

ACUITY **LAW**

**CORPORATE
LAW NEWSLETTER**

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acuitylaw.co.in

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 February 2022 relating to securities law, companies law, competition law, gaming law, and other laws. In particular, we have covered:

- (1) Securities law: Securities and Exchange Board of India (“SEBI”) notification on the separation of role of chairperson and Managing Director / Chief Executive Officer.
- (2) Companies law: (a) Ministry of Corporate Affairs (“MCA”) notifies the Limited Liability Partnership (Amendment) Act, 2021; (b) MCA notifies the applicability of specific provisions of the Companies Act, 2013 (“Companies Act”) to Limited Liability Partnerships (“LLP”); (c) MCA appoints Registrar of Companies (“ROC”) as adjudicating officer under Limited Liability Partnership Act, 2008; (d) Amendments to the Limited Liability Partnership (Amendment Rules), 2022.
- (3) Competition law: Judgement passed by the Supreme Court of India in “Competition Commission of India (“CCI”) v. State of Mizoram & Ors.”
- (4) Gaming law: Karnataka High Court struck down the amendments related to ban on online gaming in the case of “All Indian Gaming Federation v. State of Karnataka.”
- (5) Other laws: Ministry of Electronics and Information Technology issued a Draft India Accessibility and Use Policy, 2022.

1. SECURITIES LAW

Please see below the summary of the key securities law updates for the month of February 2022.

1.1. SEBI notification on the separation of role of chairperson and MD/CEO

- 1.1.1. SEBI, vide its board meeting dated 15 February 2022, has decided to relax the requirement for mandatory separation of role of chairperson and Managing Director (“MD”) / Chief Executive Officer (“CEO”) for the top 500 (five hundred) listed companies, determined by the market capitalisation.
- 1.1.2. Earlier, in March 2018, SEBI acting on the recommendations of Kotak committee, had mandated the separation of roles of chairperson and MD / CEO of listed companies and in the light of this decision, an amendment was made to the Securities and Exchange Board of India (“Listing Obligations and Disclosure Requirements”) Regulations, 2015. The deadline for compliance with this mandate was extended till 1 April 2022. However, as of December 2021, only 54% (fifty four percent) of the top 500 (five hundred) listed companies had complied with the mandate.
- 1.1.3. In light of the dismal level of compliance achieved, and continued representations from industry bodies and corporates expressing reasons and challenges for not being able to comply with this mandate, SEBI has decided to permit listed entities to comply with this requirement on a “voluntary basis”.
- 1.1.4. Please click [here](#) to read the board meeting.

2. COMPANIES LAW

Please see below a summary of the key company law updates for the month of February 2022.

2.1. MCA notifies the Limited Liability Partnership (Amendment) Act, 2021

- 2.1.1. MCA, by way of its notification dated 11 February 2022 has notified that the provisions of Section 1 to 29 of the Limited Liability Partnership (Amendment) Act, 2021 (“Amendment Act”) shall be applicable from 01 April 2022.
- 2.1.2. The above notification came in pursuant to the amendment in the Limited Liability Partnership Act, 2008 published on 13 August 2021. Please click [here](#) to read our detailed coverage of this update. (Please see paragraph 1,1,1, appearing at page no 3.).
- 2.1.3. Please click [here](#) to read the notification.

2.2. MCA notifies the applicability of specific provisions of the Companies Act to the LLPs

- 2.2.1. The MCA, by way of its notification dated 11 February 2022 directed that the provisions of the Companies Act, as listed out below, shall be applicable to the LLPs, except where the context otherwise requires, with the modifications specified in this notification: (i) section 90 (register of significant beneficial owner in a company), (ii) section 164 (disqualifications for appointment of director), (iii) section 165 (number of directorships), (iv) section 167 (vacation of office of director), (v) section 206(5) (power to call for information, inspect books and conduct inquiries), (vi) section 207(3) (conduct of inspection and inquiry), (vii) section 252 (appeal to tribunal), and (viii) section 439 (offences to be non-cognizable).

2.2.2. It is pertinent to note that, the applicability of Section 164 of the Companies Act is only limited to the designated partners and will not extend to other partners. Further, under section 165 of the Companies Act, which talks about the number of directorships, is also only applicable to the designated partners.

2.2.3. Please click [here](#) to read the notification.

2.3. **MCA appoints ROC as adjudicating officer under Limited Liability Partnership Act, 2008**

2.3.1. MCA, by way of its notification dated 11 February 2022 provided a list of ROCs, who are appointed as the adjudicating officers for the purpose of the Limited Liability Partnership Act, 2008 in respect of the jurisdiction indicated against each ROC as stipulated in the table provided under the notification.

2.3.2. Please click [here](#) to read the notification.

2.4. **Amendments to the Limited Liability Partnership (Amendment Rules), 2022**

2.4.1. The MCA, by way of its notification dated 11 February 2022 has published the Limited Liability Partnership (Amendment Rules), 2022 ("**Amendment Rules**"). The Amendment Rules amended the Limited Liability Partnership Rules, 2009 ("**LLP Rules**") and inserted certain new rules concerning the LLP. The Amendment Rules will be effective from 01 April 2022. Following are the key changes introduced by the Amendment Rules:

- (i) The National Company Law Appellate Tribunal Rules, 2016 shall be applicable for filing an appeal under the provisions of the Liability Partnership Act, 2008.
- (ii) Further, Rule 19 has been amended to provide that an LLP, a company or a proprietor of a registered trade mark under the Trade Marks Act, 1999, can apply to the Regional Director to give directions to a subsequently incorporated LLP or new LLP to change its name.
- (iii) The Amendment Rules also introduced certain new rules such as: (i) Rule 19A (allotment of new name to existing LLP) which provides that in case an LLP fails to change its name or new name in accordance with the directions issued under section 17(1) of the LLP Act within 3 (three) months from the date of such direction, the letter 'ORDNC' i.e., 'Order of Regional Director not complied', the year of the passing of the direction, the serial number and the existing LLPIN of the LLP shall become the new name of the LLP without any further act or deed by the LLP, and the Registrar shall accordingly make entry of the new name in the register of LLP and issue a fresh certificate of incorporation in form no. 16A..
- (iv) The Amendment Rules also added 2 (two) new forms, i.e., Form 16A and Form 33 LLP – ADJ, and revised fee norms for LLPs.

2.4.2. Please click [here](#) to read the Amendment Rules.

3. **COMPETITION LAW**

Please see below the summary of the key competition law updates for the month of February 2022.

3.1. **Judgement passed by the Supreme Court of India in "CCI v. State of Mizoram & Ors."**

3.1.1. The Hon'ble Supreme Court while dismissing the ruling of the High Court of Gauhati, Aizwal bench ("**High Court**") ordered the CCI to continue its probe in the alleged anti-competitive practices of bid-rigging, collusive bidding, and cartelisation in the tendering process for appointment of selling agents / distributors for lotteries organised in the state of Mizoram by the 4 (four) successful private party bidders.

3.1.2. Under the appeal filed before the Supreme Court, the issues raised was whether the CCI had jurisdiction to entertain such complaint of anti-competitive behaviour under the ambit of the Competition Act, 2002 ("**Act**"). The High Court in this regard, ruled in favour of the respondent and held that the nature of the business sought to be carried out i.e., of lotteries would come under the purview of the doctrine of res extra commercium (things beyond commerce) and hence, outside the regulation and jurisdiction of the CCI.

3.1.3. However, the Supreme Court dismissed the aforesaid ruling and pointed out that the concern of the CCI was limited to the role assigned under the Act and in the limited context of the expression of interest to examine any perceived bid rigging in the tendering process for appointment of selling agents.

3.1.4. Further, the Supreme Court observed that though the lotteries are state regulated and even things beyond commerce, that would not take away the aspect of something which is anti-competitive in the context of business related to lotteries. The

definition of 'service' under the Act must be read in broader sense to include service of any description which is made available to the potential clients.

3.1.5. Therefore, the Supreme Court overruled the decisions passed by the High Court and held that, lotteries may be a regulated commodity, the same would not take away the jurisdiction of the CCI to look into allegations of anti-competitive activities in business or services related to lotteries.

3.1.6. Please click [here](#) to read the judgement.

4. GAMING LAW

Please see below the summary of the key gaming law updates for the month of February 2022.

4.1. **Karnataka High Court struck down the amendments related to ban on online gaming in the case of "All Indian Gaming Federation v. State of Karnataka."**

4.1.1. Recently, the Karnataka High Court in the case of '*All Indian Gaming Federation v. State of Karnataka, Writ Petition (Civil) No. 18703 of 2021*' struck down certain amendments to the Karnataka Police Act, 1963, introduced vide the Amendment Act, which prohibited and criminalized all online games including the 'game of skill'.

4.1.2. The Amendment Act inter alia had introduced expansive definitions of several terms including 'gaming', 'wagering or betting', 'instruments of gaming', etc., and sought to ban all games of skill offered through online platforms played with monetary stakes or otherwise.

The Karnataka High Court in its analysis reiterated that the state lacks the legislative competence under entry 34 list II schedule VII of the Indian constitution on the grounds of fact that 'games of skill' when played even with monetary stakes are distinct from 'games of chance'. The Karnataka High Court also observed that 'games of skill' have been judicially upheld in the case of '*State of Bombay v. RMD Chamarbaugwala*' as business activities protected under Article 19(1)(g) of the Constitution of India.

4.1.3. Accordingly, the Karnataka High Court held that the relevant provisions of the Amendment Act are violative of (i) Article 19(1)(g) of the Constitution of India for banning 'games of skill'; and (ii) Article 14 of the Constitution of India for treating 'games of skill' and 'games of chance' similarly.

4.1.4. Further, the Karnataka High Court observed that the Amendment Act places an absolute embargo on 'games of skill' involving money or stakes, which defies the principle of proportionality and is too excessive in nature. Therefore, violative of Article 14 of the Constitution of India on the ground of 'manifest arbitrariness'.

4.1.5. In the view of the above, the Karnataka High Court struck down certain amendments which prohibited and criminalized all online games including the 'games of skill'.

4.1.6. Please click [here](#) to read the judgement.

5. OTHER LAWS

Please see below the summary of the key amendments introduced in other legislations in the month of February 2022.

5.1. **Ministry of Electronics and Information Technology ("MEITY") issued a Draft India Accessibility and Use Policy, 2022**

5.1.1. MEITY has released the Draft India Accessibility and Use Policy, 2022 ("**Draft Policy**") in order to harness the public sector data and to allow the licensing & sale of public data by the government to the private sector.

5.1.2. This Draft Policy will be applicable to all the data and information which is created / generated / collected / archived by the central government and the authorized agencies and will be open and shareable unless it falls under a negative list of datasets which cannot be shared. The Draft Policy defines the term negative list as, the list of data assets deemed non-shareable by ministries / departments; Data sets that are confidential in nature and / or are in the interest of the country's security in not opening to the public.

5.1.3. The Draft Policy proposes the establishment of India data office (IDO) to streamline and unify data access and sharing among government and other stakeholders. and chief data officer as assigned by each ministry / department will work closely with such IDO;

5.1.4. The Data Policy further provides that the data as generated, created, collected, or stored by the central government and authorised agencies shall remain the property of such agency / department / ministry / entity which generated / collected it.

- 5.1.5. It is also proposed that an indicative framework will be notified by India data council on high value datasets. These high value datasets will be defined on their degree of importance in the market, degree of social economic benefits, etc.
- 5.1.6. As per the Draft Policy, data which has been processed minimally will be available at no cost in order to promote innovation and research & development but the data which had undergone value addition / transformation, the value will be decided by the concerned department. However, to enable fair price discovery, India data office will issue licensing frameworks and valuation models which can be used by the concerned departments.
- 5.1.7. This Draft Policy recognises the non-personal data as a valuable resource as it notes that India's ambition to achieve \$5 trillion economy is dependent on its ability to harness data. However, there are various issues in the Draft Policy which needs to be addressed before coming into the force such as how the centre and state are going to share the money from the sale of the data under this Draft Policy, how it will deal with the privacy concerns with regards to dealing with the data in the absence of a robust data protection law in India, etc.
- 5.1.8. Please click [here](#) to read the draft policy.

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