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MINISTRY OF CORPORATE AFFAIRS

Draft Policy for Pre-Legislative consultation and comprehensive review of existing Rules and Regulations

INTRODUCTION

Ministry of Corporate Affairs (MCA) is primarily responsible for administering the Companies Act, 2013, LLP Act, 2008, IBC-2016, Competition Act, 2002 and legislations relating to the Three Professional Institutes (PIs), namely Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and Institute of Cost Accountants of India (ICoAI). Various Rules have been prescribed by the Ministry under respective legislations. The Regulators (viz. the IBBI, CCI, ICAI, ICSI, ICoAI) established under respective Statutes have framed regulations as required. NFRA does not, at present, have statutory authority to make regulations.

2.1 MCA has generally undertaken public consultation at the stage of framing or making amendments in the principal legislations. The recommendations of the relevant Committees (CLC, ILC, etc.) are placed on the website of the Ministry for public comments. Attention of the Industry Chambers, Professional Institutes, Regulatory Bodies etc. is drawn to the process of consultation. In many cases, public comments received are analysed through statements giving Ministry's observations on such comments. These are not placed in public domain.

2.2 While rules are framed by the Ministry, the concerned regulators frame regulations. The practice of public consultation for regulation making is not uniform across all regulators. IBBI has issued a regulation in 2018 about the manner of public consultation. Statutes governing the Three PIs mandate publication of draft regulations for public consultation before finalising the regulations. Until a recent amendment was made in year 2023 in the Competition Act, the CCI did not engage in a consultative process while framing regulations. As far as amendments in rules are concerned, the process of public consultation is not being currently followed in all cases, although original rules for Companies Act, 2013 and Limited Liability Partnership Act, 2008 were published for carrying out such consultation.

NEED FOR PUBLIC CONSULTATION IN RULE/REGULATION MAKING EXERCISE

3. Need for public consultation in rule/regulation making exercise has been felt for bringing in greater transparency and greater involvement of the stakeholders. The Legislative Department vide their DO Letter DO 11(35)/20-13-L.I dated 5th February, 2014 has also laid emphasis on the process of pre-legislative consultation for principal legislations as well as for subordinate legislation.

4. In this context, paragraphs 99 and 100 of Budget Speech (2023-24) of Hon'ble Finance and Corporate Affairs Minister read as under:-

Financial Sector Regulations

99. To meet the needs of Amrit Kaal and to facilitate optimum regulation in the financial sector, public consultation, as necessary and feasible, will be brought to the process of regulation-making and issuing subsidiary directions.

100. To simplify, ease and reduce cost of compliance, financial sector regulators will be requested to carry out a comprehensive review of existing regulations. For this, they will consider suggestions from public and regulated entities. Time limits to decide the applications under various regulations will also be laid down.

5. The issue has also been discussed in the Financial Stability and Development Council (FSDC) meeting. Para 13 of RoD of 27th FSDC Meeting (08.05.2023) is as shown below:

" Para 13: The Chairperson (IBBI) outlined the Board's practice of inviting extensive discussions prior to the issuance of any regulation, highlighting that there is a specific regulation on regulation-making. Following the recent budget announcements, resolution professionals and other stakeholders have been requested to provide comments on all existing regulations. IBBI is willing to revise any cumbersome or unfriendly regulation based on the feedback received in the next three months. To reduce compliance costs, the existing eight forms have been consolidated into one form, and the process of digitisation is to follow suit under the IBC 21 initiative, with the launch of a new portal expected by

the end of the year. This digitisation is expected to further reduce compliance costs for resolution professionals and other intermediaries. In addition, amendments to regulations were made following extensive consultation, seminars, and workshops, and the Ministry of Corporate Affairs (MCA) is actively considering them. “

POLICY AND ITS DATE OF EFFECT

6. Given the above background, the Ministry has taken a decision to frame a policy for pre-legislative consultation and for comprehensive review of rules/regulations which is annexed hereto. The concerned Divisions of the Ministry and the regulators constituted under various Statutes being administered by the Ministry would comply with the Policy as far as practicable and within the respective statutes.

7. Where there is a specific statutory provision on the subject of or manner of consultation, it shall be followed. This policy is advisory in nature and may not be construed as a policy directive under section 55 of competition Act, 2002 or under section 225 of IBC, 2016.

8. The policy aims towards carrying out public consultations both at the time of framing original rules and regulations, and at the time of review as outlined in Para 100 of Budget Speech (2023-24).

9. The annexed Policy shall be effective with effect from **01.01.2024**.

ANNEX

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Part A: Policy for pre-Legislative consultation with regard to framing of rules and regulations

PART A.1 POLICY WITH REGARD TO FRAMING OF RULES BY THE MINISTRY

(i) Draft principal rule or any draft amendment to the principal rule (including any Form annexed to the Rules) may be prepared along with an explanatory note mentioning, *inter-alia*-

(a) the issue/difficulty that the proposed amendment seeks to address;

(b) rule-making/regulatory practices on the subject matter, if any;

(c) manner of implementation of the proposed rule; and

(d) the manner, process and timelines for receiving comments from the public

(ii) After obtaining the approval of the competent authority, the draft formulation and the explanatory note may be placed on the Ministry's website for at least 30 days. Rules which are of emergent nature or where in public interest it is expedient that they be issued earlier may not be placed for stakeholders' consultations or may be placed for comments for a shorter period than 30 days. The decision on the necessity/feasibility as well as period of public consultation shall be taken by the concerned Division in the Ministry.

(iii) The concerned Division in the Ministry shall devise a template for seeking public consultation which should enable seeking clause-by-clause feedback on the proposed draft rules.

(iv) In case the concerned Division in the Ministry considers it necessary to consult any specific group of stakeholders, separate consultations with the concerned Body/Institute/Agency representing such stakeholders could be made. Field offices may also be consulted in appropriate cases. Similarly, specific consultations with any independent/external expert, if considered expedient, may also be undertaken at this stage.

(v) In case the concerned Division in the Ministry considers it useful, a circular to be issued by the Ministry may be placed in public domain for public consultation in a manner similar to one for rules, provided that such consultation may not be done in case of a circular that reiterates / clarifies legal position, or is meant for information or for compliance by officers or authorities under the jurisdiction of the Ministry.

(vi) The concerned Division in the Ministry may consider and decide whether to place circulars providing relaxations in fee or filing dates or

for any other purpose of temporary nature also in public domain for consultations.

(vii) Where there is a specific statutory provision for consultation, it shall be followed.

(viii) Where public consultation has been conducted for a new rule or amendment in a rule, the concerned division in the Ministry may also consider publishing a general statement of its response to the public comments, not later than the date of notification of the rule.

(ix) Sufficient period may be given to the stakeholders to comply with the new set of rules. Accordingly, the date of enforcement of rules should ordinarily be 30 days after the date of notification unless a different date is considered necessary for any matter of urgency or public interest.

PART A.2.: POLICY WITH REGARD TO FRAMING OF REGULATIONS BY REGULATORS

(i) All principal regulations as well as amendments to the principal regulations may be placed in public domain for prior public consultations for a period of at least 30 days. Regulations which are of emergent nature or where in public interest it is expedient that they be issued earlier may not be placed for stakeholders' consultations or may be placed for comments for a shorter period than 30 days. The decision on the necessity/feasibility as well as period of public consultation shall be taken by the Regulator.

(ii) Draft principal regulation or any amendment to the principal regulation (including any Form annexed to the regulations) may be prepared along with an explanatory note mentioning, *inter-alia*:-

(a) the issue/difficulty that the proposed amendment seeks to address;

(b) regulatory practices on the subject matter, if any;

(c) manner of implementation of the proposed regulation; and

(d) the manner, process and timelines for receiving comments from the public.

(iii) The Regulators shall devise a template for seeking public

consultation which should enable seeking clause-by-clause feedback on the proposed regulation.

(iv) A circular to be issued by the Regulator may be placed in public domain for public consultation in a manner similar to one for regulations, provided that such consultation will not be necessary in case of a circular that reiterates / clarifies legal position with respect to any regulation issued by the regulator and does not create any new obligation on the stakeholders.

(v) Regulators may consider and decide whether circulars on minor or interpretational clarifications need to be issued.

(vi) Regulators may consider and decide whether circulars providing relaxations in fee or filing dates or for any other purpose of temporary nature may be placed in public domain for consultations.

(vii) Regulators may also consider whether the process of public consultation needs to be followed before issuance of guidance notes / FAQs.

(viii) Specific consultations with any independent/external expert, if considered expedient, may also be undertaken for which necessary decision may be taken by the regulator.

(ix) Where public consultations are being done on a regulation, the regulators may also consider publishing a general statement of its response to the public comments, not later than the date of notification of the regulation.

(x) Sufficient time of at least 30 days may be given for implementation / enforcement of set of regulations. This requirement may not be applicable in case of regulations of urgent nature or involving public interest.

Part B: Policy for pre-Legislative consultation with regard to comprehensive review of existing rules and regulations

PART B.1: POLICY WITH REGARD TO COMPREHENSIVE REVIEW OF EXISTING RULES

(i) The Ministry through the concerned Division shall comprehensively review each Rule and amend or repeal any rule keeping in view the following:

- a. objectives and outcomes
- b. experience of implementation of rules including w.r.t enforcement and litigation so far
- c. rule-making/regulatory practices
- d. relevance in current economic environment
- e. any other factor considered relevant by the concerned division in the Ministry.

(ii) The public consultation and feedback from specific stakeholders, experts or field officers, wherever relevant, as referred to in Part A.1 should be followed for the comprehensive review as well.

(iii) Where considered useful, during or after the process of public consultations, views/comments/recommendations of Sectoral regulators or Statutory bodies may be obtained.

(iv) Any Form that is part of a rule shall also be reviewed with an objective of rationalisation and reduction in compliance burden.

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PART B.2: POLICY WITH REGARD TO COMPREHENSIVE REVIEW OF EXISTING REGULATIONS

(i) The regulators shall comprehensively review each regulation and amend or repeal any regulation keeping in view the following:

- a. objectives and outcomes
- b. experience of implementation of regulations including w.r.t enforcement and litigation so far
- c. regulatory practices
- d. relevance in current economic environment
- e. any other factor considered relevant by the regulator

(ii) The public consultation and feedback from specific stakeholders, experts or field officers, wherever relevant, as referred to in Part A.2 should be followed for the comprehensive review as well.

(iii) Any Form that is part of a regulation should also be reviewed with an

objective of rationalisation and reduction in compliance burden.

The exercise of comprehensive review of existing rules and regulations shall commence with effect from 01.01.2024 and be completed within financial year 2024-25.
