

Vol. 10 | October 2021



Clasis Law
Annual
Championship

CLASIS LAW

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

THE MONTHLY BULLETIN

Official newsletter of the Clasis Law

In this Issue

Media Coverage - Podcast | 2
Guest Article | 3-6
Legal & Regulatory Updates | 7-11
Annual Championship | 12
Off Beat Section | 13
Contact Us | 14

Second Edition of our annual e-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)



Ranked by Asialaw Profiles 2022 edition for the practice areas Corporate and M&A, Dispute resolution, Labour and employment, Restructuring and insolvency and Shipping and International Trade Law

Ranked by IFLR 1000 for the practice areas M&A and Restructuring & Insolvency.

Recognized by Insights Success as the Most Reliable Law Firms 2021.

Awarded by India Business Law Journal's 2021 edition of Indian Law Firm Awards for Insurance & Reinsurance and Shipping & Maritime practice areas.

Recognized by Benchmark Litigation Asia-Pacific 2021 as a Recommended firm for Employment and Labour practice and listed for Corporate & Commercial and Insolvency practice areas.

Recognized by Forbes India as one of the Top 50 Law Firms under the practice areas Corporate & Commercial, Labour & Employment and Insolvency & Bankruptcy.

Recognized by Chambers and Partners (Asia-Pacific 2020) for Shipping practice.

Recognized 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.

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

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

MEDIA COVERAGE

PODCAST SERIES IN ASSOCIATION WITH CONVENTUS LAW



Vineet featured in an exclusive podcast episode titled "**Labour & Employment laws in India**" published by Conventus Law. Please listen the podcast at this link

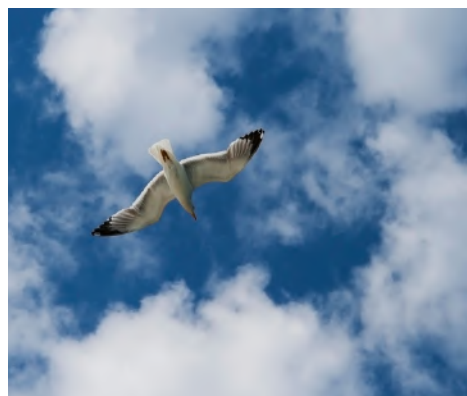
<https://www.linkedin.com/posts/class-is-law---law-firm-legal-developments-in-india-labour-employment-activity-6852107414917914624-IiWo>

Mustafa featured in the exclusive podcast series by Conventus Law discussing about the key developments in Insolvency and Restructuring area and the dispute resolution options for investors in India. Please listen the podcast at this link -

<https://open.spotify.com/show/5hJYuv9YPDVpkvZQfYNSJJ>



GUEST ARTICLE



A BIRD'S EYE VIEW OF FREEDOMS OF THE AIR

*Shinjni Kharbanda**,
Senior Legal Manager
SpiceJet Limited

I - Introduction

The Convention on International Civil Aviation ("**Chicago Convention**") made effective on April 4, 1947, is considered as a seminal event in the aviation history as it promulgated "the standards and procedures for peaceful global air navigation".⁽¹⁾ The primary goal of the Chicago Convention was to promote "development of international civil aviation ...in a safe and orderly manner, and such that the air transport services would be established on the basis of equality of opportunity and operated soundly and economically".⁽²⁾

Article 1 of the Chicago Convention recognizes the sovereignty principle of the contracting States. Further, the Chicago Convention has declared five Freedoms of the Air, wherein the first two freedoms were stipulated in the International Air Services Transit Agreement and all five freedoms were enumerated in the International Air Transport Agreement.⁽³⁾ It is pertinent to note that the International Civil Aviation Organization ("**ICAO**") has referred to the Sixth to Ninth Freedoms of the Air as "so-called" because these remaining Freedoms of the Air are not incorporated in the international treaty.⁽⁴⁾ Countries have entered into bilateral air service agreements ("**BASA**") which recognizes certain types of Freedoms of the Air and grants permission to the contracting State's carrier to enter into another contracting State's airspace.⁽⁵⁾ Moreover, such bilateral agreements also provide clarity about airline tariffs, passenger capacity restrictions and airline route networks.⁽⁶⁾

The text of the Freedoms of the Air as specified by ICAO has been reproduced below:

First Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (also known as a First Freedom Right).

Second Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (also known as a First Freedom Right).

Third Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier (also known as a Third Freedom Right).

GUEST ARTICLE

"Fourth Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier (also known as a Fourth Freedom Right).

Fifth Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State (also known as a Fifth Freedom Right).

ICAO characterizes all "freedoms" beyond the Fifth as "so-called" because only the first five "freedoms" have been officially recognized as such by international treaty.

Sixth Freedom of the Air - the right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other States (also known as a Sixth Freedom Right). The so-called Sixth Freedom of the Air, unlike the first five freedoms, is not incorporated as such into any widely recognized air service agreements such as the "Five Freedoms Agreement".

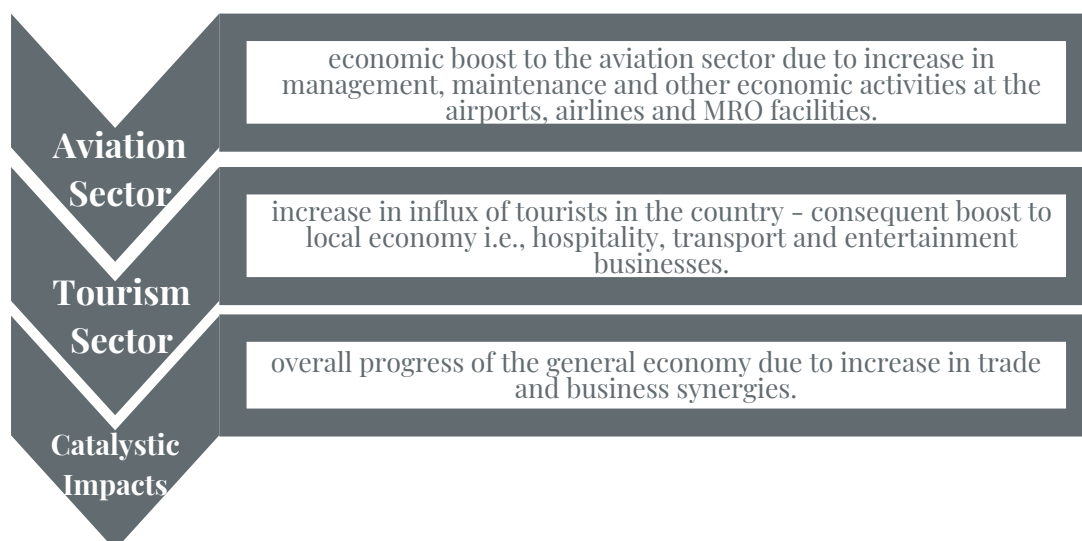
Seventh Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e. the service need not connect to or be an extension of any service to/from the home State of the carrier.

Eighth Freedom of the Air - the right or privilege, in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State (also known as Eighth Freedom Right or "consecutive cabotage").

Ninth Freedom of the Air - the right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State (also known as a Ninth Freedom Right or "stand alone" cabotage)." (7)

II Air Service Liberalisation and Freedoms of Air

The liberalization in the aviation sector is often viewed with a limited lens of promoting increase in the passenger travel.(8) The 2009 Report prepared by InterVISTAS-EU Consulting Inc. made an interesting observation about the impact of liberalization on the wider economy, and this is illustrated below(9):



GUEST ARTICLE

Further, we often turn a blind eye on the positive impact of liberalization of the Air Cargo industry resulted from the Fifth and Seventh Freedom Rights being allowed by certain countries. Examples of Seventh Freedom Right being utilized by the contracting States and their carriers, includes introduction of Kuala Lumpur - Dubai - Newark route and Dubai-New York route by Malaysia Airlines,⁽¹⁰⁾ deal signed between United Kingdom and Singapore in 2007⁽¹¹⁾ and an agreement entered into between Chile, New Zealand, Singapore and Brunei.⁽¹²⁾

In January 2020, Azerbaijan granted Seventh Freedom Right to all airlines of the prescribed 40 countries to promote tourism and attract foreign airlines to introduce more routes connecting Azerbaijan with various other destinations. Nevertheless, this measure was also introduced to enhance travel experience of Azerbaijan's nationals by providing access to many more international destinations and direct flight routes.⁽¹³⁾ Recently, China decided to convert Hainan FTP into an international center by allowing foreign carriers to operate in such region. This has been made possible because the Chinese government has broadened air traffic rights to include the Fifth Freedom and Seventh Freedom of the Air.⁽¹⁴⁾ This move is likely to provide economic boost to the Hainan based airlines and carriers who are Star Alliance, Oneworld or Sky Team alliance partners.⁽¹⁵⁾ It is worthwhile to note that there are certain carriers that find the Seventh Freedom Right to be an unattractive option due to: (a) lack of awareness about the commercial feasibility of operations in the foreign country; (b) lack of clarity about the labour law regime of such country; and (c) surge of code-sharing and alliance partnerships with the foreign carriers.⁽¹⁶⁾

Globally, the rampant spread of COVID-19 virus led to implementation of protectionist measures such as international travel restrictions and quarantine requirements. Due to such measures being implemented by India and other countries, global leisure travel came to a grinding halt and BASAs were being suspended to a great extent.⁽¹⁷⁾

A multilateral agreement was conceptualized by the member states of Latin American Civil Aviation Commission to counter the economic slump caused by COVID-19 crisis and promote aviation recovery.⁽¹⁸⁾ This agreement aimed to promote air cargo liberalization in the Latin American region.⁽¹⁹⁾ ICAO Secretary General Dr. Fang Liu opined that - *"In the near-term it should help increase the efficiency of vaccine distribution, and in the longer term it should enable air cargo and in particular e-commerce to play even more important parts in regional economic recovery and development. I strongly encourage other States and Regions to take similar action"*⁽²⁰⁾.

During the afore-mentioned crisis, the Ministry of Civil Aviation ("**MoCA**") commenced the Vande Bharat Mission wherein the national carrier and other private airlines started repatriation flights to and from India, to provide much needed relief to the Indian nationals stranded at various foreign locations. As per the recent statistics published by MoCA, 4,626,431 Air India passengers (one of carriers permitted to fly as a part of the Vande Bharat Mission) benefitted from such repatriation flights.⁽²¹⁾

Further, MoCA proposed bilateral air bubble arrangements i.e. "temporary arrangements between two countries aimed at restarting commercial passenger services when regular international flights are suspended as a result of the COVID-19 pandemic. They are reciprocal in nature, meaning airlines from both countries enjoy similar benefits".⁽²²⁾ Accordingly, India entered into air bubble arrangements with countries such as Bahrain, Afghanistan, US, UK, France, Germany, Canada and Qatar.

GUEST ARTICLE

These arrangements have been instrumental for Indian government as it has facilitated re-establishment of air links with other countries during pandemic and granted certain freedoms of the air to such countries.⁽²³⁾

Going forward it would be worthwhile that the Indian aviation regulator may consider broadening air traffic rights to include Seventh Freedom Right for emergency cargo and perishable cargo operations in the relevant bilateral agreements at certain Indian airports as it will assist in transportation of such cargo in the post-pandemic era.

Disclaimer - The views expressed here are of the author alone (does not reflect the views of SpiceJet Limited) and readers should not act on the basis of this information without seeking professional legal advice.

Foot notes

- Shinjini Kharbada is a Senior Legal Manager at SpiceJet Limited. She holds an LL.M. from NYU School of Law and B.A., LLB (Hons.) from School of Law, Christ University, India.
- 1. ICAO, The History of ICAO and Chicago Convention <<https://www.icao.int/about-icao/History/Pages/default.aspx>>; ICAO, Convention on International Civil Aviation, Doc 7300/9 <<https://www.skybrary.aero/bookshelf/books/999.pdf>>
- 2. Id.
- 3. American Historical Association, What Are the "Five Freedoms" of Air Transport? <[https://www.historians.org/about-aha-and-membership/aha-history-and-archives/gi-roundtable-series/pamphlets/em-17-how-free-are-the-skyways-\(1945\)/what-are-the-five-freedoms-of-air-transport](https://www.historians.org/about-aha-and-membership/aha-history-and-archives/gi-roundtable-series/pamphlets/em-17-how-free-are-the-skyways-(1945)/what-are-the-five-freedoms-of-air-transport)>
- 4. ICAO, Freedoms of the Air, Manual on the Regulation of International Air Transport (Doc 9626, Part 4) <<https://www.icao.int/pages/freedomsair.aspx>>
- 5. Comptroller and Auditor General of India, Audit Report, Chapter 6: Management of bilateral agreements and slot management (Report No. 40 of 2016) <https://cag.gov.in/uploads/download_audit_report/2016/Chapter_6_Management_Union_Government_Report_40_of_2016_Commercial_Civil_Aviation_PA.pdf>
- 6. Zivile Zalagenaitė, Freedoms of the sky: the basics of passenger traffic agreements <<https://www.aerotime.aero/19397-freedoms-of-the-sky-the-basics-of-passenger-traffic-agreements>>
- 7. Supra note 4; International Transport Forum, Liberalisation of Air Transport, Research Report (2019) <https://www.itf-oecd.org/sites/default/files/docs/liberalisation_air_transport.pdf>
- 8. InterVISTAS-EU Consulting Inc., The Impact of International Air Service Liberalisation on Chile (July 2009) <<https://www.iata.org/en/iata-repository/publications/economic-reports/chile-benefits-from-further-liberalization/>>
- 9. Id.
- 10. Flight Global, Lifting the 7th veil (1998) <<https://www.flightglobal.com/lifting-the-7th-veil/23396.article>>
- 11. Zivile Zalagenaitė, Freedoms of the sky: the basics of passenger traffic agreements, AeroTime Hub (2017) <<https://www.aerotime.aero/19397-freedoms-of-the-sky-the-basics-of-passenger-traffic-agreements>>
- 12. Supra note 8.
- 13. Press service of CJSC Azerbaijan Airlines, AZAL to open its sky to all airlines <<https://www.azal.az/en/article/534>; <https://simpleflying.com/azerbaijan-fifth-freedom/>>
- 14. Hainan's Official Portal for Global Investors, Why Hainan FTP? <<http://www.investhainan.cn/wh/>>; The State Council, The People's Republic of China, China tests Seventh Freedom of the Air in Hainan FTP (June 2020) <http://english.www.gov.cn/statecouncil/ministries/202006/10/content_WS5ee01967c6d0a6946639bc33.htm>; Jin Yu-Lai, Hainan Free Trade Port: exciting opportunities on the horizon (September 2021) <<https://www.lexology.com/commentary/shipping-transport/china/kairong-law-firm/hainan-free-trade-port-exciting-opportunities-on-the-horizon>>; Gide, China releases master plan for Hainan free trade port (June 2020) <<https://www.gide.com/en/news/china-releases-master-plan-for-hainan-free-trade-port>>
- 15. Id.
- 16. Supra note 10.
- 17. Satyendra Pandey, Freedoms of the Air: strategic aviation assets for a nation <<https://www.bangaloreaviation.com/2014/09/freedoms-air.html#!>>; Vinamra Longani, Is the "Bi-lateral Air Service Agreement" being replaced by the "Air Bubble"? (September 2020) <<https://sarinlaw.com/air-bubble-vande-bharat-mission-repatriation/>>
- 18. ICAO, New ICAO-LACAC air cargo liberalization agreement to bolster regional vaccine transport long-term recovery <<https://www.icao.int/Newsroom/Pages/New-ICAO-LACAC-air-cargo-liberalization-agreement-to-bolster-regional-vaccine-transport-long-term-recovery.aspx>>; CAPA, Latin American Civil Aviation Commission implements air cargo liberalisation agreement (December 2020) <<https://centreforaviation.com/news/latin-american-civil-aviation-commission-implements-air-cargo-liberalisation-agreement-1045197>>; Brazil, Chile, Dominican Republic, Ecuador, Guatemala, Panama, Paraguay, Peru, Uruguay and Venezuela are parties to the multilateral agreement.
- 19. Id.
- 20. Id.
- 21. Ministry of Civil Aviation, Vande Bharat Mission - Number of flights and passengers flown <https://www.civilaviation.gov.in/sites/default/files/flights_and_flawn-6-10-2021.pdf>
- 22. Ministry of Civil Aviation, About Air Transport Bubbles <<https://www.civilaviation.gov.in/en/about-air-transport-bubbles>>
- 23. Supra note 17.

LEGAL UPDATE



No objection/response to arbitration invocation notice and S. 11 petition would prima facie constitute acceptance regarding existence of arbitration agreement

DELHI HIGH COURT: SWASTIK PIPE LTD. V/s SHRI RAM AUTOTECH PVT. LTD [ARB.P. 241/2021]

Brief facts of the case:

By way of the petition under section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act'), the Petitioner sought appointment of Arbitrator to adjudicate disputes between parties arising from the tax invoices issued by the Petitioner in course of its dealings with the Respondent. The Petitioner being engaged in the business of manufacturing and supplying steel pipes and tubes had been providing C.R strips to the Respondent, as per Respondent's request and specification. In view of the aforesaid business dealings, the Petitioner contended that an amount of Rs. 15, 63, 217/- was outstanding against the goods which have been already delivered to the Respondent.

As the liability was not discharged by the Respondent, the Petitioner issued a legal notice dated 31st December, 2020 calling upon the Respondent to pay the outstanding amount or agree to arbitration in terms of the arbitration clause as contained in the invoices. On service of the legal notice, the Respondent neither made payment nor replied to the said notice. In these circumstances, the Petitioner approached the High Court for appointment of arbitrator. Thereafter, the petition was taken up and notice was issued on the Respondent. Despite successful service the Respondent chose not to appear before the court. Accordingly, court proceeded to decide the petition *ex-parte*.

The pertinent issue for consideration before the Hon'ble Delhi High Court was as to whether the terms and conditions appearing on the invoices accompanying delivery of goods would constitute valid arbitration agreement between the parties, specifically since the invoices containing the arbitration agreement were not signed by the Respondent.

Court's Findings:

The Court initially examined sub clause (b) of section 7 (4) of the Act which states that an arbitration agreement can be in the nature of exchange of communication/ writing(s), which provides a record of agreement in writing. Upon which, Court observed that intention of the legislature is clear to include written documents not signed by parties, within the ambit of valid arbitration agreement. To ascertain validity of an arbitration agreement which is in writing but not signed by the parties, Court pointed out that it is essential to ascertain if there was intention of the parties or consensus ad idem to refer the disputes to arbitration.

In support of the aforesaid position of law, Court relied upon the findings of the following cases on the subject matter:

(a) *In M/s Caravel Shipping Services Pvt. Ltd. vs. Premier Sea Food Exim Pvt. Ltd.(1)* the Supreme Court reiterated that the only pre-requisite to validity is that the arbitration agreement must be in writing, but section 7 (4) could not be construed rigidly to imply that in all cases arbitration agreement needs to be signed.

LEGAL UPDATE

(b) In **Trimex International FZE Ltd. Dubai vs. Vedanta Aluminium Ltd. India**(2) the Supreme Court held that in the absence of a signed agreement between the parties, the existence of the arbitration agreement can be inferred from various documents duly approved and signed by parties in the form of exchange of emails, letters and others.

(c) The division bench of the Delhi High Court in **Scholar Publishing House Pvt. Ltd. vs. Khanna Traders**(3) has held that there is no straight-jacket formula to say whether condition on invoices can amount to binding arbitration clauses. That an arbitration agreement could be inferred through a series of correspondences, or even on demur of one of the parties, who can otherwise object to it on the ground of absence of agreement.

In addition to the aforesaid, Court relying upon sub clause (c) of section 7 (4) of the Act reiterated that it is clear that an arbitration agreement can be inferred from the exchange of statement of claim and defence in which existence of agreement is alleged by one party and not denied by the other.

Applying the aforesaid principles of law, Court noted that the Respondent did not file any reply to deny the assertion of existence of arbitration agreement, both in response to the legal notice and on service of notice for hearing. The consequence of such non-appearance would mean that assertion of existence of arbitration agreement is un rebutted. On the basis of the aforesaid prima facie findings, Court held that it can be inferred that the arbitration agreement exist between the parties. Accordingly, Petition was allowed and a sole Arbitrator was appointed by the Court.

(1) (2010) 3 SCC 1

(2) (2019) 11 SCC 461

(3) (2013) (3) Arb. LR 105 Delhi – Appeal against this order is pending before the Supreme Court

CORPORATE REGULATORY UPDATES

Income-tax (26th Amendment) Rules, 2021

On 6 September 2021, the Ministry of Finance issued a notification on "Income-tax (26th Amendment) Rules, 2021". In terms of this notification, Rule 14 C has been inserted after Rule 14 B of the Income-tax Rules, 1962, and it reads as:

14C Prescribed manner of authentication of an electronic record under electronic verification code under sub-clause (b) of clause (i) of sub-section (7) of section 144B.-

For the purposes of sub-clause (b) of clause (i) of sub-section (7) of section 144B, where an assessee or any other person submits an electronic record by logging into his registered account in designated portal of the Income-tax Department, it shall be deemed that the electronic record has been authenticated under electronic verification code.

Explanation - For the purposes of this rule, —"designated portal" shall have the same meaning as assigned to it in clause (i) of the Explanation below to section 144B.

This notification shall come into force from 6 September 2021.

Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

On 8 September 2021, the Reserve Bank of India ("RBI") issued the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021 and came into effect on the same date. The amendment provides that in the Principal Regulations (that is Foreign Exchange Management (Export of Goods and Services) Regulations, 2015), in Regulation 15, in sub-regulation 1, for clause (ii), the following shall be substituted, namely: -

"ii) the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank, as the case may be; and"

Application for Aadhaar e-KYC authentication license

On 13 September 2021, RBI issued a circular on application for Aadhaar e-KYC authentication license.

In terms of Section 11A of the Prevention of Money Laundering Act, 2002, entities other than banking companies may, by notification of the Central Government, be permitted to carry out authentication of client's Aadhaar number using e-KYC facility provided by the Unique Identification Authority of India (UIDAI). Such notification shall be issued only after consultation with UIDAI and the appropriate regulator.

'A detailed procedure for processing of applications under the aforementioned Section for use of Aadhaar authentication services by entities other than banking companies has been provided by the Department of Revenue, Ministry of Finance vide its circular dated 9 May 2019.

Accordingly, Non-Banking Finance Companies (NBFCs), Payment System Providers and Payment System Participants desirous of obtaining Aadhaar Authentication License - KYC User Agency (KUA) License or sub-KUA License (to perform authentication through a KUA), issued by the UIDAI, may submit their application to this Department for onward submission to UIDAI. The applications can also be forwarded over email. The format of the application is provided in the Annex to the circular.

Clarifications with respect to Circular dated 28 April 2021 on 'Alignment of interest of Key Employees ('Designated Employees') of Asset Management Companies (AMCs) with the Unitholders of the Mutual Fund Schemes'

On 20 September 2021, the Securities and Exchange Board of India ("SEBI") decided to provide clarity on certain provisions and on the applicability of the Circular dated 28 April 2021, that provided that a part of the compensation of Key Employees of the AMCs shall be paid in the form of units of the scheme(s) in which they have a role or oversight.

With regards to the SEBI circular dated 28 April 2021 (hereinafter referred to as "Alignment circular"), following aspects, amongst other aspects, are clarified:

(1) The term 'Key employees' shall be read as 'Designated Employees'.

(2) The phrase 'paid in the form of units' shall be read as 'mandatorily invested in units'.

(3) a) For junior employees, the provision under para 2(i) of the Alignment Circular shall be implemented in a phased manner i.e.10% in the 1st year and 15% in the 2nd year of implementation of the Alignment circular. In other words, junior employees shall be required to invest 10% during October 01, 2021 to September 30, 2022 and 15% during October 01, 2022 to September 30, 2023.

(b) All junior employees shall be mandatorily required to invest 20% as specified under para 2(i) of the Alignment circular with effect from 1 October 2023 onwards. However, as prescribed in the circular dated 25 June 2021, other designated employees shall be mandatorily required to invest 20% as specified under para 2(i) of the Alignment circular with effect from 1 October 2021.

CORPORATE REGULATORY UPDATES

(c) The phased implementation for junior employees shall cease to apply from the date such employee attains the age of 35 years. For this purpose, a designated employee of the AMC below the age of 35 years (excluding CEO, head of any department and Fund Managers), shall be deemed as “junior employee”).

(4) With regards to the provisions under para 2 of the Alignment circular, it is clarified that:

- All non-cash benefits and perks shall be accounted for in CTC at the perquisite value as per the Form 16 under Income Tax Act, 1961. However, superannuation benefits and Gratuity paid at the time of death/retirement, shall not be included in the CTC.
- The perquisite value of interest on loan availed by the Designated Employees against the units from the AMC as specified in para 2(iv) of the Alignment circular shall not be included in the CTC.
- Designated Employees may set off their existing investments as on date of the applicability of the Alignment circular, if any, against the fresh investments as required in the same schemes.
- Designated Employees may set off their units, for which the required lock-in period of 3 years is expired, against the fresh investments required to be made in the same schemes as per the provisions of the Alignment circular. In such cases, AMC shall ensure that such units are locked in for the further period of 3 years or tenure of the scheme, whichever is less.

Extension of time for holding of Annual General Meeting ('AGM') for the Financial Year ended on 31.03.2021

The Companies Act, 2013 (Act) requires a company (other than one person company), in every year, to hold its annual general meetings (AGM) within a period of 6 months (9 months in case of first AGM) from the closure of financial year, and in any event not later than a period of 15 months from the date of last AGM. However, on account of second wave of Covid-19 and consequent lockdowns, respective Registrar of Companies (ROC) released an order on September 23, 2021 relaxing the norms for the companies whose financial year (other than first financial year) ended on March 31, 2021 and allowing such companies to hold their AGMs within a period of 2 months from the due date by which such companies are required to conduct their AGMs.

Master Direction - Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021

On 24 September 2021, RBI issued the Master Direction on Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021.

These directions come into immediate effect replacing the existing instructions on the matter of securitisation of standard assets. Securitisation involves transactions where credit risk in assets are redistributed by repackaging them into tradeable securities with different risk profiles which may give investors of various classes access to exposures which they otherwise might be unable to access directly. While complicated and opaque securitisation structures could be undesirable from the point of view of financial stability, prudentially structured securitisation transactions can be an important facilitator in a well-functioning financial market in that it improves risk distribution and liquidity of lenders in originating fresh loan exposures. Given the above, in exercise of the powers conferred by the Sections 21 and 35A of the Banking Regulation Act, 1949; Chapter IIIB of the Reserve Bank of India Act, 1934; and Sections 30A, 32 and 33 of the National Housing Bank Act, 1987, the RBI, being satisfied that it is necessary and expedient in the public interest so to do, issued these directions.

The provisions of these directions shall apply to the following entities (collectively referred to as lenders in these directions) unless specifically mentioned otherwise:

- Scheduled Commercial Banks (excluding Regional Rural Banks);
- All India Term Financial Institutions (NABARD, NHB, EXIM Bank, and SIDBI);
- Small Finance Banks (as permitted under Operating Guidelines for Small Finance Banks dated 6 October 2016 and as amended from time to time); and,
- All Non-Banking Financial Companies (NBFCs) including Housing Finance Companies (HFCs).

These directions will be applicable to securitization transactions undertaken subsequent to the issue of these directions.

Master Direction - Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021

On 24 September 2021, RBI issued the Master Direction on Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021. These directions come into immediate effect replacing the existing instructions on the matter of sale/transfer of loan exposures.

Loan transfers are resorted to by lending institutions for multitude of reasons ranging from liquidity management, rebalancing their exposures or strategic sales. A robust secondary market in loans can be an important mechanism for management of credit exposures by lending institutions and also create additional avenues for raising liquidity.

CORPORATE REGULATORY UPDATES

It is therefore necessary to lay down a comprehensive, self-contained set of regulatory guidelines governing transfer of loan exposures. Accordingly, in exercise of the powers conferred by the Sections 21 and 35A of the Banking Regulation Act, 1949 read with Section 56 of the Banking Regulation Act, 1949; Chapter IIIB of the Reserve Bank of India Act, 1934; and Sections 30A, 32 and 33 of the National Housing Bank Act, 1987, the RBI, being satisfied that it is necessary and expedient in the public interest so to do, issued these directions.

The provisions of these directions shall inter-alia apply to the following entities (collectively referred to as lenders in these directions), unless specified otherwise:

- Scheduled Commercial Banks;
- Regional Rural Banks;
- Primary (Urban) Co-operative Banks/State Co-operative Banks/District Central Co-operative Banks;
- All India Financial Institutions (NABARD, NHB, EXIM Bank, and SIDBI); (e) Small Finance Banks; and
- All Non Banking Finance Companies (NBFCs) including Housing Finance Companies (HFCs).

Extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014

Certain class of companies as specified under the provisions of the Act are required to appoint a cost auditor and the cost auditors are required to submit their cost audit report to the board of directors within 180 days from the closure of relevant financial year.

However, on account of second wave of Covid-19 and consequent lockdowns, the MCA has vide its Circular dated September 27, 2021 relaxed the additional fees and extended the last date of filing of Form CRA-4 for the FY 2020-21.

The Cost Auditors are now allowed to submit the cost audit report to the board of directors by October 31, 2021 and the companies are allowed to submit the cost audit report within 30 days from the date of receipt of cost audit report.

Further, where companies have got extension of time for holding the annual general meeting they may file Form CRA-4 within 30 days of convening of the annual general meeting.

Risk Management Framework (RMF) for Mutual Funds

On 27 September 2021, SEBI decided to review the extant Risk Management Framework for Mutual Funds. The matter was deliberated in the Mutual Funds Advisory Committee (MFAC) based on the inputs received from the mutual fund industry. The recommendations of MFAC have been suitably incorporated in the Risk Management Framework for mutual funds. With the overall objective of management of key risks involved in mutual fund operation, the revised Risk Management Framework (RMF) shall provide a set of principles or standards, which inter alia comprise the policies, procedures, risk management functions and roles & responsibilities of the management, the Board of AMC and the Board of Trustees.

The elements of RMF, wherever applicable, have been segregated into 'mandatory elements' which should be implemented by the AMCs and 'recommendatory elements' which address other leading industry practices that can be considered for implementation by the AMCs, to the extent relevant to them. AMCs shall perform a self-assessment of their RMF and practices and submit a report, thereon, to their Board along with the roadmap for implementation of the framework. The aforesaid exercise must be completed and the necessary systems must be in place at the AMCs to enable compliance with the provisions of this circular with effect from 1 January 2022. The Circular dated 30 September 2002 on "Risk Management System" shall be rescinded with effect from 1 January 2022. However, AMCs may choose to adopt the provisions of this circular before the effective date.

Compliance with the RMF should be reviewed annually by the AMC. Reports of such reviews shall be placed before the Board of AMC and Trustees for their consideration and appropriate directions, if any. Trustees may forward the findings and steps taken to mitigate the risk along with their comments to SEBI in the half-yearly trustee reports.



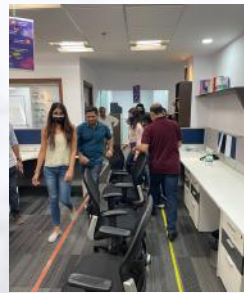
RECENT EVENTS



"Clasis Law - Annual Championship 2021"

13 & 14 October 2021

After two days of rigorous, tough, extreme and dedicated competition, work life balance was perfectly created in our offices. During the last two years, we all have witnessed new way of working and living as well. Since work is important, having fun at work is also equally important and series of varied sports enriched our health. Sports are about staying active, feeling proud, developing as a player, and making friends. Above all, the point was to have fun.





OFF BEAT SECTION



International Coffee Day

Coffee owns the love of millions of beverage drinkers across the world. International Coffee Day is celebrated on October 1st with the aim of educating people of the plight of farmers and their economic instability. On this day, coffee lovers celebrate by making experimental recipes of the beverage and organizing various events in cafes and coffee outlets. Let's read about some interesting facts about this day.



First initiated in Japan, it was officially declared as International Coffee Day in 2015.



In 2005, United States also declared "National Coffee Day".

International Coffee Organisation, was established in 1963 in London and overlooks matters related to coffee.

OUR OFFICES



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

WWW.CLASISLAW.COM

Follow us on



Subscribe to
our bulletin



DISCLAIMER: This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to herein. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions.