



EXEMPTED ACQUISITION- INCREASE IN SHAREHOLDING LIMIT

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1. Exempted acquisition- increase in shareholding limit

Threshold limit for acquisition of non-controlling stake in enterprise(s) solely for the purpose of investment or in the ordinary course of business has been enhanced from 15% to 25%.

2. Intra-group mergers/amalgamations

Exemption has been introduced for intra-group mergers or amalgamation between: (i) wholly owned subsidiaries of the parent company *inter-se*, or (ii) wholly owned subsidiary with the parent company. This is in addition to the exemption for intra-group acquisitions already provided under the Combination Regulations.

3. Buy-back of shares and amendment in rights issue exemption

Exemption has been provided for acquisition of non-controlling stake through buy-back of shares. The Combination Regulations earlier had an exemption provision for acquisition in furtherance of rights issue, but only to the extent of the entitled proportion of the shareholder. This restriction has been deleted, and the subscription to rights issue will now be available beyond the shareholder's entitled proportion provided it doesn't lead to change in control over the company.

4. Calculation of threshold in an asset sale

In case of an indirect slump sale, whereby the assets of a company are first transferred to a second company and then the assets/business unit are transferred to a third company, the assets/turnover of the original transferor are also to be included for calculation of the asset/turnover threshold for filing a notice with CCI.

5. Exponential increase in filing fee

The fee for filing notice with the CCI has been increased substantially. For Form I, the fee has been increased almost 20 times to US \$20,000 (*approx.*) and for Form II 4 times to US \$80,000 (*approx.*). CCI has explained that this increase in fee structure is in line with fees charged by other regulatory authorities in India and abroad.

6. Some other procedural changes

- Deletion of list of transactions where only Form I (*Part I*) was required to be filed. This implies that it is now mandatory to file the complete Form I (*Part I and Part II*) in every instance.
- Optional for parties to file Form II. It's recommended to file this form in combinations involving horizontally or vertically aligned entities with combined market share of more than 15% or 25% in each case.
- Post review of Form I, if CCI frames an adverse *prima-facie opinion* and seeks submission of the detailed Form II, it will be considered as a fresh filings and the timing will be computed afresh. This will increase the transaction cost, where timelines are generally crucial.
- Permission to board authorised company secretary to sign Form I and II.
- Form III to be filed along with a certified copy of the executed loan or investment agreement. New sub-regulation whereby CCI may permit filing of Form III even beyond the 7 day period is inconsistent with section 6(5) of the Act, which specifically limits the filing period to 7 days.
- Summary of the proposed combination to be provided with certain non-confidential details/information along with the notice.

PSA view: The increase in the threshold limit for acquisition of non-controlling enterprise is in alignment with the new Takeover Regulations where a similar threshold of 25% is prescribed for making an “open offer” in listed companies. However, acquisitions with future conversion options are also taken into account for computing the 25% under the Combinations Regulations, which is in contrast to the Takeover Regulations. The change with respect to the intra group companies will facilitate consolidation of group companies with lesser statutory compliance. However, the amendment provides partial relief as the exemption only extends to transactions involving wholly owned subsidiaries and not all subsidiaries or group mergers. Further, the erstwhile regulations provided for a definition of “group” while determining any intra-group acquisition. The amendment has curiously deleted this definition leaving stakeholders with little guidance on interpretation of the term “group.” Finally, the change in the calculation of threshold in an asset sale can lead to undesirable circumstances, where, for example, though a small chunk of the business/asset (*which otherwise would not have crossed the prescribed threshold*) might be transferred through the creation of a special purpose vehicle. But on account of the turnover of the original transferor also being used for calculation, this may necessitate filing with CCI.

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