

**Bill No. LVI of 2018**

THE FOREIGN INVESTMENT IN FINANCIAL SERVICES,  
CRITICAL INFRASTRUCTURE AND TECHNOLOGY  
AFFECTING NATIONAL SECURITY  
(REGULATION) BILL, 2018

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BILL

*to provide for measures to ensure national security while promoting foreign investment, to reform the process of examination of such investment, vis-a-vis their effect, if any, on national security and to establish a Committee on Foreign Investment to effectively guard against the risk to national security posed by certain types of foreign investment in financial services, critical infrastructure and technology sector, and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5       **1.** (1) This Act may be called the Foreign Investment in Financial Services, Critical Infrastructure and Technology Affecting National Security (Regulation) Act, 2018.

Short title  
extent and  
commencement.

(2) It extends to the whole of India.

10       (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

**2.** In this Act, unless the context otherwise requires,—

(a) 'access' means the ability and opportunity to obtain information, subject to regulations prescribed by the Committee under section 9;

(b) 'Committee' and 'Chairperson' means the Committee on Foreign Investment and the Chairperson thereof, respectively;

(c) 'control' includes the power to determine, direct, or decide important matters including but not limited to the sale, lease, pledge or other transfer of the company's assets; the dissolution of the company; the closing or relocating of research and development facilities; board decisions; capital allocation or budget plans affecting an entity, and its right to information in relation to an entity subject to regulations prescribed by the Committee under section 9;

(d) 'country of special concern' includes a country that poses a significant threat to the national security of India;

(e) 'covered transaction' includes any of the following form of transaction or investment including any merger, acquisition, investment or takeover either proposed or pending after the coming into operation of this Act, by or with any foreign person,—

(i) resulting in increase in foreign holding of an Indian business engaged in financial services, critical infrastructure and technology sector by five percent or more, in such Indian business that already has at least fifteen percent combined foreign ownership;

(ii) entering into business in financial services, critical infrastructure and technology sector by an existing Indian Business that has foreign ownership of at least fifteen percent;

(iii) investing (other than passive investment) in any Indian critical technology company or Indian critical infrastructure company subject to regulation prescribed by the Committee under section 9;

(iv) resulting in change in the rights that a foreign person has with respect to an Indian business in which the foreign person has an investment, if that change may result in foreign control of Indian business; or

(v) leading to any transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of this Act, subject to regulations prescribed by the Committee under section 9 or which impairs the national security.

(f) 'critical infrastructure' means, systems and assets, whether physical or virtual, as may be prescribed, the incapacity or destruction of which may have a debilitating impact on national security;

(g) 'critical infrastructure company' means an Indian business that owns, operates, or primarily provides services to, an entity or entities that operate within a critical infrastructure sector or subsector, as defined by regulations prescribed by the Committee under section 9;

(h) 'critical technology company' means an Indian business that produces, trades in, designs, tests, manufactures, services, or develops one or more critical technologies, or a subset of such technologies, as defined by regulations prescribed by the Committee under section 9;

(i) 'critical materials' means physical materials essential to national security, subject to regulations prescribed by the Committee under section 9;

(j) 'financial services' means and includes services supplied by companies that are in the business of lending, payments, wallets, wealth management, asset

management, peer-to-peer lending, peer-to-peer payments, foreign exchange, money transfer, financial service platforms such as aggregators and comparison platforms, and any other area related to financial transactions as may be prescribed;

5 (k) 'foreign Government-controlled transaction' includes any covered transaction that could result in the control of any person engaged in Indian financial or critical infrastructure or technological services by a foreign Government or an entity controlled by or acting on behalf of a foreign Government; foreign State-owned enterprises, and also foreign Government influenced transactions including but not restricted to such foreign companies that have Government official(s) on their board, or where Government  
10 officials of a foreign country are able to exert influence on business decisions or a transaction when the entity investing is under a legal obligation of a foreign Government or foreign authority to disclose the critical technology or critical infrastructure or any other fact thereof which is likely to impair the national security;

15 (l) 'fund' means the Committee on Foreign Investment in India Fund established under section 15;

(m) 'foreign person' means a person who is not a resident in India and includes any entity or a person which or who is in any manner associated with a firm, company, partnership, limited liability partnership or any other entity in any form not registered in India and is under the control of a foreign Government or a foreign authority;

20 (n) 'Indian business' means any entity or a person engaged in financial services in critical infrastructure or technology sector in India;

(o) 'intellectual property' has the meaning given to that term in regulations as may be prescribed by the Committee under section 9;

25 (p) 'investment' means investments through the ownership of a majority or minority of the total outstanding voting securities, proxy voting or contractual arrangements or the acquisition of equity interest, including contingent equity interest, or grant of form in whatever form as further defined in regulations prescribed by the Committee under section 9;

30 (q) 'lead agency' means an agency, or agencies, designated as the lead agency or agencies pursuant to sub-section(4) of section 3 for compliance with the provisions of this Act;

(r) 'national security' shall be construed so as to include those issue relating to Indian national security, including its application to financial services and critical infrastructure and technology sector in India;

35 (s) 'non public technical information' means any information (either by itself or in conjunction with other information) to which a foreign person may have access without which critical technologies cannot be designed, developed, tested, produced, or manufactured; and in a quantity sufficient to permit the design, development, testing, production, or manufacturing of such technologies;

40 (t) 'passive investment' means an investment by a foreign person in an Indian business,—

(i) that is not described in clause (e) of section 2;

(ii) that does not afford the foreign person—

45 (a) access to any non-public technical information in the possession of Indian business;

(b) access to any non-technical information in the possession of Indian business that is not available to all investors;

(c) membership or observer rights on the board of directors or equivalent governing body of Indian business or the right to nominate an individual to such a position; or

(d) any involvement, other than through voting of shares, in substantive decision making pertaining to any matter involving Indian business; 5

(e) any involvement, other than through non-voting shares, in substantive decision making pertaining to any matter involving Indian business;

(iii) under which the foreign person and Indian business to not have a parallel strategic partnership or other material financial relationship, as described in regulations prescribed by the Committee under section 9; and 10

(iv) that meets such other criteria as the Committee may prescribe by regulation under section 9.

## CHAPTER II

### COMMITTEE ON FOREIGN INVESTMENT

Constitution  
of Committee  
on Foreign  
Investment,

3. (1) The Central Government shall by notification in the Official Gazette, constitute a Committee on Foreign Investment to operate as a national agency of the Government of India, with the objective to effectively guard against the risk to the national security posed by certain types of foreign investment in financial services and technology sector, and for other purposes assigned to it under this Act. 15

(2) The Committee shall consist of the following namely:— 20

(i) Secretary, Department of Economic Affairs, Ministry of Finance;

(ii) Secretary Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;

(iii) Secretary, Ministry of Home Affairs;

(iv) Secretary, Department of Commerce, Ministry of Commerce and Industry; 25

(v) Secretary, Ministry of Defence;

(vi) Secretary (Economic Relations), Ministry of External Affairs;

(vii) Secretary, Ministry of Overseas Indian Affairs;

(viii) Secretary, Department of Revenue, Ministry of Finance;

(ix) Secretary, Ministry of Micro, Small and Medium Enterprises. 30

(3) The Secretary of the Department of Economic Affairs, Ministry of Finance shall serve as the Chairperson of the Committee.

(4) The Committee may constitute a lead agency or lead agencies for the exercise of any power or discharge of any function which the Committee may by resolution delegate to them or for inquiring into, reporting or advising upon any matter which the Committee may refer to them. 35

(a) Provided that the lead agency constituted under this section shall be presided by the Chairperson of the Committee only; and

(b) The lead agency shall consist of members of the Committee only and may, with the sanction of the Committee co-opt not more than two persons who are not members of the Committee, but who in the opinion of that Committee possesses special qualifications for serving on such Committee. 40

Powers and  
functions of the  
Committee.

4. (1) The Committee, acting through the Chairperson, may suspend a proposed or pending covered transaction that appears to it to pose a risk to the national security of the

country, for such time as the covered transaction is under review or investigation under section 5 or section 6 respectively;

5 (2) The Committee or a lead agency may, on behalf of the Committee, negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction in order to mitigate any threat to the national security likely to arise as a result of the covered transaction.

10 (3) If a party to a covered transaction has voluntarily chosen to abandon the transaction, the Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction for purposes of effectuating such abandonment and mitigating any risk to the national security likely to arise as a result of the covered transaction.

15 (4) The Committee or lead agency, as the case may be, may negotiate, enter into or impose, and enforce any agreement or condition with any party to a completed covered transaction in order to mitigate any interim risk that may arise as a result of the covered transaction until such time that the Committee has completed action pursuant to section 5 or section 6 as the case may be;

20 (5) the Chairperson and the head of the lead agency shall periodically review the appropriateness of an agreement or condition imposed under sub-sections (2), (3) or (4) and shall terminate, phase out, or otherwise amend the agreement or condition if a threat no longer requires mitigation through the agreement or condition.

(6) No agreement shall be entered into or any condition imposed under sub-sections (2), (3) or (4) with respect to a covered transaction unless the Committee determines that the agreement or condition resolves the national security concerns posed by the transaction, taking into consideration whether the agreement or condition is reasonably calculated to —

25 (i) be effective;

(ii) allow for the terms of the agreement or condition in an appropriately verifiable way; and

(iii) enable effective monitoring of compliance with and enforcement of the terms of the agreement or condition.

30 (7) No agreement shall be entered into or any condition imposed under sub-sections (2), (3) or (4) unless the Committee has conducted a risk-based analysis of the threat to national security of the covered transaction after taking into consideration the factors specified in section 12.

35 (8) Any member of the Committee who concludes that a covered transaction poses an unresolved national security concern shall recommend to the Committee that the Committee suspend the transaction under sub-section (1), or negotiate enter into or impose, or enforce any agreement or condition under sub-sections (2), (3) or (4) with respect to the transaction and in making that recommendation, the member shall propose or contribute to the risk-based analysis required by sub-section (7) of this sub-section.

40 (9) If Committee fails to reach consensus with respect to recommendation under sub-section (8) regarding a covered transaction, the members of the Committee who support an alternative recommendation shall produce —

(i) a written statement justifying the alternative recommendation; and

45 (ii) as appropriate, a risk-based analysis that supports the alternative recommendation.

(10) If any written notice of a covered transaction that was submitted to the Committee under this Act is withdrawn before the completion of any review or investigation by the Committee under section 5 or section 6 respectively, the Committee shall establish, as deemed appropriate —

(a) interim protections to address specific concerns with such transaction that have been raised in connection with any such review or investigation pending any resubmission of any written notice under this Act with respect to such transaction and further action by the Chairman under this section;

(b) specific time frames for resubmitting any such written notice; and 5

(c) a process for tracking any action that may be taken by any party to the transaction, in connection with the transaction, before the notice referred to in clause (b) is resubmitted.

(11) The lead agency shall negotiate, modify, monitor, and enforce, on behalf of the Committee, any agreement entered into or condition imposed under sub-section (2) with respect to a covered transaction, based on the expertise and knowledge of the issues related to such transaction: 10

Provided that the lead agency may for the purposes of sub-section (ii) obtain assistance of other departments or agencies:

Provided further that the lead agency shall provide periodic reports to the Committee on any material modification to any such agreement or condition imposed with respect to the transaction. 15

(12) In the case of a covered transaction with respect to which an agreement is entered into under sub-sections (2), (3) or (4) the Committee or lead agency, as the case may be, shall formulate, adhere to, and keep updated a plan for monitoring compliance with the agreement. 20

(13) Each plan required under sub-section (12) with respect to an agreement entered into under sub-sections (2), (3) or (4) shall indicate—

(i) the member of the Committee who shall have primary responsibility for monitoring compliance with the agreement;

(ii) the manner in which the compliance with the agreement shall be monitored; 25

(iii) the frequency of conducting compliance reviews;

(iv) whether an independent entity shall be utilized under sub-section (15) to conduct compliance reviews; and

(v) the proposed action if the parties fail to co-operate regarding monitoring compliance with the agreement. 30

(14) If, at any time after a mitigation agreement or condition is entered into or imposed under sub-sections (2), (3) or (4) the Committee or lead agency, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or lead agency may—

(a) negotiate a plan of action for the party or parties to remediate the lack of compliance, with failure, to abide by the plan or otherwise remediate the lack of compliance serving as the basis for the Committee to find a material breach of the agreement or condition; or 35

(b) require that the party or parties submit a written notice under sub-section (1) of section 5 or a declaration under sub-section (4) of section 5 with respect to a covered transaction initiated after the date of the determination of non-compliance but not later than five years after the date of such determination, to the Committee to initiate a review of the transaction under section 5; or 40

(c) seek injunctive relief.

(15) If the parties to an agreement under sub-sections (2), (3) or (4) enter into a contract with an independent entity from outside the Indian Government for the purpose of monitoring compliance with the agreement, the Committee shall take such action as is necessary 45

to prevent a conflict of interest from arising by ensuring that the independent entity owes no fiduciary duty to the parties.

5 (16) Any agreement or condition entered into or imposed under sub-sections (2), (3) or (4) shall be considered binding on all successors and assignees unless and until the agreement or condition terminates on its own terms or is otherwise terminated by the Committee in its sole discretion.

10 (17) Subject to the other provisions of this section, the Committee shall develop and agree upon methods for evaluating compliance with any agreement entered into or condition imposed with respect to a covered transaction that may allow the Committee to adequately ensure compliance without unnecessarily diverting the resources of the Committee from assessing any new covered transaction for which a written notice under sub-section (1) of section 5 of or declaration under sub-section (4) of section 5 has been filed, and if necessary, reaching a mitigation agreement with or imposing a condition under sub-section (2), (3) or (4) on a party to such covered transaction or any covered transaction for which a review has  
15 been reopened for any reason.

### CHAPTER III

#### REVIEW AND INVESTIGATION OF COVERED TRANSACTIONS

20 **5.** (1) (a) The party or parties to any covered transaction shall initiate a review of the transaction by submitting draft or a formal written notice of the transaction to the Chairperson of the Committee. Review of covered transactions.

(b) Subject to clause (d), the Committee shall provide comments on a draft or formal written notice or accept a formal written notice submitted under clause (a) with respect to a covered transaction not later than the date that is ten business days after the date of submission of the draft or formal written notice.

25 (c) If the Committee determines that a draft or formal written notice described under clause (a) of this sub-section is not complete, the Committee shall notify the party or parties to the transaction in writing that the notice is not complete and shall provide an explanation of all material respects in which the notice is incomplete.

30 (d) No covered transaction for which a notice was submitted under clause (a) may be withdrawn from review, unless a written request for such withdrawal is submitted to the Committee by any party to the transaction and approved by the Committee.

35 (e) A request for withdrawal under clause (d) shall not be construed to preclude any party to the covered transaction from continuing informal discussions with the Committee or any member thereof regarding possible resubmission for review pursuant to this sub-section.

40 (f) A written notice submitted under clause (a) by a party shall include a copy of any partnership agreements, integration agreements, or other agreements relating to the transaction, including any such agreements relating to the transfer of intellectual property, as may be specified in regulations prescribed by the Committee under section 9.

(2) Upon receiving written notice of any covered transaction, or pursuant to a unilateral review initiated with respect to any covered transaction, the Chairperson, acting through the Committee:

45 (a) shall review the covered transaction to determine the effects of the transaction on the national security in such manner as may be prescribed; and

(b) shall consider the factors specified in section 12 for such purpose, as appropriate.

(3) If the Committee has any information or reason to believe that the covered transaction may be a national security risk the Committee shall within thirty days of the review, conduct an investigation of the transaction under section 6.

(4) (a) A party to any covered transaction shall submit, not later than forty five days of its completion, to the Committee, a declaration with basic information regarding the transaction instead of a written notice under sub-section (1), if the covered transaction;

(i) involves the acquisition of a total voting interest of the foreign person, which would directly or indirectly result in holding at least fifteen percent in the Indian business post the acquisition, or any such subsequent direct or indirect investment of at least five percent by the same foreign person or any other foreign person, in an Indian business by, that has existing foreign ownership of at least fifteen percent; and

(ii) involves a foreign person in which a foreign government owns, directly or indirectly, foreign stated-owned enterprises holds at least five percent of voting or passive interest.

(b) The Committee shall require the submission of a declaration specified in clause (a) with respect to any covered transaction identified under regulations prescribed by the Committee under section 9 for purposes for this sub-section, at the discretion of the Committee and based on appropriate factors, such as—

(i) the technology, industry, economic sector, or economic subsector in which Indian business that is a party to the transaction trades or of which it is a part;

(ii) the difficulty of remedying the harm to the national security that may result from completion of the transaction; and

(iii) the difficulty of obtaining information on the type of covered transaction through other means.

(5) Any review under this section shall be completed before the end of thirty days period beginning on the date of the acceptance of written notice under sub-section (1) by the Chairperson, or beginning on the date of the initiation of the unilateral review in accordance with sub-section(4), as applicable and if the parties to the covered transaction are not able to satisfy the Committee that such a transaction does not pose a threat to the national security of India, the Committee shall initiate an investigation into such a transaction as per the provisions of section 6.

Provided that the authority of the Committee to initiate a review under sub-section (4) may not be delegated to any person, other than the Deputy Secretary or an appropriate Under Secretary of the department or agency represented on the Committee.

(6) The Committee shall establish a mechanism to identify covered transactions for which—

(a) a notice under sub-section (1) or a declaration under sub-section (4) is not submitted to the Committee; and

(b) information is reasonably available.

Investigation  
of covered  
transactions.

6. (1) The Committee shall immediately conduct an investigation of the effects of a covered transaction on the national security after considering the factors specified in section 12, and shall take all necessary action in connection with the transaction to protect the national security.

(2) Sub-section (1) shall apply in each case in which—

(a) a review of covered transaction under section 5 results in a determination that—



(i) the transaction threatens to impair the national security and that threat has not been mitigated during or prior to the review of a covered transaction under section 5; or

(ii) the transaction is a foreign Government-controlled transaction; or

5 (iii) the transaction may result in control of any critical infrastructure of or within India by or on behalf of any foreign person, if the Committee determines that the transaction could impair national security, and that such impairment to national security of India has not been mitigated by assurances provided or renewed with the approval of the Committee, as described in sub-clause (i),  
10 during the review period under section 5; or

(iv) parties of the covered transaction fail to satisfy the Committee within thirty days of the review.

(b) the lead agency recommends, and the Committee concurs, that an investigation be undertaken.

15 (3) Any investigation under sub-section (1) shall be completed before the end of the forty five day period beginning on the date on which the investigation commenced; and

(i) if on such completion the Committee concludes that concerned covered transaction poses a threat to the national security of India, it shall take appropriate measures as per section 13; or

20 (ii) in case the investigation is not completed in forty five days, the transaction shall be rejected and the parties shall be debarred from re-applying for the transaction.

*Exceptions.—*

25 (a) Notwithstanding anything contained in clause (a) of sub-section (2), an investigation of a foreign Government-controlled transaction described in sub clause (ii) of clause (a) of sub-section (2) or a transaction involving critical infrastructure described in sub clause (iii) of clause (a) of sub-section (2) shall not be required, if the Committee determines, on the basis of the review of the transaction under section 5, that the transaction will not impair the national security of India.

30 (b) The authority of the Committee referred to in clause (a) above shall not be delegated to any person.

35 7. (1) The Committee shall, upon completion of a review under section 5 or completion of an investigation under section 6 as the case may be, cause to forward to the Central Government a report duly signed by the Chairperson with a declaration, that in the determination of the Committee, there are no unresolved risks to the national security of India which concern with the transaction that is the subject of the report.

Maintenance of records of review and investigation of covered transactions.

(2) Each certified report required under sub-section (1) shall include—

(a) a description of the actions taken by the Committee with respect to the transaction; and

(b) identification of the determinative factors considered under section 12.

40 8. (1) No provision of this Act shall be construed as prohibiting any party to a covered transaction from submitting additional information concerning the transaction, including any proposed restructuring of the transaction or any modifications to any agreements in connection with the transaction under section 4 while any review or investigation of the transaction is ongoing.

Submission of additional information to the Committee.

45 (2) the lead agency shall upon request from any member of the Committee, promptly provide briefings on a covered transaction for which all action has concluded under section 6 or in compliance with a mitigation agreement or condition imposed with respect to such transaction, on a classified basis, if deemed necessary by the sensitivity of the information:

Provided that the disclosure of information under this section shall be consistent with the regulations as may be prescribed under Section 9 and the members of the Committee shall be subject to the same limitations on disclosure of information as may be prescribed under Section 9:

Provided further that the proprietary information associated with a particular party to a covered transaction shall be furnished to the members of the Committee only when the Committee provides assurance of confidentiality, unless such party otherwise consents in writing to such disclosure.

Regulations.

**9. (1)** The Committee shall have the power to prescribe regulations for the purposes of this Act. 10

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) specify the voting rights, profit or equity share or such other characteristics that shall amount to control by a foreign person,

(b) define the covered transactions by reference to the technology, sector, subsector, transaction type, or other characteristics of such transactions, 15

(c) Standard procedures for—

(i) submitting any notice of a covered transaction to the Committee;

(ii) submitting a request to withdraw a covered transaction from review;

(iii) resubmitting a notice of a covered transaction that was previously withdrawn from review; and 20

(iv) providing notice of the results of a review or investigation to the parties to the covered transaction, upon completion of all action under this Act,

(d) imposition of civil penalties for any violation of this Act,

(e) minimizing paperwork burdens, 25

(f) coordinating reporting requirements under this Act, with reporting requirements under any other provision of the laws in force in India.

Analysis of covered transactions by the Committee.

**10. (1)** Except as provided in this section the Committee shall expeditiously carry out a thorough analysis, in such manner as may be prescribed by regulations, of any threat to the national security posed by any covered transaction, which shall include the identification of any recognized gaps in the collection of intelligence relevant to the analysis: 30

Provided that the Committee shall seek and incorporate into the analysis required by sub-section (1), the views of all affected agencies with respect to the transaction.

(2) The lead agency may provided the Committee with basic information regarding any threat to the national security of India posed by a covered transaction. 35

(3) The Chairman shall ensure that the lead agency remains engaged in the collection, analysis and dissemination to the Committee of any additional relevant information that may become available during the course of the investigation under section 6 with respect to a transaction.

(4) The Committee shall ensure that its processes under this section preserve the ability of the Committee to conduct analysis under sub-section (1) that is independent, objective, and consistent with all applicable directives, policies, and analytic tradecraft standards of the intelligence community. 40

**11.** (1) Subject to sub-section (3), the Chairperson shall, with respect to a covered transaction that threatens to impair the national security take such action for such time as the Chairperson considers appropriate to suspend or prohibit the transaction or to require divestment.

Suspension of covered transactions.

5 (2) The Chairperson shall announce the decision on whether or not to take action pursuant to sub-section (1) with respect to a covered transaction not later than fifteen days after—

(a) the date on which the investigation of the transaction under section 6 is completed; or

10 (b) the date on which the Committee otherwise refers the transaction to the Chairperson under section 4,

Whichever is earlier.

(3) The Chairperson shall exercise the authority conferred by sub-section (1), if the—

15 (a) entity fails to provide credible evidence within seven days from the date that the Committee refers the transaction to the Chairperson, proving that the foreign interest does not impair the national security; and

(b) entity fails to prove that the transaction does not fall in determinative factors as under section 12.

20 **12.** For purposes of this Act, the Committee or the Chairperson as the case may be, with reference to an Indian business or Indian critical technology company or Indian critical infrastructure company, taking into account the requirements of maintaining the national security, or risks of spreading terrorism or risk of interference in Government's ability to monitor terror threats due to influence of foreign person, shall consider—

Factors for consideration of the Committee.

25 (a) that there is a minimum local ownership of at least twenty six per cent and not more than seventy four per cent foreign ownership wherein no single foreign investor controls more than ten per cent of such entity subject to such other regulations made by the Committee under section 9;

30 (b) the potential national security-related effects of the cumulative market share of any one type of infrastructure, energy asset, critical material, or critical technology by foreign persons;

(c) whether any foreign person that would acquire an interest in an Indian business or its assets as a result of the covered transaction has a history of—

35 (i) complying with Indian laws and regulations, including laws and regulations pertaining to exports, the protection of intellectual property, and immigration; and

(ii) adhering to contracts or other agreements with entities of Indian Government;

40 (d) the extent to which the covered transaction is likely to expose, either directly or indirectly, personally identifiable information, genetic information, or other sensitive data of Indian citizens to access by a foreign Government or foreign person that may exploit that information in a manner that threatens national security;

45 (e) whether the covered transaction is likely to have the effect of creating any new cyber security vulnerabilities in India or exacerbating existing cyber security vulnerabilities;

(f) whether the covered transaction is likely to result in a foreign Government gaining a significant new capability to engage in malicious activities against India, including such activities designed to affect the outcome of any elections in India;

(g) whether the covered transaction involves a country of special concern that has a demonstrated or declared strategic goal of acquiring a type of critical technology that an Indian business that is a party to the transaction possesses;

(h) whether the covered transaction is likely to facilitate criminal or fraudulent activity affecting the national security of India by taking control over the financial services or technical sector of India;

(i) whether the covered transaction is likely to expose any information regarding sensitive national security matters or sensitive procedures or operations of any law enforcement agency with national security responsibilities to a foreign person not authorized to receive that information; and

(j) such other factors as the Committee may determine to be appropriate, generally or in connection with a specific review or investigation.

Notice of  
results to  
parties.

**13.** The Committee shall notify the parties to a covered transaction of the results of a review or investigation under this Act, immediately upon completion of all action under this Act.

Annual report.

**14. (1)** The Committee shall transmit a report to the Chairperson before July 31 of each year on all of the reviews and investigations of covered transactions completed under sections 5 and 6 during the twelve months period covered by the report.

(2) The annual report under sub-section (1) shall contain the following information, with respect to each covered transaction, for the reporting period:—

(a) a list of all notices filed and all reviews or investigations of covered transactions completed during the period, with—

(i) a description of the outcome of each review or investigation, including whether an agreement was entered into or condition was imposed under section 4 with respect to the transaction being reviewed or investigated, and whether the President of India took any action under this section with respect to that transaction;

(ii) basic information on each party to each such transaction;

(iii) the nature of the business activities or products of the Indian business with which the transaction was entered into or intended to be entered into; and

(iv) information about any withdrawal from the process.

(b) specific, cumulative, and, as appropriate, trend information on the numbers of filings, investigations, withdrawals, and decisions or actions by the Chairperson under section 11.

(c) cumulative and, as appropriate, trend information on the business sectors involved in the filings which have been made, and the countries from which the investments have originated.

(d) information on whether companies that withdrew notices to the Committee in accordance with section 5 have later refiled such notices, or, alternatively, abandoned the transaction.

(e) the types of security arrangements and conditions, the Committee has used to mitigate national security concerns about a transaction, including a discussion on the methods that the Committee and any lead agency are using to determine compliance with such arrangements or conditions.

(f) a detailed discussion on all perceived adverse effects of covered transaction on the national security or critical infrastructure of India that the Committee propose to take into account in its deliberations during the period before delivery of the next report, to the extent possible.

(g) statistics on compliance plans conducted and actions taken by the Committee during that period, a general assessment of the compliance of parties with agreements entered into and conditions imposed under sections 4 that are in effect during that period, including a description of any actions taken by the Committee to impose penalties or initiate a unilateral review and any recommendations for improving the enforcement of such agreements and conditions.

(h) cumulative and, as appropriate, trend information on the number of declarations filed under section 5, the actions taken by the Committee in response to those declarations, the business sectors involved in those declarations, and the countries involved in those declarations.

(i) a description of—

(i) potential methods to improve such identification and the resources required to do so; and

(ii) the number of transactions identified during the reporting period and the number of such transactions identified for further review.

(3) The report shall be created and maintained in such manner, as may be prescribed by the regulations framed under section 9.

**15.** (1) There shall be established a fund, to be known as the 'Committee on Foreign Investment in India Fund' to be administered by the Chairperson.

Funding and Fees.

(2) The Central Government shall provide, after the appropriation made by Parliament by law in this behalf, necessary amounts each year to the Fund, as may be required, for carrying out the purposes of this Act.

(3) The Committee may assess and collect a fee as may be determined by the Committee by regulations with respect to each covered transaction for which a written notice is submitted to the Committee under sub-section (1) of section 5 or a declaration under sub-section (4) of section 5

(4) The amount of the fee to be assessed under sub-section (3) with respect to a covered transaction—

(i) may not exceed an amount equal to one percent of the value of the transaction or an amount decided by the Committee, whichever is less.

(ii) shall be based on the value of the transaction, taking into account the effect of the fee on small business concerns; the expenses of the Committee associated with conducting activities under this Act, the effect of the fee on foreign investment; and such other matters as the Committee considers appropriate.

(5) The Committee shall periodically reconsider and adjust the amount of the fee to be assessed under sub-section (4) with respect to a covered transaction to ensure that the amount of the fee does not exceed the costs of administering this Act and otherwise remains appropriate.

(6) Any fees collected under this Section shall—

(a) be deposited into the Fund solely for use in carrying out activities under this Act;

(b) to the extent and in the amounts provided in advance in Appropriations Acts, be available to the Chairperson;

(c) remain available until expended; and

(d) be in addition to any appropriations made available to the Committee.

## CHAPTER IV

## MISCELLANEOUS

- Rules of evidence. **16.** The burden of proof for establishing that a covered transaction does not pose a threat to the national security of India shall be the party to a covered transaction.
- Appeal. **17.** Any person aggrieved by an order of the Committee under section 5 or section 6 as the case may be; may file an appeal to the High Court within thirty days from the date receipt of the order. 5
- Act to supplement other laws. **18.** No provision of this Act shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of the laws in force in India and shall be in addition to and not in derogation thereof. 10
- Power to remove difficulties. **19.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty: 15
- Provided that no order shall be made under this section after the expiry of three years from the commencement of this Act.
- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.
- Penalty. **20.** Whoever fails to comply with the provisions of this Act, shall be punishable with a fine which shall not be less than rupees one crore, subject to a maximum of rupees twenty five crore. 20
- Protection for action taken in good faith **21.** No suit, prosecution or other legal proceedings shall lie against the Committee or the person, officer or authority in respect of anything done by it or him in good faith in pursuance of carrying out the bonafide purposes of this Act or of any rule or order made, or direction issued, there under. 25
- Severability. **22.** If any provision of this Act, or the application of such a provision to any person or circumstance, is held to be invalid, the application of that provision or amendment to other persons or circumstances and the remainder of the provisions of this Act shall not be affected thereby. 30
- Power to make rules. **23.** (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) Every rule made under this section and every regulation made by the Committee under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation. 35 40

## STATEMENT OF OBJECTS AND REASONS

There is an imminent threat to India's national security on account of the influx of Multi-National Corporations—large internet firms from certain leading economies into India's financial technology space either directly or through a proxy. Such instances include the buying of a large stake and taking de-facto control of the existing Indian companies. As far as foreign investment is concerned, at present, there is no level playing field in India between private sector banks and non-bank finance companies (NBFCs).

Since it is extremely hard to get a fresh banking license, the favourite route for foreign Multi-National Corporations to enter the Indian financial services space is through the non-bank finance companies which are now becoming systemically important. Current foreign direct investment regulations in India allow one-hundred per cent foreign investment in non-bank finance companies under the automatic route. This unfettered foreign ownership and control of our non-bank finance companies can potentially destroy the strong fabric of India's financial services sector.

Foreign financial giants could capture a large chunk of our domestic lending market by resorting to predatory pricing and capital dumping. This is nothing but a surreptitious aggression, which, if unchecked, could give the foreign government access to sensitive data on millions of individuals including armed forces personnel and corporates. These data could be weaponized posing a serious national security threat. India must balance its national interest with imperative of foreign investment against the potential damages.

In the light of this growing unacknowledged threat to national security, it is imperative to redouble the ongoing efforts to ensure data privacy. The Reserve Bank of India presently has an ownership cap of ten per cent on a single foreign investor in respect of private sector banks. Further, the Reserve Bank of India currently has an overall ownership cap of seventy-four per cent on all foreign investors combined, in respect of private sector banks. These ownership limits should be urgently extended to non-bank finance companies and payments firms.

There is a need for a legislation which aims at balancing the possible gains from foreign investment against potential national security harms.

Hence this Bill.

DR. NARENDRA JADHAV

## FINANCIAL MEMORANDUM

Clause 15 of the Bill envisages the establishment of the Committee on Foreign Investment in India Fund, out of the Consolidated Fund of India. Besides this, a non-recurring expenditure is also likely to be involved. At this stage, it is not possible to quantify the exact amount.



MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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to provide for measures to ensure national security while promoting foreign investment, to reform the process of examination of such investment, vis-a-vis their effect, if any, on national security and to establish a Committee on Foreign Investment to effectively guard against the risk to national security posed by certain types of foreign investment in financial services, critical infrastructure and technology sector, and for matters connected therewith and incidental thereto.

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*(Dr. Narendra Jadhav, M.P.)*