PN2 is the introduction of the concept of 'ultimate effective control over the investee entity' as the third limb of the beneficial ownership test.²⁴ Government approval is required where LBC interests enable the relevant LBC citizen or entity to 'exercise ultimate effective control over the investee entity in any manner'. This formulation derives from section 2(1)(fa) of the PMLA,²⁵ which defines beneficial owner to include a person who 'exercises ultimate effective control over a juridical person'. The PMLA does not define what ultimate effective control means or what rights, arrangements, or conduct constitute its exercise.

²²NDA Hotline II (n 26): 'While the FDI proposal filing process substantially remained digital even under the Erstwhile SOP, physical copies of original documents could be sought where doubts arose regarding authenticity. The New SOP has dispensed with this requirement.'

²³NDA Hotline II (n 26): 'The New SOP has now extended the deemed approval framework to MHA comments as well, which is expected to reduce delays and significantly expedite the approval process in practice.'

²⁴PN2 (n 12), para 3.1.1(c)(iii).

²⁵PMLA (n 13), s 2(1)(fa). The phrase 'ultimate effective control over a juridical person' appears in the definition of beneficial owner but is not defined anywhere in the PMLA or the PML Rules.

The import of this undefined concept into the FDI framework creates a structural ambiguity with significant transactional consequences. Standard investment agreements routinely include a range of minority investor protections that could, depending on regulatory interpretation, constitute 'ultimate effective control' over the investee entity. The provision on its face captures: affirmative consent rights over major corporate actions (issuance of shares, change of business, acquisition or disposal of material assets, related-party transactions, incurrence of debt above a threshold); board representation rights, including the right to appoint one or more directors; reserved matter vetoes over operational or strategic decisions; negative covenants restricting specified activities without investor consent; and information and inspection rights accompanied by step-in provisions on breach.

The problem is acute because there is no bright-line test for which of these rights constitutes 'ultimate effective control'. The IBA's analysis of the Singapore structuring dimension identifies the core difficulty: an LBC investor holding eight per cent equity but holding a contractual right to appoint the chief executive officer or block certain decisions could be regarded as exercising control, triggering the government approval requirement despite the numerical shareholding falling well below the 10 per cent threshold.²⁶ The Supreme Court's observation in *Vodafone International Holdings BV v Union of India*²⁷ that 'control' is a mixed question of law and fact and that controlling interest may be assumed through shareholding leading to control in management -- while made in a tax context -- is instructive on the general legal difficulty of drawing bright lines around control.

There is a deeper doctrinal difficulty here. The PMLA's concept of ultimate effective control was designed for financial crime prevention: the purpose of identifying the individual who exercises ultimate effective control over a juridical person is to ensure that the natural person behind a legal entity cannot evade AML obligations by interposing corporate structures. In that context, the concept operates between an individual at the apex of a corporate chain and the juridical person at the base and the analysis is directed at identifying natural person responsibility for AML reporting obligations.

PN2 applies this concept in an entirely different context: the question is not whether an individual natural person is ultimately responsible for AML compliance, but whether a

²⁶IBA Article (n 23): 'an LBC investor holding eight per cent equity but having a contractual right to appoint the chief executive officer or block certain decisions could be regarded as exercising control, thereby triggering PN3 considerations.'

²⁷*Vodafone International Holdings BV v Union of India* (2012) 6 SCC 613 (Supreme Court of India), holding that 'control' is a mixed question of law and fact and that controlling interest may be assumed through ownership of shares leading to control in management.

corporate entity from an LBC jurisdiction exercises sufficient control over an Indian investee to warrant government oversight of the investment. When transplanted into this geopolitical investment screening context, the concept loses the natural person anchor that gave it operational meaning in the PMLA. The question becomes: when does a minority LBC shareholder's contractual rights amount to ultimate effective control over the Indian company, not as an individual responsible for AML compliance, but as a corporate interest with potential national security implications? This question has no answer derivable from the PMLA framework, because the PMLA was not designed to answer it.²⁸

The practical consequence is predictable. AD banks, already institutionally disposed to conservative interpretations to protect themselves from regulatory liability, will apply the most cautious reading of ultimate effective control. Any LBC investor holding governance rights in an investment agreement, including standard minority investor protections, may trigger a referral for government approval regardless of numerical equity ownership. Investors structuring LBC-linked investments below the 10 per cent threshold will face uncertainty about whether their governance package pushes them into the approval track. This replicates, in the control domain, the same dysfunction that PN3's undefined beneficial ownership concept produced in the threshold domain.

4.2 The Reporting Obligation: A Threshold Paradox That Recreates PN3's Dysfunction

PN2 introduces a mandatory DPIIT reporting obligation for investments that qualify for the automatic route: where a foreign investor entity has any direct or indirect ownership by a citizen or entity of an LBC, the Indian investee company must report the investment to DPIIT in the prescribed format before inward remittance or execution of transaction documents.²⁹ This obligation is operationalised through Schedule I of Annexure VII of the SOP, requiring extensive disclosures regarding the investor entity, its upstream ownership structure, LBC beneficial ownership positions, governance rights, board composition, downstream investments of the Indian company, and a declaration of compliance.

This reporting obligation contains a structural paradox that has been identified in practitioner commentary and has not been addressed by any subsequent regulatory guidance.³⁰ The

²⁸Mishra and Rathore (n 9).

²⁹PN2 (n 12), para 3.1.1(d). The obligation attaches to investments where the investor entity has 'direct or indirect ownership' by a citizen or entity of an LBC -- without importing the 10 per cent PMLA threshold applicable to the approval condition.

³⁰ELP Alert (n 18). The ELP analysis uses the following worked example: a Chinese national residing in Canada invests in a Cayman feeder fund, which invests into a Singapore fund, which invests into an Indian AIF. The actual stake of the Chinese national in the Indian AIF is 0.2 per cent. On a literal reading of para 3.1.1(d), the

obligation to report attaches to investments involving 'any direct or indirect ownership' by an LBC citizen or entity but unlike the government approval condition (which is expressly tied to PMLA-threshold beneficial ownership), the reporting condition does not state that only interests exceeding the PMLA 10 per cent threshold trigger the reporting requirement. On a literal reading, even a 0.2 per cent indirect ownership interest a Chinese national residing in Canada holding a small interest in a Cayman feeder fund participating in a Singapore vehicle investing in an Indian AIF falls within the reporting obligation, triggering a mandatory pre-transaction Schedule I filing by the Indian company.

This is precisely the zero-threshold dysfunction that PN3 created in the approval domain, now transplanted into the reporting domain. Where the government approval obligation has been resolved through the 10 per cent PMLA threshold, the reporting obligation that applies to the very same investments freed from that approval requirement has been drafted without an equivalent threshold. The result is that the compliance burden PN2 was intended to reduce has been partially relocated from the approval track to the reporting track, and the reporting track may in some respects be broader than the approval obligation that preceded it.

The practical difficulty is compounded by the information asymmetry problem. Schedule I requires the Indian investee company to disclose upstream LBC ownership structures, beneficial ownership positions, and governance rights across the investment chain.³¹ An Indian company receiving FDI from a Singapore fund has no direct relationship with that fund's LP base and no legal mechanism to compel LP-level ownership disclosures. The SOP places the compliance obligation on the Indian investee,³² but the Indian investee may be structurally unable to obtain the information required to satisfy that obligation, a compliance impossibility that no amount of good faith effort can resolve.

The timing of the obligation amplifies the problem. Reporting must occur prior to inward remittance of foreign capital or, for transactions not involving inward remittance, prior to execution of transaction documents. AD banks are likely in practice to require proof of completed DPIIT reporting before facilitating the remittance. This creates a sequential pre-transaction process -- ownership analysis, Schedule I filing, DPIIT receipt confirmation, then

Indian AIF must file a Schedule I report before accepting the investment.

³¹Department for Promotion of Industry and Internal Trade, Standard Operating Procedure for Processing FDI Proposals (4 May 2026) (SOP 2026), Annexure VII, Schedule I.

³²NDA Hotline II (n 26): 'the New SOP requires even Exempted LBC Investments to furnish BO disclosures, along with extensive details regarding the proposed investment, investor, and investee entities. Since investments qualifying for the automatic route exemption are, by definition, not expected to involve any controlling or material LBC nexus, subjecting them to the same level of ownership disclosure as approval-route proposals may raise practical concerns relating to confidentiality, execution timelines, and compliance burdens.'

remittance that adds real execution friction to every transaction with any LBC linkage, however minimal. The investment may nominally proceed under the automatic route, but it must clear a pre-transaction compliance hurdle that introduces documentary and timing obligations comparable in burden, if not in legal characterisation, to the approval process it replaces.

4.3 The 60-Day Commitment: Aspirational Policy Without Legal Force

The 60-day fast-track processing commitment for LBC investments in specified manufacturing sectors, capital goods, electronic capital goods, electronic components, polysilicon and ingot-wafer, advanced battery components, rare earth permanent magnets, and rare earth processing³³ has been presented as a centrepiece of PN2's liberalisation. A careful assessment of its legal status and operational scope reveals substantial limitations.

The 60-day commitment is a policy statement embedded in a non-statutory Press Note. Unlike the US FIRRMA framework, under which CFIUS review timelines are prescribed by federal statute and carry defined procedural consequences,³⁴ or the EU FDI Screening Regulation, which establishes Member State screening timelines within a treaty-anchored framework,³⁵ India's 60-day commitment creates no enforceable legal right. An investor who files a qualifying application on day one and receives no decision by day 60 has no remedy in law: there is no deemed approval mechanism for Government Route cases in specified sectors, no right of appeal to an independent body, and no statutory damages or consequence for the Government's failure to comply with its own processing commitment.

Whether the 60-day timeline will be honoured in practice is an empirical question that the regulatory track record gives reason to doubt. The SOP of August 2023 prescribed a 12-week processing timeline that was in practice chronically disregarded, with approvals routinely taking six months to a year.³⁶ The revised SOP of May 2026 does not prescribe how the 60-day period is to be allocated across the different stages of processing, the Competent Authority review, inter-ministerial consultation, MEA comments, MHA clearance, and final decision in

³³SOP 2026 (n 27), Annexure VII, Schedule II. The fast-track applies to investments involving up to 49 per cent capital or voting rights in an IOCC engaged in capital goods, electronic capital goods, electronic components, polysilicon and ingot-wafer, advanced battery components, rare earth permanent magnets, and rare earth processing.

³⁴50 USC s 4565 (Foreign Investment Risk Review Modernization Act 2018 (FIRRMA), amending the Defense Production Act 1950): mandatory declarations result in clearance within 30 days; full reviews within 45 days; all statutory and enforceable timelines.

³⁵Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 Establishing a Framework for the Screening of Foreign Direct Investments into the Union [2019] OJ L 79I/1.

³⁶NDA Hotline I (n 10): approvals under SOP 2023 'often took significantly longer, typically ranging from eight months to a year.'

the way that FIRMA's staged review periods are precisely defined.³⁷ The absence of granular sub-period allocation makes the 60-day outer limit aspirational rather than operative.

The eligibility restriction further limits the commitment's practical reach. The 60-day processing timeline is available only for investments in Indian Owned and Controlled Companies (IOCCs), entities in which majority shareholding and control are held by resident Indian citizens at all times. Foreign Owned or Controlled Companies (FOCCs), even where they operate in eligible manufacturing sectors, are expressly excluded from the fast-track mechanism.³⁸ This means that wholly-owned Indian subsidiaries of global manufacturers, and Indian JV companies where a foreign partner holds a controlling stake, receive no benefit from the 60-day commitment. Given that these are precisely the structures through which significant LBC-linked manufacturing investment is likely to flow, the effective reach of the 60-day mechanism is substantially narrower than the headline commitment suggests.

There is a further ambiguity: neither PN2 nor the revised SOP clarifies whether the 60-day timeline is mandatory (giving rise to deemed approval on expiry) or merely directory (a guideline for administrative performance).³⁹ For the commitment to function as intended, it would need to carry deemed approval consequences, as the MHA comment provision in the revised SOP does for inter-ministerial consultation. Absent this, the 60-day figure risks replicating the history of the 12-week SOP 2023 timeline: a stated objective that is honoured in some cases and disregarded in others, with no consequence for non-compliance.

4.4 The Prospectivity Gap and the Follow-On Investment Problem

PN2 operates prospectively. It provides no grandfathering relief for pre-existing investments that would satisfy the PMLA-aligned 10 per cent threshold test if assessed today, but which were made prior to PN2 under the zero-threshold conservative interpretation that PN3's ambiguity produced. During the six years of PN3, a significant number of investments -- particularly by global funds with passive LBC LP participation -- were made with AD bank comfort on the basis of a 10 per cent working standard, but without formal government approval.

³⁷Moin Ladha, Tanish Prabhakar and Hayden D'Souza, 'Amendments to Investment from Land Bordering Nations' (Khaitan and Co ERGO Alert, 5 May 2026) <https://www.khaitanco.com/sites/default/files/2026-05/ERGO_Amendments%20to%20Investment%20from%20Land%20Bordering%20Nations_5%20May%2026.pdf> accessed 1 October 2026.

³⁸NDA Hotline I (n 10): 'A uniform 60-day approval timeline across all sectors involving direct or indirect LBC exposure, rather than only selected sectors, could have further improved regulatory certainty.'

³⁹Mishra and Rathore (n 9): 'PR 2026 does not clarify whether the timeline is mandatory or merely intended as a guideline for administrative processing.'

Those investments now face a legal paradox. The standard that PN2 has formally endorsed is precisely the standard on which they relied. Yet PN2 does not retrospectively regularise them: they remain governed by PN3 as it stood at the time of investment. DPIIT has not issued a transitional window permitting affected investee companies to regularise their compliance position under Schedule I, and the RBI has not announced a compounding facility for what may amount to technical FEMA violations arising from PN3-era approvalless investments.⁴⁰ A related gap concerns follow-on investments by LBC shareholders who held shares prior to the introduction of PN3 in April 2020. An LBC investor who held 8 per cent of an Indian company before PN3 was issued, and who wishes now to participate in a rights issue or bonus issue at that same proportionate level, finds no clarity in PN2 on whether such participation requires government approval. The revised SOP does not expressly address the follow-on investment category, and the absence of guidance forces conservative outcomes: AD banks are likely to treat any such investment as requiring Government Route approval pending explicit clarification.⁴¹

V. Comparative Context: What Structural Enforceability Looks Like

India's evolving framework should be assessed against mature investment screening regimes to understand what genuinely functional process accountability looks like. The United States FIRRMA framework establishes mandatory filing obligations for transactions in sensitive sectors, with mandatory declarations resulting in clearance within 30 days and full reviews within 45 days, all statutory timelines with defined consequences for overrun.⁴² The EU FDI Screening Regulation establishes a cooperation mechanism between Member States and the Commission with defined screening timelines anchored in treaty obligations.⁴³

The common features of mature investment screening regimes are: statutory enforceability of processing timelines; deemed approval or mandatory notification consequences for overrun; publicly available aggregate screening data for transparency and accountability; defined

⁴⁰NDA Hotline I (n 10): 'the Revised Framework provides welcome relief for global VC/PE funds with non-controlling LBC BO in respect of future investments, it appears to operate prospectively and does not grandfather existing structures already compliant with the PMLA Rules-based BO criteria.'

⁴¹NDA Hotline II (n 26): unaddressed issues include permitting follow-on investments by existing LBC investors holding shares prior to PN3 merely to maintain pre-PN3 shareholding levels, and clarifying applicability of the revised framework to LLP investments under Schedule VI and FVCI investments under Schedule VII of the NDI Rules.

appellate mechanisms for adverse decisions; and sectoral precision that reserves heightened scrutiny for genuinely sensitive activities while allowing other investments to proceed without friction.

India's PN2 framework, by contrast, rests on non-statutory Press Notes, applies a threshold-based approval obligation without a corresponding threshold for reporting, commits to processing timelines with no enforcement mechanism, provides no appellate pathway, and publishes no aggregate approval data. The alignment of the beneficial ownership definition with the PMLA framework is a genuine step toward international regulatory legibility, the PMLA-aligned standard is consistent with FATF recommendations that underpin most major jurisdictions' AML-based beneficial ownership regimes. But definitional convergence without procedural accountability does not, in isolation, produce a commercially workable investment screening regime.

VI. Conclusions and Recommendations

6.1 Conclusions

Press Note 2 of 2026 is genuine but incomplete reform. Its most important contribution is the formal definition of beneficial ownership anchored in the PMLA framework with the 10 per cent threshold that the market had self-constructed during six years of PN3 ambiguity. This provides real relief to global PE and VC funds with passive, non-controlling LBC LP participation below 10 per cent, the category most paralysed by PN3. The elimination of the residency limb from the approval trigger, the listed-entity exemption imported from the PML Rules, and the procedural improvements in the revised SOP are additional genuine achievements.

Against these gains must be set three unresolved structural problems of significant practical consequence. The concept of ultimate effective control over the investee entity is introduced as the third limb of the beneficial ownership test but is undefined in any applicable instrument and operationally untethered from the PMLA context in which it originated. It will generate conservative and inconsistent interpretations by AD banks, replicating in the control domain the ambiguity that PN3 produced in the threshold domain. The mandatory DPIIT reporting obligation is expressed in terms of any direct or indirect LBC ownership without importing the 10 per cent PMLA threshold that governs the approval obligation, a literal-reading compliance burden that recreates, in the reporting domain, the zero-threshold problem PN2 was designed to eliminate in the approval domain. The 60-day processing commitment is non-statutory, applies only to IOCCs in specified sectors, excludes FOCCs, distributes no internal sub-period

allocation, and carries no deemed approval consequence making it a policy aspiration rather than an enforceable right.

The overall assessment is that PN2 succeeds in resolving the most acute dysfunction of PN3, the threshold ambiguity for the approval obligation, while simultaneously introducing or leaving unresolved problems of comparable practical significance in the control determination, reporting obligation, and processing accountability domains. The net compliance burden on Indian investee companies has, on balance, increased rather than decreased.

6.2 Recommendations

Five reforms would materially strengthen the PN2 framework. First, DPIIT should issue an interpretive circular defining the scope of ultimate effective control over the investee entity with illustrative examples distinguishing standard minority investor protection rights from governance rights that constitute control, this is the single most urgent clarification required. Second, paragraph 3.1.1(d) should be formally amended through an NDI Rules amendment to subject the reporting obligation to the same 10 per cent PMLA-threshold condition that governs the approval obligation; the current drafting recreates PN3's zero-threshold dysfunction in a reporting context. Third, the 60-day processing commitment should be enacted as a statutory obligation under the NDI Rules, extended to all Government Route cases in sectors where 100 per cent FDI is otherwise permitted under the automatic route, accompanied by a deemed approval mechanism on expiry. Fourth, DPIIT should provide grandfathering relief, through a transitional Schedule I reporting window, for pre-PN2 investments by non-LBC entities with sub-10-per-cent LBC beneficial ownership made in good faith reliance on AD bank guidance. Fifth, DPIIT should publish quarterly aggregate data on PN2 applications received, processed, approved, rejected, and pending, disaggregated by sector and LBC jurisdiction, to create the process accountability that the current regime entirely lacks.