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Draft Rules on exempted transactions under the Competition Act

On March 11, 2024, the Ministry of Corporate Affairs, Government of India, published the Draft Competition Commission of India (Exempted Combination) Rules, 2024 ("**Draft Exemption Rules**") outlining 12 (twelve) categories of transactions that will be exempt from approval requirement of the the Competition Commission of India (**"CCI"**).

The Draft Exemption Rules, once notified, will re-introduce and/or modify the following categories of transactions mentioned in Schedule I of the existing Combination Regulations, which are presently exempt and do not require an approval from the CCI:

1. **Transactions in ordinary course of business:** The acquisitions listed below will qualify as transactions in the ordinary course of business:

   a) acquisition of less than 25% of the total shares or voting rights of a target enterprise by an underwriter or a stockbroker; and
   b) acquisition of less than 10% of the total shares or voting rights of a target enterprise by a mutual fund.

2. **Acquisition of less than 25% shareholding/ voting rights:** Acquisition of shares or voting rights of less than 25% of a target enterprise not leading to acquisition of control of a target enterprise qualify as '*solely as an investment*' ("**SAI**") if:

   a) the acquirer does not acquire the right to appoint a director or an observer on a target enterprise; and
   b) the acquirer does not acquire the right to access the commercially sensitive information ("**CSI**") of a target enterprise; and
   c) there are no overlaps[1] between the business activities of the acquirer group (including its affiliates) and the target enterprise (including its affiliates) (together as "**Parties**") in India.

   It is clarified that, in case of acquisition of less than 10% of the total shares or voting rights of a target enterprise, the CCI will not consider the overlaps between the Parties and hence, the benefit of this exemption can be availed, subject to other 2 (two) conditions being met.

[1] Horizontal, or vertical or complementary overlap.

3. **Acquisition of additional shareholding/ creeping acquisition:**

Scenario 1: *Not leading to more than 25% shareholding/voting rights*

Exempts acquisition of additional shares or voting rights of a target enterprise by an existing shareholder or its group provided, the acquirer or its group:

a) post the acquisition, holds less than 25% shares or voting rights of a target enterprise; and
b) does not acquire control of a target enterprise.

It is clarified that, in case of overlaps between the business activities of the Parties:

i) the exemption will be available, provided the additional/ incremental shareholding acquired by a single or a series of smaller acquisitions does not exceed 5%.
ii) the exemption will not be available, in cases where the additional/ incremental shareholding does not exceed 5% but the shareholding of the acquirer or its group increases from less than 10% prior to the acquisition, to 10% or more after the acquisition.

Scenario 2*: Holds 25% or more but not leading to 50% or more shareholding/ voting rights*

Exempts acquisition of additional shares or voting rights, wherein prior to the acquisition, the acquirer or its group holds at least 25% and post the acquisition, they do not hold 50% or more, provided the acquisition does not result in change in control of a target enterprise.

Scenario 3*: Holds 50% or more and acquiring additional shareholding or voting rights*

Exempts acquisition of shares or voting rights, wherein prior to the acquisition, the acquirer or its group holds at least 50%, provided the acquisition does not result in change in control of a target enterprise.

4. **Asset acquisitions:** Exempts acquisition of:

a) current assets (*such as stock-in-trade, raw materials, stores and spares, trade receivables, etc.*), provided these assets do not constitute the business of a target enterprise;
b) assets not related to acquirer's business activity or made SAI, not leading to control of a target enterprise selling the assets, provided these assets do not represent the substantial business operations of a target enterprise.

5. **Rights/ bonus issue, buyback and stock splits:** Exempts acquisition of shares pursuant to bonus issue, stock splits, consolidation of the face value of shares, buybacks or rights issue provided that such acquisition does not result in change in control of a target enterprise.

6. **Intra-group transactions:** Exempts intra-group: (a) mergers and amalgamations; and (b) asset acquisitions, provided that there is no change in control of a target enterprise. However, no specific exemption for intra-group acquisition of shares/ voting rights is provided.

7. **Demergers:** Exempts demergers where the resulting company issues shares to the demerged company (or its shareholders) in proportion to their existing shareholding in the demerged company.

8. **Acquisition pursuant to merger remedies:** Exempts acquisition of shares, control, voting rights or assets by a purchaser approved by the CCI in accordance with its order directing remedies/ modifications.

9. **Definition of Affiliate modified:** The Draft Exemption Rules propose to modify the definition of '*affiliate*' as shown in the table below:

Test for determining an Affiliate	
Existing Test	**Revised Test**
Direct or indirect shareholding of 10% or more; **or**	10% or more of the shareholding or voting rights of the enterprise; **or**
Right or ability to nominate a director or observer to the board; **or**	Right or ability to have a representation on the board of directors of the enterprise either as a director or as an observer; **or**
Right or ability to exercise any special right (including any advantage of commercial nature with any of the party or its affiliates) that is not available to an ordinary shareholder.	Right or ability to access CSI of the enterprise.

Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team's in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

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19 Practices and 19 Ranked Lawyers	12 Practices and 42 Ranked Partners **IFLR1000 APAC Rankings 2023** --------- Banking & Finance Team of the Year --------- Fintech Team of the Year --------- Restructuring & Insolvency Team of the Year	Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices --------- 11 winning Deals in IBLJ Deals of the Year --------- 12 A List Lawyers in IBLJ Top 100 Lawyer List
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