

Technology Law Analysis

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BOOST TO INDIA'S SPACE POTENTIAL: INDIA LIBERALIZES FOREIGN DIRECT INVESTMENT

- The foreign investment policy was ambiguous about space activities beyond satellites, leading to different interpretations.
- Some companies made investments basis the view that investments in the activities not listed under the FDI policy in this sector could be made up to 100% without prior government approval.
- The proposed FDI Space Policy addresses these concerns and allows 100% foreign investments under the automatic and governmental approval route.
- Formal notification is awaited which will make this policy effective as law.

BACKGROUND

India currently is home to more than 200 space start-ups¹, and the space sector in India has attracted USD 124.7 million investment in the year 2023². The existing foreign investment policy of India ("FDI Policy") requires foreign investors to obtain prior government approvals for investing in the space sector, particularly for the establishment of satellites.

Considering the growth of this sector, the Indian government has been periodically releasing policies / notifications, establishing organizations, etc. with the intent to allow more private participation in this sector. This has led to the establishment of an organization to promote the sector called the Indian National Space Promotion and Authorization Centre in 2020, as well as the introduction of the National Geospatial Policy, 2022 followed by the Indian Space Policy, 2023.

On February 21, 2024, the Union Cabinet approved amendments to the Foreign Direct Investment ("FDI") policy and communicated it in a press release³ ("FDI Space Policy") which proposes to liberalize investments in the space sector. However, a formal notification from the relevant authorities is still awaited for the amendments to become enforceable as law.

Existing FDI Policy

Existing foreign investment limits in the space sector are provided under the Schedule I of Foreign Exchange Management Act (Non-Debt Instrument) Rules, 2019 ("NDI Rules"). The current norms do not recognize "space" as a sector in itself. Instead, the space related activities are primarily captured under the head - "satellites - establishment and operation". 100% foreign investment is allowed in this sector but the same is subject to approval from the government along with compliance of sectoral guidelines from Department of Space / Indian Space Research Organisation. In essence, all foreign investments in companies undertaking the activities of satellites-establishment and operations require government approval.

Reforms - New FDI Space Policy

The proposed FDI Space Policy allows 100% foreign investment in the space sector and has also created sub-categories, entry route and investment thresholds for various space related activities, which are as follows:

S.no.	Activity	FDI Thresholds
1.	Satellites-manufacturing & operation, satellite data products and ground segment & user segment	Up to 74% under automatic route and beyond 74% (up to 100%) under government route
2.	Launch vehicles and associated systems or subsystems, creation of spaceports for launching and receiving spacecraft	Up to 49% under automatic route and beyond 49% (up to 100%) under government route
3.	Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment	Up to 100% under automatic route

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(i) Status of existing investments

The existing FDI policy did not include space sector related activities (other than satellites-establishment and operation) such as launch vehicle business, ground segment, user segment, sub-component / sub-systems manufacturing, data products etc.

Various stakeholders argued that since the existing FDI policy did not specify certain activities such as launch vehicles, data sets, manufacturing of space systems / components etc. under the head of "*satellites-establishment and operation*", foreign investments in such cases should be permitted up to 100% under the automatic route. This was based on the interpretation under the FDI policy that sectors / activities not specifically listed or prohibited, are permissible for foreign investment up to 100% under the automatic route, subject to sectoral conditionalities. Relying on the same, foreign investors made investments in space start-ups whose activities were not explicitly listed or regulated under the current FDI regime without obtaining government approval.

Some stakeholders interpreted "satellites" very broadly and took a more conservative view that all space related activities required government approval. Similarly, there were overlaps in activities / interpretation of the FDI policy under the sectors of defence, telecom and manufacturing.

The space liberalization norms under the proposed FDI Space Policy may have actually de-liberalized this sector for certain companies who received investments in allied space activities based on the understanding that sectors / activities not specifically listed or prohibited, should be eligible for foreign investments up to 100% under the automatic route. In such cases where the investment thresholds under the proposed FDI Space Policy may be breached, it would be interesting to see the government's approach including granting approvals on a post-facto basis.

(ii) Sub- categorizations of activities within the Space Sector

While the government has acknowledged the sub-categories of activities within the space sector, it hasn't clarified its rationale for providing different foreign investment thresholds for such activities. Relaxed thresholds for satellites (i.e., 74% under the automatic route (up to 100% **under government route**)) and its sub-components (i.e., 100% under the automatic route) encourage foreign participation in commercial aspects of space activities. In contrast, the 49% cap on foreign investments under the automatic route (up to 100% **under government route**) on launch vehicles acknowledge their dual-use potential for both civilian and defence purposes. This sensitivity, combined with the launching state's heightened liability under Article II of the Convention on International Liability for Damage Caused by Space Objects ("**Liability Convention**"), may be viewed as necessitating greater government oversight.⁴

However, industry players have also criticized the differential treatment provided to launch vehicles vis-a-vis satellites. They believe, in essence, both industries have similar sensitivity issues and hence should be treated at par from a foreign investment perspective. Hence, the difference in foreign investment thresholds require more explanation from the government.

(iii) Satellite Data Products

The term '*satellite data products*' has not been defined under the proposed FDI Space Policy but investments in such activities would be permitted up to 74% under the automatic route (up to 100% **under government route**). This may lead to some conflict from a satellite imagery / data perspective read along with the liberalized Geospatial Guidelines, 2021. ("**Geospatial Guidelines**").

The Geospatial Guidelines largely permit foreign investments up to 100% under the automatic route with limited foreign investment restrictions especially if the activity is for (i) creation / ownership / storage of geospatial data of a certain accuracy (as defined under the Geospatial Guidelines); (ii) terrestrial mobile survey, street view survey and surveying activities in Indian territorial waters. There seems to be no specific restriction on satellite generated data (other than the above) under the Geospatial Guidelines. Thus, the proposed FDI Space Policy may end up limiting foreign investments for activities relating to Satellite Data Products (which would include geo-spatial data) in which otherwise is viewed to be permissible up to 100% under the automatic route.

The government should also define what constitutes satellite data products and to the extent possible it would be recommended that foreign investment up to 100% should be permitted under the automatic route.

Additionally, the rationale for capping investments for satellite data products under the proposed FDI Space Policy seems unclear as these are data sets which could be regulated under the Geospatial Guidelines and the new Indian privacy law.

(iv) Where are sub-components for launch vehicles covered?

The proposed FDI Space Policy explicitly covers the manufacturing of components and systems / sub-systems for the satellite sector, ground & user segment, and permits 100% FDI under automatic route for the same. With the absence of similar language for components in launch vehicles, it could imply its inclusion under the broader launch vehicle category, hence falling under the 49% automatic route (up to 100% **under government route**). Alternatively, it could also be argued since it is not expressly specified, the same could be covered under the 100% automatic route category. However, considering the critical role of such components in the sector's development, clarification from the government would provide much-needed comfort especially if the components are dual use (satellite and launch vehicle usage).

(v) What about ground segment and user segment for launch vehicles?

Following the pattern observed with the satellite and ground segment categories, the absence of specific mention for the "*ground segment & user segment*" in the launch vehicle section raises further questions. This omission could be an oversight or intentional, but the lack of clarity hinders transparency and predictability for potential investors. Further clarity on the inclusion from an industry perspective in the official amendment notification would ensure a comprehensive and consistent policy framework for the entire launch vehicle sector.

(vi) Were any sub-categories / activities missed?

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September 22, 2024

As space activities may expand to include space mining, exploration, international space station construction, space tourism etc., India needs to proactively address these areas. Especially, if these should be interpreted for foreign investments up to 100% under the automatic route, as this would have a bearing on India's ability to attract foreign investment while safeguarding national interests, technological competitiveness, and responsible stewardship of India in space.

CONCLUSION

While the proposed FDI Space Policy provides substantial liberalization, further clarity is awaited based on the formal notification which will make this effective as law. Ideally, the Government should provide definitions / explanations for the proposed categorization and sub-categorizations, and further clarity on the inclusions and omissions of activities which may be related to most space sector functions such as user and ground segments.

While the move towards liberalization significantly reduces government control over the space sector, its inherent interconnectedness with other regulated domains like telecommunications / geospatial cannot be ignored. Despite these challenges, the government's willingness to open the space sector to foreign investments is a positive step offering greater confidence to foreign investors. Relaxation in the existing norms also signifies a supportive stance towards the industry, encouraging both domestic and international participation. Notably, India successfully attracted substantial foreign investment even during the era of full government control. Therefore, with the current reforms, a significant increase in foreign investments is expected.

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You can direct your queries or comments to the authors.

¹Rajya Sabha Questions, Department of Space, available at <https://sansad.in/getFile/annex/262/AU621.pdf?source=pqars>

²Notification, Department of Space, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1988864>

³Notification, Ministry of Commerce & Industry, available at <https://pib.gov.in/PressReleaselframePage.aspx?PRID=2007876>

⁴Article II of the Liability Convention provides that a launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft flight.

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