

ACUITY LAW

**CORPORATE & LABOUR
LAW NEWSLETTER**

JUNE 2019
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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 led by Souvik Ganguly and Gautam Narayan, 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 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 acuitylaw.co.in or write to us at al@acuitylaw.co.in.

INTRODUCTION

This newsletter covers key updates about the developments in corporate and labour law during the month of June 2019. In relation to corporate law, we have covered key regulatory developments including clarification issued by Reserve Bank of India (**RBI**) on storage of payment system data and notifications issued by Ministry of Corporate Affairs (**MCA**) with respect to (a) SPICe form notified for license to incorporate companies with charitable objects; (b) inclusion of disaster management within the scope of corporate social responsibility activities; and (c) web-based verification service for directors.

In relation to labour law, we have covered a notification which has reduced the employee state insurance contribution.

Please see below the summary of the abovementioned regulatory developments.

CORPORATE LAW

RBI: CLARIFICATION ON STORAGE OF PAYMENT SYSTEM DATA

RBI had issued a directive vide a circular dated 6 April, 2018 (**Circular**) to all the payment system providers to ensure that, within a period of six months, the entire data relating to payment systems operated by them is stored in a system only in India.

RBI has now released FAQs addressing issues with respect to the implementation of the Circular that were raised by payment system operators.

The Circular is applicable to payment system providers, banks in India and transactions through system participants, service providers etc. engaged for providing payment services.

The payment system operator has to ensure compliance with the provisions of the Circular. Payment system operator and banks functioning as a payment system operator or as a payment system participant have the following obligations:

- (i) The payment data of the domestic payment transactions has to be stored in India. However, in case of a cross border transaction, the domestic component of the transaction can be stored abroad if required.
- (ii) The payment data stored in India has to include end-to-end transaction details and information pertaining to payment or settlement transaction that is gathered/transmitted/processed as part of a payment message/instruction.
- (iii) In case the payment transaction is processed outside India then after such processing the payment data has to be deleted from the systems abroad and stored in India. The data once deleted has to be brought to India at the earlier of one business day or 24 hours from processing of payment.
- (iv) System audit report has to be submitted after storing the payment data in India and such report will include data storage, maintenance of database etc.

The banks including the foreign banks which were earlier specifically permitted to store the banking data abroad can continue to do so however with respect to domestic payment transactions they must to store the data only in India. The payment data stored in India can be shared with the overseas regulator only after taking the prior approval of the RBI.

MCA: NOTIFIES SPICe FORM FOR LICENSE TO INCORPORATE COMPANIES WITH CHARITABLE OBJECTS

MCA vide notification dated 7 June 2019 has amended Rule 19 of the Companies (Incorporation) Rules, 2014 which will be effective from 15 August 2019.

Section 8(1) of the Companies Act, 2013 (**Companies Act**) empowers the central government to grant license to persons/association of persons, to incorporate companies with charitable objects.

Now, a person or an association of persons who wants to incorporate a company with limited liability under section 8(1) of the Companies Act without the addition to its name of the word "Limited" or "Private Limited", will have to make an application in Form No. INC-32 (SPICe) instead of earlier applicable Form No. INC.12.

Along with the application made in Form No. INC-32 (SPICe), now the memorandum and articles of association of the proposed company have to be submitted instead of draft memorandum and articles of association of the proposed company.

MCA: INCLUDES DISASTER MANAGEMENT UNDER CORPORATE SOCIAL RESPONSIBILITY ACTIVITIES

Under the Companies Act, certain class of companies based on their turnover and net profits are required to spend at least 2% of the average net profits of the company made during the 3 immediately preceding financial years towards corporate social responsibility activities.

MCA has notified disaster management including relief, rehabilitation and reconstruction activities as activities eligible for corporate social responsibility funding effective from 30 May 2019.

MCA: WEB-BASED VERIFICATION SERVICE FOR DIRECTORS

After stakeholders expressed difficulty in filing e-form DIR-3 KYC under Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014, MCA has proposed to ease the process by bringing in web-based verification.

In order to update the registry MCA conducts KYC of all the directors of all the companies through e-form DIR-3 KYC. Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014 mandates every individual who has been allotted a director identification number as on March 31 of a financial year, to submit e-form DIR-3 KYC to the central government on or before June 30 of immediate next financial year.

MCA has informed that any person who has already filed form DIR-3 KYC is only required to complete his/her KYC through a web-based verification service with pre-filled data based on the records in the registry. However, in case a person wants to update his mobile no. or e-mail address he will have to file e-form DIR-3 KYC as this facility is not being proposed in the web-based service. In case a person wants to update any other personal details, he has to file e-form DIR-6 before the completion of KYC through the web-based service.

MCA will notify the amendment in the relevant rules including the amendment relating to extension of time for completion of KYC through e-form DIR-3 KYC or the web-based service.

LABOUR LAW**GOVT. REDUCES THE EMPLOYEE STATE INSURANCE CONTRIBUTION**

The Employees' State Insurance Act, 1948 (**ESI Act**) provides for medical, cash, maternity, disability and dependent benefits to the insured persons and is administered by Employees' State Insurance Corporation. The benefits provided under the ESI Act are funded by the contribution made by the employers and employees.

Applicability of ESI Act:

The ESI Act is applicable to all factories including government factories and certain establishments having 10 or more employees or were employed on any day of the preceding 12 months.

The central government under section 1(5) of the ESI Act, made the ESI Act applicable to shops, hotels, restaurants, cinemas including preview theatres, road-motor transport undertakings, newspaper establishments, establishments engaged in insurance business, non-banking financial companies, port trust, airport authorities and warehousing establishments having 10 or more employees. However, the threshold for coverage of establishments in Maharashtra and Chandigarh is 20 employees or more.

Further under section 1(5) of the ESI Act, the scheme has been extended to private medical and educational institutions having 10 or more employees in certain states/union territories.

The states which have extended the scheme to educational institutions are Rajasthan, Bihar, Pondicherry, Jammu & Kashmir, Uttarakhand, Chhattisgarh, West Bengal, Jharkhand, Kerala, Uttar Pradesh, Andhra Pradesh, Assam, Punjab, Tamil Nadu.

The states which have extended the scheme to private medical institutions are West Bengal, Rajasthan, Bihar, Kerala, Himachal Pradesh, Uttarakhand, Andhra Pradesh, Punjab, Assam, UT Chandigarh, Jharkhand and Orissa.

The ESI Act is not applicable to

- (i) the seasonal factories;
- (ii) a mine subject to the operation of the Mines Act, 1952, or a railway running shed; and
- (iii) to a factory or an establishment belonging to or under the control of the government whose employees are otherwise getting the benefits which are substantially similar or superior to the benefits provided under the ESI Act.

Reduction in rates of contribution:

The Ministry of Labour & Employment has reduced the rate of total contribution under the ESI Act from 6.5% to 4% as follows:

- a) employee's contribution has been reduced from 1.75% to 0.75%; and
- b) employers' contribution has been reduced from 4.75% to 3.25%

The reduced rates will be effective from 01 July 2019.

This has been done with an aim of providing relief to the employees and to increase enrolment of workers under the employment state insurance scheme and bring more workforce into the formal sector. This will also reduce the financial liability of the establishments and lead to enhanced ease of doing business. The reduced rates will benefit 3.6 crore employees and 12.85 lakhs employers.

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