ACUITY LAW

CORPORATE
LAW NEWSLETTER

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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, 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.

INTRODUCTION

This newsletter covers key updates for the month of January 2022 relating to securities laws, competition laws and company laws. In particular, we have covered:

(1) Securities laws: (a) Amendment to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018; (b) Amendment to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012; (c) SEBI's framework for operationalizing Gold Exchange in India; (d) Amendment to the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018; (e) Amendment to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015; and (f) SEBI's consultation paper on ESG rating providers for securities markets.

(2) Competition law: (a) Order passed by the CCI in: In Re: Cartelisation by Shipping Lines in the matter of provision of Maritime Motor Vehicle Transport Services to the Original Equipment Manufacturers.

(3) Company Law: (a) Amendments to Section 403 of the Companies Act, 2013 and the Companies (Registration Offices and Fees) Rules, 2014.

1. SECURITIES LAW

Please see below the summary of the key securities law updates for January 2022.

1.1. Amendment to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018

1.1.1. The Securities and Exchange Board of India ("**SEBI**") vide its notification dated 14 January 2022, has amended the Securities and Exchange Board of India ((Issue of Capital and Disclosure Requirements) Regulations, 2018 (**"ICDR Regulations"**). Some of the key amendments introduced in the ICDR Regulations has been discussed hereinafter.

1.1.2. The amendments have prescribed certain additional conditions for an offer for sale ("**OFS**"), where the prospective issuer does not satisfy the net worth criteria, operating profits criteria or other requirements as provided under regulation 6 of the ICDR Regulations. The amendments provide that shareholders holding more than 20% (twenty percent) stake in the pre-issue shareholding of such issuers shall only be allowed to sell up to 50% (fifty percent) of their shares in the public offer and shareholders with less than 20% (twenty percent) stake shall only be permitted to sell up to 10% (ten percent) of their shares in the public offer.

1.1.3. The amendments also provide that if a prospective issuer company has identified future inorganic growth as one of its objectives in its offer documents, but has not identified any acquisition or investment target, the amounts utilised for such inorganic growth as well as for general corporate purpose ("**GCP**") shall not exceed 35% (thirty five percent) of the total amount being raised through the public issue. The above limit would be inapplicable if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments have been made in the offer documents.

1.1.4. As per the amendment, a credit rating agency registered with SEBI shall be permitted to act as a monitoring agency for the funds raised by an issuer and such monitoring shall continue till 100% (hundred percent) of the amounts raised have been utilised, including amounts raised for general corporate purposes. Earlier, the amounts raised for general corporate purposes were outside the purview of monitoring by the concerned monitoring agencies.

1.1.5. Further, with respect to the lock-in period of the shareholding for anchor investors, the amendments have provided that 50% (fifty percent) of the shareholding of the anchor investors shall be locked in for a period of 30 (thirty) days, whereas the remaining portion shall be subject to a lock-in of 90 (ninety) days from the date of allotment of all issues that open on or after 01 April 2022.

1.1.6. Please click here to read the amendment notification.

1.2. Amendment to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

1.2.1. SEBI, vide a notification dated 24 January 2022, has amended the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulations**") and inserted chapter III-B on Special Situation Funds ("**SSFs**") specifying the definitions, applicability, registration process, and investment norms for these SSFs.

1.2.2. As per the amendment, SSFs shall be a sub-category under category - I Alternative Investment Funds ("**AIF**") that shall invest in special situation assets in accordance with the investment objectives of the SSF and may even act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016 ("**Code**"). SSFs intending to act as a resolution applicant shall ensure compliance with the eligibility requirements under the Code.

1.2.3. An applicant may apply for registration as a SSF in accordance with the provisions of chapter II of the AIF Regulations.

1.2.4. Special situation assets in which SSFs may invest include a stressed loan available for acquisition in terms of Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021, or as part of a resolution plan approved under the Code or in terms of any other policy of the Reserve Bank of India ("**RBI**") or Government of India. Special situation assets also include security receipts issued by an asset reconstruction company registered with RBI, securities of certain kinds of investee companies, or any other asset as may be specified by SEBI.

1.2.5. The notification further clarified that SSFs shall not accept investments from any other AIF other than an SSF. Further, SEBI vide a circular dated 27 January 2022, has clarified that the scheme of an SSF shall have a minimum corpus of INR 1,000,000,000 (Indian Rupees One Billion). The minimum investment by an investor seeking to invest in a SSF is INR 100,000,000 (Indian Rupees One Hundred Million) whereas for investors who are employees or directors of the SSF or employees or directors of the manager of the SSF, the minimum value of investment shall be INR 2,500,000 (Indian Rupees Two Million Five Hundred Thousand).

1.2.6. Please click here and here to read the amendment notification and the SEBI circular respectively. Further, please click here to read our detailed coverage of this update.

1.3. **SEBI's framework for operationalizing Gold Exchange in India**

1.3.1. SEBI, vide its circular dated 10 January 2022, has notified the framework for operationalizing gold exchanges in India. The instrument for trading in the gold exchange/segment shall be referred to as 'Electronic Gold Receipts' ("**EGRs**") which has been notified as a 'security' under the Securities Contracts (Regulation) Act, 1956. SEBI has simultaneously also issued SEBI (Vault Managers) Regulations, 2021 on 31 December 2021 to regulate the registration and operation of vault managers for the purposes of operationalising gold exchanges.

1.3.2. Stock exchanges desirous of trading in EGRs may apply to SEBI for obtaining approval for trading in the gold exchange segments. Trading in EGRs shall comprise of 3 (three) phases which shall include conversion of the physical gold into EGR by the vault managers registered with SEBI in the first phase. Pursuant to the conversion into EGRs, the stock exchanges will allow trading of EGRs on continuous basis in the second phase. Subsequently, under the third phase the EGRs may be converted back into physical gold by the vault managers and the necessary intimations with respect to the extinguishment of the EGRs shall have to be provided to all the concerned stakeholders.

1.3.3. Further, to lower the costs associated with withdrawal of gold from the vaults, EGRs have been made fungible and interoperability between vault managers across the country has been allowed. To increase the reach of gold exchanges, all existing branches of vault managers will be allowed to operate as 'collection and/or withdrawal centres'.

1.3.4. Clearing corporations shall also empanel assaying agencies to check the purity of gold, if required by the beneficial owner of the EGR, at the time of withdrawal of gold from the vaults and the charges for the same shall be borne by such beneficial owner.

1.3.5. Please click here to read the SEBI circular.

1.4. **Amendment to the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018**

1.4.1. SEBI vide its notification dated 14 January 2022, has amended the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 ("**Settlement Regulations**"). The amendment is intended to rationalise the norms on settlement proceedings and has come into effect from the date of its gazette publication.

1.4.2. In September 2021, SEBI had initiated a consultative process to streamline and further harmonise the Settlement Regulations. The proposed amendments were subsequently approved by SEBI in its board meeting held on 28 December 2021.

1.4.3. The amendment notification has reduced the timeline within which settlement applications may be filed. Under the earlier regulatory framework, a settlement application could be filed within 60 (sixty) days from date of receipt of show cause notice, with a possible extension of 120 (one hundred and twenty) days. Pursuant to the amendment settlement applications may be filed only within 60 (sixty) days and no extension may be granted.

1.4.4. Further, the time period for submission of the revised settlement terms form has been rationalised to 15 (fifteen) days, from an earlier regime of 10 (ten) + 20 (twenty) days. Further, any non-compliance of condition precedent(s) for settlement, has also been added as a ground for rejection of the settlement application.

1.4.5. Please click here to read the amendment notification.

1.5. **Amendment to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015**

1.5.1. SEBI, vide its notification dated 24 January 2022, has amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"), which has come into force from the date of the publication of the notification.

1.5.2. SEBI had, on 27 January 2021 released a consultation paper on *'introduction of provisions relating to appointment / re-appointment of persons who fail to get elected as whole-time directors/managing directors at the general meeting of a listed entity*'. The consultation paper prescribed stricter requirements for the appointment of managing directors ("**MD**") / whole time directors ("**WTD**"), whose appointment / re-appointment had been earlier rejected by the shareholders at a general meeting of the company. SEBI, in its Board Meeting dated 28 December 2021, approved the proposals under the consultation paper with certain modifications.

1.5.3. Under the LODR Regulations, a listed entity is required to ensure that for the appointment of a person on the board of directors, approval of the shareholders is taken at the next general meeting, or within 3 (three) months from the appointment, whichever is earlier. Through the amendment, this provision has been extended to the appointment of managers of the company as well.

1.5.4. Further, where a person has been rejected for appointment by the shareholders earlier at a general meeting, such person can be appointed or re-appointed, including as a MD / WTD or manager, only with the prior approval of the shareholders. While the consultation paper proposed this requirement only with respect to MD / WTD, the notified amendment extends it to all directors and managers of the company.

1.5.5. The amendment also prescribes that a detailed explanation and justification by the nomination and remuneration committee and the board of directors for recommending such person for appointment or re-appointment must be annexed with the notice of the meeting to the shareholders.

1.5.6. Please click here to read the amendment notification.

1.6. **SEBI's consultation paper on ESG rating providers for securities markets**

1.6.1. SEBI has, on 24 January 2022, issued a consultation paper in order to streamline and regulate the Environment Social and Governance ("**ESG**") rating providers ("**ERP**").

1.6.2. The consultation paper proposes that only accredited entities registered with SEBI may be permitted to provide ESG ratings so as to ensure standardisation of the ratings and to avoid confusion. The SEBI accredited entities may include rating agencies and SEBI registered research analysts having a minimum net worth of INR 100,000,000 (Indian Rupees One Hundred Million). A listed entity would only be able to obtain ESG ratings from an accredited ERP.

1.6.3. In the consultation paper, it is suggested that ERPs need to specifically state the domain to which their products are connected. For example, carbon risk ratings cannot be referred to as ESG ratings. Further, ERPs need to provide at least 1 (one) of the following rating products, namely: (a) ESG impact ratings; (b) ESG corporate risk ratings or ESG financial risk ratings; or c) any other ESG related rating products, which shall be appropriately labelled.

1.6.4. SEBI also proposed that ERPs should use appropriate terminologies regarding the products they offer and to disclose the rating scale and ESG rating reports on its website. An accredited ERP should also ensure consistency in the application of their ESG rating scale.

1.6.5. Every ERP should have professional rating committees, comprising of members who are adequately qualified and knowledgeable to assign a rating. Further, it is proposed that ERPs should follow a subscriber-pay business model.

1.6.6. Public comments have been invited on the above consultation paper on ESG rating providers for securities markets.

1.6.7. Please click here to read the consultation paper.

2. **COMPETITION LAW**

Please see below the summary of the key competition law updates for January 2022

2.1. **Order passed by the CCI in: In Re: Cartelisation by Shipping Lines in the matter of provision of Maritime Motor Vehicle Transport Services to the Original Equipment Manufacturers**

2.1.1. The Competition Commission of India ("**CCI**") passed the final order against four maritime transport companies namely Nippon Yusen Kabushiki Kaisha ("**NYK Line**"), Kawasaki Kisen Kaisha Ltd. ("**K-Line**"), Mitsui O.S.K. Lines Ltd. ("**MOL**") and Nissan Motor Car Carrier Company ("**NMCC**"). Among these, NYK Line, MOL and NMCC were lesser penalty applicants.

2.1.2. After a detailed probe the CCI found the companies guilty of indulging in cartelisation in the provision of maritime motor vehicle transport services to automobile original equipment manufacturers ("**OEMs**") for various trade routes. The CCI, in its findings, observed that there was an agreement between NYK Line, K-Line, MOL and NMCC with an objective to enforce the 'respect rule' which meant avoiding competition with each other and protecting the business of other carriers with their respective OEMs.

2.1.3. The CCI further observed that in order to achieve the respect rule, the companies used to share commercial sensitive information including freight rates with each other. The companies used to resist price reduction from certain OEMs to preserve their market position and maintained their prices.

2.1.4. In the backdrop of the evidence and findings at hand, the CCI held that the companies were guilty of forming a cartel between 2009 to 2012 and accordingly passed a cease and desist order. The CCI also imposed penalties on K-Line, MOL & NMCC to the tune of approximately INR 242,000,000, (Indian Rupees Two Hundred and Forty Two Million), INR 101,000,000 (Indian Rupees One Hundred and One Million), and INR 286,000,000 (Indian Rupees Two Hundred and Eighty Six Million), respectively.

2.1.5. Please click here to read the CCI order.

3. COMPANY LAW

Please see below a summary of the key company law updates for January 2022.

3.1. Amendments to Section 403 of the Companies Act, 2013 and Companies (Registration Offices and Fees) Rules, 2014

3.1.1. The Ministry of Corporate Affairs ("**MCA**") has amended the higher additional fees payable by defaulters upon any default on 2 (two) or more occasions in submitting, filing, or registering documents and information as prescribed under the Companies Act, 2013 through 2 (two) notifications dated 11 January 2022.

3.1.2. The first notification dated 11 January 2022 has brought into effect the amendments to Section 403 that were introduced by the Companies (Amendment) Act, 2020. Prior to the amendment Section 403 provided that where a default in filing occurs on 2 (two) or more occasions, the filing may be made on payment of higher additional fee which shall not be lesser than twice the additional fee prescribed for defaults in the first instance. The amendment has removed this minimum cap on the higher additional fee, and the higher additional fee shall be payable as prescribed under the Companies (Registration Offices and Fees) Rules, 2014 ("**Rules**").

3.1.3. Pursuant to the notification of the changes introduced by the Companies (Amendment) Act, 2020 as mentioned above, the second notification has laid down the higher additional fees for such instances of defaults on 2 (two) or more occasions.

3.1.4. Please click here and here to read the notifications introduced by the MCA.

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