

ACUITY **LAW**

**CORPORATE
LAW NEWSLETTER**

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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 under the leadership of Deni Shah 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 under the leadership of Gautam Narayan 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

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CORPORATE LAW NEWSLETTER - FEBRUARY 2021

This newsletter covers recent key updates in Indian corporate laws relating to amendments to certain Rules under the Companies Act 2013, an order passed by the Competition Commission of India, and certain developments in the securities laws.

In particular, we have covered: (a) Amendments to the Companies (Specification of Definition Details) Rules, 2014; (b) Amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2014; (c) Amendment to the Companies (Incorporation) Rules, 2014; (e) Order of Competition Commission of India in the matter of Baglekar Akash Kumar v. Google LLC and Google India Digital Services Private Limited; (f) Discussion paper by Securities and Exchange Board of India (“SEBI”) on re-appointment of managing directors and whole-time directors by listed companies; and (g) SEBI’s ruling in the matter of insider trading activities in the scrip of Future Retail Limited.

1. COMPANIES LAW

Please see below the summary of the key company law updates for February 2021.

1.1. Amendments to the Companies (Specification of Definitions Details) Rules, 2014**1.1.1. Amendment on 1 February 2021:**

- (a) The Ministry of Corporate Affairs *vide* notification dated 1 February 2021, amended the Companies (Specification of Definitions Details) Rules, 2014. The amendment was made in line with the budget announcement by the Government of India. Through the amendment, the threshold for determination of a small company has been increased as follows: (i) paid-up capital – increased to INR 20,000,000 (Rupees twenty million) from INR 5,000,000 (Rupees five million); and (ii) turnover – increased to INR 200,000,000 (Rupees two hundred million) from INR 20,000,000 (Rupees twenty million).
- (b) The amendment shall come into effect from 1 April 2021 and it aims to ease the compliance requirements for small companies and is expected to benefit around 200,000 small companies.
- (c) Please click [here](#) to read the amendment.

1.1.2. Amendment on 19 February 2021:

The Ministry of Corporate Affairs *vide* notification dated 19 February 2021, further amended the Companies (Specification of Definitions Details) Rules, 2014. We have discussed the key amendment below:

- (a) The amendment inserts a new Rule 2A which provides that following class of companies will not qualify as listed companies:
 - (i) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their:
 - A. non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
 - B. non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; and
 - C. both A and B.

- (ii) private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
 - (iii) public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a foreign jurisdiction.
 - (b) The amendment shall come to effect from 1 April 2021.
 - (c) Please click [here](#) to read the amendment
- 1.2. **Amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016**
- 1.2.1. The Ministry of Corporate Affairs vide notification dated 1 February 2021, amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
 - 1.2.2. As per the amendment following companies can also enter into scheme of mergers or amalgamation under Section 233 of the Companies Act, 2013:
 - (a) two or more start-up companies; and
 - (b) one or more start-up company with one or more small company.
 - 1.2.3. According to the amendment, a start-up company means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and which is recognised in accordance with the notification issued by Department for Promotion of Industry and Internal Trade on 19 February 2019 ([here](#)).
 - 1.2.4. The amendment has come into effect from 1 February 2021.
 - 1.2.5. Please click [here](#) to read the amendment.
- 1.3. **Amendment to the Companies (Incorporation) Rules, 2014**
- 1.3.1. The Ministry of Corporate Affairs vide notification dated 1 February 2021, amended the Companies (Incorporation) Rules, 2014. The amendment modifies Rule 3 and Rule 6 which deals with incorporation of one person company (“OPC”) and conversion of OPC into a public company or a private company respectively.
 - 1.3.2. According to the amendment, any natural person who is an Indian citizen whether resident or otherwise can form an OPC. For being considered as ‘resident in India’, the residency period has been reduced to 120 days from 182 days. The amendment further deletes sub Rule 7 of Rule 3.
 - 1.3.3. An OPC can be converted into a public or private company in the following manner:
 - (a) by increasing the minimum number of members and directors to 2 or 7 members and 2 or 3 directors;
 - (b) by maintaining the minimum paid-up capital as per the requirements of the Companies Act, 2013 for such class of company and by making due compliance of Section 18 of the Companies Act, 2013 for conversion.
 - 1.3.4. Further, the company is required to file an application in e-Form No. INC 6 for conversion into public or private company along with the applicable fees by attaching the following documents:

- (a) altered MOA & AOA;
- (b) copy of resolution;
- (c) list of proposed members and its directors along with consent;
- (d) list of creditors; and
- (e) the latest audited balance sheet and profit and loss account.

1.3.5. The amendment shall come to effect from 1 April 2021.

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

2. **COMPETITION LAW**

Please see below the summary of a key Competition law update for February 2021.

2.1. **Order of Competition Commission of India (“CCI”) in the matter of Baglekar Akash Kumar v. Google LLC and Google India Digital Services Private Limited**

2.1.1. The CCI has passed its order on 29 January 2021 in the matter involving Baglekar Akash Kumar v. Google LLC and Google India Digital Services Private Limited relating to abuse of dominant position. In the present matter it was alleged that since Google has integrated the ‘Meet App’ into its “Gmail App”, it is using its dominant position in the mailing and direct messages market to enter into the market for providing specialised video conferencing services, thereby stifling competition in the market. While deciding this case, the CCI relied on its earlier order to determine the relevant market and held that the conduct of Google do not amount to any anti-competitive activities.

2.1.2. To determine whether there was abuse of dominant position by Google, the CCI first examined the relevant market by relying on its earlier order dated 18 August 2020, passed in the matter titled *In Re: Harshita Chawla and WhatsApp Inc & Others (“WhatsApp Order”)*. In the WhatsApp Order, the CCI held that it is important to identify the primary or most dominant feature(s) of an app to categorise it into a particular relevant market. It was observed that the primary function of Gmail App is to provide email services. Direct message services or internet related services, as claimed by the applicant of this case, are not the primary features of Gmail App. The CCI further observed that the relevant secondary market in this case is the “market for providing specialised video conferencing services”. Pursuant to determining the relevant market, and hearing both the parties to the case, the CCI observed that regardless of Google having a dominant position, its conduct does not seem to violate the provisions of Competition Act, 2002 relating to abuse of dominant position for the following reasons:

- (a) Gmail users are not compelled to use the Meet App;
- (b) Users are free to switch off the Meet App;
- (c) Users are free to use rival video conferencing apps like zoom or webex meet; and
- (d) Anyone with google account (not necessarily a Gmail account) can use the Meet App.

2.1.3. Please click [here](#) to read the CCI order in the matter of Google

3. **SECURITIES LAW**

Please see below the summary of the Securities law updates for February 2021.

- 3.1. **Discussion paper by Securities and Exchange Board of India (“SEBI”) on re-appointment of managing directors and whole-time directors who fail to get elected at a general meeting of a listed entity.**
 - 3.1.1. Currently, as per the Companies Act, 2013, a managing director or a whole-time director may be appointed at a meeting of the board of directors of a listed entity subject to subject to the appointment being approved subsequently at a general meeting of the company.
 - 3.1.2. The discussion paper issued by SEBI on 27 January 2021 seeks to address the mischief in a situation where such appointment is not approved at the general meeting by the shareholder, but the board of directors of the listed entity, re-appoints such a person to the same designation, who then continues to hold office till the next general meeting.
 - 3.1.3. Currently, the Companies Act, 2013 prohibits the re-appointment of an additional director who fails to get his appointment ratified at the shareholders’ meeting. The discussion paper seeks to impose similar restrictions on the appointment of managing and whole-time directors of a listed entity, subject to a few conditions.
 - (a) The nomination and remuneration committee of the listed entity must recommend the appointment of such a person, with detailed reasons for such recommendation.
 - (b) The board of directors must approve the appointment after recording reasons for such appointment.
 - 3.1.4. Other obligations on the board of directors of the company are:
 - (a) Shareholder approval in respect of the appointment must be obtained at the next general meeting or within 3 months of the appointment, whichever is earlier.
 - (b) Reasons for the appointment must be disclosed to the stock exchanges where the entity is listed, within 24 hours along with recommendations of the nomination and remuneration committee. This requirement is applicable for other director appointments in the normal course of business as well.
 - 3.1.5. If the re-appointment is rejected by the shareholders again, the concerned person shall not be eligible to be appointed as a director in that particular listed entity for 2 years from date of rejection.
 - 3.1.6. Public comments have been invited on the above recommended amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
 - 3.1.7. Please click [here](#) to view the discussion paper.
- 3.2. **SEBI’s ruling in the matter of insider trading activities in the scrip of Future Retail Limited.**
 - 3.2.1. SEBI has issued an order on 3 February 2021, in relation to allegations of insider trading activities in the securities of Future Retail Limited. The noticees in the matter were alleged to be in breach of the SEBI (Prohibition of Insider Trading) Regulations 2015, for trading in securities while being in possession of unpublished price sensitive information (“**UPS**”). The important point of law discussed by the SEBI whole-time member was regarding the degree of disclosures required to be made by a company and when an information can be considered to be generally available to the public and when does the information cease to be UPSI.
 - 3.2.2. SEBI held that interviews given to news agencies would not qualify as sufficient disclosures if all material information regarding a particular transaction was not disclosed during such interviews. SEBI held that all the material information must be available to the public on a non-discriminatory basis.

- 3.2.3. The present case dealt with insufficient disclosure of information relating to a proposed demerger and subsequent merger transaction. SEBI held that the interviews to news agencies did not contain specific details as to the manner in which the proposed restructuring would be completed, consideration which would be received by the shareholders of the listed company and other material information. The whole-time member mentioned that the disclosure of information should contain all such information as would be required to be made under the mandated disclosures as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Further, disclosure of information, should be made at all the stages of a restructuring process, disclosing material developments on a regular basis, till the time the event is resolved or closed.
- 3.2.4. Taking all of the above into consideration, SEBI held that the disclosures made were insufficient in nature and that all the material information had not been disclosed to the public and there existed unpublished price sensitive information.
- 3.2.5. Further, by applying the principle of association, SEBI held that the entity carrying out the trade was an insider and it had access to the unpublished price sensitive information, thereby causing the entity to be in violation of the SEBI (Prohibition of Insider Trading) Regulations, 2015.
- 3.2.6. SEBI restrained the noticees in the matter, from accessing the securities market, and passed an order for disgorgement of profits, while levying additional penalty.
- 3.2.7. The order passed by SEBI has been appealed by the noticees before the Securities Appellate Tribunal and the next hearing for the same is scheduled on 12 April 2021.
- 3.2.8. Please click [here](#) to read the order passed by SEBI

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