

ACUITY **LAW**

AI INSIGHTS

SEPTEMBER AND OCTOBER 2023
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ABOUT ACUITY LAW

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic professionals led by Souvik Ganguly, Gautam Narayan, Sidhartha Barua, 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 and Sidhartha Barua 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 Direct and 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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'AL Insights' is a compilation of our thought leadership articles published in the month of September and October 2023 on key legal and regulatory topics. Please click on the access links to read more.

A. CORPORATE

1. LODR (Second Amendment) Regulations 2023

Securities Exchange Board of India (SEBI) has made amendments to the Listing Obligations and Disclosure Requirement) Regulations, 2015 (LODR Regulation) which came into effect on 14 July, 2023. The changes include the obligation for listed companies to confirm or deny rumors reported in mainstream media, subjecting directorships to shareholder approval every five years, disclosure of binding agreements affecting listed entities, periodic review of special rights conferred to shareholders, requiring special resolution for alienation of assets, filling vacancies in the office of compliance officer within three months, and filling vacancies in key managerial personnel positions within 3 months. These amendments are aimed at enhancing standards of stewardship and transparency in listed companies.

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2. SEBI Guidelines For Investor Protection Funds And Investor Services Funds

Securities Exchange Board of India (SEBI) has issued comprehensive guidelines for Investor Protection Funds (IPF) and Investor Services Fund (ISF) maintained by stock exchanges and depositories which came into effect on 29 June 2023. The guidelines cover the constitution and management of the IPF, contributions to the IPF, and its utilization. Stock exchanges and depositories are required to establish an IPF, with contributions from listing fees, interest earned on security deposits, and penalties collected. The IPF will address investment claims of clients of defaulting trading members and provide relief to affected investors. The guidelines also introduce an ISF for investor education programs. These measures are aimed at enhancing investor protection, financial literacy, and market stability.

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B. DISPUTES

1. Amendments to Corporate Insolvency Resolution Process

Insolvency and Bankruptcy Board of India (IBBI) introduced the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 with the aim to make the resolution process robust, transparent, and efficient while taking into consideration the needs of various classes of creditors. The significant changes by the Amendment include extension of timelines for filing claims, enhancement of the role of authorized representatives (particularly for homebuyers) and provisions allowing for audits of the corporate debtor.

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2. Unilateral Appointment of Arbitrator: A Legal Quandry

The Calcutta High Court in *Mcleod Russel India Ltd. v. Aditya Birla Finance Ltd.* while upholding a unilateral appointment of arbitrator held that in the event the parties have agreed in writing, the bar of unilateral appointment shall not apply. This ruling is seen to be a deviation from the trajectory of judicial precedence on the subject matter including the rulings of the Apex Court. The Court held that not all unilateral arbitrator appointments are inherently invalid and a 'written agreement' to overcome the invalidity of unilateral appointment (arising out of the Seventh Schedule of the Arbitration Act) can be inferred from written pleadings filed by the parties.

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3. Corporate Successor's Criminal Liability in Banking Sector: Supreme Court Clarifies the Law.

The Supreme Court in *Religare Finvest Ltd. v. State of NCT of Delhi* dealt with the liability of a transferee bank in a merger for corporate criminal acts committed by officials of the transferor bank (prior to the merger). Religare Finvest had filed criminal complaints against the successor bank (Laxmi Vilas Bank) and argued that the successor bank should be held accountable. However, the Supreme Court ruled that criminal liability cannot be transferred to a transferee company after a merger, especially when it comes to actions that occurred prior to the merger.

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4. **Unregistered Agreement to Sell Admissible in Evidence.**

The Supreme Court in *R. Hemlatha v. Kashthuri* ruled upon the admissibility of unregistered agreements in suits seeking specific performance. The Hon'ble court held that despite the requirement of mandatory registration under the Registration Act, an unregistered agreement to sell can be admitted as evidence in suits for specific performance. The Court emphasized the significance of the proviso to Section 49 of the Registration Act, 1908 which allows for the admission of unregistered documents for specific performance.

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5. **Comparative Advertising: Balancing Puffery and Avoiding Disparagement.**

The Delhi High Court in its decision of *Reckitt Benckiser (India) Pvt. Ltd. & Anr. v. Wipro Enterprises (P) Ltd.* (Dettol-Santoor Case) upheld the boundaries between puffery and disparagement in advertising. The Court ruled that an advertisement can compare products but cannot denigrate a rival's product. The point of contention was whether Santoor's advertisement which allegedly denigrated a product resembling Dettol's product attracted disparagement. The Hon'ble Court, while dismissing the allegation against Santoor, provided guiding principles to differentiate between puffery and disparagement.

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