

De Jure

March 23, 2016

**MCA EXTENDS EXEMPTIONS UNDER
COMPETITION ACT, 2002**



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.

Table 1

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

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 TO | ASSETS | | TURNOVER | |
|-----------------------------|--------------------|------------------|--------------------------|------------------|--------------------------|
| In India | Individual | Rs. 2,000 Crores | | Rs. 6,000 Crores | |
| | Group | Rs. 8,000 Crores | | Rs.24,000 Crores | |
| In India and outside | | ASSETS | | TURNOVER | |
| | | Total | Minimum Indian Component | Total | Minimum Indian Component |
| | Individual Parties | \$1 Billion | Rs. 1,000 Crores | \$3 Billion | Rs. 3,000 Crores |
| | Group | \$4 Billion | Rs. 1,000 Crores | \$12 Billion | Rs. 3,000 Crores |

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