

**BACKGROUND NOTE: DRAFT COMPETITION COMMISSION OF INDIA
(GENERAL) AMENDMENT REGULATIONS, 2024**

1. The Competition Act, 2002 (the ‘Act’) aims to prevent practices having an adverse effect on competition, to promote and sustain competition in the markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India.
2. Under Section 36 of the Act, the Commission is guided by the principles of natural justice and, subject to the other provisions of the Act and any rules made by the Central Government, the Commission has the powers to regulate its own procedure.
3. For such regulation of its procedure, the Commission has, in exercise of the powers conferred upon it under Section 64 of the Act, formulated the Competition Commission of India (General) Regulations, 2009 (General Regulations’).
4. These General Regulations have been amended from time to time, one of the amendments being the Competition Commission of India (General) Amendment Regulations, 2022, applicable *w.e.f.* 08.04.2022 which, *inter alia*, provides for creation of Confidentiality Ring(s) to enable access to the parties to the confidential information and document(s) of the other parties, during proceedings before the Commission.
5. Pursuant to the same, applications seeking creation of Confidentiality Ring(s) are being received in the Commission from the party(s) in several matters. The process, *inter alia*, includes making application(s) for setting up Confidentiality Ring(s), filing undertaking(s) for being part of Confidentiality Ring(s), carrying out inspection(s) and obtaining certified copies, by the parties, in terms of regulation 35 read with regulation 37 and regulation 50 of the General Regulations.
6. It has been observed that often parties have been taking significant time in completing aforesaid requirements thereby delaying the proceedings before the Commission. It is also desirable that undertaking(s) filed by the parties – (i) for providing self-certification of confidentiality claims in terms of parameters of the General Regulations; and (ii) for safeguarding confidential information accessed – should be taken in the form of an affidavit.

7. Accordingly, to streamline the processes and for timely & effective disposal of matters, certain amendments are being carried out in regulations 35 and 37 of the General Regulations for prescription of timelines for accessing documents through Confidentiality Ring, submission of undertaking(s) on affidavit *etc.*
8. Further, it is noted that the fee for inspection prescribed under regulation 50(1) was fixed way back in 2009 and has not been revised thereafter. Keeping this in view and taking into account inflation since then, the charges for carrying out inspection are also being revised.
9. In addition to the above, certain editorial changes to the said regulations are being also made.
10. The CCI invites stakeholders to submit written comments on the draft Competition Commission of India (General) Amendment Regulations, 2024, within 30 (thirty) days from 26.02.2024 to 27.03.2024. The comments must be sent by duly filling up the form hosted on the CCI's website at: <https://www.cci.gov.in/stakeholders-topics-consultations>.

35. Confidentiality.

- (1) The Commission shall maintain confidentiality of the identity of an Informant on a request made to it in writing:

Provided that where it is necessary or expedient to disclose the identity of the Informant for the purposes of the Act, the Commission may do so after providing a reasonable opportunity to the Informant, to represent its case before the Commission.

- (2) A party seeking confidentiality over the information or the document(s) furnished by it shall set out cogent reasons for such treatment and shall self-certify that making the information or document or document(s) or information or a part or part(s) thereof public will result in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of any information or can be reasonably expected to cause serious injury. Further, the party shall confirm the following, along with the date on which such confidential treatment shall expire, on self-certification basis:

- (a) that the information is not available in the public domain;
- (b) that the information is known only to limited employees, suppliers, distributors and others involved in the party's business;
- (c) that adequate measures have been taken by the party to guard the secrecy of the information;
- (d) that the information cannot be acquired or duplicated by others.

The party claiming confidentiality shall provide an undertaking in the form of an affidavit certifying the claims in terms of the requirements as above and such undertaking shall be filed by either the party itself or any of its employee, who has been duly authorised by the party Board or any other equivalent body to issue such authorisation on behalf of the party concerned:

Provided that the parties furnishing false undertaking shall be liable to be proceeded against, as per the provisions of the Act.

- (3) The party claiming confidentiality shall file a complete version of such information or document(s) with the words 'restriction of publication claimed' in red ink on top of the first page and the word 'confidential' clearly and legibly marked in red ink near the top on each page together with a non-confidential version thereof, which shall redact/ not contain such information(s) or document(s) or part(s) thereof upon which confidentiality has been claimed.
- (4) The non-confidential version of such information or document(s) shall be an exact copy of the confidential version with the omissions of the confidential information being indicated in a conspicuous manner, as stipulated in sub-regulation (3).
- (5) The information or document(s) or part(s) thereof that have been claimed to be confidential under this regulation shall be segregated from the non-confidential record and kept securely, bearing the title, the docket number of the proceeding, the notation 'confidential' and the date on which confidential treatment expires:

Provided that the following shall be marked ‘confidential (search and seizure/ e-mail dumps/ call detail records etc.)’, as the case may be, and shall be kept separately:

- (a) documents/ material obtained through search and seizure operations;
 - (b) e-mail dumps;
 - (c) call detail records; or
 - (d) any other document/ material in the nature of personal information.
- (6) The Commission may, if considered necessary or expedient, set up Confidentiality Ring(s) comprising of such authorised representatives of the parties, including, but not limited to, the authorised representatives specified under Section 35 of the Act, who would be able to access the information as mentioned in sub-regulation (5), as required, in unredacted form in terms of Regulation 37 of these regulations:

Provided that the Commission, while setting up a Confidentiality Ring, may decide the extent of information to be made accessible, as well as the parties and their members to be included, in the Confidentiality Ring, as deemed appropriate, for the purpose:

Provided further that the document(s)/ material mentioned in proviso to sub-regulation (5) which have been relied upon in the confidential version of the report of the Director General, shall be made accessible to the members of the Confidentiality Ring.

(6A) (a) The party seeking access to confidential information shall make a request for setting up a Confidentiality Ring, at the earliest.

(b) In case such request is made by a party post receipt of the non-confidential version of the investigation report, the same shall be made within a period of 7 (seven) days from the receipt thereof:

Provided that if the Commission is satisfied that the party was prevented by sufficient cause from making the request within the said period of 7 (seven) days, it may entertain the request made within a further period of 7 (seven) days.

- (7) Access to unredacted information in terms of sub-regulation (6) shall be provided on filing of undertakings in the form of an affidavit by the parties to be included in the Confidentiality Ring stating that the information accessed by their members pursuant to such ring, shall not be shared and/ or disclosed by them, to any other person including to any official and/ or other employee of enterprise concerned or to any official and/ or employee of any joint-venture, subsidiary, group entity of the concerned enterprise, or to any other person, whatsoever, and that they shall use such information and document(s) only for the purposes of the proceedings under the Act, and shall keep such information and document(s) within their sole custody, and shall destroy the same at the culmination of the present proceedings:

Provided that separate undertaking(s) on aforesaid terms in the form of an affidavit shall also be provided by each party included in the Confidentiality Ring, to the other parties in the matter, whose confidential information is being accessed by its members,

and the parties shall have the liberty to avail suitable remedies as per law, in case of any breach of such undertaking(s):

Provided further that the ~~representatives of the~~ parties concerned and their members forming part of Confidentiality Ring shall be liable to be proceeded against as per the provisions of the Act for breach of undertakings.

(7A) The parties shall file undertakings in terms of sub-regulation (7) above within a period of 7 (seven) days from the date of receipt of the order setting up Confidentiality Ring:

Provided that if the Commission is satisfied that the party was prevented by sufficient cause from filing the undertaking within the said period of 7 (seven) days, it may accept the same filed within a further period of 3 (three) days.

(8) The Informant shall not be part of Confidentiality Ring and shall have access to non-confidential records only:

Provided that the Commission may include the Informant in the Confidentiality Ring in appropriate cases, if the inclusion of the Informant in the ring is considered necessary or expedient for effective inquiry.

(9) (1) The parties included in the Confidentiality Ring may make application(s) seeking inspection under regulation 37 read with regulation 50 of these regulations, within a period of 7 (seven) days from the date of submission of undertaking(s).

(2) Such inspection shall be completed by the parties within a period of 3 (three) weeks of being allowed.

(3) The parties may make application(s) seeking grant of certified copies under regulation 37 read with regulation 50 of these regulations within a period of 1 (one) week thereafter.

(4) On receipt of an application seeking certified copies, the same shall be supplied within a period of 2 (two) weeks:

Provided that the Secretary may extend the time period(s) prescribed under sub-clause (2) above for a further period of 7 (seven) days but not thereafter.

(10) (1) The Commission may, considering the facts and circumstances of a particular matter, in exceptional cases, extend the timelines prescribed under this regulation for reasons to be recorded in writing.

(2) In case the party(s) fail to adhere to the given timelines, the Commission shall continue with the proceedings in accordance with law.

(11) If the Commission includes in any order or decision or opinion, information that has been claimed confidential under this regulation, the Commission shall make two versions of the order or decision or opinion, as the case may be. The non-confidential version which omits the confidential information that appears in the complete version, shall be served upon the parties, and shall be included in the non- confidential records. The complete version shall be placed in the confidential records as provided in sub-regulation (4) and the same shall be shared with the members of the Confidentiality Ring.

- (12) Any person or party, including any officer or employee appointed by the Commission under sub-section (1) of Section 17 of the Act or any officer appointed by the Central Government under sub-section (1) of Section 16 of the Act or any expert or professional engaged by the Commission under sub-section (3) of Section 17 of the Act or any expert called upon to assist the Commission under sub-section (3) of Section 36 of the Act privy to the contents of the information or document(s) or part(s) thereof that have been claimed confidential under this regulation, shall maintain confidentiality of the same and shall not use or disclose or deal with such confidential information for any purpose other than the purposes of the Act or any other law for the time being in force:

Provided that breach of confidentiality by any officer or employee of the Commission/ Office of the DG shall constitute a ground for initiation of disciplinary proceedings under the relevant rules or regulations, as the case may be:

Provided further that breach of confidentiality by any expert or professional engaged by the Commission under sub-section (3) of Section 17 of the Act or any expert called upon to assist the Commission under sub-section (3) of Section 36 of the Act shall be sufficient ground for termination of the engagement or contract, as the case may be.

37. Inspection and certified copies of documents.

- (1) Subject to the provisions of Section 57 of the Act and regulation 35 of these regulations, a party to any proceeding of an ordinary meeting of the Commission may on an application in writing in that behalf, addressed to the Secretary, be allowed to inspect or obtain copies of the documents or records submitted during proceedings on payment of fee as specified in regulation 50.

Provided further that no request for inspection or certified copies of internal documents shall be allowed.

- (2) The Commission may, on an application of a person, who is not a party to the proceedings, on sufficient cause demonstrated, allow such person inspection and/ or grant of certified copies of documents or records mentioned in sub-regulation (1) on payment of fee as specified in regulation 50.
- (3) An inspection shall be allowed only in the presence of an officer so authorized by the Secretary:

Provided that the inspection of documents or grant of certified copies thereof as per sub-regulation (1) or sub-regulation (2) shall be allowed under the supervision of and subject to the time limits to be specified by the Secretary or an officer authorized by him in this behalf.:

Provided further that for the purposes of inspection and grant of certified copies of confidential documents, the time limits as stipulated under regulation 35 of these regulations, shall apply.

- (4) An officer of the Central or State Government or the Director General or a statutory authority shall be allowed inspection and obtain copies of documents or records mentioned in sub-regulation (1) on making written request to the Secretary for the purpose.

50. Inspection and copying charges.

- (1) A party to the proceedings, on application, may be allowed inspection of records relating to its case by the Secretary, on such conditions as may be specified, on payment of rupees ~~one-two~~ thousand five hundred per day per case.
- (2) ~~Copying~~ Charges for supplying certified copies the parties to the proceedings shall be rupees twenty per page.