

ACUITY **LAW**

**CORPORATE
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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 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 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 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 in Indian laws for the month of August 2021 relating to company law, securities laws, and foreign exchange laws. In particular, we have covered:

- (1) Companies law: The Limited Liability Partnership (Amendment) Act, 2021.
- (2) Securities law: (a) Amendments to disclosure regime under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) regulations, 2011 (“**Takeover Code**”) and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”); and (b) Securities and Exchange Board of India (“**SEBI**”) amendments in regulations regarding Real Estate Investment Trusts (“**REITs**”) and Infrastructure Investment Trusts (“**InvITs**”).
- (3) Foreign Exchange Laws: (a) Press Note 3 of 2021 by the Department for Promotion of Industrial and Internal Trade (“**DIPP**”) on foreign direct investment in petroleum and natural gas public sector units (“**PSUs**”), (b) Draft Foreign Exchange Management (Non-debt Instruments - Overseas Investment) Rules, 2021 (“**Overseas Investment Rules**”); and (c) Draft Foreign Exchange Management (Overseas Investment) Regulations, 2021 (“**Overseas Investment Regulations**”).
- (4) Competition Laws: Suo Motu action of the Competition Commission of India (“**CCI**”) In Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited (“**Maruti Suzuki**”) in implementing discount control policy vis-à-vis dealers.

1. COMPANIES LAW

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

1.1. The Limited Liability Partnership (Amendment) Act, 2021

1.1.1. The Limited Liability Partnership (Amendment) Act, 2021 (“**LLP Amendment Act**”) received the President’s assent on 13 August 2021. The following are the key amendments introduced by the LLP Amendment Act:

- (a) The LLP Amendment Act has created a class of LLP called a “small LLP” in line with the concept of a ‘small company, and in which the contribution does not exceed INR 2,500,000 (Rupees Two Million Five Hundred Thousand), or such higher amount, not exceeding INR 50,000,000 (Rupees Fifty Million) as may be prescribed and the turnover of which for the previous financial year does not exceed INR 4,000,000 (Rupees Four Million), or such higher amount, not exceeding INR 500,000,000 (Rupees Five Hundred Million), as may be prescribed.
- (b) The LLP Amendment Act has decriminalized certain minor offences and introduced amendments so as to convert the offences into civil defaults and to convert the nature of punishment from fines to monetary penalties.
- (c) The LLP Amendment Act has amended the existing law allowing a Regional Director to compound any offence which is punishable by fine only under the Limited Liability Partnership Act, 2008 (“**Act**”).
- (d) The LLP Amendment Act has inserted a new section in the Act, permitting the central government to establish special courts, as may be required for the purpose of providing a speedy trial for the offences under the Act. The LLP Amendment Act also provides for the powers and the procedure to be followed by these special courts.
- (e) The LLP Amendment Act also provides the central government with the authority to prescribe the accounting and auditing standards in consonance with the National Financial Reporting Authority.
- (f) Another key change is the change in the definition of a ‘resident in India’, which has been modified to provide that any person who is resident in India for 120 (one hundred twenty) days in the current financial year, may qualify as a resident in India, and may accordingly be appointed as a designated partner in an LLP. Under the earlier law, a person resident in India for 182 (one hundred eighty two) days in the last financial year would qualify within the definition of a ‘person resident in India’.

1.1.2. The primary objectives of the LLP Amendment Act are to incentivise conversion of partnership firms into limited liability partnerships and to decriminalise certain offences so as to reduce criminal prosecutions for minor omissions in the normal course of the business transactions of an LLP.

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

2. SECURITIES LAW

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

2.1. Amendments to the disclosure regime under Takeover Code and PIT Regulations

2.1.1. SEBI vide notification dated 13 August 2021, has made amendments to the Takeover Code which shall come into force from 1 April 2022. SEBI has relaxed certain disclosure obligations on the acquirers / promoters pertaining to the acquisition or disposal of shares aggregating to 5% (five percent) and any change of 2% (two percent) thereafter. Further, SEBI has also relaxed the annual shareholding disclosure requirements and the requirements in relation to disclosure of the creation/invoication/release of any encumbrance that are registered in depository systems. These relaxations have been given on account of the implementation of the system driven disclosures whereby such information will be readily available with the stock exchanges.

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

2.1.3. SEBI vide circular dated 13 August 2021 relaxed the regulatory provisions under the PIT Regulations. As per the circular, listed companies which have complied with requirements of the circular dated 9 September 2020 related to the implementation of mechanism of system driven disclosures, will no longer need to continue with the manual filing of disclosures as required under Regulation 7(2) (a) & (b) of PIT Regulations.

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

2.2. SEBI amendments relating to REITs and InvITs

2.2.1. SEBI vide notifications dated 30 July 2021 has made amendments to the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, wherein the provisions related to minimum application value and trading lots for REITs and InvITs have been amended. The minimum application value shall now be in the range of INR 10,000 (Rupees Ten Thousand) and INR 15,000 (Rupees Fifteen Thousand) and the minimum trading lots for REITs and InvITs will be of 1 (one) unit.

2.2.2. Please click [here](#) and [here](#) to read the notifications.

2.2.3. Further, SEBI vide circular dated 4 August 2021 has clarified that registered unlisted InvITs which have already issued units as of the date of the circular, shall be required to comply with the amended provisions of SEBI (Infrastructure Investment Trusts) Regulations, 2014 within a period of 6 (six) months from the date of the circular.

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

3. FOREIGN EXCHANGE LAWS

Please see below the summary of the key foreign exchange law updates for August 2021.

3.1. Press Note 3 of 2021 by DIPP on foreign direct investment (“FDI”) in petroleum and natural gas PSUs

3.1.1. The DIIP has released a press note on 29 August 2021 amending the consolidated FDI policy circular of 2020 in relation to the permitted levels of FDI in petroleum and natural gas PSUs.

3.1.2. Pursuant to the press note, the levels of permitted foreign investment under the automatic route has been increased from 49% (forty nine percent) to 100% (one hundred percent), if the concerned PSU is operating in the petroleum and natural gas sector, and has received an 'in-principle' approval for strategic disinvestment from the central government This has been done primarily to aid the privatization of Bharat Petroleum Corporation Limited, and the sale of the government's 53% (fifty three percent) stake in the company.

3.1.3. Please click [here](#) to read the press note.

3.2. Draft Foreign Exchange Management (Non-debt Instruments - Overseas Investment) Rules, 2021

3.2.1. The Reserve Bank of India through notification dated 9 August 2021 has issued the Overseas Investment Rules governing overseas investment in equity and acquisition and transfer of immovable property outside India by persons resident in India. The acquisition and transfer of immovable properties outside India by persons resident India is presently governed under Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 and overseas investments are governed under the Foreign Exchange Management (Transfer or Issue of Any Foreign Securities) Regulations, 2004 (“ODI Regulations”). Overseas Investment Rules were open for public comments till 23 August 2021 and are proposed to be finalised after public consultation. The Overseas Investment Rules are not applicable to any investment made outside India by a unit set up in an International Financial Services Centre (“IFSC”).

3.2.2. Under the Overseas Investment Rules, acquisition of immovable property by individuals is now permitted through the purchases out of remittances sent under the Liberalized Remittance Scheme (“LRS”) and out of income or assets outside India (other than overseas direct investments (“ODI”). Under the current regime, acquisition of immovable property by individuals is permitted by way of gift, and inheritance or acquisition by way of purchase from foreign exchange held in resident foreign currency account or joint acquisition with a relative who is a person resident outside India, provided there is no outflow of funds from India.

- 3.2.3. In relation to transfer of immovable property outside India, a person resident in India is required to obtain a general or specific permission from RBI under the current regime for such transfer. Under Overseas Investment Rules, transfer of immovable property by a person resident in India is permitted by way of (a) gift to a person resident in India; (b) inheritance to an individual; or (c) sale.
- 3.2.4. In relation to transfer of foreign securities, the ODI Regulations permits transfer by way of pledge for obtaining fund based or non-fund based facilities in India from an authorised dealer or by way of sale of shares of a joint venture or wholly owned subsidiary to another Indian party. Under the Overseas Investment Rules, a person resident in India holding equity capital may transfer such investment by way of sale to another person resident in India or a person resident outside India. In case of transfer on account of merger, amalgamation or demergers or buyback or liquidation, the transfer is required to be approved by the competent authority as per Indian laws or the laws of the host country.
- 3.2.5. In case the person resident in India, making any financial commitment or undertaking disinvestment, has an account appearing as a special mention account or a non-performing asset or is a wilful defaulter or if such person is under investigation by any regulatory authority, then such person is required to obtain a no-objection certificate as per the Overseas Investment Rules from the concerned lender bank or regulatory body or investigative agency for making any financial commitment or undertaking disinvestment.
- 3.2.6. For restructuring, under the ODI Regulations, a listed Indian party, who has set up a wholly owned subsidiary abroad or have at least 51% (fifty one percent) stake in an overseas joint venture, is permitted to write off capital and other receivables, such as loans and royalty, in respect of the joint venture or the wholly owned subsidiary up to 25% (twenty five percent) of the equity investment. Under the Overseas Investment Rules, Indian entity which has made an ODI may be permitted for restructuring of the balance sheet by the foreign entity for the previous 2 (two) years subject to ensuring compliance with reporting and documentation requirement. Further, the diminution in the total value of the outstanding dues towards the Indian entity, after such restructuring, should not exceed the proportionate amount of accumulated losses
- 3.2.7. The ODI Regulations prohibits an Indian party i.e., a company or a partnership or a limited liability partnership incorporated or registered under the applicable Indian laws, from making any direct investment in foreign entity engaged in real estate business or banking business. The Overseas Investment Rules further extends these restrictions. As per the Overseas Investment Rules a person resident in India is restricted from making any ODI in a foreign entity engaged in (a) real estate activity; (b) gambling in any form; and (c) offering financial products linked to Indian Rupee except for products offered in an IFSC. Other general restrictions under Overseas Investment Rules include (a) restriction from making overseas investment in Financial Action Task Force and International Organization of Securities Commission non-compliant jurisdictions; (b) financial commitment by a person resident in India in a foreign entity that has invested or invests in India where such financial commitment is designed for the purpose of tax evasion or tax avoidance by such person.
- 3.2.8. The Overseas Investment Rules also prescribes for a new pricing guideline. Under the new framework, for issue or transfer of equity capital from a person resident outside India to a person resident in India, if the securities are listed then the price should be as worked out in accordance with the concerned stock exchange. In other cases, the price should be with 5% (five percent) range of the fair value arrived on an arm's length basis as per any internationally accepted pricing methodology.
- 3.2.9. Please click [here](#) to read the Overseas Investment Rules.

3.3. **Draft Foreign Exchange Management (Overseas Investment) Regulations, 2021**

- 3.3.1. The Reserve Bank of India through notification dated 9 August 2021 has issued the Overseas Investment Regulations with the aim to promote ease of doing business. Overseas investments are presently covered under the ODI Regulations. The Overseas Investment Regulations deals with overseas financial commitments by modes other than equity capital and introduces the concept of deferred payment. The Overseas Investment Regulations were open for public comments till 23 August 2021 and are proposed to be finalised after public consultation.
- 3.3.2. As per the ODI Regulations, overseas financial commitments, other than by means of equity capital, can be made by creation of charge, by way of pledge, on the shares of the joint venture or step-down subsidiary outside India. In addition to the existing modes, the Overseas Investment Regulations prescribes that financial commitments, which are not made by means of equity capital, can be made by way of (a) loan which is backed by a loan agreement; (b) issuing guarantee to or on behalf of the foreign entity or its step-down subsidiary in which the Indian entity has acquired control; and (c) pledge in favour of an AD Bank or a public financial institution in India or an overseas lender or by creating charge by way of mortgage or hypothecation of assets in or outside India.
- 3.3.3. The Overseas Investment Regulations also prescribes that for ODI through investment in equity capital in the foreign entity and control over such entity are pre-requisites for making any financial commitment by modes other than equity capital in such foreign entity.
- 3.3.4. The Overseas Investment Regulations introduces the concept of deferred payment, according to which, foreign securities equivalent to the amount of total consideration shall be transferred or issued, as the case may be, upfront by the seller to

the buyer, subject to pricing guidelines and indemnification outlined in Foreign Exchange Management (Guarantee) Regulations, 2000.

3.3.5. The Overseas Investment Regulations also prescribes reporting requirements for overseas investments which includes reporting by (a) person resident in India for any financial commitments or disinvestments; (b) person resident in India for making any overseas portfolio investment or transferring such investment by way of sale; (c) submitting annual performance report; and (d) submitting annual return on foreign liabilities and assets. Overseas Investment Regulations prescribes restriction on further financial commitments, directly or indirectly, towards the concerned foreign entity or transfer of such investment until delay in reporting, if any, is regularised.

3.3.6. Please click [here](#) to read the Overseas Investment Regulations.

4. COMPETITION LAWS

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

4.1. **Suo Motu action of CCI in Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-à-vis dealers**

4.1.1. In an order published on 23 August 2021, the CCI has imposed a penalty on Maruti Suzuki to the tune of INR 2,000,000,000 (Indian Rupees two billion) for restricting and controlling the discounts offered by its dealers to the end consumers.

4.1.2. The CCI has taken the suo motu action based on an anonymous email and has observed that the discount control policy of Maruti Suzuki is an agreement amongst enterprises engaged at different stages or levels of production chain in different markets which puts a restriction on resale price. Such an agreement is anti-competitive in nature and is strictly prohibited under the provisions of Competition Act, 2002.

4.1.3. The CCI rejected contentions of Maruti Suzuki in relation to absence of a formal agreement for implementation of the discount control policy of Maruti Suzuki and that such discount control policy is a measure by the dealers to police themselves and Maruti Suzuki is merely a third party.

4.1.4. The CCI concluded that the conduct of Maruti Suzuki has caused an appreciable adverse effect on competition. Therefore, in addition to the imposition of penalty, the CCI further ordered Maruti Suzuki to cease and desist from indulging in such anti-competitive practice.

4.1.5. Please click [here](#) to read the CCI Order.

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