

ACUITY **LAW**

**CORPORATE
LAW NEWSLETTER**

JUNE 2022
acuitylaw.co.in

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.

The information contained in this document is not legal advice or legal opinion. The contents recorded in the said document are for informational purposes only and should not be used for commercial purposes. Acuity Law LLP disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

INTRODUCTION

This newsletter covers key updates for the month of June 2022 relating to company laws, securities laws, information technology laws, insurance laws and consumer protection laws. In particular, we have covered:

- (1) Company laws: (a) Amendment to the Companies (Appointment and Qualification of Directors) Rules, 2014.
- (2) Securities laws: (a) Securities and Exchange Board of India (**SEBI**) circular on compliance requirements for Alternative Investment Funds (**AIFs**).
- (3) Information technology laws: (a) Ministry of Electronics and Information Technology (**MEITY**) and Indian Computer Emergency Response Team (**CERT-In**) partially extend compliance requirement deadlines for CERT-In directions dated 28 April 2022 relating to information security practices (**CERT-In Directions**); (b) Proposed draft amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
- (4) Other laws: (a) Insurance Regulatory and Development Authority of India (**IRDAI**) circulars to permit health, general and life insurers to launch products without prior approval; (b) Notification of the Central Consumer Protection Authority (**CCPA**) Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.

1. COMPANY LAWS

Please see below the summary of the key company laws updates for the month of June 2022.

1.1 Amendment to the Companies (Appointment and Qualification of Directors) Rules, 2014

- 1.1.1 The Ministry of Corporate Affairs (**MCA**), vide its notification dated 01 June 2022 has notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 (**Appointment and Qualification of Directors Amendment Rules**).
- 1.1.2 Pursuant to the Appointment and Qualification of Directors Amendment Rules, a new proviso has been inserted to rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014, which requires every person to provide his / her consent in writing to act as a director of the company. The proviso provides that if a person seeking appointment as a director is a national of a country sharing land borders with India, then such person is required to attach a security clearance from the Ministry of Home Affairs, Government of India with the consent being furnished to the company in form DIR-2.
- 1.1.3 Additionally, a new proviso has been inserted to rule 10 of the Companies (Appointment and Qualification of Directors) Rules, 2014 stating that in the event a person applying for obtaining a Director Identification Number (**DIN**) is a national of a country sharing land border with India, then the security clearance (*as stipulated in paragraph 1.1.2. above*) must be attached with the application.
- 1.1.4 Consequently, form DIR-2 and form DIR-3 have also been amended to include the requirement stipulated in paragraph 1.1.2 and 1.1.3. above.
- 1.1.5 Please click [here](#) to read the Appointment and Qualification of Directors Amendment Rules.

2. SECURITIES LAW

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

2.1 SEBI circular on compliance requirements for AIFs

- 2.1.1 SEBI vide its circular dated 24 June 2022 (**SEBI Circular**) has prescribed certain requirements in relation to appointment of a compliance officer for managers of AIFs, and additional guidelines for large value funds for accredited investors (**LVF**) under the SEBI (Alternative Investment Funds) Regulations, 2012 (**AIF Regulations**).
- 2.1.2 The SEBI Circular has mandated all AIFs to ensure that their investment manager designates an employee or a director as compliance officer. Such compliance officer can be any person other than the chief executive officer (**CEO**) (or persons holding similar role or equivalent position) of the manager of the AIF. The role of such compliance officer is to monitor compliance of the AIF with provisions of the Securities and Exchange Board of India Act, 1992, the AIF Regulations, and other applicable circulars.

2.1.3 The SEBI Circular also prescribes certain guidelines for LVFs in relation to the following:

- (i) **Filing of LVF schemes with SEBI:** Presently, LVFs are exempted from filing their placement memorandum with SEBI prior to launch of the scheme, and LVFs may launch their schemes by merely intimating the SEBI. The SEBI Circular prescribes that at the time of providing the intimation to SEBI, a duly stamped and signed undertaking by the CEO and the compliance officer of the manager of the AIF is required to be submitted to SEBI stating that they have exercised due diligence in relation to the information contained in the placement memorandum. Further, for the existing LVF schemes, the above undertaking must be submitted to SEBI by 31 July 2022.
- (ii) **Extension of tenure beyond 2 years:** LVFs are not required to obtain investor's consent for extension of its tenure beyond an additional period of 2 years, and such extension may be implemented in the manner permitted under contribution agreements entered between LVF and the investors, other fund documents of the LVF, and conditions prescribed by SEBI. The SEBI Circular has prescribed the following guidelines for such extension: (a) the placement memorandum, contribution agreement or other fund documents of LVF should provide the terms and conditions to be satisfied for an extension beyond 2 years, and the investors should be aware of the same; and (b) LVFs shall obtain approval from its trustee / board of directors / designated partners for such extension, at least 1 month prior to the expiration of the tenure of the scheme. In the event the prescribed conditions under the fund documents of the LVF are not fulfilled, the LVF must liquidate and wind up in accordance with the AIF Regulations and circulars issued thereunder.

2.1.4 Please click [here](#) to read the SEBI Circular.

3. INFORMATION TECHNOLOGY LAW

Please see below the summary of the key information technology law updates for the month of June 2022.

3.1 MEITY and CERT-In partially extend compliance requirement deadlines for CERT-In Directions

3.1.1 MEITY and CERT-In vide notification dated 27 June 2022 extended the deadline for compliance with the CERT-In Directions. The deadline for compliance with the CERT-In Directions has been extended to 25 September 2022, in relation to (a) all compliance requirements to be undertaken by micro, small, and medium enterprises (**MSMEs**) which are covered under the criteria notified by the Ministry of Micro, Small and Medium Enterprises; and (b) requirements relating to the aspects of registration and maintenance of 'validated names of subscribers / customers hiring the services' and 'validated address and contact numbers' by data centres, virtual private server providers, cloud service providers and virtual private network service providers.

3.1.2 Please click [here](#) to read the notification. Additionally, please click [here](#) to read our earlier coverage of this update (please see paragraph 5.1 appearing at page no. 5).

3.2 Proposed draft amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

3.2.1 MEITY vide its press note dated 06 June 2022 has released the draft amendments ("**Draft Intermediary Amendment**") to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (**Intermediary Rules**). Following are the key changes under the Draft Intermediary Amendment:

- (i) The Draft Intermediary Amendment has proposed to enhance the standards of due diligence to be maintained by an intermediary. The Draft Intermediary Amendment prescribes that intermediaries should not only inform the users of the terms of use of the service, but the intermediary should also ensure compliance of the same by the user.
- (ii) Under the Intermediary Rules, a grievance officer is required to acknowledge user complaints within 24 hours of receipt of the complaint and dispose of the same within 15 days of receipt. The Draft Intermediary Amendment proposes to reduce the timeline for redressing particular kinds of complaints, i.e., complaints pertaining to removal of information, which must be redressed within 72 hours of receipt of the complaint.
- (iii) The Draft Intermediary Amendment also proposes to insert additional obligations on intermediaries under rule 3 (1) of the Intermediary Rules, pursuant to which the intermediary will be required to ensure that their services are easily accessible to users, without conceding on the user's expectation of due diligence, privacy, and transparency, and that the rights available to a user under the Constitution of India are respected.

- (iv) The Draft Intermediary Amendment seeks to set up grievance appellate committees to act as alternative forums to hear appeals against the orders passed by the grievance officers. Aggrieved persons may approach such grievance appellate committee within 30 days of the order passed by the grievance officer of an intermediary. The Draft Intermediary Amendment also clarifies that aggrieved users may continue to approach the court and appeal directly against the order of such grievance officer.

3.2.2 Please click [here](#) to read the Draft Intermediary Amendment.

4. OTHER LAWS

Please see below the summary of the key other law updates for the month of June 2022.

4.1. IRDAI circulars to permit health, general and life insurers to launch products without prior approval

4.1.1. The IRDAI, vide circulars dated 01 June 2022, and 10 June 2022 has extended the 'use and file' procedure under which products can be introduced without the prior approval of IRDAI, to all health insurance products, most general insurance products under fire, motor, marine and engineering insurance, and most life insurance products.

4.1.2. With respect to the health insurance business, the use and file procedure is extended to all categories of products, and add-ons or riders to existing products to be introduced by general and health insurers. The circular lists down certain norms which are required to be followed while issuing the products, such as: (a) products are to be offered as per insurer's board of director's approved policy, (b) products must be viable, self-sustainable and affordable to the targeted market and any revision to the price, must be based on the underlying claims experience, (c) insurers are to file the proposed name of the product, and obtain unique identification number for the product, within 7 days of the introduction of the product.

4.1.3. IRDAI has also allowed general insurers to introduce all products under fire, marine, motor, and engineering lines of business under the use and file procedure for both retail and commercial categories. However, the extension of 'use and file' procedure by this circular is not applicable to retail product of miscellaneous lines of business having an initial sum insured up to INR 50,000,000 (Indian Rupees Fifty Million).

4.1.4. IRDAI through its circular dated 10 June 2022 has also extended the 'use and file' procedure to most life insurance products (except products related to individual savings, individual pensions, and annuity). The circular lists down key conditions applicable to life insurance products filed under the 'use and file' procedure such as: (a) need of a board approved product management and pricing policy for new products, (b) constitution of a product management committee which will review and approve the products, (c) the chief executive officer of the insurer shall be responsible for ensuring the existence of a robust due diligence process to mitigate risks.

4.1.5. Please click [here](#), [here](#), and [here](#) to read the circulars dated 01 June 2022, 01 June 2022 and 10 June 2022 respectively. Additionally, please click [here](#) to read our article on the revamped IRDAI norms.

4.2. Notification of the CCPA Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

4.2.1. The CCPA vide its notification dated 09 June 2022 has notified the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (**CCPA Guidelines**). The CCPA Guidelines has been issued with an intention to curb misleading advertisements, and to protect the rights of the consumers from false and misleading advertisements and endorsements.

4.2.2. The CCPA Guidelines are applicable to all advertisements regardless of form, format or medium. It will also be applicable to an advertising agency or endorser whose service is availed for advertisement of such goods, product, or service. Following are the key provisions introduced under the CCPA Guidelines:

- (i) **Conditions for non-misleading and valid advertisements:** The CCPA Guidelines prescribes certain conditions for an advertisement to be non-misleading and valid. Such conditions include that the advertisements should: (a) contain truthful and honest representations; (b) not mislead consumers by exaggerating the accuracy; (c) not present the rights conferred on consumers by any law as a distinctive feature; and (d) be compliant with the applicable laws.
- (ii) **Conditions for bait advertisements:** Bait advertisements are defined as advertisements which offer products / services at low prices to attract consumers. The CCPA Guidelines prescribe that an advertisement should not lure consumers to purchase goods / services without a reasonable outlook of selling such goods at the price offered, or if there is insufficient stock of the goods to meet the demand generated by the advertisement.

- (iii) **Prohibition on surrogate advertisements:** Under the CCPA Guidelines, surrogate advertisements are advertisements of a product / service which is prohibited by law, through the advertisement of other goods / services of the same business entity which is permitted by law. The CCPA Guidelines also prohibits the making of an advertisement if the advertisement uses any brand, logo, colour, layout, or presentation associated with goods whose advertisement is prohibited. However, the CCPA Guidelines have maintained a carve-out for genuine advertisements which merely make use of the brand name of goods / services whose advertising is prohibited, and the same will not be considered as surrogate advertisement.
- (iv) **Children targeted advertisements:** The CCPA Guidelines also prescribes a number of general restrictions in relation advertisements that targets or uses children such as advertisements (a) that encourage dangerous behavior for children; (b) take advantage of children's inexperience or incredulity; (c) induce children to have an unrealistic expectations from goods / products and services; or (d) condone practices detrimental to the physical health and mental wellbeing of children. The CCPA Guidelines also prescribe bans on advertisements of junk foods during programs or channels meant exclusively for children.

4.2.3. Moreover, the CCPA Guidelines also list down restrictions with respect to free claims advertisements, the due diligence requirements and duties of advertisers, business entities, as well as endorsers, requirements to impose disclaimers and disclose material connections.

4.2.4. Please click [here](#) to read the CCPA Guidelines.

Authors: Souvik Ganguly, Akhil Ramesh, Yogesh Chhajer, Aman Bagaria and Tanuj Modi

Our co-ordinates:

Mumbai

506 Marathon Icon
Off Ganpatrao Kadam Marg
Lower Parel, Mumbai – 400013

Email: al@acuitylaw.co.in