

ACUITY **LAW**

**CORPORATE  
LAW NEWSLETTER**

MAY 2022  
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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](http://acuitylaw.co.in) or write to us at [al@acuitylaw.co.in](mailto:al@acuitylaw.co.in).

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## INTRODUCTION

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

- (1) Company laws: (a) Amendment to the Companies (Share Capital and Debentures) Rules, 2014 and the Companies (Prospectus and Allotment of Securities) Rules, 2014; (b) Circulars issued by the Ministry of Corporate Affairs (**MCA**) on relaxations in relation to holding of Extraordinary General Meetings (**EGMs**) and Annual General Meetings (**AGMs**) through video conferencing or other audio-visual means.
- (2) Securities laws: (a) Circular issued by Securities Exchange Board of India ("**SEBI**") on relaxation from compliance with provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**).
- (3) Information technology laws: FAQs issued by the Indian Computer Emergency Response Team (**CERT-In**) on its directions dated 28 April 2022 relating to information security practices.

## 1. COMPANIES LAW

Please see below the summary of the key company law updates for the month of May 2022.

- 1.1 **Amendment to the Companies (Share Capital and Debentures) Rules, 2014 and the Companies (Prospectus and Allotment of Securities) Rules, 2014**
  - 1.1.1 MCA by way of its notifications dated 04 May 2022 and 05 May 2022 has amended the Companies (Share Capital and Debentures) Rules, 2014 (**Share Capital and Debentures Rules**) and Companies (Prospectus and Allotment of Securities) Rules, 2014 (**Prospectus and Allotment of Securities Rules**), respectively.
  - 1.1.2 The amendments have been brought pursuant to press note 3 dated 17 April 2022, issued by the Department of Promotion of Industry and Internal Trade which has made the Indian government's prior approval mandatory for foreign investments from countries that share a land border with India, so as to curb opportunistic acquisitions/takeovers of Indian firms.
  - 1.1.3 By an amendment to the Prospectus and Allotment of Securities Rules, the fourth proviso in rule 14(1) has been added which stipulates that no offer or invitation of any securities should be made to a body corporate incorporated in, or a national of, a country which shares a land border in India, unless such body corporate or the national has obtained government approval under the Foreign Exchange Management (Non-debt Instrument) Rules, 2019 (**NDI Rules**) and attached the approval to the private placement offer cum application letter.
  - 1.1.4 Further, the Share Capital and Debentures Rules have also been amended to revise the format for the securities transfer form, i.e., form SH-4, to include a declaration from the transferee stating that no government approval is required under the NDI Rules for the transfer of shares, or where the transferee is required to obtain the government approval prior to the transfer, the same has been obtained and enclosed with the form.
  - 1.1.5 Please click [here](#) and [here](#) to read the notifications.
- 1.2 **Circulars issued by the MCA on relaxations in relation to holding of EGMs and AGMs through video conferencing or other audio-visual means**
  - 1.2.1 Based on several representations and difficulties faced by the stakeholders due to COVID-19 pandemic, the MCA vide its circular dated 08 April 2020 had allowed the companies to conduct their EGMs through video conferencing or other audio-visual means. Subsequently, the MCA vide its circular dated 05 May 2020 had allowed to conduct their AGMs through video conferencing and other audio-visual means.
  - 1.2.2 The above relaxations to conduct EGMs and AGMs through video conferencing or other audio-visual means was extended till 30 June 2022 through circulars dated 08 December 2021 and 14 December 2021.
  - 1.2.3 MCA vide its circulars dated 05 May 2022 has further extended the timeline for allowing companies to conduct their EGMs through video conferencing or other audio-visual means till 31 December 2022. Further, the MCA also decided to allow the companies whose AGMs are due in the year 2022 to conduct their AGMs through video conferencing or other audio-visual means on or before 31st December 2022.
  - 1.2.4 It must be noted that these relaxations to hold the AGMs through video conferencing or other audio-visual means shall not be construed as an extension in the timelines for holding of AGMs by companies, and the companies will still need to hold their AGMs as per the applicable provisions of the Companies Act, 2013.
  - 1.2.5 Please click [here](#) and [here](#) to read the circulars.

## 2 SECURITIES LAW

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

### 2.1 Circular issued by SEBI on relaxation from compliance with provisions of the LODR Regulations

2.1.1 SEBI vide its circular dated 13 May 2022 has provided certain relaxations from compliance with provisions of the LODR Regulations. The key relaxations are listed below:

- (a) SEBI has eased the compliance requirements for listed companies under regulation 36(1)(b) of the LODR Regulations which requires the sending of a hard copy of annual report to the shareholders who have not registered their email addresses, up to 31 December 2022. However, these listed entities will be required to send a hard copy of the annual report to any shareholder if a request to such extent is received. Further, the notice of AGM published by advertisement should contain a link to the annual report to enable shareholders to access the annual report.
- (b) The requirement of sending proxy forms to shareholders along with the notice for the general meeting is also dispensed with, up to 31 December 2022, in case the general meeting is held through electronic mode only.

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

## 3 INFORMATION TECHNOLOGY LAW

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

### 3.1 FAQs issued by CERT-In on its directions dated 28 April 2022 relating to information security practices

3.1.1 CERT-In, the national agency appointed under the Information Technology Act, 2000 (**IT Act**) had, in April 2022, published directions relating to information security practices, procedure, prevention, response, and reporting of cyber incidents for a safe & trusted internet (**Directions**). Please click [here](#) to read our earlier coverage of this update (*please see paragraph 5.1 appearing at page no. 5*).

3.1.2 In furtherance of the Directions, CERT-In has released FAQs on 18 May 2022 with the objective of enabling better compliance with the Directions. However, the FAQs are not to be treated as binding legal regulations and have only been released in response to the general queries received by the government agency. Some of the key clarifications provided under the FAQs are listed below:

- (a) The term 'body corporate' shall have the meaning as per section 42A of the IT Act, which includes a company, firm, sole proprietorship, or other association of individuals engaged in commercial or professional activities.
- (b) The Directions will not be applicable to any individual citizens.
- (c) Intermediaries regulated by the IT Act will have to comply with the Directions, the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013 as well as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
- (d) The Directions will also apply to those entities which are not present in India but cater to Indian users and such entities will also be required to designate a point of contact in India to liaise with CERT-In.
- (e) With respect to the reporting of cyber security incidents within the prescribed timeline of 6 (six) hours, the entities may provide information to the extent available within the abovementioned time period of 6 (six) hours, and additional information may be reported later within a reasonable period to CERT-In. Further, if multiple entities are affected by a cyber security incident, any entity which notices the cyber security incident shall be responsible to report the same to CERT-In. This reporting obligation can neither be contractually transferred, nor indemnified or dispensed with.
- (f) With respect to the information requests in respect of logs to be maintained by the regulated entities, the FAQs have clarified that such requests can only be made by officers above the rank of deputy secretary to the government of India. Further, the statutory requirements related to reporting cyber security incidents will prevail over any contractual confidentiality obligations undertaken by the entities.
- (g) Virtual private networks being used to provide secured access to the employees of a corporate entity will not be required to register themselves with CERT-In, and only entities providing proxy services to general internet users will be required to comply with the registration requirements.

- (h) With respect to requirement of maintaining logs of IT systems in India, the FAQs have clarified that such logs may be stored outside India, as long as entities are able to produce such logs before the CERT-In upon the receipt of such a request, within a reasonable time.

3.1.3 Please click [here](#) to read the CERT-In FAQs. Additionally, please click [here](#) to read our views on the FAQs released by CERT-In.

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