Vol. 9 | September 2021

We are 11!

CLASIS LAW

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

THE MONTHLY BULLETIN

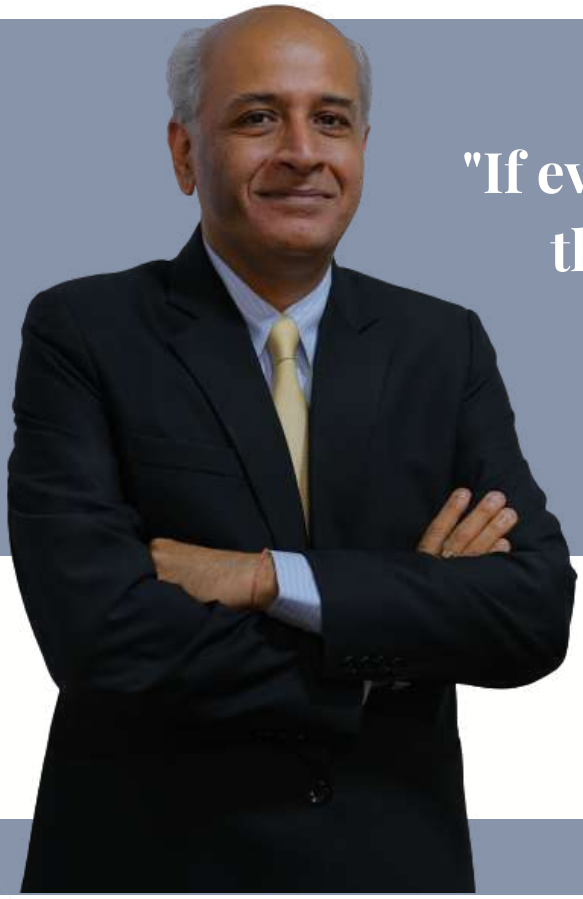
Official newsletter of the Clasis Law

In this Issue

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

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.

WE ARE 11!
MESSAGE FROM VINEET ANEJA



"If everyone is moving forward together, then success takes care of itself."
--Henry Ford.

Vineet Aneja
Founder & Managing Partner
& Head of Corporate Practice
Clasis Law

To all our clients, business associates and friends – I thank you for your continued support and commitment to Clasis Law.

I am extremely proud to announce that Clasis Law has marked its *11th anniversary* – a significant milestone.

Celebrating any anniversary is all about our two biggest assets, our clients and our employees/business associates. I am very grateful to all our employees/business associates for their dedication and patience, for delivering quality work for our clients and for making Clasis Law a family.

As I turn back to our journey of eleven years, the last two years seem to be more precious because the last two years actually taught us the implementation of new strategies and tactics for a sustainable growth in the dynamic environment, while the continuous business development activities ensured that the show must go on. All transitions over the last 11 years came with great efforts, resulting in Clasis Law being recognized in the market as a professional and process driven firm, which drives its business through knowledge, expertise, hard work and focus on client service driven by its innovative and client centric approach.

WE ARE 11!
MESSAGE FROM VINEET ANEJA

Announcing Next Milestones

Looking forward to future prospects, I believe in seeing many more great experiences, more expansion, growth and excitement. We want to continue bestowing the clients with an amazing work experience. We will surely be entering into, and adapting new technologies, sectors, and areas of practice. We also have been successful in riding the new technology wave that has come into existence during the last couple of years. No doubt we will be facing challenges again, but I equally believe that our team will again meet all such challenges successfully.

We are all focused in making the firm stronger by finding solutions to the legal challenges faced by you and hoping that we shall soon overcome this global health crisis in a good shape.

Stay Safe Stay Healthy.

Looking forward to another 11 years and more with you all!

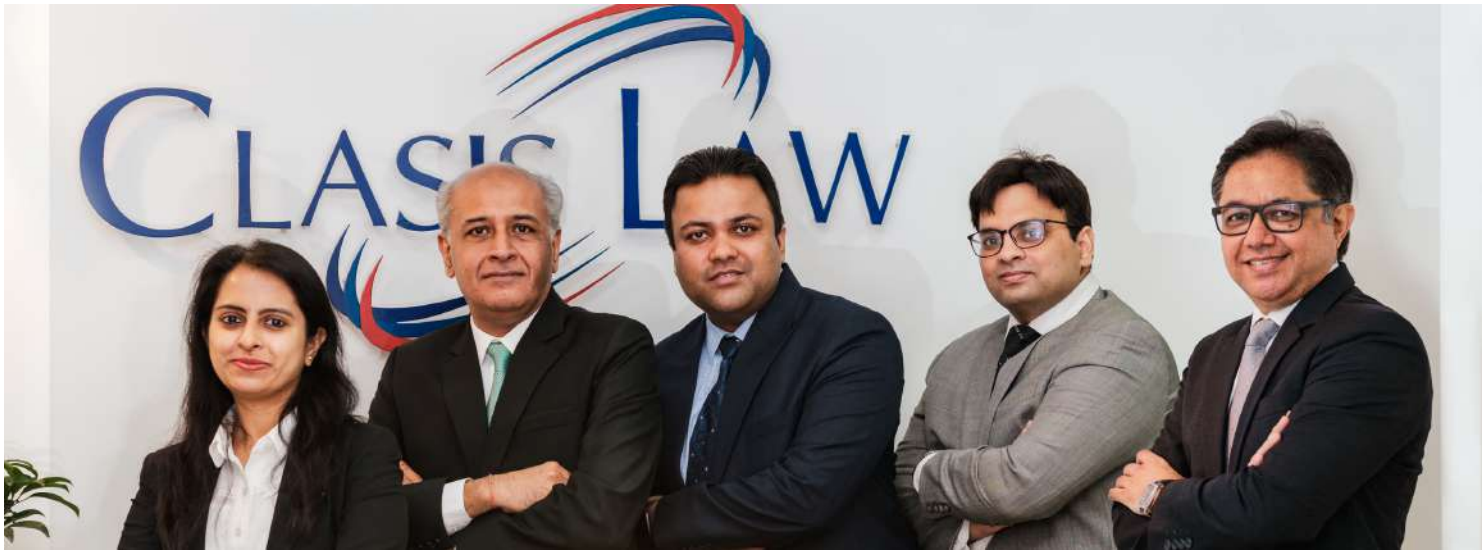
Vineet Aneja,
Founder and Managing Partner & Head of Corporate Practice

CLASIS LAW

MEDIA COVERAGE - WE ARE 11!

IT'S BEEN QUITE A JOURNEY, BUT IT FEELS LIKE WE'RE JUST GETTING STARTED.

Anniversary Celebrations

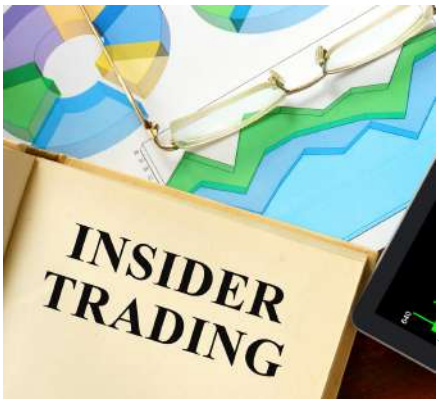


MEDIA COVERAGE

Vineet featured in an exclusive Q&A series titled “Clasis Law Marks 11 Years - Q&A” published on Conventus Law. In this Q&A series he discussed about his kick on starting the firm and the evolution of the firm culture during eleven years. Please read more at this link - https://lnkd.in/gTuNBWXP

Mustafa share his thoughts about how the courts adapted to the covid-19 pandemic and the recent litigation trends in India which have been and may be for the remainder of 2021 published by ILO. He also share his views on how to avoid common pitfalls in the process. Please read the article at this link - https://lnkd.in/dEv9X2JG

GUEST ARTICLE



India – Insider Trading Laws

Sakshi Gaur,
Legal Manager
Propelld

Introduction – What is Insider Trading?

Insider trading has become widespread in the growing economies and in today's market. Insider trading occurs when a person having possession of sensitive non-public information uses it to trade shares for his/her own advantage. In the United States of America, the Securities and Exchange Commission **("SEC")** defines 'Insider trading' as referring to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, non-public information about the security.

Insider trading is per say harmful to the growing economy. The security market was developed in India back in 1875 with the establishment of Bombay Stock Exchange (BSE). The Securities and Exchange Board of India (SEBI) was established in 1992 to regulate the market and offence of insider trading. In USA, the first insider trading laws were passed in the year 1934. Even though the insider trading violations have been around for a long time, with the establishment of stock exchanges, the fight against the insider trading violations is comparatively new. The law in India is still underdeveloped in comparison to the Western economies especially if we look at the rate of convictions on insider trading. Even today, SEBI is not equipped with surveillance powers and phone tapping unlike few other regulatory authorities in India.

SEBI (Prohibition of Insider Trading) Regulations of 2015 (2015 PIT Regulations)

Regulation 2(g) provides the definition of an insider. It has two clauses as to who can qualify as an insider. Firstly, a person who is or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information (UPSI) in respect of securities of a company, and secondly, a person who has received or has had access to such UPSI.

Regulation 2(d) of the 2015 PIT Regulations defines "connected person" as any person who in the past six months when the concerned act occurred has been associated with a company, directly or indirectly, had access to UPSI or were reasonably expected to have such access.

'Unpublished price sensitive information' (UPSI) has been defined under PIT as the information that is not generally available, and which may materially affect the price of securities on coming into public domain.

Need For Amendments in Insider Trading Laws of India

Let us look at few Indian cases decided under the law to understand further why the need for amendments arose in the insider trading laws of India.

- *Rakesh Agarwal Vs. SEBI (1)*

The Appellant was the MD of ABS Industries. In October 1996, Bayer took a controlling interest in ABS. During SEBI's investigation it was revealed that Mr. Kedia, the brother-in -law of the appellant had purchased shares prior to the acquisition on the basis of UPSI related to the impending acquisition and this transaction made by Mr. Kedia was funded by the appellant. It was also revealed that such purchase was made on the behest of the appellant. SEBI found out that the share purchase was based on the UPSI in relation to the imminent takeover of ABS by Bayer, and this information was available to the Appellant by virtue of his position as Managing Director of ABS. The SAT held that the basic underlying principle of insider trading regulations is to prohibit the misuse of information and use it to get unfair benefit. SAT was also of the opinion that when a person takes advantage of the UPSI or uses it for their own personal benefit, there is a contravention of the fiduciary obligation owed by the corporate insider.

- The WhatsApp Leak Case

In November 2017, certain articles distributed in the print media brought to SEBI's attention that UPSI regarding predicted earning patterns of 12 Indian companies were being circulated on WhatsApp groups, well before they were officially announced. SEBI started an investigation into the issue and around 190 gadgets were seized, through which the WhatsApp conversations were taking place. The accused in these orders took a stand that the data in the WhatsApp messages was not UPSI but it was 'heard on the street' ("HOS").

Since SEBI is not authorized with powers through which it can carry an inquiry over end-to-end encrypted based software/applications such as WhatsApp, it ordered the seizure of mobile phones to look into the chats. SEBI penalized Ms. Shruti Vora from Antique Stock Broking for releasing UPSI relating to financial results of Asian. Besides, two other analysts, Parthiv Dalal and Neeraj Kumar Agarwal - were also fined.

In March 2021 the Securities and Appellate Tribunal (SAT) set aside the decision by the SEBI and held*(2)* that SEBI failed to establish any insider trading connection. As per the SAT, generally available information cannot be construed as UPSI. "The information can be branded as an UPSI only when the person getting the information had a knowledge that it was unpublished price sensitive information."

Lacunas in Implementation of the Existing Regulations

The implementation of the regulatory mechanism highlights some significant glitches that need to be plugged. Investigative powers given to SEBI needs to be improved.

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(1) Rakesh Agarwal v. SEBI, (2004) 1 CompLJ 193 SAT (India).
(2) Shruti Vohra Vs SEBI (Appeal No. 308 of 2020)
<http://sat.gov.in/english/pdf/E2021_JO2020308_25.PDF>

(a) *Search and Seizure powers* - As of date, SEBI still does not have the power to wiretap the phone calls. This power has played an instrumental and essential role by which SEC has investigated matters in USA.

(b) *Non-utilization of existing penal provisions to their maximum capacity* - SEBI has failed to recognize and utilize its existing powers to the full extent. It holds the power to institute criminal proceedings and the person if convicted can be imprisoned for a period which can extend to ten years. However, as of date, no one has been sent to prison for the crime of insider trading.

(c) *Lack of Staff* - SEBI faces a shortage of human resource, as its long held 780 odd employees amounts to the ratio of 1:6 which means there isjust one SEBI employee for every six companies. SEBI has been hiring more staff but there is still a long way to go before the ratio can be improved.

Conclusion – A Roadmap to Future

Lack of Human resource coupled with the high difficulty level to investigate insider trading cases, unavailability of up-to-date technological resources including wiretapping make the whole process more cumbersome for the SEBI. It forces SEBI to give priority to other investigations over insider trading investigations. The recent Amendment brought in 2019 in the PIT Regulations have to some extent eased the investigative powers of SEBI.

In order to incentivize and encourage informants, SEBI said, informants would be suitably rewarded in case the UPSI by them provided leads to a disgorgement of at least Rs 1 crore. The total amount of monetary reward shall be 10 per cent of the monies collected but shall not exceed Rs 1 crore. Though it is yet to see how much of progress will this bring in increasing the rate of conviction in insider trading cases in India.

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

LEGAL UPDATE

SUPREME COURT ALLOWS ENFORCEMENT OF A FOREIGN AWARD AGAINST NON-SIGNATORIES TO AN ARBITRATION AGREEMENT

The Hon'ble Supreme Court has recently expounded on the issue of whether an arbitration award could be enforced against a party who was not a signatory to the arbitration agreement in its recent judgment in Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd.(1)

The dispute revolves around a representation agreement **('Agreement')** entered between a foreign corporation namely Integrated Sales Services Ltd. **('ISS')** and an Indian company namely DMC Management Consultants Ltd. **('DMC')**. The said agreement was signed by the Managing Director of DMC and the Director of ISS, however, the agreement was later amended and was executed by the Chairman of DMC and the Director of ISS. The said agreement was governed by laws of Delaware, USA and contained an arbitration clause which stipulated that any dispute between the parties was to be referred to a single arbitrator in Kansas City, Missouri, USA.

Thereafter, certain disputes arose between the parties, and a notice for arbitration was sent by ISS to the Chairman of DMC and was followed by filing of a statement of claim before the Ld. Arbitrator naming the Chairman of DMC, DMC Global, Gemini Bay Consulting Limited ('GBC') and Gemini Bay Transcription Private Limited ('GBT') as the Respondents. It was herein alleged by ISS that the Chairman of the DMC was controlling the affairs of all the Respondents and was diverting the business of DMC to GBT and GBC with an intention to deprive ISS of its commission. The Tribunal awarded damages totaling USD 690 million to ISS jointly payable by the Chairman of DMC, DMC Global, GBC and GBT.

ISS thereupon filed for enforcement of the foreign arbitral award before the Bombay High Court under Section 48 of the Arbitration and Conciliation Act, 1996 ('Act'). However, the Single Judge held that the arbitral award was enforceable only against DMC and not against the other three Respondents as they were non-signatories to the arbitration agreement. The said decision of the Single Judge was reversed on appeal by the Division Bench of the High Court wherein it was held that the award could only be challenged under Section 48 if the Delaware law has not been followed on the 'alter ego' principle. Aggrieved by the decision, the Chairman of DMC, GBC and GBT approached the Supreme Court by way of special leave petitions resisting enforcement of the award.

Decision and analysis of the Supreme Court

Enforcement of foreign award against non-signatory to arbitration agreement:

Relying upon various judgments, the Supreme Court rejected the preliminary objection by Appellant that the Respondent had failed to discharge the burden of proving that the arbitral award could be enforced against a non-signatory to the arbitral agreement. The Supreme Court observed that the only evidence contemplated by the Act for enforcement of a foreign award were the formalities provided by Section 47(1) (c) which was based on Article IV of the New York Convention. The Court emphasized that all the requirements of Section 47 of the Act are procedural in nature and does not go to the extent of requiring substantive evidence to "prove" that a non-signatory to an arbitration agreement can be bound by a foreign award. Relying upon various judgments, the Supreme Court rejected the preliminary objection by Appellant that the Respondent had failed to discharge the burden of proving that the arbitral award could be enforced against a non-signatory to the arbitral agreement.

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(1) Civil Appeals Nos. 8343 – 8344 of 2018 and Civil Appeal Nos.8345-8346 of 2018; decision dated August 10, 2021

The Supreme Court observed that the only evidence contemplated by the Act for enforcement of a foreign award were the formalities provided by Section 47(1) (c) which was based on Article IV of the New York Convention. The Court emphasized that all the requirements of Section 47 of the Act are procedural in nature and does not go to the extent of requiring substantive evidence to "prove" that a non-signatory to an arbitration agreement can be bound by a foreign award.

Opposing enforcement of the foreign award under Section 48 of the Act:

The Appellants had referred to Section 48 of the Act which dealt with conditions of enforcement of foreign award to argue that a non-signatory to an arbitration agreement would be directly covered under the said provision. The Supreme Court observed that the grounds under Section 48 of the Act were very specific, and only speaks of incapacity of parties and the agreement being invalid under the law to which the parties have subjected it. And, it was held that in the present dispute the non-signatories could not avail these grounds to wriggle out of award debt.

The Supreme Court observed that the only grounds for refusal of enforcement of a foreign award under Section 48(1)(b) are natural justice grounds relatable to notice of appointment of the arbitrator or of the arbitral proceedings, or that a party was otherwise unable to present its case before the arbitral tribunal, all of which are events anterior to the making of the award.

Perversity as a ground for setting aside a foreign arbitral award:

The Supreme Court observed that perversity as a ground to set aside an award in an international commercial arbitration in India is no longer available after the 2015 Amendment to the Act. The Court relied on the judgment in *Ssangyong Engg. & Construction Co. Ltd. vs NHAI(2)* wherein the Supreme Court had held that the ground of "patent illegality" was an independent ground of challenge which applies only to awards made under Part I of the Act and does not involve international commercial arbitrations. Thus cannot be paralleled as a ground to refuse enforcement of a foreign award under Section 48of the Act.

Torts claim and scope of arbitration agreement:

The Supreme Court observed that Section 44 of the Act recognizes the fact that tort claims may be decided by an arbitrator provided they are disputes that arise in connection with the agreement entered between the parties. It was emphasized that the Court while deciding upon the tort claim has to look into whether the claim arises out of the terms of the contract or is consequential upon any breach thereof.
Basis the above observation, Supreme Court dismissed the present appeals.

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(2) (2019) 15 SCC 131

CORPORATE REGULATORY UPDATES

The Companies (Specification of definitions details) Third Amendment Rules, 2021 and The Companies (Registration of Foreign Companies) Amendment Rules, 2021

The Ministry of Corporate Affairs, India (MCA) on August 5, 2021 issued the Companies (Specification of definitions details) third amendment rules, 2021 **(Definition Rules)** and the Companies (Registration of Foreign Companies) amendment rules, 2021 **(Foreign Company Rules)** to further amend the provisions of the Companies (Specification of definitions details) Rules, 2014 and the Companies (Registration of Foreign Companies) rules, 2014 respectively. As per the amendment an explanation has been inserted to the definition of 'electronic mode' which provides that electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centers set up under Section 18 of the Special Economic Zones Act, 2005 shall not be construed as 'electronic mode' for the purpose of Section 2 (42) of the Companies Act, 2013.

The term 'electronic mode' has been defined under Rule 2(1) (c) of Companies (Registration of Foreign Companies) Rules, 2014 **(Foreign Company Rules)** and 2 (1) (h) of Companies (Specification of definitions details) Rules, 2014 **(Definition Rules)**.

The MCA vide its notification dated August 5, 2021 has exempted certain entities from complying with the provisions of sections 387 to 392 of the Companies Act, 2013. The exemption has been granted in relation to offering for subscription of securities, prospectus related requirements and any other incidental matters, in the International Financial Services Centers set up under Section 18 of the Special Economic Zones Act, 2005. The exempted entities are as follows:

(a) Foreign companies;
(b) Companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India.

The Limited Liability Partnership (Amendment) Act, 2021

The Limited Liability Partnership (Amendment) Act, 2021 as received the assent of President on the August 13, 2021 and this is the first time that changes have been made to the Limited Liability Partnership Act, 2008 since it came into effect in 2009. Through this amendment some key changes that have been introduced are such as introduction of Small Limited Liability Partnership, Decriminalizing of offences, Compounding of offences, Adjudication of Penalties, establishment of Registration offices for the purpose of registration of LLPs, establishment of Special Courts for speedy trial of offences under the Act etc.

'Security and Covenant Monitoring' using Distributed Ledger Technology

On 13 August 2021, the Securities and Exchange Board of India ("SEBI") issued a circular on using Distributed Ledger Technology for 'Security and Covenant Monitoring'. In order to strengthen the process of security creation, monitoring of security created, monitoring of asset cover and covenants of the non-convertible securities, a working group comprising of officials from SEBI, Depositories, Stock Exchanges and Trustees Association of India (TAI) was constituted by SEBI. Based on the recommendations of the working group, a platform for 'Security and Covenant Monitoring System' ('system') hosted by Depositories shall be developed. The system shall be used for recording and monitoring of the security created and monitoring of covenants of non-convertible securities. The system shall inter alia capture the process of creation of security (viz. due diligence, charge creation etc.), continuous monitoring of covenants by Debenture Trustees (as applicable), credit rating of the non-convertible securities by the Credit Rating Agencies (CRAs) etc.

Tendering of shares in open offers, buy-back offers and delisting offers by marking lien in the demat account of the shareholders

On 13 August 2021, SEBI decided that a lien shall be marked against the shares of the shareholders participating in the tender offers. Upon finalization of the entitlement, only accepted quantity of shares shall be debited from the demat account of the shareholders. The lien marked against unaccepted shares shall be released. The detailed procedure for tendering and settlement of shares under the revised mechanism is specified in the Annexure. All other procedures shall remain unchanged. The aforesaid measures reduce the systematic risk and risks associated with the movement of securities from demat account of shareholders to Clearing Corporation account, vice-versa and make the process more investor friendly. The said revised mechanism shall be applicable to all the tender offers for which public announcement is made on or after 15 October 2021.

Tendering of shares in open offers, buy-back offers and delisting offers by marking lien in the demat account of the shareholders

On 13 August 2021, SEBI confirmed by Stock Exchanges and Depositories that they have implemented the System Driven Disclosures ("SDD") in line with the circular dated 9 September 2020 and the same has gone live from 1 April 2021. SEBI, vide circular dated 9 September 2020, implemented the SDD in phases, under SEBI (Prohibition of Insider Trading) Regulations, 2015 **("PIT Regulations").**

In this regard, attention is drawn to para 7 of the aforesaid circular which reads as under:

"7. The system would continue to run parallel with the existing system i.e. entities shall continue to independently comply with the disclosure obligations under PIT Regulations as applicable to them till 31 March 2021."

It is, therefore, clarified that for listed companies who have complied with requirements of the circular dated 9 September 2020, the manual filing of disclosures as required under Regulation 7(2) (a) & (b) of PIT Regulations is no longer mandatory.

Disclosure of shareholding pattern of promoter(s) and promoter group entities

On 13 August 2021, SEBI issued a circular revising the format of disclosure of shareholding pattern of promoter(s) and promoter group entities. Regulation 31(4) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 **("LODR")** mandates that all entities falling under promoter and promoter group be disclosed separately in the shareholding pattern on the website of stock exchanges, in accordance with the format(s) specified by the Board.

Accordingly, SEBI vide Circular dated 30 November 2015 and Circular dated 7 December 2018, prescribed formats for disclosure of shareholding pattern including disclosure of holding of specified securities of promoter and promoter group, public shareholders and significant beneficial owners, respectively.

Currently, the shareholdings of promoter(s) and promoter group entities are collectively disclosed under 'table II - Statement showing shareholding pattern of the Promoter and Promoter Group' of the aforementioned circular. In the interest of transparency to the investors, all listed entities shall now provide such shareholding, segregated into promoter(s) and promoter group. The revised format of aforementioned table II is placed at Annexure A to this circular. The circular dated 30 November 2015 stands modified to that extent.

Guidelines on issuance of non-convertible debt instruments along with warrants ('NCDs with Warrants') in terms of Chapter VI - Qualified Institutions Placement of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

On 13 August 2021, SEBI issued guidelines on NCDs with Warrants. Chapter VI of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, ("ICDR Regulations, 2018") governs issuance of 'NCDs with Warrants' (hereinafter "the issue"), through Qualified Institutions Placement (QIP).

Regulation 179 of ICDR Regulations, 2018, inter alia provides that:

"(3) In a qualified institutions placement of non-convertible debt instrument along with warrants, an investor can subscribe to the combined offering of non-convertible debt instruments with warrants or to the individual securities, that is, either non-convertible debt instruments or warrants."

The above framework under ICDR Regulations, 2018, permits the issue where NCDs and warrants offering can be attached to each other (stapled offer) or offered separately for subscription (segregated offer). SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, governs issue and listing of non-convertible securities, on a recognized stock exchange and provides for Electronic Book Provider platform (EBP platform), offering efficient and transparent price discovery mechanism. In this regard stakeholders were consulted through a SEBI consultation paper regarding 'NCDs with Warrants' as a product and on applicability of EBP platform mechanism on 'NCDs portion' of the issue. Accordingly, in order to streamline procedure of issuance and applicability of EBP platform mechanism on the 'NCDs portion', SEBI decided and made applicable for issues wherein the size of NCDs portion is above threshold prescribed under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, and Circulars issued there under:

(a) EBP platform mechanism shall be mandatory for 'NCDs portion' of the issue (for both stapled and segregated offer) and issuer shall be required to comply with the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, and Circulars issued there under.

(b) 'Warrants portion' of the issue shall be in terms of Chapter VI on Qualified Institutions Placement under ICDR Regulations, 2018.

(c) Of the 'total issue size' of the issue, at least 40% size shall consist of 'Warrants portion'. It may be noted that 'total issue size' shall mean combined size of NCDs issue and the aggregate size of the warrants portion, including the conversion price of warrants.

(d) The segregated offer of NCDs and stapled offer, both shall be exempted from the requirements as prescribed under the Regulations 175(3), 179(2) (a), 180(1), and 180(2) of the ICDR Regulations, 2018.

This circular shall be applicable for all issues of 'NCDs with Warrants' made under ICDR Regulations, 2018, on or after the date of this Circular. Entities involved in the 'NCDs with Warrants' issue process are advised to ensure compliance with this circular.

CORPORATE REGULATORY UPDATES

The Companies (Appointment and Qualification of Directors) Amendment Rules, 2021

The MCA vide its notification dated August 19, 2021 issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021, to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014. Clause (B) of sub rule (4) of rule 6 has been substituted. Further, after the second proviso, new proviso has been inserted in sub rule (4) of rule 6 which provides exemption to an advocate, chartered accountant/company secretary/cost accountant in practice for at least ten years to pass the online proficiency self-assessment test.

The Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021

The MCA vide its notification dated August 19, 2021 issued the Companies (Creation and Maintenance of databank of Independent Directors) second Amendment Rules, 2021 to further amend the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019. As per amendment, new rule after rule 5 has been inserted which provides that the institute shall within sixty days from the end of every financial year send an Annual Report (on capacity building of independent director) to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an independent director in format provided in the Schedule to the Rules.

Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)

The MCA has issued Frequently Asked Questions (FAQs) on Corporate Social Responsibility vide circular dated August 25, 2021. This FAQs has been issued in supersession of clarifications and FAQs issued vide General Circular no. 21/2014 (dated 18th June 2014), 36/2014 (dated 17th September 2014), 01/2016 (dated 12th January 2016), 05/2016 (dated 16th May 2016), clarification issued vide letter dated 25.01.2018 and General Circular no. 06/2018 (dated 28th May 2018), for better understanding and facilitating effective implementation of CSR.

Master Directions on Prepaid Payment Instruments (PPIs)

On 27 August 2021, the Reserve Bank of India ("RBI") issued the Master Directions (MD) on Prepaid Payment Instruments afresh keeping in mind the many amendments. These Directions shall be called the Reserve Bank of India Master Directions on Prepaid Payment Instruments, 2021 (MD-PPIs, 2021). These Directions shall come into effect from the date they are placed on RBI website. However, in respect of instructions already issued, they shall be effective as per the respective timelines prescribed.

Applicability: The provisions of MD-PPIs shall apply to all Prepaid Payment Instrument (PPI) Issuers and System Participants.

Purpose

(a) To provide a framework for authorization, regulation and supervision of entities issuing and operating PPIs in the country;

(b) To foster competition and encourage innovation in this segment in a prudent manner while taking into account safety and security of systems and transactions along with customer protection and convenience; and

(c) To provide for harmonization and interoperability of PPIs.

Banks and non-bank entities issue PPIs in the country after obtaining necessary approval/authorization from RBI under the Payment and Settlement Systems Act, 2007 (PSS Act). Taking into account the developments in the field and the progress made by PPI issuer, the existing instructions issued on the subject till date have been incorporated and are consolidated in these Master Directions.

The Directions lays down the eligibility criteria and the conditions of use for Payment System Operators (PSOs) involved in the issuance and operation of PPIs in the country.

No entity can set up and operate payment systems for PPIs without prior approval/authorization of RBI.

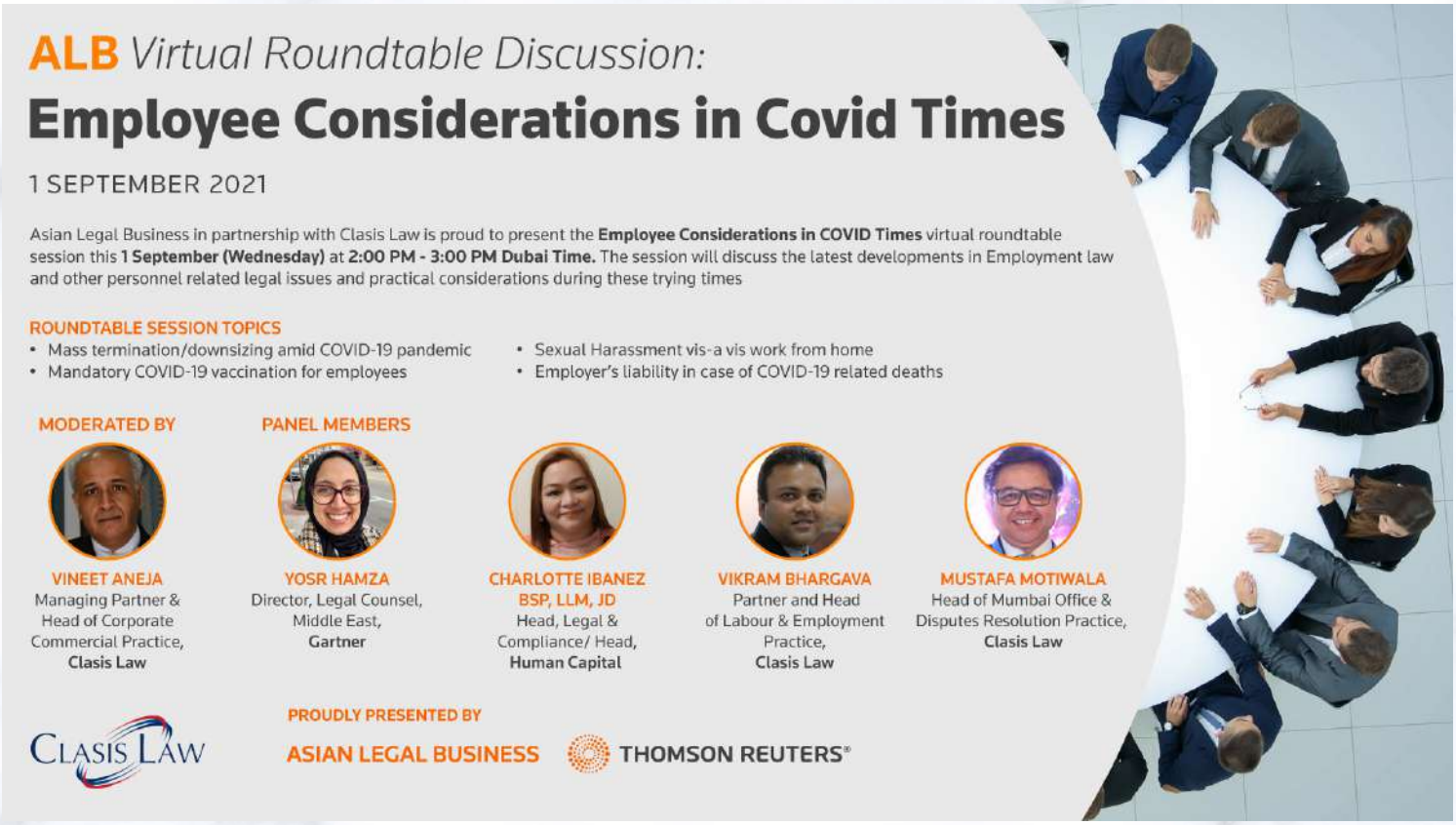
Guidelines on Compensation of Whole Time Directors/Chief Executive Officers/Material Risk Takers and Control Function staff - Clarification

On 30 August 2021, RBI issued a clarification on Guidelines on Compensation of Whole Time Directors/Chief Executive Officers/Material Risk Takers and Control Function staff. The circular draws a reference to para 2.1.2 (f) of circular dated 4 November 2019 on the captioned subject. In terms of the extant guidelines, share-linked instruments are required to be fair valued on the date of grant using Black-Scholes model. However, it has been observed that banks do not recognize grant of the share-linked compensation as an expense in their books of account concurrently. Therefore, in the interest of better clarity, the following sentence is being added to the extant instructions contained in the said paragraph:

"The fair value thus arrived at should be recognized as expense beginning with the accounting period for which approval has been granted".

Banks should ensure compliance to above instructions for all share-linked instruments granted after the accounting period ending 31 March 2021.

RECENT EVENTS



"Virtual roundtable discussion on Employee considerations in COVID times"

1 September 2021 in association with ALB

Vineet Aneja, Managing Partner & Head of Corporate Commercial practice; **Mustafa Motiwala**, Partner & Head of Dispute Resolution Practice & Mumbai Office and **Vikram Bhargava**, Partner and Head of Labour & Employment practice, presented & discussed on the various aspects of employment laws and compliances related to it during the COVID times. The panel also comprised of **Yosr Hamza** - Director, Legal Counsel | Middle East - Gartner and **Charlotte Ibanez** - Head, Legal & Compliance, Human Capital.

Associate Partner

Elevations 2021

Congratulations!

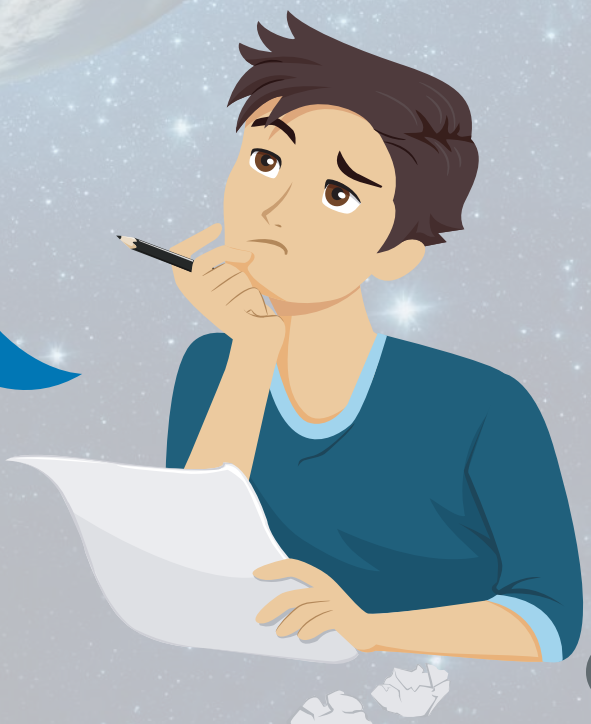
Senior Associate

OFF BEAT SECTION

International Day for the Preservation of the Ozone Layer

*International Day for the Preservation of the Ozone Layer is celebrated every year on **16 September**, this day is observed to spread awareness about ways that are effective in protecting the ozone layer. The UN General Assembly proclaimed this day as the World Ozone Day. Let's read some interesting facts about ozone layer depletion, major preventions and existence.*

- On May 16, 1985, Scientists at the British Antarctic Survey discovered the ozone hole.
- Vienna Convention was establish in 1985 followed by the Montreal Protocol in 1987, with only goal to repair & protect the ozone layer.
- On 18th March, 1991 India became a party to the Vienna Convention & ratified the Montreal protocol on 19th June 1992.



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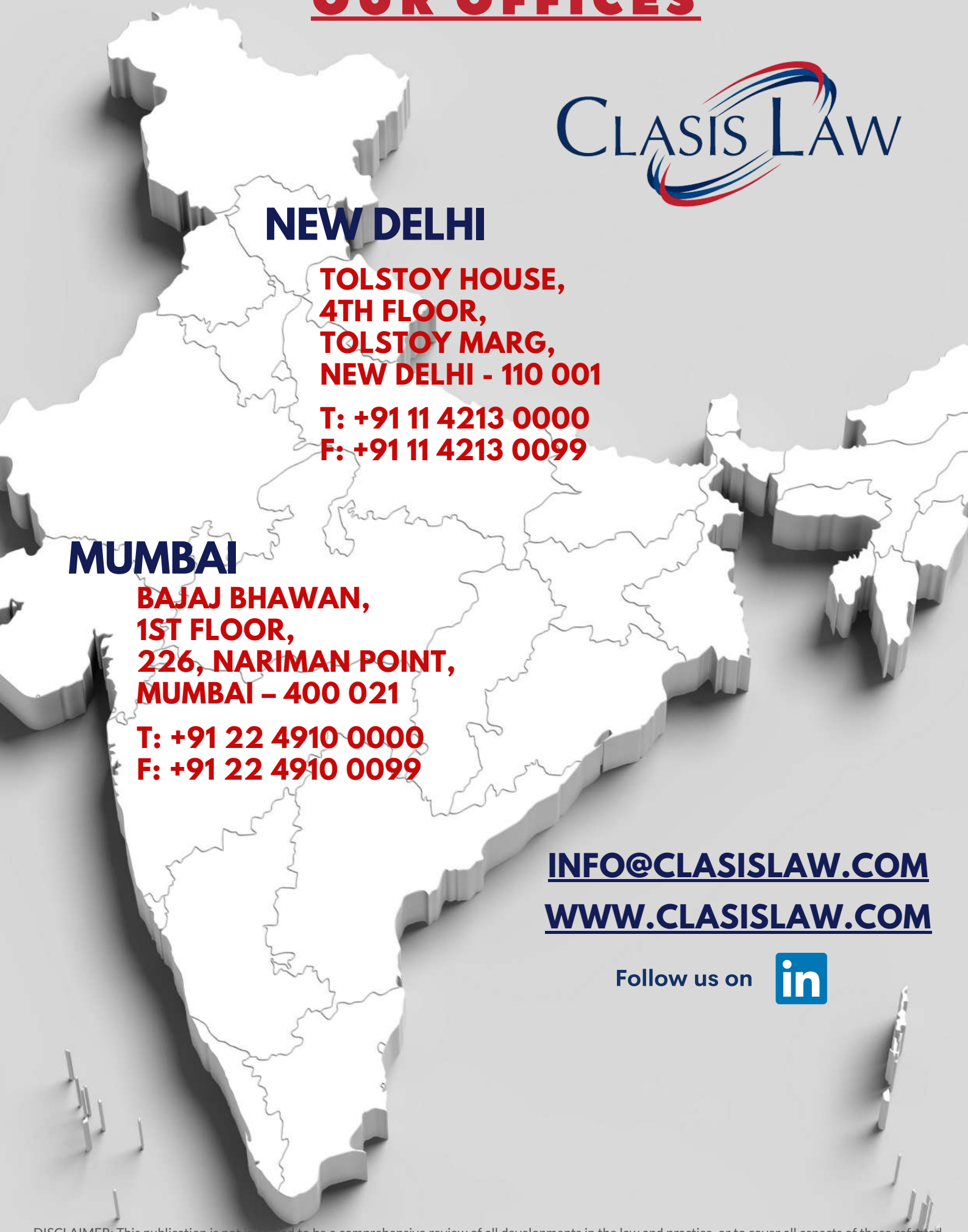

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