

BACKGROUND NOTE:

DRAFT COMPETITION COMMISSION OF INDIA (DETERMINATION OF TURNOVER OR INCOME) REGULATIONS, 2023

The Competition Act, 2002 (Act) aims to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India. Section 64(1) of the Act empowers the Competition Commission of India (CCI) to make regulations consistent with the Act and the rules made thereunder for carrying out the purposes of the Act.

The Competition (Amendment) Act, 2023, inter alia, amended Section 27, 48 and Section 64 of the Act empowers the CCI to frame regulations for the purposes of imposition of penalty on enterprise and/or person based on turnover or income of such enterprise and/or person. Further, it has been provided that turnover or income will be determined in the manner as specified by regulations.

The CCI proposes the draft CCI (Determination of Turnover or Income) Regulations, 2023 which provide for the determination of turnover or income for the purposes of Section 27(b) and Section 48 of the Act.

The CCI invites stakeholders to submit written comments on the draft CCI (Determination of Turnover or Income) Regulations, 2023 from 22.12.2023 to 12.01.2024. The comments must be sent only by duly filling the form available on the website of the CCI (<https://www.cci.gov.in/stakeholders-topics-consultations>) .

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**The Competition Commission of India (Determination of Turnover or Income)
Regulations, 2023**

(No. __ of 2023)

New Delhi, the __day of __, 2023

In exercise of the powers conferred by sub-section (1) and clause (fb) and (gd) of sub-section (2) of section 64 read with Explanation to clause (b) of section 27 and clause (c) of Explanation to section 48 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following regulations, namely:-

1. Short Title and Commencement

- (1) These regulations may be called the Competition Commission of India (Determination of Turnover or Income) Regulations, 2023.
- (2) These regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions

- (1) In these regulations, unless the context otherwise requires-
 - (a) “Act” means the Competition Act, 2002 (12 of 2003);
 - (b) “Commission” means the Competition Commission of India established under sub-section (1) of section 7 of the Act;
 - (c) “Chartered Accountant” means a chartered accountant as defined in Explanation (a) to section 35 of the Act;

- (d) “Enterprise” means enterprise as defined under Section 2(h) of the Act and for the purposes of these regulations also includes a person as defined under section 2(l) of the Act;
 - (e) “Turnover” means turnover as defined under section 2(y) of the Act and as explained in Explanation 2 under section 27(b) of the Act.
- (2) Words and expressions used but not defined in these regulations shall have the same meanings respectively as assigned to them in the Act or the rules or regulations framed thereunder or in the Companies Act, 2013 (18 of 2013).

3. Determination of turnover or income for enterprise for the purposes of Section 27 of the Act

- (1) Turnover or income, as the case may be, includes the total value of sales or revenue or receipts, by whatever name called, and other operating income, as per the audited financial statements maintained by such enterprise.
- (2) The turnover or income shall exclude indirect taxes, trade discounts, and intra-group sales, if any.
- (3) In case an enterprise is required to prepare a consolidated financial statement under Section 129 of the Companies Act, 2013 or under any law, turnover or income shall be derived based on such audited consolidated financial statements.
- (4) In case audited financial statements are not available, turnover, as determined above, shall be the amount certified by the statutory auditor of the enterprise and supported by an affidavit by any of the persons authorised to sign financial statements of the enterprise. In case of an enterprise where statutory auditor is not appointed, turnover, as determined above, shall be the amount certified by a Chartered Accountant and supported by an affidavit by any of the persons authorised to sign financial statements of the enterprise.

(5) Turnover or income in foreign currency shall be converted into Indian rupee (INR), which shall be the average of the foreign currency reference rates as published by the Reserve Bank of India, for each of the relevant financial year.

4. Determination of income for individual for the purposes of Sections 27 and 48 of the Act

(1) Income in case of an individual shall be the gross total income as per the Income Tax Returns (ITRs) as prescribed under the Income Tax Act, 1961 and the rules made thereunder.

(2) In case ITRs are not available or tax returns are filed in multiple jurisdictions or not filed in any jurisdiction, income shall be the total income as certified by a Chartered Accountant and supported by an affidavit by such individual.

(3) In case an individual who is not required to file ITR, income shall be the total income as certified by a Chartered Accountant and supported by an affidavit by such individual.

5. Removal of Difficulties

In a situation not provided for in these regulations, or in the matter of their interpretation, the decision of the Commission thereon shall be binding.
