

Vol. 9 | September 2024

Official Newsletter

CLASIS LAW





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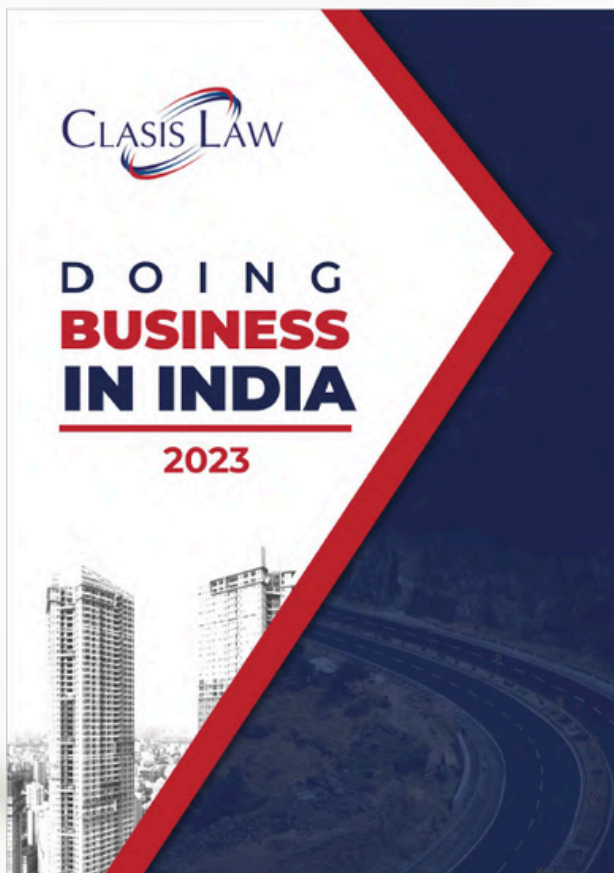
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DOING BUSINESS IN INDIA

We are pleased to share the **Fifth Edition** of our e-book titled

"Doing Business in India".

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



Please scan the QR code above or [Click Here](#) to download the e-book. Alternatively, you may write to us at info@clasislaw.com for the copy.

14th ANNIVERSARY CELEBRATION



Message from Vineet Aneja, Managing Partner on the occasion of the 14th anniversary of Clasis Law.

Another year goes by and we completed 14 years on September 15, 2024.

Every year has been different in the challenges that we have come across, in the success that we have experienced, in the changes that we have had to adapt to, in welcoming new people and at the same time saying goodbye to some as they moved on. It's all a part and parcel of any business and we look forward to the next year with the same vigor and enthusiasm as we have always done. Hope and hard work are always a key aspect.

No journey can be undertaken or endured without the support of your colleagues. Thank you to my team for their hard work and dedication that has brought us this far. Each one has played a key role in our success and I couldn't be prouder of the team we have become. But as much as we should celebrate our accomplishments, let's not forget that this anniversary of also a stepping stone to what's next. We have even bigger goals ahead and I know that together we can achieve them.

As we celebrate another milestone in our journey, we want to express our deepest gratitude to our clients. Their trust and partnership have been the foundation of our success and we wouldn't be where we are today without their continued support. It's our client's confidence in our services that drives us to raise the bar, and for that, we are truly thankful.

We deeply value the relationships we've built and look forward to continuing our work together for many years to come.

The challenges we've faced have only made us stronger, more resilient and more determined. With the same drive, creativity and teamwork, I have no doubts we'll continue to reach new heights.

So, let's use this anniversary as fuel to push forward with renewed energy and enthusiasm. The best is yet to come and the sky is the limit.

We will reach new heights.

Once again thank you to our clients, our team and our well-wishers.

With best wishes
Vineet Aneja
Managing Partner

14th ANNIVERSARY CELEBRATION



14th ANNIVERSARY CELEBRATION

ELEVATIONS



Jasmeet Munday
Senior Associate

FEATURED ARTICLE



Legal and practical gaps in beneficial ownership reporting

Authors

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On July 15, 2024, the Ministry of Corporate Affairs (“MCA”) amended the Companies (Management and Administration) Rules, 2014, replacing e-form MGT-6 with a web-form MGT-6 available on the MCA V3 portal. Form MGT-6 is applicable to the companies for reporting declarations received from registered and beneficial owners regarding their shareholdings in the company.

To understand the requirement of filing form MGT-6, the concept of “registered owner” and “beneficial owner” needs to be discussed. A registered owner is a person who holds shares on behalf of another person and whose name is entered in the register of members. A registered owner is also known as an ostensible owner. In contrast, a beneficial owner is a person who holds the beneficial interest in the shares of the company and is entitled to receive dividend or bonus shares, however, whose name is not entered in the register of members.

The body corporates that hold the entire share capital of an Indian company, are required to comply with the statutory requirement of having 2 (two) or 7 (seven) members, as the case may be. To comply with this requirement, these body corporates hold entire capital in such Indian company, with 1 (one) share being held by another person on their behalf. The person holds 1 (one) share as registered owner, however, the beneficial interest of such 1 (one) share remains with the concerned body corporate. In this scenario, the body corporate is considered as beneficial owner, while the person holding that single share is referred to as registered owner.

Section 89 of CA, 2013 mandates registered owner to disclose his/her interest in the share(s) held by him/her and any such change in those shares in form MGT-4. The beneficial owner is required to disclose his/her interest along with the particulars of registered owner in form MGT-5. Whenever, the company receives declaration in form MGT-4 and form MGT-5, it is required to file form MGT-6 within 30 days of receiving the declarations.

It is pertinent to note that section 89 uses the term “person” to refer to both registered and beneficial owner. The term person includes both natural as well as artificial person.

FEATURED ARTICLE

The earlier form MGT-6 allowed for reporting of both natural and artificial persons (such as corporate entities) as beneficial owners. However, the new web-form MGT-6 now appears to restrict reporting to natural persons only. Hence, in our view, the new web-form MGT-6 is not in consonance with the legal requirements prescribed under section 89 of CA, 2013.

The practical challenges being faced while filing web form MGT-6 are provided herein:

The updated form requires identity details of the registered owner such as income-tax permanent account number (“PAN”), passport or other registration number (in the case of body corporates) to be completed. Further, the form has the provision for completing the personal details of the authorized person in case the registered owner is a body corporate. However, this is not permitted for the beneficial owners. While providing the details of the beneficial owner, the new form requests a beneficial owner ID (“BO ID”), PAN or passport. The registration number cannot be mentioned as part of the details of the beneficial owner. Additionally, the name and personal details of the authorized person is not allowed to be mentioned in the form, which are required to be included in the case of body corporates. These changes show that while the registered owner can be a natural person or a legal entity, the beneficial owner must now be a natural person.

Conclusion

In light of the above, the changes in the web-form MGT-6 raises a question that can a mere change to a form, which is a mode of implementing the legal requirement can per se amend the law which involves a formal process requiring parliamentary approval and President’s assent? MCA should align the form MGT-6 with the legal requirement of section 89 of the Act and provide the option to mention the details of the authorized person in cases where body corporates are the beneficial owners.

Disclaimer: *This publication is not intended to cover all the aspects of those referred to herein and is only based on the understanding with respect to amendment in web form MGT-6. This publication has been prepared for information purposes only and should not be construed as legal advice.*

LEGAL UPDATE



Failure to register an Agreement to Sale is not cheating or criminal breach of trust : Supreme Court

Introduction

In a recent judgment^[1], the Supreme Court of India held that criminal action cannot be maintained against a civil wrong wherein there exists a specific civil remedy.

Facts and Contentions:

One Mohd. Naseem (**Respondent No.2**) entered into an Agreement to Sell with the Appellants for the sale of Swami Towers in Shital Bazar, Rajgarh, on June 29, 2020 (**Agreement**). Under the Agreement, certain monies were advanced to the Appellants by Respondent No. 2 with the promise to complete the entire sale transaction within 18 months from the date of execution. As the sale did not materialise, Respondent No. 2 filed an FIR with the local police station on May 24, 2022, on the pretext that the Appellants refused to execute registered agreements relating to the property, indicating dishonest intentions and a criminal conspiracy. The FIR stated that the Respondent No. 2 has been regularly contacting the Appellants, but they refused to execute the registered documents relating to the said property to dupe the Respondent No. 2. The Court also noted that soon after the FIR was lodged, a Civil Suit was

also instituted against the Appellants seeking for specific performance of the Agreement. The Appellants approached the High Court of Rajasthan under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR. The said petition was rejected by the High Court and thus, the present SLP came to be filed.

Observations of the Court and Conclusion:

The Court, on bare perusal of the FIR opined that the FIR did not spell out any element of cheating or breach of trust. The Court observed that this FIR was filed merely as an arm-twisting tactic to pressurize the Appellants into registering the Agreement for sale of the property. The Court noted that mere non-performance of an agreement to sell does not amount to cheating and breach of trust. The Court held that every civil wrong cannot be converted into criminal wrong. The Court further noted that the Respondent No. 2 was trying to abuse the criminal machinery to satisfy ulterior motives and that the High Court had erred in recording a finding that ingredients of Cheating and Criminal Breach of Trust i.e., Section 420 and 406 of the Indian Penal Code, 1860 (**IPC**) were present in the instant case.

LEGAL UPDATE

The Court opined that an offence should have some essential ingredients to be constituted as Cheating under Section 420 of the IPC i.e. *inter alia*, fraudulent or dishonest inducement of a person, an intention to deceive and the deceived person be induced to deliver the property owing to the fraud. The Court held that on bare perusal of the FIR, no element constituting fraud or deceit was made out. The Court further observed that no case was made out under Criminal Breach of Trust as per Section 406, merely because paying part amount towards sale consideration does not constitute entrustment of property and refusal to register the sale after receipt of part consideration did not constitute misappropriation of funds.

The Court held that since none of the ingredients of the offences alleged were made out, no offence could be said to have been committed by them. The Court further held that the act of the Appellants at best constitute a civil wrong and does not call for any criminal action against them. The Court also held that a civil wrong cannot be given a criminal color merely to coerce the defaulting party, i.e., the Appellants herein.

On the said premise, the Court allowed the Appeal by setting aside the order of the High Court and thereby quashing the FIR against the Appellants.

[1] Radhyesham & Ors vs State of Rajasthan & Anr (Cri. Apl No. 3020 of 2024)

CORPORATE REGULATORY UPDATES

Ministry of Civil Aviation Approves 100% FDI in Aircraft MRO Services

The Ministry of Civil Aviation, in a press release dated 2nd August 2024, informed the public of several steps taken by the government to facilitate the establishment of aircraft maintenance, repair, and overhaul ("MRO") services in India through various policy, including 100% Foreign Direct Investment via the automatic route for aircraft MRO services. Other steps include application of uniform 5% Integrated Goods and Services Tax to the import of aircraft parts, components, testing equipment and tools, (regardless of their HSN classification, subject to specified conditions), extension of export period for goods imported for repairs from 6 months to 1 year, extension of re-import period for warranty repairs from 3 to 5 years, exemption from customs duty on tools and tool kits, etc.

IBBI Introduces VRIN Requirement for Valuation Reports to Enhance Authenticity and Verification of Valuation Reports

On 12th August 2024, the Insolvency and Bankruptcy Board of India ("IBBI") issued Circular IBBI/RV/75/2024, introducing a new requirement for valuation reports under the Insolvency and Bankruptcy Code, 2016. This update mandates the assignment of a Valuation Report Identification Number ("VRIN") to each valuation report, aimed at ensuring authenticity and providing a unique reference for every report. Registered valuers and registered valuer entities are now required to generate a VRIN through a newly developed online module available on the IBBI website.

Extension of Relaxations for Companies in IFSCs Regarding Issuance of Securities

MCA, vide notification dated 26th August 2024, has extended the relaxation available to companies located in International Financial Services Centers ("IFSCs") regarding the issuance of securities. This relaxation, which was earlier granted until 31st March 2024, has now been extended until 31st March 2025. Companies in IFSCs can issue

securities in dematerialized form even if they have not issued any listed or traded securities, provided that they fulfil the conditions stipulated in the Companies (Share Capital and Debentures) Amendment Rules, 2020.

Proposed Amendments to SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI issued a consultation paper on 28th August 2024, seeking public comments on proposed amendments to the 'SEBI (Prohibition of Insider Trading) Regulations, 2015'. The proposed changes aim to strengthen the regulatory framework to prevent insider trading, particularly by individuals in possession of unpublished price-sensitive information. Key proposals include mandatory maintenance of a structured digital database of individuals having access to unpublished price-sensitive information, stricter penalties for violations, and enhanced surveillance mechanisms. The consultation paper invites public comments until 15th September 2024.

SEBI Amends Intermediaries Regulations

SEBI has issued the 'SEBI (Intermediaries) (Amendment) Regulations, 2024' on 29th August 2024. The amendments, which took effect upon publication in the Official Gazette, primarily introduce Chapter IIIA, which imposes restrictions on associations between regulated entities and unregistered persons providing securities advice or making claims about returns. Entities regulated by SEBI, including mutual funds and alternative investment funds, are now prohibited from engaging in transactions, referrals, or any form of association with individuals or entities that provide securities-related advice or claims without SEBI's authorization. The amendment clarifies that associations through specified digital platforms are exempt from these restrictions, provided that these platforms have robust mechanisms to prevent unauthorized activities. The regulation also defines 'association' in detail and outlines potential

CORPORATE REGULATORY UPDATES

SEBI actions for non-compliance, stressing the importance of adhering to these guidelines to uphold market integrity.

IFSCA Consultation on Factoring Regulations

The International Financial Services Centers Authority ("IFSCA"), on 30th August 2024, issued a consultation paper on the proposed International Financial Services Authority (Registration of Factors and Registration of Assignment of Receivables) Regulations, 2024 ("Regulations") to seek comments, views, and suggestions from the public. The Regulations, inter alia, propose to: a) Lay down the manner of granting Certificates of Registration to factors intending to conduct factoring business in IFSC. b) Establish the manner of filing particulars of assignment of receivables in such transactions with the Central Registry by a Trade Receivable Discounting System (TReDS), registered with the Authority, on behalf of factors.

IFSCA Consultation on Guidelines for International Trade Financing Services Platform

On 30th August 2024, the IFSCA issued a consultation paper on the proposed guidelines for the establishment of an International Trade Financing Services Platform ("ITFS") and invited comments, views, and suggestions from the public. The guidelines, inter alia, propose to: a) Specify the list of permissible activities for the ITFS platform. b) Define the eligibility criteria and process for authorization to set up an ITFS platform. c) Establish the principles for the operation of the ITFS platform.

IFSCA Listing Regulations, 2024

On 30th August 2024, IFSCA issued the International Financial Services Centres Authority (Listing) Regulations, 2024 ("IFSCA Listing Regulations"), which provide a unified regulatory framework for the listing of securities and other permitted financial products in the IFSC.

Review of IFSCA Market Infrastructure Institutions Regulations, 2021

On 30th August 2024, IFSCA issued a consultation paper on the review of the 'IFSCA (Market Infrastructure Institutions) Regulations, 2021' ("MII Regulations"). The MII Regulations, initially notified in April 2021, provide a unified regulatory framework for stock exchanges, clearing corporations, and depositories operating in IFSC. The proposed amendments aim to ensure that the Market Infrastructure Institutions ("MIIs") while pursuing their business objectives, continue to prioritize their regulatory roles. MIIs also act as the first line of regulation for Capital Market Intermediaries such as Broker-Dealers, Clearing Members, and Depository Participants. The amendments focus on strengthening governance standards, enhancing market confidence, and deterring malpractices.

IFSCA Consultation on Bullion Market Regulations

On 31st August 2024, IFSCA issued a consultation paper on the proposed 'International Financial Services Centres Authority (Bullion Market) Regulations, 2024' ("IFSC Bullion Market Regulations"). These regulations aim to revise the regulatory framework for the bullion market ecosystem in IFSC in India, providing a comprehensive set of guidelines for the growth and development of the bullion market. The proposed framework also seeks to promote ease of doing business for market players.



Notable Recognitions & Accolades



**Clasis Law ranked in the five areas
of practice
Corporate and M&A, Dispute
Resolution,
Labour & Employment,
Restructuring &
Insolvency and Shipping
in the recently announced 2024-25
edition of Asialaw rankings.**

Recognized as a
“Notable Practitioner” in
Corporate and M&A
for the 2024/25 edition of Asialaw.



Vineet Aneja



Notable Recognitions & Accolades



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