

APPENDIX II

AMENDMENTS TO THE COMBINATION REGULATIONS

Highlights of the major changes in the Combination Regulations in February 2012

- The exemption under Item 1, Schedule I to the Combination Regulations was amended such that a notice need not be filed for acquisitions of upto less than 25 percent of the shares/voting rights of a company, as compared to the earlier position of exempting acquisitions of upto only 15 percent of the shares/voting rights of a company.
- The Regulations now dispensed with the requirement of filing a notice in respect of intra-group mergers or amalgamations involving enterprises wholly owned by group companies.
- Acquisitions of shares or voting rights pursuant to a bonus issue, stock splits, or consolidation of face value of shares or buy back or subscription of rights issue, not leading to an acquisition of control, were included in the list of transactions in Schedule I that normally would not require a filing with the Commission.
- The Company Secretary of the company, duly authorised by the Board, had been authorised to sign the Form I or Form II, in addition to those persons specified under the General Regulations (i.e. the managing director or the director authorized by the board).
- Some simplifications were introduced in Form I. In Form I, the distinction, for filling of Part I for certain types of transactions and Part II for the remaining transactions, was removed. A provision was introduced for parties to provide details of value of the asset and value of turnover for the purpose of Section 5 and to provide a copy of the agreement and board resolution etc.
- Parties had option of filing Form II, especially in those cases where there could be significant horizontal overlap (>15%) and/or significant vertical relationship (>25%) between the parties, in the relevant market.
- A new provision was introduced for attribution of value of assets and turnover of a transferor company to the transferee company, where assets are transferred to a transferee company for the purpose of effecting a combination.
- A provision was made for admission of belated filing of Form III in respect of transactions covered under Section 6(5) of the Act. Form III was now required to be filed along with a copy of the loan or investment agreement.

- It was decided to increase the filing fees to INR 10,00,000 in respect of Form I and to INR 40,00,000 in respect of Form II.
- The parties were now required to file a brief summary of the combination, when filing the notice under Section 6 (2) of the Act.

Highlights of the major changes in the Combination Regulations in April, 2013

- Inserting an exemption under Item 1A, Schedule I to the Combination Regulations, allowing creeping acquisitions of upto five per cent shares/voting rights in a company in one financial year, where the acquirer or its group already holds more between 25 percent to less than 50 percent of shares/voting rights of the company.
- Amending the exemption to intra-group mergers/amalgamations such that notification is not required for mergers/amalgamations between parent companies and subsidiaries and/or mergers/amalgamations of enterprises in which more than 50 per cent shares/voting rights in each of such enterprises are held by enterprise(s) belonging to same group, provided that the transaction did not result in transfer from joint control to sole control.
- Item 8, Schedule I to the Combination Regulations was amended such that the intra-group acquisition would not apply where the acquired enterprise is jointly controlled by enterprises not belonging to the same group.

Highlights of the major changes in the Combination Regulations in March, 2014

- It was now clarified that the notification requirement shall be determined with respect to the substance of the transaction and structure of transaction(s) having the effect of avoiding notice shall be disregarded.
- The exemption under Item 10, Schedule I to the Combination Regulations which did not require notification of transactions having no local nexus was deleted.
- The filing fee was further revised to INR 15,00,000 for Form I, and to INR 50,00,000 for Form II.
- Regulation 29 was deleted as it was considered as an additional condition in respect of preferring appeal in matters relating to combinations.
- Similar to Form I, now the Combination Regulations did not require verification of each page of Form II.

- Amendments were made to Form to require a list of other jurisdictions in which the combination had been notified and also include information on horizontal overlaps and vertical relationships in the summary
- Form II was amended to require parties to submit audited annual accounts for immediately preceding two financial years

Highlights of the major changes in the Combination Regulations in July, 2015

- It was provided that parties shall give notice in Form I or Form II in accordance with the notes to forms published on the website of the CCI.
- For acquisitions, the trigger document for notification is either the agreement itself or any “other document” for acquisition. Earlier, the term “other document” included a communication of an intention to make an acquisition to a Central Government, State Government or Statutory Authority. Now the amendments limited the scope of the definition of “other document” to communication of an intention to make an acquisition to a Statutory Authority alone.
- Number of copies of the Forms to be filed (along with the original) with the CCI was reduced to one instead of the earlier requirement of submitting two copies.
- Previously, in cases where the CCI took *suomotu* cognizance of a failure to notify a combination, it was mandatory to notify the combination in Form II. Pursuant to the amendment, CCI, while taking *suomotu* cognizance, could direct the parties to notify the combination now in either Form I or Form II, based on the facts of each case.
- The pool of the signatories to the Forms now included any person, duly authorized by the Board for the said purpose. Earlier, only directors or company secretaries could sign the forms.
- Inter-connected or inter-dependent transactions are now mandatorily required to be filed in a single notice.
- The parties are required to provide an affidavit in support of their claims regarding confidential treatment of information submitted and are required to clearly state the reasons, justification and implications in relation to confidentiality claims.
- The amendments provided that a summary of every combination under review will be published on the website of CCI.
- Under these amendments, a notice would not be considered valid unless it was complete and in conformity with the Combination Regulations. Pursuant to the amendments, the CCI could, after recording reasons, invalidate a notice

which was incomplete or not in conformity with the Combination Regulations. The decision to invalidate a notice was required to be communicated to the parties within seven days of the Commission's decision.

- The earlier requirement of mandatorily issuing a defect letter in case of incomplete notices was made optional.
- Under these amendments, in combinations which were conditional upon carrying out modification by the parties to the combination, the proceedings would be terminated upon acceptance of the compliance report by the CCI.
- The timelines for Phase I review was increased from thirty calendar days to thirty working days.
- A clock stop of 15 working days was provided for seeking comments of third parties.
- A new exemption was introduced in Schedule I. The said exemption pertained to the acquisition made by a purchaser approved by the CCI in cases wherein CCI had ordered divestitures.
- Form I was amended and certain additional information was now required under the revised Form.

Highlights of the major changes in the Combination Regulations in Jan, 2016

- The requirement of "Verification" of notices was done away with and notices now require only a simple Declaration.
- The scope of the "other document" has been further limited to Public Announcements made under the SEBI Takeover Code.
- The amendments expanded the pool of signatories who may sign a notice such that any person authorized by a company can sign the notice.
- The condition of "inter-dependent" transactions was removed from Regulation 9(4) and the wider condition of "inter-connected" transactions was retained.
- Regulation 31, which required notices to be filed upon the execution of transaction documents or board approvals on or after the 1st June 2011, was omitted as it had lost its relevance and was unnecessary.
- An explanation of the term "solely as an investment" under Item I, Schedule I to the Combination Regulations, was included.

- Item 1A, Schedule I to the Combination Regulations was amended such that parties will no longer be required to notify a combination where there is an increase in shareholding from 25% to 50%, as long as the acquisition does not result in a change from joint/sole control over the target.