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In this Edition

A handbook on "Doing Business in India" 2019 Edition by Clasis Law

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

For further information about the firm, its practice areas and lawyers please visit us @ www.clasislaw.com

Message from the Managing Partner

"Growth and rewards come only through unwavering effort and persistence"

It is with pleasure and delight that I announce that we have with our resolute effort and perseverance reached the milestone of completing 10 years this month.

The firm prides itself on its successful history and the associated values which we abide by till today. Our philosophy to keep our clients at the heart of everything we do drives us to create value at work each day. Our focus is and shall continue to remain on delivering results through our cutting edge solutions based on a solid foundation of knowledge and experience. I believe that, we succeed when the client succeeds and in the course of this commitment towards the client, no request is too small and no service too big. In this way, we are truly global in our processes, approach, experience and expertise. As we celebrate our 10th year anniversary, we remain committed to our core values of being a highly professional and merit driven institution with uncompromising work ethics.

We are blessed to be surrounded by a team of principled and dedicated professionals. We could not be more proud of the extraordinary character of our team and the legal results they achieve with each passing year.

Our relentless hard work and effort has borne many fruits in the last decade. One of them being a notable accolade received by the firm from RSG Rankings on two consecutive occasions which has further instilled the fire to excel and work harder to achieve newer heights."

It is my firm belief that we will continue to grow, evolve and adapt to the emerging challenges in coming times such as the on-going COVID-19 pandemic. In our resolve to evolve and adapt, we have attempted to turn the drawbacks of the COVID-19 pandemic into a positive and tried to spend quality time with our family and restore our health which otherwise we could not focus on with such ease due to work engagements.

I would also like to take this opportunity to thank our clients who have been a part of this journey and helped us succeed in achieving this milestone. It is this continuous patronage of our clients which has helped us reach this far and tide through challenging times such as the on-going COVID-19 pandemic.

After a decade of its existence, the same unwavering commitment to quality legal work and strong values propels our firm into its next decade of existence. I hope that the support and blessing of the people who have been a part of this journey continues and more gets added so that we can reach newer heights in the coming decade.

Today, my heart is filled with profound gratitude and I wish to thank one and all who have been a part of the firm's journey and helped it achieve this milestone. I look forward to an even more exciting next decade full of innovative solutions, growth, surprises and rewards.

My very best regards.

ELECTRONIC EXECUTION OF CONTRACTS ESPECIALLY IN LIGHT OF THE COVID-19 PANDEMIC - ITS LEGALITY AND ADMISSIBILITY IN INDIA

by
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The Government's increased efforts on ease of doing business, streamlining the storage of records, and improving the safety, security and cost-effectiveness of records, has resulted in promotion of the use of digital technologies by individuals and companies, which includes electronic signing of agreements, documents and contracts.

Given that Indian law recognizes electronic signatures or e-signatures, there has been an increase in the usage of e-signatures in recent times. This, in part, is due to the Government's decision to focus on enabling electronic transactions using Aadhaar ID, the unique identification number issued by the Government of India.

Further, the on-going COVID-19 pandemic has given a huge impetus to electronic execution of documents due to the worldwide lockdowns, physical unavailability of people and the inability to travel. The traditional way of executing contracts/agreements involved the parties to be physically present at a place and affix the signatures, stamps, common seals, etc., which is currently not possible due to the on-going COVID-19 pandemic and the consequent inability to travel. In this manner, electronic execution of contracts/agreements makes it easier for parties to execute a document without any unnecessary delays attributed to the concept of wet/physical signatures such as unavailability of all parties at the same place at the same time.

Further, Indian law treats electronic signatures as equivalent to physical signatures, subject to a few exceptions, and generally allows documents to be signed using e-signatures. However, the e-signatures must satisfy a number of conditions and certain checks must be done before it can be relied upon.

E-signatures under the IT Act and applicable rules

Under Indian law, a written signature/signature in manuscript is not necessarily required for a valid contract. Validity of a contract is determined basis the legal capacity/competency of the parties to enter into a contract, the subject matter of the contract (i.e., the contract must be for a lawful purpose) and acceptance of the offer by the parties.

The Information Technology Act, 2000 **("IT Act")** identifies e-signatures and deals with the legality of such signatures. The IT Act was amended by the Information Technology Amendment Act, 2008 to permit the use of electronic signatures. The amendment (by way of Section 3A) provides the procedure for authentication of any electronic record by electronic signature.

The IT Act, which provides for the adoption of electronic signatures, read with the relevant rules and regulations acknowledges the following forms of electronic signatures:

(a) *Digital signatures method* – Through this method digital signatures are created which are unique to the executor of the document as well as the document being executed, and / or

(b) *Aadhaar e-KYC method* – Through this method electronic signatures are carried out using the Aadhaar ID of the signatory which is authenticated by Unique Identification Authority of India (UIDAI).

Further, the Central Government vide the Electronic Signature or Electronic Authentication Technique and Procedure Rules, 2015 has incorporated guidelines with respect to e-authentication technique using Aadhaar e-KYC services in the Second Schedule of the IT Act. These rules recognise e-authentication technique using Aadhaar e-KYC services as valid authentication of an electronic record.

Difference between the digital signature method and the Aadhaar e-KYC method

Digital signatures are carried out using a digital signature certificate (DSC) issued to the signer by the Government authorised Certifying Agencies (CAs). The signer has to use the DSC that is stored on a USB e-token in order to complete the signing requirements. On the other hand, the Aadhaar e-KYC based e-signature facility has been introduced by the Government recently to allow an individual having an Aadhaar ID and Aadhaar registered mobile number to sign documents instantly without having to procure a digital signature certificate (DSC). This mode of e-signature saves cost and time and is also legally valid in terms of the IT Act so long as the entity providing such e-signature services has complied with the requirements under the IT Act *(as discussed further in this article)*.

While a digital signature is ideal for signers who need to sign documents on regular basis or want to sign documents in bulk or want to sign and exchange documents on international level, an Aadhaar based e-signature service is ideal for processes where signers need to sign documents instantly but not regularly and hence do not want to invest time and money in procuring a DSC.

Authenticity and legality of e-signatures

The relevant provisions of the IT Act specify that an electronic record can be authenticated by an electronic signature or electronic authentication technique which is considered reliable and is specified in the second schedule of the IT Act.

Further, the IT Act provides that an electronic signature or electronic authentication technique shall be considered reliable if:

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

However, e-signatures/digital signatures cannot be used for executing all types of documents/contracts. The documents that cannot be executed electronically are (i) a negotiable instrument (other than a cheque), (ii) a power of attorney, (iii) a trust deed, (iv) a will (including any other testamentary disposition by whatever name called), and/or (v) any contract for the sale or conveyance of immovable property or any interest in such property.

Conditions for using Aadhaar e-KYC based e-signature model

While e-signatures by way of a valid DSC does not require any further compliances in terms of its use, the Aadhaar based e-signatures requires certain aspects to be considered. For an e-signature by way of the Aadhaar e-KYC based model to be compliant in terms of Indian law, the service provider providing such e-signature facilities needs to be either of the following:

(a) a Central/State Government Ministry/Department or an undertaking owned and managed by Central /State Government,

(b) an authority constituted under a Central/State Act, or

(c) a not-for-profit company/special purpose organization of national importance,

(d) a bank/financial institution/telecom company, or

(e) a legal entity registered in India.

Further, the service provider is required to be integrated with an e-sign service provider (ESP) as certified by the Controller of Certifying Authorities. Thus, only in the event an ESP is empaneled with an authorized certifying agency can it offer e-signature facilities/services to the service providers. Therefore, it becomes imperative for companies to check for fulfillment of the aforementioned conditions, prior to selecting a service provider to tie up with for e-signature facilities, in order to be compliant with the applicable law in India.

Admissibility of e-signatures under Evidence Act

The Indian Evidence Act, 1872 **("Evidence Act")** has been amended from time to time, especially to provide for the admissibility of electronic records along with paper based documents as evidence in the Indian courts. Perhaps the most important amendment to the Evidence Act has been the introduction of sections 65A and 65B under the second schedule of the IT Act, which provides for special provisions as to evidence in relation to electronic records and the admissibility of electronic records, respectively.

Section 65B of the Evidence Act, is the guiding law in terms of admissibility of electronic record and provides that, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record (whether it be the contents of a document or communication printed on a paper, or stored, recorded, copied in optical or magnetic media produced by a computer), is deemed to be a document and is admissible in evidence without further proof of the production of the original, provided the conditions set out in section 65B for the admissibility of evidence are satisfied, which have been set out as under:

(a) At the time of creation of the electronic record, the computer output containing the information was produced from a computer that was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer,

(b) During the period, the kind of information contained in the electronic record was regularly fed in to the computer in the ordinary course of the activities,

(c) Throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) The information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

As regards admissibility of documents which have been signed electronically, the Evidence Act provides that these will be admissible as evidence, subject to the authenticity and integrity of the electronic/ digital signature being proved in the court by the signer. Further the Evidence Act provides for presumption as to the authenticity of electronic records and electronic signatures. However, such presumption would only be with respect to a secure electronic record or a secure electronic signature.

Conclusion

E-signatures are increasingly becoming popular and useful especially in todays' times with the on-going COVID-19 pandemic where the parties are in different cities/countries. In the backdrop of the COVID-19 pandemic, the adoption of electronically signed contracts are gaining traction and is the evident next step to conclude contracts. Further, e-signatures, being digital in nature and made by cryptographic technology, cannot be validated by ordinary authentication procedures. Thus, the chances of tampering with it are minimal. Considering that documents/agreement are executed between parties across countries/continents, it is likely that sooner than later the concept of wet/physical signatures will completely vanish.

However, like with every technology, it does have its own limitations and challenges, such as risk of identity theft and publication or creation of false signatures. Combating such issues becomes important while using e-signatures. Thus, it is imperative for companies/individuals using e-signature facilities to consider these challenges before opting for such a service.

THE SUPREME COURT LAYS DOWN TWO TESTS FOR SEEKING EXEMPTION FROM INITIATING ARBITRATION PROCEEDINGS IN CASES INVOLVING SERIOUS ALLEGATIONS OF FRAUD

In its recent judgment dated 19 August 2020, the Supreme Court of India in the matter of ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd. [2020 SCC OnLine SC 656],*** the Supreme Court has laid down two tests to determine whether serious allegations of fraud in a particular case can be taken as a ground for exemption from initiating arbitral proceedings.

After reviewing the precedents on the issue and the legal arguments raised by the parties, the Supreme Court observed that it is clear that "serious allegations of fraud" arise only if either of the two tests laid down are satisfied, and not otherwise, which are:

(a) The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all.

(b) The second test can be said to have been met in cases in which the allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain.

It is pertinent to note that the Supreme Court in its earlier judgments of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24 and Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532* had held that cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion will not be arbitrable. However, in the present case, the Supreme Court has clarified that the aforesaid ruling must now be read subject to a rider that the mere fact that civil or criminal proceedings can or have been instituted in respect of a subject matter involving serious allegations of fraud would not lead to the conclusion that a dispute which is otherwise arbitrable, ceases to be so. Therefore, parties cannot seek exemption from invoking arbitration merely due to serious allegations of fraud and that civil and/or criminal proceedings can or have been initiated basis the same. In order to seek exemption from arbitration proceedings the aforementioned two tests must be satisfied.

To further explain the aforementioned point, the Supreme Court referred to the Bombay High Court's judgment in *Fazal D. Allana v. Mangaldas M. Pakvasa, AIR 1922 Bom 303,* wherein it has been held that section 17 of the Indian Contract Act only applies if the contract itself is obtained by fraud or cheating. However, a distinction is made between a contract being obtained by fraud and performance of a contract (which is perfectly valid) being vitiated by fraud or cheating. The latter would fall outside section 17 of the Contract Act, in which the remedy for damages would be available, but not the remedy for treating the contract itself as being void. This is for the reason that the words "with intent to deceive another party thereto or his agent" must be read with the words "or to induce him to enter into the contract", both sets of expressions speaking in relation to the formation of the contract itself. This is further made clear by sections 10, 14 and 19, all of which deal with "fraud" at the stage of entering into the contract. Even section 17(5) of the Contract Act which speaks of "any such act or omission as the law specially deals to be fraudulent" must mean such act or omission under such law at the stage of entering into the contract. Thus, fraud that is practiced outside of section 17 of the Contract Act, i.e., in the performance of the contract, may be governed by the tort of deceit, which would lead to damages, but not rescission of the contract itself. Both kinds of fraud are subsumed within the expression "fraud" when it comes to arbitrability of an agreement which contains an arbitration clause.

Applying the principle of law as set out above to the facts of the case, the Supreme Court held that there is no such fraud as would vitiate the arbitration clause in the Shareholder Subscription Agreement **("SSA"),** entered into between the HSBC Bank and Avitel Post Studioz Ltd., as this clause has to be read as an independent clause. Further, any finding that the contract itself is either null and void or voidable as a result of fraud or misrepresentation does not entail the invalidity of the arbitration clause which is extremely wide and that the impersonation, false representations made, and diversion of funds are all inter parties, having no "public flavour" so as to attract the "fraud exception". The appeals were disposed of accordingly.

ADMINISTRATION AND SUPERVISION OF INVESTMENT ADVISERS (IAS)

On 6 August 2020, the Securities and Exchange Board of India **("SEBI")** decided to recognize a wholly-owned subsidiary of the stock exchange (stock exchange subsidiary) to administer and supervise Investment Advisers (IAs registered with SEBI in terms of the SEBI (Investment Advisers) Regulations 2013. Earlier, SEBI allowed registered IAs to use infrastructure of the stock exchanges to purchase and redeem mutual fund units directly from Asset Management Companies on behalf of their clients.

RESOLUTION FRAMEWORK FOR COVID-19-RELATED STRESS

On 6 August 2020, the Reserve Bank of India **("RBI")** with the intent to facilitate revival of real sector activities and mitigate the impact on the ultimate borrowers, decided to provide a window under the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019, dated 7 June 2019 **("Prudential Framework")** to enable the lenders to implement a resolution plan in respect of eligible corporate exposures without change in ownership, and personal loans, while classifying such exposures as 'standard', subject to specified conditions. The lending institutions shall ensure that the resolution under this facility is extended only to borrowers having stress on account of COVID-19. Further, the lending institutions will be required to assess the viability of the resolution plan, subject to the prudential boundaries. Towards this end, each lending institution shall put in place a Board approved policy detailing the manner in which such evaluation may be done and the objective criteria that may be applied while considering the resolution plan in each case. Further, accounts which do not fulfill the required eligibility conditions to be considered for resolution under this framework may continue to be considered for resolution under the Prudential Framework, or the relevant instructions as applicable to specific category of lending institutions where the Prudential Framework is not applicable.

While the Prudential Framework is otherwise not applicable to certain categories of lending institutions to which this circular is addressed, exposures of these lending institutions shall also be included for any resolution under this facility. Consequently, without prejudice to the specific conditions applicable to this facility, all the norms applicable to implementation of a resolution plan, including the mandatory requirement of Inter-Creditor Agreements (ICA) and specific implementation conditions, as laid out in the Prudential Framework shall be applicable to all lending institutions for any resolution plan implemented under this facility.

MICRO, SMALL AND MEDIUM ENTERPRISES (MSME) SECTOR – RESTRUCTURING OF ADVANCES

On 6 August 2020, RBI decided to extend the scheme permitted in terms of the circular dated 11 February 2020 in view of the continued need to support the viable MSME entities on account of the fallout of COVID-19 and to align these guidelines with the Resolution Framework for COVID 19 – related Stress announced for other advances. Accordingly, existing loans to MSMEs classified as 'standard' may be restructured without a downgrade in the asset classification, subject to the following conditions:

(a) The aggregate exposure, including non-fund based facilities, of banks and non-banking financial companies (NBFCs) to the borrower does not exceed INR 25 crore as on 1 March 2020.

(b) The borrower's account was a 'standard asset' as on 1 March 2020.

(c) The restructuring of the borrower account is implemented by 31 March 2021.

(d) The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on 1 March 2020.

(e) Asset classification of borrowers classified as standard may be retained as such, whereas the accounts which may have slipped into NPA category between 2 March 2020 and date of implementation may be upgraded as 'standard asset', as on the date of implementation of the restructuring plan. The asset classification benefit will be available only if the restructuring is done as per provisions of this circular.

(f) As hitherto, for accounts restructured under these guidelines, banks shall maintain additional provision of 5% over and above the provision already held by them.

All other instructions specified in the circular dated 11 February 2020 shall remain applicable.

BASEL III CAPITAL REGULATIONS – TREATMENT OF DEBT MUTUAL FUNDS/ETFS

On 6 August 2020, RBI decided that the banks investing in debt mutual fund/exchange traded fund (ETF) with underlying comprising of (i) Central, State and Foreign Central Governments' bonds (ii) Bank's Bonds and (iii) Corporate Bonds (other than Bank Bonds) shall compute capital charge for market risk as under:

(a) Investment in debt mutual fund / ETF for which full constituent debt details are available shall attract general market risk charge of 9%, as hitherto.

(b) In case of debt mutual fund / ETF which contains a mix of the above debt instruments, the specific risk capital charge shall be computed based on the lowest rated debt instrument/ instrument attracting the highest specific risk capital charge in the fund.

(c) Debt mutual fund / ETF for which constituent debt details are not available, at least as of each month-end, shall continue to be treated on par with equity for computation of capital charge for market risk as earlier prescribed.

LOANS AGAINST GOLD ORNAMENTS AND JEWELRY FOR NON-AGRICULTURAL END-USES

On 6 August 2020, RBI decided to increase the permissible loan to value ratio (LTV) for loans against pledge of gold ornaments and jewelry for non-agricultural purposes from 75% to 90% with a view to further mitigate the economic impact of the COVID-19 pandemic on households, entrepreneurs and small businesses. This enhanced LTV ratio will be applicable up to 31 March 2021 to enable the borrowers to tide over their temporary liquidity mismatches on account of COVID 19. Accordingly, fresh gold loans sanctioned on and after 1 April 2021 shall attract LTV ratio of 75%.

OFFLINE RETAIL PAYMENTS USING CARDS / WALLETS / MOBILE DEVICES – PILOT

On 6 August 2020, RBI permitted a pilot scheme to be conducted for a limited period to encourage technological innovations that enable offline digital transactions. Under the pilot scheme, authorised Payment System Operators (PSOs) – banks and non-banks – will be able to provide offline payment solutions using cards, wallets or mobile devices for remote or proximity payments. The scheme would be subject to certain conditions, namely:

(a) Payments could be made using cards, wallets or mobile devices or through any other channel.

(b) Payments may be made in remote or proximity mode.

(c) Payment transactions can be offered without any Additional Factor of Authentication (AFA).

(d) The upper limit of a payment transaction shall be INR 200.

(e) The total limit for offline transactions on an instrument shall be INR 2,000, at any point of time. Resetting of the limit shall be allowed in online mode with AFA.

(f) The PSO shall send real time transaction alerts to users as soon as transaction details are received.

(g) Contactless payments shall adhere to EMV standards, as hitherto.

(h) Payment transactions in offline mode without AFA shall be at the choice of the user.

(i) The acquirer shall incur all liabilities arising out of technical or security issues at merchant's end.

(j) These payments shall be covered by the provisions of the limited customer liability circular dated 6 July 2017 and 4 January 2019.

(k) Before introducing operations under the scheme, PSOs shall inform RBI the detailed specifications of the payment solutions they would offer. They may, however, launch operations without waiting for any approval from RBI.

(l) Entities other than PSOs having innovative solutions may tie-up with PSOs to offer their products.

(m) RBI retains the right to advise a PSO to stop transactions and exit the pilot in the event of non-compliance of these conditions.

Other entities having innovative solutions shall tie-up with the authorised PSOs. The pilot scheme shall be undertaken till 31 March 2021 only. RBI shall subsequently decide on formalising such a system based on the experience gained under the pilot.

ONLINE DISPUTE RESOLUTION (ODR) SYSTEM FOR DIGITAL PAYMENTS

On 6 August 2020, RBI advised authorised Payment System Operators (PSOs) – banks and non-banks – and their participants to put in place system/s for ODR for resolving disputes and grievances of customers. To begin with, authorised PSOs shall be required to implement an ODR system for disputes and grievances related to failed transactions in their respective payment systems by 1 January 2021. The PSOs shall provide access to such a system to its participating members i.e., Payment System Participants (PSPs). Any entity setting up a payment system in India thereafter or participating therein, shall make available the ODR system at the commencement of its operations. The minimum requirements of the ODR system are specified in the annex to this circular.

Based on experience gained, ODR arrangement would later be extended to cover disputes and grievances other than those related to failed transactions. It is pertinent to note that if the grievance remains unresolved up to one month, the customer may approach the respective ombudsman.

OPENING OF CURRENT ACCOUNTS BY BANKS - NEED FOR DISCIPLINE

On 6 August 2020, RBI issued the revised instructions on the opening of current accounts by banks are as under:

(a) No bank shall open current accounts for customers who have availed credit facilities in the form of cash credit (CC)/ overdraft (OD) from the banking system and all transactions shall be routed through the CC/OD account.

(b) Where a bank's exposure1 to a borrower is less than 10% of the exposure of the banking system to that borrower, while credits are freely permitted, debits to the CC/OD account can only be for credit to the CC/OD account of that borrower with a bank that has 10% or more of the exposure of the banking system to that borrower. Funds will be remitted from these accounts to the said transferee CC/OD account at the frequency agreed between the bank and the borrower. Further, the credit balances in such accounts shall not be used as margin for availing any non-fund based credit facilities. In case there is more than one bank having 10% or more of the exposure of the banking system to that borrower, the bank to which the funds are to be remitted may be decided mutually between the borrower and the banks. It may be noted that banks with exposure to the borrower of less than 10% of the exposure of the banking system can offer working capital demand loan (WCDL) / working capital term loan (WCTL) facility to the borrower.

(c) Where a bank has a share of 10% or more in the total exposure of the banking system to the borrower, it can provide CC/OD facility as hitherto.

(d) In case of borrowers covered under guidelines on loan system for delivery of bank credit issued vide circular dated 5 December 2018, bifurcation of working capital facility into loan component and cash credit component shall henceforth be maintained at individual bank level in all cases, including consortium lending.

(e) In case of customers who have not availed CC/OD facility from any bank, banks may open current accounts as under:

(i) In case of borrowers where exposure of the banking system is INR 50 crore or more, banks shall be required to put in place an escrow mechanism. Accordingly, current accounts of such borrowers can only be opened/maintained by the escrow managing bank. However, there is no restriction on opening of 'collection accounts' by lending banks subject to the condition that funds will be remitted from these accounts to the said escrow account at the frequency agreed between the bank and the borrower. Further, the balances in such accounts shall not be used as margin for availing any non-fund based credit facilities. While there is no prohibition on amount or number of credits in 'collection accounts', debits in these accounts shall be limited to the purpose of remitting the proceeds to the said escrow account. Non-lending banks shall not open any current account for such borrowers.

(ii) In case of borrowers where exposure of the banking system is INR 5 crore or more but less than ₹50 crore, there is no restriction on opening of current accounts by the lending banks. However, non-lending banks may open only collection accounts as defined at (e) (i) above.

(iii) In case of borrowers where exposure of the banking system is less than INR 5 crore, banks may open current accounts subject to obtaining an undertaking from such customers to the effect that customers shall inform the bank(s), if and when the credit facilities availed by them from the banking system becomes INR 5 crore or more. The current account of such customers, as and when the exposure of the banking system becomes INR 5 crore or more and INR 50 crore or more, will be governed by the provisions of para (e) (ii) and (e) (i) respectively.

(iv) Banks are free to open current accounts of prospective customers who have not availed any credit facilities from the banking system, subject to necessary due diligence as per their Board approved policies.

Further, banks shall monitor all current accounts and CC/ODs regularly, at least on a quarterly basis, specifically with respect to the exposure of the banking system to the borrower, to ensure compliance with these instructions. Banks should not route drawal from term loans through current accounts. Since term loans are meant for specific purposes, the funds should be remitted directly to the supplier of goods and services. Expenses incurred by the borrower for day to day operations should be routed through CC/OD account, if the borrower has a CC/OD account, else through a current account.

As regards existing current and CC/OD accounts, banks shall ensure compliance with the above instructions within a period of three months from the date of this circular.

RESOURCES FOR TRUSTEES OF MUTUAL FUNDS

On 10 August 2020, SEBI in relation to dealing with the issue of providing administrative support including appointment of independent auditors for the Trustees to effectively discharge various responsibilities as cast upon them in the SEBI (Mutual Funds) Regulations, 1996, decided that:

(a) Trustees shall appoint a dedicated officer having professional qualification and minimum 5 years of experience in finance and financial services related field.

(b) The officer so appointed, shall be employee of the Trustees and directly report to the Trustees.

(c) The scope of work for the said officer shall be specified by Trustees from time to time to support the role and responsibilities of the Trustees. The officer shall accordingly assist the Trustees and discharge the activities assigned to him.

(d) The said officer shall be treated as access person in terms of SEBI circular dated 8 May 2001.

Further, Trustees shall have standing arrangements with independent firms for special purpose audit and / or to seek legal advice in case of any requirement as identified and whenever considered necessary. The Trustees shall however continue to be liable for discharge of various fiduciary responsibilities as cast upon them in the SEBI (Mutual Funds) Regulations, 1996. The provisions of this circular shall be applicable with effect from 1 October 2020.

SYSTEM-BASED ASSET CLASSIFICATION - UCBS

On 12 August 2020, the RBI decided to implement system-based asset classification in urban cooperative banks (UCBs) in order to improve the efficiency, transparency and integrity of the asset classification process. The relevant instructions in this regard are as under:

(a) UCBs having total assets of INR 2000 crore or above as on 31 March 2020 shall implement system-based asset classification with effect from 30 June 2021.

(b) UCBs having total assets of INR 1000 crore or above but less than INR 2000 crore as on 31 March 2020 and having self-assessed themselves as being under Level III or Level IV in terms of the circular dated 31 December 2019 on Comprehensive Cyber Security Framework for UCBs shall implement system-based asset classification with effect from 30 September 2021.

(c) UCBs which meet the above criteria as at the end of the current or subsequent financial years shall implement system-based asset classification within a period of six months from the end of the financial year concerned.

(d) For smooth implementation of the system, all concerned UCBs may conduct pilot/parallel run and evaluate the results for accuracy/integrity of the asset classification in compliance with the applicable RBI instructions so as to ensure that they are ready for implementation of the system-based asset classification from the appointed date.

UCBs not meeting the above criteria are also encouraged to voluntarily implement the system-based asset classification in their own interest.

REVIEW OF GUIDELINES FOR CORE INVESTMENT COMPANIES

On 13 August 2020, the RBI issued the revised guidelines applicable for Core Investment Companies (CICs). The following are the key amendments in the revised CIC guidelines:

(a) Definition of Adjusted Net worth (ANW) - While computing ANW, the amount representing any direct or indirect capital contribution made by one CIC in another CIC, to the extent such amount exceeds ten per cent of Owned Funds of the investing CIC, shall be deducted. All other terms and conditions for computation of ANW remain the same. The deduction requirement shall take immediate effect for any investment made by a CIC in another CIC after date of issue of this circular. In cases where the investment by a CIC in another CIC is already in excess of 10% as on 13 August 2020, the CIC need not deduct the excess investment as on the date of this circular from owned funds for computation of its ANW till 31 March 2023.

(b) Group Structure - To address the complexity in group structures and existence of multiple CICs within a group, it has been decided that the number of layers of CICs within a Group (including the parent CIC) shall be restricted to two, irrespective of the extent of direct or indirect holding/ control exercised by a CIC in the other CIC. If a CIC makes any direct/ indirect equity investment in another CIC, it will be deemed as a layer for the investing CIC. While the regulation shall be applicable from 13 August 2020, existing entities shall reorganise their business structure and adhere to this guideline latest by 31 March 2023.

(c) Risk Management - The parent CIC in the group or the CIC with the largest asset size, in case there is no identifiable parent CIC in the group, shall constitute a Group Risk Management Committee (GRMC). The GRMC shall report to the Board of the CIC that constitutes it and shall meet at least once in a quarter. The composition of the GRMC has also been specified.

(d) Corporate Governance and Disclosure Requirements - Corporate governance requirements will be as per the Companies Act, 2013. Disclosure requirements will be applicable to NBFC-CICs as per the guidelines contained in the annexure to this circular. The guidelines indicate basic minimum requirements and CICs shall strive to achieve higher standards of governance and disclosure.

(e) Registration - It shall be noted that CICs (a) with an asset size of less than INR 100 crore, irrespective of whether accessing public funds or not and (b) with an asset size of INR`100 crore and above and not accessing public funds are not required to register with the Bank under Section 45IA of the RBI Act, 1934

(f) Change in nomenclature - A Systemically Important Core Investment Company (as defined in sub-paragraph (xxv) of paragraph 3 of the Core Investment Companies (Reserve Bank) Directions, 2016) will henceforth be termed as a Core Investment Company. A Core Investment Company, which is not required to be registered in terms of point (e) above, will henceforth be termed as 'Unregistered CIC' instead of 'exempted CIC'.

PARTIAL CREDIT GUARANTEE SCHEME (PCGS) 2.0 EXTENDED WITH GREATER FLEXIBILITY TO RESPOND TO EMERGING DEMANDS

On 17 August 2020, the Government of India decided to modify PCGS 2.0 for purchase of Bonds/CPs as under:

(a) Additional 3 months have been granted to build up the portfolio. At the end of six months, i.e. by 19 November 2020, the portfolio shall be crystallised based on actual amount disbursed, for the Guarantee to come into effect.

(b) At the portfolio level, AA and AA- investment sub-portfolio under the Scheme should not exceed 50% (instead of 25% as stipulated earlier) of the total portfolio of Bonds/ CPs purchased by PSBs under the Scheme.

It is expected that the above modification will provide greater flexibility to Public Sector Banks (PSBs) in purchasing Bonds/CPs under PCGS 2.0.

The Partial Credit Guarantee Scheme (PCGS) 2.0 was launched on 20 May 2020 to provide portfolio guarantee for purchase of bonds or commercial papers (CPs) with a rating of AA and below issued by NBFCs/HFCs/ MFIs by PSBs.

RBI RELEASES FRAMEWORK FOR AUTHORISATION OF PAN-INDIA UMBRELLA ENTITY FOR RETAIL PAYMENTS

On 18 August 2020, RBI released the framework for authorisation of pan-India Umbrella Entity for Retail Payments. The objective of this framework is to set-up pan-India umbrella entity / entities focusing on retail payment systems. Such entity shall be a company incorporated in India under the Companies Act, 2013 and may be a 'for-profit' or a Section 8 Company as may be decided by it. Further, the umbrella entity shall be a Company authorised by RBI under Section 4 of the Payment and Settlement Systems Act, 2007 (PSS Act). It shall be governed by the provisions of the PSS Act and other relevant statutes and directives, prudential regulations and other guidelines / instructions.

All entities eligible to apply as promoter / promoter group of the umbrella entity shall be 'owned and controlled by resident Indian citizens' (as defined in the rules / regulations framed under the Foreign Exchange Management Act, 1999 (FEMA), as amended from time to time) with 3 years' experience in the payments ecosystem as Payment System Operator (PSO) / Payment Service Provider (PSP) / Technology Service Provider (TSP). Any entity holding more than 25% of the paid-up capital of the umbrella entity shall be deemed to be a Promoter.

Amongst other things, the framework also provides that in case of any Foreign Direct Investment (FDI) / Foreign Portfolio Investment (FPI) in the applicant entity, it shall:

(a) Fulfil, additionally, the capital requirements as applicable under the rules / regulations framed under FEMA, as amended from time to time.

(b) Submit, with application of authorisation, necessary approval from the competent authority as required under rules / regulations framed under FEMA, as amended from time to time.

The RBI shall invite applications for the umbrella entity which shall be submitted in the prescribed form (Form A) till the close of business on 26 February 2021.

CLARIFICATIONS ON THE NEW DEFINITION OF MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES)

On 21 August 2020, RBI issued a notification in view of the clarification issued by the Ministry of MSME keeping in mind the representations from IBA and banks regarding applicability of certain aspects of the new criteria for classifying the enterprises as micro, small and medium enterprises. The Ministry of MSME, inter alia, clarified the following:

(a) Classification of Enterprises as per new definition in terms of the gazette notification dated 26 June 2020 –

(i) Classification / re-classification of MSMEs is the statutory responsibility of the Government of India Ministry of MSME, as per the provisions of the MSMED Act, 2006.
(ii) As per the gazette notification all enterprises are required to register online and obtain 'Udyam Registration Certificate'. All lenders may, therefore, obtain 'Udyam Registration Certificate 'from the entrepreneurs.

(b) Validity of EM Part II and UAMs issued till 30 June 2020 -

(i) The existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAMs) of the MSMEs obtained till 30 June 2020 shall remain valid till 31 March 2021. Further, all enterprises registered till 30 June 2020, shall file new registration in the Udyam Registration Portal well before 31 March 2021.
(ii) 'Udyam Registration Certificate' issued on self-declaration basis for enterprises exempted from filing GSTR and / or ITR returns will be valid for the time being, upto 31 March 2021.

(c) Value of Plant and Machinery or Equipment -

The online form for Udyam Registration captures depreciated cost as on 31st March each year of the relevant previous year. Therefore, the value of Plant and Machinery or Equipment for all purposes of the gazette notification dated 26 June 2020 (on reclassification of MSMEs) and for all the enterprises shall mean the Written Down Value (WDV) as at the end of the Financial Year as defined in the Income Tax Act and not cost of acquisition or original price, which was applicable in the context of the earlier classification criteria. In view of the above, instructions contained in circular dated 13 July 2017 on 'Investment in plant and machinery for the purpose of classification as Micro, Small and Medium Enterprises – documents to be relied upon' are superseded.

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERNATIONAL FINANCIAL SERVICES CENTRES) GUIDELINES, 2015

On 21 August 2020, SEBI issued certain amendments to the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015. In order to further streamline the operations at International Financial Services Centres (IFSC), based on consultations with stakeholders, SEBI decided to amend provisions of the aforesaid guidelines, which are as follows:

(a) Incorporation of a new clause 8(3) to the IFSC Guidelines – An entity, based in India or in a foreign jurisdiction, may provide financial services in IFSC, subject to compliance with the applicable regulatory framework / guidelines for such financial services, as specified by the Board, from time to time.

(b) Clause 19 of SEBI (IFSC) Guidelines, 2015 has been amended to read as follows - The entities issuing and/or listing their debt securities in IFSC shall prepare their statement of accounts in accordance with IFRS/ US GAAP/ IND AS or accounting standards as applicable to them in their place of incorporation. In case an entity does not prepare its statement of accounts in accordance with IFRS/ US GAAP/ IND AS, a quantitative summary of significant differences between national accounting standards and IFRS shall be prepared by such entity and incorporated in the relevant disclosure documents to be filed with the exchange. Provided that quantitative summary of significant differences is not required and a statement of differences between local accounting standards and IFRS/ US GAAP/ IND AS would suffice, if the issue is targeted to institutional investors, along with a disclaimer that issuer has not quantified the effect of applying IFRS/ US GAAP / IND AS to its financial information and investor may make their own judgment in accessing the financial information.

FOOD SAFETY AND STANDARDS (PACKAGING AND LABELLING) FIRST AMENDMENT REGULATIONS, 2020

On 21 August 2002, the Food Safety and Standards Authority of India issued the Food Safety and Standards (Packaging and Labelling) First Amendment Regulations, 2020 which comes into effect from 21 August 2020. Food Business Operators are required to comply with all the provisions of these regulations by 1 January 2022 however compliance before this date shall be voluntary.

In terms of these regulations Food Service Establishments having central license or outlets at ten or more locations shall mention the calorific value (in kcal per serving and serving size) against the food items displayed on the menu cards or boards or booklets and the reference information on calorie requirements shall also be displayed clearly and prominently as "An average active adult requires 2,000 kcal energy per day, however, calorie needs may vary". Further, the Food Service Establishments shall also mention the information specified below against the food items displayed on the menu cards or boards or booklets namely (a) information relating to allergens, (b) logo for vegetarian or non-vegetarian.

The provisions of these amendment regulations shall not be applicable to the following:

(a) caterers and food service premises that operate for less than 60 days in a calendar year (consecutively or non-consecutively);

(b) self-serve condiments that are free of charge and not listed on the menu; and

(c) special - order items or modified meals and menu items as per request of the customer.

COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2020

The Ministry of Corporate Affairs ("MCA") vide its notification dated August 24, 2020 issued the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020, thereby further amending the Companies (Corporate Social Responsibility Policy) Rules, 2014. The Amendment Rules allow companies engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business to undertake and include research and development activity of new vaccine, drugs and medical devices related to COVID-19 for the financial years 2020-21, 2021-22 and 2022-23, under their CSR Policy, subject to the following conditions:

(i) Such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Companies Act, 2013, such as Indian Council of Medical Research, Council of Scientific and Industrial Research, Department of Biotechnology, Department of Science and Technology etc.; and

(ii) Details of such activity shall be disclosed separately in the annual report on CSR included in the Board's Report.

EXTENSION OF IMPLEMENTATION TIMELINE OF PROCEDURAL GUIDELINES FOR PROXY ADVISORS AND GRIEVANCE RESOLUTION BETWEEN LISTED ENTITIES AND PROXY ADVISERS

On 27 August 2020, SEBI issued a circular extending the timeline for compliance with the requirements of SEBI Circular dated 3 August 2020 (by way of which the "Procedural Guidelines for Proxy Advisors" were issued), by four months. Accordingly, the provisions of said SEBI Circular shall be applicable with effect from 1 January 2021. Similarly SEBI issued another circular extending the timeline for compliance with the requirements of another SEBI circular dated 3 August 2020 (by way of which the "Grievance Resolution between listed entities and proxy advisers" were issued), by four months and accordingly, the provisions of said circular would also become applicable with effect from 1 January 2021.

TEMPORARY RELAXATION IN PROCESSING OF DOCUMENTS PERTAINING TO FPIS DUE TO COVID-19

On 31 August 2020, SEBI prescribed certain temporary relaxations in processing of documents pertaining to Foreign Portfolio Investors (FPIs) due to the on-going COVID-19 pandemic and the consequent lockdowns. SEBI decided that for the entities from jurisdictions which are still under lockdown, the temporary relaxations shall be extended to the entities from such jurisdictions till the time lockdown is lifted from such jurisdictions. However, in-transit applications shall be processed on the basis of provisions of aforesaid circular dated 30 March 2020. It may be noted that for the entities from jurisdictions where lockdown has already been lifted, the relaxation provided under the aforesaid circular dated 30 March 2020 shall not be applicable.

RBI ANNOUNCES MEASURES TO FOSTER ORDERLY MARKET CONDITIONS

On 31 August 2020, RBI, in order to foster orderly market conditions to overcome the effects of the on-going COVID-19 pandemic, announced the following measures:

(a) It will conduct additional special open market operation involving the simultaneous purchase and sale of Government securities for an aggregate amount of INR 20,000 crore in two tranches of INR 10,000 crore each. The auctions would be conducted on 10 September 2020 and 17 September 2020. The RBI also stated that it remains committed to conduct further such operations as warranted by market conditions.

(b) It conduct term repo operations for an aggregate amount of INR 100,000 crore at floating rates (i.e., at the prevailing repo rate) in the middle of September to assuage pressures on the market on account of advance tax outflows. In order to reduce the cost of funds, banks that had availed of funds under long-term repo operations (LTROs) may exercise an option of reversing these transactions before maturity. Thus, the banks may reduce their interest liability by returning funds taken at the repo rate prevailing at that time (5.15%) and availing funds at the current repo rate of 4%. Details regarding this shall be notified separately.

(c) Currently, banks are required to maintain 18% of their net demand and time liabilities (NDTL) in statutory liquidity ratio (SLR) securities. The extant limit for investments that can be held in held to maturity (HTM) category is 25% of total investment. Banks are allowed to exceed this limit provided the excess is invested in SLR securities within an overall limit of 19.5% of NDTL. SLR securities held in HTM category by major banks amount to around 17.3% of NDTL at present. However, there are inter-bank variations with some banks close to the 19.5% of NDTL limit. Accordingly, RBI decided to allow banks to hold fresh acquisitions of SLR securities acquired from 1 September 2020 under HTM up to an overall limit of 22% of NDTL up to 31 March 2021 which shall be reviewed thereafter. Details regarding this shall be notified separately.

(d) The RBI stands ready to conduct market operations as required through a variety of instruments so as to ensure orderly market functioning.

REVIEW OF DEBT AND MONEY MARKET SECURITIES TRANSACTIONS DISCLOSURE

On 1 September 2020, SEBI decided that that the details of debt and money market securities transacted (including inter scheme transfers) in its schemes portfolio shall be disclosed on daily basis with a time lag of 15 days (which was 30 days earlier) in a revised format as prescribed in the annexure to the circular. The disclosure shall be in a comparable, downloadable (spreadsheet) and machine readable format. This circular shall come in to effect from 1 October 2020.

MASTER DIRECTIONS ON PRIORITY SECTOR LENDING

On 4 September 2020, the RBI issued the Reserve Bank of India (Priority Sector Lending – Targets and Classification) Directions, 2020. The PSL guidelines were last reviewed for commercial banks in April 2015 and for UCBs in May 2018 respectively. The RBI decided to review and release revised guidelines with an objective to harmonise various instructions issued to Commercial Banks, SFBs (small finance banks), RRBs (regional rural banks), UCBs and LABs (local area banks); SFBs (small finance banks), RRBs (regional rural banks), UCBs (urban cooperative banks) and LABs (local area banks); align these guidelines with emerging national priorities and bring sharper focus on inclusive development. The revised guidelines also aim to encourage and support environment friendly lending policies to help achieve Sustainable Development Goals (SDGs). Further, these Master Directions encompass the revised guidelines on PSL for all Commercial banks, RRBs, SFBs, UCBs and LABs and, accordingly, supersede the earlier Master Directions on PSL issued separately for Scheduled Commercial Banks, RRBs, SFBs and guidelines issued for UCBs, respectively. The main categories and targets under priority sector are (i) Agriculture, (ii) Micro, Small and Medium Enterprises, (iii) Export Credit, (iv) Education, (v) Housing, (vi) Social Infrastructure, (vii) Renewable Energy and (viii) Others.

RE-LODGEMENT OF TRANSFER REQUESTS SHARES

On 7 September 2020, SEBI decided to fix 31 March 2021 as the cut-off date for re-lodgement of transfer deeds. Further, the shares that are re-lodged for transfer (including those request that are pending with the listed company / RTA, as on date) shall henceforth be issued only in demat mode. In terms of Regulation 40 (1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, transfer of securities held in physical mode has been discontinued with effect from 1 April 2019. Subsequently, vide Press Release No. 12/2019 dated 27 March 2019, it was clarified that transfer deeds lodged prior to deadline of 1 April 2019 and rejected / returned due to deficiency in the documents may be re-lodged with requisite documents which date has now be fixed as 31 March 2021.

RESOLUTION FRAMEWORK FOR COVID-19-RELATED STRESS – FINANCIAL PARAMETERS

On 7 September 2020, RBI issued the financial parameters for the resolution framework for COVID-19 related stress issued on 6 August 2020 **("Resolution Framework").** The Resolution Framework envisaged constitution of an Expert Committee by the RBI to make recommendations on the required financial parameters with sector specific benchmark ranges for such parameters to be factored in the resolution plans in respect of borrowers eligible under Part B of the Annex to the Resolution Framework. Further, all lending institutions are mandatorily required to consider the key ratios while finalizing the resolution plans in respect of eligible borrowers (given under Part B of the Annex to the Resolution Framework). Lending institutions are free to consider other financial parameters as well while finalizing the resolution assumptions in respect of eligible borrowers apart from the mandatory key ratios and the sector-specific thresholds that have been prescribed. These requirements are applicable even in cases when there is only one lending institution with exposure to an eligible borrower. Lending institutions are expected to ensure compliance to TOL/ATNW agreed as per the resolution plan at the time of implementation itself. Nevertheless, in all cases, this ratio shall have to be maintained as per the resolution plan by 31 March 2022 and on an ongoing basis thereafter. However, wherever the resolution plan envisages equity infusion, the same may be suitably phased-in over this period. All other key ratios shall have to be maintained as per the resolution plan by 31 March 2022 and on an ongoing basis thereafter. This circular of 7 September 2020 provides certain other parameters and clarifications.

COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2020

The Ministry of Corporate Affairs **("MCA")** vide its notification dated September 7, 2020 issued the Companies (Acceptance of Deposits) Amendment Rules, 2020, thereby further amending the Companies (Acceptance of Deposits) Rules, 2014 **("Deposit Rules")**. The Amended Rules provide for the following:

(i) Any amount received by a startup company by way of a convertible note, convertible into equity shares or repayable within a period not exceeding 10 years (which was earlier 5 years) from the date of issue, exceeding INR 2.5 Million in a single tranche from a person, shall not be termed as a deposit as per the relevant provisions of the Companies Act, 2013 ("Act"). The maximum time limit for conversion/ repayment, without the amount being considered as deposit, has been extended from 5 years to 10 years.

(ii) "Start-up company" for the purpose of Deposit Rules shall mean a private company incorporated under the Act and recognized as such in accordance with notification number G.S.R. 127(E) dated February 19, 2019 issued by the Department for Promotion of Industry and Internal Trade.

(iii) The maximum limit in respect of deposits to be accepted from members as provided under the Deposit Rules shall not apply to a private company being a start-up, for 10 years (which was earlier 5 years) from the date of its incorporation.

EXTENSION OF TIME FOR CONVENING ANNUAL GENERAL MEETING

The Registrar of Companies (ROC), for specific jurisdiction, issued orders on September 8, 2020 granting general extension of time for convening the annual general meeting (AGM) for the financial year ended March 31, 2020, other than the first AGM. As per the order, companies can convene their AGM for the year ended March 31, 2020 by December 31, 2020 (which otherwise was to be held by September 30, 2020), without seeking specific extension of time the from ROC. The order has been issued to address the difficulties which companies are facing in completion of their statutory audit on account of situation due to COVID-19.

FIRMS' 10TH ANNIVERSARY CELEBRATIONS 15 SEPTEMBER 2020

ANNOUNCEMENTS

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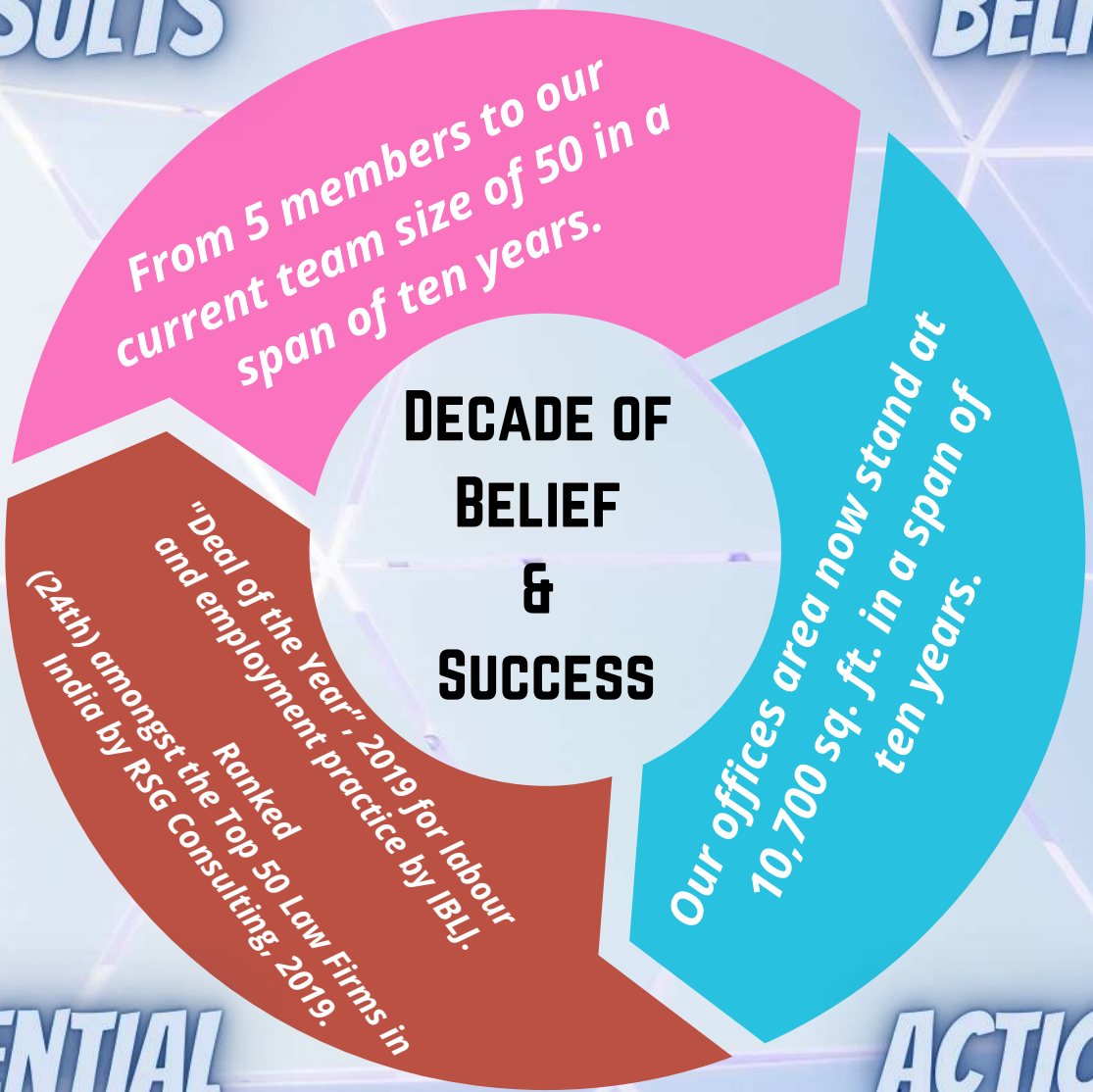
OFFBEAT SECTION

A DECADE OF MULTIPLE FOLDS



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