

ACUITY **LAW**

**CORPORATE
LAW NEWSLETTER**

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ABOUT ACUITY LAW

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic lawyers/ professionals led by Souvik Ganguly, Gautam Narayan, Deni Shah and Renjith Nair 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 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 with assistance from Renjith Nair.

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

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

Acuity Law 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, please visit our website acuitylaw.co.in or write to us at al@acuitylaw.co.in.

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INTRODUCTION

This newsletter covers key updates for the month of December 2021 relating to securities laws, competition law, data protection law and consumer protection law. In particular, we have covered:

- (1) Securities laws: (a) Amendment to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; (b) Circular regarding clarifications to the amendment to the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020; and (c) SEBI Board Meeting dated 28 December 2021.
- (2) Competition law: Proceedings against Amazon.com NV Investment Holdings LLC under Sections 43A, 44 and 45 of the Competition Act, 2002
- (3) Data Protection law: Report by the Joint Parliamentary Committee on the Personal Data Protection Bill, 2019
- (4) Consumer Protection law: Introduction of the Consumer Protection (Direct Selling) Rules, 2021

1. SECURITIES LAW

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

1.1. **Amendment to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**

- 1.1.1. The Securities and Exchange Board of India (“SEBI”), vide its notification dated 06 December 2021, has amended the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST regulations**”). The notification has amended the regulatory framework related to delisting of equity shares of a listed company, pursuant to an open offer. The amendment has come into effect from 06 December 2021.
- 1.1.2. SEBI had on 25 June 2021 released a discussion paper on the issue where delisting of a company pursuant to an open offer would require the acquirer to first make an open offer to acquire shares, then dispose of a certain portion of the acquired shares to meet the minimum public shareholding of 75% (seventy five percent), after which the acquirer would again need to acquire more shares from the public to meet the delisting threshold of 90% (ninety percent). To address this issue, SEBI had proposed to allow delisting of a company directly after the making of an open offer, if the 90% (ninety percent) threshold is met by the acquirer.
- 1.1.3. As per the amendment, if an acquirer intends to delist the target company after making an open offer, the intention to delist the company shall have to be disclosed at the time of making the public announcement and the detailed public announcement for the open offer.
- 1.1.4. Further, to be eligible for the simplified procedure under the amended regulations, the acquirer must not be: (a) a promoter, part of a promoter group or a person(s) in control; or (b) directly/indirectly associated with the promoter or any person(s) in control; or (c) a person holding more than 25% (twenty five per cent) shares or voting rights of the company, at any time during the preceding 2 (two) years from the date of the public announcement, and the acquirer should not acquire joint control along with an existing promoter/person in control.
- 1.1.5. In case of an unsuccessful delisting offer, but which results in the shareholding of acquirer to exceed the maximum permissible non-public shareholding threshold of 75% (seventy five percent), the acquirer may make a further attempt to delist the target company in accordance with the delisting regulations at any time before expiry of 12 (twelve) months from the date of completion of the open offer, subject to the acquirer continuing to exceed the said maximum permissible non-public shareholding.
- 1.1.6. The amendment also clarifies that where a competing offer is made, the acquirer shall not be entitled to delist the target company and will not be liable to pay interest to the shareholders on account of delay due to competing offer.
- 1.1.7. Please click [here](#) to read the amendment notification.

1.2. **Circular regarding clarifications to the amendment to the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020**

- 1.2.1. SEBI, vide a circular dated 10 December 2021 has provided certain clarifications in relation to the amendment to the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020 (“**PMS Regulations**”) which facilitates co-investment by investors of Alternative Investment Funds (“**AIF**”) under the portfolio management route. Through the abovementioned circular SEBI has clarified that a manager of an AIF which is also a portfolio manager registered with SEBI, may offer co-investment services only after providing prior intimation to SEBI. Further, an AIF manager who is not a SEBI

registered portfolio manager, and intends to offer co-investment services through the portfolio management route, shall be required to obtain registration with SEBI as a portfolio manager under the PMS Regulations.

- 1.2.2. The circular clarifies that portfolio managers shall be required to submit a monthly report regarding their portfolio management activity, on the SEBI portal within 7 (seven) working days from the end of each month and furnish a report to their clients on a quarterly basis which includes details of the co-investment services offered by the portfolio manager.
- 1.2.3. The amendment further clarifies that the provisions with respect to fees and charges as well as direct on-boarding of clients by portfolio managers shall not be applicable to co-investment services.
- 1.2.4. The amendment shall be applicable for the monthly reports to SEBI and quarterly reports to clients to be made from the month of April 2022 onwards. The remaining provisions of the circular shall come into effect from the date of applicability of the PMS Regulations.
- 1.2.5. Please click [here](#) to read the circular.
- 1.3. **SEBI Board Meeting dated 28 December 2021**
 - 1.3.1. SEBI in its board meetings dated 28 December 2021 approved a number of amendments with respect to securities regulations. Some of the key amendments approved by the Board are as follows:
 - 1.3.2. Amendments approved to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”) and the SEBI (Listing Obligations and Disclosure Requirements), 2015 (“**LODR Regulations**”)
 - a) In cases where an issuer company has mentioned future inorganic growth as an object for the issue under the offer documents, but has not identified any acquisition or investment target, the company may not use more than 35% (thirty five percent) of the total amount being raised for such achieving such objects or for general corporate purposes.
 - b) The approved amendments also limit the maximum number of shares that may be offered for sale by the pre-existing shareholders of an issuer company which does not fulfil the general criteria for listing as provided under regulation 6 (1) of the ICDR Regulations.
 - c) Pursuant to the amendments coming into effect, 50% (fifty percent) of the shareholding of the anchor investors shall be locked-in for a period of 30 (thirty) days whereas the remaining portion, shall be locked in for a period of 90 (ninety) days from the date of allotment.
 - d) Further, SEBI also approved a number of amendments in relation to the monitoring and utilisation of the issue proceeds, the allocation methodology for non-institutional investors and the lock-in provisions in case of preferential issues.
 - 1.3.3. Amendments approved to the SEBI (Mutual Funds) Regulations, 1996
 - a) The approved amendments mandate mutual funds schemes to follow Indian Accounting Standard (IND AS) from financial year 2023-24 onwards. Further, SEBI has also approved other accounting related regulatory provisions to remove redundant provisions and to bring more clarity.
 - b) Prior to any winding up of a mutual fund scheme or premature redemption of the units of a closed scheme, the trustees of the mutual funds will be mandated to obtain the consent of the unitholders.
 - 1.3.4. Amendment approved to the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018
 - a) The time period for filing a settlement application has been rationalized to 60 (sixty) days from the date of receipt of the show cause notice or the supplementary notice.
 - b) Certain provisions relating to the condition precedent for settlement, non-monetary terms, provisions relating to irregularity in procedure, settlement scheme and legal costs, in the settlement process will be clarified.
 - c) All payments under the Settlement Regulations to be accepted only through the dedicated payment gateway.
 - d) SEBI has also approved the issuance of separate guidelines dealing with the procedure to be adopted for arriving at suitable terms pursuant to filing of a compounding application.
 - 1.3.5. The SEBI board has also approved the introduction of provisions in the LODR Regulations, as per which persons who fail to get appointed or re-appointed as a director or gets rejected by the shareholders at the general meeting of a listed entity, any subsequent appointment or re-appointment shall only be carried out only after obtaining the prior approval of the shareholders.

1.3.6. Please click [here](#) to read the press release.

2. COMPETITION LAW

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

2.1. Proceedings against Amazon.com NV Investment Holdings LLC (“Amazon”) under sections 43A, 44 and 45 of the Competition Act, 2002

2.1.1. The Competition Commission of India (“CCI”) in November 2019 had granted an approval to Amazon for the acquisition of 49% (forty-nine per cent) stake in Future Coupons Pvt Ltd (“FPCL”). However, on 25 March 2021, FPCL filed an application before the CCI alleging that Amazon had made false representations and repressed material information regarding the purpose of its investment in FCPL and consequent rights over Future Retail Limited.

2.1.2. The CCI, upon perusal of the application, prima facie observed that Amazon had misrepresented and concealed material facts in the original application and accordingly issued a show cause notice to Amazon.

2.1.3. The CCI, in its findings observed that, Amazon had stated in the original application that the purpose of the investment in FPCL was to create a long-term value for the company, provide return on its investment and enhance Amazon’s existing investments in the payments landscape in India. However, on the basis of internal documents, the CCI observed that the rationale behind the transaction was to become the single largest shareholder of Future Retail Limited at the time when foreign direct investment opens up in the retail sector.

2.1.4. Accordingly, by way of its order dated 17 December 2021, the CCI reasoned that Amazon had concealed the actual scope of the investment in 2019 and stayed the same until the disposal of a fresh application which was to be filed by Amazon.

2.1.5. Further, this is the first case in which the CCI has suspended its approval. The CCI also imposed a penalty of approximately INR 2 billion on Amazon for misrepresentation of material facts and non-notification of interconnected steps in the notice for its acquisition in FPCL.

2.1.6. Please click [here](#) to read the CCI order.

3. DATA PROTECTION LAW

Please see below a summary of the key data protection law updates for December 2021

3.1. Report by the Joint Parliamentary Committee on the Personal Data Protection Bill, 2019

3.1.1. The Joint Parliamentary Committee (“JPC”) on the Personal Data Protection Bill, 2019 (“Bill”) presented its report (“Report”) in the parliament on 18 December 2021. The Report contains two parts, i.e., the major recommendations on data protection and privacy in connection with provisions in the Bill and the clause-by-clause examination of the Bill.

3.1.2. The JPC has recommended a phased implementation of the new data protection regime and suggested that all provisions of the Bill should be implemented within 24 (twenty four) months from its notification. Further, with respect to the Data Protection Authority of India (“DPA”), the JPC recommended that DPA should start its activities within 6 (six) months.

3.1.3. The JPC has also recommended to enlarge the scope of application of the law and include the regulation of non-personal data including anonymized personal data as well as personal data under the new proposed Bill. The DPA will be empowered for handling both personal as well as non-personal data.

3.1.4. The JPC has recommended that central government in consultation with all the sectoral regulators should develop a comprehensive policy on data localisation. It has also recommended that the central government should ensure that a mirror copy of all such data that is currently available with foreign entities should be mandatorily brought back into India.

3.1.5. The JPC has recommended that the DPA should regulate manufacturers that collect data through internet of things (IoT) and other similar devices. Further, it has recommended appropriate privacy certification processes for all digital and IoT devices to ensure the integrity of all such devices with respect of data privacy & protection.

3.1.6. The JPC in order to crystallise norms for reporting of data breaches has suggested a fixed time period of 72 (seventy two) hours for reporting data breaches to the DPA. The DPA after such breach may also direct the data fiduciary to report and post details on its website.

3.1.7. Other recommendations under the Report include social media platforms being subject to higher compliances, providing clarity on appointment of a data protection officer, additional layer of approval for cross-border data transfer, and wider representation by technical, legal experts on the selection committee for DPA appointment.

3.1.8. Please click [here](#) to read the Report.

4. CONSUMER PROTECTION LAW

Please see below the summary of the key consumer protection law updates for December 2021

4.1. Introduction of the Consumer Protection (Direct Selling) Rules, 2021

4.1.1. The Central Government *vide* a notification on 28 December 2021, in exercise of the powers conferred under the Consumer Protection Act, 2019 has notified the Consumer Protection (Direct Selling) Rules, 2021 (“**Rules**”). These Rules shall apply to all goods and services bought or sold through direct selling, all models of direct selling, all direct selling entities offering goods and services to consumers in India, all forms of unfair trade practices across all models of direct selling and to direct selling entities which are not established in India but offer goods or services to consumers in India.

4.1.2. Existing direct selling entities shall need to comply with these Rules within 90 (ninety) days from the date of publication of the Rules in the official gazette.

4.1.3. The following are some of the key provisions that must be complied with by the direct sellers and direct selling entities:

- a) Prohibition of promotion of pyramid schemes or participation in money circulation schemes. Direct sellers and direct selling entities shall have to provide a self-declaration to the effect that they have complied with the Rules and are not involved in any pyramid or money circulation scheme.
- b) Direct selling entities shall have to establish an adequate grievance redressal mechanism and bear the liability in any action related to the authenticity of such goods or services.
- c) Direct selling entities shall have to appoint a nodal officer who shall be responsible for ensuring compliance with the provisions of the Consumer Protection Act and the rules thereunder. The Direct selling entities cannot persuade consumers to make a purchase based upon the representation that they can reduce or recover the price by referring prospective customers to the direct sellers for similar purchases.
- d) Direct selling entities must be incorporated under the Companies Act 2013, or be registered under the Partnership Act, 1932, or the Limited Liability Partnership Act, 2008 and must have a minimum of one physical location in India.

4.1.4. Please click [here](#) for the Press Release and [here](#) for the Rules.

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