

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 November 2021 relating to banking law, company laws, securities laws, and banking laws. In particular, we have covered:

- (1) Banking laws: (a) Integrated Ombudsman Scheme, 2021 by the Reserve Bank of India (“RBI”); and (b) Discussion Paper of NITI Aayog on “Digital Banks: A Proposal for Licensing and Regulatory Regime for India.
- (2) Securities laws: (a) Amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015; and (b) Amendments to the Securities Exchange Board of India (Intermediaries) Regulations, 2008

1. BANKING LAW

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

1.1. Integrated Ombudsman Scheme, 2021 by the RBI

1.1.1. The RBI, vide notification dated 12 November 2021, launched the Reserve Bank - Integrated Ombudsman Scheme, 2021 (“Scheme”) which integrates the existing three Ombudsman schemes of RBI namely (a) The Banking Ombudsman Scheme, 2006; (b) The Ombudsman Scheme for Non-Banking Financial Companies, 2018; and (c) The Ombudsman Scheme for Digital Transactions, 2019. The scheme includes non-scheduled primary co-operative banks with a deposit size of INR 500,000,000 (Indian Rupees Five Hundred Million) and above thus adopting a ‘One Nation One Ombudsman’ approach and making the mechanism for dispute resolution jurisdiction neutral. The scheme has come into effect on 12 November 2021.

1.1.2. The scheme provides cost-free redressal of customer complaints involving deficiency in services if they are not resolved to the customer’s satisfaction or not replied within a period of 30 (thirty) days by any entity that is regulated by the Reserve Bank of India.

1.1.3. Salient features of the Scheme are: (a) complainant does not have to identify under which scheme he/she should file a complaint with the ombudsman; (b) The scheme defines ‘deficiency in service’ as the ground for filing a complaint, with a list of exclusions. Therefore, the complaints will no longer be rejected simply on account of not being covered under the grounds listed in the scheme; (c) removal of restriction in relation to territorial jurisdiction of ombudsman office; (d) complaints can be filed online on complaint management system portal of RBI or through the dedicated e-mail or sent in physical mode in the format; (e) the multi-lingual contact centre under the scheme will provide information/clarifications regarding the alternate grievance redress mechanism of RBI and guide complainants in filing of a complaint; and (f) regulated entity will not have the right to appeal in cases where an award is given by the ombudsman against it for not furnishing satisfactory and timely information/documents.

1.1.4. Please click [here](#) to read the Scheme.

1.2. Discussion Paper by NITI Aayog on “Digital Banks: A Proposal for Licensing & Regulatory Regime for India”

1.2.1. NITI Aayog, the public policy think tank of the government of India, has released a discussion paper seeking comments from the public on digital banks, and offering a template and roadmap for a digital bank licensing and regulatory framework in India. The discussion paper recommends the setting up of digital banks, i.e., banks that do not have physical branches, which would completely work on the internet and other proximate channels to offer their services.

1.2.2. The discussion paper recommends a two-stage approach for the licensing of a digital bank i.e., a restricted digital business bank license which will be first stage and a full-stack digital business bank license which will be the second stage in the regulatory control over these digital banks. For the first stage, the digital banks will be required to test their product in the regulator sandbox of RBI. Upon successful completion of this step, the digital bank can obtain the full-stack digital business bank license.

1.2.3. Further, the report has also recommended that the minimum paid up capital requirement for the digital business bank license should be INR 200,000,000 (Rupees Two Hundred Million) and the minimum paid up capital requirement for the digital universal bank license should be INR 2,000,000,000 (Rupees Two Billion).

1.2.4. Please click here to [read](#) the discussion paper.

2. SECURITIES LAW

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

2.1. Amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

- 2.1.1. The Securities and Exchange Board of India (“SEBI”), vide its notification dated 9 November 2021, amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2012 (“LODR regulations”). The notification has amended the provisions related to related party and related party transactions by listed entities. The amendments will come into effect from 1 April 2022.
- 2.1.2. As per the amendments, a person or entity shall be deemed to be a ‘related party’: (a) if such person or entity is a promoter or a promoter group of the listed entity, irrespective of their shareholding in the listed entity; or (b) if such person or entity is holding 20% (twenty percent) of the equity shares in the listed entity, either directly or beneficially, shall be deemed to be a related party. This threshold is set to be lowered to 10% (ten percent) from 1 April 2023. Prior to the amendment, only persons holding more than 20% (twenty percent) shareholding in the listed entity, were categorised as related parties of such listed entity.
- 2.1.3. The definition of related party transactions will also be widened to include any transactions between the subsidiaries of a listed entity on one hand, and the subsidiaries of the related party of the listed entity on the other hand. Further, with effect from 1 April 2023 related party transactions shall include within its scope any transaction between a listed entity or its subsidiary on one hand and any other entity on the other hand which has the effect of benefitting the related parties of the listed entity or any of its subsidiaries.
- 2.1.4. The threshold for material related party transactions has also been amended. Earlier transactions exceeding 10% (ten percent) of the consolidated annual turnover of the listed entity was deemed to be a material related party transaction, whereas now in the event a related party transactions exceeds INR 10,000,000,000 (Rupees Ten Billion) or 10% (ten percent) of the annual consolidated turnover of the listed entity, whichever is lower, then such a transaction would be a material related party transaction.
- 2.1.5. With effect from the date of these amendments, a listed entity shall be required to submit to the stock exchanges disclosures of related party transactions, every 6 (six) months, and within 15 (fifteen) days from the date of publication of its standalone and consolidated financial results, whereas from 1 April 2023, these disclosures will have to be made every 6 (six) months and on the date of the publication of the standalone and consolidated financial results.
- 2.1.6. Further, SEBI, vide its circular dated 22 November 2021 has also notified the format for reporting of related party transactions to the stock exchanges. The listed entities are advised to make RPT disclosures every 6 (six) months in the format notified by the SEBI.
- 2.1.7. Please click [here](#) and [here](#) to read the amendment notification and the circular, respectively.

2.2. Amendment to the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

- 2.2.1. SEBI, vide its notification dated 17 November 2021, has amended the SEBI (Intermediaries) Regulations, 2008 (“Intermediaries Regulations”), substituting Schedule II thereof, which lays down the criteria for ‘fit and proper’ persons to hold a registration as an intermediary. The amendment has come into effect from 17 November 2021.
- 2.2.2. Pursuant to the amendment while determining whether an applicant meets the ‘fit & proper person’ criteria under the Intermediaries Regulations, in addition to the principal officer, directors or managing partners, compliance officer and key management persons of the intermediary SEBI may now even consider whether the promoters or persons holding controlling interest or exercising control over the applicant or intermediary fulfil the ‘fit and proper’ person criteria, or not.
- 2.2.3. Further, for determining the ‘fit and proper person’ criteria, the person or intermediary should not be subject to any of the following disqualifications – i) criminal complaint/filed pending under section 154 of the Code of Criminal Procedure; ii) charge sheet filed for economic offences by any enforcement agency and pending proceedings thereto; iii) an order of restraint, prohibition or debarment on matters of securities laws or financial market passed the board/regulatory authority/enforcement agency; iv) any recovery proceedings initiated by board pending against such person; v) conviction of any offence involving moral turpitude; vi) winding proceedings passed or initiated; vii) declared insolvent and not discharged; viii) unsoundness of mind; ix) a wilful defaulter; x) declared fugitive economic offender; or xi) any other disqualification as specified by the board.

- 2.2.4. In the event any person is declared as not a 'fit and proper person' to be an intermediary, such person shall not be eligible to apply for a registration as an intermediary for a period of 5 (five) years, from the date of such an order. Additionally, in the event any person associated with a registered intermediary feels to meet the revised criteria, the intermediary shall be required to ensure that such person is replaced within a time period of 30 (thirty) days from such disqualification.
- 2.2.5. The amendment also clarifies that an intermediary shall have to fulfil the 'fit and proper' person criteria, not only at the time of obtaining the registration, but at all times during the continuation of the registration as well.
- 2.2.6. These amendments were approved at SEBI's board meeting on 28 September 2021.
- 2.2.7. Please click [here](#) to read the amendment notification.

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