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The New Investment Policy: Issues and Challenges in the Covid-19 Era

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ABSTRACT

COVID-19 continues to inflict disorder with the world economy, upsetting all manner of business throughout the world. Companies are grappling with the economic damage and the stock market is struggling every day to sustain at an acceptable level. The level of uncertainty is increasing in the transactional space, making the potential investors adopt a cautious approach before committing to significant transactions. Remembering every one of these contemplations the Indian government has re-surveyed its FDI strategy for abridging deft takeovers/acquisitions of Indian organizations because of the predominant COVID-19 pandemic? India's correction of its FDI strategy follows the strides of numerous different nations attempting to forestall China's savage buying of low valuation resources during the COVID-19 emergency. The present paper attempts to understand the new investment policy focusing more upon the challenges and issues related to the same. It aims at assessing the impact of the policy on the country's growth.

Keywords: *FDI policy, COVID-19, Pandemic, Economic Disruption, Predatory purchasing*

INTRODUCTION

The sudden information about the acquisition of more than 1% shareholding in one of India's largest housing finance companies, the Housing Development Financial Corporation (**HDFC**) by Peoples Bank of China (**PBOC**) caused a tempest in the entire financial market and the business community. The situation was alarming, as it indicated that it will be easy for the Chinese investors to acquire Indian companies in the wake of a spikyplunge in the appraisal of listed Indian companies because of the COVID-19 pandemic. The concern became more serious whenthe shareholding was picked when HDFC's price was losing 40% from its crest. Although, justifications came from HDFC that PBOC was already having a shareholding of 0.8% as of March 2019 and had only increased its shareholding to above 1%.

PBOC's getting hold of HDFC was not the only opportunistic trade taking advantage of the deafening stock prices. Other similar trades took place.

According to a recent study by the Brookings Institution, "India's biggest challenge is to be able to map Chinese investments in India due to lack of single point data and because of the ways and means in which FDI can be routed into India".

As a result of all such events, the Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India (**DIPP**), which is a Government agency to look after FDI policy-related measure and regulates foreign investments into India, in a quick and largely welcomed move, has amended the FDI policy, intending to protect Indian companies against opportunistic takeovers/acquisitions during the COVID – 19 pandemics. Although the Government has been already planning for such a move due to the COVID-19 pandemic and its impact on the Indian economy the Government has adopted this amendment without delays. The amendment came into effect on April 22, 2020.

OBJECTIVES OF THE STUDY

The study has been carried out with the following objectives:

1. To identify the reason for amendment in Investment Policy.
2. To develop an understanding of the new investment policy
3. To identify the various issues and challenges associated with the new investment policy.

RESEARCH METHODOLOGY

Secondary data have been obtained mainly from the articles published in the newspapers, the internet, and reports of certain government agencies. With the help of a thorough analysis of this data and its interpretation and examination, fruitful conclusion and findings have been formulated at the end of the study.

LITERATURE REVIEW

The Global financial system has visible a fast boom in overseas direct investment (FDI) for greater than three and half decades. ***Singh et.al (2012)*** provide an explanation for that "one of the note worthy help of globalization in the past is the mounting and scattering FDI among the countries, contributing appreciably too constructive sound outcomes at the hard work productiveness of domestic firms". The Heckscher-Ohlin–Samuelson model indicates that "FDI and worldwide exchange may be substituted under the postulation that manpower and capital can shift without restraintamongnations and no sporting value apply". This suggests atortuousconnectionamid international trade and exchange of invention elements among the two as explained by ***Liu (2001).*** Most of the budding economies and people with inside the evolution segment have a look at FDI as avast basis of financing. ***Miteshi&Stefanova (2017)*** trust that FDI is a supplement to insufficient home capital. They bear in mind that FDI price range jointly ownership extrade and capital creation. At the equal time, it allows the substitution of the huge volumes of old capital collected at some point of years of important making plans for transition economies. Alluring FDI inflows with favorable regulations has consequently turn out to be a key fight sector with inside the evolving and budding markets as mentioned via way of means of Singh (2009). The New Growth idea states that "if you want to have superior financial growth, performance in keeping with character have to be elevated". This in flip will increase the actual gross home product (GDP) and thereby assist in pleasing people's pursuit for income. Therefore, FDI enables the economies through introducing new enlargement possibilities and big income having brim over impact throughout numerous sectors of the economies in phrases of technical and managerial know-how, talent up-gradation, more advantageous and advanced infrastructure, employment possibilities, improved competitiveness, and possibility for neighborhood markets to increase globally.

In the last few decades, noteworthy adjustments can be observed in strategies and rules associated with FDI in India. They aren't simplest developmental adjustments in commercial coverage however additionally it has altered the forex scenario of the country. FDI has emerged as one of the most favored routes for the mobilization of financial resources. Hence FDI as much as fifty one percentage fairness in unique industries become accepted beneath Neath the automated approval course via way of means of the Reserve Bank of India (RBI). Since 1991 a bunch of work has been done on this path to make the environment pleasant for the investor in thecountry.**Table1**givesageneral idea of the developments in the FDI coverage over time in India therefore making FDI a massive supply of outside financing within side the country.

Table 1: Major Features of FDI Policy in India

Phase I 1950-67	Phase II 1967 -1980	Phase III 1980-1990	Phase IV 1990-Onwards	Phase V 2014 Onwards
Amenable Attitude	Limitations	Pro-business approach: gradual liberalization	Open door policy	More focus on an open-door policy and promoting select sectors which are in the interest of the nation.
Non- biased remedy to FDI No barriers on remittances Indian shaving ownership and power.	Restrictions on FDI without technology. More than 40 percent now no longer allowed. FDI managed through FERA (foreign exchange regulation act)	Export centered gadgets accepted better FDI Liberalization in the modus operandi of Remittance and royalty in technical fees. Faster channels for FDI clearance were created.	Liberalized policy framework for foreign trade, foreign Exchange and technical collaborations. Core and infrastructure sectors: FDI was welcomed FERA was replaced with FEMA (Foreign exchange management act). FDI didn't need to be accompanied by technical know-how.	Promoting FDI selectively in several sectors. Focus on FDI for job establishment and domestic manufacturing. Increasing FDI in the defense sector from 26 percent to 49 percent and controlling it through the FIPB route. Expansion of smart cities and lessening in FDI from 50,000 square meters to 20,000 square meters with a three-year post-completion lock-in. FDI in manufacturing through automatic route. Manufacturers are allowed to sell through retail including e-commerce platforms. Expanding the FDI limit in the insurance sector from 26% to 49%., Civil aviation raised from74%to100%. FII/FPI allowed investing in Power Exchanges through the primary market. Overseas investment upto 49% in the insurance and pension sectors under the automatic route.
			FDI was motivated through mergers and acquisitions in the services and financial sector, non-banking financial companies, and insurance, etc.	100%FDI in asset reconstruction companies through the automatic route. Construction development is eligible for 100%FDI under the automatic route. Limit for investment by foreign portfolio investors (FPIs) in central public sector enterprises, other than banks, listed in stock exchanges raised from 24 % to 49%. Investment limit for foreign entities in Indian stock exchanges will be enhanced from 5% to15%

Source: Compiled from various sources: 1. Uma Kapila (2015-16), Indian Economy Performance and policies, Academic Foundation.

2. Government of India Ministry of Commerce & Industry Department of Industrial Policy & Promotion 3. RBI bulletin

Thus, withinside the state-of-the-art years, lots of governments were proactive in making insightful modifications withinside the funding guidelines of India and this has helped the state to assemble and enhance its industries with greater international connect. Government guidelines considering that 2014 may be noticeably praised for being thoughtful in knowledge the worldwide monetary heritage properly earlier and making deep structural modifications withinside the economy. The funding surroundings has modified withinside the country. India's rank has moved via way of means of 53rd role withinside the World Bank's annual 'ease of doing commercial enterprise index. India presently ranks 77th withinside the listing of a hundred ninety countries. The paper opinions the modern FDI coverage regime in India that's especially an end result of the COVID 19 pandemic.

New Investment Policy: The Focus Areas

Covid-19 is a dark cloud that has suddenly descended on humanity. But even the darkest clouds have silver linings. India's amendment of its FDI policy follows the footsteps of many other countries trying to prevent China's predatory purchasing of low valuation assets during the COVID-19 crisis. The guidelines of the European Commission, for example, mention that "among the possible consequences of the current economic shock is an increased potential risk to strategic industries, in particular but by no means limited to healthcare-related industries." Keeping all these considerations in mind the investment policy has been amended keeping track of the following aspects

1. **Policies to facilitate and maintain investment, aftercare offerings at the rise**

Steps were taken to relieve the executive problem for corporations and to condense bureaucratic limitations to hurry up manufacturing techniques and fast-monitoring the shipping of products at some point of the pandemic. The crisis, and the ensuing closure or disruption of everyday governmental services, have additionally increased using on-line gear and e-structures that allow the continuity of vital services.

2. **Investment incentives searching for to decorate manufacturing withinside the fitness sector**

The consciousness has been laid upon which includes incentives for the fast improvement of drugs and vaccines withinside the country resource packages. Other incentive schemes address the enlargement or conversion of manufacturing strains to reinforce scientific supplies. The 1/3 institution of incentives pursuits to beautify reduced in size monetary sports in general.

3. **Acquiring shares in crisis-affected companies**:

Some governments have voiced their readiness to interfere greater actively withinside the marketplace to hold strategic corporations afloat. This consists of the alternatives of capitalization, fairness investment, or maybe complete or partial nationalization.

4. **Supporting local SMEs in supply chains**

Financial and monetary assist for SMEs is an fundamental a part of the bulk of the nation resource applications associated with COVID-19. They include, in general, assured recuperation of deferred payments, tortuous financing to providers via their buyers, tax credit and different monetary blessings to firms, co-financing of improvement packages, and direct stipulation of financing to nearby firms. Such packages can assist preserve deliver chains intact.

5. **Protecting national security and public health through foreign investment screening**

The COVID-19 pandemic has ended in intensified screening of overseas funding for countrywide safety reasons. New measures aimed toward safeguarding home capacities regarding fitness care, pharmaceuticals, clinical supplies, and equipment.

Furthermore, governments appoint FDI evaluations to shield different important home groups and technology that can be specifically liable to adversarial overseas takeovers.

6. Other state intervention in the health industry

To defend public fitness and country wide safety throughout the crisis, a few nations have resorted to interventions that in particular goal the fitness industry.

These measures include, inter alia, an responsibility of personal corporations to shift manufacturing to synthetic items associated with the COVID-19 emergency, the opportunity to intrude and briefly occupy factories, manufacturing units, and personal healthcare facilities, or to confiscate public fitness-associated items.

7. Instrumentalizing intellectual property

Given the outstanding fitness emergency and R&D demanding situations associated with COVID-19, international locations have taken measures to inspire the joint use of IP-blanketed technology to hurry up powerful R&D and to facilitate mass manufacturing of wanted treatments, diagnostics, and vaccines. This consists of facilitating the supply of non-voluntary licenses to utilize present technology.

The amendments would possibly assist solidify the continued fashion closer to extra preventive access guidelines for overseas funding in industries taken into consideration as being of important significance for host international locations. At the identical time, the pandemic might also additionally set off extra opposition for attracting funding in different industries as economies are searching for to get over the downturn and disrupted deliver chains want to be rebuilt. Concerning funding facilitation, the disaster might also additionally raise the usage of on line administrative approval approaches for traders and employees Investment guidelines can counter the disaster in several approaches Fiscal and monetary guide for agencies and personnel are on the center of financial guidelines in reaction to the disaster. National and international investment policies can play an important complementary role invarious ways, although not all of them can be of immediate effect **(Table 2).** Policy measures may be customized to address the specific needs of those industries particularly affected by the crisis (e.g. health, tourism, airline, automobile).

Table 1: Investment policy instruments for responding to the pandemic

Investment Policy Area	Policy Measures (Examples)
Policy Actions at the National Level	
Investment facilitation	• Alleviation of administrative burdens and bureaucratic obstacles for firms
Investment retention and aftercare by investment promotion agencies (IPAs)	• COVID-19 related information services • Administrative and operational support during the crisis
Investment incentives	• Financial or fiscal incentives to produce COVID-19 related medical equipment • Incentives for enhancement of contracted economic activities • Incentives for conversion of production lines
State participation in crisis-affected industries	• Acquisition of equity in companies • Partial or full nationalization
Local small and medium enterprises (SMEs) and supply chains	• Financial or fiscal support for domestic suppliers (such as SMEs)
National security and public health	• Application and potential reinforcement of FDI screening in COVID-19-relevant industries
Other state intervention in the health industry	• Mandatory production • Export bans • Import facilitation
Intellectual property (IP)	• General authorization of non-voluntary licensing to speed up research and development (R&D) • IP holder-specific non-voluntary licensing to enable imports of medication
International support measures for investment	• International pledges in support of cross-border investment
IIAs	• Reform of IIAs in support of public health policies and to minimize investor-state dispute settlement (ISDS) risks

Source: UNCTAD
https://unctad.org/en/PublicationsLibrary/diaeiainf2020d3_en.pdf

Reasons for Amendment in the Investment Policy

The current investment policy states that any non-resident entity has permission to invest in India except in certain sectors/activities that are prohibited under the automatic route that is with no requirement of government authorization. However, a citizen of Bangladesh or Pakistan or an individual integrated in Bangladesh or Pakistan can invest merely in the Government route, i.e., after obtaining due Government approval, except that a citizen or entity from Pakistan cannot invest in defense, space, atomic energy, and forbidden sectors/activities. As per the amendment in the FDI policy, any entity or beneficiary of investment into India or a resident, based in a country that shares a land border with India can invest only under the Government route. Also, the transmission of ownership of any gift or destiny FDI in an Indian entity, immediately or indirectly, resulting withinside the useful possession falling in the aforementioned hindrance may also name for Government approval.

The intent following this revision may be understood to be regulating together Greenfield and Brownfield investments from countries sharing a common boundary with India and to authorize the Government to dissect such investments and backup them on a case-to-case basis. While the revision doesn't state it in particular, it appears to be intended at regulating investments from China. Out of the seven countries that share land borders with India, investments from Bangladesh and

Pakistan were already regulated and investments from Bhutan, Nepal, Myanmar, and Afghanistan are not noteworthy to prompt such a move.

This modification is very broad in its sweep and will make things clear and transparent as it will apply to the acquisition or transfer of even one share, although, the amendment does not define the concept of beneficial ownership. China may try to take advantage of this lack of clarity, and therefore, investments from China can and will persist to be routed from countries other than China. The revision puts investment by a company or a citizen-based in China or by a beneficial owner based in China under the Government approval route. This constraint without difficulty may be circumvented where the investment into an Indian business is by a company in a country other than China which is eventually owned by a Chinese business or national.

India is not the only country, modifying the investment policy. Similar developments have been adopted in some other countries as well. In the last few weeks, Germany, France, Italy, and Spain have made their foreign investment laws more stringent to prevent hostile acquisitions. In the past, Chinese companies have escaped the kind of scrutiny in India that their investments have attracted in the West, despite several prominent investments and acquisitions.

These amendments highlight the call for investors to cautiously think about foreign investment assessment risks at this extremely sensitive and unstable time in respect of both deals which are currently underway and transactions being contemplated.

The recent change is a big exodus from the earlier standard of blanket approval of all FDI except in the proscribed strategic sectors /activities.

Challenges for New Investment Policy in the Times of Pandemic

The New Investment policy has largely received an overwhelming welcome but the start-up communities are not very happy as they will have one source of funding shut off, many questions are still unanswered, and the same may pose certain challenges for the Government:

- It is still not clear as to how the Government will scrutinize investments that are routed through various shell companies. Estimating the concrete investment flows from China and Chinese companies could be difficult because the majority of the investments in Indian companies are routed through Hong Kong, Singapore, or other third-party countries which don't share a border with India.

- Further, it is also difficult to say that this is a temporary arrangement or it will continue for long. The modification will also affect transactions and investments that were at an advanced stage of negotiations or waiting for completion.

- This unparalleled environment could afford opportunistic buyers the chance to acquire or invest in companies that have been weakened by the crisis. In addition, creditors may unintentionally find themselves in a position where they get hold of the business. Assuming control or ownership upon a default may well be a triggering event for foreign investment regulatory authorities where the creditor (new owner) is ultimately foreign-owned.

- In March 2020 *OECD Interim Economic Outlook*, the downside scenario saw global growth halved to 1.5%. The most recent estimates in the OECD Economic Outlook suggest an exceptional collapse in the first half of 2020 – an almost 13% decline in global GDP **(Figure 1).**

Figure 1.Projected change in GDP at constant prices between 2019Q4 and 2020Q2 (percent)

Source: OECD Economic Outlook 107 database.

- Considering the scenario there is a strong need to keep trade flowing, not only to ensure the supply of essential products but also to send a signal of confidence for the global economy.

Implications of New Investment Policy

The Department for Promotion of Industry and Trade (DIPP), on 17 April 2020, issued a press note about a crucial change in the Foreign Direct Investment Policy to "control opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic." It mandates the prior approval of the government for any FDI by an entity (including citizens) based in any nation sharing a land border with India, or if the beneficial ownership in the investing entity lies with such an entity based in the nation sharing a land border with India.

India is unlikely to be bullied as its FDI moves are on an extremely strong legal footing. But it is important to address the larger picture. Even if one sets aside the alleged role of China's wet markets in the COVID-19 outbreak and ignores its leaders' continuing suppression of facts and information related to the virus, the financial and strategic exploitation of a pandemic-induced economic slowdown is reprehensible, and unquestionably needs state regulation.

The Indian start-up ecosystem has thrived in recent years to become the third-largest in the world and India has been moving up in terms of its ranking on the Global Innovation Index as well by developing new and commercially successful technologies. The government of India has strengthened its policy framework for innovation (with initiatives like Startup India and Atal Innovation Mission) at both the national and regional levels to foster innovation that can drive long-term growth for the country.

These initiatives have been quite successful in reaping their desired effects in terms of boosting innovation and promoting entrepreneurship, but there is a need to provide sufficient funding indigenously to make these start-ups global players. Presently, lack of sufficient funding from domestic investors (due to the high risk and high cost of a start-up) has resulted in Chinese firms and firms from other capital-rich developed countries become significant investors in the Indian startup ecosystem.

China's liberalization model of FDI has also worked on an arrangement that requires sharing of technological and management know-how so that the domestic Chinese firms can also benefit from this sharing and emerge as global players. Similarly, for their outward investments, they are seeking

access to technology and other innovations which when combined with their capital-rich position presently would give China a significant edge over other developed countries who are presently engaged in battling the Covid-19 pandemic.
Hence, the change in FDI policy by India is timely and appropriate as it would allow the government to screen incoming proposals from China on their intent and impact on the economy. This becomes even more relevant in these times of public health emergency when Indian domestic firms are already struggling to stay afloat. Any attempt of predatory investment practice or preempting of the market by competing Chinese firms could make the situation even more precarious.

As far as China's objection to the FDI amendment in terms of violating WTO principle of non-discrimination is concerned, it needs to be noted that regulations regarding FDI into a country are not governed by the WTO. The TRIMs Agreement of WTO covers only trade-related investment measures (such as local content requirements) that are inconsistent with GATT. Further, in unprecedented times like these, international agreements allow countries to take necessary steps that they may deem fit to protect their essential national interests. India is not the only country to be doing so during this pandemic. Several countries in the European Union are acknowledging an increased potential risk to their strategic industries by takeover through FDI.

While there is no denying the fact that FDI remains important for meeting the developmental needs of India, the Covid crisis has brought a silver lining to India where it is in a relatively better position to leverage its FDI policy to its national interests. India's handling of the pandemic has earned it the reputation of being a responsible and trustworthy nation with effective and participative governance. At the same time, China has dented its reputation by allegations of misinformation on Covid-19, which has been further aggravated by the Chinese predatory acquisition of firms in other countries weakened by the crisis. Consequently, affected countries are responding by altering their FDI policies to avoid predatory acquisition by Chinese firms and/or providing an economic stimulus package to help firms shift production out of China (such as by Japan).

In these times when firms from other countries are contemplating shifting their supply chain away from China and exploring alternative locations, India should boost its manufacturing competitiveness to become an important part of the reshaped global supply chain. This is the right time for India to capitalize on its start-up advantage and new technologies and business models developed therein. Through appropriate fiscal incentives, the stimulus package, and deeper penetration of new technologies, it can strengthen its position as an attractive destination for FDI.

CONCLUSION

As the COVID-19 pandemic keeps to open up, massive rescue applications and help applications of Governments and global establishments searching for to keep away from the worst for the worldwide economy. For funding policies, this means, above all, retaining organizations liquid, incentivizing funding in COVID- 19 associated industries, imparting commercial enterprise with a most of administrative help of their daily operations, retaining deliver chains alive, and, if necessary, defensive countries' country wide protection in admire of center home industries.

The pandemic is anticipated to have an enduring effect on funding policymaking. It might also additionally help and coagulate the modern-day fashion closer to greater restrictive access regulations for overseas funding in industries taken into consideration as being of important significance for host countries. At the identical time, the pandemic might also additionally bring about greater opposition for attracting funding in different industries as economies attempt to get over the disaster and disrupted deliver chains want to be re-established. The disaster may additionally beautify the usage of on line administrative approval methods for buyers and staff.

The enormity of the post-pandemic renewal task and the priorities in this process will vary from country to country. However, all governments will face the not unusual place venture of a way to make the fine use of funding rules in bringing their economies again onto a sustainable improvement path. In addition to countrywide efforts, a success global cooperation can be crucial, specifically for the healing of growing countries, together with least evolved countries.

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