

March 23, 2016

MCA ENTENDS EXEMPTIONS UNDER COMPETITION ACT, 2002





The Ministry of Corporate Affairs ("**MCA**") has issued two Notifications on March 4, 2016 amending certain provisions of the Competition Act, 2002 ("**Act**")

GROUP EXEMPTION

A 'Group' is defined for the purposes of Section 5 (*Combination*) of the Act to mean - *two or more enterprises which*, *directly or indirectly*, *are in a position to (i) exercise 26% or more of the voting rights in another enterprise; or (ii) appoint more than 50% of the members of the board of directors in another enterprise; or (iii) control the management or affairs of another enterprise.*



The above definition of Group is significant in determining whether a proposed transaction for **acquisition**, **acquiring of control** or any **merger or amalgamation** by entities within a Group as per the above definition fall within the monetary thresholds set out in Section 5. If such a proposed transaction violates the specified monetary thresholds, then the concerned entity has to approach the Competition Commission of India ("CCI"), to seek approval for the proposed combination.

On March 4, 2011, the MCA had exempted a 'Group' exercising less than 50% (fifty percent) of voting rights in other entity from the provisions of Section 5 of the Act for a period of 5 years. The said period of 5 years expired on March 3, 2016. Thereafter, the MCA on March 4, 2016, extended this exemption for a further period of 5 years i.e. until March 3, 2021.

Therefore, as a corollary, only if the entities in a 'Group' are exercising more than 50% of the voting rights in another enterprise are the said entities required to approach the CCI for seeking approval.

TARGET EXEMPTION

On March 4, 2011, the MCA had exempted any enterprise whose control, shares, voting rights or assets are being acquired and has *either assets of value of not more than Rs. 250 crores in India or turnover of not more than Rs. 750 crores in India* from the provisions of Section 5 for a period of 5 years. Upon the expiry of the said period of 5 years on March 3, 2016, the MCA extended this exemption for a further period of 5 years i.e. until March 3, 2021, while also revising the amounts specified above.

This exemption is now available where any enterprise whose control, shares, voting rights or assets are being acquired and has either *value* of assets not more than Rs. 350 crores in India or turnover of not more than Rs. 1,000 crores in India.

Although the MCA has made the above revisions for the applicability of Target Exemption, there has been no change in the scope of applicability of this Target Exemption being that only acquisition transaction would be entitled to this Target Exemption, and not any transaction involving mergers or amalgamation. It would have perhaps been ideal had the MCA considered extending this Target Exemption to transactions involving mergers and amalgamations.

REVISION OF JURISDICTIONAL THRESHOLDS

The jurisdictional thresholds mentioned in Section 5 of the Act, beyond which the entity will need to seek approval from the CCI, have been revised *vide* Notification No. S.O. **675(E)** dated March 4, 2016. The jurisdictional thresholds with respect to the value of the assets and the value of turnover of the concerned entity / group currently applicable have been doubled (enhanced by 100%) as of March 4, 2016.

Original limits that were applicable were 'assets' of the value more than US\$500 million and 'turnover' more than US\$ 1500 million. Both these limits had to be met. For ease Assets: \$500 million and Turnover \$1500 million.

Vide the notification, the MCA on March 4, 2011, enhanced the value of the assets and the value of the turnover as mentioned in the Act (*for the limited purpose of Section 20(3)*) by 50% percent of the original jurisdictional thresholds mentioned in the Act i.e. **Assets: \$750 million and Turnover \$2250 million**.

On May 30, 2011 certain provisions of the Competition Act (Amendment) Act, 2007 ("**2007 Amendment**") were notified including provisions pertaining to Combinations. The 2007 Amendment amended the jurisdictional thresholds set out in the Act. However, for all practical purposes, the amended Section 5 of the Act had to be read in conjunction with above notification of the MCA which enhanced the value of the assets and turnover by 50% percent. Set out below in Table 1 are the applicable thresholds prior to the notification on March 4, 2016.

	APPLICABLE	ASSETS		TURNOVER					
	ТО								
In India	Individual	Rs. 1,500 Crores		Rs. 4,500 Crores					
	Group	Rs. 6,000 Crores		Rs.18,000 Crores					
In India		Assets		TURNOVER					
and		Total	Minimum	Total	Minimum				
outside			Indian		Indian				
			Component		Component				
	Individual	\$750	Rs. 750	\$2,250	Rs. 2,250				
	Parties	Million	Crores	Million	Crores				
	Group	\$3	Rs. 750	\$9	Rs. 2,250				
		Billion	Crores	Billion	Crores				

Table 1

On March 4, 2016, the MCA enhanced jurisdictional thresholds (*for the limited purpose of Section 20(3)*) by 100%, **Assets: \$1 Billion and Turnover \$3 Billion**. It is clarified that the 100% must be taken of the amounts prescribed under Section 5, and not of the amounts that were enhanced pursuant to March 4, 2011 Notification. Set out below in Table 2 are the jurisdictional / financial thresholds currently applicable.

Table 2

APPLICABLE	ASSETS		TURNOVER						
ТО									
Individual	Rs. 2,000 Crores		Rs. 6,000 Crores						
Group	Rs. 8,000 Crores Rs.24,000 Crores		00 Crores						
	Assets		TURNOVER						
	Total	Minimum	Total	Minimum					
		Indian		Indian					
		Component		Component					
Individual	\$1	Rs. 1,000	\$3	Rs. 3,000					
Parties	Billion	Crores	Billion	Crores					
Group	\$4	Rs. 1,000	\$12	Rs. 3,000					
	Billion	Crores	Billion	Crores					
	TO Individual Group Individual Parties	TOIndividualRs. 2,00GroupRs. 8,00IndividualIndividualIndividual\$1PartiesBillionGroup\$4	TOIndividualRs. 2,000 CroresGroupRs. 8,000 CroresGroupTotalMinimumIndianComponentIndividual\$1PartiesBillionGroup\$4Rs. 1,000	TOIndividualRs. 2,000 CroresRs. 6,000IndividualRs. 2,000 CroresRs. 24,000GroupRs. 8,000 CroresRs. 24,000TotalAssetsTotalTotalMinimumTotalIndianComponentIndividual\$1Rs. 1,000\$3PartiesBillionCroresBillionGroup\$4Rs. 1,000\$12					

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