

ARE WE LIVING IN THE ERA OF THE JETSONS -THE MINISTRY AMENDS THE FDI POLICY, 2020

1. INTRODUCTION

“**The Jetsons**”, a popular primetime cartoon show created by the Hanna-Barbara animation studio in Los Angeles, featured the life of George Jetson and his family who lived in Skypad Apartments, with a robot maid named Rosie who did all the household chores. The year is 2062 and George works at “Spacely Space Sprockets”. He travels around the city in a fancy aerocar with a transparent bubble top.

For all the millennials (and possibly the Gen Z) reading this and who grew up watching Cartoon Network, does this sound all too familiar? Well, this may not actually seem too far-fetched anymore because we may soon be living in the era of the Jetsons.

The DPIIT, through Press Note No. 1 of 2024¹ (“**Current Notification**”), has amended the Consolidated FDI Policy Circular of 2020 (“**FDI Policy**”), to relax FDI upto 100% in the Indian space sector. The amendments will come into effect once they are notified and included in the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“**NDI Rules**”).

While our preliminary analysis of the first notification issued by the Union Cabinet on February 21, 2024 (“**First Notification**”), can be found [here](#), this alert focuses on the definitions included in the FDI Policy through the Current Notification, along with our analysis.

2. AMENDMENTS TO THE FDI POLICY

The amendments to the FDI policy proposed under the Current Notification are aligned with the entry routes and caps proposed in the First Notification. The relaxation of the sectoral caps to the Space Sector has been included as Paragraph 5.2.12 of the FDI Policy as follows:

5.2.12. Space Sector

Relevant Space Activity	Permitted FDI	Entry Route
5.2.12.1		
Satellites-Manufacturing & Operation	100%	Upto 74%: Automatic
Satellite Data Products		
Ground Segment & User Segment		Beyond 74%: Government Route

¹ See: https://dpiit.gov.in/sites/default/files/Press_Note_1_2024_0001.pdf (accessed on March 11, 2024 at 11:48 hours, India time).

5.2.12.2		
Launch Vehicles and associated systems or subsystems	100%	Upto 49%: Automatic
Creation of Spaceports for launching and receiving Spacecraft		Beyond 49%: Government Route
5.2.12.3		
Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment	Upto 100%	Automatic

In addition to the sectoral caps, the Indian (investee) entities are also required to comply with such sectoral regulations, as introduced by the Department of Space (“DoS”) from time to time.

3. DEFINITIONS: CLARITY OR A CAUSE FOR CONCERN?

What was considered as a big miss by the Ministry in the First Notification has been rectified under the Current Notification, i.e., including definitions to certain esoteric terms which were used to describe the sub-sectors/activities. For ease of understanding, we have listed below the terms which have now been defined in the FDI Policy:

(1) Satellites – Manufacturing & Operation: End-to-end manufacturing and supply of satellite and/or payload, establishing the satellite systems including control of in-orbit operations of the satellite and payloads.

(2) Satellite Data Products: Reception, generation or dissemination of earth observation/remote sensing satellite data and data products including Application Interfaces (API).

(3) Ground Segment: Supply of satellite transmit/receive earth stations including earth observation data receive station, gateway, teleports, satellite Telemetry, Tracking and Command (TTC) station, Satellite Control Centre (SCC), etc.

(4) User Segment: Supply of user ground terminals for communicating with the satellite, which are not covered under the ground segment.

(5) Launch Vehicles and Associated Systems or Subsystems: A vehicle and its stages or components that is designed to operate in or place spacecraft with payloads or persons, in a suborbital trajectory, earth orbit or outer space.

(6) Creation of Spaceports for launching and receiving Spacecraft: A spaceport (also referred as launch site) can be regarded as the base from which spacecraft are launched, and consisting of facilities involving devices for transportation to, from and via outer space.

(7) Manufacturing of Components and Systems/Subsystems for Satellites ground segment and user segment: Comprises the manufacturing and supply of the electrical, electronic and mechanical components systems/ subsystems for satellites, ground segment and user segment.

The inclusion of these definitions was an anticipated move and does not come as a surprise. This is an important step towards understanding the length and breadth of the liberalised Indian space sector. However, even with the inclusion of these definitions, certain activities still remain unclear as we note in our analysis below.

4. OUR ANALYSIS - DEMYSTIFYING THE CLOUDS

4.1. *Manufacturing of Launch Vehicles and Associated Systems/Sub-Systems*

Prior to the Current Notification, Indian entities that were engaged in the establishment and operation of satellites were permitted to have foreign investment upto 100% only with the prior approval of the Government. While an Indian entity engaged in manufacturing activities, either through itself or through contract manufacturers in India could have upto 100% FDI under the automatic route, if such an entity was engaged in manufacturing and operation of satellites, then it was not allowed to do so freely and required the prior approval of the Government.

The FDI Policy has remained silent until now with respect to activities such as manufacturing of Launch Vehicles and its Associated Systems/Sub-Systems. The position under FDI Policy read with the NDI Rules has always been clear to state that, in sectors/activities which are not prohibited or regulated through sectoral caps/FDI conditionalities, upto 100% foreign investment under the automatic route is permitted, while the Current Notification limits foreign investment to only 49% for activities pertaining to Launch Vehicles and Associated Systems/Sub-Systems. Accordingly, existing Indian entities engaged in manufacturing of Launch Vehicles and Associated Systems/Sub-Systems, which currently have more than 49% of foreign investors in their share capital may need to look at restructuring their foreign shareholding to make it an Indian owned or controlled company (“IOCC”) or seek a prior Government approval. It remains to be seen how the regulators will treat the foreign investment in such existing entities.

Further, with the recent amendments, if an entity is in a position to carry out manufacturing of both satellites and launch vehicles, given the different permissible FDI limits, this would be significantly disadvantageous to the entity given the regulatory requirements, even though it is likely that the 2 streams of business are natural corollaries and supplement each other, i.e. they are likely to use the same manufacturing facilities, hire employees with similar skill sets, use similar technical knowhow or research and development, etc.

Further, while the Current Notification defines the term “*Launch Vehicles and Associated Systems or Subsystems*”, it has not expressly set out parameters for the business models that can be carried out in association with such launch vehicles. For instance, the new Paragraph 5.2.12.1 of the FDI Policy clearly states that the FDI limit of 74% is for manufacturing and operation of satellites, whereas Paragraph 5.2.12.2 simply states “*Launch vehicles and associated systems or subsystems*” without delving into the nature of the activity, such as manufacturing, operation, supply or distribution of launch vehicles. In the absence of clear guidelines outlining the scope of the businesses, it is advisable for an Indian entity to limit foreign investment to only 49%, if it is dealing with launch vehicles or systems in any manner.

4.2. *“Dual Use Components, Systems or Sub-Systems”*

As per the Current Notification, for activities pertaining to Launch Vehicles and Associated Systems/Subsystems and its Components, while 100% FDI is permitted, upto 49% FDI is permitted under the automatic route and for any foreign investment beyond this, a prior approval will be required. On the other hand, in case of manufacturing of components and systems/sub-systems for (i) satellites, (ii) ground segments and (iii) user segments, upto 100% FDI is permitted under the automatic route. Clearly, the intention of the Government is to draw a distinction between manufacturing of components and systems/sub-systems for (A) satellites, ground segment and user segment on one hand and (B) launch vehicles on the other.

However, the amendments do not throw light on such “Dual Use” components and systems/sub-systems which may be used in manufacturing of both satellites and launch vehicles. In the absence of regulatory clarity, entities manufacturing such dual use components will need to think about housing these business verticals in separate incorporated entities before bringing foreign investors on board.

4.3. *Satellite based Broadband Services*

Another interesting question which has arisen pursuant to the relaxation of FDI in the Indian space sector, deals with treatment of satellite broadband services which sits right at the intersection between Telecom Services and Satellite Operations, as defined in the revised FDI Policy.

Currently, Indian entities providing telecom services including telecom infrastructure², are permitted to have upto 100% FDI under the automatic route. Considering the cap of 74% in Satellite Operations, the prevalent question is whether a business of providing satellite-based internet services will enjoy the liberalised position under Telecom Services or be subject to the sectoral caps under the space sector. It may be argued that if the Indian entity is solely engaged in providing satellite broadband services and is not engaged in any other activities listed in the Current Notification, it should continue to enjoy the relaxation as a telecom service provider. However, until a notification to this extent is issued clarifying this position, we are reticent to conclude on whether these definitions have really clarified the position or caused some confusion for the stakeholders in the industry.

With the emergence of satellite broadband services as a means to connect the unreachable contours of India, players like Amazon’s Project Kuiper, Elon Musk’s Starlink, Jio Spacefiber and Bharti backed OneWeb, have announced their plans to provide wireless internet services through satellite connectivity. Given the immense interest of foreign participants in this space, it will be relevant for the regulators to clarify their position on this conflict in the regulations at the earliest.

4.4. *Jets off the Space Port*

Space ports or launch sites is defined in the Current Notification as a station from which spacecrafts are launched, and also includes facilities which assist with transportation to or from outer space. Konstantin Tsiolkovsky in 1895 had theorized about a space elevator as an efficient way to lift resources from earth into orbit³. Modern thought also seems to suggest that space elevators may be a “greener way” for heavy cargo movement to space⁴. Science fiction has adopted this, and the fiction of Arthur C Clarke and the Star Trek Series even suggests that this would make assembly of space craft and space stations more efficient.

A space port (whether to launch craft into space or build a space elevator) would therefore require substantial resource allocation in terms of land and environmental resources and also warrant compliance with environmental regulations, land acquisitions, land use restrictions, and air space regulations, apart from the sectoral regulations introduced by the DoS. Accordingly, in addition to the legislative framework to be established by the DoS, regulatory preparedness for establishment and operation of such space ports will also assist in quick and smooth implementation of the policy changes. From an international law perspective, the implementation of treaties, conventions and regulations may also be necessary for the establishment of space ports.

² As per 14.1 of the NDI Rules, Telecom Services includes Telecom Infrastructure Providers Category I, viz. Basic, Cellular, United Access Services, Unified license (Access services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), all types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category I (providing dark fibre, right of way, duct space, tower), Other Service Providers and such other services as may be permitted by the Department of Telecommunications (DoT).

³ See: https://en.wikipedia.org/wiki/Space_elevator (accessed on March 7, 2024 at 19:12 hours, India time).

⁴ See <https://www.isec.org/> (accessed on March 11, 2024 at 11:49 hours, India Time), with respect to on going global efforts with respect to space elevators.

Introduction of space ports could also emerge as an opportunity for multiple stakeholders to set up what we like to call as “Space Parks” where space launch stations (and in the future, space elevators) can be set up by private players on a plug and play basis. This model can be on lines very similar to industrial parks or renewable energy parks, where the entity operating the Space Park will provide resources for private players looking to launch space vehicles or use space elevators when materials to build them have been developed. One can only wonder, if these Space Parks will make our lives resemble the Jetsons, travelling in and out of Space in an aerocar becoming a reality!

4.5. *Lost opportunity to clarify regarding the use of Geospatial Data*

Considering the inconsistencies between the restrictions on use of Geospatial Data⁵ by foreign owned or controlled entities (“FOCC”) and Indian Entities⁶ under the Geospatial Guidelines⁷ and the use of Satellite Data Products by such FOCCs under the FDI Policy (discussed at length in our [post](#) from February), it would have been helpful if the Government had used this opportunity to clarify this overlap and provide relief to the stakeholders. Accordingly, it remains unclear if entities with upto 74% FDI dealing in Satellite Data Products can also use Geospatial Data without being restricted in the manner prescribed under the Geospatial Guidelines. We anticipate that future regulations to be issued by the DoS will address this inconsistency.

5. **CONCLUSION**

The introduction of relaxations in the Indian Space Sector to the FDI Policy has been anticipated since the First Notification. While we are still waiting for these regulations to be notified under FEMA, to ensure that a robust regulatory framework is put in place, not only the DoS or DST, but other regulators across sectors will need to come together to take proactive steps to ensure a safe and reliable market for space operations in India.

India’s continued focus on and foray into space makes us also exclaim “Hooba-Dooba” just like George Jetson did to express his wonder or astonishment. Do continue to watch this space (pun fully intended) as we will try our best to continue to communicate developments in the Indian space sector.

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This alert is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice and you should seek legal advice before you act on any information or view expressed herein.

⁵ As per Paragraph 7(c) of the Geospatial Guidelines, Geospatial Data means positional data with or without attribute data tagged, whether in the form of images, videos, vector, voxel and/or raster datasets or any other type of geospatial dataset in digitized or non-digitised form or web services.

⁶ As per Paragraph 7(f) of the Geospatial Guidelines, Indian Entity means any Indian citizen, Government entities, Societies registered under applicable statutes, statutory bodies, Autonomous Institutions of the Government, or any Indian company or Indian LLP owned by resident Indian citizens or any Indian company or Indian LLP controlled by resident Indian citizens (as defined in the Explanation to Rule 23 of the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019).

⁷ Guidelines for Acquiring and Producing Geospatial Data and Geospatial Data Services including Maps dated February 15, 2021.

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