

No.34/ 54/2015-TPD (Services)FTS:
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Trade Policy Division)

Udyog Bhavan, New Delhi
Dated the 23rd April, 2015.

OFFICE MEMORANDUM

Subject:-Meeting of IMG on Architectural Services on 12th May, 2015

The undersigned is directed to refer to the above subject and to inform that a meeting of IMG has been scheduled to be held under the Chairmanship of Shri Rajeev Kher, Secretary, Department of Commerce on 12th May, 2015 at 4.00PM in Conference Room No. 141, Udyog Bhavan, New Delhi to consider roadmap for Architectural Services in India.

2. You are therefore, requested to kindly make it convenient to attend the meeting. The agenda is enclosed. A line of confirmation by e-mail (dd2tpd-doc@nic.in) will be appreciated.



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To

As per list enclosed

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Copy to: PS to CS/PPS to AS(TPD)/PPS to JS(SP)/ AEA(SS)

IMG AGENDA FOR ARCHITECTURAL SERVICES

Department of Commerce

Services Desk



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1. QUALIFICATION AND COMPETENCE OF AN ARCHITECT

1.1 Background

1.1.1 Enactment of Architects Act 1972

Architects Act 1972 has been enacted by Parliament of India, with the consent of the states, under the scope of entry No.66 of List I (union list) of 7th Schedule of Constitution of India and entry No.26 of the List III (Concurrent List) of the 7th Schedule of the Constitution of India

Entry 66 of List I reads as follows:-

"Coordination and determination of standard in institution for higher education or research and scientific and technical institution"

Entry 26 of List III reads as follows:-

"Legal, medical and other profession"

1.1.2 Architects Act

1.1.2.1 Architects Act 1972 deals with three important issues:

- i. Registration of Architects, possessing recognised qualifications
- ii. Minimum standards of education leading to recognised qualification
- iii. Code of Conduct, ethics and etiquettes for a person engaged in practice of profession of an Architect

1.1.2.2 **Provisions:** After enactment of Architects Act 1972, the field of practice of profession of an Architect standards of his education and training, stands occupied by this Central Legislation, applicable throughout the country.

1.1.2.3 Council of Architecture has been created under the provisions of the Architecture Act. It is statutory Body, composed of Nominees of the Central Government, each of the state & Union Territory and of the profession & educational institutions. Nominees of the Central Government, State Governments and UTs account for more than 2/3 of its members.

1.1.2.4 Council of Architecture is empowered (Section 20) to prescribe the minimum standards of architectural education and training, leading to recognised qualification, including duration of course, periods of studies of subjects, Student teacher ratio, qualification of teaching staff, requirement of space /accommodation etc. Council of Architecture as a regulator is expected to oversee the maintenance of standards of education being imparted by institution and make a report to the universities, State Governments and Central Government, as the case may be. Council of Architecture is also required to make recommendation to the Central Government on recognition and de-recognition of qualification.

- 1.1.2.5 Council of Architecture is also empowered to prescribe a Code of Conduct for architects in practice and violation of which would constitute infamous conduct attracting disciplinary action including removal of name of a person from the register of Architects.
- 1.1.2.6 While, the Council of Architecture is empowered to make its prescriptions (Standards of Education & Training, practice, functioning of COA etc) by way of framing Regulations under the provisions of section 21 & 45 of the Architects Act, with the prior approval of the Central Government and by placing the same before both the Houses of Parliament and publishing it in the Gazette of India, the Central Govt is empowered to make Rules, duly placed before both the houses of Parliament and published in gazette of India, under the provision of Section of the Architects Act to prescribe the procedures for transaction of business by the Council of Architecture.
- 1.1.2.7 Council of Architecture has framed minimum standards of architectural education in 1983 and the last amendment was made in early 2006 and all the institutions imparting architectural education including IITs, SPA, Central Universities, and State Universities and deemed to be Universities are required to follow these standards. Bachelor of Architecture programme is of 5 years duration and includes a practical training of one semester under a registered Architect.
- 1.1.2.8 Council of Architecture has framed Architects Professional Conduct Regulation 1989 which prescribes the ethics and etiquettes to be followed by architects in practice as well as in service (private or government). The council of Architecture Rules 1973, with up to date amendments, framed by Central Government prescribes the procedure for conducting an enquiry against architects for their infamous conduct and the disciplinary action to be taken against the defaulting architects.
- 1.1.2.9 Pursuant to the provisions of the Architects Professional Conduct Regulation 1989, the Council of Architecture has prescribed the Scope of Work and Services to be rendered by an Architect

1.2 ISSUE

While the field of education, qualification of an Architect and his competence to practice of the profession of an architect stands occupied by Architect Act 1972, various Central government Ministries/departments, State Governments and Local Self-Governments have prescribed their own qualifications for practice of the profession of architect, which are contrary to the provisions of Architects Act 1972.

- 1.2.1 Architects Act 1972 defines who is qualified to be an Architect, what is his scope of work, what services an Architect is expected to render.
- 1.2.2 National Building Code 2005 (A document without any statutory basis as per WP©1042/2006, High Court of Delhi) defines who can sign building Plans for municipal sanctions. It suggests that Diploma Holders and Civil Engineers can also sign Buildings Plans.

Signing of building plans by implication means that the signatory has designed the building and he shall supervise the construction and he shall ensure the compliance the related laws.

- 1.2.3 Model Bye Laws of States permit licentiates to sign the building plans (land and its development being state subject and building construction being municipal subject)

1.3 EXPLANATIONS

1.3.1 National Building Code 2005

- i. National Building Code 2005 has been framed by Bureau of Indian Standards. The Nodal Ministry is Ministry of Consumer Affairs, Government of India.
- ii. As per BIS Act, it is only empowered to deal with standardisation, marking and quality certification of goods. Goods certainly do not include practice of any profession
- iii. BIS's prescription concerning qualification and competence of professionals, thus, is nothing but over stepping over a central statute which has already occupied the subject of practice of the profession an architect and his education and training.
- iv. The BIS Itself has stated that the NBC-2005 is intended to serve to a model for adoption by various construction department and local bodies
- v. National Building Code 2005 part II - administration prescribes "guide for the qualification and competence of professionals" for the planning, designing and supervision of the building/developmental work for which the statutory permission is required.
- vi. This guide not only deals with the qualification of professionals such an architect, engineer, supervisor, town planner, urban designer, landscape architects, engineer of utility services, but also prescribes the competence of each of the professional.
- vii. It restricts the competence of an architect to design building other than multi storied and special building. Whereas as per the NBC 2005, an engineer can design any building including multi storied and special building. Whereas the fact is his education qualification is not those which are prescribed under Architects Act 1972 for a person to practice the profession of an architect.
- viii. This guide document published as a part of National Building Code 2005 is invariably adopted by various state governments and local self governments without realising that the field of profession of an architect and his education & training is already occupied by a Central Legislation called Architects Act and BIS is not competent to deal with the subject of the qualification and profession of an architect.

1.3.2 Building construction and development rules framed by state government

As per 7th Schedule of Constitution of India, List II deals with the subject matter to be dealt with state governments. This includes land and development over it including construction. Empowered with this provision, various states have framed building construction and development rules.

However, not able to distinguish between the building construction and the professional required to design the building they have also dealt with the subject of prescribing qualification and competence of persons who could be authorised by them to design the buildings (i.e. the practice of profession of an Architect). Though the subject matter stands occupied by central legislation i.e. Architects Act.

One such example is development authority building construction and development rules 2008 framed by Housing and Town Planning Department of Government of Uttar Pradesh (**Annex-1**). This document is nothing but a copy of the prescription of National Building Code 2005.

1.3.3 Building By-laws framed by local self-government i.e. Municipal authorities.

While the subject of building construction is to be dealt with the local self-government as per the provision of 12th Schedule of Constitution of India (Article 243W), the Municipal authorities also have prescribed under building By-laws the qualification and competence of professionals to design the buildings and supervise its construction (i.e. practice of the profession of an architect).

These by-laws describe the architect as licensed person, technical person or licence surveyor or an Engineer or a draftsman and prescribed their competence based on their area of plot, height of the building and complexity of the project.

Examples

Haryana Building By-laws in 1.307 (**Annex-2**)

Delhi Building by-laws p.18 (**Annex-3**)

Noida Building By-laws p.38 (**Annex-4**)

1.4 IMPLICATION

These prescriptions defeat the very purpose of the Architects Act which was enacted as a Central Legislation to protect the interest of the public and that the public be served by a qualified professional (subject specialist) when it comes to design of building.

1.5 PROPOSAL FOR CONSIDERATION OF IMG

These contradictory provisions may be sorted out so that the Architects Act 1972 prevails.

- 1.5.1 BIS may be advised by the Ministry of Consumer Affairs that the NBC-2005 part 2 "Guide for the qualification and competence of professional" for planning, designing and supervision of the building / development work be withdrawn / deleted as it in contradiction with the Architect Act 1972.

- 1.5.2 States Government (Department of Urban Development, Housing and Municipal Affairs) may be advised by Ministry of HRD that they may amend the model rules for development authorities and Municipal Authorities so that no person other than an architect, registered with council of architecture be permitted to plan, design, supervise and sign drawing and documents which require statutory approvals for construction of buildings.
- 1.5.3 All Development Authorities and Municipal Bodies be advised by State Governments to amend the Building Bye laws so that these are consistent with the Architects Act and no person other than an Architect, registered with Council of Architecture be permitted to plan, design, supervise and sign the drawings and documents, which requires statutory approvals for construction of buildings.

1.6 BENEFITS OF PROPOSED RECOMMENDATIONS

- 1.6.1 The competence and qualifications to provide Architectural Services shall be consistent with the domestic law as well as identical to practice followed as in all developed nations.
- 1.6.2 India shall be able to take better commitment once there are uniform and consistent domestic laws on qualification and competence of Architects.
- 1.6.3 Firm ground shall be created for need to enter into MRAs for foreign statutory bodies dealing with practice of Architects in their respective countries.

2. DEFINING PRACTICE OF AN ARCHITECT/ ARCHITECTURAL SERVICES

2.1 BACKGROUND

The term "Practice of the profession of an Architect or Architectural Services" has not been defined in the Architects Act, 1972. However, a reference is to "practice of the profession of an Architect" has been made in Section 25(c)- a, section 30 and again in Section 37 (i) (a) of the Architects Act 1972.

2.2 ISSUE

The domain of the profession of an architect is not defined, and is invariably confused with that of other professionals, ie. Engineers, diploma holders, draftsman, licensed surveyors etc by the State Governments and Local Self Governments (Municipal Bodies) and Development Authorities.

2.3 EXPLANATION

In absence of a statutory provision defining the professional domain of an Architect and a prohibitory clause restricting others to practice the profession of an Architect, Building Bye Laws prescribed by Municipal and Development Authorities permit Engineers, Diploma Holders, Draughtsman and Licensed Surveyors to practice the profession of an Architect

2.4 IMPLICATIONS

- 2.4.1 Public at large is not getting the benefit of the development of the Architectural profession and the education of an architect
- 2.4.2 Tradability of Architectural services is impeded because of multiple / different competencies prescribed by states and Local Self Governments

2.5 PROPOSAL FOR CONSIDERATION OF IMG

- 2.5.1 Ministry of HRD may amend Architect Act Section 37 (i).

- i. Existing provision of the Act

"After the expiry of one year from the date appointed * under sub-section (2) of section 24, no person other than a registered architect or a firm of architects shall use the title and style of architect."

- ii. Proposed provision in the Act

After the expiry of one year from the date appointed * under sub-section (2) of section 24, no person other than a registered architect or a firm of architects shall use the title and style of architect "and practice the profession an architect, including signing of building plans and related documents required for obtaining statutory approval for the constructions any building and its related infrastructure".

2.5.2 Ministry of HRD may advise Council of Architecture to define the term "practice of the profession of an Architect" by making a regulation under the provision of Section 45 of the Architects Act.

Explanation

- i. Council of Architecture is empowered to make Regulation under provisions of Section 45, not inconsistent with the provision of Architects Act but with prior approval of the Central Government. These may include subject of standards of education and standards of professional conduct and any other matter which is to be or may be provided by regulation under this Act and in respect of which no rules have been made.
- ii. Council of Architecture being the subject expert, can do the detailing of the enabling provisions of the Act, with a flexibility to amend the same from time to time to address the contemporary issues confronted by the society. It will not be out of place to mention that Council of Architecture is largely composed of nominees of central government and each of the state government, nearly accounting for 2/3 of its members.

2.6 BENEFITS

- 2.6.1 Confusion created by State Laws and Municipal Bye-Laws defining services to be provided by an engineer, diploma holder, draftsmen, licence surveyors shall be removed.
- 2.6.2 Public at large will get benefitted by getting served by qualified and right person doing right job.
- 2.6.3 Government shall be assured of (in public interest) implementation of the supervisory responsibilities (ensuring compliance of relevant laws related to design and construction) delegated to an Architect by virtue of conferment of the Title Architect to a qualified person.

3. JURIDICAL PERSONS (Company, trust, society etc) CAN NOT PRACTICE ANY REGULATED PROFESSION

3.1 Background

3.1.1 Architect Act is akin to many other professional laws dealing with registration and practice of professions such as medicine, pharmacy, chartered accountancy, legal, company secretary etc.

3.1.2 Only persons registered with Council of Architecture under the provisions of the Architect Act or a firm of architects, (all partners being registered with COA) can practice the profession of an architect and use title and style of an architect. (Section 37)

This provision implies that

- i. Only natural persons can practice the profession an architect.
- ii. Any firm having a non architect as a partner cannot practice the profession an architect.
- iii. A company (private and public limited) incorporated under Company Law cannot practice the profession an architect. Similarly a society, trust or a statutory body also can not practice the profession of an Architect.

3.1.3 Architect Act provides for a penal action (Section 36 and 37) against persons (natural or juridical) who falsely claim to be registered or use in connection with their name or title any words or letters reasonably calculated to suggest that he is an architect or he practices the profession an architect without being registered with Council of Architecture. The first conviction with fine may extent to Five Hundred rupees of and any subsequent conviction may be imprisonment, which make extent to six months.

3.2 ISSUE

3.2.1 Registrar of Companies, in violation of the provisions of the Architect Act have been permitting the following:

- i. Name of the companies which have word architect in it.
- ii. Acceptance and approval of the objects of the Companies to practice the profession an architect. This includes of number of companies wholly owned by foreign nationals/entities.

3.2.2 Ministry of Corporate Affairs while vide its circular dated March 2012 advised all registered of Companies/ LLPs that no new company the incorporated with the object to the practice the profession an architect, without obtaining an NOC from Council of architecture.

3.2.3 Despite the above stated circular of MCA, various Registrars of Companies continue to register companies with an object to pursue the profession an architect.

3.2.4 MCA is yet to take a decision on shutting down the existing companies which have been incorporated with an object to practice the profession an architect.

3.2.5 Given the provisions of Section 36 and 37, all the companies using the word architect in their name and those which has objects to practice the profession an architects, attract penal action.

However the amount of fine (Rs.500/- or Rs.1000/-) prescribed in 1972 is too little to act as a deterrent to the violators.

3.3 IMPLICATIONS

- 3.3.1 While Architects registered with Council of Architecture can be disciplined in case of a professional misconduct, a company or any other juridical person cannot be disciplined under the provisions of the Architect Act.
- 3.3.2 Permitting a company to practice the profession of an architect becomes an alternative to the registration requirement as provided in the Architects Act, defeating the very purpose of the Act.

3.4 PROPOSAL FOR CONSIDERATION OF IMG

- 3.4.1 Ministry of Corporate Affairs may advise all the Registrar of Companies :
- i. that the word architect and its variants be deleted from the name of any company registered by them.
 - ii. that objects of any company seeking to practice of the profession of an architect (including the design of buildings) be deleted from their Memorandum and Article of Association.
- 3.4.2 Ministry of HRD may amend the section 36 of the Architects Act
- i. **Existing Provision:** *"If any person whose name is not for the time being entered in the register falsely represents that it is so entered, or uses in connection with his name or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable with fine which may extend to one thousand rupees"*
 - ii. **Proposed Provision:** *"If any person whose name is not for the time being entered in the register falsely represents that it is so entered, or uses in connection with his name or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable with fine which may extend to one thousand rupees be prescribed by the Central Government in Rules."*
- 3.4.3 Ministry of HRD may amend the Section 37 (2) of the Architects Act.
- i. **Existing Provision:** (1) *After the expiry of one year from the date appointed* under sub section (2) of section 24, no person other than a registered architect, or a firm of architects shall use the title and style of architect ...*
(2) *"If any person contravenes the provisions of sub section(1), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both"*
 - ii. **Proposed Provision:** (2) *If any person contravenes the provisions of sub-section (1), he shall be punishable on first conviction with fine which may extend to five hundred rupees be as prescribed by the central Government in Rules and on any subsequent conviction with imprisonment which may extend to six months or with*

fine double of that is prescribed for the first conviction not exceeding one thousand rupees or with both."

3.5 BENEFITS

- 3.5.1 Foreign companies illegally practicing the profession of an Architect in violation of the provisions of the Architects Act in India can be stopped and countries having interest in Indian Market can be encouraged to enter in reciprocal arrangement with the respective statutory bodies regulating the profession.
- 3.5.2 Private and Public Limited Companies, illegally practicing the profession of an Architect in violation of the provisions of the Architects Act in India can be stopped. Foreign Companies may not be able to take refuge of the argument that domestic law is not uniformly applied to wholly owned domestic or foreign entities.
- 3.5.3 Indian Architects shall have experience of projects right now being offered to foreign and Indian companies on the basis of their corporate/financial strength. This shall in turn, over a period of time increase their eligibility and potential to export the Architectural Services.

4. FOREIGN ARCHITECTS IN INDIA

4.1 BACKGROUND

4.1.1 Section 37 (1) (b) of Architect Act reads as follows:

“a person who, carrying on the profession of an architect in any country outside India, undertakes the function as a consultant or designer in India for a specific project with the prior permission of the Central Government”.

4.1.2 The purport of the above provision can be understood as follows:

- i. The foreigner must be a natural person and an architect in his own country (as may be legally defined in his country).
- ii. The foreign architect can perform professional duties in India only with prior permission of Central Government. The permission may include clearance from Labour Ministry as it may offset opportunity of an Indian Architect, clearance from Home Ministry for security reasons, clearance from Ministry of Human Resources Development (Council of Architecture) to ensure that the person in question is an architect is on country and his expertise is not available in our country etc.
- iii. The foreigner can only function as consultant or as designer but not an Architect.
- iv. By implication, a foreigner (architect) can only be adviser and offer his expertise to a client or to an architect (Indian) for the project for which the Central government has granted permission to a foreigner to perform professional duties in India.
- v. Foreign juridical person (firms, companies, LLPs etc) are not allowed to perform the duties and functions of consultants or designers under the provisions of the Section 37(1)(b)

4.2 ISSUE

4.2.1 Presence of foreign architect in India without compliance of the provisions of the section 37 of the Architect Act has become common and some of the enabling routes are as under:

- i. Foreign legal entities are being appointed as “architect” for the projects in India by Central and State Governments, PSUs etc., following a global tendering process.
- ii. Foreign legal entities are being appointed as “architect” for project in India by real estate developers on invitations basis.

4.2.2 In both the above cases the municipal authorities and the other statutory/government bodies of India such as Delhi Urban Arts commission, Archaeological survey of India, Ministry of Environment, Supreme Court appointed committees on environmental issues do not recognise the foreigners (persons not registered with Council of Architect) are and insist on drawing and documents be signed by an architect, who is registered with Council of Architecture.

4.2.3 To meet this requirement, the foreigners and their respective client get the drawing and documents signed and submitted to municipal authorities and other statutory/ government bodies by another Indian architect, who is not the author of the design. Legally it means that the foreigners engaged by the respective client are actually not the architect of the project and the person who have signed the drawing and documents is the architect of the project

and the author of the design and he alone shall perform the duties and function of the architect including supervision of the construction of the building and he shall ensure the compliance of various laws related with construction such as fire safety law, Indian electricity board, BIS standards for products, Labour Laws etc.

Thus, the practice of engagement of foreigners as architects is not only violative of the various provisions of the Architect Act but is also encouraging unethical practice of surrogate presence of foreigners in India (See Annex on Foreign Architects). The outflow of money from India as a consequence of this practice is naturally illegal.

4.3 IMPLICATIONS

- 4.3.1 As foreigners and foreign legal entities are being appointed by Government agencies and other organisations without their being registered with Council of Architecture, they can not be disciplined, in case of a professional misconduct, under the provisions of the Architects Act.
- 4.3.2 A foreigner, not being a resident of India, cannot be tried for any other liability that may arise as a consequence of his practice of the profession of an Architect in India.
- 4.3.3 As foreigners are freely being appointed as Architects in India (though illegally), no foreign country is interested in entering into MRAs.
- 4.3.4 Foreigners and foreign legal entities are occupying space exclusively reserved by the Parliament of India for only those registered with the Council of Architecture
- 4.3.5 Engagement of foreigners and foreign legal entities is causing loss of foreign exchange.

4.4 PROPOSAL FOR CONSIDERATION OF IMG

- 4.4.1 Ministry of HRD may advise all the Central Government Ministries, State Governments, all public sector undertakings; autonomous bodies etc.
 - i. that no foreigner or foreign legal entity (juridical person) be engaged as an architect for any project in India.
 - ii. that a foreigner (only natural person) can be engaged only as a consultant or a designer under the provisions of architect act under section 37(1) (b), with prior permission of the Central Government for a specific projects, for which Indian Architects do not have requisite experience/ expertise.
 - iii. that no foreign juridical person(firm, company, trust, society etc) be engaged as consultant or designer.
- 4.4.2 Ministry of HRD may advise Council of Architecture to define the distinction between an architect, consultant and designer.
- 4.4.3 RBI may advise all the Banks that no remittance to a foreign land be allowed on account of Architectural Services rendered in India by a foreigner or a foreign legal entity.
- 4.4.4 Ministry of External Affairs may:
 - i. revoke visa of the foreigners providing Architectural Services in India on Business or Tourist Visa.

This can be checked by seeking a list of foreign Architects appointed by the Central/ State Governments, Central/State PSUs, Autonomous Bodies funded by the Central Government.

- ii. strictly follow the requirement of Ministry of Labour that no employment visa be granted to any foreigner / foreign consultant unless he draws a annual salary less than US \$ 25000.
- iii. not issue any visa to any foreigner(architect, consultant, designer) against appointment letters issued by their Indian clients, unless he produces proof of his engagement being approved by the Central Government under the provisions of the Architects Act Section 37(1) proviso (b), subject to 4.4.4 (ii) above.

4.5 BENEFIT

Once a foreigner is engaged as a consultant or a designer to an Indian Architect, as envisaged in the Architects Act, the following benefits shall accrue:

4.5.1 the expertise of the foreigner will get transferred on Indian soil and it will help Indian principal architect and his associates to enhance their expertise, skill and ability to International Standard.

4.5.2 this process shall also make Indian Architect and their legal entities enhance their qualifications so that they could be eligible for consideration for other project within and outside India.

Once such example of such engagement of foreign architects as consultant in India was implemented by the Airport of Authority of India for a number of Airports in India for which domestic architects did not possess the requisite experience.

4.5.3 This process may well become a part of a long term economic trade strategy which may open up the world market for Indian Architects.

V. CONFLICTING POLICIES/GUIDELINES ON ENGAGEMENT OF ARCHITECTS FOR PUBLIC PROJECTS

5.1 BACKGROUND

5.1.1 Architects Act

5.1.1.1 Pursuant to Section 45 of the Architects Act, Council of Architecture, with prior approval of the Central Government, has made Architects (Professional Conduct) Regulation 1989 to promote the standard of professional conduct/self discipline required of an Architect.

5.1.1.2 Sub section 1 reads as under:

The Council may, with the approval of the central Government, *[by notification in the Official Gazette] make regulations not inconsistent with the provisions of this Act, or the rules made there under to carry out the purposes of this Act.

Sub section 2 reads as under:

In particular and without prejudice to the generality of the foregoing power, such regulations may provide for -

- a. the management of the property of the Council;
- b. the powers and duties of the President and the Vice-President of the Council;
- c. the summoning and holding of meetings of the Council and the Executive Committee or any other committee constituted under section 10, the times and places at which such meetings shall be held, the conduct of business thereat and the number of persons necessary to constitute a quorum;
- d. the functions of the Executive Committee or of any other committee constituted under section 10;
- e. the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognised qualifications;
- f. the appointment, powers and duties of inspector;
- g. the standards of staff, equipment, accommodation, training and other facilities for architectural education;
- h. the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;
- i. the standards of professional conduct and etiquette and code of ethics to be observed by architects;
- j. any other matter which is to be or may be provided by regulations under this Act and in respect of which no rules have been made.

5.1.1.3 Pursuant to the Regulation 1989 the Council of Architecture has prescribed Conditions of engagement of an Architect, Scale of Charges, Guidelines for Architectural Competitions etc.

5.1.1.4 Implications of Architects Acts and Regulations

- i. By implication of the provisions of the Regulation 1989, an architect can be commissioned for a project:
 - by invitation on the basis of conditions of engagement and Scale of Charge prescribed by COA.
 - by participating in Architectural Design Competition conducted as per COA guidelines.
- ii. By implication of the provisions of the Regulation 1989, an architect cannot :
 - quote fee in competition with other architects and get appointed on lowest fee basis (similar to Tendering process being followed for supplies / construction).
 - offer design upfront (prior to appointment), free of cost, as part of Technical bid.

5.1.2 CVC Guidelines for engagement of Consultants including Architects

- 5.1.2.1 CVC relies on Bureau of Public Enterprises circular dated 15th July 1978 for appointment of Consultants. The highlights are:
 - i. there should be a prequalification through Public Notice,
 - ii. Bids to be screened by a scrutinizing committee,
 - iii. Selection of consultants shall be done by Board of the Public Enterprise
 - iv. Selection be made with Maximum consideration to their suitability competence and proven track record.
- 5.1.2.2 Pre-requisites of prequalification process (CVC letter dated 26th April 2007);
 - i. Transparency
 - ii. Fairness
 - iii. Maintenance of Competition

5.1.3 CVC Guide Lines for Construction Civil and Electrical Works

5.1.3.1 Eligibility Criteria

- i. Turn over: Average annual turnover for last three years should be at least 30% of the estimated cost
- ii. Experience of successful completion of works: 3 similar works of 40% of the estimated cost or 2 similar works of 50% of the estimated cost or 1 similar work of 80% of the cost of works
- iii. Similar work: This should be defined clearly

5.1.3.2 Other stipulations include:

Earnest Money, Performance Guarantee, Security etc

5.1.3.3 Implication of CVC Guidelines:

- i. CVC Guidelines for construction are being applied for the selection of Architects by every Government Department.

- ii. Parameters of Prequalification criteria have supported monopolistic trade practice.
- iii. Parameters of Prequalification criteria has led to exclusion of Indian Architects and has paved way for the entry of foreign architects for all large projects e.g. Stadiums for Commonwealth Games, IITs, World Class Railway stations etc.
- iv. No distinction is being made between Completion of Design and construction work.
- v. Creativity has been relegated to naught.
- vi. Architects are being forced to deposit Earnest money and submit Performance Guarantee, again encouraging monopolistic trade practice.

5.1.4 Ministry of Finance- Manual of Policies and Procedure of Employment of Consultants (August 31, 2006), including Architects

5.1.4.1 It prescribes Minimum qualifying standards, such as:

- i. Minimum experience, including number of assignments handled by the firm similar to the area of assignment.
- ii. Turnover and other financial parameters of the firm.
- iii. Minimum educational qualifications of each of the key professionals.
- iv. Minimum requirement of experience of key professionals in an area similar to the proposed assignment.

5.1.4.2 It proposes two methods of selection:

- i. Lowest cost basis: out of pre qualified professionals.
- ii. Quality cum cost basis: Qualifying criteria having 70% weightage and financial bid having 30% weightage.

5.1.4.3 Implications of MOF Guidelines:

- i. Every Government agency is following it.
- ii. Parameters of Prequalification criteria has led to exclusion of Indian Architects and has paved way for the entry of foreign architects for all large projects e.g. Stadiums for Commonwealth Games, IITs, World Class Railway stations etc.
- iii. Educational qualifications have become replacement of registration.
- iv. Quality cum Cost based selection also leads to selection of the lowest bidder.
- v. Prequalification criteria (technical bid), increasingly now, includes preparation and presentation of a design concept involving a complete design, three dimensional views, model etc.

5.2 VALIDITY OF MULTIPLE AND CONFLICTING POSITIONS

- 5.2.1 CVC guidelines requiring maximum consideration to competence and proven track record for the appointment of a consultant is not inconsistent with the provisions of the Architects Act.

- 5.2.2 CVC guidelines for Civil and Electrical Works (construction works) viz requirement of bench marking of experience, Turn Over, experience of Similar work etc is irrelevant for practice of profession of an Architect.

In a growing economy bench marking has to be raised over a period of time in order to strengthen the ability and experience of the domestic professional else the domestic professionals shall never gain the requisite experience shall gradually become inexperienced for the world market.

- 5.2.3 MOF Guidelines / Manual's recommendations stipulating selection of an Architect on lowest fee basis, calling for Design in the guise of Technical Bid, Turn over criteria, educational qualification etc is in direct conflict with the code of conduct for the Architects, under the provisions of the Architects Act and against the spirit of the practice of any profession.
- 5.2.4 Architects Act being a special Act dealing with the practice of the profession of an Architect and his education, legally prevails over any other laws, stipulation or guideline or Government Order to the extent such stipulations are inconsistent with the provisions of the Architects Act.

5.3 PROPOSAL FOR CONSIDERATION OF IMG

- 5.3.1 Council of Architecture be advised to evolve alternative methods of engaging (selection of) an Architect apart from appointment by invitation or through an Architectural Competition, keeping in view the requirement of CVC of transparency, fairness and competitiveness.
- 5.3.2 CVC may advise the various Government Agencies that the stipulations made for Civil and Electrical Works (Construction works) should not be applied for selection of Architects
- 5.3.3 MOF Manual be suitably amended to be consistent with the provisions of the Architects Act.

5.4 BENEFITS

- 5.4.1 Indian Architects shall not be excluded from doing projects in India.
- 5.4.2 Indian Architects shall, over a period of time, gain sufficient experience to be global players which shall in turn cause development of Human Resource in India and Increase the global competitiveness of Indian Architects in times to come.

Annex on FOREIGN ARCHITECTS

Companies from USA, UK, and Singapore have set up Pvt Ltd Companies in India, offering and conducting **ARCHITECTURAL SERVICES** on Indian soil for Indian Clients without **any approval from the regulator – the COA (Architects Act)**. These include five companies from Singapore, four from USA and three from UK. In total, about 12 companies have been identified till date.

A perusal of the India's commitments indicates that no natural person of Singapore can provide Architectural Services without registration with the Council of Architect.

- **None of these architects** working in these Indian Companies owned by Singaporeans are **registered with the CoA** and are thus committing violations of the commitments given by India to Singapore in this sector.
- The Architects Act, 1972 does not allow foreigners/Indians intending to practice architecture cannot register as a Company under the Companies Act. They can enter into a partnership with an Indian but before that each partner is required to register with the Council of Architects (CoA). None of these foreign architects are registered with the CoA.

The proof of their existence lies in the fact that they **pay Service tax** under Architects services and are registered under that head. Their **MOA** states that they offer Architectural services. Their **websites** state that they practice architecture. **Site board photographs** are also available for many of these. **Industry magazines** also show that they are architectural services suppliers. **COA has filed criminal cases against 7 of these 12 companies**. For the balance 5, the process of collection of facts, appraisal by the DC, and EC of the COA is underway. Thus, **these companies exist in violation of CECA /FTA / WTO agreements**.

COA is the regulator for Architecture in India. Architects Act 1972 prescribes minor financial penalties. The act was pre WTO and Pre CECAs. The Act could not have imagined such a situation (violation through various modes of the WTO). To resolve this matter, in March 2012, MCA released a circular saying that no new Companies /LLPs can be set up until they get an NOC from COA. Despite this, many companies were registered.

Action: CoA/ M/o HRD, Ministry of Corporate Affairs, MEA (through our High Commission)

