

**RECENT LEGAL DEVELOPMENTS IN
INDIA**

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NEW COMPETITION LAW FROM MID-2008

Liberalisation of Indian economy in 1991 led to a change in the policy of the Government of India curbing monopolistic tendencies to encouraging fair competition. Consequently the Indian Parliament passed the Competition Act 2002 ("Act") to replace the Monopolies and Restrictive Trade Practices Act 1969. The Act established the Competition Commission of India ("Commission") for preventing practices adverse to competition, promoting market competition, and protect consumer interests while ensuring freedom of trade. Many substantive provisions of the Act are not yet fully implemented, particularly the functions of the Commission. The long delay is caused by a Public Interest Litigation before the Supreme Court on the appointment of the Chairperson of the Commission. Following the assurances given before the Supreme Court, the Competition (Amendment) Act 2007 ("Amendment") was passed in September 2007 to usher in a new competition legal regime in India. The Commission is likely to be fully constituted and become totally operational by mid-2008.

Notices of mergers, acquisitions ("M&A") above prescribed threshold levels should be filed with the Commission within 30 days of the approval of the M&A proposal by the concerned Boards of Directors or from the execution of any agreement or other document for M&A.

No combination shall come into effect until 210 days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders approving the combination, whichever is earlier.

A new chapter provides for the organisation, procedures and powers of the Appellate Tribunal composed of a Chairperson and not more than 2 members appointed by the Central Government with jurisdiction to hear and dispose off appeals from the decisions of the Commission. An appeal lies to the Supreme Court from a decision of the Tribunal.

The proximate prospects of the Commission becoming fully functional give hope for the resolution of many competition issues especially global battles for market share in India. It is recently reported that the world (chip) war between the two competing giants, Intel and AMD, has reached India. AMD is contemplating to move the Commission to make a representation on monopoly trade practices in the fast growing microprocessor market, especially at Governmental levels.

ISSUE OF FOREIGN CURRENCY EXCHANGEABLE BONDS (FCEB) BEGINS IN MID-FEBRUARY 2008

In February this year, the Ministry of Finance unlocked another foreign-funds route to India by notifying the Issue of Foreign Currency Exchangeable Bonds (“FCEB”) Scheme 2008 as an “enabling mechanism to permit Indian companies to unlock a part of their holdings in group companies for meeting their financing requirements by issue of Exchangeable Bonds.” Indian companies are allowed to issue Foreign Currency Convertible Bonds (“FCCB”). FCCBs are offered by Indian companies as debt instruments convertible into its own shares to overseas subscribers at a pre-determined price. The crucial difference between the two bonds is that in FCEB a holding company can issue bonds tied to the shares of a subsidiary company.

The minimum maturity of the FCEB shall be five years for purposes of redemption. The exchange option can be exercised at any time before redemption.

EMERGENCE OF REAL ESTATE INVESTMENT TRUST (REIT)

The Securities and Exchange Board of India (“Board”) proposed a Draft of the Real Estate Investment Trust Regulations 2008 and invited public comments.

Real Estate Investment Trust (REIT) is an entity that uses the pooled capital of many investors to purchase and manage income generating property in conjunction with a Real Estate Investment Management Company. Like mutual funds, an investor can purchase units in the REIT for the specific schemes it promotes. With the booming real estate in India, the Board has been concerned with RIETs in India. Instead of providing for REITs within the framework of the Securities and Exchange Board (“SEBI”) (Collective Investment Scheme) Regulations 1999 the Board chose to promulgate a new draft the SEBI (Real Estate Investment Trusts) Regulations 2008 (“Regulations”).

RIET is defined as a trust registered under the Indian Trust Act 1882 and registered with SEBI under the Regulations, whose object is to organise, operate and manage real estate collective investment.

REITS are prohibited from investing in vacant land or engaging or participating in property development activities. Property development activities do not include refurbishment, retrofitting and renovations.

FURTHER LIBERALISATION OF FOREIGN DIRECT INVESTMENT

The Government of India approved a number of long delayed changes in the Foreign Direct Investment ("FDI") policy on 30 January 2008.

Civil Aviation: Foreign airlines are now allowed to invest in cargo airlines and the cap on FDI is raised from 49% to 74%. Subject to sectoral regulations and security clearance, FDI limit in Ground Handling Services is raised from 49 to 74% on the automatic route. 100% FDI on automatic route is now allowed for the Maintenance and Repair Organisations (MRO), flying training institutes, technical training institutions; and helicopter and seaplane services with the approval of the Directorate General of Civil Aviation.

Petroleum and Natural Gas: The earlier condition of compulsory divestment up to 26% equity in favour of an Indian Partner(s) or public within 5 years for actual trading and marketing petroleum products is deleted.

Commodity Exchanges: FDI up to 26%, in the case of Foreign Institutional Investor ("FII") up to 23%, is now allowed subject to the condition that no single investor would hold more than 5%.

Credit Information Companies: FDI up to 49% in Credit Information Companies is allowed subject to the condition of (a) obtaining prior government approval and regulatory clearance from the Reserve Bank of India, and (b) investment by FII will be allowed in the CIC listed at Stock Exchanges with an overall limit of 49% investment. Credit Reference Agencies are deleted from the list of Non Banking Finance Companies and FDI allowed up to 100% on the automatic route.

FDI in Mining of Titanium ore: FDI up to 100% with government approval in mining and mineral separation of titanium bearing minerals and ore, its value addition and integrated activities is allowed.

Industrial Parks and Construction : It is clarified that provisions of Press Release No. 2 (2005) Series, Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Protection, SIA (FC Division) will not apply to (a) Industrial Parks, and (b) FDI in construction development projects for registered FIIs. The clarification will facilitate FII to purchases of shares of Indian real estate companies. PIS, however, applies to secondary market transactions.

Further Information

The texts of the documents referred are on file with Lee & Lee. Should you require any further information or have queries, please do not hesitate to contact Lee & Lee. The contact person is Prof (Retd) L R Penna, Consultant in the India Desk at DID: +65 6557 4812 / Fax: +65 6221 9712 / email: penna@leenlee.com.sg.

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