

# MONTHLY ROUND-UP



**Highlights of 2020 - Page 2 - 3**  
**Guest Article - Page 4 - 6**  
**Legal update - Page 7**  
**Regulatory updates - 8 - 13**  
**Illuminare - Page 14**  
**Season Greeting - Page 15**  
**Contact Us - Page 16**



**"A domestic law firm with International approach.  
Global experience with local knowledge."**

**We continue business as usual and our attorneys and staff are available to provide our clients uninterrupted service. Please do not hesitate to reach out with questions or concerns at any time.**

**Second Edition of our annual book on "Doing Business in India" 2020**  
**TO ACCESS THE E-BOOK, SCAN THE QR CODE / VISIT [HTTPS://TINYURL.COM/Y245JT5O](https://tinyurl.com/Y245JT5O)**



**Recognised by Chambers and Partners (Asia-Pacific) for Shipping practice**

**Recognised as a "Notable Firm" by Asialaw**

**Awarded "Deal of the Year", 2019 for the work under the Labour and Employment practice  
by India Business Law Journal**

**Ranked (24th) amongst the Top 50 Law Firms in India by RSG Consulting, 2019**

**Recommended Firm, 2019 by Global Law Expert**

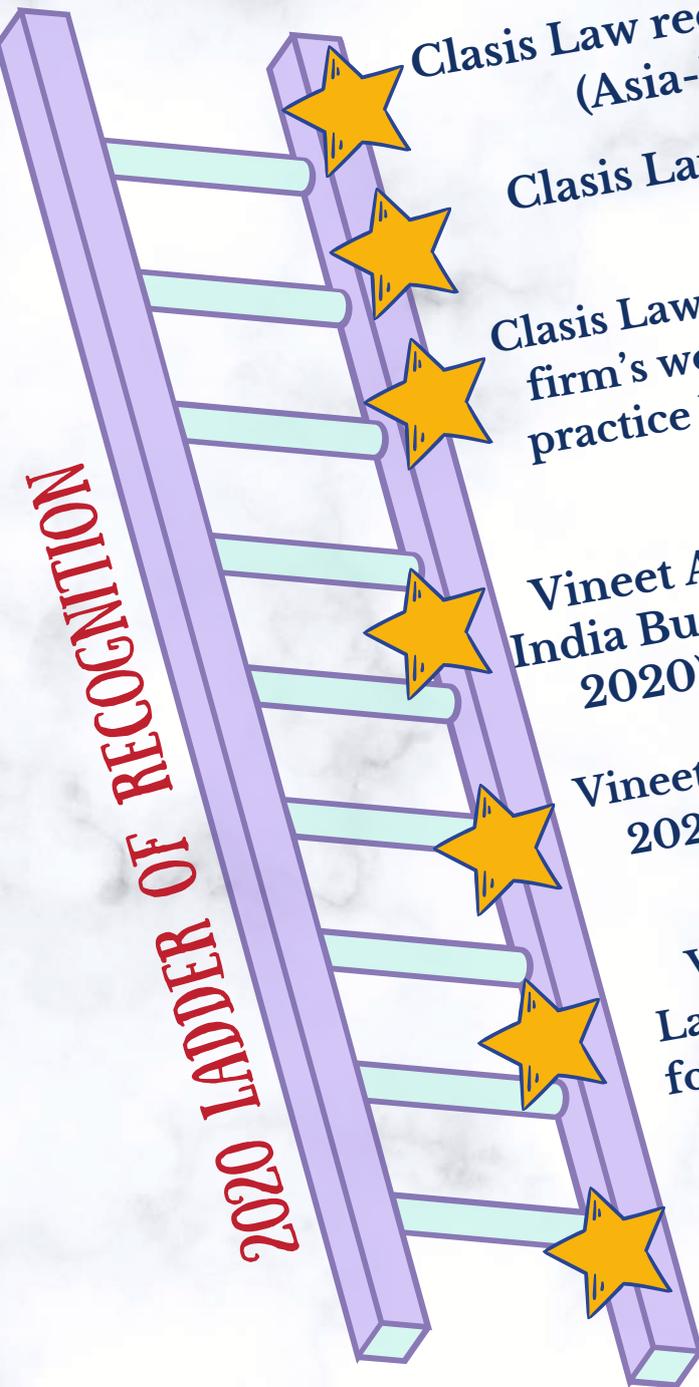
**Recognised by Asian Legal Business as Asia's best firms for M&A work - 2019**

**Recognised by Legal 500 for Corporate, M&A; Dispute Resolution; Insurance and Shipping practices**

**Recommended by Chambers and Partners (Asia-Pacific) as recognized practitioner for Shipping practice**

# HIGHLIGHTS OF 2020

*The pandemic-hit year 2020 was more challenging than the usual years. We managed to stand out on our client-centric approach, determination, and innovation and were prepared in advance to serve our esteemed clients. With immense pleasure and delight, we share that we have with our resolute effort and perseverance accomplished numerous milestones in 2020.*



Clasis Law recognized by Chambers and Partners (Asia-Pacific) for Shipping practice

Clasis Law recognized as a "Notable Firm" by Asialaw

Clasis Law awarded "Deal of the Year", 2019 for the firm's work under the Labour and Employment practice by India Business Law Journal, a leading India-focused legal publication.

Vineet Aneja, Managing Partner recognized by India Business Law Journal (Vantage Asia – A List 2020) - One of the top 100 Lawyers in India

Vineet Aneja recognized by Asian Legal Business 2020 as one of the Super 50 lawyers in India

Vineet Aneja ranked by Asialaw Leading Lawyers rankings as a "Notable Practitioner" for his contributions under the practice area Corporate and M & A

Mustafa Motiwala, Head of Mumbai Office recognized by Asian Legal Business 2020 as one of the Super 50 lawyers in India & one of the Top Disputes Lawyer in India

# HIGHLIGHTS OF 2020



We are pleased to announce the launch of the SECOND EDITION of our annual book

## Doing Business in India

The book intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.

**GRAB YOUR COPY TODAY!**

For accessing the link to the e-book, please scan the QR Code or visit at <https://tinyurl.com/y245jt5o>  
Alternatively, you may email us at [info@clasislaw.com](mailto:info@clasislaw.com) for a copy.



Clasis Law successfully launched the **SECOND EDITION** of the annual book titled "Doing Business in India"



Clasis Law relocated its New Delhi office on 12th November 2020

**WE'VE MOVED!**



Tolstoy House, 4th Floor,  
Tolstoy Marg,  
New Delhi 110 001



*We request you to make the change in your records for all future correspondence*

**FIRMS' 10TH ANNIVERSARY CELEBRATIONS 15 SEPTEMBER 2020**

## Elevations during the year 2020



**Neetika Ahuja**  
Partner



**Nihal Shaikh**  
Associate Partner



**Dinesh Gupta**  
Associate Partner



**Kanav Rawat**  
Senior Associate



**Sidhant Pandita**  
Senior Associate



**Vikas Khurana**  
Senior Associate



## MULTI-TIERED ARBITRATION CLAUSES: HOW DOES ARBITRATION & MEDIATION WORK TOGETHER?

### Author

**Ms. Niharika Dhall**

FCIArb, LL.M.,

Legal Counsel,

Toyo Engineering Corporation,

Japan

International arbitration and mediation interact in many ways. Sometimes the interaction is required because of a complex and multi-tiered dispute resolution clause in the contract; sometimes, the parties may freely choose to utilize mediation along with arbitration to more effectively resolve their dispute. The goal of this article is to understand how mediation can be used before, during or after an arbitration process, to aid in dispute resolution.

### Mediation prior to Arbitration 'Med-Arb'

In the event of any dispute arising out of or in connection with this contract, the parties *may first refer the dispute to mediation* under the [preferred Institutional Rules]. All disputes arising out of or in connection with this contract shall be finally settled by arbitration under the Rules of [preferred Institution] by one or more arbitrators appointed in accordance with the said Rules.

Certain contracts provide for mediation to be used prior to commencement of arbitration (referred to as 'med-arb'). The format of med-arb gives the parties an opportunity to resolve the dispute amicably, or at least attempt to. The goal is to "freeze" an escalating problem and allow time to assess and resolve the dispute.

Med-arb clauses are based on the principle of control. Mediation is likely to be effective at resolving the dispute because parties know that the next stage of the dispute resolution process is binding arbitration, where an arbitrator may render an award neither party is happy with. This encourages parties to work hard in mediating their disputes. Moreover, parties are often more amenable to a settlement because they have not had years to entrench themselves in the righteousness of their cause and the irredeemable qualities of their opponents. They may still be able to see the bigger picture and want to preserve relationships.

Thus, the best-case scenario with a med-arb clause is that the mediation successfully resolves the dispute (usually at a much lower cost and time investment), while preserving the parties' ongoing relationship. If the mediation is unsuccessful, the investment in time and money still leads to certain benefits in the arbitral proceedings. Just as the threat of an arbitration, potentially makes mediation more effective, similarly, an unsuccessful mediation lends more structure to an arbitration. Not only does it inform upon the position of the parties, it also brings more clarity to their objectives.

The worst-case scenario in a med-arb clause is that clause provides for a mandatory mediation, which requirement is side-stepped. If the mediation is mandatory as per the contract, non-adherence could potentially derail the arbitration. However, this is easily avoidable by drafting the clause carefully and ensuring that mediation is recommended, not mandatory (as in the above clause). This allows parties and their lawyers to choose mediation as a tool prior to arbitration if it seems suitable in that case.

## Mediation after the commencement of arbitration 'Arb-Med'

All disputes arising out of or in connection with this contract shall be finally settled by arbitration under the Rules of [preferred Institution] by one or more arbitrators appointed in accordance with the said Rules. The parties further agree that following the commencement of arbitration, they may attempt in good faith to resolve the dispute through mediation.

The parties may elect to use mediation after the commencement of arbitration, colloquially referred to as 'arb-med'. This was used more liberally in civil law jurisdictions, till the introduction of the SIAC-SIMC Arb-Med-Arb Protocol which popularized arb-med in common law jurisdictions. Under this Protocol, the arbitrator and mediator are separately and independently appointed by the Singapore International Arbitration Centre (SIAC) and Singapore International Mediation Centre (SIMC), respectively.

While this is no doubt a more complicated interaction, it does have a fair share of benefits if used strategically. Mediation post the commencement of arbitration proceedings has certain inherent advantages. For instance, parties are more acutely aware about the financial and personal cost of adjudicating disputes and the risk involved; they have more information to assess the strengths of their claims or defense; and they may be less keen to fight since the sense of grievance diminishes with time. The risks associated with arb-med arise primarily due to a lack of familiarity with its working. While arb-med is commonly used by civil law practitioners, it remains a novelty with common law practitioners. For instance, Section 33 of the Hong Kong Arbitration Ordinance specifically provides that if all parties consent in writing, and for so long as no party withdraws the party's consent in writing, an arbitrator may act as a mediator after the arbitral proceedings have commenced. The section goes on to lay the procedural groundwork for the conduct of the mediation<sup>(1)</sup> and serves as an interesting framework for use of arb-med in ad-hoc arbitration as well. Similarly, the arbitration laws of Australia<sup>(2)</sup>, Japan<sup>(3)</sup> and Netherlands<sup>(4)</sup> provide for settlement attempts by the tribunal if consented to by the Parties. In recent times, institutional arbitration rules have also popularized the use of mediation after the commencement of arbitration proceedings. The most notable example is the SIAC-SIMC Arb-Med-Arb Protocol. Going a further step, DIS Arbitration Rules mandate that an arbitrator shall seek to encourage an amicable settlement of the dispute, at every stage of the arbitration, unless the parties object<sup>(5)</sup>. One of the ways an arbitrator can do this is by providing the parties with a preliminary non-binding assessment of factual or legal issues in the arbitration, provided all of the parties consent thereto<sup>(6)</sup>.

The risks associated with arb-med can be mitigated with comprehensive training for arbitrators and lawyers in mediation and by helping practitioners mould the arb-med facility to suit the dispute and the parties. For instance, in some cases confidentiality in the mediation process would be preferable to the arbitrator acting in a dual capacity. This would avoid unfortunate results like those in the case of *Ku-ring-gai Council v Ichor Constructions Pty Ltd*<sup>(7)</sup> where the award was set aside because the arbitrator, who acted as a mediator thereafter, failed to secure further written consent from the parties after the mediation terminated, to continue in his prior role as the arbitrator. In the absence of such written consent, the arbitrator's mandate had terminated under the applicable NSW Arbitration Act and a substitute arbitrator should have been appointed.

(1) Section 33, Hong Kong Arbitration Ordinance

(2) Section 27D of NSW Commercial Arbitration Act, 2010

(3) Article 38(4) of the Japan Arbitration Law (Law No.138 of 2003)

(4) Article 1043 of the Dutch Code of Civil Procedure

(5) Article 26, DIS Arbitration Rules 2018

(6) Annex 3(F), DIS Arbitration Rules 2018

(7) [2018] NSWSC 610

## **Mediation after conclusion of Arbitration**

A relatively rare form of interaction is mediation after the arbitral award is delivered, though it may be effective in cases where enforcement presents an indomitable challenge. Another approach is where the arbitration is concluded, and the final award is sealed. The parties are then given the option to mediate, failing which, the final award is divulged.

## **Conclusion**

The contrary nature of mediation and international arbitration, the former being non-adjudicatory and the latter being adjudicatory, is at the essence of what makes their relationship successful when used together. Admittedly not all business relationships and contracts would benefit from a multi-tiered dispute resolution clause. However, with respect to those that do benefit, the use of mediation and arbitration together is a powerful tool.

Mediation allows boundaries to be pushed in a way that is only possible because the mediator has no interest in the outcome and is unencumbered by the burden of rendering an enforceable award. However, it is the threat of that arbitration award that makes parties focus and take advantage of the process. The mediation therefore, whether or not successful, becomes a filter ensuring that only the most entrenched claims and issues are raised in arbitration, which acts as a safety net because of its binding nature. Thus, the manner and sequence in which mediation and arbitration are used together can allow for surprisingly helpful results, if used strategically.

*The views expressed here are of the author alone and readers should not act on the basis of this information without seeking professional legal advice.*



## WHETHER THE HOMEBUYERS ARE RESTRAINED FROM APPROACHING THE CONSUMER FORUM/COMMISSION IN LIGHT OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016?

**M/S. IMPERIA STRUCTURES LTD. VS ANIL PATNI AND ANR. - CIVIL APPEAL NO. 3581-3590 OF 2020**

### **Brief facts of the case:**

Sometime in 2011, the Respondents entered into a Builder Buyer Agreement (“**Agreement**”) with the Appellant for purchase of an apartment in a housing scheme called “ESFERA” (“**Project**”). The Appellant was supposed to complete the Project within 3 years from the date of the execution of the Agreement. However, even after 4 years there were no signs of completion of the Project. Thereafter, in and around 2017, the Respondents approached the National Consumer Dispute Redressal Commission, New Delhi (“**Commission**”) to individually file a Consumer Complaint to seek *inter alia* directions for refund on the entire amount collected towards consideration alongwith 18% interest. Meanwhile, since the Real Estate (Regulation and Development) Act, 2016 (“**RERA Act**”) came into force on 1st May 2016, the Appellant got the Project registered with Haryana Real Estate Regulatory Authority. (“**Haryana Authority**”).

As the Appellant could not produce any substantial evidence for the delay, the Commission allowed the Complaint and granted reliefs of refund of amounts deposited alongwith 9% interest p.a. for respective date of deposits alongwith Rs. 50,000 towards costs.

The Appellant, therefore, filed this appeal to challenge the order dated 12th September 2018 under section 23 of Consumer Protection Act, 1986 (“**CP Act**”) before the Hon’ble Supreme Court of India. The appeal was filed by placing the RERA registration letter and order passed by Haryana Authority in complaint preferred by one Himanshu Giri whereby *inter alia* directions were given to provide delay possession charge at the prescribed rate of 10.75% interest p.a.

### **Submissions:**

The Appellant made out the case by *inter alia* pointing out that once the RERA Act came into force, all questions concerning the Project would be under exclusive jurisdiction of the authorities under RERA Act and Commission ought not to have entertained the Complaint.

The Respondents opposed the case of the Appellant by *inter alia* stating that at no point, such plea was taken by the Appellant that the Project was registered under RERA Act before the Commission or in the Appeal Memo. The remedy available under the CP Act would be an additional remedy to a consumer even though RERA Act came into effect.

### **Relevant findings:**

(1) In light of the below judgements, the Hon’ble Apex Court held that the remedies available under the provisions of the CP Act are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act.

(a) *Secretary, Thirumurugan Cooperative Agricultural Credit Society vs. M. Lalitha (dead) through LRs. and Ors(1).*

(b) *National Seeds Corporation Limited vs. M. Madhusudhan Reddy and Anr(2).*

(c) *Virender Jain vs. Alaknanda Cooperative Group Housing Society Limited and Ors(3).*

(2) Section 79 of the RERA Act does not in any way bar the Commission or Forum under the provisions of the CP Act to entertain any complaint.

(3) The Hon’ble Court also observed that the proviso to Section 71 (1) of RERA Act which gives a right or an option to withdraw the Complaint and does forcefully transfer the pending proceeding under CP Act to authorities of RERA Act. It is the discretion of the allottee to initiate appropriate proceedings under CP Act or RERA Act.

(4) The Hon’ble Court also considered the decision in the case of *Pioneer Urban Land and Infrastructure Limited and Anr. vs. Union of India and Anr(4)*, wherein it was concluded that remedies given to allottees of flats/apartment are concurrent remedies and can avail remedies under the CP Act, Insolvency and Bankruptcy Code, 2016 as well as RERA.

(5) Lastly, it was also observed by the Hon’ble Court that Section 100 of Consumer Protection Act, 2019 (“**2019 CP Act**”) which is akin to Section 3 of CP Act was enacted with an intent to secure remedies under the 2019 CP Act which has come into force after the RERA Act.

(1) (2004) 1 SCC 305

(2) (2012) 2 SCC 506

(3) (2013) 9 SCC 383

(4) (2019) 8 SCC 416

# CORPORATE REGULATORY UPDATE

## MONITORING AND DISCLOSURES BY DEBENTURE TRUSTEE(S)

On 12 November 2020, the Securities and Exchange Board of India ("SEBI") has issued a circular in relation to monitoring and disclosures by Debenture Trustee(s). In terms of the circular, the Debenture trustee shall carry out periodical monitoring in following manner:

(a) Debenture trustee shall incorporate the terms and conditions of periodical monitoring in the debenture trust deed wherein listed entity shall be liable to provide relevant documents/ information, as applicable, to enable the debenture trustee(s) to submit the following reports/ certification to Stock Exchange(s) within the timelines mentioned below:

Reports/Certificate	Periodicity	Format
Asset cover Certificate	<b>Quarterly basis</b> within 60 days from end of each quarter	Annexure A to the circular
A statement of value of pledged securities		----
A statement of value for Debt Service Reserve Account or any other form of security offered		----
Net worth certificate of guarantor (secured by way of personal guarantee)	<b>Half yearly basis</b> within 60 days from end of each half-year	----
Financials/value of guarantor prepared on basis of audited financial statement etc. of the guarantor(secured by way of corporate guarantee)	<b>Annual basis</b> within 75 days from end of each financial year	----
Valuation report and title search report for the Immovable / movable assets, as applicable.		----

(b) For existing debt securities, listed entities and debenture trustee(s) shall enter into supplemental/amended debenture trust deed within 120 days from the date of this circular incorporating the changes in the debenture trust deed.

(c) In case, a listed entity has more than one debenture trustee for its listed debt securities, then debenture trustees may choose a common agency for preparation of asset cover certificate.

Further, inter-alia, the debenture trustee(s) shall make the disclosures on their websites as specified in the Circular. The provisions of this circular shall come into force from the quarter ended 31 December 2020 for listed debt securities.

## **NON-COMPLIANCE WITH PROVISIONS RELATED TO CONTINUOUS DISCLOSURES**

On 13 November 2020, SEBI decided to lay down a similar uniform structure for imposing fines for non-compliance with continuous disclosure requirements after discussion with market participants. In view of the above, in the interests of investors and the securities market, the Stock Exchanges shall levy fine and take action in case of non-compliances with continuous disclosure requirements by issuers of listed Non-Convertible Debt Securities and/ or NCRPS and/ or Commercial Papers as specified in the annexure to this circular. In case a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under this circular in consultation with each other. The recognized stock exchanges shall take necessary steps to implement this circular and shall disclose on their website the action(s) taken against the entities for non-compliance(s); including the details of the respective requirement, amount of fine levied/ action taken etc. The amount of fine realized as per the structure provided in the annexure to this circular shall be credited to the "Investor Protection Fund" of the concerned recognized stock exchange. The fines specified in the annexure to this circular shall continue to accrue till the time of rectification of the non-compliance and to the satisfaction of the concerned recognized stock exchange. Such accrual shall be irrespective of any other disciplinary/enforcement action(s) initiated by recognized stock exchange(s)/SEBI.

These provisions shall come into force for compliance period ending on or after 31 December 2020.

## **MINISTRY OF INFORMATION & BROADCASTING REQUESTS COMPLIANCE OF POLICY ON FDI IN DIGITAL MEDIA**

On 16 November 2020, the Union Ministry of Information and Broadcasting issued a public notice to facilitate eligible entities involved in uploading/streaming of news and current affairs through digital media, to comply with the decision of Union Government on 18 September 2019, which permitted 26% FDI under the Government approval route.

Further, the Ministry laid out the detailed actions to be undertaken by eligible entities to comply with this decision, within a month. In terms of the public notice:

(i) Entities having foreign investment below 26% may furnish an intimation to the Ministry of Information & Broadcasting within one month from 16 November 2020 giving the following:

(a) Details of the company/entity and its shareholding pattern along with the names and addresses of its Directors/shareholders,

(b) The names and address of Promoters/Significant Beneficial Owners,

(c) A confirmation with regard to compliance with pricing, documentation and reporting requirements under the FDI Policy, Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and Foreign Exchange Management (Mode of Payment and Reporting of Non-debt Instruments) Regulations, 2019 along with copies of relevant reporting forms in support of the past/existing foreign investment and downstream investment(s), if any, and

(d) Permanent Account Number and the latest audited / unaudited Profit & Loss Statement and Balance Sheet along with the Auditor report.

(ii) Entities which, at present, have an equity structure with foreign investment exceeding 26% would give similar details as at (i) above to the Ministry of Information & Broadcasting within one month from the 16 November 2020, and to take necessary steps for bringing down the foreign investment to 26% by 15 October 2021 and seek approval of the Ministry of Information & Broadcasting.

(iii) Any entity which intends to bring fresh foreign investment in the country has to seek prior approval of the Central Government, through the Foreign Investment Facilitation Portal of DPIIT, as per the requirements of (a) FDI Policy of Government of India and Department for Promotion of Industry and Internal Trade (DPIIT) Press Note No. 4 of 2019 (dated 18 September 2019) in this regard and (b) Foreign Exchange Management (Non-debt Instruments)(Amendment) Rules, 2019 vide Notification dated 5 December 2019.

(iv) Every entity has to comply with the requirements of citizenship of Board of Directors and of the Chief Executive Officers (by whatever name called). The entities are required to obtain security clearance for all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract or consultancy or any other capacity for functioning of the entity, prior to their deployment. For this purpose, the entities will apply to Ministry of Information & Broadcasting at least 60 days in advance and the proposed foreign personnel shall be deployed by the entity only after prior approval of this Ministry.

## **INTRODUCTION OF UNIFIED PAYMENTS INTERFACE (UPI) MECHANISM AND APPLICATION THROUGH ONLINE INTERFACE AND STREAMLINING THE PROCESS OF PUBLIC ISSUES OF SECURITIES UNDER - SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008 (ILDS REGULATIONS), SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES) REGULATIONS, 2013 (NCRPS REGULATIONS), SEBI (ISSUE AND LISTING OF SECURITISED DEBT INSTRUMENTS AND SECURITY RECEIPTS) REGULATIONS, 2008 (SDI REGULATIONS) AND SEBI (ISSUE AND LISTING OF MUNICIPAL DEBT SECURITIES) REGULATIONS, 2015 (ILDM REGULATIONS)**

On 23 November 2020, SEBI decided to introduce the following in addition to the already specified modes under the ASBA Circular (issued by SEBI on 16 August 2018):

(a) Providing an option to investors to apply in public issues of debt securities through the app/web interface of Stock Exchange(s) with a facility to block funds through Unified Payments Interface (UPI) mechanism for application value upto INR 200,000;

(b) Permitting the UPI mechanism to block funds for application value upto INR 200,000 submitted through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants).

The process flow for applying through online interface of stock exchanges or intermediaries and availing the option of blocking funds through UPI mechanism is placed at Annex I to the Circular. Further, the circular also mentions:

(a) New entities / mechanisms part of the public issue process using UPI -

(i) National Payments Corporation of India (NPCI): NPCI, a Reserve Bank of India (RBI) initiative, is an umbrella organization for all retail payments in India. It has been set up with the guidance and support of the Reserve Bank of India (RBI) and Indian Banks Association (IBA);

(ii) Unified Payments Interface (UPI): UPI is an instant payment system developed by the NPCI. It enables merging several banking features, seamless fund routing & merchant payments into one hood. UPI allows instant transfer of money between any two persons' bank accounts using a payment address which uniquely identifies a person's bank account.

(b) Validation by Stock Exchanges and Depositories - The details of investor viz. PAN, DP ID / Client ID, entered on the Stock Exchange platform at the time of bidding, shall be validated by the Stock Exchange/s with the Depositories on real time basis. Stock Exchanges and Depositories shall put in place necessary infrastructure for this purpose.

(c) Other requirements - Stock Exchanges shall update demand data on working days on their websites which shall include all the UPI (accepted/pending) and ASBA bids; 'Working day' for this purpose shall be the working day of the Stock Exchange on which debt securities are listed.

The provisions of this circular shall be applicable to a public issue of securities under the captioned Regulations (as mentioned above) which opens on or after 1 January 2021. Stock Exchanges, NPCI, Sponsor Banks and Self Certified Syndicate Banks shall make required changes to implement the same from 1 January 2021. Accordingly, the SEBI dated 27 July 2012 shall stand repealed from that date.

## ESTABLISHMENT OF BRANCH OFFICE (BO)/LIAISON OFFICE (LO)/PROJECT OFFICE (PO) OR ANY OTHER PLACE OF BUSINESS IN INDIA BY FOREIGN LAW FIRMS

On 23 November 2020, the Reserve Bank of India ("RBI") issued a circular advising that no fresh permissions/renewal of permission shall be granted by the RBI/AD Category-I banks to any foreign law firm for opening of Liaison Office in India, till the policy is reviewed based on, among others, final disposal of the matter by the Supreme Court of India. The Supreme Court has while disposing of the case, held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession. Accordingly, AD Category - I banks are directed not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India. Further, they shall bring to the notice of the RBI in case any such violation of the provisions of the Advocates Act comes to their notice. All other provisions of the BO/LO/PO policy shall remain unchanged. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers. The Master Direction No. 10 dated 1 January 2016 is being updated simultaneously to reflect the changes.

## INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (MINIMUM INFORMATION REQUIRED FOR INVESTIGATION AND INSPECTION) REGULATIONS, 2020

On 23 November 2020, the Insurance Regulatory and Development Authority of India issued the Insurance Regulatory and Development Authority of India (Minimum Information Required for Investigation and Inspection) Regulations, 2020 which was published in the official gazette on the same date. These Regulations come into force after 6 months from 23 November 2020. The objective of these regulations is to specify minimum information required to be maintained by insurer, intermediary or insurance intermediary, so as to enable the investigating officer to discharge satisfactorily his or her functions under section 33 of the Insurance Act, 1938.

Unless otherwise mentioned herein, these Regulations are applicable to all Insurers and Intermediaries or Insurance Intermediaries, as defined under the Act or IRDA Act, 1999, for the purpose of investigation and inspection by the Authority.

## RELAXATION IN TIMELINES FOR COMPLIANCE WITH REGULATORY REQUIREMENTS

On 1 December 2020, SEBI, in view of the prevailing situation due to COVID-19 pandemic and representation received from the Stock Exchanges, decided to extend the timelines for compliance with the following regulatory requirements by the trading members/clearing members, as under:

S. No.	Compliance requirements for which timelines are extended	Extended timeline
1	Internal Audit for half year ended on 30 September 2020	31 December 2020
2	System Audit for half year ended on 30 September 2020	
3	Half yearly net worth certificate as on 30 September 2020	
4	Cyber Security and Cyber Resilience Audit for half year ended on 30 September 2020	31 January 2021

# CORPORATE REGULATORY UPDATE

In view of the request received from the Depositories, SEBI decided to extend the timelines for compliance with the following regulatory requirements by depository participants (DPs), as under:

S. No.	Compliance requirements for which timelines are extended	Extended timeline
1	Submission of half yearly Internal Audit Report by DPs for the half year ended on 30 September 2020	31 December 2020
2	KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days	Period of exclusion shall be from 23 March 2020 till 31 December 2020. A 15 day time period after 31 December 2020 is allowed to Depository/DPs, to clear the back log
3	Systems audit on annual basis for the financial year ended 31 March 2020	31 December 2020

## DISPENSATION OF CERTAIN REQUIREMENTS BY THE COMPETITION COMMISSION OF INDIA (CCI)

On 1 December 2020, CCI issued a press release pursuant to stakeholders' consultation and detailed examination of the efficacy of the present framework for examination of non-compete restrictions, entered into as a part of combinations, deciding to dispense certain disclosure requirements in the combination notices. Parties to combination are no more required to give separate details regarding their non-compete restrictions, in the combination notice. In this regard, CCI has omitted item 5.7 of Form I of Schedule II to the Combination Regulations.

## OPERATIONAL GUIDELINES FOR TRANSFER AND DEMATERIALIZATION OF RE-LODGED PHYSICAL SHARES

On 2 December 2020, SEBI issued the operational guidelines for crediting the transferred shares into the respective demat account of the investor. SEBI, had earlier (7 September 2020) fixed 31 March 2021 as the cut-off date for re-lodgment of transfer requests and had stipulated that such transferred shares shall be issued only in demat mode. Guidelines to credit the transferred physical shares in demat mode are:

(a) Subsequent to processing of the re-lodged transfer request, the RTA shall retain the physical shares and intimate the investor (transferee) about the execution of transfer through Letter of Confirmation. This letter shall be sent through Registered / Speed Post or through email with digitally signed letter and shall, inter-alia, contain details of endorsement, shares, folio of investor (required on Demat request form) as available on the physical shares.

(b) The investor shall submit the demat request, within 90 days of issue of Letter of Confirmation, to Depository participant (DP) along with the Letter of Confirmation. RTA shall also issue a reminder at the end of 60 days of issue of Letter of Confirmation, informing the investor to submit the demat request as above.

(c) Depository Participant will process the Demat Request on the basis of Letter of Confirmation, as this letter is a confirmation of holding of physical shares on behalf of the investor by RTA.

(d) The suggested format of the Letter of Confirmation is given at Annexure – A of the circular.

Further, in case of the are required to be locked-in as per the SEBI circular dated 6 November 2018, the RTA while approving/ confirming the demat request, shall also incorporate / intimate the Depository about the lock-in and its period. Such shares shall be in lock-in demat mode for 6 months from the date of registration of transfer.

In case of non-receipt of demat request from the investor within 90 days of the date of Letter of Confirmation, the shares will be credited to Suspense Escrow Demat Account of the Company.

## **FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) (FOURTH AMENDMENT) RULES, 2020**

On 8 December 2020, the Ministry of Finance issued the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2020 amending the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 to incorporate the changes brought about by press note 4 of 2020 series issued by the Department for Promotion of Industry and Internal Trade (DPIIT). In terms of the said press note, 100% FDI is permitted under the automatic route in the Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959, subject to certain conditions. However, beyond 74% FDI, prior Government approval will be required wherever it is likely to result in access to modern technology or for other reasons to be recorded. This aspect has been captured in the amendment to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

The position so far was that, while 100% FDI was permitted in the Defence sector, upto 49% FDI was permitted under the automatic route and FDI beyond 49% was permitted under the government route wherever it was likely to result in access to modern technology or for other reasons to be recorded.



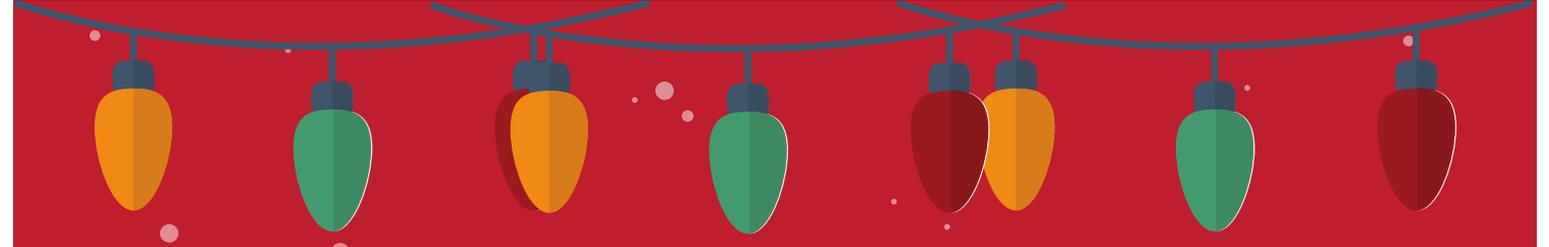
**YOUR TRUSTED PARTNER FOR  
COMPANY COMPLIANCE; BUSINESS  
SET-UP; DEBT RECOVERY; FUNDING;  
BACK OFFICE ASSISTANCE;  
ACCOUNTING SOLUTION; OFFICE SET-  
UP; CONFERENCES & EVENT  
MANAGEMENT**

**"LAUNCHING SOON - TEMPLATES OF LEGAL  
AGREEMENTS"**



Anjamo Consulting Private Limited

**E: [info@anjamo.co.in](mailto:info@anjamo.co.in) / [info@illuminare.in](mailto:info@illuminare.in)  
W: [www.anjamo.co.in](http://www.anjamo.co.in) / [www.illuminare.in](http://www.illuminare.in)**



# MERRY CHRISTMAS

CHRISTMAS GREETING FROM  
CLASIS LAW!

WE HAVE ENJOYED PARTNERING  
WITH YOU THIS YEAR & LOOKING  
FORWARD TO MANY MORE YEARS  
TO COME.  
ENJOY PEACE AND GOODWILL  
THROUGHOUT THE SEASON.



CLASIS LAW | 10 YEARS OF EXCELLENCE

## NEW DELHI

**TOLSTOY HOUSE,  
4TH FLOOR,  
TOLSTOY MARG,  
NEW DELHI - 110 001**

**T: +91 11 4213 0000  
F: +91 11 4213 0099**

## MUMBAI

**BAJAJ BHAWAN,  
1ST FLOOR,  
226, NARIMAN POINT,  
MUMBAI - 400 021**

**T: +91 22 4910 0000  
F: +91 22 4910 0099**

**[INFO@CLASISLAW.COM](mailto:INFO@CLASISLAW.COM)**

**[WWW.CLASISLAW.COM](http://WWW.CLASISLAW.COM)**

Follow us on

