

ACUITY **LAW**

**CORPORATE
LAW NEWSLETTER**

APRIL 2021
acuitylaw.co.in

ABOUT ACUITY LAW LLP

Acuity Law LLP was founded in November 2011. Acuity Law LLP comprises of a team of young and energetic lawyers/ professionals led by Souvik Ganguly, Gautam Narayan and Deni Shah who have deep and diverse experiences in their chosen areas of practice. We advise Indian and multinational companies, funds, banks and financial institutions, founders of companies, management teams, international law firms, domestic and international investment banks, financial advisors and government agencies in various transactions in and outside India.

Acuity Law LLP takes pride in rendering incisive legal advice taking into consideration commercial realities. Our areas of practice are divided into three departments. The Corporate practice is led by Souvik Ganguly, the Global Trade and Tax practice is led by Deni Shah and the Disputes practice is led by Gautam Narayan.

As part of the Corporate practice, Acuity Law LLP advises on:

- Mergers and acquisitions;
- Distressed mergers and acquisitions;
- Insolvency Law;
- Private Equity and Venture Funding;
- Employment and labour laws;
- Commercial and trading arrangements; and
- Corporate Advisory

As part of the Global Trade and Tax practice, Acuity Law LLP advises on:

- Cross-border tax planning and jurisdiction analysis
- Strategies for acquisitions, mergers, divestitures, diversification or consolidation of businesses
- Inbound and outbound investment structuring
- Endowment planning / wealth management strategies
- Global Trade & Customs laws, including foreign trade policy
- International supply chain optimization
- Goods & Services Tax and other Indirect taxes

As part of the Disputes practice, Acuity Law LLP advises and represents clients on domestic and cross - border:

- Civil disputes;
- Criminal law matters; and
- Arbitration matters

Acuity Law LLP actively follows legislative and policy developments in its chosen areas of practice and shares such developments with clients and friends on a regular basis.

If you want to know more about Acuity Law LLP, please visit our website acuitylaw.co.in or write to us at al@acuitylaw.co.in.

The information contained in this document is not legal advice or legal opinion. The contents recorded in the said document are for informational purposes only and should not be used for commercial purposes. Acuity Law LLP disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

INTRODUCTION

This newsletter covers recent key updates in Indian corporate laws relating to banking law, competition law and developments under securities laws.

In particular, we have covered:

- (a) Circular and Guidelines issued by the Reserve Bank of India (“**RBI**”) on:
 - (i) Corporate Governance in Banks – Appointment of directors and constitution of committees of the board; and
 - (ii) Appointment of Statutory Central Auditors or Statutory Auditors of Commercial Banks, Urban Cooperative Banks and Non-Banking Finance Companies (including Housing Finance Companies);
- (b) Delhi High Court’s Judgment in the case of WhatsApp LLC & Facebook Inc. v Competition Commission of India; and
- (c) Circulars issued by the Securities and Exchange Board of India (“**SEBI**”) on:
 - (i) Reporting Formats for Mutual Funds;
 - (ii) Procedural Matters – Issues and Listing;
 - (iii) Alignment of Interest of Key Employees of Asset Management Companies with the Unit Holders of Mutual Fund Schemes;
 - (iv) Relaxation on Timelines for Compliance with Regulatory Requirement Trading Members or Clearing Members or Depository Participants or Know-Your-Customer Registration Agencies;
 - (v) Further Relaxation in Adherence to Prescribed Timelines issued by SEBI due to CoVID – 19 dated 13 April 2020;
 - (vi) Relaxation from Compliance with certain provisions of the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015 due to CoVID-19 pandemic; and
 - (vii) Relaxation of Timelines for Updating Scheme Information Documents and Key Information Memorandum of Mutual Fund Schemes.

1. BANKING LAW

Please see below the summary of the key banking law updates for April 2021

- 1.1. **RBI Circular on Corporate Governance in Banks – Appointment of Directors and Constitution of Committees of the Board**
 - 1.1.1. The RBI has released a circular on Corporate Governance in Banks on 26 April 2021 (the “**Circular**”), which contains revised guidelines relating to governance framework of commercial banks with respect to the composition and functioning of board of directors of banks (“**Board**”) including: appointment of chairperson for Board meetings; constitution, and composition of certain committees of Board; the age, tenure, and remuneration of directors on the Board; and the appointment of the managing director (“**MD**”) of the banks.
 - 1.1.2. The Circular will apply to all private sector banks, small finance banks and wholly owned subsidiaries of foreign banks. It is also applicable to nationalized banks to the extent it is not inconsistent with provisions of laws applicable to such banks. The Circular is not applicable to foreign banks operating through branch offices in India. Further, the applicability of the Circular on other commercial banks viz., local area banks, payments banks and regional rural banks will be notified separately by the RBI.
 - 1.1.3. While the Circular comes into effect from 26 April 2021, RBI has permitted banks to comply with the instructions latest by 01 October 2021 in order to enable smooth transition to the new requirements. It has been clarified that the Circular will not have any overriding effect and it will supplement the existing law in place.
 - 1.1.4. The Circular provides that the chairperson of the Board should be an independent director. In the absence of a chairperson, the Board meetings should be chaired by an independent director. The quorum for Board meetings should consist of 1/3rd (one-third) of the total strength of the Board or 3 (Three) directors, whichever is higher, and at least 50 (Fifty) percent of the directors attending a meeting should be independent directors.
 - 1.1.5. The Circular provides for guidelines on composition of 3 (Three) committees viz the audit committee, the risk management committee, and the nomination and remuneration committee. The audit committee and the nomination and remuneration

committee should consist only of non-executive directors as its members and the majority of the members of risk management committee should be non-executive directors. The audit committee and the risk management committee should meet at least once in every quarter and the nomination and remuneration committee should meet as and when required.

- 1.1.6. The upper age limit for non-executive directors (including the chairperson of the Board) has been capped at 75 (Seventy-five) years. The total tenure of non-executive directors on the Board, whether continuously or otherwise, cannot exceed 8 (Eight) years. After completing 8 (Eight) years such person may be considered for re-appointment after a cooling period of 3 (Three) years. During the cooling period, the person can be appointed as a director in another bank.
- 1.1.7. In addition to sitting fees and expenses related to attending meetings of the Board and its committees, bank may provide for payment of compensation to non-executive directors in the form of a fixed remuneration. However, such fixed remuneration for a non-executive director, other than the chairperson of the board, cannot exceed INR 2 (Two) million per annum.
- 1.1.8. Under extant law, the maximum tenure for appointment of MD and Chief Executive Officer (“CEO”) or whole-time directors is 5 (Five) years at a time. Banks may reappoint them for another term of 5 (Five) years but not earlier than 2 (Two) year before expiry of the current term. The Circular provides that the total term of the MD and CEO and whole-time directors cannot exceed more than 15 (Fifteen) years. Thereafter, the individual will be eligible for reappointment as MD and CEO or whole-term director in the same bank, if considered necessary and desirable by the Board, after a minimum cooling period of 3 (Three) years. During this 3 (Three) year cooling period, the individual cannot be appointed or associated with the bank or its group entities in any capacity, either directly or indirectly.
- 1.1.9. Further, the MD and CEO or whole-time director who is also a promoter or major shareholder of the bank, cannot hold these posts for more than 12 (Twelve) years. However, RBI may allow such individuals to continue up to 15 (Fifteen) years in extraordinary circumstances and at its sole discretion. The Circular clarifies that banks with MD and CEOs or whole-time directors, who have already completed 12 (Twelve) or 15 (Fifteen) years tenure as on 26 April 2021, will be allowed to complete their current term of 5 (Five) years.
- 1.1.10. Please click [here](#) to read the circular.
- 1.2. **RBI Guidelines for Appointment of Statutory Central Auditors or Statutory Auditors of Commercial Banks, Urban Cooperative Banks and NBFCs (including Housing Finance Companies)**
 - 1.2.1. The RBI has issued guidelines on appointment of statutory central auditors or statutory auditors of commercial banks, urban cooperative banks and NBFCs (Including Housing Finance Companies) on 27 April 2021 (“Guidelines”). The Guidelines will be applicable from financial year 2021 and onwards. Urban cooperative banks and NBFCs will have the flexibility to adopt the guidelines from the 2nd (Second) half of the financial year 2021.
 - 1.2.2. As per the Guidelines, commercial banks and urban cooperative banks will be required to take prior approval of RBI for appointment of statutory central auditors or statutory auditors on an annual basis and should apply before 31 July of the reference year. NBFCs are not required to take any prior approval of RBI for appointing statutory central auditors or statutory auditors but are required to inform the concerned department of RBI within 1 (One) month of such appointment.
 - 1.2.3. The Guidelines further provide that entities with asset size of more than INR 150 (One hundred fifty) billion should have minimum of 2 (Two) audit firms as statutory central auditors or statutory auditors and other entities should have at least 1 (One) statutory central auditors or statutory auditors. The Guidelines also clarify that the joint auditors should not have common partner and should not be under the same network.
 - 1.2.4. With respect to the independence of auditors, the audit committees of the board of commercial banks and NBFCs are required to monitor and assess the independence of the auditors and conflicts of interest. Similarly, the board of directors of the urban cooperative banks shall be responsible for monitoring and accessing the independence of the auditors. The Guidelines also provide that the time gap between any non-audit work by statutory central auditors or statutory auditors for the concerned entities or any audit or non-audit work for its group entities should be at least 1 (One) year before or after its appointment as statutory central auditor or statutory auditor.

1.2.5. The Guidelines prescribe that the appointment of statutory central auditors or statutory auditors should be for a continuous period of 3 (Three) years subject to the concerned audit firm satisfying to the eligibility norms each year. An audit firm shall not be eligible for re-appointment for the same entity for 6 (Six) years upon completion of its tenure.

1.2.6. Please click [here](#) to read the Guidelines.

2. COMPETITION LAW

Please see below the summary of the key competition law updates for April 2021

2.1. Delhi High Court's Judgment in the Case of WhatsApp LLC & Facebook Inc. v CCI

2.1.1. The Hon'ble Delhi High Court on 22 April 2021, has dismissed the petition filed by WhatsApp LLC. ("WhatsApp") and Facebook Inc. ("Facebook") against the order passed by the Competition Commission of India ("CCI") in the matter relating to the new terms and new privacy policy of WhatsApp ("New Updates") issued earlier this year.

2.1.2. On 24 March 2021, the CCI had passed an order for conducting a detailed investigation into the New Updates, to determine if any provisions of the New Updates would amount to abuse of dominant position of WhatsApp in the relevant market i.e., Over-The-Top messaging application. Please click [here](#) to read the CCI order.

2.1.3. Aggrieved by the CCI order dated 24 March 2021, WhatsApp and Facebook had filed a writ petition before the Hon'ble Delhi High Court on the grounds that the order was wrongfully passed despite judicial challenges pending before the Hon'ble Supreme Court and the Hon'ble Delhi High Court. It was further claimed in the petition that the CCI order was passed without coming to prima facie finding on the claim of WhatsApp that the New Updates does not expand WhatsApp's ability to share data with Facebook and that the New Updates intend to provide users with further transparency about how WhatsApp collects, uses and shares data. It was also contended that Facebook should not be involved in the investigation as it is merely the parent company of WhatsApp and the New Updates are applicable to WhatsApp users only.

2.1.4. The Hon'ble Delhi High Court, while dismissing the petition, observed that merely because an issue is pending before any other competent court in India, the CCI would not get divested of the jurisdiction that it otherwise possesses under the Competition Act, 2002. It was also observed that CCI has passed its order merely to form a prima facie opinion regarding any anti-competitive implications of the New Updates. The suo moto action of the CCI is purely administrative in nature and does not entail any consequences on the civil rights of WhatsApp and Facebook. The Hon'ble Delhi High Court also rejected the contentions of Facebook and stated that it is an integral part of the investigation and the allegations in relation to sharing of data by WhatsApp with Facebook would require the presence of Facebook in such an investigation.

2.1.5. Please click [here](#) to read the Delhi High Court Order.

3. SECURITIES LAW

Please see below the summary of the key securities law updates for April 2021.

3.1. SEBI Circular on Reporting Formats for Mutual Funds

3.1.1. SEBI has issued a circular on 12 April 2021 providing revised reporting formats for mutual funds.

3.1.2. The requirement of submitting bi-monthly compliance certificate and half-yearly compliance certificate by the asset management companies ("AMC") to the trustees of the mutual fund ("Trustees") has been discontinued with effect from the quarter ending June 2021. The contents of the bi-monthly compliance certificate and half-yearly compliance certificate has been incorporated in the quarterly report to be submitted by the AMCs to the Trustees. The quarterly report is required to be submitted by the AMCs to the Trustees by 21st calendar day of succeeding month for each quarter.

3.1.3. To synchronize the frequency of submission of the compliance test report and quarterly report, complete compliance test report is required to be submitted by the AMCs to the Trustees instead of exceptional reporting on a quarterly basis by 21st calendar day of succeeding month for each quarter.

3.1.4. The format for half-yearly trustee report has also been revised. Trustees are required to submit corrective steps taken with respect to the non-compliance report in the half-yearly trustee report. The half-yearly trustee report is required to be submitted within 2 (Two) months from the end of the half year.

- 3.1.5. The changes prescribed with respect to the quarterly report and compliance test report shall come into effect from the quarter ending June 2021. The changes prescribed with respect to half-yearly trustee report shall come into effect from half year ended March 2021.
- 3.1.6. The circular also provides the formats for the quarterly report, compliance test report and half-yearly trustee report as its annexure.
- 3.1.7. Please click [here](#) to read the circular.
- 3.2. **SEBI Circular Relating to Procedural Matters – Issues and Listing**
- 3.2.1. SEBI has released a circular on 22 April 2021 on procedural relaxations with respect to rights issue. Prior to this circular, SEBI, on account of the Covid-19 pandemic, vide its circular dated 6 May 2020 had granted one-time relaxations from strict enforcement of certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”), pertaining to rights issue opening up to July 31, 2020, which were further extended for rights issues opening up to 31 December 2020.
- 3.2.2. One of the relaxations granted by SEBI in its circular dated 6 May 2020 was with respect to a provision under ICDR Regulation which mandates that an application for a rights issue is to be made only through application supported by blocked amount facility. In light of the difficulties due to pandemic and to ensure that all eligible shareholders are able to apply to rights issue during such times, SEBI has directed that the issuer along with lead manager(s) to the issue, the registrar and other recognized intermediaries, should establish an optional mechanism that is non-cash mode to accept applications of shareholders while ensuring that no third-party payments should be allowed in respect of any application. This relaxation was further extended for rights issues opening up to 31 March 2021, vide SEBI circular dated 19 January 2021 and now has been further extended to rights issues opening up to 30 September 2021 vide circular dated 22 April 2021.
- 3.2.3. The issuer along with the lead manager(s) is required to ensure the following: (i) the mechanism will only be an additional option, and would not be a replacement of the existing process, and as far as possible, efforts should be made to adhere to the existing prescribed framework; (ii) the mechanism functions in a transparent and robust manner with adequate checks and balances, and the lead managers and registrar to the issue should satisfy themselves about the transparency, fairness and integrity of the mechanism; (iii) an FAQ, a dedicated online investor helpdesk and helpline are created by the issuer company along with the lead manager(s) to guide investors through the application process, and to resolve difficulties faced by investors on a priority basis; and (iv) the issuer, lead manager(s), registrar and other intermediaries should be responsible for all investor complaints.
- 3.2.4. The issuer along with lead manager(s), registrar, and other recognized intermediaries (as incorporated in the mechanism) should ensure that the refund for un-allotted / partial allotted application is completed on or before T+1 day (T being the basis of allotment day).
- 3.2.5. The registrar to the issue, should ensure that all data with respect to refund instructions is error free to avoid any technical rejections. Further, in case of any technical rejection of refund instruction, same should be addressed promptly.
- 3.2.6. Please click [here](#) to read the SEBI circular.
- 3.3. **SEBI Circular on Alignment of Interest of Key Employees of AMC with the Unitholders of the Mutual Fund Schemes**
- 3.3.1. SEBI has issued a circular on 28 April 2021, to align interest of key employees of AMCs with unit holders of mutual fund schemes. Under the said circular, AMCs are mandatorily required to pay a minimum of 20% (twenty percent) of the salary/ perks/ bonus/ non-cash compensation (gross annual cost to company) net of income tax and any statutory contributions (i.e., provident fund and National Pension Scheme) of the ‘Key Employees’ in the form of units of mutual fund schemes in which they have a role/ oversight.
- 3.3.2. ‘Key Employees’ of the AMCs include: (i) chief executive officer; (ii) chief investment officer; (iii) chief risk officer; (iv) chief information security officer; (v) chief operation officer; (vi) fund Manager(s); (vii) compliance officer; (viii) sales head; (ix) investor relation officer(s); (x) heads of other departments (x) dealer(s) of the AMC; (xi) direct reportees to the CEO (excluding personal assistant/ secretary); (xii) fund management team and research team; and (xiii) other employees as identified and included by AMCs and trustees.
- 3.3.3. Other key highlights of the circular include: (i) that the compensation paid in the form of units shall be proportionate to the asset under management of the schemes in which the Key Employee has a role or oversight; (ii) the compensation is to be paid proportionately over 12 (Twelve) months; (iii) the compensation paid in the form of units will have a lock-in for a

minimum period of 3 (Three) years or tenure of the scheme whichever is less; (iv) no redemptions of the said units shall be allowed during the lock-in period. However, AMC may have a provision of borrowing from the AMC by Key Employees against such units in exigencies such as medical emergencies or on humanitarian grounds, as per the policy of the AMC; (v) no redemption of said units shall be allowed within the lock-in period in case of resignation or retirement before attaining the age of superannuation as defined in the AMC service rules. In case of retirement on attaining the superannuation age, the said units shall be released from the lock-in and the Key Employee shall be free to redeem the units, except for the units in close ended schemes where the units shall remain locked in till the tenure of the scheme is over; (vi) units allotted to the Key Employees shall be subject to claw back in case of violation of code of conduct, fraud, gross negligence. Upon claw back, the units shall be redeemed and amount shall be credited to the scheme.

3.3.4. The provisions of this circular are not applicable to exchange traded funds, index funds, overnight funds and existing close ended scheme.

3.3.5. Please click [here](#) to read the SEBI circular.

3.4. **Relaxation on Timelines for Compliance with Regulatory Requirement Trading Members or Clearing Members or Depository Participants or Know-Your-Customer (“KYC”) Registration Agencies**

3.4.1. SEBI has released a circular on 29 April 2021 for trading members or clearing members or depository participants or KYC registration agencies (“**Intermediaries**”) for relaxing timelines for compliance under several regulatory requirements. The circular was issued in light of the ongoing pandemic.

3.4.2. Timelines for compliances relating to activities such as maintaining call recordings of order or instructions received from clients or uploading KYC application and supporting documents or client funding reporting have been extended till 30 June 2021.

3.4.3. Similarly, timelines for compliances such as requirement of submitting internal audit report, net worth certificate, compliance certificate for margin trading for clearing member segment, system audit report, cyber security and cyber resilience audit report and net worth certificate for all member, for the period ending on March 2021 have been extended till 31 July 2021.

3.4.4. Please click [here](#) to read the circular for Trading Members/ Clearing Members/ Depository Participants/ KYC Registration Agencies.

3.5. **Addendum to SEBI Circular on Relaxation in Adherence to Prescribed Timelines Issued by SEBI due to CoVID – 19 dated 13 April 2020**

3.5.1. SEBI had issued a circular on 29 April 2021 as an addendum to its earlier circular dated 13 April 2020 wherein certain relaxations for carrying out various shareholder requests like processing remat requests, transmission requests, request for issue of duplicate share certificates, request for consolidation or split or replacement of share certificates and for other regulatory filings were granted to Registrars to an Issue and Share Transfer Agents (“**RTAs**”).

3.5.2. The SEBI circular dated 13 April 2020 had enlisted 12 (Twelve) specific items wherein such relaxations had been prescribed. In the circular dated 29 April 2021, SEBI has added ‘processing of demat requests’ to the already existing list of activities and has extended the relaxation given under the circular dated 13 April 2020 till 31 July 2021.

3.5.3. Please click here to [read](#) the SEBI circular dated 13 April 2020 and [here](#) to read the SEBI circular dated 29 April 2021.

3.6. **Relaxation from Compliance with Certain Provisions of the LODR Regulations due to CoVID-19 Pandemic**

3.6.1. SEBI has issued a circular on 29 April 2021 providing relaxation from compliance with certain provisions of LODR Regulations in view of the second wave of CoVID-19 pandemic in India.

3.6.2. The relaxation has been granted for furnishing annual secretarial compliance report, quarterly financial results, annual audited financial results and statement of deviation or variation in use of funds. The timelines for these actions have been extended till 30 June 2021.

3.6.3. The circular also provides relaxation of timelines for compliance by depository participants on activities like beneficial owner grievance report, investor grievance redressal, closure of demat account and processing of demat requests.

3.6.4. The circular further permits the listed entities to use digital signature certifications for authentication/ certification of filing/ submissions made to the stock exchanges under the LODR Regulations for all filings until 31 December 2021.

- 3.6.5. Please click [here](#) to read the circular.
- 3.7. **Relaxation from Compliance with Certain Provisions of the LODR Regulations or Other Applicable Circulars due to CoVID-19 Pandemic**
- 3.7.1. SEBI has issued a circular on 29 April 2021 granting relaxation to entities that have listed their debt securities or bonds from compliance with certain provisions of LODR Regulations.
- 3.7.2. The relaxation is available for entities which have listed their debt securities under SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares Regulations, 2013 and SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008. The circular also covers entities which have listed their bonds under SEBI (Issue and Listing of Municipal Bonds) Regulations, 2015 and commercial papers.
- 3.7.3. The timelines for furnishing half-yearly financial results and annual audited financial results, furnishing statement of deviation or variation in use of funds by the entities issuing non-convertible debt securities have been extended to 30 June 2021.
- 3.7.4. For entities that have listed their bonds, the timeline for furnishing annual audited financial results has been extended till 30 June 2021 and entities that have listed commercial paper the timeline of furnishing half-yearly financial results and annual audited financial results has been extended to 30 June 2021.
- 3.7.5. The circular further permits the listed entities to use digital signature certifications for authentication/ certification of filing/ submissions made to the stock exchanges under the LODR Regulations for all filings until 31 December 2021.
- 3.7.6. Please [click](#) here to see the circular relating to entities which have listed their debt securities, bonds and commercial papers.
- 3.8. **SEBI Circular on Relaxation of Timelines for Updating Scheme Information Documents and Key Information Memorandum of Mutual Fund Schemes.**
- 3.8.1. SEBI has issued a circular on 30 April 2021 for relaxing timelines to update Scheme Information Documents and Key Information Memorandum of mutual fund schemes in view of the situation arising because of the ongoing pandemic.
- 3.8.2. The requirement of updating Scheme Related Documents and Key Information Memorandum of Mutual Fund Schemes at the end of half year ending in March 2021 has been extended till 31 May 2021.
- 3.8.3. Please click [here](#) to read the SEBI circular.

Our co-ordinates:

Mumbai

506 Marathon Icon
Off Ganpatrao Kadam Marg
Lower Parel, Mumbai – 400013

Email: al@acuitylaw.co.in