FEMA Bulletin

July – August 2026 | Edition 2

Key Foreign Exchange Management Act 1999 (FEMA) developments

In this bulletin

In this edition, we track the key developments set to reshape inbound foreign investment and export-led e-commerce. Both warrant close monitoring: the Foreign Investment Rules remain in draft form, while the e-commerce policy decision takes effect only on the date of the corresponding FEMA notification.

01 Draft Foreign Exchange Management (Foreign Investment) Rules, 2026

A proposed recast of the Non-Debt Instruments Rules, 2019, into a principle-based, equity-focused framework.

02 Inventory-based e-commerce exclusively for exports

A targeted FDI policy relaxation for the exports of goods manufactured and/or produced in India.

1 Proposed revamp in the foreign investment framework

Draft Rules seek to replace the Non-Debt Instruments Rules, 2019, with a principle-based, equity-focused regime

Overview

- On 21 July 2026, the Ministry of Finance released the draft Foreign Exchange Management (Foreign Investment) Rules, 2026 (Draft Rules), which propose to replace the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules, 2019).
- The proposal follows the Union Budget 2026-27 announcement to comprehensively review the existing framework and make it more contemporary and investor-friendly. The Draft Rules were open for public consultation until 31 August 2026 and will take effect only upon publication in the Official Gazette. Until then, the NDI Rules, 2019, continue to apply.

Key changes

- **Shift from "non-debt instruments" to "equity":** The framework moves to an equity-based approach. "Equity" is broadened to cover the instruments classified as equity under applicable accounting standards, units of investment vehicles under the respective SEBI regulations, and participating interests or rights in oil fields or mines of an Indian company or LLP. The Draft Rules focus solely on foreign investment in equity and its transfer. Provisions on immovable property do not form part of the Draft Rules.
- Foreign-owned or Controlled Company (FOCC) **replaced by the Foreign-Controlled Entity (FCE):** The FOCC concept is replaced by the FCE framework, covering an Indian company, LLP or investment vehicle owned or controlled by a person resident outside India. Ownership and control are determined as prescribed by the relevant sectoral regulator, and in the absence of such stipulations, under the applicable Indian law governing the entity.
- **Quantitative threshold in the definition of "control":** Alongside the right to appoint a majority of directors or to control management or policy decisions, "control" now expressly includes situations where shareholders' agreements or voting arrangements entitle a person to 10% or more of the voting rights.
- **Gifts between natural persons permitted:** Against the earlier ceiling of USD 50,000, with the RBI's approval, the Draft Rules permit gifts of equity between natural persons. Where the gift is on a repatriation basis by a person holding on a non-repatriation basis, the recipient must be a close relative under the Companies Act, 2013, and the value in a financial year must not exceed the Liberalised Remittance Scheme limit of USD 250,000.
- **Broader range of eligible investee entities:** The framework now covers Indian companies and specified bodies corporate, LLPs, SEBI-registered investment vehicles, registered partnership firms and proprietary concerns. Societies and trusts are excluded.
- **Uniform threshold for FDI and FPI:** Foreign investment of 10% or more in the equity of a company or LLP will be treated as foreign direct investment (FDI), and less than 10% as foreign portfolio investment (FPI). The threshold does not distinguish between listed and unlisted companies or LLPs.
- **Powers of the Reserve Bank of India widened:** The Draft Rules separate regulatory roles – the RBI will administer operational aspects, such as reporting, payment mechanisms and implementation, while the DPIIT retains authority over interpretation of the FDI policy. Mode of payment, reporting and other operational conditions will be prescribed separately by the RBI.
- **Direct listing on international stock exchanges consolidated:** The Draft Rules consolidate and enable the direct listing of equity by eligible Indian public companies on international stock exchanges, with a dedicated scheme set out in the annexure to the rules.

Source: Draft Foreign Exchange Management (Foreign Investment) Rules, 2026 – Ministry of Finance (Department of Economic Affairs).

Key insights

- The Draft Rules signal a more principle-based and consolidated regime, with greater emphasis on equity, broader coverage of investee entities, and clearer treatment of gifting and pledging transactions.
- Extending the FDI/FPI classification to LLPs – treating sub-10% investment as portfolio investment – raises practical questions, given the absence of a recognised trading platform for LLP interests.
- While partnership firms and proprietary concerns are now covered, a detailed operating framework is awaited. Suitable government clarification would aid smooth implementation and avoid fresh interpretational issues.

Business takeaways

Investors and investee entities should re-examine existing and proposed deal structures against the equity-based framework and the widened meaning of “equity”.

Groups structured around the FOCC concept should assess their exposure under the FCE test and the newly codified 10% voting-rights threshold in “control”.

With the Draft Rules still at the consultation stage, transactions remain governed by the NDI Rules, 2019, until the final rules are notified in the Official Gazette.

We recommend revisiting the FDI versus FPI characterisation of existing and proposed investments, including in LLPs, against the uniform 10% threshold.

Eligible public companies pursuing overseas capital should evaluate the consolidated direct-listing route as a viable fundraising avenue.

2 Review of FDI policy on e-commerce sector

Inventory-based e-commerce permitted exclusively for exports of goods manufactured or produced in India

Overview

- On 23 July 2026, the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry, issued Press Note No. 3 (2026 Series), reviewing the FDI policy on the e-commerce sector.
- Under the Consolidated FDI Policy of 2020, the FDI is permitted in business-to-business (B2B) e-commerce and the marketplace model, but not in business-to-consumer (B2C) e-commerce or the inventory-based model, where the inventory owned by the e-commerce entity is sold directly to consumers. To facilitate greater exports and easier access to global markets for Indian sellers, this restriction has now been relaxed for exports.

Key changes

- **New para inserted in the FDI Policy:** A new Para 5.2.15.2.5, “Inventory-based model of e-commerce exclusively for exports”, is proposed to be inserted under Para 5.2.15.2 of the FDI Policy.
- **Inventory-based exports permitted:** An e-commerce entity is permitted to engage in the inventory-based model exclusively for the export of goods or products manufactured and/or produced in India, in line with the Foreign Trade Policy 2023, read with the Handbook of Procedures and the FEMA (Export of Goods & Services) Regulations, 2015.
- **Existing restrictions relaxed for exports:** The restrictions on B2C and the inventory-based model under Para 5.2.15.2.1 to 5.2.15.2.4 shall not apply to the export of goods or products through e-commerce as permitted above.
- **Scope limited to exports:** The relaxation applies only to exports; the restriction on the inventory-based B2C e-commerce model for the domestic market continues unchanged.
- **Effective date:** The decision will take effect from the date of the corresponding FEMA notification.

Key insights

- The change allows e-commerce entities to own and export India-made inventory, directly supporting the government’s export-promotion and manufacturing agenda.
- Domestic-facing B2C inventory-based e-commerce restrictions remain intact; the liberalisation is narrowly export-specific.
- The relaxation becomes operative only once the enabling FEMA notification is issued.

Business takeaways

E-commerce entities may now restructure to hold India-made inventory for export without breaching FDI conditions, provided that the FTP 2023, the Handbook of Procedures, and the FEMA export regulations are observed.

We recommend strengthening export documentation, EDF/EDPMS reporting and realisation-timeline controls under the FEMA Export Regulations before scaling up volumes.

Businesses should track the enabling FEMA notification closely and align go-live plans to it, as the relaxation operates only from that date.

Source: Press Note No. 3 (2026 Series) dated 23 July 2026 – DPIIT, Ministry of Commerce & Industry.

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