



Ministry of Corporate Affairs issues fresh notifications wherein, the Central Government intends to provide clarity on the applicability of the threshold exemption limits to all forms of combinations; Clarity on the methodology to be adopted for calculating the relevant assets and turnover of the target when only a portion or segment or business of one enterprise is being combined with another

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The Ministry of Corporate Affairs (MCA) has undertaken a major reform in the regulation of combinations under the Competition Act, bringing India in line with the global practice. The Act which was passed by Parliament in 2002 had initially provided for notice of combinations to be given by enterprises, as per Section 5 of the Act, on a voluntary basis. However, this Section was amended in 2007 making the notice mandatory.

In 2011, in response to concerns expressed by various stake holders, the Government had issued a notification exempting an enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than Rs. 250 crores in India or turnover of not more than Rs. 750 crores in India from the applicability of Section 5 of the Competition Act, 2002, for a period of 5 years. These limits were enhanced to Rs. 350 crores and Rs. 1000 crores, respectively, in March, 2016.

It was, however, noted by the Government that the said notification was being applied to Combinations which resulted only from acquisition but was not extended to Merger/Amalgamation and Acquiring of Control Cases. It was also noted that where only a segment/portion/business of an enterprise was being combined with another enterprise, the relevant assets and turnovers attributable to the target segment/portion/business were not being considered and instead the transferor's total assets and turnover were being considered for determining the applicability of the exemption.

Stakeholders had been voicing their concerns over the issue and in keeping with the Government's principle of Minimum Government and Maximum Governance, the Ministry has issued fresh notifications No. S.O. 988 (E) and No. S.O. 989(E) dated 27.03.2017 wherein, the Central Government intends to provide

- (i) Clarity on the applicability of the threshold exemption limits to all forms of combinations as referred under Section 5 of the Act.
- (ii) Clarity on the methodology to be adopted for calculating the relevant assets and turnover of the target when only a portion or segment or business of one enterprise is being combined with another.

With the issue of these notifications, combinations falling within the threshold limits would not require to be filed before the Competition Commission of India. The reform is in pursuance of the Government's objective of promoting Ease of Doing Business in the country and is expected to make India a more attractive destination for Foreign Direct Investment. The notification is expected to enable greater freedom to industry in taking legitimate business decisions towards further accelerating India's economic growth.

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