

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 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 law during the month of May 2019. We have summarized key regulatory developments including notifications issued by Ministry of Corporate Affairs (**MCA**) with respect to (a) thresholds of members and depositors for filing class action suits; (b) companies barred from applying for strike-off without filing overdue annual returns; (c) one-time opportunity for filing e-form ADT-1 without fee; (d) companies' directors to ensure timely filing of e-form ACTIVE; and notification issued by the Reserve Bank of India (**RBI**) with respect to changes made to 'voluntary retention route' for foreign portfolio investors investment in debt.

Please see below the summary of the relevant regulatory developments.

MCA: SPECIFIES THRESHOLDS OF MEMBERS AND DEPOSITORS FOR FILING CLASS ACTION SUITS

Companies Act, 2013 under section 245 had introduced the concept of class action suit pursuant to which shareholders and depositors of a company have the right to file a class action before the National Company Law Tribunal (**NCLT**) if they are of the opinion that the management or conduct of the affairs of the company is being done in a manner prejudicial to the interests of the company, its members or depositors. However, the thresholds for number of members or depositors who could have filed a class action suit were pending notification by the MCA.

In this regard, the MCA has amended NCLT Rules, 2016 to specify the threshold of members and depositors who can file a class action suit against a company. The thresholds are provided below:

- (a) the lesser of (i) 100 members; or (ii) such number of members constituting at least 5% of the total members of the company;
- (b) members who hold at least (i) 2% of issued share capital of the company, in case it is a listed company, and (ii) 5% of issued share capital of the company, in case it is an unlisted company.
- (c) the lesser of (i) 100 depositors; or (ii) such number of depositors constituting at least 5% of the total depositors of the company;
- (d) depositors who hold at least 5% of the total deposits of the company.

This is a welcome step for protection of rights of shareholders and depositors in India with the advent of class action suits.

MCA: BARS COMPANIES FROM APPLYING FOR STRIKE-OFF WITHOUT FILING OVERDUE ANNUAL RETURNS

MCA has amended Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Pursuant to the amendment, a company cannot apply for removal of its name from Register of Companies unless the company has filed financial statements and annual return up to the end of financial year in which the company ceased to carry business operations. Further, the fees for filing Form No. STK-2 (for removal of name of the company from the Register of Companies) has been increased to Rs. 10,000 from Rs. 5,000. This amendment brings clarity as Registrars of Companies were adopting divergent practices; some Registrars permitted companies to file Form No. STK-2 even where financial returns and/or annual returns were overdue.

MCA: GRANTS ONE-TIME OPPORTUNITY FOR FILING E-FORM ADT-1 WITHOUT FEE

MCA vide circular dated 13 May 2019 clarified that those companies which had filed Form ADT-1 through e-form GNL-2 as an attachment (by selecting 'others') during the period from 01 April 2014 to 20 October 2014 due to the unavailability of the e-form ADT-1 at that time can now file e-form ADT-1 to file notice of appointment / reappointment with the Registrar for the period up to 31 March 2019 without fee till 15 June 2019 and thereafter the fee and any additional fee will be applicable as per Companies (Registration of offices and fees) Rules, 2014. This is a welcome relief for companies as the waiver of fees seeks to avoid duplication of payments for filing Form ADT-1.

MCA: DIRECTS COMPANIES' DIRECTORS TO ENSURE TIMELY FILING OF E-FORM ACTIVE

On 21 February 2019, the MCA had, through an amendment of the Companies (Incorporation) Rules, 2014, specified that companies which were incorporated on or prior to 31 December 2017 must file e-form ACTIVE by 15 June 2019. In order to ensure compliance of filing of e-form ACTIVE by companies, the MCA has now amended Companies (Appointment and Qualification of Directors) Rules, 2014, to specify that the directors identification number of directors of companies which fail to file e-form ACTIVE will be marked as "Director of ACTIVE non-compliant company" and will be changed only once the company rectifies the filing.

VOLUNTARY RETENTION ROUTE FOR FOREIGN PORTFOLIO INVESTORS INVESTMENT IN DEBT

On 1 March 2019, the RBI, in consultation with the Government of India and Securities and Exchange Board of India, had introduced a separate channel called 'Voluntary Retention Route' (**VRR**), to enable Foreign Portfolio Investors (**FPIs**) to invest in debt markets in India. This route gives greater degree of flexibility to the FPIs in choosing the amount they wish to invest in both the Government and corporate bond market as well as the quantum of time for which their investment will remain in India.

Based on the feedback received on the circular issued on 1 March 2019 which introduced VRR for FPIs investment in debt, RBI has revised the directions vide circular dated 24 May 2019. The following changes have been introduced:

- a) A new separate category called VRR-Combined has been introduced. It means VRR for FPI investment in instruments that are eligible under both VRR-Govt and VRR-Corp.
- b) The requirement to invest at least 25% of the Committed Portfolio Size within one month of allotment has been removed. Now, the successful allottees are required to invest at least 75% of their Committed Portfolio Size within three months from the date of allotment.
- c) Investments under this route will now be capped at INR 75,000 crore or higher which shall be allocated among VRR-Govt, VRR-Corp and VRR-Combined as may be decided by RBI. Earlier the investments were capped at INR 40,000 crore for VRR-Govt and INR 35,000 crore for VRR-Corp per annum.
- d) There is an additional option that has been inserted if an FPI decides to discontinue under VRR at the end of the retention period i.e. FPIs can continue to hold their investment until the date of maturity or the date of sale, whichever is earlier.

RBI has further stated under this circular that FPIs that were allotted investment limits under the 'tap' open during 11 March 2019 – 30 April 2019 may, at their discretion, convert their full allotment to VRR-Combined.

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