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SPECIAL GUEST POST BY KETAN MUKHIJA
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INSOLVENCY & BANKRUPTCY LAW
SECURITIES LAW
COMPANY LAW
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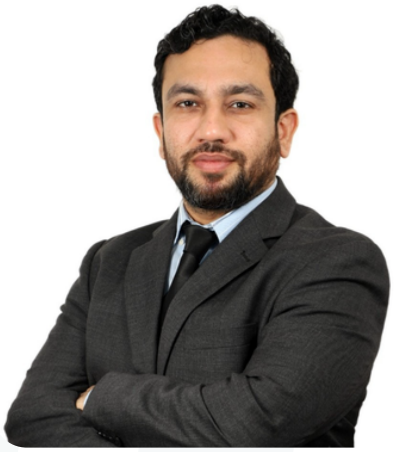
MISCELLANEOUS

A Practical Insight into the Revised Definition of a "Small Company"



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The Ministry of Corporate Affairs' revision of the "small company" definition under Section 2(85) of the Companies Act, 2013, implemented through the Companies (Specification of Definition Details) Amendment Rules, 2025, effective from 1 December 2025, represents a thoughtful recalibration of India's corporate regulatory landscape. By raising the paid-up share capital threshold from ₹4 crore to ₹10 crore and the turnover ceiling from ₹40 crore to ₹100 crore, the Government has more than doubled the financial bounds within which a private company can qualify as a "small company".

This shift is neither cosmetic nor incremental; it reflects a pragmatic response to the evolving dynamics of India's private sector. Over the past decade, business models, particularly in technology, professional services, and manufacturing, have matured rapidly, with many enterprises scaling turnover and capital without corresponding increases in complexity or corporate governance risk. Under the previous thresholds, a significant cohort of companies that were operationally still "small" in terms of governance capacity got pushed out of the small company bracket and, consequently, into a higher compliance stratum ill-matched to their size and resources.

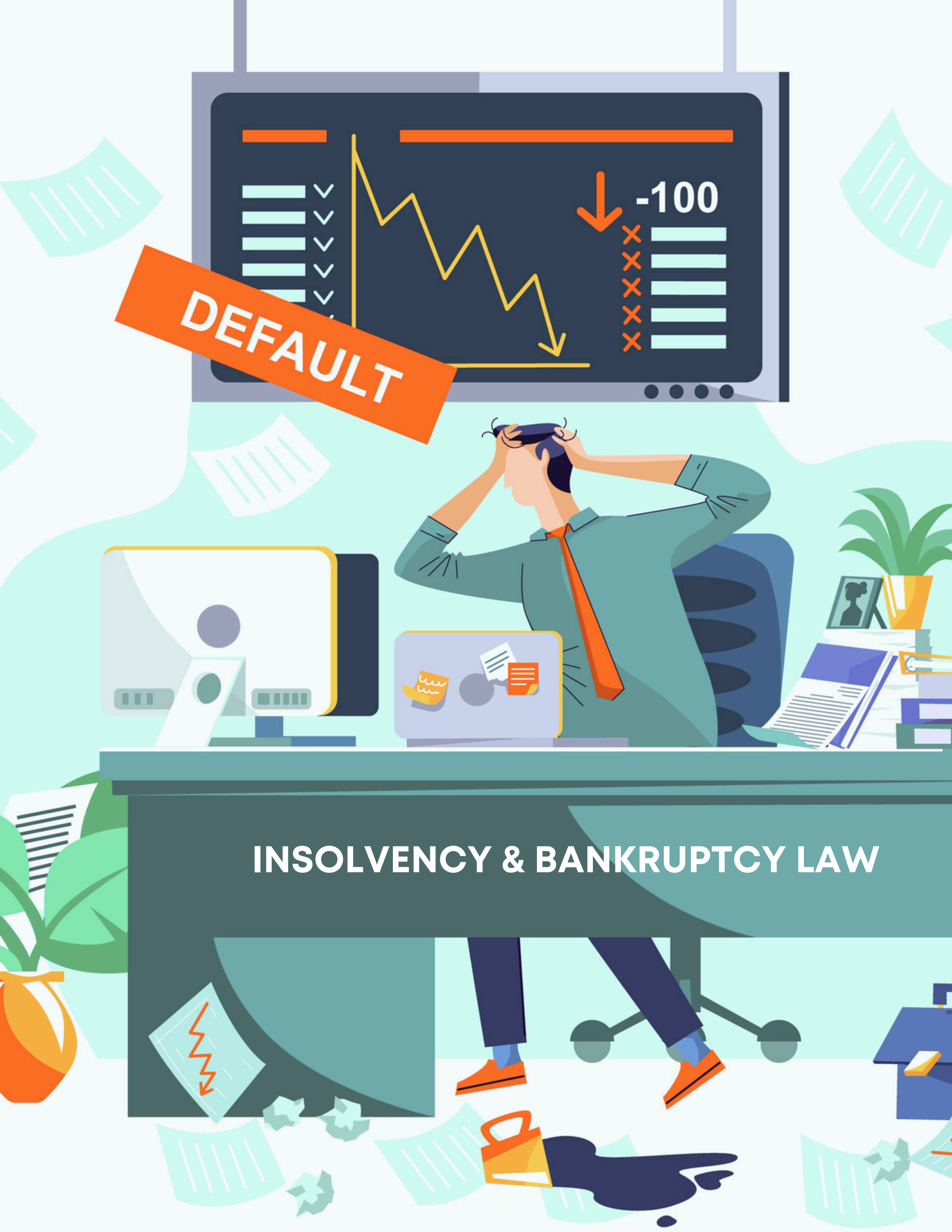
For the corporate advisor and practitioner community, this expanded definition carries important structural and strategic effects. First, it broadens the pool of companies eligible for the streamlined compliance regime that small companies enjoy. These benefits, which include exemptions from preparing cash flow statements, reduced board meeting requirements, simplified filing norms, lower filing fees, and in many cases exemption from internal audit obligations, materially reduce both regulatory friction and cost of compliance. Particularly for startups and growth-stage companies that are navigating capital constraints while pursuing rapid expansion, such relief can translate into tangible savings of management time and professional fees, enabling a sharper focus on scaling operations and fundraisings rather than procedural formalities.

Equally significant is the degree to which the amendment aligns with broader policy priorities such as Ease of Doing Business and formalization of the corporate sector. By lifting outdated monetary thresholds, the Government has acknowledged the inflationary and industry growth pressures that rendered previous cut-offs increasingly anachronistic. In practical terms, this avoids unnecessary escalation in compliance costs for companies that have grown beyond ₹40 crore turnover but are still relatively modest in size compared to large corporates, a segment that often struggles disproportionately under one-size-fits-all regulatory frameworks.

Importantly, the amendment retains the classical exclusions under Section 2(85), public companies, holding or subsidiary companies, companies registered under Section 8, and entities governed by special Acts continue to be excluded from small company status despite meeting financial criteria. This ensures the regime remains targeted towards genuinely independent private enterprises, preserving investor and stakeholder safeguards where public interest or group complexity is present.

From an advisory standpoint, this development encourages practitioners to revisit compliance classifications early in the financial year, assess eligibility anew with reference to audited figures for the preceding year, and recalibrate corporate governance frameworks accordingly. The expanded category of small companies not only reduces compliance burden but also integrates with other regulatory reliefs, such as faster merger pathways, thereby fostering a more proportionate and growth-friendly regulatory ecosystem.

In summation, the 2025 amendment to the “small company” definition is a well-timed, pragmatic regulatory reform that meaningfully eases compliance for a broader swathe of India’s private corporate sector, supporting both entrepreneurship and sustainable formal growth.



INSOLVENCY & BANKRUPTCY LAW

The National Company Law Tribunal ("NCLT") has held that homebuyers cannot be compelled to act as resolution applicants for stalled real estate projects. [*The Canara Bank Ltd vs Riverbank Developers Pvt Ltd.*]. [Link]

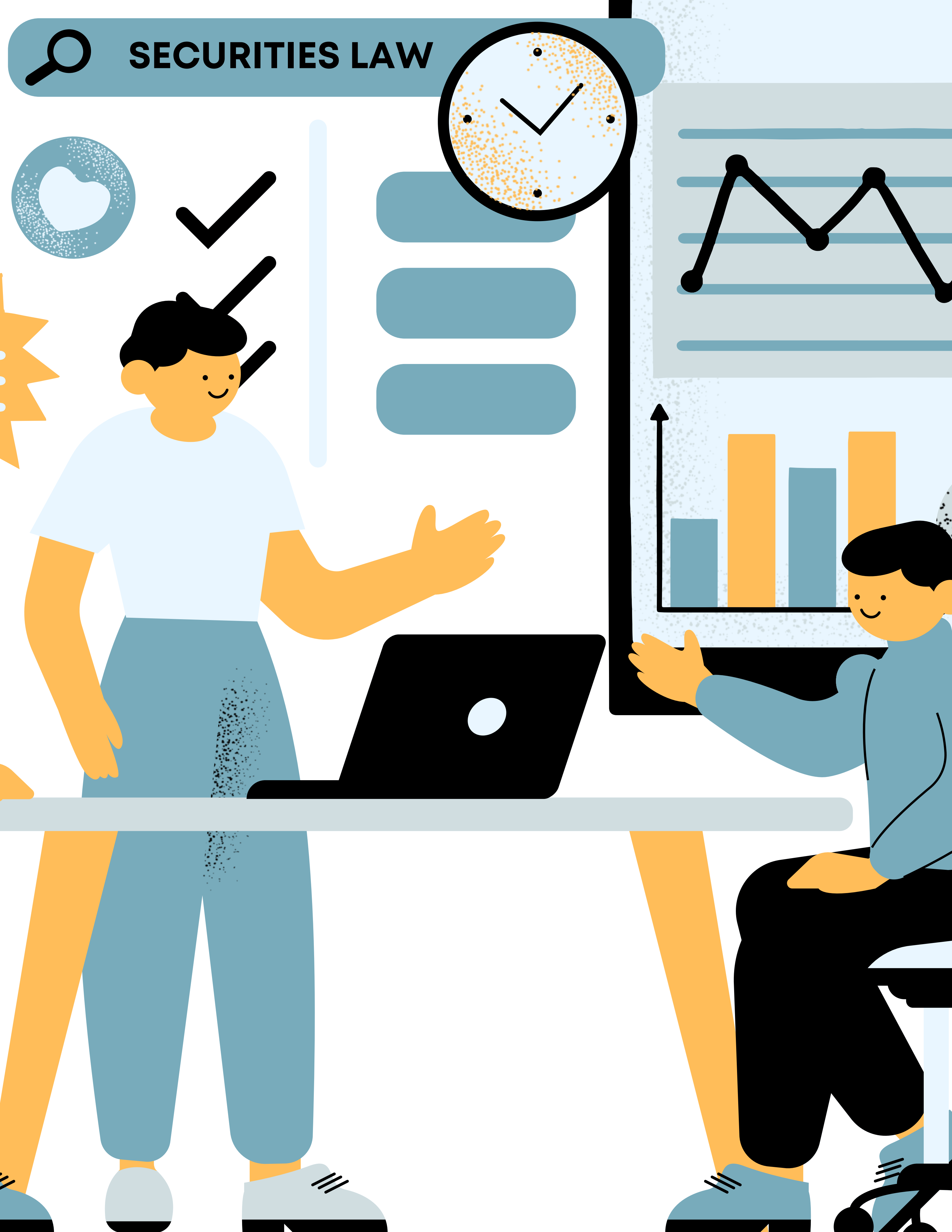
The NCLT, Kolkata Bench, recently intervened in the Corporate Insolvency Resolution Process ("**CIRP**") of the Riverbank Developers Pvt. Ltd. and reaffirmed that homebuyers cannot be compelled to take up the role of a resolution applicant merely because a housing process remains incomplete.

Under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), homebuyers are recognised as a class of financial creditors and participate in the Committee of Creditors ("**CoC**") with voting rights pursuant to Section 5(8). However, this has led to an emerging practice that homebuyers should step in as resolution applicants to complete stalled real estate projects when external resolution applicants do not come forward. While homebuyers may participate as part of the creditor class in the CoC, their status does not automatically make them resolution applicants or make it compulsory for them to take up project completion responsibilities.

The Tribunal in the present case, observed that homebuyers constitute a distinct class of creditors who purchase residential flats for their own personal use and are often already burdened with loan repayments. The Tribunal held that even though homebuyers vote as a class, they cannot be forced to "don the hat of a resolution applicant" in the absence of financial wherewithal as well as the unwillingness to take upon liabilities.

Drawing out on the objective of IBC, the tribunal stated that it has been devised to ensure timely resolution of the insolvency process. It should not be used to obligate unwilling homebuyers to take on financial and construction responsibilities of a failed real estate project. Further, the strict restriction of the process to only homebuyers undermines the prospect of an effective resolution.

Accordingly, the Tribunal directed the issuance of a fresh invitation for project-specific resolution plans with modified eligibility criteria, which would be open to all prospective applicants to ensure effective resolution of the case. By holding that homebuyers cannot be compelled to act as resolution applicants, the Tribunal has reinforced the protective intent of the IBC towards the homebuyers. Going forward, the CoC will have to look for more capableresolution applicants to complete stalled projects instead of shifting that responsibility ontothe homebuyers themselves. The ruling also strengthens the position of homebuyers as a distinct class of creditors whose consent to be their own resolution applicants cannot be assumed or coerced.


SECURITIES LAW

Securities Exchange Board of India ("SEBI") notifies the SEBI (Merchant Bankers) (Amendment) Regulations, 2025. [Link]

Recently, SEBI notified the amended SEBI (Merchant Bankers) (Amendment) Regulations, 2025 ("**the 2025 Amendment**"). The 2025 Amendment brings a major overhaul, including a change in definition, categorization of merchant bankers, responsibilities of the compliance officer, obligations of the merchant bankers, etc.

Prior to the amendment, the SEBI (Merchant Bankers) Regulations, 1992 governed the Merchant Bankers. However, this framework loosely regulated Merchant Bankers. They were classified into four categories and had no liability to maintain liquid net worth, revenue qualifications and had lower capital thresholds and. This saturated the market with merchant bankers with limited capabilities. Other provisions led to reduced accountability and conflict of interests.

Pursuant to the 2025 Amendment, only the employee of a merchant banker who is responsible for management or administration of merchant banking activities, with at least five years of experience would qualify as a principal officer. This excludes proprietors, partners, directors, etc. from the definition of principal officer, reducing conflict of interest.

A major change has been made to Regulation 3 which deals with the application for the grant of certificate of registration. As per the 2025 Amendment, a person can only act as a merchant banker after receiving a certificate of registration from the bank. Additionally, applications for registration can now be made for only 2 categories. Category I bankers can carry out all the permitted activities and Category II bankers can carry out all activities under the first category except public issues of equity shares. Merchant Bankers already holding a certificate will have to re-categorize themselves into these two categories instead of four as provided in the previous regulation.

Additionally, categorization has also been introduced for capital adequacy requirement. For Category I bankers, net worth shall not be less than Rs. 50 crores. Similarly, for Category II bankers, net worth shall not be less than Rs. 10 crores. On failing to meet these requirements, bankers cannot undertake any fresh permitted activity unless they comply with the regulations. Bankers will also need to fulfill the liquid net requirement, failing which they cannot undertake fresh activities.

The 2025 Amendment also introduces Regulation 21B, according to which, the merchant banker cannot lead manage its own issue or be associated with any other related activity. Furthermore, as per Regulation 21C, bankers cannot lead manage public issues if their directors, key managerial persons or relatives hold more than 0.1% of the paid-up share capital or shares whose nominal value is more than 10,00,000 rupees.

The 2025 Amendment brings a simpler categorization of merchant bankers while enhancing the scope of their activities. At the same time, the regulations add more compliances burdens, ensuring that the market has more financially sound and legally compliant bankers. To ensure fairness, the changes also prohibit the merchant bankers and closely associated parties from leading their own issues.

Overall, the changes make ecosystem of merchant bankers much stronger and reliable with improved compliance, financial strength and clear categorizations.

SEBI lays down the procedure for conversion of existing Alternative Investment Fund ("AIF") schemes into AI-only funds or Large Value Funds ("LVFs"). [Link]

Through a circular dated December 08, 2025 ("**the circular**"), SEBI has notified the process for the conversion of existing AIFs to AI only scheme or LVF scheme.

Earlier this year, SEBI AIF (Third Amendment) Regulations were introduced in November 2025 which recognized AI-only funds and LVF schemes. However, the regulations did not establish a uniform procedure for conversion of existing schemes into these newly recognized funds. Lack of such uniform procedure had caused problems like inconsistent market practices, uncertainty for investors, and the risk of misuse of scheme extensions to avoid stricter compliance norms. The December circular bridges this procedural gap by notifying a uniform procedure for conversion.

As per the circular, it is the duty of the manager of the AIF to ensure that the name of the scheme is changed to include 'AI only fund' or 'LVF', as per the conversion. Information of such change and conversion must be given to SEBI within 15 days, while the depositories must be informed about the change in name within 15 days.

Further, if an investor has an AI status at the time of on-boarding, such investor shall be reckoned as an AI even after losing such status. It is provided that the maximum permitted extension for AI only scheme is of five years, inclusive of extended tenure prior to conversion to an AI-only scheme/ LVF scheme. Moreover, LVFs are also exempt from following the standard template of placement memorandum and annual audits, without getting specific waivers from investors.

The circular provides a simple but regulated path for conversion to AI and LVF schemes. The five-year cap on the life of AI only schemes curb potential misuse of the conversion or permissible extension for evading compliance. LVFs, on the other hand, have a lesser compliance burden. Overall, the circular introduces a separate category of AIFs, enhances ease of doing business and introduces variable but balanced compliance requirements.

SEBI Overhauls the Mutual Fund Regulatory Framework under the SEBI (Mutual Funds) Regulations, 2026. [Link]

SEBI, in its 212th Board Meeting on 17 December 2025, decided to scrap the SEBI (Mutual Funds) Regulations, 1996 ("**1996 Regulations**") and replace them with a fresh, consolidated framework called the SEBI (Mutual Funds) Regulations, 2026 ("**2026 Regulations**"). The 2026 regulations aim at streamlining the rules, making costs more transparent, and tightening how mutual fund-related expenses are structured for investors.

Under the 1996 regime, mutual fund expenses were controlled through the idea of a Total Expense Ratio ("**TER**") even though that term was never clearly defined in the regulations themselves. In practice, the TER acted as a single overall cap that bundled together almost every cost- brokerage, day-to-day operating expenses, investment management fees, and applicable taxes, which gave Asset Management Companies ("**AMCs**") considerable room to structure their charges but did not give investors much visibility into the break-up of these expenses.

Over the years, as SEBI kept adding piecemeal amendments, the regulatory text became long, dense, and harder to navigate, leaving both market participants and compliance teams struggling with a framework that was not always intuitive to read or apply.

The 2026 Regulations make an important shift in how mutual fund fees are structured by breaking up the earlier bundled model. Instead of treating all costs as part of a single figure, SEBI has now introduced the concept of a Base Expense Ratio ("BER"), which is confined to core investment-related and other recurring scheme expenses, and specifically leaves out brokerage and statutory charges. TER has also been given a clear legal definition, and is now described as a combination of the BER, brokerage, regulatory fees, and statutory levies taken together.

As a result, investors can more easily see what portion of the total outgo represents the fund manager's own charges and what portion represents payments that are effectively passed through towards government or regulatory dues, which should, in principle, improve transparency and help investors better understand the cost structure of their investments.

Furthermore, SEBI has reduced BER caps in many categories, such as index funds, Exchange Traded Funds and close-ended equity schemes and significantly cut brokerage restrictions for both cash market and derivate trades. Statutory taxes like stamp duty, Securities Transaction Tax and Goods and Service Tax must be applied to actuals in addition to the BER limitations. By removing out-of-date chapters and reducing the overall length of the regulations, SEBI has simplified and smoothened compliance for market participants in addition to making financial adjustments.

The new approach is likely to simplify cross-scheme comparisons and make mutual fund cost structures easier to understand for investors, although this cannot be guaranteed in every case. AMCs are expected to function within a more streamlined and less complex regulatory framework, while investors should gain clearer insight into what they are paying for through more granular disclosure of expense components and tighter cost controls.

The Securities Markets Code ("SMC") 2025 and the Consolidation of Securities Regulation in India. [Link]

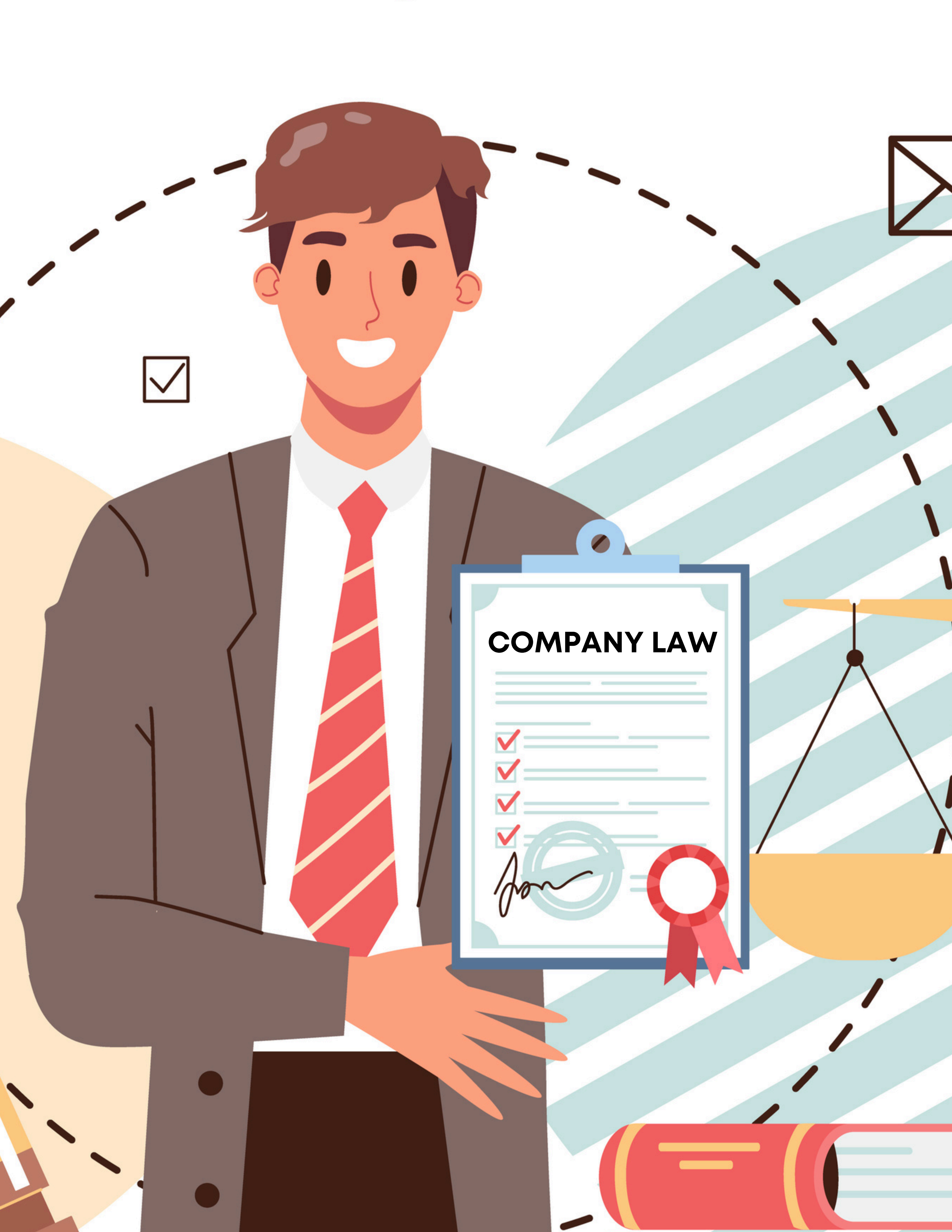
The SMC was presented in the Lok Sabha on December 18, 2025, upon concepts initially discussed in the 2021-22 Union Budget. It is a major step to the modernization of the financial regulations in India which will be characterized by greater uniformity. The ultimate aim is to have one common law for the entire securities market, thus putting together and discarding the Securities Contracts (Regulation) Act of 1956, Depositories Act of 1996, and SEBI Act of 1992.

India's securities laws developed overtime in a segmental way, where each was concerned with a particular market area. Such a system proved to be useful for the specialized control in the sectors, but on the other hand, it resulted in the creation of overlaps, disputed definitions, and enforcement that was not uniform. Companies and intermediaries operating in several areas were burdened with a lot more compliance hassle as a result.

The SMC aims to centralize this disorganized system and at the same time preserve the main aspects of the previous regulations. It also makes some changes to SEBI's structure by giving greater powers to the government appointees and imposing stricter regulations on the or discord of interest. Now, the issues of disclosures and recusals relate not only to direct connections but also to family ties, and the process of investigating and judging is more distinctly separated in order to increase transparency and accountability.

One of the significant updates concerning the procedure is that the law now has fixed timelines embedded right into it. For instance, the law sets a limitation of eight years from the occurrence for inspections or investigations, except in cases of exceptional systemic risk. This adds a tangible amount of predictability to enforcement, something that was badly needed by the former regime. Besides, it refines penalties, transferring minor procedural or technical errors from criminal charges to civil fines. The most serious misuses or deliberate violations continue to receive the heavy hand.

Among the priorities of the SMC, the protection of the investors is the most prominent one. SEBI is given the authority to establish good grievance mechanisms, such as the appointment of an Ombudsperson, explicitly by the code. Furthermore, the code revises basic definitions of securities, investment schemes, and regulated products to conform to the actual market developments. If executed well, along with firm secondary rules and enforcement, it could bring regulations together, strengthen market discipline and elevate India's position in the world market.


COMPANY LAW

The Ministry of Corporate Affairs (“MCA”) Expands Financial Thresholds for “Small Companies”. [Link]

The MCA, through a notification dated December 1, 2025, has amended the Companies (Specification of Definition Details) Amendment Rules, 2025 to substantially revise the financial thresholds for classification as a “small company” under Section 2(85) of the Companies Act, 2013 (“**the Companies Act**”).

Before this amendment, a company was considered a small company when the paid-up share capital of the company did not exceed Rs. 4 crore and the turnover of the company was not greater than Rs. 40 crore. Although these thresholds have been periodically revisited in the past, they still remained below the market realities especially when it comes to the private companies that had turned over-growth without an equivalent growth in organisational complexity.

In line with the current notification, the MCA has amended the thresholds to be considered a small company in respect:

- Paid-up share capital not exceeding Rs. 10 crore; and
- Turnover not exceeding Rs. 100 crore.

This is far afield of the previous restrictions and constitutes a substantial extension of the category of companies that will be allowed access to the regulatory relaxations that come with small company status. In this regard, the holding companies, the subsidiary companies founded according to the Section 8 of the Companies Act, and some regulated organizations like banking companies are not considered as small company regardless of their financials.

This change allows a significantly larger set of private and growth-stage companies to continue operating within a lighter compliance framework despite revenue-led expansion. As a result, companies that would earlier have exited the small company category solely due to marginal turnover growth will now retain access to statutory relaxations relating to board meetings, reporting, penalties, and auditor rotation. The amendment thus replaces the earlier rigid threshold-based exit with a more realistic and graduated compliance structure, better aligned with the scale and governance risk of such companies.

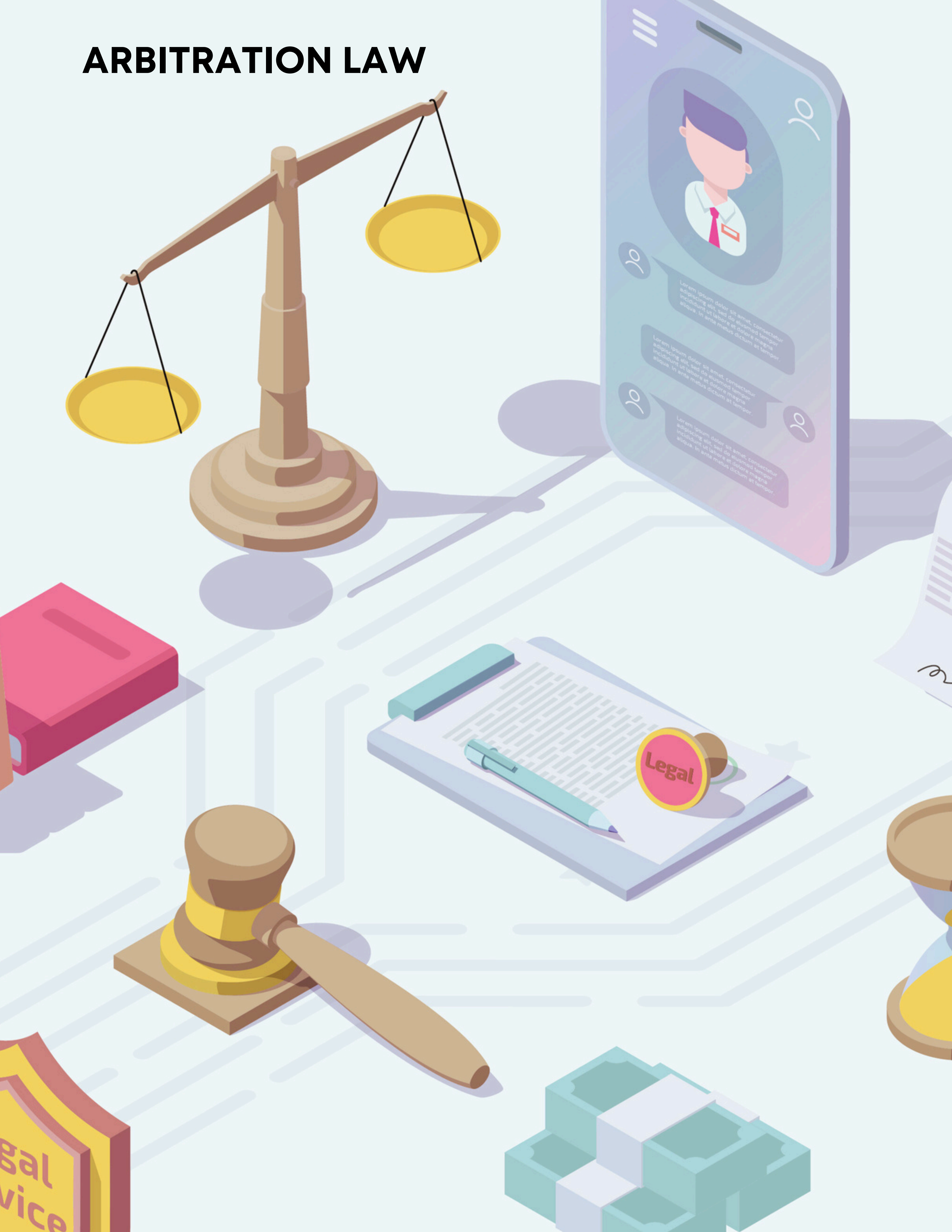
The statutory exclusions that are already placed in Section 2(85) of the Companies Act are not disturbed by the amendment. Companies falling within the revised thresholds will now be entitled some statutory relaxations.

The updated thresholds are a purposeful regulatory shift away from a one-size-fits-all compliance architecture. The MCA seems to have realized that turnover in itself is not a perfect proxy of governance risk by broadening the small company bracket significantly.

Meanwhile, the exception of holding-subsidiary structures and Section 8 companies suggests that MCA still sees group complexity and public-interest orientation as two different risk indicators, which require an increased regulation control regardless of the scale of the financials.

Though compliance is made easier by the expanded thresholds, the companies that have just become small companies need to actively review their size position at the start of the financial year and remodel board practices, filings and reporting structures. The amendment strengthens the ongoing focus of MCA on the ease of doing business and quietly realigns the focus on providing regulatory control and flexibility in operations to the expanding environment of India-based private companies.

ARBITRATION LAW



Supreme Court ("SC") decides that the ratio of *Bharat Drilling & Foundation Treatment Pvt. Ltd. v. State of Jharkhand* ("Bharat Drilling") needs to be reconsidered by a larger bench of appropriate strength. [*State of Jharkhand v. Indian Builders Jamshedpur*]. [Link]

The SC recently noted that the view of law laid down in Bharat Drilling must be reconsidered due to being at odds with the recent rulings of the Apex court. The question to be decided in this case was whether prohibitory or expected clauses in government contracts bind only the contracting parties or is the Arbitral Tribunal is also bound by them.

Earlier, Bharat Drilling was understood as a conclusive authority holding that arbitral tribunals are not bound by contractual bars. This created ambiguity as arbitral tribunals were sometimes seen as having the discretion to override contractual bars on claims, treating such clauses as binding only on the contracting parties and not on the tribunal itself. It also raised questions over judicial treatment of party autonomy and nature of contractual clauses.

However, in the present case, the High Court ("**HC**") of Jharkhand relied on the judgment in Bharat Drilling and allowed claims which were prohibited by the contract. However, the Apex court rejected the conclusion, noting that Bharat drilling is not an authority on this question because it did not examine the facts and circumstances, nor the contentions of the case in detail. Similarly, the Jharkhand HC had not examined the contractual clauses in question and rather acted under the impression that the issue has been conclusively settled in Bharat Drilling.

Referring the matter to a larger bench, the court noted that the arbitrator is bound by the procedures agreed upon between the parties. Therefore, the applicability of expected or prohibited clauses would depend on the agreement between the parties. Referring to precedents, the court settled that its is the duty of the Arbitral Tribunal and Courts to examine what the contract provides for it is the foundation of legal relationship between parties.

The reference of Bharat Drilling to a larger bench shows the willingness of the court to ensure that the Arbitration law in India is clear, concise and just. The reference also reaffirms the primacy of party autonomy and that the Arbitral Tribunal derives its authority from the contract between parties. Whether the larger bench stands by such an understanding or not is yet to be seen.

Bombay HC broadens the scope of limitation exclusion under the Arbitration and Conciliation Act, 1996 ("A&C Act). [*Laguna Resort Pvt. Ltd. Vs. Concept Hospitality Pvt. Ltd.*]. [Link]

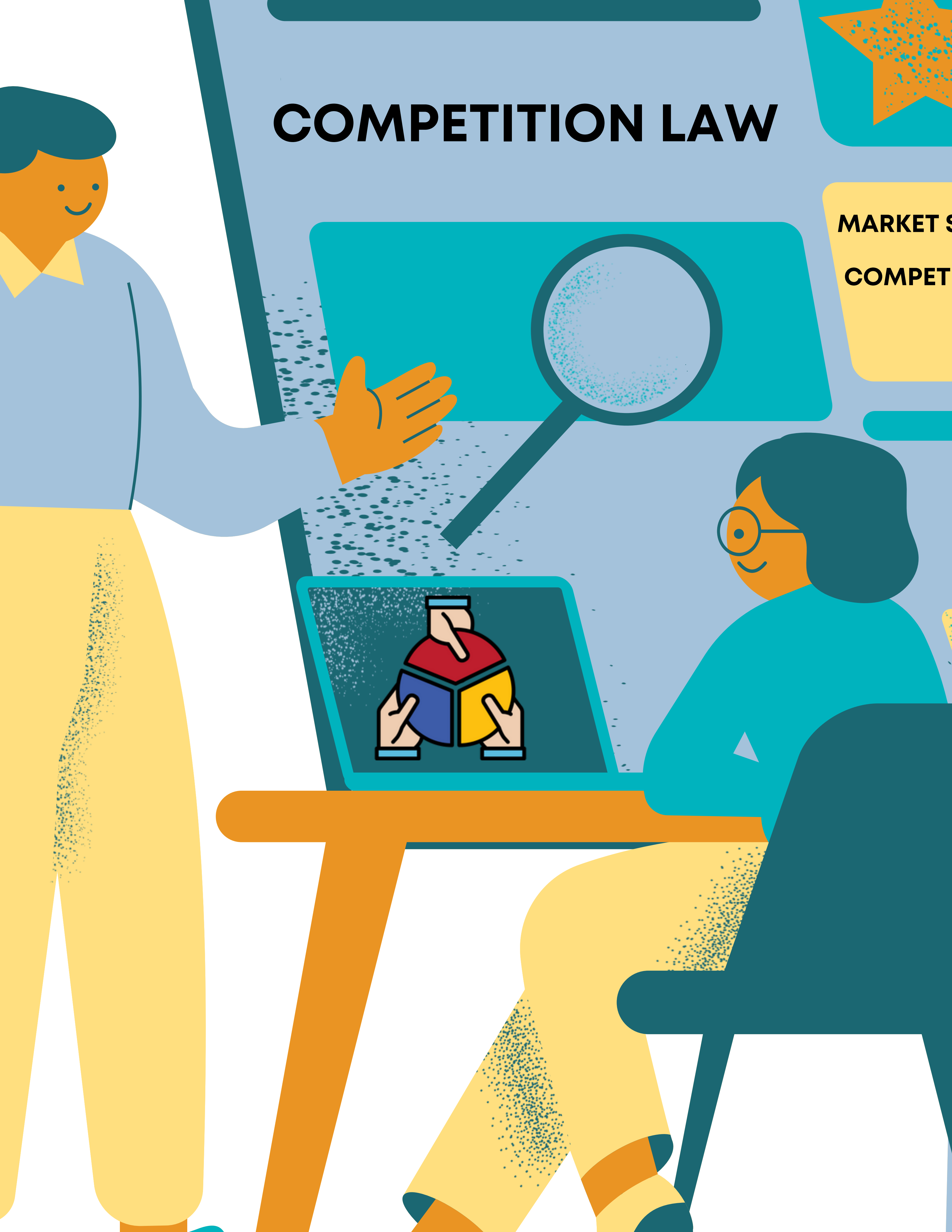
On December 17, 2025 the Bombay HC in the present case promulgated that the time spent in previous Arbitral proceedings can be excluded while calculating limitation under Section 43 of the A&C Act. In cases where only part of the arbitral award is set aside and fresh proceedings arise from different agreement, the time can still be excluded.

Prior to this judgment, the exclusion of limitation generally applied only where the entire arbitral proceeding or award was set aside, and where subsequent proceedings arose from the same arbitration agreement. Since the provision merely referred to "the dispute so submitted" without clarifying its application to partially set aside awards or severed claims, courts were reluctant to extend limitation exclusion to fresh proceedings arising from a different but related contract.

In the present case, arbitration proceedings were initiated under subsequent management contracts, resulting in an award encompassing various claims. However, the said award was partially set aside on the ground of non- arbitrability under the subsequent contracts. The claimant thereafter, initiated fresh arbitral proceedings under the original contract, which was further challenged by the petitioner as barred by limitation.

Bombay HC, while rejecting the contention of the petitioner, held that Section 43(4) of the A&C Act applies so long as the dispute, or even a part thereof, formed the subject matter of the earlier arbitration and the right to sue continues. Further the scope was also broadened as the said section did not confine to cases where the entire award is annulled.

This judgment clarifies that the similarity of dispute under Section 43 of the A&C Act extends even to severed portions of an award. This decision protects the rights of the parties to pursue an alternate remedy and reinforces the purposive interpretation of limitation provisions in the A&C Act. It also strengthens procedural fairness and provides for an equitable opportunity to access arbitration, in case of bona fide invocation of arbitration. This judgment acts as a precedent to prevent premature dismissal of arbitral claims on technical limitation grounds where parties have bona fide pursued earlier arbitral remedies. It provides greater certainty and flexibility to litigants when awards are partially set aside, encouraging substantive justice over procedural rigidity.


COMPETITION LAW
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NCLAT affirms Competition Commission of India's ("CCI") jurisdiction over data practices in digital markets. [*WhatsApp LLC and Meta Platforms Inc. v. Competition Commission of India*]. [Link]

The NCLAT has allowed an application filed by the CCI, seeking clarification on whether the privacy and consent safeguards upheld in its judgment dated November 4, 2025 would also apply to WhatsApp's sharing of user data with Meta for advertising purposes. The Tribunal clarified that the safeguards govern all user data collection and sharing, including for advertising, and granted WhatsApp three months to align its practices accordingly.

In its November 4 ruling, the NCLAT had supported the findings of the CCI that WhatsApp has misused its dominant status by subjecting unfair conditions and limiting market access by updating its privacy policy in 2021. The Tribunal had overruled the direction, by the CCI of a blanket five-year ban on advertising use of WhatsApp user data, and found such a ban disproportional to the adoption of effective opt-in and opt-out mechanisms after the meaningful transparency, purpose limitation, and user choice had been reinstated.

This created an interpretational ambiguity. Though the ruling underscored that any non-essential purpose of the use of data needs express and revocable user consent, the part of it was not expressly applicable to the advertising-related data sharing.

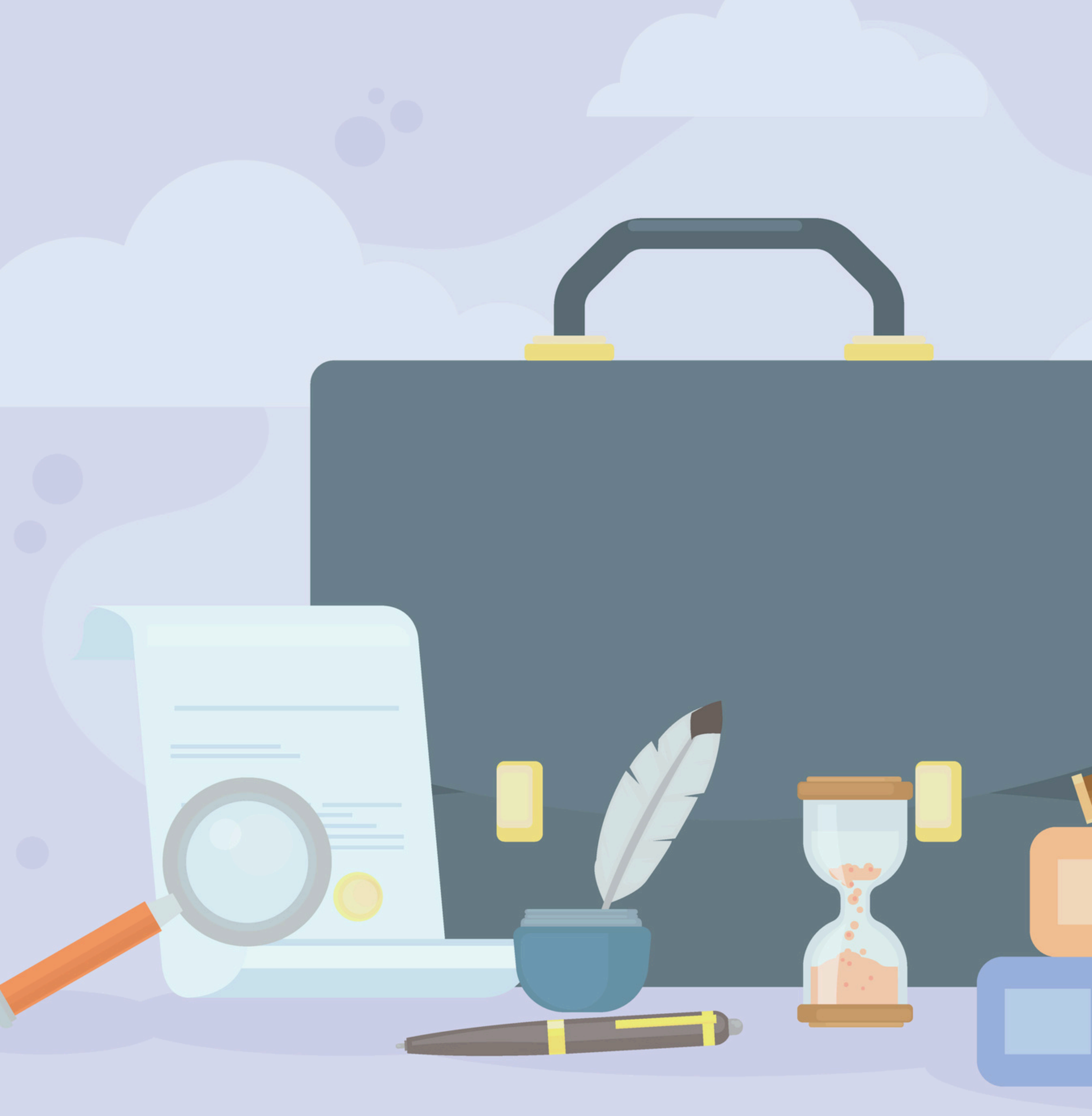
Allowing the CCI's application, the NCLAT clarified that the remedial directions contained in CCI's order dated 18 November 2024 apply to WhatsApp user data collection and sharing for all purposes, including both advertising and non-advertising uses. The Tribunal was of the view that such clarification only goes to reconcile the operative directions with its substantive reasoning but not a review or rewriting of the judgment.

Meta and WhatsApp had challenged the plea claiming that the Tribunal did not have the authority to make changes to its operative order by way of making a clarification and that the CCI was only left with an appeal. The Tribunal dismissed this objection on the basis that the Competition Act in Section 53(O) allowed such clarification to be made where it was needed to indicate the intention of the Court.

The clarification settles an important point of principle in digital Competition Law. Although the monetisation through advertising was not banned per se, the Tribunal has indicated clearly that the advertising information is not an exception to the competition required consent and transparency. The move supports the stance that the Competition Law will examine the circumstances in which the data is retrieved and utilized, as opposed to the business model itself.

The clarification reinforces regulatory consistency since all non-essential data uses are brought to a single consent model. In the future, the CCI should provide more directives on the type of data-related remedies especially in the context of advertising ecosystems to keep the enforcement of effective competition with predictability to the digital platforms.

MISCELLANEOUS



India’s Insurance Sector set for Structural Reform under the New Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Bill 2025 (“The Bill”). [Link]

The Union Government has recently passed the Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Bill 2025, which is set to bring significant reforms in the insurance sector of India. Notably, it seeks to modernise the regulatory framework by bringing changes to three major legislations, namely, the Insurance Act, 1938, the Life Insurance Corporation Act, 1956, and the Insurance Regulatory and Development Authority of India (“**IRDAI**”) Act, 1999. Keeping in mind the growing financial sector, the bill’s main objectives include strengthening regulatory oversight, increasing insurance coverages and attracting long-term investments.

Previously, the situation was quite restrictive, with Foreign Direct Investment (“**FDI**”) limited to just 74% in insurance companies and required partnership of foreign insurers with Indian entities. IRDAI had very limited power in comparison to other regulators in advanced markets, while barriers for entering the sector remained high due to heavy capital and fund compliances. This proved to be a major hurdle for the sector as it restricted competition, innovation and growth of insurance coverage, especially in rural and backward areas.

With this bill, several amendments have been introduced, with the most significant being increasing the FDI limit to 100% and allowing foreign insurers to have full ownership of Indian insurance entities. This would nevertheless be subject to certain governance conditions. Another key change include expansion of IRDAI’s role as a regulatory and supervisory mechanism that now has a 5% threshold for prior approvals of equity transfers from the earlier 1%, and greater flexibility in overseeing ownership changes.

Moreover, foreign insurers now have fewer net-owned fund requirements, which helps improve reinsurance capacity. Amendments further focus on improving policyholder protection, operational efficiency, and regulatory compliance, and also modernise the framework with respect to licensing, capital structure, and supervision.

However, despite the advancements, the bill suffers from shortcomings. It still does not introduce statutory timelines for claim settlement, which continues to dampen the confidence of policyholders. There is no easement of capital requirements for new domestic insurers, which restricts small players from entering the market. The expanded role of IRDAI raises questions about its practical implications, with experts raising concerns over regulatory discretion and predictability.

In conclusion, the bill represents India's commitment to liberalising and modernising its insurance sector. It aims to strike a balance between growth, competition, and policyholder protection by allowing full foreign ownership and granting the regulator additional powers. Though ambitious, its effectiveness will mainly depend on how clearly and consistently the subordinate rules and guidance are followed.

SC rules deduction cap for Head Office Expenses of Foreign Companies subject to Section 44C of the Income Tax Act, 1961 ("IT Act"). [*Director of Income Tax (IT)-I, Mumbai v. M/s American Express Bank Ltd. and connected cases*]. [Link]

On December 15, 2025, the SC has, in its recent ruling, clarified the scope of Section 44C of the IT Act, 1961, extending to head office expenses incurred by foreign companies outside India. All of these, whether common or related to domestic operations, will be subjected to a lower of 5% of adjusted total income or the amount attributable to the Indian business. This will rule out any claims for full deductions under the general provisions of Section 37(1) of the said act.

Earlier, non-resident companies that operated in India through foreign banks would claim full deductions for certain head office expenses incurred outside India under Section 37(1), stating these to be exclusively for their domestic operations. These included travel, certification, audit, and administrative costs, etc which bypassed the restrictive cap under Section 44C. Though the appellate authorities as well as the Bombay HC favoured this interpretation, it opened a wide scope for categorising such expenses as "exclusive" and not "common", leading to higher deductions.

In the present ruling, this has thus been rejected with the Court holding that once such expenses have been classified as "head office expenditure" as defined in the Explanation to Section 44C, they automatically fall under the said provision, irrespective of whether they are categorised as common or exclusively linked to Indian operations. Section 44C is a special provision and therefore, would override provisions for general deductions. If full deductions are allowed under Section 37(1), then it would render the special provision ineffective.

In conclusion, the ruling firmly reinforces what Section 44C meant to do, i.e. prevent excessive claims of foreign head office expenses. Though crucial for regulating such claims, it also increases the need for careful tax planning by foreign companies, especially where genuine administrative costs are incurred at the head office level.

SC has held that Non-Compete Fee can be deducted as "Revenue Expenditure" under Section 37(1) of the IT Act. [*Sharp Business System Thr. Finance Director Mr. Yoshihisa Mizuno v. Commissioner Of Income Tax-III N.D.*]. [Link]

The SC has recently clarified the long standing confusion regarding the treatment of non-compete fees under the IT Act. The present judgement arose from conflicting opinions of the Delhi, Bombay and Madras HCs on whether non-compete fee can be treated as revenue expenditure or as a depreciable capital asset. The SC held that the payment of non-compete fee does not result in the acquisition of a capital asset or alteration of the profit-making structure of the business. Therefore, it is allowable as a revenue expenditure under the IT Act.

Previously, the Delhi HC had treated non-compete fees as capital expenditure and did not allow depreciation, holding that the right was only personal against the payee. On the contrary, the Madras and Bombay HC had held that the non-compete fee constituted an intangible asset and allowed depreciation under Section 32(1)(ii) of the IT Act. The SC held that the payment of a non-compete fee for a limited period did not add to the fixed capital of the assessee, rather it only enabled it to operate its business more efficiently by reducing competition. Therefore, it set aside the view of the Delhi HC and held that the expenditure was revenue in nature and allowable under Section 37(1) of the IT Act.

The SC observed that in order to distinguish between capital and revenue expenditure, rather than relying on a single rigid test, courts must assess it in a practical, commercial sense. The SC held that the “Test of Enduring Benefit” is not conclusive and the distinction between capital and revenue expenditure must be assessed by analysing the nature of the advantage in a commercial sense. It clarified that if an expenditure is made for bringing into existence an asset or a long term advantage, then it is a capital expenditure. On the other hand, if it is incurred for running the day-to-day business or working it with a view to earning profits, it is revenue expenditure.

This judgment further recognises that mere payment of non-compete only reduces competitive friction, it does not guarantee profits. Capital expenditure presupposes some certainty of structural advantage. Non-compete fees lack this certainty. By placing such payments firmly in the revenue field, the SC prevents an artificial expansion of “capital assets” and draws a line between business facilitation and business formation.

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