



DEVELOPMENTS IN CORPORATE LAW

IN AUGUST
2018

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic lawyers led by Souvik Ganguly and Gautam Narayan, who have deep and diverse experiences in their chosen areas of practice. We have advised 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 astute legal advice informed by commercial realities. Our areas of practice are divided into two departments.

The Corporate practice is led by Souvik Ganguly 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 Disputes practice, Acuity Law 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 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 www.acuitylaw.co.in or write to us at al@acuitylaw.co.in.

INTRODUCTION

This newsletter covers developments with respect to corporate laws during the month of August 2018. We have covered the amendments made to the Companies (Appointment and Qualification of Directors) Rules, 2014; Companies (Registration Office and Fees) Rules, 2014; Companies (Incorporation) Rules, 2014; Companies (Accounts) Rules, 2014. We have also covered some recently amended legislations, such as the Prevention of Corruption (Amendment) Act, 2018; the Specific Relief (Amendment) Act, 2018; and the Negotiable Instruments (Amendment) Act, 2018.

Please see below summaries of the relevant developments.

1. COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) FIFTH AMENDMENT RULES, 2018 AND COMPANIES (REGISTRATION OFFICE AND FEES) FOURTH AMENDMENT RULES, 2018

On 21 August 2018, the Ministry of Corporate Affairs issued a notification which extended the last date for filing form DIR-3 KYC, which is to be filled by directors of all companies. Every director, who has been allotted a director identification number (“DIN”), on or before 31 March 2018, shall furnish the form on or before 15 September 2018 (previously 31 August 2018). In case of failure to file the form before the due date, from 16 September 2018, such approved DINs would be deactivated and shall be reactivated on payment of a specialized fee of INR 5000.

2. COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2018

On 27 July 2018, the Ministry of Corporate Affairs issued a notification which amended the Companies (Incorporation) Rules, 2014.

The explanation of the term "resident in India" has been amended to mean a person who has stayed in India for a period of not less than 182 days during the immediately preceding financial year (as opposed to being calculated during the immediately preceding calendar year earlier). Additionally, while counting the number of days of stay of a director in India for the financial year 2018 – 2019, any period of stay between 01 January 2018 till the 27 July 2018 shall also be counted.

3. COMPANIES (ACCOUNTS) AMENDMENT RULES, 2018

On 31 July 2018, the Ministry of Corporate Affairs issued a notification which has amended certain rules of the Companies (Accounts) Rules, 2014. The amended rules are as follows:

- Board reports by all other companies, other than One Person Companies (“OPCs”) must now include: (i) disclosure with respect to cost records, and (ii) compliance with the prevention of sexual harassment of women at workplace statute.
- Newly inserted rule 8A provides that the board report of OPCs and small companies shall be prepared on a standalone basis with respect to the financial statement of the company, in an abridged form.

4. PREVENTION OF CORRUPTION ACT (AMENDMENT) ACT, 2018

The Prevention of Corruption Act (Amendment) Act, 2018 (“**Amendment Act**”) was recently passed, amending the Prevention of Corruption Act, 1988 (“**the PCA**”). The Amendment Act came into force on July 26, 2018 and effects critical changes to the PCA, including direct liability for commercial organizations and managerial personnel of such organizations involved in bribery in India.

- **Commercial Organizations’ Liability**

The Amended Act holds a commercial organization liable if any person associated with it gives or promises to give any undue advantage to a public servant with an intent to obtain or retain business or any advantage for that commercial organization. All types of entities (including domestic companies, foreign companies and partnerships) doing business in India are covered under this provision. Commercial organizations operating in India will therefore be vicariously liable for any bribes provided to public servants by persons associated with their organization. Intermediaries who provide bribes on behalf of commercial organizations are also associated with such organization under the Amendment Act. Furthermore, commercial organizations can be held liable for the actions of their employees, agents, professional advisors and service providers. Further, a parent company (including a foreign parent company) can be held liable under the PCA for the actions of its Indian subsidiary. Commercial organizations can avoid liability for a bribe provided by a person associated with them by demonstrating that the bribe was provided to the public servant despite the organization putting in place adequate procedures to prevent it.

- **Managerial Personnel’s Liability**

The Amendment Act now includes a distinct offense dealing with the supply side of bribery. It imposes liability on individuals providing bribes to public servants and also imposes liability on directors, managers, secretaries and other officers of a commercial organization. Managerial personnel of a commercial organization are to be liable if the prosecution can establish that such personnel consented to or conspired with the person committing the offence under the PCA. Managerial personnel can face imprisonment from 3 years up to 7 years and / or fines if found guilty.

5. SPECIFIC RELIEF (AMENDMENT) ACT, 2018

On 01 August 2018, the Specific Relief (Amendment) Act, 2018 (“**the Amended Act**”) was published in the official gazette. The Amended Act seeks to amend the Specific Relief Act, 1963 which sets out the remedies available to parties whose contractual or civil rights have been violated. The major changes are as follows:

- Sets out two main remedies that are available to a party whose contract has not been performed:
 - the party may ask the court to compel performance of the contract (specific performance);
 - the party may seek monetary compensation instead of performance.

SPECIFIC RELIEF (AMENDMENT) ACT, 2018 CONTINUED...

- The Amended Act seeks to remove the conditions to avail specific performance (when monetary compensation is inadequate or when monetary compensation cannot be easily ascertained) and seeks to permit specific performance by courts as a general rule.
- The Amended Act adds a new entity to the list of parties who may seek specific performance and against whom specific performance may be sought. It now includes a limited liability partnership (“LLP”) formed from the amalgamation of two existing LLPs, one of which may have entered into a contract before the amalgamation.
- The Amended Act gives an affected party (i.e. a party whose contract has not been performed by the other party) the option to arrange for performance of the contract by a third party or by his own agency (substituted performance). The costs in connection with such performance may be recovered from the other party. Specific performance cannot be claimed after obtaining substituted performance.
- The Amended Act seeks to prevent courts from granting injunctions in contracts related to infrastructure projects, if such an injunction would hinder or delay the completion of the project. These projects can be categorized under the following infrastructure sectors and their sub-sectors: (i) transport; (ii) energy; (iii) water and sanitation (iv) telecommunication; and (v) social and commercial infrastructure.
- Under the Amended Act, certain civil courts may be designated as Special Courts by the state government, in consultation with the Chief Justice of a High Court. These courts will handle cases related to infrastructure projects which must be disposed of within 12 months from the date of receipt of summons by the defendant. This period can be extended by the courts for another 6 months.
- The Amended Act additionally permits a person through whom the dispossessed got possession of the immovable property, to file a suit for recovery.
- The Amended Act inserts a new provision for engaging technical experts in suits where expert opinion may be needed. The court will determine the terms of payment of such expert which will be borne by both the parties.

6. NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018

On 02 August 2018, the Negotiable Instruments (Amendment) Act, 2018 (“**the Amended Act**”) was passed. The Amended Act seeks to amend the Negotiable Instruments Act, 1881 which defines promissory notes, bills of exchange, and cheques. It also specifies penalties for bouncing of cheques, and other violations with respect to such negotiable instruments. The major changes are as follows:

- A court trying an offence related to cheque bouncing may direct the drawer to pay interim compensation to the complainant. This interim compensation may be paid under certain circumstances, including where the drawer pleads not guilty of the accusation. The interim compensation will not exceed 20% of the cheque amount and must be paid by the drawer within 60 days of the trial court’s order to pay such a compensation.

NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018 CONTINUED...

- If a drawer convicted in a cheque bouncing case files an appeal, the appellate court may direct him to deposit a minimum of 20% of the fine or compensation awarded by the trial court during conviction. This amount will be in addition to any interim compensation paid by the drawer during the earlier trial proceedings. In case the drawer is acquitted (during trial or by the appellate court), the court will direct the complainant to return the interim compensation (or deposit in case of an appeal case), along with an interest. This amount will be repaid within 60 days of the court's order.