

ACUITY **LAW**

**CORPORATE
LAW NEWSLETTER**

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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.

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INTRODUCTION

This newsletter covers key updates for the month of October 2021 relating to company laws, securities laws, and banking laws. In particular, we have covered:

- (1) Companies laws: (a) Extension of timelines by the Ministry of Corporate Affairs (“MCA”); and (b) Bombay High Court’s Order in the matter of Zee Entertainment Enterprises v. Invesco Developing Markets Fund & Anr.
- (2) Securities laws: Orders passed by the Securities and Exchange Board of India (“SEBI”) declaring commodity brokers involved in the matter of National Spot Exchange Limited (“NSEL”), to be ‘not fit and proper’ persons to hold a license under the SEBI Act, 1992 and the regulations thereunder.
- (3) Foreign Exchange laws: Amendment to the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019

1. COMPANIES LAW

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

1.1. Extension of timelines by MCA

1.1.1. In view of the ongoing COVID-19 pandemic, the MCA has granted the following extensions:

- (a) Last date of filing of annual return and financial statement, for the financial year ending on 31 March 2021, with concerned registrar of companies has been extended till 31 December 2021 vide circular dated 29 October 2021. Please click [here](#) to read the circular.
- (b) Last date of submitting cost audit report to the concerned board of directors of a company, as per the provisions of Companies (Cost Records and Audit) Rules, 2014, has been extended till 30 November 2021 vide circular dated 29 October 2021. Consequently, the cost audit report should be filed with the concerned registrar of companies within 30 days from the date of receipt of copy of the cost audit report by the company. Prior to this extension, the last date of submitting cost audit report to the concerned board of directors of a company was extended till 31 October 2021 vide circular dated 27 September 2021. Please click [here](#) to read the circular dated 29 October 2021 and [here](#) to read circular dated 27 September 2021.
- (c) Last date of filing the statement of account and solvency by limited liability partnerships with the concerned registrar of companies for the financial year 2020-21 has been extended till 30 December 2021 vide circular dated 26 October 2021. Please click [here](#) to read the circular.

1.2. Bombay High Court’s Order in the matter of Zee Entertainment Enterprises v. Invesco Developing Markets Fund & Anr.

- 1.2.1. In an order dated 26 October 2021, the Bombay high court has granted an interim injunction in favour of Zee Entertainment Enterprises (“ZEE”) and restrained the Invesco Developing Markets Fund and OFI Global China Fund (together, “Invesco”), the largest shareholders of ZEE, from taking any action in furtherance of their September 2021 requisition notice for Zee to hold an extra-ordinary general meeting (“EGM”) under Section 100(4) of the Companies Act, 2013 (“Companies Act”).
- 1.2.2. The requisition notice sent by Invesco Developing Markets Fund, contained 9 (nine) resolutions, which included the removal of Mr. Punit Goenka, the CEO & Managing Director of ZEE, and the appointment of 6 (six) independent directors on the board of ZEE.
- 1.2.3. ZEE had moved the Bombay high court, praying for directions that the requisition notice be declared invalid, and to injunct Invesco from taking any steps to call the EGM on its own. ZEE had objected to the proposed resolutions, as the implementation of any of the proposed resolutions would result in an illegality on the part of ZEE and would cause ZEE to be in contravention of a number of applicable laws including regulation 17 of SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, section 203 of the Companies Act, 2013 (“Act”) the mandatory provisions regarding the nomination and remuneration committee under the Act, and guidelines issued by the Ministry of Information & Broadcasting (“MIB Guidelines”).
- 1.2.4. The court after considering the submissions on both sides held that the resolutions proposed by Invesco to be decided in the EGM, were such that if approved, would result in the company being non-compliant under a number of applicable laws. The resolution with respect to removal of Mr. Punit Goenka as the director, would result in a violation of section 203 of the Companies Act, which provides that a company must have a managing director and a whole-time director at all times.

Further, the MIB Guidelines requires a company to seek prior approval from the ministry before effecting any change in the board of directors of the company to which the MIB Guidelines apply.

- 1.2.5. Further, the court also held that the resolutions proposed for the appointment of the independent directors would also cause the company to be non-compliant with the process for the appointment of the independent directors as laid down under the Act. The court noted that independent directors cannot be appointed on the basis of a nomination received from a shareholder of the company and that the independent directors must be first proposed by the nomination and remuneration committee, followed by subsequent appointment by the board, and approval by the shareholders.
- 1.2.6. The court while determining the scope of the term 'valid requisition' in Section 100 (4) of the Act, held that a resolution proposed to be passed at a shareholders' meeting should be such that if the proposed resolutions are passed, the same would be valid in law, and would not result in any illegality on the part of the company. However, the court has not passed a final decision in the matter regarding the validity of the requisition notice, and has only passed an injunction restraining Invesco from calling the EGM on its own.
- 1.2.7. The order thus clarifies an important point in law, that although the shareholders have a right to call an EGM, the resolution proposed to be passed at such an EGM, must be valid resolutions in law, and should not be such as would cause the company to commit an illegal action.
- 1.2.8. Please click here to [read](#) the order.

2. SECURITIES LAW

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

- 2.1. **Orders passed by the SEBI declaring commodity brokers involved in the NSEL matter, to be 'not fit and proper' persons to hold a license under the SEBI Act, 1992 and the regulations thereunder.**
 - 2.1.1. SEBI is currently investigating approximately 300 (three hundred) brokers as a part of its probe into the NSEL matter and has issued orders against 9 (nine) commodity brokers, stating that they were not 'fit and proper' persons to continue to hold their registration, as required under the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and the SEBI (Intermediaries) Regulations, 2008.
 - 2.1.2. SEBI had initiated enquiry proceedings against various brokers under Chapter V of the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") and appointed a designated authority to enquire whether the commodity brokers were 'fit and proper' to continue to hold the certificate of registration as Trading and Clearing Members in terms of Regulation 5 (e) read with Regulation 27 (iv) of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 ("**Stock Broker Regulations**"). Orders were passed against the 9 (nine) commodity brokers on 24 September 2021, 7 October 2021, 8 October 2021, 14 October 2021, 21 October 2021 and 29 October 2021.
 - 2.1.3. The commodity brokers had traded in the 'paired contracts' on the NSEL, which were in violation of the conditions prescribed in the Government of India's Notification dated 5 June 2007 ("**2007 Exemption Notification**") and also the provisions of the Forward Contracts Regulation Act, 1952 ("**FCRA**").
 - 2.1.4. SEBI in its orders held that the brokers had by either trading in the paired contracts themselves, or by facilitating the trading in 'paired contracts' by its clients on the NSEL, had violated the provisions of the 2007 Exemption Notification as well as the applicable provisions of the FCRA. The execution of the paired contracts were in the nature of purely financial contracts that promised assured returns under the garb of spot trading in commodities. Accordingly, SEBI held that the conduct of the commodity brokers was detrimental to the interest of the securities market.
 - 2.1.5. Further, to determine whether the commodity brokers were 'fit and proper' persons, SEBI took note of an earlier order of the Securities Appellate Tribunal ("**SAT**") which had held that 'good reputation and integrity' of a person were critical facets of the 'fit and proper' criteria and that for determining whether an entity enjoyed a 'good reputation' prima facie observations in other judicial pronouncements or reports by regulatory authorities could be taken into consideration. Taking note of the observations made against the commodity brokers by the Bombay High Court, and the Supreme Court, in the matters of 63 Moons Technologies Private Limited, and the other reports prepared by the Economic Offences Wing, and the Department of Economic Affairs of the Government of India, SEBI arrived at the conclusion that the commodity brokers did not enjoy a good reputation, and accordingly were not 'fit and proper' persons for the purposes of holding a registration as a commodities broker.

2.1.6. The orders passed by SEBI against the commodity brokers were on similar lines. Please click here to [read](#) the most recent order dated 29 October 2021, passed by SEBI in this matter.

3. FOREIGN EXCHANGE LAWS

Please see below the summary of the key foreign exchange laws updates for October 2021.

3.1. Amendments to the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019

3.1.1. The Ministry of Finance, vide notifications dated 5 October 2021, and 12 October 2021, amended the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 (“**NDI Rules**”).

3.1.2. Vide the notification dated 5 October 2021, the Ministry of Finance has amended schedule I of the NDI Rules, increasing the permitted foreign investment under the automatic route from 49% (forty nine percent) to 100% (one hundred percent), for public sector units operating in the petroleum and natural gas sector that have received an 'in-principle' approval for strategic disinvestment from the central government. This notification has implemented the Press Note No. 3 of 2021, released by the Department for Promotion of Industry and Internal Trade on 29 July 2021.

3.1.3. Vide the notification dated 12 October 2021, 100% (one hundred percent) foreign direct investment has been permitted in the telecom sector under the automatic route. Prior to this, the foreign investment in the telecom sector was permitted up to 100% (one hundred percent), with government approval being required beyond 49% (forty nine percent). This notification has brought into effect, the changes proposed to be made to the telecom sector vide Press Note 4 of 2021, dated 6 October 2021 of the Department for Promotion of Industry and Internal Trade.

3.1.4. Please click [here](#) and [here](#) to read the amendment notifications.

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