

**FEMA NOTIFICATION CONFIRMS LEGALITY OF BONUS SHARES ISSUED TO FOREIGN SHAREHOLDERS IN PROHIBITED SECTORS**

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On June 11, 2025, the Department of Economic Affairs, Ministry of Finance, Government of India issued Notification S.O. 2549(E) ("**2025 Notification**") amending Rule 7 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (the "**NDI Rules**"). This amendment accords binding legal force under the Foreign Exchange Management Act, 1999 ("**FEMA**") to the clarification previously announced in Press Note 2 of 2025 ("**PN2**") by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India ("**DPIIT**"). For a detailed discussion of PN2, please refer to our previous update on the matter ([here](#)).

**The 2025 Notification**

As discussed in our previous update, PN2 inserted a clarification in the Consolidated FDI Policy dated October 15, 2020, issued by the DPIIT, pursuant to which an Indian company engaged in a sector or activity prohibited for foreign direct investment ("**FDI**") was permitted to issue bonus shares to its pre-existing non-resident shareholders as long as the shareholding pattern of the pre-existing non-resident shareholders remained unchanged. This clarification was to take effect from the date of issuance of the applicable FEMA notification, which has happened in the form of a new sub-rule (2) being inserted in Rule 7 of the NDI Rules.

However, the new sub-rule (2) goes a step further and clarifies the retrospective applicability of the change introduced by PN2. It expressly provides that any bonus shares issued to such pre-existing non-resident shareholders prior to the commencement of the sub-rule shall also be deemed to have been issued in accordance with the provisions of the NDI Rules, the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 or the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, as applicable.

**Our Comments**

The 2025 Notification rightly clarifies the retrospective applicability of PN2 and aligns with the original intent with which PN2 was issued. While PN2 did not expressly state that it would apply retrospectively, it was widely understood that its purpose was to regularize legacy shareholdings, particularly in cases where bonus shares had been issued in the past. However, the lack of express clarity in PN2 could have led to regulatory uncertainty regarding whether companies would have to go in for compounding of offences emanating from past issuances. The 2025 Notification now fills this gap by explicitly confirming that the relief under PN2 applies retrospectively.

Separately, in our view, a similar approach can also be applied to investors from land-bordering countries who hold shares in Indian companies prior to the issuance of Press Note 3 of 2020. The Indian government should consider providing a similar relaxation to such

investors provided the investment is made solely to maintain their original shareholding. Such a clarification can act as an anti-dilution safeguard for pre-existing investors impacted by Press Note 3 of 2020 while also allowing investee companies to raise additional funds without requiring approval from the Indian government.