

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.

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INTRODUCTION

This newsletter covers key updates for the month of July 2022 relating to banking laws, securities laws, and other laws. In particular, we have covered:

- (1) Banking laws: Reserve Bank of India's (**RBI**) notification on non-bank payment system operators (**PSOs**).
- (2) Securities laws: (a) International Financial Services Centres Authority (**IFSCA**) circular on angel funds under IFSCA (Fund Management) Regulations, 2022; (b) Amendments to SEBI regulations for listing of social enterprises on social stock exchanges; and (c) Securities Exchange Board of India (**SEBI**) consultation paper on extending applicability of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (**PIT Regulations**) to units of mutual funds.
- (3) Other laws: (a) Amendment to the Foreign Contribution (Regulation) Rules, 2011.

1. BANKING LAWS

Please see below the summary of key banking law updates for the month of July 2022.

1.1. RBI notification on non-bank PSOs

- 1.1.1. RBI vide its notification dated 04 July 2022 has made it mandatory for non-bank PSOs to obtain prior approval of the RBI in case of any takeover or acquisition of control, which may or may not result in the change of management of the PSO. The approval is to be obtained by way of an application to the Department of Payment & Settlement Systems along with details of the proposed directors and new shareholders.
- 1.1.2. Further, non-bank PSOs will also be required to obtain prior approval from RBI for the sale or transfer of payment activity to an entity which is not authorized to undertake such payment activities.
- 1.1.3. After receipt of approval from RBI in each of the above instances, a public notice of at least 15 days must be given before effecting the changes.
- 1.1.4. However, in case of a change in management of the non-bank PSO, or sale / transfer of payment activity to an entity that is authorized to undertake similar activity, the non-bank PSO is only required to inform the RBI within 15 days, and no prior approval for such change is required.
- 1.1.5. Please click [here](#) to read the notification.

2. SECURITIES LAWS

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

2.1. IFSCA circular on angel funds under IFSCA (Fund Management) Regulations, 2022

- 2.1.1. IFSCA (Fund Management) Regulations, 2022 (**Fund Management Regulations**) were notified in April 2022 to regulate fund management entities operating in International Financial Services Centres (**IFSC**). IFSCA vide its circular dated 01 July 2022 (**IFSCA Circular**) has further notified a specific framework for regulation of angel funds under the Fund Management Regulations.
- 2.1.2. The IFSCA Circular is applicable to angel funds that are launched by fund management entities registered or authorised under the Fund Management Regulations. The IFSCA Circular defines angel funds and / or angel schemes as a sub-category of venture capital schemes that raises funds from angel investors. The key provisions of the IFSCA Circular are:
 - (a) **Permitted Investments:** Angel funds set up under the Fund Management Regulations may make investments in early-stage venture capital undertakings or other regulated angel schemes, or funds set up in IFSC, in India or in any other foreign jurisdiction. Early-stage venture capital undertakings have been defined as incorporated entities working towards innovation, development or improvement of products, processes or services, have been incorporated less than 10 years prior to the date of investment by the angel fund, and has not had an annual turnover exceeding USD 20 million since incorporation. The entity must also not have been promoted or sponsored by an industrial group having turnover exceeding USD 50 million.

However, angel funds are not permitted to make any investments in an associate of the fund management entity, or in any early-stage venture capital undertaking connected to the investors of the angel fund.

- (b) **Ring-fencing of investments:** Each investment to be made by an angel fund / scheme has to be approved by the investors wishing to contribute to the particular investment, and each such investment shall be ring-fenced from all other investments made by the angel fund / scheme.
- (c) **Filing of placement memorandum:** Angel schemes may be launched by a fund management entity under the green channel i.e., the schemes shall be open for receiving investments immediately upon filing of the placement memorandum with IFSCA.
- (d) **Minimum corpus:** The minimum corpus of an angel scheme should be USD 1 million, and the minimum investment amount by a single angel investor is USD 40 thousand, which must be invested over 5 years.
- (e) **Investment restrictions:** A maximum of 200 angel investors may participate in any particular investment. Further, the angel fund may only invest up to USD 1.5 million in a single early-stage venture capital undertaking and such investment must be locked-in for a period of 1 year. However, the angel fund may invest in excess of USD 1.5 million in subsequent rounds of fund raising by such entity to protect the dilution of its shareholding.
- (f) **Skin-in the game:** The fund management entity of the angel scheme must invest at least 2.5% of the investment amount or USD 20 thousand, whichever is less, in each investment to be made by the angel scheme.

2.1.3. Please click [here](#) to read the IFSCA Circular.

2.2. Amendments to SEBI regulations for listing of social enterprises on social stock exchanges

2.2.1. SEBI, vide 3 separate notifications dated 25 July 2022 has amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**), and SEBI (Alternative Investment Funds) Regulations, 2012 (**AIF Regulations**). These amendments have been introduced pursuant to SEBI's consultation paper dated 06 May 2021 proposing to establish a social stock exchange in India, as a separate segment on recognised stock exchanges.

2.2.2. Pursuant to the consultation paper, zero-coupon zero-principal instruments were included within the ambit of the term 'securities' under the Securities Contracts (Regulations) Act, 1956 by a gazette notification dated 15 July 2022, which may now be listed on social stock exchanges pursuant to the amendments. The key amendments to the ICDR Regulations, the LODR Regulations and the AIF Regulations are as follows:

(a) Amendments to the ICDR Regulations

- (i) The amendment to the ICDR Regulations has defined the term 'Social Enterprises' as 'Not for Profit Organisations' and 'For Profit Social Enterprises' which are engaged in any of the social activities listed under regulation 292E (2) (a) of the ICDR Regulations, and services the underserved or less privileged segments or low performance regions as per the development priorities of central or state governments. Further, such enterprises must meet the financial eligibility criteria prescribed under regulation 292E (2) (c) of the ICDR Regulations.
- (ii) The notification defines 'Not for Profit Organisations' to include charitable trusts registered under the Indian Trusts Act, 1882 or public trust statutes of the relevant state, charitable societies registered under the Societies Registration Act, 1860 and a company registered under section 8 of the Companies Act, 2013 which meet the eligibility criteria prescribed for 'Social Enterprises'. 'For Profit Social Enterprises' have been defined as companies or body corporates, except section 8 companies, which operate for profit, and which fulfill the eligibility criteria prescribed for 'Social Enterprises'.
- (iii) Pursuant to the amendment, Not for Profit Organisations may register themselves with a social stock exchange, with or without raising of funds by issuing zero-coupon zero-principal instruments to institutional investors and non-institutional investors. Further, For Profit Social Enterprises may also register themselves as a Social Enterprise with a social stock exchange while continuing to raise funds through issuance of equity shares on the main board, or any other segment of the stock exchange.
- (iv) The amendment notification has also prescribed the conditions for issuance of zero-coupon zero-principal instruments, the procedure for public and private issuance of such instruments, as well as the contents required to be incorporated in fund-raising documents.
- (v) Please click [here](#) to read the amendment notification to the ICDR Regulations.

(b) Amendments to the LODR Regulations

- (i) The LODR Regulations have been amended to prescribe compliance requirements for the Social Enterprises registered with a social stock exchange.
- (ii) For Profit Social Enterprises shall comply with the disclosure requirements prescribed for the segment of the stock exchange in which their securities are listed, whereas Not for Profit Organisations with securities listed on a social stock exchange shall make annual disclosures to the social stock exchange within 60 days from the end of a financial year. SEBI has also been authorised to prescribe any other specific matters that may be required to be disclosed by Not for Profit Organisations.
- (iii) The notification also prescribes that Social Enterprises shall frame a policy for determination of materiality and appoint key managerial personnel to determine materiality for making disclosures to the social stock exchange.
- (iv) Social Enterprises have also been mandated to make disclosures with respect to their social impact, whereas listed Not for Profit Organisations are also required to provide details with respect to utilization of funds raised by such organisations, on a quarterly basis.
- (v) Please click [here](#) to read the amendment notification to the LODR Regulations.

(c) Amendments to the AIF Regulations

- (i) The AIF Regulations have also been amended to rename 'social venture funds' as 'social impact funds'. Social impact funds shall invest primarily in securities, units or partnership interests of social ventures or securities of Social Enterprises, and 'social units' may be issued to investors who have agreed to receive only social returns or benefits, and no financial returns against their contributions. Social impact funds are a sub-category of Category I AIFs.
- (ii) The amendment notification prescribes that social impact funds may have a lower minimum corpus of INR 50 million, whereas the minimum investment amount by an investor in a social impact fund which invests only in listed securities of a Not for Profit Organisations is limited to INR 0.2 million. The notification also prescribes certain other relaxations in the investment conditions for social impact funds.
- (iii) Please click [here](#) to read the amendment notification to the AIF Regulations.

2.3. SEBI consultation paper on extending applicability of the PIT Regulations to units of mutual funds

2.3.1. SEBI vide a consultation paper dated 08 July 2022 has proposed to extend the applicability of the PIT Regulations to units of mutual funds. The consultation paper has proposed to amend the PIT Regulations so as to harmonize the regulations governing trading while in possession of unpublished price sensitive information (**UPSI**) in all kinds of securities.

2.3.2. The consultation paper seeks to regulate any individual that may be in possession of UPSI related to units of a mutual fund which may materially impact the net asset value of the units, or materially affect the interests of a unitholder. The consultation paper also proposes to prescribe additional compliance obligations on identified designated persons, who may be more likely to come in possession of UPSI.

2.3.3. The key changes proposed by the consultation paper are as follows:

- (a) The words 'except units of a mutual fund' are proposed to be omitted from the definition of securities to do away with the exclusion of mutual fund units from the definition of the term securities.
- (b) The definition of 'trading' is proposed to be broadened to include acts of 'redeeming' and 'switching' of securities.
- (c) A new chapter is proposed to be inserted for regulating the communication of UPSI relating to units of mutual funds, trading by insiders when in possession of UPSI, as well as for prescribing compliance obligations on mutual funds and the designated persons associated with mutual funds.
- (d) A 'connected person' for the purposes of the new chapter includes any person who is associated or has been associated with the mutual fund, or the asset management companies (**AMCs**) and trustees of the mutual fund during a period of two months prior to the relevant act, which association may allow such person access to UPSI.

- (e) General restrictions have been placed on communication of UPSI by insiders to any other person except for the communication of UPSI for legitimate purposes, or for the performance and discharge of the insider's functions and legal obligations. The board of directors of the AMC of every mutual fund have been obligated to create a policy for determination of what may qualify as 'legitimate purposes' for which UPSI may be shared.
- (f) General restrictions have also been placed on trading by insiders when in possession of UPSI, and any trading when in possession of UPSI will be presumed to have been motivated by the knowledge of such UPSI. A few defences have also been prescribed for trading when in possession of UPSI, such as off market transfers between insiders having the same UPSI, or transactions that are carried out pursuant to statutory obligations or pursuant to systematic plans such as systematic investment plans (SIP).
- (g) The board of directors of the AMC or the Trustee of every mutual fund would also be required to ensure that a code of conduct is formulated to regulate, monitor, and report dealings in units of own mutual fund by its designated persons and their immediate relatives, or persons for whom the designated person takes trading decisions. The minimum standards required to be included in the code of conduct include handling of information on a need-to-know basis, obtaining prior approval by designated persons for any trading in units of own mutual fund schemes, closure of trading window when designated persons may be expected to have access to UPSI, and periodic disclosures by designated persons.

2.3.4. Please click [here](#) to read the consultation paper.

3. OTHER LAWS

3.1. Amendment to the Foreign Contribution (Regulation) Rules, 2011

- 3.1.1. The Ministry of Home Affairs by way of a notification dated 01 July 2022 has amended the Foreign Contribution (Regulation) Rules, 2011, and brought into effect certain relaxations in relation to compliance requirements to be observed by recipients of foreign contribution.
- 3.1.2. By way of this amendment, the Ministry of Home Affairs has increased the threshold for the amount of money that may be received by an individual from his relatives in a financial year from INR 1 hundred thousand to INR 1 million without informing the central government of such receipt. Furthermore, information with respect to receipt of foreign contribution beyond the new threshold may now be provided to the Central Government within 3 months of such receipt. Prior to the amendment, the timeline for providing such information was 30 days.
- 3.1.3. The amendment notification has also relaxed the timelines from 15 days to 45 days, within which information regarding opening of a new bank account for utilising foreign contribution has to be provided to the central government. The compliance requirement to place details of the foreign contribution received by an entity on its website on a quarterly basis has also been removed.
- 3.1.4. Please click [here](#) to read the amendment.

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