Vol. 6 | June 2022

The Monthly Bulletin

Official Newsletter

CLASIS LAW

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CLASIS LAW

Notable Recognitions & Accolades

Ranked in the 2022 edition of Benchmark Litigation Asia-Pacific rankings.

Recognized by Forbes India 2021-2022 as one of the Top law firms in India (*Above 10 years experience*).

ASIAN LEGAL BUSINESS
FAST 30
ASIA'S FASTEST GROWING FIRMS 2021

Recognized by Asian Legal Business as one of the fastest growing firms in Asia 2021.

Notable Recognitions & Accolades

Recognized by Forbes India 2020 as one of the Top law firms in India (Above 10 years experience).

Recognized by Benchmark Litigation as a Notable firm in Asia-Pacific 2021.

Award winning law firm for the year 2021 by India Business Law Journal.

Notable Recognitions & Accolades

Recognized as a Most Reliable Law Firm by Insight Success 2021.

Leaders in Law Podcast

Vineet Aneja, Managing Partner & Head of Corporate Practice at Clasis Law was recently interviewed at the Conventus Law's "*Leader in Law Podcast*" series on the occasion of Clasis Law's eleven years. In this episode, he discussed his experience of being an entrepreneur and his motivation behind the formation of *Clasis Law*.

Please listen to the episode at this link - https://clasislaw.com/podcast

The Clasis Law Podcast

We are live on Spotify!

Yes, you heard it right, we have launched our podcast channel **"The Clasis Law Podcast"** wherein we discuss about the latest and trending legal issues and a lot more. So, stay tuned to our channel and don't forget to follow the channel ***"The Clasis Law Podcast"***.

Latest Episode
Legal Remedies for Home Buyers

Other Episodes

- ***Arbitration in Hong Kong***
- ***Wills & Probate - Legal Overview for Indian Residents residing in Hong Kong.***
- ***The Cost of War - Russia's invasion on Ukraine.***
- ***CryptoHype***
- ***Meta - The way ahead***
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GUEST ARTICLE

Labor Codes: Comparison Between Employees & Workers

By - **Ms. Vedika Srivastav**
Senior Executive Legal Compliance
CBRE South Asia Private Limited

India's new labor codes are one of the critical changes in Indian legal landscape. Employers in India are gearing up as the government prepares for the implementation of the new labor codes. It is important that the terms 'employee' and 'worker' as defined in the new labor codes - Code on Wages, 2019, Code on Social Security, 2020, Industrial Relations Code, 2020 and Occupational Safety, Health and Working Conditions Code, 2020, are well understood by employers in respect of determining the implementation of provisions thereto to specific classes of employees.

Employee: While the Social Security Code uses the term 'employee', the other three codes use both the terms "employee" and "worker" in different contexts. The definitions of 'employee' in the 4 labor codes are similar and broad to include persons who are "employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied".

An employee excludes an apprentice engaged under Apprentices Act, 1961, besides members of armed forces. The Occupational Safety, Health and Working Conditions Code qualifies 'employee' with respect to mine workers for consistency with the provisions under the Mines Act, 1952. The Code on Social Security in its definition of 'employee' provides for certain qualifications for application of provisions related to Employees' Provident Fund Scheme, Employees' State Insurance Corporation and employees' compensation, to maintain consistency with the currently applicable laws.

Worker: The definition of 'worker' under the Industrial Relations Code, Occupational Safety, Health and Working Conditions Code and Code on Wages is same as 'workman' under the Industrial Disputes Act, 1947. A worker is "any person (except an apprentice as

defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied with certain exceptions, and for the purposes of any proceeding under a labor codes in relation to an industrial dispute, the term 'worker' includes any person who has been dismissed, discharged or retrenched in connection with, or as a consequence of such dispute, or whose dismissal, discharge or retrenchment has led to such dispute. A worker however excludes a person who is employed mainly in a managerial or administrative capacity; or who, being employed in a supervisory capacity, draws wages exceeding INR 15,000 per month. The definition of "worker" under the Industrial Relations Code includes workers in unorganized sector for the purpose of application of trade union related provisions.

Consequences of Different Usage of Terms *"Employee"* and *"Worker"*

The distinction between 'employee' and 'worker' is well captured in the Occupational Safety, Health and Working Conditions Code. There are certain provisions relating to working hours of employees, overtime payments, leave etc. which are applicable to workers in all establishments. There are similar provisions in relation to commercial establishments under state specific shops and establishments statutes. To the extent Occupational Safety, Health and Working Conditions Code provisions are more beneficial, they may be applicable to only workers in commercial establishments with at least 10 employees. Since 'worker' excludes persons in managerial, administrative and certain supervisory positions, in case the applicable shops and establishments act does not make exception for such category of employees in application of their less beneficial overlapping provisions, such provisions with lesser benefits may be exclusively applicable to employees in such excluded positions, who are not covered as 'worker' under the Occupational Safety, Health and Working Conditions Code. These excluded categories of employees may include employees in leave administration and payroll functions with administrative powers, managers with control over a class of workers or an establishment or supervisors with teams reporting into them.

A critical understanding of the Industrial Relations Code in this context is application of the trade union related provisions to employees in unorganized sectors, the definition of 'worker' being expanded beyond the ambit of 'workman' ***(1)*** under the Trade Unions Act, 1923. To that extent, under the Industrial Relations Code, a worker need not be employed

in an organized trade or industry to enjoy the protection and benefits if Trade Unions Act and unorganized sector workers, such as self-employed workers will also enjoy such legal advantage.

Conclusion

Whether a person is a workman has been the grey area of Indian labor laws. The main objective of the labor codes is to ensure harmony and consistency across different labor legislations. This would help reduce litigation in terms of understanding the application of the law. Unfortunately, this ambiguity is not quite addressed by the labor codes which progressively use the gender-neutral term 'worker' instead of 'workman'. In absence of a clear definition or guidance with respect to excluded classes of employees from the definition of 'worker', there will continue to remain confusion regarding application of the labor codes. Add to that the situation where both the terms 'employee' and 'worker' are used in the same law, such as Occupational Safety, Health and Working Conditions Code. And to top it all, the definition of 'employee' under each of the state-specific shops and establishments acts continues to apply to commercial offices, which laws will not be subsumed by the labor codes.

Footnote

1) "Workman" under the Trade Unions Act, 1926 means "all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises"

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

LEGAL UPDATE

Gujarat High Court clarifies position of third-party vis a vis proceeding under Section 9 of Arbitration Act

In a recent judgment of *Vijay Arvind Jariwala vs Umang Jatin Gandhi(1)*, Hon'ble Gujarat High Court has answered the question, 'Whether a third party to an arbitration agreement can be impleaded as a party in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 **("Act")**?'

Brief Facts

The facts relevant to the present matter are that a partnership firm in the name and style of Blue Feathers Infracon **("Partnership Firm")**, created by partnership deed dated 23.2.2012 consisted of partners named, Umang Jatin Gandhi **("Respondent")**, Vijay Arvind Jariwala **("Petitioner")** and Sandip Balwantrai Naik in his individual capacity and in the capacity of partner in another firm named called Blue Feathers Incorporation. In the year 2014, two partners, Sandip Balwantrai Naik in his individual capacity and in the capacity of partner Blue Feather Incorporation separated from the firm and a retirement deed was executed on 17.7.2014. Accordingly, the Petitioner and the Respondent remained two partners of the firm with a profit-sharing ratio of 50% each.

Subsequently, the Partnership Firm purchased a plot of land for the purpose of developing a scheme related to construction of residential flats. The partners obtained a loan of rupees 2 crores for the construction of their project by mortgaging the said plot of land.

However, the project could not be completed and following which the partners of the firm i.e., the Petitioner and Respondent started making allegations against each other. In view of the rising disputes, the Respondent filed an application under Section 9 of the Act on the basis of the arbitration clause contained in the partnership deed. The Respondent, inter-alia, prayed for directions to the Petitioner to co-operate in the completion of the housing project and in conducting all affairs related thereto, and also to allow the Respondent to take all the steps necessary to complete the same. During the pendency of the Section 9 proceedings, the Petitioner moved an application under Order 1 Rule 10 of Code of Civil Procedure, 1908 praying that the erstwhile partner Sandip Balwantrai Naik and his wife Falguni Sandip Naik be impleaded as parties in the said proceedings. The said application of the Petitioner came to be dismissed by the Commercial Court. Feeling aggrieved by the dismissal, the Petitioner preferred a challenge to the said order before the Gujarat High Court.

Submissions

In the proceedings before the High Court, the Petitioner made the followings submissions in order to showcase that the proposed persons were proper and necessary parties to Section 9 proceedings:

a) Falguni Naik, the wife of retired partner Sandip Balwantrai Naik, was given a large sum of money by the Partnership Firm and the said amount had not been fully repaid.
b) The retiring partner continues to be liable to the third parties in respect of his dealings with the third party while he was the partner.
c) The liability of the retiring partner Sandip Balwantrai Naik continued as no public notice of dissolution had been given by him.

Opposing the Petitioners submissions, the Respondent argued that arbitration was a mechanism to resolve disputes between the parties concerned and that in the instant case as the disputes were between the existing partners, one of them had filed the application under Section 9 on the basis of the arbitration clause in the partnership deed. It relied on the judgment in *Firm Ashok Traders Vs. Gurumukh Das Saluja and Other(2)* to buttress its submission that as per the facts of the case the proposed persons were not proper and necessary parties to the Section 9 proceedings.

Issue for consideration before the High Court

Whether a third party who is not party to the arbitration to the arbitration agreement could be impleaded as party?

Observations

The Court observed that the provisions of the Act are made to apply to the parties who are bound by the arbitration clause and their relationship in the resolution of disputes between them, in the process of arbitration is governed by the provisions of the Act. Section 9 which enables a party to seek interim measures before or during arbitral proceedings, was introduced with the intent to inter alia balance the rights between the parties to arbitral proceedings until the disputes are decided

Further, it referred to Section 2(h) of the Act, wherein the term "party" is defined to mean a party to the arbitration agreement and held:

"It is the 'party' defined under Section 2(h) of the Act which may initiate proceedings under Section 9 for interim measures. The very basis of Section 9 proceedings is the arbitration clause under which the arbitration proceedings could be initiated. The interim measures could be prayed for and would operate between the parties who would be going for or have gone, for arbitration, namely the parties to the arbitration. By analogical reasoning it would imply that third party has no concern with the proceedings of Section 9 nor with the said provision recognizes the inclusion of the third party, who may be independently claiming the rights against the parties to the arbitration and vice versa."

Additionally, the Court observed that primarily and for all purposes, the provision of section 9 is intended to operate between the parties to the arbitration agreement. The Court opined that if in an interim measure's proceedings, a third party to the arbitration agreement is joined and the order regarding interim measures is addressed to such party, it would lead to chaotic situation, as such third party would not be amenable to the final resolutions of the disputes. A person who is not party to the arbitration agreement, remains a stranger to the proceedings under Section 9 of the Act. For such third party no *lis* is created in a Section 9 proceeding. Even if the parties to the arbitration and the third party have some inter se rights and obligations to be enforced vis a vis each other, it would be a separate cause of action.

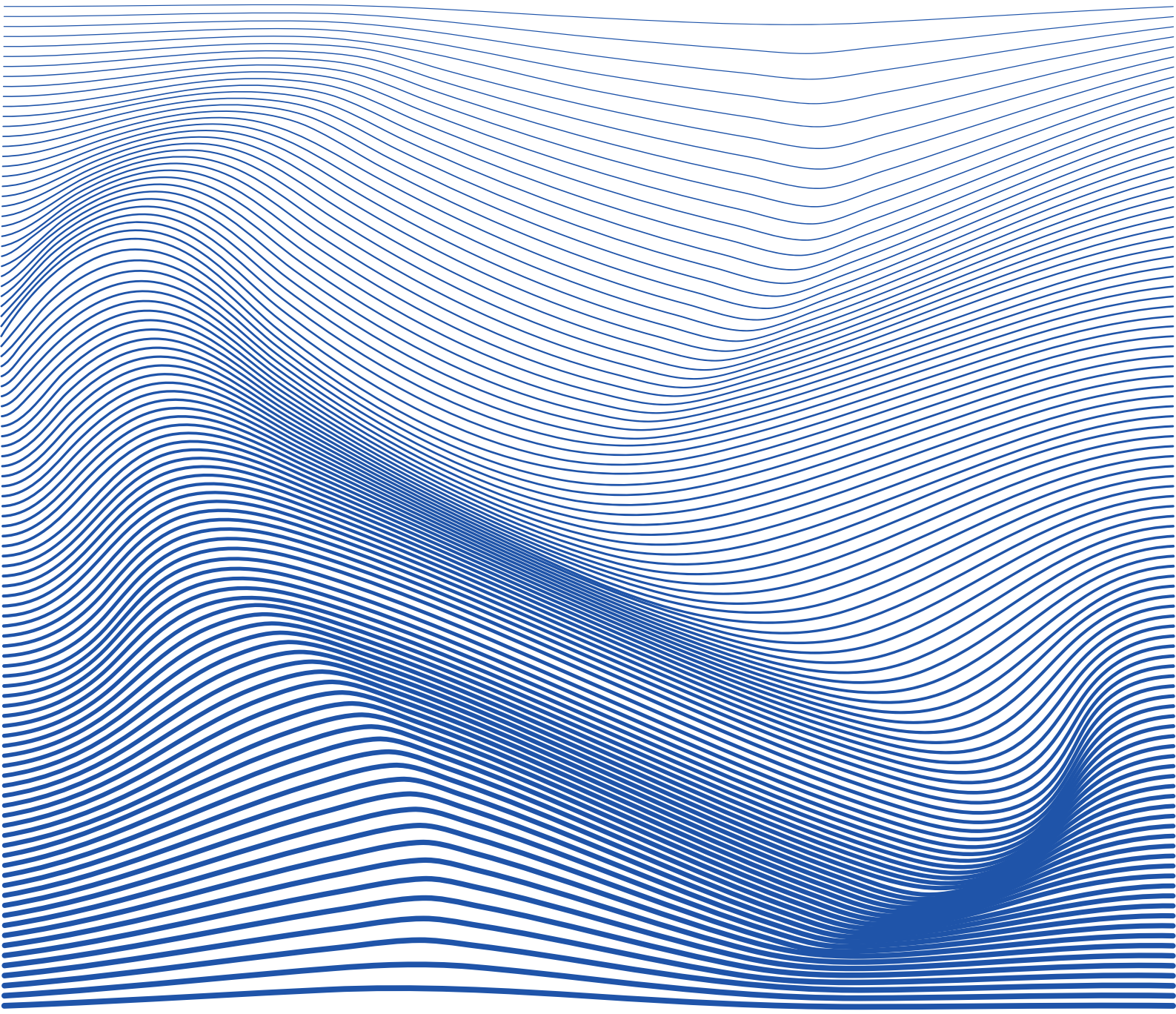
Conclusion

Applying the abovementioned principles to the facts of the case, the Court held that the proposed persons do not constitute necessary parties to the

proceeding initiated under Section 9 proceedings. The simple fact that they owed some money to the Partnership Firm is not a sufficient ground for them to be made a party to the proceedings under Section 9 of the Act. The application was accordingly dismissed.

Footnotes

(1) R/Special Civil Application No. 16131 of 2021
(2) [(2004) SCC 155]



Bid or Use of Registered Trademark as Key Word for Google Ads Constitutes Infringement – Upholds Delhi High Court

A Single Judge Bench of the Delhi High Court in the matter of Makemytrip India Private Limited Vs. Booking.com B.V. and Ors has held that, use of a registered trademark as a Key Word for Google's Ads programmes/ promotions constitutes trademark infringement under the provisions of the Trademarks Act, 1999 **("Act").**

Facts and Submissions by the Parties

Makemytrip India Private Limited **("Plaintiff")** filed the present suit for permanent injunction against Booking.com B.V **("Defendant No. 1")** seeking protection of its registered trademark 'Makemytrip' and associated/ derivative trademarks thereof. The Plaintiff submitted that it is the registered proprietor of the trademark 'MakeMyTrip' under various classes i.e., Class nos. 9, 35, 39 and 43 and had registered the domain name "www.makemytrip.com" way back in May, 2000. It is the case of the Plaintiff that Defendant No. 1 has been using the Plaintiff's registered trademark as a Key Word on Google's Ads programme. The Plaintiff's case was that when a search is carried out for 'MakeMyTrip' in Google's search bar, more often than not, the first advertisement displayed would be that of Defendant No. 1 and its services. The Plaintiff further submitted that Defendant no. 1 has also placed bids to use the Plaintiff's registered trademark as a Key Word, despite the fact that the Plaintiff had served multiple cease-and-desist notices on the Defendants and the Defendants continued to use the same by relying on the judgement of the European Commission in the Guess Case , wherein it was held that there cannot be any restriction on the use of a trademark (as a Key Word) on Google's Ads Program. Defendant No. 1 submitted that any restriction to use the Plaintiff's mark as a Key Word would be contrary to competition law and would be in contravention of the law of foreign jurisdictions. Google **("Defendant No. 3")** submitted that the use of a trademark as a Key Word would not constitute infringement of a trademark and such a position is internationally recognized in many countries including without limitation; UK, USA, EU, Australia, New Zealand, China and Russia.

Issues Raised

The primary issue raised in the present case was whether encashment of the goodwill and reputation of a registered trademark by third parties, by bidding on it as a Key Word through Google's Ads Program, would amount to infringement and passing off?

Observations by the Court and Conclusion

The Hon'ble Court opined that Section 29 (4) of the Act stipulates that if any party takes unfair advantage of any distinctive character or reputation of a registered trademark, without due cause, then such use would amount to infringement in terms of Sections 29 (6) and 29 (7) of the Act.

The Court further delved into the operations of the Google Ads programme and observed that *".....what a trademark proprietor is being forced to do is to bid for its own trademark, in order for the advertisements of its goods and services under the said trademark to be reflected in the advertisement section of the search results and not be hijacked by a competitor. This entails the trademark owner to make investments in the Google Ads Program on a daily basis, failing which its competitors could use the trademark for advertising their own goods and services and have listings higher on the Google search*

results."

The Court further observed that even though the Plaintiff was the registered proprietor of the trademark 'Makemytrip', it was still required to spend a substantial amount on bidding for its own registered mark, as Defendant no. 3 and 4 allowed even non-proprietors of the mark, like Defendant No. 1 to bid for the same.

The Court then referred to the judgement passed by its co-ordinate bench in the matter of *DRS Logistics Vs. Google India Pvt Ltd.(3)*, and stated that use of a mark as a Key Word in Google's Ads Program, inasmuch as the mark being used in a hidden manner does not take away the fact that it is, in fact, use of the mark as defined under Section 2 (2) (b) of the Act in relation to those very services. The Court further observed that as the very purpose of Google's Ads Programme was advertising, it held that use of a registered trademark as a Key Word would squarely fall within the purview of Section 29 (6) (d) of the Act.

The Court further held that as the use of the Plaintiff's trademark as a Key Word was diverting traffic to Defendant no. 1's website and generating business for it, such use would amount to taking unfair advantage and would fall foul of Section 29 (8) of the Act. The Court also observed that in various other suits filed by the Plaintiff for trademark infringements due to use of its registered mark as a Key Words under Google's Ads programme, the Plaintiff had almost every time succeeded in getting an injunction in its favour. The Court further referred to the judgement passed by the Hon'ble Bombay High Court in the matter of *People Interactive (I) Pvt. Ltd vs Gaurav Jerry**(4)*** where the question of use of registered trademarks as Key Words by a rival website was considered and answered.

The Court observed that the Bombay High Court had taken a view that invisible use of a registered trademark by non-proprietors, dilutes the mark and equated such an act with online piracy.

The Court also distinguished the Guess judgement, which was cited by Defendant No. 1, in support of its actions, on the ground that the European Commission in that case was dealing with intra-brand competition where the parties were contractually restricted and hence the *Guess Judgement* not be applicable to the present case.

The Court also referred to *Kerly's Law of Trademarks and Trade Names**(5)*** and noted that, although the Courts (of appeals) have been sceptical to consider "invisible" use of a trademark to constitute infringement, it is clear that a third-party bidding on trademark(s) as sponsored keywords for use by internet search engines can constitute misrepresentation.

After due consideration of all the judgements and relevant literature, the Court held that "invisible" use of a mark as a Key Word can constitute passing off as a matter of principle and opined that *prima facie* use of the Plaintiff's registered trademarks constituted infringement as the same would be detrimental to the Plaintiff's monetary and business interests, and also to its brand equity. Accordingly, the Court restrained the Defendants from using the mark 'MakeMyTrip' in any manner.

(1) CS(COMM) 268/2022 & I.A. 6443/2022
(2) Case AT.40428-GUESS dated December 17, 2018
(3) 2021 (88) PTC 217 (Del)
(4) MIPR 2014 (3) 101
(5) (15th Ed) Pg. 628 & 629

JUDGEMENTS

In the matter of M/s. Kovai Medical Center and Hospital Limited ("Company") for non-maintenance of the registered office

In the present case, the Registrar of Companies, Tamil Nadu, Coimbatore ("ROC") passed an order against the Company for violating the provisions of section 12 of the Companies Act, 2013 ("Act"). The ROC stated that the Company had shifted its registered office w.e.f. February 8, 2018 and had been previously maintaining its registered office in Post Box no. 3209 which resulted in non-compliance of the provisions of section 12(3) of the Act during the period from April 1, 2014 (date from which section 12 came into effect) and February 8, 2018 (date from which the registered office was shifted).

The Company filed an appeal with the Regional Director, Southern Region ("RD") against the aforesaid order passed by the ROC. It argued that the registered office had been shifted on December 30, 1988, and since no door number was allotted for the given address by the local authority, the Company obtained the P.O. Box number from the postal authorities, mentioned in registered office address and accordingly, filed form 18 with the ROC. Further, it claimed that no definition or description has been provided under the Act or Companies Act, 1956 regarding the constituents of a registered office address. Subsequently, when the door number was allotted by the local authorities to the given address, the Company filed e-Form INC-22 vide resolution dated February 8, 2018, thereby mentioning door number in place of P.O. Box number. Hence, the Company had not violated the provisions of section 12(3) of the Act. The RD set aside the order of the ROC and reduced the penalties imposed from INR 1,00,000/- to INR 20,000/- on the Company and from INR 1,00,000/- to INR 20,000/- on each of its officers-in-default.

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In the matter of M/s FCS Machinery (India) Private Limited ("Company") for non-filing of e-form with respect to the resignation of statutory auditors within due date

In the present case, the statutory auditor of the Company, M/s S Makadia & Co. was appointed for the period of five financial years from April 1, 2020, to March 31, 2025. The statutory auditor resigned from the Company w.e.f. August 1, 2021, however, the auditor filed the respective e-form beyond the prescribed time limit of 30 days from the resignation date, which resulted in a violation of Section 140(2) of the Companies Act, 2013 **("Act")**.

The Registrar of Companies, Gujarat, Dadra & Nagar Haveli **("ROC")** issued an adjudication notice to M/s S Makadia & Co. for violation of Section 140(1) of the Act. In response to the notice, M/s S Makadia & Co. submitted that the delay in filing of prescribed e-form was caused due to Covid infection to self and the family members. The ROC observed that the necessary filing was completed on December 18, 2021which was after the issuance of notice by the ROC on October 21, 2021.After considering the facts & circumstances of the case and submissions made by the statutory auditor, the ROC imposed a penalty of Rs. 1,02,000 on M/s S Makadia & Co. **Read More**

JUDGEMENTS

In the matter of M/s FCS Machinery (India) Private Limited ("Company") for violation of Section 12(3) of the Companies Act, 2013

In the present case, it was noticed that the Company had failed to mention the Corporate Identification Number and registered office address on the letterhead used for the communication letter attached with e-form INC-22 filed with the Ministry of Corporate Affairs.The Registrar of Companies, Gujarat, Dadra & Nagar Haveli ("ROC") issued an adjudication notice to the Company and its officer in default for violation of Section 12(3) of the Companies Act, 2013. In response, the Company submitted that while shifting its registered office, the Company had applied for the electricity connection with UGVCL at the new registered office and any utility bill was not available. The letter attached to e-form INC-22 was a clarification letter explaining the aforesaid and therefore, no letterhead was used. After considering the facts & circumstances of the case and submissions made by the authorised representative, the ROC imposed a penalty of Rs. 1,00,000 each on the Company and its officer in default.

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In the matter of M/s SVH Fabrics Private Limited ("Company") for failure to attach complete director's report for the financial year ended on March 31, 2018

In the present case the Registrar of Companies, Gujarat, Dadra & Nagar Haveli **("ROC")** observed from e-form AOC-4 filed for the financial year ending March 31, 2018, that the Company had failed to attach complete Directors' report for the financial year 2017-18.The ROC issued an adjudication notice to the Company and its officers-in-default for violation of the provisions of section 137 (read with section 134) of the Companies Act, 2013 **("Act")**. The authorised representative of the Company submitted that due to scanning and printer problem, the complete Directors' report for the financial year 2017-18 could not be attached with the e-form AOC-4 and all other provisions of the Act are complied with.After considering the facts & circumstances of the case and submissions made by the authorised representative, the ROC imposed a penalty of Rs. 10,000/- on the Company and Rs. 10,000/- each on the officers-in-default. Further, the Company was directed to file a fresh form AOC-4 for the financial year ended March 31, 2018 along with the necessary documents and on payment of requisite fees/ additional fees.

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CORPORATE REGULATORY UPDATES

Amendment in format of share transfer form (SH-4)

MCA notified the Companies (Share Capital and Debentures) Amendment Rules, 2022 to further amend the Companies (Share Capital and Debentures) Rules, 2014 vide its notification dated May 4, 2022. Through this amendment, MCA amended the format of share transfer in Form SH-4 in line with Foreign Exchange Management (Non-debt Instruments) Rules, 2019. According to the amendment, the following declaration shall be inserted in the share transfer form:

- Transferee is not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares; or
- Transferee is required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares and the same has been obtained and is enclosed herewith.

Reserve Bank of India amends notification relating to non-applicability of Sections 45IA, 45IB and 45IC of the Reserve Bank of India Act, 1934 to any non-banking financial company

On 4 May 2022, the Gazette of India issued the circular relating to non-applicability of Sections 45IA, 45IB and 45IC of the Reserve Bank of India Act, 1934 to any non-banking financial company. The Reserve Bank of India ("RBI") amended notification No. DNBS.138/CGM (VSNM)-2000 dated 13 January 2000, with immediate effect. Paragraph 1 of the above notification was amended to read as follows:

"(1) Sections 45IA, 45IB and 45IC of the Reserve Bank of India Act, 1934 (2 of 1934) shall not apply to any non-banking financial company

(i) which is

(a) providing only microfinance loans as defined under the Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022, provided the monthly loan obligations of a household does not exceed 50 per cent of the monthly household income; and

(b) licensed under Section 25 of the Companies Act, 1956 or Section 8 of the Companies Act, 2013; and

(c) not accepting public deposits as defined under the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016; and

(d) having asset size of less than ₹100 crore.

(ii) being a mutual benefit company as defined in paragraph 3(x) of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016."

RBI has notified partial modification to notification DBR.Ret.BC No.11/12.02.001/2018- 19 in relation to Standing Deposit Facility

On 4 May 2022, the Gazette of India issued the circular relating to partial modification to notification DBR.Ret.BC No.11/12.02.001/2018- 19 in relation to Standing Deposit Facility **("SDF")**. The RBI has partially modified notification DBR.Ret.BC No.11/12.02.001/2018- 19 dated 5 December 2018, and hereby specifies that for the purpose of this notification,

"Cash" to be maintained by banks, as referred to in the Annex of the above-mentioned notification, shall also include the balances held by banks with RBI under SDF.

Amendment in prospectus and allotment of securities rules with respect to foreign investment from the neighbouring countries

MCA notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022

to further amend the Companies (Prospectus and Allotment of Securities) Rules, 2014 vide notification dated May 5, 2022. It was provided that no offer or invitation of any securities shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national have obtained the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and such approval is attached with the Form PAS-4.

Further, the format of form PAS-4 in accordance with the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 was amended to incorporate the aforesaid requirement.

Annual General Meetings ("AGM") to be held through video conference till December 31, 2022

In continuation to the MCA's circular dated May 5, 2020, January 13, 2021, December 8, 2021 and December 14, 2021, the MCA vide its circular dated May 5, 2022 allowed the companies whose AGMs are due in the year 2022, to conduct the AGMs on or before December 31, 2022 through video conference or other audio video means. The MCA further clarified that the aforementioned circular shall not be construed as granting any extension of time for holding the AGMs by the companies under the Companies Act, 2013.

Extra-Ordinary General Meeting ("EGM") to be held through video conference by December 31, 2022

In continuation of the MCA's circular dated April 8, 2020, April 13, 2020, June 15, 2020, September 28, 2020, December 31, 2020, June 23, 2021 and December 8, 2021, MCA vide its circular dated May 5, 2022 allowed companies to conduct their EGMs to be held till December 31, 2022 through video conference or other audio video means. Further, the items to be transacted through postal ballot are allowed to be done in accordance with the framework provided in the aforesaid circulars till December 31, 2022.

Lending by Commercial Banks to NBFCs and Small Finance Banks (SFBs) to NBFC-MFIs, for the purpose of on-lending to priority sectors

On 13 May 2022, the RBI decided, to ensure continuation of the synergies that have been developed between banks and NBFCs in delivering credit to the specified priority sectors, to allow the facility wherein lending by commercial banks to NBFCs and lending by Small Finance Banks (SFBs) to NBFC-MFIs, for the purpose of on-lending to certain priority sectors, to continue on an on-going basis. This facility was earlier permitted up to 31 March 2022

Bank credit to NBFCs (including HFCs) for on-lending will be allowed up to an overall limit of 5 percent of an individual bank's total priority sector lending in case of commercial banks. In case of SFBs, credit to NBFC-MFIs and other MFIs (Societies, Trusts, etc.) which are members of RBI recognized 'Self-Regulatory Organisation' of the sector, will be allowed up to an overall limit of 10 percent of an individual bank's total priority sector lending. These limits shall be computed by averaging across four quarters of the financial year, to determine adherence to the prescribed cap.

SFBs are allowed to lend to registered NBFC-MFIs and other MFIs which have a 'gross loan portfolio' ("GLP") of up to ₹500 crore as on March 31 of the previous financial year, for the purpose of on-lending to priority sector. In case the GLP of the NBFC-MFIs/other MFIs exceeds the stipulated limit at a later date, all priority sector loans created prior to exceeding the GLP limit will continue to be classified by the SFBs as PSL till repayment/maturity, whichever is earlier.

Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

On 13 May 2022, the Securities and Exchange Board of India **("SEBI")** decided to provide relaxation upto 31 December 2022, from Regulation 36 (1) (b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 **("LODR Regulations")** which requires sending hard copy of annual report containing salient features of all the documents prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses. Further, the notice of Annual General Meeting published by advertisement in terms of Regulation 47 of LODR Regulations, shall contain a link to the annual report, so as to enable shareholders to have access to the full annual report. It is however emphasized that in terms of Regulation 36 (1) (c) of LODR Regulations, listed entities are required to send hard copy of full annual report to those shareholders who request for the same. Further, the requirement of sending proxy forms under Regulation 44 (4) of the LODR Regulations is dispensed with upto 31 December 2022, in case of general meetings held through electronic mode only. This Circular shall come into force with immediate effect.

Simplification of procedure and standardization of formats of documents for transmission of securities

On 18 May 2022, SEBI issued a circular on simplification of procedure and standardization of formats of documents for transmission of securities pursuant to amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015. In order to enhance ease of dealing in securities markets and with a view to make the transmission process more efficient and investor friendly, the procedure for transmission of securities has been further simplified vide the SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2022 dated 25 April 2022 ("LODR Amendment Regulations"). The LODR Amendment Regulations has inter alia enhanced the monetary limits for simplified documentation for transmission of securities, allowed 'Legal Heirship Certificate or equivalent certificate' as one of the acceptable documents for transmission and provided clarification regarding acceptability of Will as one of the valid documents for transmission of securities. Pursuant to the notification of the LODR Amendment Regulations, this Circular is being issued to specify the formats of various documents which are required to be furnished for the processing of transmission of securities. There are various annexures attached to this Circular some of which provide details of the documents required for transmission of securities, operational guidelines for processing investors service request for the purpose of transmission of securities, format of the form to be filed by nominee/claimant(s)/legal heir(s) while requesting transmission of securities, format of the Letter of Confirmation to be issued by RTAs/ Issuer Companies, etc.

The common norms stipulated in SEBI Circular SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/655 dated 3 November 2021 and SEBI Circular SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/687 dated 14 December 2021 shall be applicable for transmission service requests. The provisions of this Circular shall come into force with immediate effect in supersession of the following circulars:

(a) Circular No. CIR/MIRSD/10/2013 dated 28 October 2013,

(b) Circular No. SEBI/ HO/ MIRSD3/ CIR/ P/ 2016/ 0000000085 dated 15 September 2016,

(c) Circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/ 05 dated 4 January 2019, and

(d) Circular No. SEBI/ HO/ MIRSD/ MIRSD_RTAMB/ P/ CIR/ 2021/ 644 dated 18 October 2021.

Streamlining the Process of Rights Issue

On 19 May 2022, SEBI issued a circular on streamlining the process of Rights Issue. SEBI vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/13 dated 22 January 2020, stipulated procedures streamlining the Rights Issue process ('the circular'). In respect of the aforesaid circular, para 1.4.1 and at Annexure I para C (e) of the Circular, deals with the requirement regarding minimum time period between closure of trading in Right Entitlements on stock exchange platform and closure of the rights issue, which requires trading in Rights Entitlements (REs) on the secondary market platform of stock exchanges commence along with the opening of the rights issue and has to be closed at least four days prior to the closure of the rights issue. SEBI received market representation that in case there are trading holidays between last date of REs trading date and issue closure, provision of minimum gap of four days may not always ensure that there are adequate days for settlement, as minimum 2 working days are required for settlement of REs traded on last day of REs trading window (REs traded on exchange platform have T+2 rolling settlement). It was further represented that there should be a minimum gap of three working days considering two days for settlement and one additional day for investor to make application in Rights Issue.

Therefore, in view of above it has been decided that para 1.4.1 and at Annexure I para C (e) of the Circular paragraphs are amended as under:

The words *'at least four days'* are replaced with *'at least three working days'*.

This circular shall be applicable for all rights issues and fast track rights issue with immediate effect.

RBI provides clarity on the presentation of reverse repo on the balance sheet

On 19 May 2022, RBI issued a notification so as to bring forth more clarity on the presentation of reverse repo on the balance sheet.

The RBI decided that:

(a) All type of reverse repos with the RBI including those under Liquidity Adjustment Facility shall be presented under sub-item (ii) 'In Other Accounts' of item (II) 'Balances with Reserve Bank of India' under Schedule 6 'Cash and balances with Reserve Bank of India'.

(b) Reverse repos with banks and other institutions having original tenors up to and inclusive of 14 days shall be classified under item (ii) 'Money at call and short notice' under Schedule 7 'Balances with banks and money at call and short notice'.

(c) Reverse repos with banks and other institutions having original tenors more than 14 days shall be classified under Schedule 9 – 'Advances' under the following heads:
(i) Cash credits, overdrafts and loans repayable on demand'
(ii) 'Secured by tangible assets'
(iii) Banks
(iv) 'Others' (as the case may be).

This circular is applicable to all commercial banks.

RBI issues directive on Interoperable Card-less Cash Withdrawal (ICCW) at ATMs

On 19 May 2022, the RBI issued a directive on "Interoperable Card-less Cash Withdrawal ("ICCW") at ATMs".

All banks, ATM networks and White Label ATM Operators ("WLAOs") may provide the option of ICCW at their ATMs. National Payments Corporation of India ("NPCI") has been advised to facilitate Unified Payments Interface ("UPI") integration with all banks and ATM networks. While UPI would be used for customer authorisation in such transactions, settlement would be through the National Financial Switch ("NFS")/ATM networks. The on-us/ off-us ICCW transactions shall be processed without levy of any charges other than those prescribed under the circular on "Interchange Fee and Customer Charges".

Withdrawal limits for ICCW transactions shall be in line with the limits for regular on-us/off-us ATM withdrawals. All other instructions related to Harmonization of Turn Around Time and customer compensation for failed transactions shall continue to be applicable.

RBI provides clarification regarding new definition of Micro, Small and Medium Enterprises

On 19 May 2022, Government of India, vide Gazette Notification S.O. 2134(E) dated 6 May 2022, notified amendments in sub paragraph (3) paragraph (7) of the notification of Government of India, Ministry of Micro, Small and Medium Enterprises number S.O. 2119 (E), dated 26 June 2020, published in the Gazette of India.

In view of the above amendment, it is clarified that:

(i) the existing Entrepreneurs Memorandum ("EM") Part II and Udyog Aadhaar Memorandum ("UAM") of the MSMEs obtained till 30 June 2020 shall remain valid till 30 June 2022 for classification as MSMEs; and

(ii) the validity of documents obtained in terms of O.M. No.12(4)/ 2017-SME dated 8 March 2017 (RBI Circular FIDD.MSME & NFS.BC.No.10/ 06.02.31/ 2017-18 dated 13 July 2017), for classification of MSMEs upto 30 June 2020, has been extended upto 30 June 2022.

Declaration required from resident of neighbouring countries before incorporation of companies in India

MCA notified the Companies (Incorporation) Second Amendment Rules, 2022 **("Amendment")** to further amend the Companies (Incorporation) Rules, 2014 vide notification dated May 20, 2022. Through this Amendment, MCA has substituted form INC-9 *(Declaration by Subscribers and First Directors)* to bring the Companies (Incorporation) Rules, 2014 in line with the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 with respect to obtaining approval from the Indian Government prior to subscription of shares in the company to be incorporated. Further, form INC-32 (SPICe+) Part-B has been revised to include a declaration with respect to nationality of the person being appointed as director in such company. The amendment will be effective from June 1, 2022.

SEBI simplifies the procedure and standardization of formats of documents for issuance of duplicate securities certificates

On 25 May 2022, SEBI issued a Circular on Simplification of procedure and standardization of formats of documents for issuance of duplicate securities certificates. SEBI reviewed the process followed by the Registrars to an Issue and Share Transfer Agents ("RTAs") and the Issuer companies for issuance of duplicate securities certificates. Based on the feedback received from investors, recent regulatory changes, and with a view to make issuance of duplicate securities more efficient and investor friendly, the procedure and documentation requirements for issuance of

duplicate securities has been further simplified. The requirements are as specified below:

(a) Submission by the security holder of copy of FIR including e-FIR/Police complaint/Court injunction order/copy of plaint (where the suit filed has been accepted by the Court and Suit No. has been given), necessarily having details of the securities, folio number, distinctive number range and certificate numbers.
(b) Issuance of advertisement regarding loss of securities in a widely circulated newspaper.
(c) Submission of Affidavit and Indemnity bond as per the format prescribed by the Board. There shall be no requirement of submission of surety for issuance of duplicate securities.
(d) There shall be no requirement to comply with Para (a) and (b) of this circular, if the value of securities as on the date of submission of application, along with complete documentation as prescribed by the Board does not exceed INR 500,000.
(e) The applicant shall quantify the value of the securities on the basis of the closing price of such securities at any one of the recognized stock exchanges a day prior to the date of such submission in the application.
(f) An overseas securities holder, in lieu of documents mentioned in Para (a) of this circular, shall be permitted to provide self-declaration of the security certificates lost/misplaced/stolen which shall be duly notarized/ apostilled /attested by the Indian Consulate/ Embassy in their country of residence, along with self-attested copies of valid passport and overseas address proof.
(g) In case of non-availability of Certificate Nos./Distinctive Nos./ Folio nos., the RTA (upon written request by the security holder) shall provide the same, to the security holder only where the signature and the address of the securityholder matches with the RTA/listed company's records. In case the signature and/or the the address do not match, the security holder shall first comply with the KYC procedure and then only the details of the securities shall be provided to the security holder by the RTA/listed company.

Fake / forged / stolen certificates or certificates where duplicate certificate is issued, must be seized and defaced by the RTA / listed company and disposed of in the manner, authorized by the Board of the Company.

Defaced certificate shall be kept in custody of the Company/ RTA and disposed of in the manner as authorized by the Board of the Company.

The listed company shall take special contingency insurance policy from the insurance company towards the risk arising out of the requirements relating to issuance of duplicate securities in order to safeguard and protect the interest of the listed company.

As mandated vide SEBI Circular dated January 25, 2022, duplicate securities shall be issued in dematerialized mode only.

The provisions of this Circular shall come into force with immediate effect in supersession of RTI Circular No. 1 (2000-2001) dated 9 May 2001.

RBI amends the Bharat Bill Payment System Guidelines

On 26 May 2022, the RBI has issued a notification on amending the Bharat Bill Payment System ("BBPS") Guidelines. The RBI had issued the BBPS Guidelines on 28 November 2014. As announced in the Statement on Development and Regulatory Policies dated 8 April 2022, the minimum net-worth requirement for non-bank Bharat Bill Payment Operating Units stands reduced to Rs 25 crore.

The BBPS Guidelines have been suitably amended. This circular shall come into effect immediately.

Extension in timeline for filing of Annual Returns by LLP

After revising various representations from various stakeholders, MCA extended timeline for filing of Annual Returns in Form 11 for the Limited Liability Partnership firms (LLP) for the Financial Year 2021-22 by June 30, 2022 without payment of additional fees.

Amendment in Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

MCA notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022 to further amend the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 vide notification dated May 30, 2022. It has been provided that in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate incorporated in a country that shares land border with India, a declaration in form no. CAA-16 would need to be furnished declaring that:

- the company/body corporate is not required to obtain prior approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019; or
- the company/body corporate is required to obtain prior approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and the same has been obtained and is enclosed herewith.

Modification in Cyber Security and Cyber resilience framework of KYC Registration Agencies

On 30 May 2022, SEBI issued a circular on "Modification in Cyber Security and Cyber work of KYC Registration Agencies resilience frame **"KRAs"**)".

SEBI in October 2019 had issued the framework for Cyber Security and Cyber Resilience for KYC Registration Agencies. In partial modification to Annexure A of SEBI circular dated 15 October 2019, the paragraphs - 11, 40, 41 and 42 shall be read as under:

11. KRAs shall identify and classify critical assets based on their sensitivity and criticality for business operations, services and data management. The critical assets shall include business critical systems, internet facing applications /systems, systems that contain sensitive data, sensitive personal data, sensitive financial data, Personally Identifiable Information (PII) data, etc. All the ancillary systems used for accessing/communicating with critical systems either for operations or maintenance shall also be classified as critical system. The Board of the KRAs shall approve the list of critical systems.

To this end, KRAs shall maintain up-to-date inventory of its hardware and systems, software and information assets (internal and external), details of its network resources, connections to its network and data flows.

40. KRAs shall carry out periodic vulnerability assessment and penetration tests(VAPT)which inter-alia include critical assets and infrastructure components like Servers, Networking systems, Security devices, load balancers, other IT systems pertaining to the activities done as KRAs etc., in order to detect security vulnerabilities in the IT environment and in-depth evaluation of the security posture of the system through simulations of actual attacks on its systems and networks.

KRAs shall conduct VAPT at least once in a financial year. However, for the KRAs, whose systems have been identified as "protected system" by NCIIPC under the Information Technology (IT) Act, 2000, VAPT shall be conducted at least twice in a financial year.

Further, all KRAs are required to engage only CERT-In empaneled organizations for conducting VAPT. The final report on said VAPT shall be submitted to SEBI after approval from Technology Committee of respective KRAs, within one month of completion of VAPT activity.

41. Any gaps/vulnerabilities detected shall be remedied on immediate basis and compliance of closure of findings identified during VAPT shall be submitted to SEBI within 3 months post the submission of final VAPT report.

42. In addition, KRAs shall perform vulnerability scanning and conduct penetration testing prior to the commissioning of a new system which is a critical system or part of an existing critical system.

In addition to the above KRAs are mandated to conduct comprehensive cyber audit at least twice in a financial year. All KRAs shall submit a declaration from the MD/ CEO certifying compliance by the KRAs with all SEBI Circulars and advisories related to Cyber security from time to time, along with the cyber audit report.

The provisions of this circular shall come into force with immediate effect.

Processing of ASBA applications in Public Issue of Equity Shares and Convertibles

On 30 May 2022, SEBI issued a circular on " Processing of ASBA applications in Public Issue of Equity Shares and Convertibles".
SEBI via a circular dated 30 December 2009, prescribed the facility of Application Supported by Blocked Amount ("ASBA") in Public Issues for all categories of investors except Qualified Institutional Buyers ("QIBs").

Via a circular dated 6 April 2010, SEBI has extended the facility of ASBA to QIBs in public issues opening on or after 1 May 2010.

SEBI via a circular dated 1 November 2018, introduced the Unified Payment Interface ("UPI") as an additional payment mechanism with ASBA for Retail Individual Investors and the same was mandated with effect from 1 July 2019.

The processing of ASBA applications in the Public Issues by market intermediaries and SCSBs has been reviewed. In order to streamline the bidding process and to ensure the orderly development of securities market, a need has been felt to implement the ASBA process in line with the aforementioned circulars.

The ASBA applications in Public Issues shall be processed only after the application monies are blocked in the investor's bank accounts. Accordingly, all intermediaries / market infrastructure institutions are advised to ensure that appropriate systemic and procedural arrangements are made within three months from the date of issuance of this circular.

Stock Exchanges shall accept the ASBA applications in their electronic book building platform only with a mandatory confirmation on the application monies blocked.

The circular shall be applicable for all categories of investors viz. Retail, Qualified Institutional Bidder (QIB), Non-institutional bidder (NII) and other reserved categories and also for all modes through which the applications are processed.

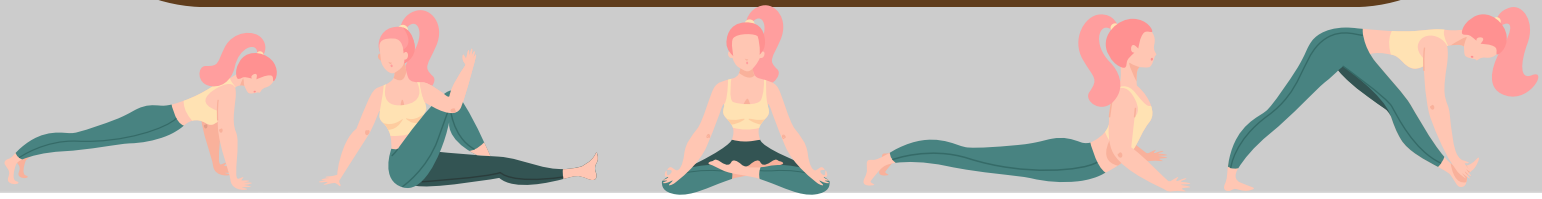
This circular shall be applicable for public issues opening on or after 1 September 2022.

International Day of Yoga
2022 – 'Yoga for Humanity'

The theme for International Yoga Day 2022 is '**Yoga for Humanity**'. The International Day of Yoga has been celebrated annually on June 21 since 2015. The Indian Prime Minister, Narendra Modi, in his UN address in 2014, had suggested the date of **June 21**, as it is the longest day of the year in the Northern Hemisphere and shares a special significance in many parts of the world. Lets read few more interesting facts about this day.

The idea of International Yoga Day was conceived by Prime Minister of India Sh. Narendra Modi, who proposed the concept on **September 27, 2014**, during his speech at the UN General Assembly.

The United Nations proclaimed 21 June as the International Day of Yoga on **December 11, 2014**. Consequently, the first International Yoga Day was observed on **June 21, 2015**.



CLASIS LAW

Tolstoy House,
4th Floor, Tolstoy Marg,
New Delhi – 110 001, India
Tel : +91 11 4213 0000
Fax : +91 11 4213 0099

Bajaj Bhawan,
1 st Floor, 226, Nariman Point,
Mumbai – 400 021, India
Tel : +91 22 4910 0000
Fax : +91 22 4910 0099

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