

Info Capsule

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❖ Latest @ ICSI

Feedback on Company Forms in MCA21-V3 Portal

As you are aware, the Ministry of Corporate Affairs w.e.f. August 31, 2022 migrated filing of 9 Company Forms from MCA 21 V2 to V3 Portal.

The Ministry of Corporate Affairs w.e.f. January 23, 2023, has launched second set of Company Forms covering 56 forms on MCA21-V3 Portal for filing purposes. The list of all 56 Company Forms is available on MCA website.

The Institute of Company Secretaries of India, in its attempt to further facilitate the stakeholders and ensure smooth transition and implementation, is sharing your feedback to the Ministry of Corporate Affairs (MCA) on regular basis. Such feedback is constantly and closely monitored by MCA at all levels for timely resolution.

We request you to share your inputs/issues/suggestions on filing of Company Forms in MCA V3 at the link given below:

<https://forms.gle/m5NGoCbt4TibuD196>

We thank you for your continued support and hope for association in the future as well.

❖ Consumer Protection Law

Centre seeks public comments on Draft Guidelines for Prevention and Regulation of Dark Patterns (September 07, 2023)

The Department of Consumer Affairs, Government of India, has sought public comments on Draft Guidelines for Prevention and Regulation of Dark Patterns. Draft Guidelines are placed on the website of the Department of Consumer Affairs and are accessible through the link

<https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Draft%20Guidelines%20for%20Prevention%20and%20Regulation%20of%20Dark%20Patterns%202023.pdf>.

Public comments/suggestions/feedback are solicited and may be provided to the Department within 30 days (until 5th October 2023).

The **draft Guidelines for Prevention and Regulation of Dark Patterns** have been framed after detailed deliberations with all stakeholders including e-commerce platforms, law firms, Government and Voluntary Consumer Organizations (VCO's).

The Department of Consumer Affairs (DoCA) conducted an interactive stakeholders consultation on "Dark Patterns" on 13th June 2023, which was attended by Advertising Standards Council of India (ASCI), various e-commerce platforms, NLU's, Law firms etc. In the meeting, there was a general consensus that Dark Patterns are a cause of concern and need to be dealt with proactively.

The draft guidelines define dark patterns as any practices or deceptive design patterns using UI/UX (user interface/user experience) interactions on any platform; designed to mislead or trick users to do something they originally did not intend or want to do; by subverting or impairing the consumer autonomy, decision making or choice; amounting to misleading advertisement or unfair trade practice or violation of consumer rights.

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1955344>

❖ Competition law

DRAFT CCI (COMBINATIONS) REGULATIONS, 2023(September 05, 2023)

The Competition (Amendment) Act, 2023 (Amendment Act) introduced various changes to the provisions relating to regulations of combinations in the Act. These include (i) a new notification criteria i.e., deal value threshold, for mergers and acquisitions where value of transaction exceeds INR 2000 crore and the enterprises being acquired/ taken control of / merged or amalgamated have substantial business operations in India; (ii) provision for relaxing application of Section 6(2A) of the Act to transactions involving implementation of an open offer or purchase of securities on a regulated stock exchange, subject to certain conditions; (iii) reduction in the overall timeline for assessment of combinations from 210 to 150 days; (iv) introduction of an intermediate time limit of 30 days for forming a prima facie opinion; (v) amendment to the scheme for review of combinations, such as issue of statement of objections by the Commission; and (vi) change in process for proposing modification to the combinations.

In view of the significant changes introduced by the Amendment Act, the CCI proposes the Competition Commission of India (Combinations) Regulations, 2023 (Draft CCI Combinations Regulations 2023), which will repeal and replace the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. The Draft CCI Combinations Regulations 2023, *inter alia*, provide for the following: (a) Value of transaction and criteria for substantial business operations in India; (b) Form of notice for the proposed combination; (c) Exercise of rights in case of open offer and acquisitions on stock exchanges; (d) Amount of fee and mode of payment; (e) Procedure for filing notice and scrutiny of notice; and (f) Procedure for modification to the proposed combination.

The CCI invites stakeholders to submit written comments on the draft Combinations Regulations within 21 (twenty-one) days from 5.09.2023 to 25.09.2023. The comments must be sent only by duly filling the form hosted on the CCI's website at: <https://cci.gov.in/stakeholders-topics-consultations>

For details:

<https://www.cci.gov.in/images/stakeholderstopicconsultations/en/consultation-on-draft-the-competition-commission-of-india-combinations-regulations-20231693885865.pdf>

❖ Market Watch

Stock Market Indices as on 08.09.2023	
S & P BSE Sensex	66598.91 (+333.35)
Nifty 50	19819.95 (+92.90)

Foreign Exchange Rates as on 8.09.2023 <i>(https://m.rbi.org.in/scripts/ReferenceRateArchive.aspx)</i>			
INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR/ 1 JPY
83.15	89.14	103.93	.5650

❖ **Pronouncement**

06.09.2023	NHPC LTD. V. State of Himachal Pradesh Secretary & Ors.	Supreme Court
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Principles for abrogation of Law to remove the basis of Judgement by the Legislature

In this case, the Supreme Court has in the Judgement decided that a legislature cannot directly set aside a judicial decision. However, when a competent legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the same is a valid legislative exercise provided it does not transgress on any other constitutional limitation. Such a legislative device which removes the vice in the previous legislation which has been declared unconstitutional is not considered to be an encroachment on judicial power but an instance of abrogation recognised under the Constitution of India.

The Judgement of the Supreme Court in the case of *Madras Bar Association vs. Union of India*, (2022) 12 SCC 455 was quoted in this case which laid down the principles, as regards the permissibility of abrogation, to remove the basis of a judgment. These principles are as under:

“43. The permissibility of a legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:

a) The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. (Lohia Machines Ltd. and Anr. v. Union of India and Ors., (1985) 2 SCC 1987).

b) The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.

c) Nullification of mandamus by an enactment would be impermissible legislative exercise (See: S.R. Bhagwat and Ors. v. State of Mysore, (1995) 6 SCC 16). Even interim directions cannot be reversed by a legislative veto (See: Cauvery Water Disputes Tribunal, 1993 Supp (1) SCC 96 and Medical Council of India v. State of Kerala and Ors., (2019) 13 SCC 185).

d) Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the Rule of law and of Article 14 of the Constitution of India.”

For details:

https://main.sci.gov.in/supremecourt/2009/12907/12907_2009_15_1501_46762_Judgement_06-Sep-2023.pdf

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu,

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