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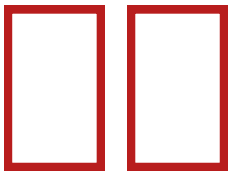

The Press Note 3 Amendment and Your Cap Table

A Question Most Tech GCs Are Not Asking Yet

The decision this memo addresses

Your company has received investment from a global Private Equity or Venture Capital fund. That fund may have limited partners, co-investors, or upstream beneficial owners with connections to Land Bordering Countries like China, Pakistan, Bangladesh, Nepal, Myanmar, Bhutan, or Afghanistan. Until now, the question of whether that upstream exposure triggered Press Note 3(**'PN3**') restrictions was either not asked, answered loosely, or managed through a legal opinion obtained at the time of investment.

The Cabinet's amendment changes the analytical framework. A Beneficial Ownership(**'BO'**) definition is now formally incorporated into the FDI Policy, aligned with the Prevention of Money Laundering (Maintenance of records) Rules, 2005 (**'PMLA Rules'**) test. The BO determination is applied at the level of the investor entity. And a 10% non-controlling Land-bordering Country (**'LBC')** BO threshold has been introduced below which automatic route clearance is available subject to Department for Promotion of Industry and Internal Trade of India (**'DPIIT'**) reporting.

The amendment also reiterates that investment into India by any entity or citizen of a country sharing a land border with India, or where the beneficial owner of the investment falls within such category, continues to require prior Government approval.

The amendment also clarifies that any direct or indirect transfer of ownership of existing or future FDI in an Indian entity that results in beneficial ownership shifting to a land-border country category will require prior Government approval. This means secondary transactions, restructuring exercises, or fund exits that alter beneficial ownership structures may also trigger approval requirements.

If you have not reviewed your cap table through this new lens, the question is not whether you need to. The question is how urgently.

Three scenarios where this decision is live

Scenario 1: You have a global fund investor and you have not mapped its LBC beneficial ownership

Most term sheets and shareholder agreements entered into before this amendment did not require the investor to represent its BO position at the PMLA Rules threshold. The new framework does not retrospectively invalidate past investments but it does create fresh reporting obligations where LBC BO at the investor level exceeds 10%. If you do not know whether your fund investor crosses that threshold, you are operating without information that is now relevant to your compliance posture.

The decision is to commission a BO mapping exercise on your significant fund investors before your next funding round, board-level disclosure exercise, or regulatory interaction where your ownership structure is material.

Scenario 2: Your next funding round includes a global fund with potential LBC exposure

The 60-day government approval timeline applies to specified manufacturing sectors. For tech companies, the automatic route remains available for LBC BO up to 10% but requires DPIIT reporting. Above 10%, government approval is required regardless of sector.
This creates a structuring decision that needs to happen before the term sheet is signed, not after. A fund that crosses the 10% LBC BO threshold at the investor level will require government route clearance. If your funding timeline does not accommodate a 60-day approval window and most growth-stage tech funding timelines do not this needs to be identified and addressed at the investor selection stage.

The decision is to add LBC BO representation and threshold confirmation to your standard investor diligence checklist immediately.

Scenario 3: You are a BFSI or regulated entity with fintech investment relationships

The PN3 framework applies to investments into Indian entities. If your company has made downstream investments into tech companies or digital platforms - as a strategic investor or through a corporate venture vehicle - those investee entities' compliance posture now affects your own regulatory exposure. A BFSI company that has invested in a fintech company that has undisclosed LBC BO exposure is not directly liable under the FDI framework, but the regulatory relationship and reputational risk is real. The decision is to extend your investee monitoring framework to include BO compliance status for companies where you hold strategic stakes.

What the amendment does not resolve

The 10% automatic route threshold is new and welcome clarity.

But the BO determination methodology of how exactly you apply the PMLA Rules test to a multi-layer fund structure with hundreds of LPs across jurisdictions, is not spelled out in the amendment.

The PMLA Rules test was designed for anti-money laundering compliance, not FDI routing decisions. Applying it to a Cayman-domiciled fund with a Singapore General Partner and Limited Partners across the US, Middle East, and Southeast Asia is not a mechanical exercise.

This is the grey zone that will generate disputes. Opinions obtained before this amendment may need to be refreshed. Representations made to incoming investors about the company's PN3 compliance posture may need to be re-examined.

What to do in the next 30 days

If your company has received investment from global funds, then request updated BO representations from your significant investors, mapped to the PMLA Rules threshold, and review whether any existing investments now require DPIIT reporting.

If you are preparing for a funding round, then build LBC BO diligence into your investor process before you are in exclusivity with a fund whose BO position you have not verified.

If you are a regulated entity with downstream tech investments, next step is to add BO compliance to your investee monitoring checklist.

This is not a crisis. It is a housekeeping exercise that is significantly easier to do now than after your next funding round closes.

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