

Telecom Hotline

October 21, 2005

FDI LIMIT IN TELECOM SECTOR RAISED TO 74% - CABINET CLARIFICATIONS

On October 20, 2005 the Union Cabinet has issued and approved the amended FDI norms for the telecom sector, which has raised the Foreign Direct Investment ("FDI") in the telecom sector from 49 per cent to 74 per cent.

Computation of FDI: As per the amended norms the total composite foreign holding including but not limited to investments by Foreign Institutional Investors (**FIs**), Non-resident Indians (**NRIs**), Foreign Currency Convertible Bonds (**FCCBs**), American Depository Receipts (**ADRs**), Global Depository Receipts (**GDRs**), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc. should not exceed 74 per cent. However, total foreign holding in Indian public sector banks and Indian public sector financial institutions will not be counted towards the ceiling of 74 per cent. On the other hand, foreign holding in Indian private sector banks will be considered as foreign equity. The 74 per cent foreign investment may be made, directly or indirectly, in an operating company or through a holding company.

Disclosure: The licensee/telecom company will be required to disclose the status of its foreign holding and certify that the foreign investment is within the ceiling of 74 per cent on a half yearly basis.

Transition: As regards the one-time transition/correction period to be allowed for licensee's/telecom companies to comply with the 74 per cent ceiling, it has been spelt out as 4 months from the date of issue of notification.

Remote Access: The amended norms also stipulate that the licensee shall not permit Remote Access (RA) to any equipment manufacturer or any other agency (network vendors) outside the country for any maintenance/repairs required by the licensee, except in circumstances of catastrophic software failure, which would lead to major part of the network becoming non-functional for a prolonged period. The provision of RA is also circumscribed by a number of rules including (1) RA password being made available for a definite period and from pre-approved locations (2) the requirement that control of RA should be within the country and not abroad, (3) support to the government agency (Intelligence Bureau) notified of the RA to record the transaction for on-line monitoring and (4) and RA being possible only in situations of 'catastrophic software failure where a major part of the network becomes non-functional for a prolonged period,' a phrase which is to be defined by the Department of Telecom shortly.

Riders: The hike in FDI has come with some riders:

- The majority of directors on the Board, including Chairman, Managing Director and CEO have to be resident Indian citizens.
- At least one resident Indian promoter should hold at least 10 per cent equity. This is to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding.
- The Chief Technical Officer (CTO)/Chief Finance Officer (CFO) should be resident Indian citizens.
- No traffic (mobile and landline) from subscribers within India to subscribers within India should be hauled to any place outside India.
- No telecom company will be allowed to transfer any accounting information, user information, and details of infrastructure/network diagram outside India.
- Moreover, the company must provide traceable identity of their subscribers

Some of the above conditions shall also be made applicable to the companies operating telecom services with existing FDI ceiling of 49 per cent.

India has witnessed tremendous growth in the telecom sector in the recent past. According to the government source the number of telephone connections has gone up to 110 million by end of August 2005. The teledensity (number of telephones per 100 population) has almost touched 10 as against the Tenth Plan target of 7. In order to benchmark the telecom services with the other emerging economies, Department of Telecommunications, Ministry of Communications and IT aims to increase telephone connections to 250 million by 2007, which requires an estimated additional investment of about US\$20 billion. In this context the industry has welcomed the increase in the FDI.

-Gowree Gokhale & Sushma George

Source: Press Information Bureau, October 20, 2005 & The Economic Times, October 21, 2005

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

Research Papers

The Tour d'Horizon of Data Law Implications of Digital Twins

May 29, 2025

Global Capability Centers

May 27, 2025

Fintech

May 05, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

SIAC 2025 Rules: Key changes & Implications

February 18, 2025