A.R.A. LAW
ADVOCATES & SOLICITORS

LEGAL E
Your peek into the Indian le

VOL. XIV- DECEMBER 2008 ISSUE 1 www.aralaw.com

CAPITAL MARKETS

TOPICS

» Regulators Permit Securities Lending And Borrowing

SEBI framework for securities lending and borrowing

In order to provide a mechanism for borrowing of securities to enable settlement of securities sold short, SEBI has also decided to put in place a full-fledged securities lending and borrowing (☐SLB☐) scheme for all market participants in the Indian securities market under the over-all framework of ☐Securities Lending Scheme, 1997☐ (☐SLS 1997☐) of SEBI. The main features of the scheme are as follows:

1. Operation of the SLB scheme: SLB would be operated through the Clearing Corporation / the Clearing House of stock exchanges having nation-wide terminals which would be registered as Approved Intermediaries (☐AIs☐) under the SLS 1997. It would take place on an automated, screen based, order-matching platform which will be provided by the AIs. This platform would be independent of the other trading platforms.
2. Eligible Securities: To begin with, the securities traded in F&O segment would be eligible for lending & borrowing under the scheme.
3. Permitted lenders / borrowers: All categories of investors including retail, institutional etc. would be permitted to borrow and lend securities. The borrowers and lenders would access the platform for lending / borrowing set up by the AIs through the Clearing Members (☐CMs☐) (including banks and custodians) who are authorized by the AIs in this regard.
4. Documentation: The AIs, CMs and the clients would enter into an agreement (which may have one or more parts) specifying the rights, responsibilities and obligations of the parties to the agreement. The agreement would include the basic conditions for lending and borrowing of securities as prescribed under the scheme. AIs may also include suitable conditions in the agreement to have proper execution, risk management and settlement of lending and borrowing transactions with clearing member and client. While the major responsibility of ensuring compliance with ☐Know Your Client☐ (☐KYC☐) norms in respect of the clients rests with CMs, the exact role of AIs/CMs vis-à-vis the clients in this regard would be elaborated in the agreement between the AI/CMs/clients. In this regard, there would be one master agreement with two individual parts to the same. The first part of the agreement would be between the AIs and the CMs and the second part of the agreement would be between the CMs

and the clients.

5. Tenure: The tenure of lending / borrowing would be fixed as standardized contracts. To start with, contracts with tenure of 7 trading days would be introduced.
6. Settlement Cycle: The settlement cycle for SLB transactions would be on a T+1 basis. The settlement of lending and borrowing transactions would be independent of normal market settlement. The settlement of the lending and borrowing transactions would be done on a gross basis at the level of the clients i.e. no netting of transactions at any level will be permitted. AIs would frame suitable risk management systems to guarantee delivery of securities to borrower and return of securities to the lender.
7. Failure to delivery securities: In the case of lender failing to deliver securities to the AI or borrower failing to return securities to the AI, the AI would conduct an auction for obtaining securities. In the event of exceptional circumstances resulting in non-availability of securities in auction, such transactions would be financially closed-out at appropriate rates, which may be more than the rates applicable for the normal close-out of transactions, so as to act as a sufficient deterrent against failure to deliver securities.
8. Position Limit: Position limits at the level of market, CM and client would be decided from time to time by AIs in consultation with SEBI. To begin with (a) the market□wide position limits for SLB transactions shall be 10% of the free-float capital of the company in terms of number of shares (b) No clearing member shall have open position of more than 10% of the market-wide position limits or Rs. 50 crore (base value), whichever is lower (c) For a FII/MF, the position limits shall be the same as of a clearing member (d) The client level position limits shall be not more than 1% of the market-wide position limits.
9. Miscellaneous: Any borrowing/lending and return of securities would not amount to purchase/disposal/transfer of the same for the purpose of compliance with the extant FDI/FII limits and the norms regarding acquisition of shares/disclosure requirements specified under the various Regulations of SEBI.

In consultation with Government of India and SEBI, RBI has also decided to permit Foreign Institutional Investors (□FIIs□) registered with SEBI and sub-accounts of FIIs to short sell, lend and borrow equity shares of Indian companies. This permission is subject to the following conditions:

1. FII participation in short selling as well as borrowing / lending of equity shares will be subject to the current FDI policy and short selling of equity shares by FIIs shall not be permitted for equity shares which are in the ban list and / or caution list of RBI.
2. Borrowing of equity shares by FIIs shall only be for the purpose of delivery into short sale.
3. The margin / collateral shall be maintained by FIIs only in the form of cash. No interest shall be paid to the FII on such margin/collateral.
4. The designated custodian banks shall separately report all transactions pertaining to short selling of equity shares and lending and borrowing of equity shares by FIIs in their daily reporting with a suitable remark (short sold / lent / borrowed equity shares) for the purpose of monitoring by RBI.

Short selling, lending and borrowing of equity shares of Indian companies shall be subject to such conditions as may be prescribed in that behalf by the Reserve Bank and the SEBI / other regulatory agencies from time to time.

[TOP]

» SEBI Moots Regulation of Investment Advisers

The Securities and Exchange Board of India (SEBI) does not currently require registration and

regulation of Investment Advisers as a separate class of intermediaries. Investment advisory services rendered by market intermediaries such as portfolio managers, stock brokers, merchant bankers and credit rating agencies are regulated by SEBI through separate regulations. The Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 (□SEBI PMS Regulations□), in particular, cover investment advisers who have discretion over and hold custody of client assets.

However, a large number of entities not having discretion over and custody of client assets have been rendering investment advice to specific clients. This includes entities calling themselves financial/investment consultants or advisers who are engaged in distribution of retail financial products, scheduled banks, Certified Financial Planners, Chartered Accountants, Tax Consultants, etc. Further, a number of such entities render investment advice on publicly accessible media like television, newspapers, radio, internet, mobile phone services, etc. The SEBI□s draft □SEBI (Investment Advisers) Regulations, 2007□ released recently vide its notification dated October 10, 2007, aims to bring this yet unregulated group under its regulatory overview by requiring the Investment Adviser to obtain a certificate of registration from SEBI.

The term □Investment Adviser□ has been defined to mean □any person who for consideration (i.e. any form of economic benefit, and includes non-cash consideration in any form whatsoever, whether received or receivable directly or indirectly from any person) is engaged in the business of providing investment advice to others, either directly or through publications or writings or electronic mails or who, for consideration and as a part of regular business, issues or publishes reports or analyses containing investment advice□. As such, this definition is rather wide and seeks to govern any person who directly or indirectly provides investment advice for consideration.

The draft regulations require the Investment Adviser to be a member of a Self Regulatory Organization (SRO) of the likes of AMFI in Mutual Funds Industry, which are governed by the SEBI (Self Regulatory Organisations) Regulations, 2004. Application for registration with SEBI needs to be made in the prescribed format to the SRO of which the applicant is a member which would be forwarded by the SRO to SEBI along with its recommendations. Thus, SEBI proposes to empower the SROs as the first level regulator to monitor the activities of the yet unregulated Investment Advisers. Though the form and nature of such SROs is yet to be formalized, the idea is to decentralize the monitoring of this segment of intermediaries.

□Investment advice□ has been defined to mean (a) advice as to value of securities; or (b) as to the advisability of investing in, purchasing, selling or otherwise dealing in securities. However, unless the context otherwise requires, the following have been excluded from the definition of □investment advice□ - (i) advice which is solely incidental to some other business or profession is given only to the client of the person in the course of such other business or profession and does not specify any particular securities; and (ii) any advice contained in a newspaper, journal, magazine or other periodical publication or given in any service consisting of radio broadcast or television transmission or a similar service in the internet or electronic media whose principal purpose is neither that of providing □investment advice□ or that of soliciting, leading or enabling persons to buy, sell or otherwise deal in securities.

However, some concerns have been raised on the exclusion of print media from the definition of Investment Adviser. There is a possibility that some investment advisers could start operating under the cover of a print or electronic medium so that they are not hauled up for not complying with the letter of the proposed regulations.

A number of fiduciary responsibilities have also been vested on the Investment Adviser. The Investment Adviser must □ (a) act in fiduciary capacity towards its clients and disclose all conflicts of interests as

and when they arise or seem likely; (b) not divulge to anybody, either orally or in writing, directly or indirectly, any confidential information about it clients without taking prior written permission of its clients except where such disclosure is required under compliance of any law; (c) disclose to every prospective client all material information about itself, its business, its disciplinary history, the terms and conditions on which it offers advisory services, its affiliations with other intermediaries; (d) before recommending a security, disclose all commissions and rewards that it will receive if the client chooses the recommended security; (e) before recommending the services of a stock broker or other intermediary to a client, disclose all commission and rewards that it will receive if the client chooses to avail the services of such intermediary; (f) comply with the bye-laws, rules and governing norms of every self-regulatory organization of which it is a member.

The draft regulations do not put any restrictions on fees to be charged to the clients. It seems the objective is to provide flexibility to the parties to structure their relationship on mutually agreed terms as it does not lay any kind of restrictions on fees or the nature of contract.

The consequential proposed amendments to SEBI PMS Regulations to exclude the word ☐advice☐ from the definition of portfolio manager attempts to avoid the overlap between the SEBI PMS Regulations and the proposed regulations.

There is also a need to determine the scope and applicability of the proposed regulation vis-à-vis foreign Investment Advisers. This issue has become more relevant in the recent times wherein the exchange controls have laws have been relaxed to allow Indian residents to invest in foreign securities and there are several foreign intermediaries marketing foreign investment products to Indian residents. From an investor viewpoint, SEBI may consider extending the applicability of these guidelines to such foreign advisers.

In India, there have been several individuals and entities engaged in rendering of investment advisery services in some or the other form, without having the capability of effectively and efficiently rendering the same. The proposed SEBI Regulations shall not only restrict the inefficient and non-compliant advisers from rendering the investment advisery services, but also facilitate the ultimate investors to take intelligent and informed investment decisions by availing the authentic & regulated investment advisery services.

Last but not the least, it remains to be seen as to how efficiently the proposed regulation is implemented once it become law. SEBI and the SROs would need to develop adequate resources to identify and regulate the lakhs of Investment Advisers operating in various forms across the country.

[TOP]

» Liberalised Remittance Scheme for Resident Individuals

In the wake of the rate cut by the US Fed, India is witnessing a tremendous pressure of foreign exchange inflows in India. With a view to ease this pressure, the Reserve Bank of India has liberalized the foreign exchange rules and now permits Indian companies to invest more funds overseas without its prior permission.

The Reserve Bank of India vide its press release dated 25 September 2007, has permitted Indian companies to invest in joint ventures or their wholly owned subsidiaries overseas up to 400 per cent of their net worth under the automatic route as against the previous limit of 300 per cent. The enhanced

limit will also be available to registered partnership firms.

The Indian listed companies☐ limit for portfolio investment abroad has been increased from 35 per cent of the net worth to 50 per cent. RBI has also dispensed the requirement of 10 per cent reciprocal share holding in the listed Indian companies by overseas companies for the purpose of portfolio investment abroad by Indian listed companies.

The existing limit for prepayment of External Commercial Borrowings (☐ECBs☐) without the RBI approval has been increased from USD 400 million to USD 500 million, subject to compliance with the minimum average maturity period as applicable to the loan.

The aggregate ceiling for overseas investments by mutual funds, registered with SEBI, has been raised from USD 4 billion to USD 5 billion. In addition, the existing facility of investing up to USD 1 billion in overseas Exchange Traded Funds, as may be permitted by SEBI by a limited number of qualified Indian mutual funds, would continue.

RBI has also enhanced the limit under the ☐Liberalised Remittance Scheme for Resident Individuals☐ from USD 100,000 to USD 200,000 per financial year.

In October 2007, the government has further confirmed that it may consider further easing of the outflows. As a result, the hike in this ceiling level to UD$ 200,000 could also see some relaxation. However, this could be mainly on the procedural front or by way of a broadening of instruments in which these funds are allowed to be invested in. At present, the scheme allows individuals to remit it only for the specific purpose of investing in assets like real estate or shares or park it with banks. However, there is no clarity on the instruments in which an individual can park these funds.

overseas investments by mutual funds, registered with SEBI, has been raised from USD 4 billion to USD 5 billion. In addition, the existing facility of investing up to USD 1 billion in overseas Exchange Traded Funds, as may be permitted by SEBI by a limited number of qualified Indian mutual funds, would continue.

[TOP]

» Legal Snapshots

FIIs may face touch entry norms

It has been reported that the Ministry of Finance wants to restrict investments by FIIs from countries whose market regulatory structure is not compliant with principles laid down by the International Organisation of Security Commissions (IOSCO). Drawing from the Ashok Lahiri committee recommendations, the Finance Ministry, which had earlier asked SEBI to prepare a negative list of tax havens, has asked the stock market regulator to prepare a list of non-IOSCO jurisdictions.

The move is aimed at ensuring that an entity investing in India was regulated by a credible regulator back home, which followed internationally-accepted principles of due diligence.

A country becomes a tax haven only because of a favourable double taxation avoidance agreement with India. A tax haven can lose its status with changes in the tax treaty. While a country which is not a tax haven may not necessarily have a robust security markets regulatory structure in conformity with global best practices, a tax haven, in some cases, could follow global best practices in its security market

regulations.

The Spain-headquartered IOSCO is the international standard-setter for securities markets with its norms applicable in more than 90% of world□s securities markets. All IOSCO members have to sign a memorandum of understanding, follow the principles endorsed by the body and facilitate exchange of information among the international community of securities regulators. The organisation follows a comprehensive methodology which enables an objective assessment of the level of implementation of the IOSCO principles in the jurisdictions of its members and the development of practical action plans to correct identified deficiencies.

Incidentally, market regulators in some popular tax havens including Mauritius, Cyprus and British Virgin Islands have MoUs with IOSCO. The majority of the foreign investment into the securities market in India comes from Mauritius because of the existence of a favourable tax treaty between the two countries. While SEBI is an associate member, Forwards Markets Commission of Mauritius is an ordinary member of IOSCO which was set up in 1983.

SEBI amends DIP Guidelines to facilitate development of a primary market for corporate bond market

In order to facilitate the development of a vibrant primary market for corporate bonds in India, SEBI has amended certain provisions of the SEBI (Disclosure and Investor Protection) Guidelines, 2000. The following are the major amendments:

1. Requirement of Credit Rating: For public/ rights issues of debt instruments credit rating from one credit rating agency would be sufficient.
2. Below Investment Grade debt instruments: SEBI (Disclosure and Investor Protection) Guidelines, 2000 currently require that the debt instruments issued through a public/rights issue shall be of at least investment grade. In a disclosure based regime, it should be left to the investor to decide whether or not to invest in a non-investment grade debt instrument. Given this, and in order to develop market for debt instruments, it has been decided to allow issuance of bonds which are below investment grade to the public to suit the risk/return appetite of investors.
3. Removal of Structural Restrictions: In order to afford issuers with desired flexibility in structuring of instruments to suit their requirements, it has been decided that structural restrictions currently placed on debt instruments such as those on maturity, put/call option on conversion, etc shall be removed.

SEBI amends DIP Guidelines.

Securities and Exchange Board of India (SEBI) has amended the SEBI (Disclosure and Investor Protection) Guidelines, 2000 vide circular dated November 29, 2007. The highlights of the amendments are:

1. Listed companies satisfying specified requirements can make Fast Track Issues through Follow-on Public Offerings and Rights Issues. The eligibility criteria for the purpose, inter alia, include minimum market capitalisation of public holding, trading turnover, track record of compliance with listing requirements and investor grievance redressal etc.
2. All categories of investors to apply for IDR issues subject to at least 50% of the issue being subscribed by Qualified Institutional Buyers (QIBs). The minimum application value in IDR issues has been reduced to Rs.20,000/-.
3. Quoting of PAN in application forms for public/ rights issues has been made mandatory,

irrespective of the value of application.

4. Companies making public issues are permitted to issue securities to retail individual investors / retail individual shareholders at a discounted price, provided that such discount does not exceed 10% of the price at which securities are issued to other categories of public. For the purpose, ☐retail individual shareholder☐ has been defined to mean a shareholder (i) whose shareholding is of value not exceeding Rs. 1,00,000/- as on the day immediately preceding the record date, and (ii) who makes application or bids in a public issue for value not exceeding Rs 1,00,000/-.
5. Application by shareholders of listed companies under the reserved quota has been restricted to retail individual shareholders;
6. The special dispensations given to DFIs have been removed by deleting the chapter on ☐Guidelines for Issue of Capital by DFIs☐ from SEBI (DIP) Guidelines.

Finance Ministry issues guidelines for computation of fair market value of ESOPs

The Finance Ministry has recently brought out guidelines for computation of fair market value (FMV) of employee stock options (ESOPs) for the purpose of levy of fringe benefit tax (FBT). The Annual Budget 2007-08 had specified that the value of ESOPs for the purpose of levy of FBT would be the FMV of the ESOPs on the date of vesting of the options as reduced by the amount actually paid or recovered from the employee.

The Finance Ministry has now spelt out the computation guidelines for FMV on the basis of whether the shares in the company, on the date of vesting of the option, are listed in a recognised stock exchange or not.

Under the said Guidelines, in cases, where the shares of a company are not listed in a recognised stock exchange, the Central Board of Direct Taxes (CBDT) has said that the FMV would be the value of the share in the company as determined by a merchant banker on the ☐specified date☐ (date of vesting of option or any date not more than 180 days earlier than the vesting date).

For shares of company that is listed in a recognised stock exchange, the FMV would be the average of the opening price and closing price of the share on the vesting date on that stock exchange. In situations where, the shares are listed in more than one recognised stock exchange, the FMV would be the average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the shares.

Many tax experts contended that valuation by a third party, merchant banker in the case of unlisted shares, would lead to subjectivity and prone to challenges.

SEBI to make FII registration public

It has been reported that The Securities and Exchange Board of India (SEBI) will soon make public the registration process for foreign portfolio investors. The stock market regulator plans to put on its website the process, besides details of all applications received from FIIs and the status of approval. This may be similar to what it does in the case of public offerings, where details are available to all investors.

This move has been decided in response to criticisms from investors that there is an undue delay on the part of SEBI in registering FIIs. While currently around 1,100 foreign portfolio investors are registered with SEBI as FIIs, many more are waiting in the wings for approval. Typically, the regulator looks for, among other things, the track record of the entity seeking to enter the local market, the top five

investors of that FII, and where it feels necessary, seeks regulatory inputs from overseas regulators as well.

Many foreign investors have justified taking recourse to investing in the Indian market through participatory notes route due to the delay in obtaining approval for FII / sub-account registration with SEBI. A more transparent system for FII / sub-account registration is bound to resonate positively with foreign investors.

Indian enters into protocol with UAE Government to amend India-UAE Tax Treaty.

The Government of India had entered into the Double Taxation Avoidance Agreement (☐the Tax Treaty☐) with the Government of the UAE which came into effect in India from 1 April 1994. The Tax Treaty has been the subject matter of considerable deliberations primarily on account of contradictory verdicts issued by various judicial bodies in India.

The debate centers around the UAE tax regime, which does not tax its citizens though it does have a Tax Treaty with India. This raised doubts whether a person who does not pay tax in UAE can be considered a resident there and whether he is entitled to the Tax Treaty benefit.

The Government of India has vide its Notification No. 282/2007, dated 28 November 2007 notified the Protocol with the Government of UAE. The main features of the Protocol are as follows:

1. The Government of India has vide its Notification No. 282/2007, dated 28 November 2007 notified the Protocol with the Government of UAE. The main features of the Protocol are as follows:
2. The Protocol amending the India-UAE Tax Treaty will come into effect from 1 April 2008 and accordingly apply from Financial Year 2008-09 (Assessment Year 2009-10).
3. The definition of ☐resident of a Contracting State☐ has been amended to provide that a person will be considered a ☐resident☐ of India if he under the laws of India is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature. However, he will not be considered a ☐resident☐ of India if he is liable to tax in India only in respect of income sourced in India. A person will be considered as a ☐resident☐ of UAE, if he is an individual who is present in the UAE for a period or periods aggregating to at least 183 days in the calendar year concerned, and a company which is incorporated in the UAE and is managed and controlled wholly in UAE. Thus, considering that there is no tax liability in the UAE, the duration of the stay in UAE has been made a criterion for determining residency rather than the factors which would determine the fiscal domicile of such a person such as domicile, place of management, etc.
4. The expenses available as deductions in determining the profits of the Permanent Establishment (PE) including executive and general administrative expenses have been made subject to the limitations of the domestic tax laws.
5. Dividends will be taxed at 10 percent in the hands of a beneficial owner
6. Capital gains on sale of shares will be taxed in the country of which the company is a resident. Capital gains from sale of shares of a company whose property principally comprised of immovable property will be taxed in the country where such property is situated. However, capital gains from sale of any other property for e.g. Government securities, debentures, bonds, etc. would continue to be taxed in the country of which the seller is a resident. Capital gains derived by a Government from the other country has been exempted from taxation.
7. The Protocol introduces the Limitation of Benefit (LOB) clause in the India-UAE Tax Treaty wherein it is provided that an entity which is a resident of a country shall not be entitled to the benefits of this Tax Treaty if the main or one of the main purposes of the creation of such an

entity was to obtain the benefits of this Tax Treaty which would not be otherwise available. It is also provided that a legal entity not having bonafide business will also be covered by the said Limitation of Benefit clause.

8. The Tax Treaty provides that a PE, for tax purposes, will be treated at par with an enterprise of that country, carrying on the same activities in the same circumstances or under the same conditions. The Protocol has clarified that this provision will however not prevent any country from charging a higher rate of tax on the profits of a PE as compared to the rate of tax charged on the profits of a similar domestic company. This provision is not in conflict with the provisions dealing with deductible expenditure from business profits.

SEBI to allow short-selling by Mutual Funds

SEBI has amended the SEBI (Mutual Funds) Regulations, 1996 to enable Mutual Funds to engage in short-selling of securities and lending & borrowing of securities. The SEBI (Mutual Funds) (Second Amendment) Regulations, 2007 which bring about the said enabling provisions have been notified by SEBI on November 16, 2007 from which date the said amendment shall come into effect. Earlier SEBI had banned short-selling as it feared a speculative sell off could depress the markets.

SEBI Board approves New Derivative Products:

Based on the interim recommendations made by the SEBI Committee on Derivatives headed by Prof. M. Rammohan Rao, the SEBI has approved introduction of new derivative products for the Indian market. The new derivative products introduced shall be relating to:

1. Mini-contracts on equity indices,
2. Options with longer life/tenure,
3. Volatility index and F&O contracts,
4. Options on Futures,
5. Bond Indices and F&O contracts,
6. Exchange-traded currency (foreign exchange) Futures & Options, and
7. Introduction of exchange-traded products to cater to different investment strategies.

RBI amends Anti-Money Laundering Guidelines, October 17, 2007

RBI has amended the Anti-Money Laundering Guidelines vide its Circular dated October 17, 2007. Following are the amendments:

- The limit for requests for payment in cash by foreign visitors/ NRI□s has been extended from USD 2000 to USD 3000 or its equivalent.
- Further PAN card will be accepted as a suitable document for establishing the relationship with the company/partnership firm.

Standing Committee on Commerce invites suggestions on Trade Marks (Amendment) Bill 2007

The Trade Marks (Amendment) Bill, 2007, introduced in the Lok Sabha has been referred to the Department-related parliamentary Standing Committee on Commerce. The main aim of the bill is to incorporate the obligations under the Madrid Agreement Concerning the International Registration of Marks, 1989, as amended on October 3, 2006 (Madrid Protocol). The Bill seeks to amend the Trade Marks Act, 1999 to:

incorporate a new Chapter IVA empowering the Registrar of Trade Marks to deal with international applications originating from India as well as those received from the International Bureau and maintain record of international registrations;

- prescribe a period of 18 months for the registration of trademarks under Section 23 of the Trade Marks Act;
- reduce the time-period of filing a notice of opposition of published applications, from four months to three months;
- prescribe a period of 18 months for the registration of trademarks under Section 23 of the Trade Marks Act;
- omit chapter X of the Trade Marks Act, dealing with special provisions for textile goods;
- The Committee has decided to invite memoranda containing views of the individuals/organizations, etc. interested in the subject matter of the Bill and also to hear oral evidence on the subject;

The Committee has decided to invite memoranda containing views of the individuals/organizations, etc. interested in the subject matter of the Bill and also to hear oral evidence on the subject.

Parliament passes Competition Bill

Both the Houses of the Parliament have passed Competition (Amendment) Bill-2007. It is expected that the Government may soon notify the Rules under the Act and India shall soon have the Competition Commission of India (CCI). The main highlights of the Amendments are:

The chief function of the CCI will be to act as an expert body which would function as a market regulator for preventing and regulating anti-competitive practices. The Judicial powers which were earlier granted to the CCI are now being taken away.

A three member Competition Appellate Tribunal (CAT) shall be set up to disposes of the appeals from the orders of the CCI. It will be a quasi-judicial body, headed by a person who is or has been a justice of the Supreme Court or the Chief Justice of a High Court. The earlier provision of direct appeals to Supreme Court on the decisions of the CCI has been done away with.

Any combination (mergers and amalgamations) amongst companies, groups or persons, should be intimated to the CCI. Earlier the intimation was not compulsory. Such combination has to be intimated only if it is above a threshold limit.

The Monopolies and Restrictive Trade Practices Commission (MRTPC) is to continue for a period of two years after constitution of Competition Commission, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969. After the period of two years, the MRTPC shall be dissolved.

[TOP]

Rajesh N. Begur
Managing Partner
A.R.A LAW
Advocates & Solicitors
E-mail : **rajesh@aralaw.com**

Ketki Bhatia
Subhrarag Mukherjee
Jaina
Kaku

[TOP]

A.R.A. LAW - Advocates & Solicitors

Mumbai Office:
3/F Mahatma Gandhi Memorial Bldg.,
7, Netaji Subhash Road, Charni Road (West),
Mumbai - 400 002.
Tel: (+91 22) 2281 1700
Fax : (+91 22) 2284 1800
E-mail: bom@aralaw.com

Bangalore Office:
237, "Sumitra", 2' C Cross,
1st Main, II Stage, Domlur,
Bangalore - 560 071.
Tel: (+91 80) 535 1619/535 3599
Telefax: (+91 80) 535 2708
Email: blr@aralaw.com

LEGAL EYE is published by A.R.A. LAW for private circulation only.

DISCLAIMER

Legal Eye is not intended as a source of advertising or solicitation and the contents of the same should not be construed as legal advice. Readers should take specific advice from a qualified professional when dealing with specific situations and should not consider this as an invitation for a lawyer-client relationship.

We make no warranty of any kind with respect to the subject matter included herein or the completeness or accuracy of this issue of Legal Eye. The Publishers and the Contributors are not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this issue of Legal Eye and in no event shall be liable for any damage or loss resulting from reliance on or use of this information. Without limiting the above the Publishers and the Contributors shall each have no responsibility for any act, error or omission, whether such acts, errors or omissions result from negligence, accident or any other cause.

Subscribe:
Please send us your contact details to enable us to put in your contact details in our mailing list for Legal Eye. You may use following format.
NAME :
DESIGNATION :
NAME OF FIRM :
ADDRESS :
DIRECT TEL. :
BOARD TEL. :
FAX :
E-MAIL :

Unsubscribe:
This message is not Spam mail! If you do not wish to receive future mailings of Legal Eye, please send us an e-mail at publications@aralaw.com and specify "Remove" in the subject line.