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## LIBERALISATION OF FOREIGN DIRECT INVESTMENTS IN THE SPACE SECTOR

### 1. INTRODUCTION

In the backdrop of India's continued success with various space exploratory missions, for the last few years, the Government of India has been attempting to create a regulatory framework to enhance the participation of private players in the Indian space sector. By establishing the Indian National Space Promotion and Authorization Centre ("IN-SPACE"), an independent nodal agency within the Department of Space ("DOS"), the Government of India paved the way for historic reforms in the Indian space sector. Today, IN-SPACE acts as a single window agency for all space activities by private entities and plays an important role in boosting the private space sector economy in India.

Since 2020, one of the very first definitive directives issued by the Government of India was the Guidelines for Acquiring and Producing Geospatial Data and Geospatial Data Services including Maps dated February 15, 2021 ("Geospatial Guidelines"), which was shortly followed by National Geospatial Policy, 2022<sup>1</sup> ("Geospatial Policy"). The Geospatial Guidelines and the Geospatial Policy led to the liberalisation of the mapping industry and democratisation of access to and production of geospatial data in India. Thereafter the Indian Space Policy, 2023<sup>2</sup> ("Space Policy") was also issued, which permitted non-governmental entities ("NGEs") to carry out certain activities in the space domain and created a level playing field for private companies to use the Indian space infrastructure.

### 2. CURRENT FRAMEWORK FOR FOREIGN DIRECT INVESTMENT ("FDI") IN THE SPACE SECTOR

As per the current regulations, provided under the Foreign Exchange Management Act (Non-Debt Instrument) Rules, 2019 ("NDI Rules") read with the foreign direct investment policy issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India ("FDI Policy"), 100% foreign investment is permitted, with the prior approval of the government, in Indian entities that are engaged in the establishment and operation of satellites, subject to sectoral guidelines prescribed by the DOS or the Indian Space Research Organisation ("ISRO").<sup>3</sup> This effectively meant that for an Indian entity engaged in any activity in the space sector, access to foreign capital or technological know-how was somewhat restricted, as a case had to be first made before the government authorities before foreign collaboration was possible.

### 3. RELAXATION OF FDI NORMS

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<sup>1</sup> Approved by the Union Cabinet on December 16, 2022.

<sup>2</sup> Approved by the Union Cabinet on April 6, 2023.

<sup>3</sup> Paragraph 12, Schedule I (Table), NDI Rules.

In line with the vision laid out under the aforementioned reforms including the Space Policy, the Union Cabinet on February 21, 2023 (“**Notification**”)<sup>4</sup> approved amendments to ease the FDI policy in the space sector, by creating sub-sectors and liberalising thresholds. As per the Notification, while 100% FDI continues to be permitted in the Space Sector, the entry routes for such foreign investments have been divided into 3 (three) different activities with defined limits for each activity, beyond which a government approval will be required.

The revised entry routes are as follows:

Relevant Space Activity	Permitted FDI	Entry Route
Satellites-Manufacturing & Operation, Satellite Data Products and Ground Segment & User Segment	Upto 74%	Automatic
Launch Vehicles and associated systems or subsystems, Creation of Spaceports for launching and receiving Spacecraft	Upto 49%	Automatic
Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment	Upto 100%	Automatic

With this path-breaking move, the Government has recognised the capabilities and expertise of NGE’s in areas such as manufacturing and operation of satellites and launch vehicles. By providing easy access to foreign capital, subject to the thresholds, Indian entities will now be able to significantly scale operations globally and provide world-class sophisticated products and service offerings.

## 4. OUR ANALYSIS

### 4.1. Harmonization with activities permitted under the Geospatial Guidelines

The Geospatial Guidelines provide that only Indian Entities<sup>5</sup>, are free to acquire, collect, generate, prepare, disseminate, store, share, publish, distribute, update, digitize and/or create Geospatial Data<sup>6</sup>, including Maps<sup>7</sup> of any spatial accuracy within the territory of India by using any Geospatial

<sup>4</sup> <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2007876>.

<sup>5</sup> As per Paragraph 7(f) of the Geospatial Guidelines read with the clarifications dated 28<sup>th</sup> November, 2022 issued by the DST, an 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). In addition, since geospatial products are software products and deemed of, implicitly, MeitY regulations apply. So, all private or commercial Indian entities must meet the definition of an Indian Software Product Company as per the Software Product Policy and among other regulations have 51% or more Indian ownership.

<sup>6</sup> 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.

<sup>7</sup> As per Paragraph 7(d) of the Geospatial Guidelines, Map means a symbolic representation of real-world objects, regions or themes on a given scale which was generally published in paper form but now also available as web-map-service.

Technology<sup>8</sup>. Further, certain activities like ground truthing/verification, terrestrial mobile mapping survey, street view survey, surveying in Indian territorial waters can be carried out only by Indian Entities.

Whereas, foreign companies, and foreign owned or controlled Indian companies (“FOCC”) are only permitted to license from Indian Entities, any Geospatial Data or digital Maps of upto a specified spatial accuracy for the purpose of serving their customers in India. Further, the Guidelines also set out certain limitations with respect to exchange or transmission of Geospatial Data/digital Maps to such foreign entities. This has been done with an intention to restrict such Geospatial Data from passing through foreign servers and ensuring that such data is stored/processed only on a domestic cloud or on servers physically located within the territory of India. Accordingly, FOCCs are permitted to use Geospatial Data only in the limited manner prescribed under these Guidelines.

As per the Notification, an Indian entity undertaking the business of “*Satellite Data Products*” is permitted to have FDI upto 74% under the automatic route, i.e. such an entity will be an FOCC. While the term “*Satellite Data Products*” has not been expressly defined in the Notification or in the existing space related regulations, in the event such an Indian Entity (*which will also be an FOCC*) utilizes geospatial data in the production of such satellite data products, then as per the Geospatial Guidelines, such Indian Entities are only permitted to have foreign ownership which is less than 50%.

Accordingly, given the contradicting positions under the Notification and the Geospatial Guidelines today, we believe that a clarification to this extent will need to be issued by the DoS and DST<sup>9</sup> at the earliest. While the Government on one hand has liberalized the sector to permit FOCCs to carry out certain activities, it will be contrarian to then shackle the hands of such an entity by limiting the nature of the activities it can undertake under the Geospatial Guidelines.

#### 4.2. *Manufacturing of Satellites and other components*

Currently upto 100% FDI is permitted under the automatic route for manufacturing activities conducted either directly by the Indian entity or through contract manufacturers in India. Further, a manufacturer is permitted to sell his products manufactured in India through wholesale and/or retail trading channels, including through ecommerce, without seeking any prior government approval (*other than in respect of trading in food products*<sup>10</sup>).

The Government, by opening up FDI in manufacturing of satellites and ancillary components/systems for satellites, ground segments and user segments, has paved the way for exponential growth of contract manufacturing in this sector in India. With the availability of capital resources and infrastructure at a very low cost, India will continue to remain an attractive market for potential collaboration with foreign partners for manufacturing opportunities. However, keeping in mind the risks posed by liberalisation of the space sector, including those to Indian

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<sup>8</sup> As per Paragraph 7(e) of the Geospatial Guidelines, Geospatial Technology means any technology including but not limited to Aerial / UAV Photogrammetry, Aerial / UAV LIDAR, drones, Radar Interferometry, street view or by other means of ground survey, satellite- based remote sensing techniques, AI, underwater mapping, and others.

<sup>9</sup> Department of Science and Technology, Government of India.

<sup>10</sup> As per the NDI Rules, applications for foreign investment in food products retail trading shall be processed in the Department of Industrial Policy and Promotion before being considered by the Government for approval.

national security, it cannot be ruled out that additional restrictions/regulations will be introduced by the DoS/DST/ISRO, particularly in relation to trading activities.

## 5. ADHERENCE TO INDUSTRY STANDARDS FOR MANUFACTURING

On September 14, 2023, during the international conference organized by CII, IN-SPACE released a catalogue of Indian Standards for Space Industry compiled by IN-SPACE and the Bureau of Indian Standards<sup>11</sup> (“BIS”) which contains 15 (fifteen) standards of compliance covering matters such as space program management strategies, safety requirements, systems engineering principles, and product assurance mechanisms. The standards aim to streamline and standardize the processes and technologies within the Indian space industry. Currently, while these standards are not compulsory in nature, IN-SPACE recommends that private players in this sector adhere to them.

## 6. CONCLUSION

The Indian Government’s commitment towards augmenting India’s space capabilities is evident with the liberalisation of the foreign investment regime through this Notification. This is a step in towards helping India create a niche for itself in the global space ecosystem in the years to come. Through foreign participation, Indian entrepreneurs will now stand to gain a significant foothold and develop a flourishing presence in commercial space exploration activities.

While the Notification has only provided comfort to stakeholders by pronouncing the Cabinet’s decision of easing FDI restrictions, the detailed guidelines along with the attendant conditions, if any, which will form part of the NDI Rules and the FDI Policy are awaited. It is also crucial for stakeholders, especially the foreign investors availing the benefit of the Notification to carefully navigate the nuanced legal landscape around the Indian space sector prior to making any investments.

We believe, the liberalisation of FDI in the space sector will not only foster innovation and competitiveness, but also position India as a promising destination for global collaborations in the rapidly advancing field of space exploration and technology.

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Date: February 24, 2024

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<sup>11</sup> Bureau of Indian Standards and IN-SPACE, Catalogue of Indian *Standards for Space Industry*, available at [https://www.inspace.gov.in/inspace/sys\\_attachment.do?sys\\_id=3657ed7987193110de76a8660cbb3544](https://www.inspace.gov.in/inspace/sys_attachment.do?sys_id=3657ed7987193110de76a8660cbb3544).

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