

Competition News Alert

August 24, 2017



CCI amends Lesser Penalty Regulations

The Competition Commission of India (“CCI”) vide a Gazette [Notification](#) (published in the Gazette of India) on August 22, 2017, (“**the amendment**”) has published “The Competition Commission of India (Lesser Penalty) Amendment Regulations, 2017 (No.1 of 2017), amending the existing Competition Commission of India (Lesser Penalty) Regulations, 2009 (“**Leniency Regulations**”), in keeping pace with some of the best practices in other jurisdictions. The amendments are largely in line with the draft amendments issued in March 2017 indicating that the CCI is now taking initiatives to streamline the procedures for applying for leniency on the basis of its experience in some ongoing matters.

This alert briefly captures the key amendments and the potential implications on the effectiveness of the leniency Regulations in India.

The major changes, *inter alia*, are (i) allowing individuals to seek leniency, which was not existing earlier and (ii) expanding the number of “markers” that can be granted to leniency applicants, which were earlier restricted to only three markers.

Clause wise changes in the Leniency Regulations are discussed below.

Changes in the Leniency Regulations –

I. In Regulation 2: Definitions

- (a) In sub regulation (1), for clause (b) the words “*and includes an individual who has been involved in the cartel on behalf of an enterprise*” has been added/ inserted.
- (b) A new proviso in sub regulation (1) after clause (g), clause (ga) has been inserted which provides for the definition of the term “Party”. The said term is defined as
 - (ga) “Party” includes an enterprise or person defined in clauses (h) and (l) of Section 2 of the Act, respectively, against whom inquiry or proceedings is instituted and shall include the Central Government, any State Government or any statutory authority and shall also include any person permitted to join the proceedings.”
- (c) In sub regulation (2), “the Companies Act, 1956” has been replaced with “the Companies Act, 2013”.

2. In Regulation 3: Conditions for Lesser Penalty

- (a) In sub regulation (1), in clause (b), the words, violations under sub section (3) has been substituted with “*contravention of the provisions*”
- (b) After sub regulation (1), sub-regulation (1A), has been inserted:
 - (1A) “Where the applicant is an enterprise, it shall also provide the names of the individuals who have been involved in the cartel on its behalf and for whom lesser penalty is sought by such an enterprise”

3. In Regulation 4: Grant of for lesser Penalty

Regulation has been replaced with the highlighted (in bold) inclusions:

“ Subject to the conditions laid down in regulation 3, the applicant **and individual mentioned in sub-regulation (IA) of regulation 3 shall be granted benefit of lesser penalty than leviable under clause section 27(b) and section 48 of the Act**, as the Commission may decide, in the following manner, namely;—

- (a) **The applicant and individual mentioned in sub-regulation (IA) of regulation 3** may be granted benefit of reduction in penalty up to or equal to one hundred percent, if the applicant is the first to make a vital disclosure by submitting evidence of a cartel, enabling the Commission to form a prima-facie opinion regarding the existence of a cartel which is alleged to have contravened the provisions of section 3 of the Act and the Commission did not, at the time of application, have sufficient evidence to form such an opinion:

Provided that the Commission may also grant benefit of reduction in penalty up to or equal to one hundred per cent, **to the applicant and individual mentioned in sub-regulation (IA) of regulation 3**, if the applicant is the first to make a vital disclosure by submitting such evidence which establishes the contravention of the provisions of section 3 of the Act, by a cartel, in a matter under investigation and the Commission, or the Director General did not, at the time of application, have sufficient evidence to establish such a contravention.

- (b) The applicants who are subsequent to the first applicant may also be granted benefit of reduction in penalty on making a disclosure by submitting evidence, which in the opinion of the Commission, may provide significant added value to the evidence already in possession of the Commission or the Director General, as the case may be, to establish the existence of the cartel, which is alleged to have contravened the provisions of section 3 of the Act.

Explanation.—for the purposes of these regulations, “added value” means the extent to which the evidence provided enhances the ability of the Commission or the Director General, as the case may be, to establish the existence of a cartel, which is alleged to have contravened the provisions of section 3 of the Act.

- (c) The reduction in monetary penalty referred to in clause (b) shall be in the following order—
- (i) **the applicant and individual mentioned in sub-regulation (IA) of regulation 3** marked as second in the priority status may be granted reduction of monetary penalty up to or equal to fifty percent of the full penalty leviable;
- (ii) **the applicant and individual mentioned in sub-regulation (IA) of regulation 3** marked as third or subsequent in the priority status may be granted reduction of penalty up to or equal to thirty percent of the full penalty leviable.”

4. In Regulation 5: Procedure for grant of for lesser penalty

- (a) In sub-regulation (I), the words, “within three working days”, has been substituted with the words “within five working days”.

- (b) in sub-regulation (4), the words, “within a period of fifteen days of the first contact”, has been substituted with the words, “within a period of fifteen days **from the date of communication of direction under sub-regulation (2)**”.

5. In Regulation 6: Confidentially

- (a) after regulation 6, a new regulation (6A) shall be inserted :—

“6A. Inspection of documents.—Notwithstanding the confidentiality under regulation 6, the provisions of sub-regulations (1), (3) and (4) of regulation 37 and the provisions of regulation 50 of the Competition Commission of India (General) Regulations, 2009, to the extent they relate to inspection, shall become applicable to the non-confidential version of the information, documents and evidence furnished by the applicant under regulation 5, after the Commission forwards a copy of the report containing the findings of the Director General to the party concerned: Provided that such party shall not disclose the information, documents and evidence so obtained other than for the proceedings under the Act.”

6. In the Schedule to the Leniency Regulations in clause (g), the words, “affected by the alleged cartel”, has been substituted with the words “affected in India by the alleged cartel”.

Comment: The amendment in the Leniency Regulations were in fact overdue considering the growing number of cartel cases being investigated by CCI. After its [first decision in the case of Brushless DC Fans](#), CCI has now made leniency more attractive, by making individuals eligible to get benefit from the leniency provisions. This will encourage employees within organisations to come forward to blow the whistle and may eventually make the leniency scheme a success, which has been a nonstarter since last eight years of enforcement of the Act. This is indeed a welcome step.

For any further details and clarifications, please feel free to write to:

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