

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 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 recent key updates in Indian laws relating to banking law, company law, and securities laws.

In particular, we have covered:

- (1) Banking law: Reserve Bank of India (“**RBI**”) circular allowing access for non-banks to centralized payment systems;
- (2) Companies law: (a) Notification issued by Ministry of Corporate Affairs (“**MCA**”) on the Companies (Incorporation) Fifth Amendment Rules, 2021 and (b) General circular regarding clarification on spending Corporate Social Responsibility (“**CSR**”) Funds on account of COVID-19 vaccination;
- (3) Securities law: (a) Discussion paper by the Securities and Exchange Board of India (“**SEBI**”) on review of the SEBI (Share Based Employee Benefits) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002; and (b) Supreme Court judgment upholding constitutional validity of the SEBI (Mutual Fund) Regulations, 1996.

1. BANKING LAW

Please see below the summary of the key banking law updates for July 2021

1.1. RBI Circular Allowing Access for Non-banks to Centralised Payment Systems

- 1.1.1. RBI has released a circular on 28 July 2021 giving direct access for non-bank entities like pre-paid payment instrument issuers, card networks and white label ATM operators to the centralised payment systems of RBI i.e., real time gross settlement (“**RTGS**”) and national electronic fund transfer (“**NEFT**”).
- 1.1.2. As per the circular, direct access to centralized payments systems means (a) allotment of separate IFSC, (b) opening a current account with RBI in its core banking system, (c) maintaining a settlement account with RBI, and (d) membership of Indian financial network and use of structured financial messaging system. By allowing direct access, RBI aims to (a) enhance efficiency as the risk of failure or delay in executing fund transfer gets reduced, (b) improve competition as non-banks will actively offer financial services which were the sole domain of banks, (c) improve risk management, and (d) ensure data protection.
- 1.1.3. As per the circular, in order to be eligible to access centralized payments systems, the non-bank entity is required to obtain a certificate of authorisation from RBI under the Payment and Settlement Systems Act, 2007. Further, the non-bank is required to be incorporated as a company under the Companies Act, 1956 or 2013, with a net-worth of at least INR 250 million. Entities incorporated outside India may empower their local offices to carry out all operations in this regard. The entity will also be required to adhere to RTGS system regulations, NEFT procedural guidelines and other instructions prescribed by RBI.
- 1.1.4. Please click [here](#) to read the circular.

2. COMPANIES LAW

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

2.1. MCA notification on the Companies (Incorporation) Fifth Amendment Rules, 2021

- 2.1.1. The MCA vide its notification dated 22 July 2021 has notified the Companies (Incorporation) Fifth Amendment Rules, 2021. These rules shall come into effect from 01 September 2021.
- 2.1.2. A new rule, Rule 33A has been inserted in the Companies (Incorporation) Rules 2014 which provides for allocation of new name to a company on failure by the company to comply with direction issued by the Central Government under section 16 of the Companies Act, 2013 (“**Companies Act**”). Section 16 of the Companies Act provides that that the Central Government may issue necessary directions to the company to change its name, if the name of the company is identical to a company already registered under the Companies Act or is identical to a registered trademark under the Trade Marks Act, 1999.
- 2.1.3. According to the new Rule 33A, if a company does not comply with the direction issued by the Central Government within 3 months the letters ‘ORDNC’ (“**Order of Regional Director Not Complied**”) along with the year of passing of the direction, the serial number and the existing corporate identity number will become the new name of the Company. Further a new certificate of incorporation shall be issued by the Registrar of Companies. Further, on change of the name, the company will have to mention ORDNC brackets below the name of the company, wherever its name is printed, affixed or engraved.
- 2.1.4. However, the new Rule 33A shall not be applicable to company where an application under e-form INC-24 is pending for disposal before the Central Government.

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

2.2. **General Circular regarding clarification on spending CSR Funds on account of COVID-19 vaccination**

2.2.1 The MCA vide circular dated 30 July 2021 has clarified that spending of CSR funds for vaccination for persons other than employees and their families is an eligible CSR activity under Schedule VII to the Companies Act relating to promotion of healthcare (including preventing healthcare) and disaster management respectively.

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

3. **SECURITIES LAW**

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

3.1. **Discussion paper by SEBI on review of the SEBI (Share Based Employee Benefits) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002**

3.1.1. SEBI has released a discussion paper seeking public comments on the review of two regulations, i.e., the SEBI (Share Based Employee Benefits) Regulations, 2014 ("**SBEB Regulations**") and the SEBI (Issue of Sweat Equity) Regulations, 2002 ("**Sweat Equity Regulations**"). The discussion paper has been released by SEBI, pursuant to a report submitted by an expert group constituted for the review of these regulations.

3.1.2. Please see below a few key recommendations of the expert group and under the discussion paper:

- (a) The discussion paper has analysed the definition of employees under the SBEB Regulations and recommended that companies be given the flexibility to determine the persons that may be categorized as "employees". Further, the discussion paper has also recommended an amendment in the definition of the term 'employees', and to delete the word "permanent" from the definition, keeping in mind the employment practices of engaging non-permanent employees. Pursuant to this proposed amendment, non-permanent employees as well as non-executive directors may also be considered eligible to receive share based employee benefits under the SBEB Regulations.
- (b) The discussion paper also recommends that the purposes for which sweat equity shares or employee stock option plans ("**ESOPs**") may be issued should be listed out in the SBEB Regulations and the Sweat Equity Regulations. Further, the maximum limit on such issuances should also be provided in the regulations.
- (c) An ESOP scheme can currently be implemented by a company under the trust route or the direct route. The discussion paper has recommended that flexibility may be given to companies to switch from a direct route to a trust route or vice versa, even after the ESOP plan has been approved by the shareholders of the company. Provided however, that the switch from one route to another must be approved by a special resolution of the shareholders and must not be prejudicial to the interests of the employees.
- (d) The discussion paper also recommended that the lock-in period and the pricing formula for the issuance of sweat equity shares to employees of a company must be brought in line with the requirements under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
- (e) The discussion paper has also recommended that the SBEB Regulations and the Sweat Equity Regulations be combined into a single set of regulations and has recommended a draft of the combined regulations titled SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.

3.1.3. Please click [here](#) to read the SEBI discussion paper.

3.2. **Supreme Court judgment upholding constitutional validity of the SEBI (Mutual Fund) Regulations, 1996.**

3.2.1. The Supreme Court of India has passed a judgment in the matter of Franklin Templeton Trustee Services Private Limited and another vs. Amruta Garg and others on 14 July 2021, in which the Supreme Court has upheld the constitutional validity of the SEBI (Mutual Fund) Regulations, 1996 ("**Mutual Fund Regulations**") and laid down certain additional guidelines in relation to winding up of mutual fund schemes.

- 3.2.2. While considering the constitutional validity of the Mutual Fund Regulations, the Supreme Court looked into whether Regulation 39 (2) (a) and Regulation 39 (3) of the Mutual Fund Regulations suffered from the vice of excessive delegation and whether the regulations gave unbridled power to the trustees of a mutual fund scheme to wind up any scheme. The Supreme Court looked into the powers of SEBI under the SEBI Act, 1992 and held that SEBI had the powers to issue directions under Section 11B of the SEBI Act, if any of the actions of the trustees under Regulation 39 (2) or 39(3) were not in compliance with applicable laws. The Supreme Court held that the trustees did not have absolute and unbridled power in relation to the winding of a scheme, and accordingly, upheld the constitutional validity of the specific provisions of the Mutual Fund Regulations.
- 3.2.3. The Supreme Court also considered the interplay between Regulations 39 to 42 and Regulation 18 (15) (c) of the Mutual Fund Regulations. The Supreme Court upheld the decision of the Karnataka High Court where the court had held that a mutual fund scheme could only be wound up by the trustees once the consent of a majority of the unitholders had been obtained as per Regulation 18 (15) (c). The Supreme Court while applying the principal of harmonious construction held that, while the opinion of the trustees was relevant, the consent of the unitholders is a pre-requisite for winding up of a scheme. Further, the Supreme Court laid down an additional guideline that the consent of the unitholders is not required to be obtained before publication of the public notices, and that the consent may be obtained after the publication of the notice and once the reasons for winding up have been disclosed to the public.
- 3.2.4. Please click [here](#) to read the Supreme Court judgment.

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