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Analysing developments impacting business

FDI IN SPACE: AN INDIAN SPACE ODYSSEY

23 February 2024

The Indian Government has recently released a press release, approving amendments to the Indian foreign direct investment policy (FDI Policy) in the space sector. While the specific amendments to the FDI Policy and the consequential amendments to the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 (NDI Rules) are yet to be notified, the proposed amendments aim at liberalizing the sector and providing impetus to its growth in India. This move aligns with India's vision of expanding the space sector and follows the progressive developments undertaken by the Indian Space Association to encourage collaboration between public and private players and the recent release of the Indian Space Policy 2023 which aims to create a thriving space ecosystem for government and non-government entities.

Background

Historically, the Indian space sector was restricted and predominantly controlled and operated by the government. In 2020, the FDI Policy was amended, and certain reforms were introduced, to encourage private sector participation in 'establishment and operation of satellites' sector. However, such investments, were permitted only under the government approval route.

Further, the International Telecommunications Union Radio Regulations (ITURR), approved and adopted by the Indian Government in 2000, defines a 'satellite' as "*a body which revolves around another body of preponderant mass, and which has a motion primarily and permanently determined by the force of attraction of that other body*". Consequently, given the broad definition of 'satellite', all activities in the space sector seemed to fall under the government approval route.

Separately, the 2017 draft of the Space Activities Bill (Bill) was intended to attract FDI and private sector participation in commercial space activities. However, even the Bill required domestic and foreign private players to apply for a license to the Indian government prior to undertaking commercial space activities.

Hence, despite the implementation of reforms in the space sector over the years, foreign investment eluded this sector. Given this background, the recent amendment is a welcome reform allowing for FDI through automatic route.

What are the amendments?

The amendments allow for foreign direct investments under the automatic route at varying degrees - sub-divisions / sub-sectors have been created within the 'establishment and operation of satellites' sector on the basis of the underlying activities.

After the amendment, the entry routes for various activities under the FDI Policy are proposed to be amended as follows:

	% of Equity / FDI Cap and Entry Route	Sector / Activity
A.	Upto 100% under automatic route	Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment.
B.	Upto 74% under automatic route (*Investments beyond 74% will require prior approval of the relevant sectoral regulator under the government route.*)	Satellites-manufacturing and operation, satellite data products and ground segment and user segment.
C.	Upto 49% under automatic route (*Investments beyond 49% will require prior approval of the relevant sectoral regulator under the government route.*)	Launch vehicles and associated systems or subsystems, creation of spaceports for launching and receiving spacecraft.

Rationale for Sub-Sector Classification

It appears that the intent of these classifications is to address governmental concerns regarding foreign investment in sectors that are complementary / overlapping with the space sector, such as the defence sector. Essentially, stringent thresholds have been applied towards those activities that could possibly have a higher instance of dual usage ie, in both commercial space and defence sectors. For instance, launch vehicle sub-systems can be used for both launching of commercial pay-load and missiles. Accordingly, this activity has been included in sub-sector **C** (49% automatic route).

While this seems to be a cogent approach, some questions remain unanswered. For instance, how do we differentiate between a propulsion manufacturer whose technology is used as a satellite component (for maneuvering space debris) from another propulsion manufacturer whose product is used for launching vehicles. Do they fall under sub-sector **A** or sub-sector **C**? Further, what threshold(s) will apply to companies that function in more than one of these sub-sectors and how will the business need to be structured?

Hopefully, there will be more clarity on this in the consequential amendments to the NDI Rules, once they are notified.

Conclusion

These amendments come at a juncture when India is on its way to realise its vision of capturing close to 9% of the global space economy by 2030. Further, with foreign companies investing / entering into collaborations with Indian entities in the space sector, it will not only bring about an economic shift but also promote technology transfer and research innovations.

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