LEGAL MEDIA GROUP

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BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

GIFT CITY IFSC

THE KEY TO UNLOCKING INDIA'S BRIMMING POTENTIAL AS A GLOBAL INVESTMENT AND ARBITRATION HUB

THE GROWTH AND EVOLUTION OF COMPETITION LAW IN MALAYSIA

UAE WELCOMES FOREIGN INVESTMENT AND BOLSTERS M&A ACTIVITY

VALUATION OF BIOLOGICAL RESOURCES IN INDIA FOR RESEARCH AND PATENTING FOR COMMERCIAL

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Legal Era aims to provide "in the trenches" editorial that gives Common Man, Law Students, Lawyers, Business Leaders and Corporate Managements a detailed outlook of the current legal scenario.

"Legal Era aims at Initiating, Integrating & Innovating ways and means to establish thought-provoking seminars with a vision to proliferate knowledge and optimize business opportunities."

-Aakriti Raizada
Founder & Managing Editor

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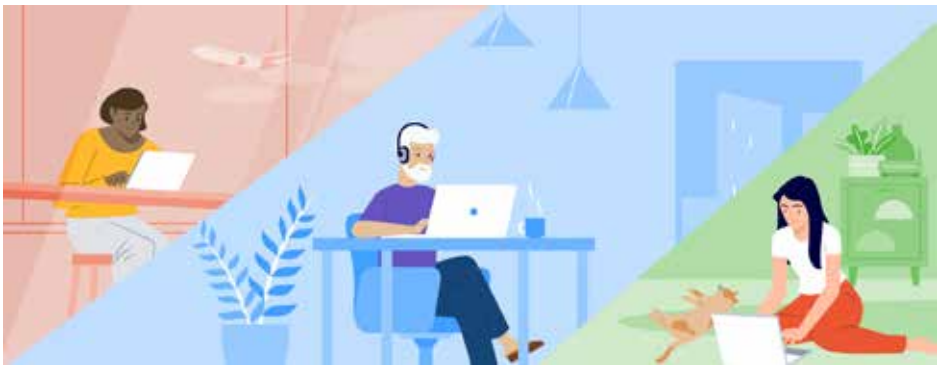
Aakriti Raizada
FOUNDER & MANAGING EDITOR



How Would You Describe Your Working Model Today?

Most people are now heading back to offices a couple of days a week. Many may have to get behind the idea of maintaining two workspaces. Whatever be the industry, geography, or roles, the hybrid model of working is touching our lives in different ways.

Indian companies are actively working to bring back employees to the office for a few days of the week. Returning to the workplace is critical to fostering innovation, personal growth, and employee retention. Industry experts say working in isolation during COVID has weakened employer-employee ties, hastening the exit of workers seeking better growth opportunities. There is this new awareness that complete remote work will have its challenges: the mental health of employees, how do you encourage teamwork, how do you keep them engaged, a central sense of purpose.

All the same, it is a reality that the world has changed so much over the past two years that sometimes it is easy to forget all how our lives have altered. For many, it is a challenge to go back to work as that would disrupt their entire work-from-home life. Some have expressly put their foot down against moving back to former cities/ office locations to perform the same work they have successfully delivered remotely. Flexible work has also changed how companies understand and acquire talent, create new opportunities, allow more family time, and provide options for more savings. HBR submits that Fairness and Equity will be the defining issues for organizations in 2022. Demanding employees to return to the office will only further exacerbate attrition rates. And, from these perspectives, the hybrid model is also here to stay.

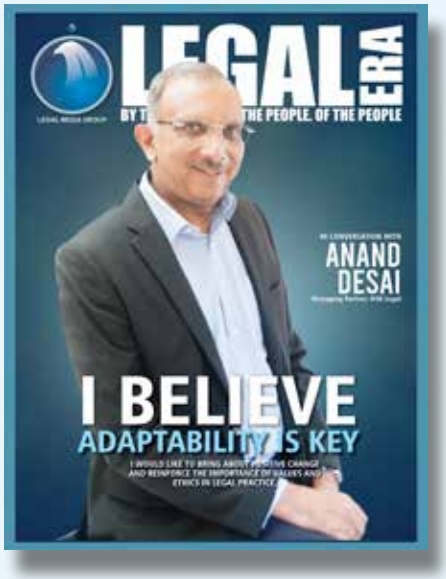
So, the question then is: Is there one perfect model of hybrid working?

So, the question then is: Is there one perfect model of hybrid working? Can there be a one-size-fits-all solution for all firms and organizations? Can we describe the hybrid way of working in a single definition with black and white characteristics?

Ongoing surveys and studies and global experiences tell us otherwise. The differing requirements of work ecosystems, historical traditions, cultural practices, on-ground practicalities, and the diverse appetites for disruption make for a steep learning curve with our experiments with the hybrid working model. And policymakers worldwide are watching these trends.

While there may be no secret sauce, it is best to figure out "the how" of being hybrid for you - the hybrid that best meets your organization's, your business, and your people's goals. And while you figure that out, I invite you to turn the pages and enjoy the enriching fleet of conversations, insights, and commentary in this April Edition of Legal Era magazine. Happy reading and I wish you a constructive month ahead.

'LEGALLY LOVED' BY THE PEOPLE. FOR THE PEOPLE



Without any doubt, Legal Era is a laudable publication offering detailed analysis by leading practitioners covering a wide range of legal issues. Thanks to the insightful articles in each edition, the readers of Legal Era are kept abreast of the ever-changing legal landscape

Indran Shanmuganathan
Partner, Shearn Delamore & Co.

While Legal Era tries to collect exciting foresights from the world, it attempts to enlighten the world thereby

C. F. Tsai
Managing Partner, Deep & Far Attorneys at Law

Legal Era has taken giant strides since its inception. Keep up the good work team!

Ameet Sharma
Lawyer, Jaipur

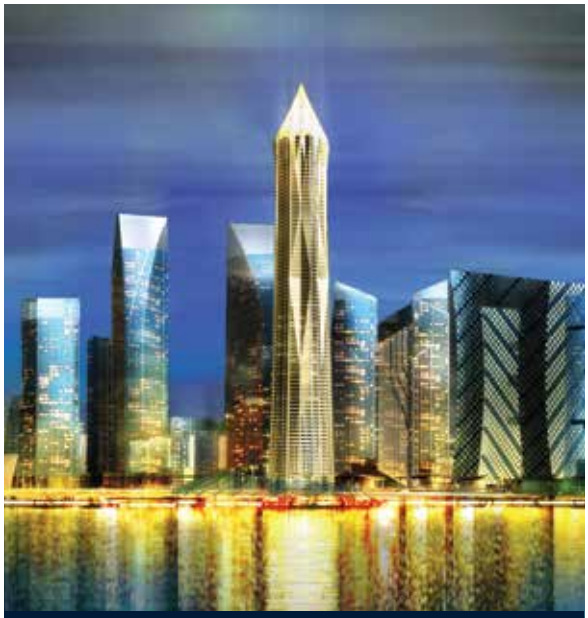
I look forward to the main interview in each edition of the magazine. The routine features too keep me up-to-speed with the latest developments in the legal universe

Rahul Sharma
In-House Counsel

I request the editorial team to include running matters with sessions and civil courts as well as the Bombay High Court

Smriti Kapoor
Lawyer, New Delhi

QUICK GLANCE



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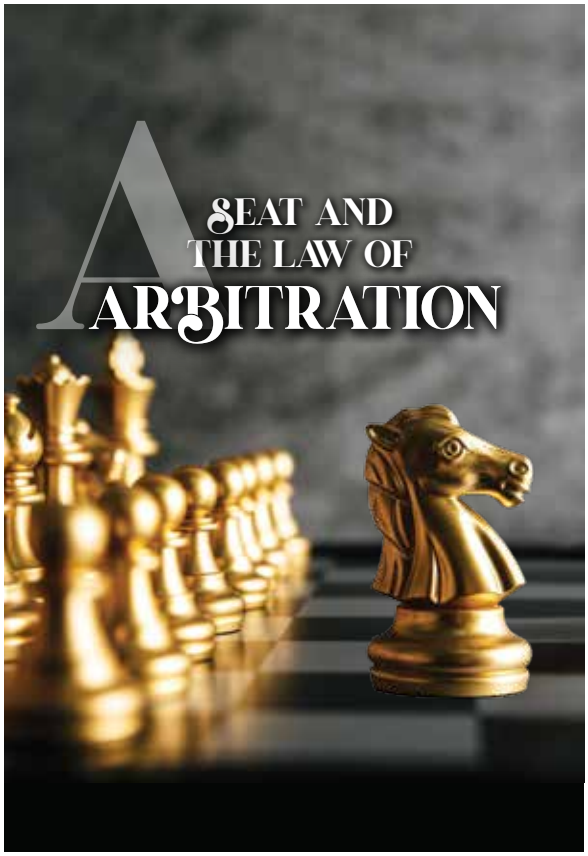
THE KEY TO UNLOCKING INDIA'S BRIMMING POTENTIAL AS A GLOBAL INVESTMENT AND ARBITRATION HUB




Changes Made To The
Rules On Issuance Of
Share Based
Employee Benefits
To Non-Residents


FROM GENERAL COUNSEL TO
INDEPENDENT
DIRECTOR


VALUATION OF
BIOLOGICAL
RESOURCES
IN INDIA FOR
RESEARCH AND
PATENTING FOR
COMMERCIAL


DEMYSTIFYING SUSTAINABILITY
LINKED LOANS


LEGAL CONSIDERATIONS FOR
INVESTMENTS IN
DATA CENTERS
IN INDIA


MITIGATION OF
ESG
RELATED
LITIGATION

CONTENTS

KHAITAN AND AZB LEAD ON AXIS BANK BUYING CITIBANK'S CONSUMER BUSINESS

Law firms Clifford Chance and Linklaters also acted as advisors

Axis Bank is acquiring New York-headquartered Citibank's consumer business in India. The acquisition is subject to customary closing conditions, including the receipt of regulatory approvals.

The transaction comprises the sale of the consumer banking businesses of Citibank India. It includes credit cards, retail banking, and wealth management and consumer loans.

The deal also includes the sale of the consumer business of Citi's non-banking financial company, Citicorp Finance (India) Limited. It comprises the asset-backed financing business, including personal loans and commercial vehicle and construction equipment loans.

While Khaitan & Co represented Axis Bank, AZB & Partners acted for Citibank. Law firms Clifford Chance and Linklaters too advised Citibank.

The Khaitan & Co team was led by partners Haigreve Khaitan, Aravind Venugopal, Vidushi Gupta and Supratim Chakraborty. They were assisted by principal associates BN Vivek, Shreya Dua and Mihir Roy and associate Sagarika Chandel.

The AZB & Partners team was led by managing partner Zia Mody along with partners Ashwath Rau, Roxanne Anderson, Gautam Ganjawala and Anand Shah.

DESAI & DIWANJI REPRESENT PAVESTONE TECHNOLOGY IN A DEAL

It is probably the largest venture capital funding into the defense sector.

Indian law firm Desai & Diwanji have acted on the Pavestone Technology fund with ₹ 160 crores investment in a drone technology startup.

Pavestone has invested in NewSpace Research and Technologies, a Bengaluru-based venture. The funding was raised at an undisclosed valuation.

Desai & Diwanji's Prerana Chaudhari (Associate Partner) led the transaction. She was assisted by Rahul Deodhar (Associate Partner), with inputs from Siddharth Mody (Partner).

SHARDUL AMARCHAND MANGALDAS & KHAITAN ADVISED PVR & INOX MERGER

Another unique merger of two leading leisure film theaters PVR Cinemas and INOX with a vision to develop 1500 screens & become a largest multiplex chain in the country

Leading Law firms Shardul Amarchand Mangaldas advised PVR Limited in the proposed merger of INOX Leisure Limited with PVR Limited.

The Board of Directors of PVR Limited and INOX Leisure Limited approved, on 27 March 2022, the proposed amalgamation of INOX Leisure Limited into and with PVR Limited. The new merged entity will be PVR INOX Ltd.

The amalgamation is subject to approval of the shareholders of PVR and INOX respectively, stock exchanges, SEBI and such other regulatory approvals as may be required. Post merger, INOX Promoters will have 16.66% stake while PVR Promoters will have 10.62% stake in the combined entity. The promoters of INOX will become co-promoters in the merged entity along with the existing promoters of PVR.

The SAM team was led by Raghubir Menon, Partner and Anirban Bhattacharya, Partner, together with Tanya Pahwa, Principal Associate, Tushnaz Patel, Senior Associate, Swati Sharma, Senior Associate, Shrungar Bhuva, Associate, Devangana Mandal, Associate, Shubhangi Maheshwari, Associate, Parth Sharma, Associate and Manisha Nayak, Associate.

The securities team was led by Yogesh Chande, Partner and Kanwardeep Kapany, Principal Associate, together with Preeti Kapany, Associate and Shweta Ojha, Associate.

The competition team was led by Shweta Shroff Chopra, Partner and Manika Brar, Partner, together with Aniket Ghosh, Senior Associate and Apurv Jain, Associate.

The litigation team was led by. Anirudh Das, Partner.

"The intellectual property team was led by J.V. Abhay, Partner, together with Madhur Chopra, Senior Associate."

Khaitan & Co team advised INOX and the team was led by Partner Ashraya Rao along with Senior Associates Kaushik Babu, Rushabh Gala and Amit Panwar.

Competition Law team was led by Manas Kumar Chaudhuri (Partner), Anisha Chand (Partner) and Soham Banerjee (Senior Associate).

Intellectual Property team was led by Adheesh Nargolkar (Partner), Smriti Yadav (Partner), Dhiren Karania (Principal Associate), Sunaina Brahma (Senior Associate) and Abdul Hannan (Associate)

Due diligence was handled by Ravali Rayaprolu (Associate), Arka Banerjee (Associate), Hansaja Pandya (Associate), Saranya Mishra (Associate) and Vaishanshi Bharadwaj (Associate) The merged entity will be named as PVR INOX Ltd, and the branding of existing screens to continue as PVR and INOX respectively.

LAKSHMIKUMARAN & SRIDHARAN ADVISE INDIAMART ON A STAKE IN LIVE KEEPING

The transaction was worth approximately ₹ 45.98 crores

One of the top Indian law firms Lakshikumaran & Sridharan has represented IndiaMart Intermesh Limited in acquiring a 51.09 percent stake in Finlite Technologies Private Limited. The latter operates 'Live Keeping', a mobile application that allows users to access their Tally ERP9 data.

The law firm assisted IndiaMart with end-to-end transaction advisory for the investment process, along with conducting legal due diligence, negotiations and finalization of transaction documentation.

The Lakshikumaran & Sridharan team was led by Kunal Arora (partner) along with Gunmeher Juneja (principal associate) and Pragya Pandey (associate). Pooja Vijayvargiya (joint partner) led the due diligence team comprising Nayanika Majumdar (senior associate), Archit Gupta (associate), and Pragya Pandey, (associate).

Kunal Arora (Partner)

CLIFFORD AND ORRICK ADVISE TENCENT ON INVESTMENT IN ITALY'S FIRST UNICORN

Scalpay is an innovative payment solution for e-commerce merchants to allow customers to 'buy-now-and-pay-later' without interest

London-based law firm Clifford Chance has advised Tencent, a Chinese multinational technology and entertainment conglomerate, on its role as lead investor in the $497 million Series B equity financing of Italian firm Scalpay.

Becoming the first unicorn in Italy after the funding round, Scalpay was advised by California, US-headquartered law firm Orrick, Herrington & Sutcliffe.

Founded in 2019, the Milan-headquartered Scalpay boasts of several prestigious clients including Shein, Moschino, Samsonite, Pandora and Nike.

While the Clifford team was led by partner Bryan Koo and supported by partners Claudio Cerabolini, Lucio Bonavitacola, Frédérick Lacroix, Laurent Schoenstein, and Marc Benzler, the Orrick team was led by partners Attilio Mazzilli and Shawn Atkinson.

Other investors in the funding included Tiger Global, Gangwal, Moore Capital, Deimos, and Fasanara Capital.

DSK LEGAL ADVISED HDFC CAPITAL ADVISORS

DSK Legal advised HDFC Capital Advisors Limited ("HDFC Capital") on their investment in Loyalie IT Solutions Private Limited ("Company") (operating under the brand name 'Reloy').

The Company is a real estate digital amenities and referral solutions provider. It is engaged in in the business of offering marketing schemes and loyalty/reward bonuses to its customers and existing customers of the developers by providing real estate brokering services using iOS and Android based mobile applications.

The scope of work of DSK Legal included: (i) assisting HDFC Capital in the due diligence process; (ii) drafting, revising, negotiating and finalizing of the transaction documents; and (iii) reviewing, assisting in completing conditions precedent and closing of the transaction.

DSK Legal team for the above transaction was led by Partner Mr. Hemang Parekh, Counsel Ms. Swati Rout and Associate Ms. Sharmishtha Bharde. Associate Partner Mr. Jayesh Kothari and Associate Mr. Kunal Chopra assisted in the closing process of the transaction.

The legal due diligence process was led by Associate Partner Mr. Jayesh Kothari, Senior Associate Ms. Harini Sutaria and Associate Mr. Kunal Chopra.

The Company was advised by Economic Laws Practice.

CYRIL AMARCHAND MANGALDAS SECURE ADANI'S FORAY INTO MEDIA REALM

Gautam Adani, India's second richest man, has been eyeing entry into this space for the past few months

The Adani Group has acquired a minority stake in Quintillion Business Media (QBM), which runs the digital media publication The Quint.

According to the statement issued by the two companies, the proposed transaction is only for the digital business news platform. It does not have a connect with other digital media or media tech properties owned by Quint Digital, including The Quint, Quintype Technologies, The News Minute and Youthkiawaaz.

The Adani Group was represented by law firm Cyril Amarchand Mangaldas. Partners Smruti Shah and Paridhi Adani led the team.

SAM, GOODWIN, SARAF, CRAVATH ADVICE ON INDIA BIOPHARMA DEAL

As a result of their work together, Shardul Amarchand Mangaldas & Co. and Goodwin Procter advised Biocon Biologics, a subsidiary of Indian drugmaker Biocon, on its $3.34 billion acquisition of the biosimilars business of American firm Viatris, which was advised by Cravath, Swaine & Moore and Saraf and Partners.

Reuters reports that Biocon will extend its biosimilars portfolio to 20 treatments by including treatments for diabetes, tumors and autoimmune diseases and commercializing them for developed markets.

In addition, Viatris will receive up to $2.34 billion in cash and convertible shares in Biocon Biologics worth $1 billion, according to Reuters.

Partners Iqbal Khan and Ambarish are leading the SAM team, while partners Graham Defries and Michael R. Patrone lead the Goodwin Procter team. Saraf and Partners was led by partner Mohit Saraf and Cravath was led by partners Mark Greene and Aaron Gruber.

S&R ASSOCIATES ADVISED DILIP BUILDCON FOR 100 PERCENT EQUITY SALE

The ten projects are estimated to be worth ₹ 2,349 crores

The New Delhi-based law firm S&R Associates has represented Dilip Buildcon Limited (DBL), a listed construction and infrastructure development company, in the sale of 100 percent equity held by DBL and its subsidiary DBL Infra Assets and their affiliates.

The portfolio pertained to 10 hybrid annuity model road projects to Shrem InvIT, an infrastructure investment trust registered with the Securities and Exchange Board of India (SEBI), acting through its investment manager, Shrem Financial.

The total equity valuation of the ten projects is approximately ₹ 2,349 crores that are subject to certain valuation adjustments.

Mohit Gogia (Partner), Shivaji Bhattacharya (Partner)

The S&R team was led by Mohit Gogia (partner), Shivaji Bhattacharya (partner), and Anshul Chopra (associate partner).

11TH ANNUAL

LEGAL ERA

Indian Legal Awards 2021-22

Awards Ceremony

07 May 2022

Hotel Shangri-La, New Delhi

Time - 17.00 IST onwards

17:00 | Welcome Address & Jury Speeches

17:30 -20:30 | Award Presentation

20:30 | Closing Remarks

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COOLEY ADDS LINKLATERS' GLOBAL HEAD IN BRUSSELS

Jonas Koponen

In the heated M&A market, Jonas Koponen brings experience in investigation, litigation and transactional dealings

The co-chair of Linklaters' antitrust and foreign investment group in Brussels has been added to Cooley's team.

A former co-head of Linklaters' life sciences and healthcare practice, as well as a member of the firm's antitrust and competition team, Jonas Koponen, joins the firm after more than 20 years. An experienced lawyer with a wide range of experience, he has worked on complex transactions, investigations and lawsuits.

Cooley partner Jacqueline Grise, chair of the firm's antitrust and competition group, says Jonas is a well-known and recognized antitrust leader in Europe and globally. Jonas' extensive expertise and background in the M&A space will help our team to deliver successful results for our clients, considering the growth of our M&A practice - with deals increasing in terms of number, size and complexity.

Refinitiv's global M&A review shows that merger and acquisition activity surpassed the earlier record of $4.2tr set in 2015 to reach $5.9tr last year. According to Refinitiv, Cooley handled 276 deals worth $149.68bn, placing her at number 25 on the list of global M&A legal advisors by deal volume.

As a merger and acquisition attorney, Koponen represents clients in evaluating merger and acquisition transactions for the European Commission and other enforcement agencies overseas. As an investigator, he represents clients in a wide range of investigations, including matters related to business conduct, cartels and anti-competitive agreements and practices.

Chambers has ranked Koponen's experience as Band 3 for competition and he has experience in the financial services, life sciences, healthcare, telecommunications, software and technology industries. A part of his transactional work has included advising clients such as Takeda Pharmaceutical Company on its recommended offer of £46bn for UK biotech outfit Shire and Johnson and Johnson on several acquisitions such as Synthes for $21.3bn in 2012 and Abbott Medical Optics for $4.3bn five years ago.

Cooley's lawyers impressed Koponen with their ability to deliver results for their clients and Koponen added: "I'm anxious to be a part of such an exciting time for our clients and for our firm."

Koponen is the third partner to join Cooley this year. Earlier this month, the firm added Caroline Hobson and Ethan Glass to its antitrust and competition practice in London and the latter moved to Cooley's global litigation department in Washington, DC from Quinn Emanuel Urquhart & Sullivan.

Earlier this month, Cooley said the company had seen its revenue increase by 28 percent in 2021 to reach $1.9 billion, while its profit per equity partner increased by 28 percent to reach $4 million. A key factor contributing to growth was the boom in mergers and acquisitions in the US tech sector, which was fueled, in part, by SPAC deals.

With an office opening in Brussels in 2019, the firm also pointed to its expanding litigation practice, which brought nine lawyers from Winston & Strawn, Latham & Watkins and DLA Piper to open in Chicago in May. A trio of litigation partners was added in July, including former Latham & Watkins Litigation group chair Matthew Kutcher, who was formerly employed by the Justice Department of Chicago.

AKIN GUMP APPOINTS DISPUTES TEAM IN DUBAI

Graham Lovett

Leading the team is Graham Lovett, Middle East ex-disputes practice head at Gibson Dunn

Akin Gump Strauss Hauer & Feld has hired a team of dispute lawyers from Gibson Dunn & Crutcher to strengthen its arbitration and litigation practices in Dubai

Senior counsel Ryan Whelan and associates Michael Stewart and Sophia Cafoor-Camps, are also joining the firm, together with the former leader of Gibson Dunn's Middle East disputes practice, Graham Lovett.

Lovett is an experienced litigator who handles litigation and arbitration matters and he brings with him almost three decades of dispute resolution experience in joint ventures, shareholder disputes, banking and finance and theft claims.

In an interview with Akin Gump, Kim Koopersmith said: "Graham and his team have extraordinary reputations in the Middle East and abroad for their work with international arbitrations and disputes. Their experience and geographical location complement our strategic priorities perfectly."

Koopersmith stressed the firm is committed to further expanding its international conflicts capabilities, with Lovett and his team's arrival fitting in with the firm's strategy to continue to expand in the Middle East.

Lovett spent nine years as a partner in Clifford Chance's Dubai office, working a total of more than two decades at the Magic Circle firm. Since joining Gibson Dunn, he has spent just over six years there. Since he has been living in the UAE for 18 years, he has held the position of chairman of the Legislative Committee of the Dubai International Financial Center, as well as a director of the Dubai International Arbitration Center.

"Graham is widely recognized as one of the leading dispute lawyers in the Middle East," said Mahmoud Fadlallah, partner in charge of Akin Gump's Dubai office. Our dispute and investigation practices are strategically expanding not only in the UAE and throughout the Middle East but worldwide as well, with the addition of his team. Graham and his team have immense experience and skill and we expect our clients to benefit greatly from that."

With the addition of this team, the firm now has four partners and approximately 15 lawyers across Dubai and Abu Dhabi.

Earlier this month, US peer Vinson & Elkins hired Hogan Lovells' Nabeel Ikram as a disputes partner to bolster its commercial litigation practice in Dubai. This occurred just days after Vinson's former Dubai managing partner Amir Ghaffari parted ways with the firm to create his own boutique disputes firm and take five lawyers with him.

Raza Mithani, a former partner in Bryan Cave Leighton Paisner's Dubai office, left the firm in January 2022 to start his own disputes and investigations business.

Gibson Dunn will remain in Dubai with six attorneys, according to the firm's website, after the departure of Lovett and his team.

Barbara Becker, the firm's senior partner, told Law.com earlier this month that she planned a trip to Dubai and had ambitions of expanding the firm's international offices.

The former Gibson Dunn Dubai disputes partner Peter Gray, who has been struck off from the British legal profession for lying to London's High Court, lost his appeal this month as well.

CERENCE HIRES NEXT GC, LENOVO'S FORMER LITIGATION HEAD

The world's top automotive law firm hires an AI software developer with a strategy background for top legal position

Lenovo's former litigation head has been hired by Cerence, a voice-powered AI company developing digital assistants for automotive customers.

Earlier 2022, Nasdaq-listed Burlington, Massachusetts-based company Sanjay Dhawan left to head enterprise firm Symphony AI. Jennifer Salinas joins during the company's leadership shake-up under new CEO Julian Curtis.

Stefan Ortmanns has hired Salinas to succeed Leanne Fitzgerald, who resigned in Feb 2022 to "pursue another opportunity," according to a public filing. A new CFO is also on board.

A Massachusetts federal court filed a class-action suit against Cerence, alleging the company misled investors about how a global semiconductor shortage would impact demand for its products. Salinas will assume her new responsibilities from 4th April, 2022.

Salinas was described by Ortmanns as "an excellent, key addition to my leadership team as we continue to drive the business forward, create a high-performance culture and produce better results for our stakeholders".

In his previous position, Salinas spent two years at Troutman Sanders in California, specializing in intellectual property and patent litigation before moving to Lenovo's US headquarters in North Carolina. In 1998, she began her career in private practice at Stradling Yocca Carlson & Rauth and in 2008 joined Sheppard Mullin Richter & Hampton. At Sheppard Mullin Richter & Hampton, she focused

Jennifer Salinas

exclusively on intellectual property law.

Her career at Lenovo spanned just over four years and she described herself as both a "lawyer by trade" and a "strategist by heart". Following her appointment as general counsel of the company's infrastructure solutions group in 2020, she joined the tech giant to lead its global litigation department in 2018.

Salinas' responsibilities at Lenovo included overseeing joint ventures, mergers and acquisitions, strategic partnerships, brand protection and securities law disclosure documents, among others.

Cerence's general counsel, Fitzgerald, started working with the company when it was launched in 2019 from local rival Nuance Communications. To assist the transition of her responsibilities, she agreed to stay till the end of the financial year after her resignation.

Earlier March 2022, Tesla has employed three people to lead the legal department. Its head of compliance currently serves as acting head of legal and corporate secretary.

SHASHANK MANISH HIRED BY SARAF AND PARTNERS

Established last year, the law firm continues its growth spurt

Saraf and Partners has hired disputes and intellectual property expert Shashank Manish as a partner in Delhi.

Manish was earlier working with P&A Law Offices and spent about four years at the firm. Prior to that, he was an independent counsel for about eight years.

Since its inception in July last, Saraf and Partners has expanded steadily from 21 partners earlier to 29 partners at present. Beginning with 100 lawyers, the firm now has 180 lawyers.

Shashank Manish

The recent partner additions include Manmeet Singh, Sachit Mathur, Ajay Bhadu, Astha Singh Trehan, Sagar Manju, Akshayy S Nanda and Alok Shankar.

ADDLESHAW GODDARD EXPANDS OFFICES IN MUNICH AND FRANKFURT

Following up on moves into Dublin and Luxembourg, the UK firm's strategy is running ahead of schedule

Three years after launching in Hamburg to start its European expansion drive, Addleshaw Goddard has gained two new offices in Germany.

The UK firm has scooped up a number of partners from rival firms to launch its new offices in Munich and Frankfurt, including three from Advant Beiten, one from Skadden Arps Slate Meagher & Flom and one from Gowling WLG. Advant Beiten will also be providing counsel in Frankfurt for Addleshaws, the firm announced today.

In the same week that the firm announced the expansion, the firm announced that it would open an office in Luxembourg with a trio of corporate lawyers from Fieldfisher to help grow its fund finance practice. A merger with local firm Eugene F Collins earlier this year allowed it to extend its reach to the Dunlin as well, bringing over 100 legal professionals and 25 partners to its network.

As part of its European expansion strategy, it opened its first office in Hamburg in June 2019. It was previously based in Paris.

Addleshaws' head of operations in Germany, Michael Leue, said that the new opening in Hamburg had put the company "well ahead" of its growth targets.

Managing partner John Joyce added, "Our European expansion has exceeded expectations over the last two years. We look forward to delivering our commitment to providing comprehensive, EU-wide services to our clients."

As the firm's most important new hire, Markus Perkams will join the firm in Frankfurt after eight years as a legal counsel at Skadden. In addition to being dual-qualified in Germany and the UK, Perkams also represents clients in arbitrations and state courts.

Jörg Bielefel, Alexander Schmid, Timo Handel and André Suttorp are among the lawyers who will join Advant Beiten - formerly Beiten Burkhardt - as partners in Frankfurt and Munich, respectively, for a global investigations team led by André Suttorp will lead a corporate and international tax law team in Munich.

Bielefel & Schmid specialize in advising and defending clients with regard to all areas of criminal and commercial tax law. Together, Theodore Handel and Addleshaws will focus on investigating and auditing law enforcement and supervisory authorities, as well as detecting and prosecuting irregularities, which he notes is a new focus for his team.

Additionally, Manuela Finger joins the two new offices along with her team from Gowling. As a partner at Gowling for five years, Finger specializes in intellectual property, information technology, digital media and data protection issues. The expertise she brings to the table is advising on new product launches and providing legal counsel to companies wishing to expand into new markets in Germany and other European countries.

In addition to the addition of Jörg Etzkorn to Addleshaws in Munich, he will continue in his current role as general counsel and chief compliance officer at German insurance giant HUK-Coburg.

Hamburg is also home to several lawyers who are moving. Helge Heirich will join the Munich office along with his competition team, whereas Nadine Bourgeois, a banking and finance attorney and Janak Goßler, a commercial and distribution attorney, will move from Munich.

According to Global Legal Post's UK law firm results tracker, Addleshaws reported a 12percent growth in revenue to £321m and a 23percent uptick in profit per equity partner to £849,000 last July.

Fieldfisher is another UK firm that has opened a new office in Germany this year. It opened in Berlin last month in order to serve as the home base for its new tech-powered group litigation unit, Fieldfisher X, which leverages legaltech to target the booming German mass litigation market.

As of September 2021, Beiten was one of three leading European firms to form Advant, an exclusive alliance formed by a Swiss verein jointly with NCTM in Milan and Altana in Paris. With more than 600 professionals and 140 equity partners, the three companies had combined revenues of €216m in 2020. According to Avant's anticipated revenue, it would place just outside the top 10 law firms in Europe.

L&L PARTNERS HIRES ASHUTOSH NARANG, GENERAL COUNSEL, CAPITAL INDIA FINANCE

Narang will work in the Mumbai office as a Partner at the firm's corporate practice.

As a Partner, Ashutosh Narang is geared up to join L&L Partners in the firm's corporate practice. He is former General Counsel and Head of the Legal and Compliance team at Capital India Finance Limited.

Narang will work from the firm's Mumbai office.

His academic background includes a law degree from Symbiosis Law School and a postgraduate degree from the National University of Singapore in Singapore.

Narang was previously with Link Legal before joining Capital India Finance. His previous work experience includes AZB & Partners and Wadia Ghandy & Co.

With 165 candidates joining the firm in 2021, L&L has been on a talent acquisition spree. There have been 22 ex-Luthraites hired at the firm since July 2021.

ORRICK HERRINGTON TEAM JOINS OSBORNE CLARKE IN LONDON

UK firm adds on heft to renewables and energy management capabilities with the arrival of John Deacon and two other partners

In the UK, Osborne Clarke has expanded its energy and infrastructure practices by taking along three partners from Orrick Herrington & Sutcliffe in London.

Osborne Clarke is bringing in sector veteran John Deacon immediately, while Dominic O'Brien and Hannah Roscoe will join before the end of FY 2022.

According to the firm, the arrival of the trio will add significant heft to its expertise in the energy sector, especially in the areas of renewables, power management, waste and bio-energy. As listed on the firm's website, 74 lawyers, including 39 partners, make up Osborne Clarke's energy and utility team in the UK.

In addition to the new hires, Hugo Lidbetter, a former energy expert at Fieldfisher in Bristol, has joined the firm's energy group as a partner.

"We are committed in investing and growing the UK energy sector as part of our decarbonization transformation strategy," said Matthew Lewis, head of the firm's UK energy and utilities sector group. "Our partnership will help to grow our client base and enhance our services with the vast experience of John, Dominic and Hannah."

After five years as the UK firm's co-leader of its renewables practice at Hogan Lovells, Deacon joined Orrick in 2015. He concentrates his practice on renewable energy projects like biogas and solar assets, carbon finance and

trading and infrastructure claims. He specializes in dealing with renewable energy issues.

Between 2005 and 2011, Deacon was a partner at Hunton & Williams for six years before joining Hogan Lovells. In his LinkedIn profile, he is listed, having worked previously at Hammonds, where he became a partner in 2004 after working five years as an associate at Baker McKenzie.

In 2016, O'Brien shifted to Orrick from Jones Day. His experience is primarily focused on energy and infrastructure project financing. He helps utility companies, developers and energy providers finance new Greenfield projects, brownfield acquisitions and corporate financings.

The move comes shortly after Roscoe spent over two years at Orrick. After earning her qualifications and training at Herbert Smith Freehills between 2008 and 2010, she moved to the US firm in 2019. In addition to her

expertise in renewable energy, nuclear and conventional sources of energy, she has experience in M&A, joint ventures, commercial contracts, restructurings, financings and project development.

Osborne Clarke launched an office in Warsaw in March 2022, which added 30 lawyers from local practices to the firm's European infrastructure and energy and utilities platforms. The office will be the firm's first physical presence in Central and Eastern Europe and will be led by Olgierd Swierzewski, a co-managing partner and Tomasz Olkiewicz, the firm's head of business development. The office consists of six partners, including four from MDDP, 24 lawyers and four support staff.

The firm's long-time corporate partner, John Cook, left Orrick in January to join Intersect Power as its chief legal officer after spending more than 25 years at the firm.

TESLA APPOINTS THIRD NEW LEGAL LEADER

Bill Berry takes over as acting head of legal from David Searle, compliance chief

The company has appointed its director of compliance as acting head of legal and corporate secretary, the third person to lead Tesla's legal department within the past two years.

Tesla's deputy general counsel and head of compliance, David Searle, joined the company last February after almost two years working at Walmart, where he was vice president and chief ethics and compliance officer.

According to Bloomberg Law, Searle updated his LinkedIn profile last week to reflect his new titles, which indicates that he assumed the role of acting director of legal last October. As Tesla's legal leader, he replaces William Berry, formerly of Google's in-house team, who according to his LinkedIn page led Tesla's legal team for several months last year as vice president of legal and left the company in December.

Mr. Berry replaced acting general counsel and corporate secretary Alan Prescott who left Tesla last April after less than 18 months in the role to become chief legal officer of Luminar, a Peter Thiel-funded company that develops laser sensor technology for autonomous vehicles.

He spent most of his career as a federal prosecutor in Houston before moving to Walmart's hometown of Bentonville, Arkansas

David Searle

to take up his position at the multinational retailer. Previously, he served for four-and-a-half years as chief compliance officer and deputy general counsel at Bristow Group, an aviation company that primarily serves the offshore energy sector, and he served earlier as director of compliance at chemicals distributor Nexeo Solutions and as audit and investigations counsel at the energy tech company Baker Hughes. He worked as an associate at Baker Botts prior to joining the firm.

Tesla moved its headquarters to Austin last December after Elon Musk clashed with officials in the company's previous home state of California over restrictions that stopped production at the factory during the pandemic. According to Searle's LinkedIn profile, he is once again based in Texas.

Searle is Tesla's sixth legal chief in the last decade. Between December 2018 and December 2019, the company lost three general counsels, Todd Maron, Dane Butswinkas and Jonathan Chang. A former divorce lawyer of Musk, Marcon left the company at the end of 2018 after serving as its top lawyer for over four years. However, Butswinkas, a partner at Williams & Connolly, held the role for just two months, while Chang moved to SambaNova, a developer of AI hardware.

A request for comment was not responded to by Tesla.

INDUSLAW HIRES ANUP SHAH LAW FIRM TEAM FOR EXPANDING REAL ESTATE ZONE

The group will be joining from April 1

The multi-specialty law firm IndusLaw has hired a team from Anup Shah Law Firm (ASLF) for the expansion of its real estate practice.

Based out of Bangalore and Chennai, AFSL is a premium real estate law firm.

On the development plans, Suneeth Katarki, the founding partner at IndusLaw said, "With this expansion, IndusLaw gains an increased foothold in South India, a talented pool of resources and a broader network that will enable us to expand services provided to our clients. It will help us create a niche in the premium real estate space and further cement our dispute resolution practice. We welcome them all and look forward to this new journey."

Anup S Shah, the founding partner of ASLF commented, "I am extremely proud and happy to see my team joining IndusLaw. I am sure, this will enhance the overall client-serving capabilities at IndusLaw. I wish them and the firm greater success."

The ASLF team comprises 64 members (50 in Bangalore and 14 in Chennai), including four Chennai-based partners R Sunitha, KN Geetha, Kempe Gowda and K Vivekanand and 38 associates and 22 support staff.

Meanwhile, Anup Shah will continue to run his advisory and consulting work under the AFSL brand.

TAYLOR WESSING HIRES TECH SPECIALIST FOR MENA

Abdullah Mutawi has joined the company in Dubai to develop M&A, private equity, and venture capital offerings in the region

Among its latest recruitments is Taylor Wessing, which has recruited the head of corporate commercial at leading Middle East firm Al Tamimi & Company to become its head of corporate for MENA.

Having practiced corporate law in London and the Middle East for more than 25 years, Abdullah Mutawi brings his expertise in M&A, corporate finance, venture capital, and special situations to his TMT sector. Taylor Wessing in Dubai is recruiting him after three years at Al Tamimi, where he developed and led the venture capital and emerging companies practices, as well as led the M&A practice.

Ronald Graham, who heads the Dubai office of Taylor Wessing, said that the firm was looking for a senior corporate tech lawyer to complement its international team and capitalize on the company's offerings in Europe in M&A, private equity, and venture capital work in the technology sector.

Added that Abdullah is a well-known lawyer in this space with experience in multibillion-dollar tech transactions throughout the world, he says, "I'm delighted that he decided to join us."

Prior to joining Al Tamimi in 2019, Mutawi spent five years as a partner at the US law firm Baker Botts Dubai. Earlier, he spent more than a decade with UK firm Trowers & Hamlins, in Bahrain as executive director of the Technology, Media, and Telecommunications sector and in Dubai as the head of its UAE operations. While working at Hill Dickinson and Norton Rose Fulbright in London, he began his legal career.

Furthermore, he co-founded Dubai Angel Investors in 2016, a seed and Series A micro-VC angel fund and currently serves as its chairman.

"The regional VC and start up ecosystem has expanded tremendously in recent years and clients increasingly require global capabilities that will be able to provide through this Band One ranked platform," said Mutawi. "Growth capital, M&A and IPO/de-SPAC exit volumes are also growing by a significant margin in the region, and we are confident that our top-quality M&A support and seamless coverage throughout the UK, Europe, and the US can benefit clients' maturing portfolios and legal requirements."

Mutawi's hire expertise aligns with Taylor Wessing's global growth and his reputation will aid us in driving new opportunities in the Middle East, Europe, and the United States, noted Taylor Wessing's UK managing partner, Shane Gleghorn.

Mutawi's hiring follows Taylor Wessing's last July report that the UK Company's revenue had jumped 12percent to £175.5m over the past year thanks to the addition of six new partners to its corporate group. Deidre MacCarthy and Adam Griffiths are among the new hires - they were hired last July to spearhead the new Dublin office. Having joined from ReganWall, Griffiths hails from a local firm, while MacCarthy comes from an offshore outfit.

The UK's Clyde & Co has been expanding its corporate offering in the Middle East lately, adding Morgan Lewis & Brockius energy and corporate partner Chadi Salloum to its office in Dubai soon after increasing lawyer Rizwan Riyadh's status to partner in Riyadh.

In October, HFW hired finance expert Euan Pinkerton from Baker Botts to launch an on-the-ground transactional offering in Riyadh, with Pinkerton becoming the firm's third full-time partner to be based in Riyadh since it entered the city through an association with local firm Mohammed Al Khiliwi in 2019.

DEBASISH PANDA APPOINTED CHAIRPERSON OF IRDAI

The position will be for three years until further directions

The Government of India has appointed Debasish Panda as the chairperson of the Insurance Regulatory and Development Authority of India (IRDAI).

The notification to this effect was issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions.

Panda was a former secretary at the Department of Financial Services (DFS).

Debasish Panda

BHARGESH OJHA JOINS CHANDHIOK & MAHAJAN

He served Kotak Bank as a General Counsel for 17 years

Bhargesh Ojha has joined as a senior advisor in banking, finance, and corporate governance practice at Chandhiok & Mahajan (C&M).

On his joining, Pooja Mahajan, the managing partner at C&M said, "We are excited to have Ojha in our team. His expertise will strengthen our ability to serve clients in banking and finance matters both nationally and internationally. His deep understanding of clients' needs as an in-house counsel will help us formulate client-focused strategies and help in the overall growth of the firm."

An in-house counsel since 1991, Ojha served as the Head Legal and General Counsel at Kotak Bank and its subsidiaries for 17 years. He handled significant transaction works for the bank and non-banking financial companies in the group. As a Legal Head at Kotak Mahindra Prime Limited, he set up the legal hypothecation and car loan structure, and was a part of the ideating team, having initiated the process of converting Kotak Mahindra Finance Limited into a bank.

Ojha has worked for over three decades in the banking and finance sector. He has been an advocate at leading law firms and an in-house counsel providing a holistic approach to the problems at hand. His specialization covers cross-border financing, portfolio acquisitions, litigation, restructuring, lending and borrowing.

Bhargesh Ojha

Before joining C&M, he worked as an independent consultant to various financial and non-financial institutions on risk analysis, corporate laws, banking, financial services and insurance regulations, real estate laws, security, mortgage, and stamp duty laws.

Prior to that, he led the securitization process and private placement of debentures at Tata Finance Limited.

Ojha ranked among the Top 100 GCs by Legal 500 in India.

OSBORNE CLARKE HIRES 30 LAWYERS

During Russia's ongoing invasion of Ukraine, Osborne Clarke's CEO says that Move will help its Polish clients navigate the changing business landscape.

Osborne Clarke, among the top 30 law firms in the UK, has announced it had hired 30 lawyers from local practices to open its office in Warsaw, its first physical presence in Central and Eastern Europe (CEE), amid increasing tensions of Russia's ongoing invasion of Ukraine.

Managing partners Olgierd Swierzewski and Tomasz Olkiewicz will oversee the new office, which is set to open in the spring. The firm's wider team is expected to include six partners, four from MDDP, as well as 24 lawyers, according to a statement. The newly assembled team includes a majority of MDDP members, while the rest of the team comes from local law firms.

The only two partners not joining from MDDP are Swierzewski and Katarzyna Baranska. Linkedin profiles suggest that both were employed by local giant Kochanski Partners till late 2021.

Baranska is set to lead the decarbonization group when she joins the firm; Swierzewski will oversee IT and data. Agata Demuth, the former MDDP partner who recently joined the firm, is listed on the company's website as the head of real estate in Poland.

The new Warsaw team of Osborne Clarke will serve both domestic and international clients across a number of key sectors, including technology, media, communications, energy and utilities, as well as real estate and infrastructure, including plans to expand into new ones as the team grows.

Following the launch, Osborne Clarke's Warsaw office will continue to participate in MDDP's mutual referral program.

According to Osborne Clarke's international CEO, Omar Al-Nuaimi, this move is strategic given Poland's position as the fifth largest economy in the EU and the firm's strong position in the CEE region's international market. Additionally, he noted that the Polish legal market was facing mounting pressure due to the "rapidly developing situation in Ukraine" and "other geopolitical factors".

The fact that we will have a team in Poland to assist our clients in navigating a changing business environment has been well received by our clients, he said.

In his most recent role, Olkiewicz served as a corporate partner at MDDP, where he spent almost 18 years of his career. By trade, Olkiewicz is an expert in M&A and tax laws. He handles matters for Osborne Clarke's key industry sectors, for example, health and life sciences. Then in 2004, he joined MDDP. Before that, he worked for Ernst & Young for nine years as a senior tax manager.

"Our teams have never been closer together," Olkiewicz said, adding that MDDP and Osborne Clarke have experience in many of the same key sectors.

"We are advising clients on issues related to the circular economy and waste reduction," he said. "Decarbonization and ESG have a major role in our strategy for energy and utility companies."

Likewise, Swierzewski focuses on IT issues and matters of data. He served as CEO of Kochanski Partners from 2020 to 2021, and a technology transaction partner between those periods, according to his LinkedIn profile. A year ago, he left Kochanski Partners for a position as vice president of the management board of Lotos Paliwa, one of Poland's largest oil companies.

Additionally, Swierzewski has experience working in-house. From 2008 to 2011, he was the associate general counsel at Dell's Polish operations but he also served as general counsel of Accor Hotels for nearly nine years.

Osborne Clarke will now have 1,300 lawyers across offices in 26 different countries following the move. Besides Belgium and the Netherlands, the firm has 15 other European bases in France, Spain, Germany, Sweden, Italy and Spain.

As of late, several other firms have expanded in Poland, including top 20 firm Taylor Wessing, which acquired a 10-lawyer Banking and Finance group from Deloitte Legal in December.

Following the November exit of 10 of Greenberg Traurig's Warsaw lawyers, including one shareholder, the firm made a series of lateral moves last year. After hiring seven real estate lawyers from Dentons, Kochanski & Partners, and Domanski Zakrzewski Palinka, it retained ten more during the following few weeks.

Law firms in the region, including Kyiv's Arzinger Law Office, spoke out in solidarity with the Ukrainian legal community last week. In a statement, managing partner Timur Bondaryev condemned the invasion. The following firms closed their offices in Kyiv to ensure the safety of staff: Baker McKenzie, Dentons, CMS and Taylor Wessing.

KHAITAN & CO ENHANCES M&A TAX & REGULATORY PRACTICE

Kotak will work out of the firm's Mumbai office where he is currently based

In his new role at Khaitan & Co, Hiten Kotak, a former partner at Pricewaterhouse Coopers, will work for the firm's Mumbai office.

M&A Tax practice at PwC was led by Kotak. With over three decades of experience, he advises clients on M&A structuring and cross-border transactions concerning reorganizations, divestitures, minority purchases and joint ventures arising from both domestic and cross-border corporate restructuring.

Additionally, Kotak advises some credible business groups on succession planning and wealth management.

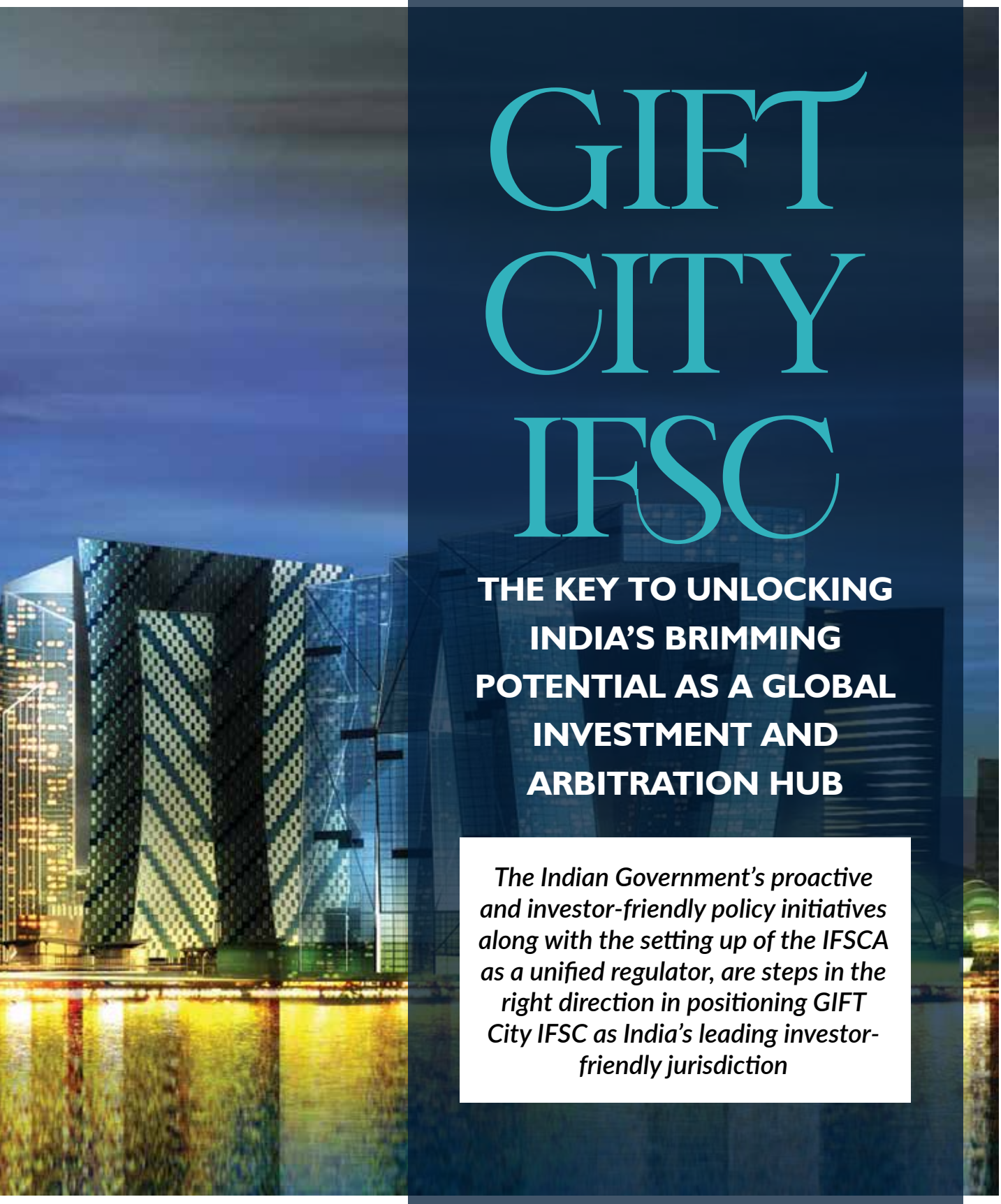
Kotak spent five years with KPMG, the joint head of the Tax Department, before joining PwC.

Khaitan & Co's Executive Director, Amar Sinhji, commented on Hiten Kotak joining the firm:

"Our Firm is very pleased to welcome Hiten Kotak to the Direct Tax Practice as Executive

Hiten Kotak

Director. During his three decades of practice, Hiten has become an industry leader in the area of Mergers & Acquisitions Tax and Regulatory law. Furthermore, he will advise on strategies related to wealth, estate and succession planning. We are very excited to have Hiten join us to strengthen our M&A Tax & Regulatory and Private Client practices. This is definitely a great addition to our team!"



GIFT CITY IFSC

THE KEY TO UNLOCKING INDIA'S BRIMMING POTENTIAL AS A GLOBAL INVESTMENT AND ARBITRATION HUB

The Indian Government's proactive and investor-friendly policy initiatives along with the setting up of the IFSCA as a unified regulator, are steps in the right direction in positioning GIFT City IFSC as India's leading investor-friendly jurisdiction

SHANEEN PARIKH
Partner (Head – International Arbitration)

JEET SHROFF
Senior Associate

cyril amarchand mangaldas
advocates & solicitors

Over the last century, technology propelled changes in the manufacturing, communications and transportation sectors have played a major role in revolutionizing international trade and commerce. An exponential growth in domestic and international business, trade and commerce has led to the emergence of international commercial hubs globally.

Historically, global financial centers have been in strategically located jurisdictions and so port cities such as Singapore, London, New York, Tokyo and Hong Kong, have developed into the financial capitals of the world. These jurisdictions are now firmly established as integral focal points of international business and financial activities.

Over the last decade, other jurisdictions have set up bespoke financial centers in geographically defined areas within their territorial border. These 'International Financial Centers' ("**IFCs**"), usually situated within a Special Economic Zone ("**SEZ**"), feature state-of-the-art hard and soft infrastructure in support of a well-rounded financial ecosystem, aided by sophisticated investor-friendly laws and practices.

These IFCs cater to entities both within and outside the jurisdiction of the domestic economy where they are situated, primarily offering products and rendering services in the financial sector. Beneficial legislation such as less-restrictive economic and regulatory laws and other fiscal incentives, such as tax exemptions, duty-free imports, further attract the interest of investors.

Key examples are the Dubai International Financial Center ("**DIFC**") and the Abu Dhabi Global Market ("**ADGM**"), which were set up within the United Arab Emirates ("**UAE**"), and introduced their own independent legal framework to cater to the global economy. The laws of the DIFC and ADGM are based on the English common law system,[1] distinct from civil law principles and Sharia law which govern the rest of the UAE. As a result, the DIFC and ADGM have emerged as attractive financial jurisdictions for international investors, who tend to be receptive to the more familiar principles of common law.

Rationale for setting up an IFC in India

Despite India being a strong contributor to the global economy, foreign investors have shown apprehensions in conducting international business on Indian soil due to a regulatory and legal regime plagued by procedural red-tapism. The Indian Government has in the last decade introduced a number of economic initiatives such as 'Make in India', 'Digital India' and 'Atmanirbhar Bharat Abhiyaan (Self-reliant India), and also put in place measures to ease the setting up of and doing business in India, hoping to attract more foreign direct investment.

The most compelling argument for establishing an IFC in India is its demographic and location. Having a large pool of young and

[1] *See https://www.difc.ae/business/laws-regulations/ and https://www.adgm.com/adgm-courts/english-common-law*

skilled workforce means there is a naturally available and diverse human capital to match the employment opportunities that would arise. India's strategic location at the heart of South Asia and its proximity to important sea lanes with regards to trade connectivity coupled with India's information technology capability and steady economic growth gives it a unique advantage over other jurisdictions.

To provide a conducive business-friendly environment for the world's business community, the Government of India set its sights on establishing a modern financial jurisdiction in the form of an IFC at GIFT City.

GIFT City International Financial Services Center established

In 2007, the idea of India's first smart city – the Gujarat International Finance Tech City ("**GIFT City**") was visualized at the Vibrant Gujarat Global Investor Summit. Pursuant to the 2015 Budget speech, GIFT City was chosen as the home of India's first IFSC. GIFT City located near Gandhinagar, Gujarat is spread across 886 acres, of which 261 acres was earmarked as a multi-services SEZ and in 2015, notified as an International Financial Services Center ("**GIFT City IFSC**"). GIFT City IFSC has been created in a SEZ under the Special Economic Zones Act, 2005[2] ("**SEZ Act**"). The remaining 625 acres is being developed as a domestic tariff area, focused on local business activities and services.

[2] *Special Economic Zones Act, 2005 available at http://sezindia.nic.in/upload/uploadfiles/files/SEZAct2005.pdf*

The 2022 Budget has further strengthened the Government's bid to establish a state-of-the-art dispute resolution mechanism by announcing an international arbitration center to be set up in GIFT City IFSC

TUSHAR KARKARIA
Associate

GIFT City IFSC is intended to compete with the top global financial centers, serving as a hub for international finance and information technology services. The GIFT City IFSC as a jurisdiction has an ecosystem distinct from the rest of India, although situated within its territorial borders. Under the SEZ Act, GIFT IFSC is deemed to be a foreign territory for the purpose of trade duties and tariffs, whilst under the Foreign Exchange Management Act, 1999 (read with the Foreign Exchange Management (IFSC) Regulations 2015, GIFT IFSC entities have been conferred with the status of persons resident outside India.

GIFT City IFSC functions under an independent regulatory framework which is distinct from the rest of India. It is governed by an independent regulatory authority i.e. the IFSC Authority ("IFSCA") established in 2020 headquartered at GIFT City is the nodal regulator for all IFSCs in India. The IFSCA has taken over the powers and jurisdiction of various financial regulators, including SEBI and RBI, extending to IFSCs pan-India, and is intended to be a unified regulator to promote ease of doing business and provide a world-class regulatory environment in Indian IFSCs.

Minimum Government, Maximum Governance: The Indian Government's efforts to develop GIFT City IFSC

A unique feature of the IFSC's exceptionalism is that business may be conducted in any currency other than the Indian Rupee. As a result, the flow of foreign currencies in the IFSC presents a lucrative opportunity for the Government to direct valuable foreign capital into the Indian economy. With this in mind, international stock exchanges have been set up by the BSE and NSE, viz. India INX and NSE IFSC, and offer extended hours of trading in several instruments including debt securities, currency and commodity derivatives in foreign currencies.

Additionally, the Government of India has introduced a slew of beneficial and business friendly concessions / exemptions applicable to entities setting up in GIFT City IFSC. Private and public companies are granted various compliance and administrative relaxations / exemptions from the provisions of the Companies Act, 2013, for example, relaxation of timelines for filing forms and returns, greater administrative flexibility, etc.[3] Entities engaged in rendering financial services enjoy the benefits of fiscal incentives.[4] For instance, IFSC units are granted a tax holiday for 10 consecutive years (in the first 15 years of commencing operations).

GIFT City IFSC has also been the breeding ground for novel initiatives by the Government. To make it a world-class fintech hub, the IFSCA introduced the Regulatory Sandbox Framework for IFSC entities involved in the Fintech space in October 2020.[5] This framework breeds innovation of new products, services and solutions in a controlled environment isolated from the live market on the basis of real market data and information. A similar initiative was the introduction of the Framework for Aircraft Operating Lease[6] under which registered lessors in the IFSC can lease aircraft to airline operators. Previously, with the lack of a developed domestic aircraft leasing industry, Indian airline operators have looked to foreign lessors when acquiring aircraft, which has led to higher operational expenses. The introduction of the framework for Aircraft Operating Lease is a step establishing GIFT City IFSC as a global aircraft leasing hub.

Alternate Investment Funds ("**AIFs**") have assumed a position of great significance in the rapidly evolving Indian economy which is witnessing increasing investment sophistication and diversity. The ability of AIFs to customize and curate products across asset classes, increase diversification, reduce risks and maximize returns, has attracted both domestic and foreign investors in India. As such AIFs are being encouraged to operate in the IFSC to provide investors a structured, sophisticated, and state-of-the-art investment route. The SEBI (International Financial Services Center) Guidelines, 2015[7] and Operating Guidelines for Alternative Investment Funds in International Financial Services Centers[8] provide a broad framework for AIFs set up in the IFSC.

In the IFSC, AIFs offer investor flexibility, in that they can be set up in the form of a trust, company or LLP and can invest in securities which are (i) listed in the IFSC, (ii) issued by companies incorporated in the IFSC, as well as (iii) issued by companies incorporated in a foreign jurisdiction[9]. Given the significant and substantial benefits offered to AIFs set up in IFSCs, it is no surprise that several AIFs are lining up to set up shop in GIFT City. Avendus Capital, one of India's largest players, became the fourth firm to set up an AIF in GIFT City in September 2021.

Dispute Resolution in the IFSC

Arm-in-arm with a holistic financial ecosystem which is conducive for business activities, there must be a robust and effective dispute resolution framework – comprising independent courts and alternate dispute resolution ("**ADR**") services. For a dispute resolution system to be effective,

[3] *See http://www.giftgujarat.in/documents/EXEMPTIONS-GRANTED-UNDER-THE-COMPANIES-ACT-2013-FOR-COMPANIES-SET-UP-IN-IFSC-15062017.pdf*
[4] *See http://www.giftgujarat.in/tax-benifits*
[5] *Circular F. No. 71/IFSCA/CMD-RS/2020-21 dated October 19, 2020 available at https://ifsca.gov.in/Viewer/Index/99*
[6] *See Circular F. No. 28/IFSCA/ALF/2020-21 dated February 19, 2021 available at https://www.ifsca.gov.in/Viewer/Index/148*
[7] *https://www.sebi.gov.in/legal/guidelines/mar-2015/sebi-international-financial-services-centers-guidelines-2015_29457.html*
[8] *Circular no. SEBI/HO/IMD/DF1/CIR/P/143/2018*
[9] *Section 22(3) of the IFSC Guidelines, 2015.*

the ease of enforcement of judicial decisions/awards holds vital importance. Accordingly, the jurisdictions, within which the IFCs are located, have clear laws to enforce the judgments / awards rendered by the courts / arbitral tribunals of the IFC concerned.

Recognizing that most cross-border commercial transactions include arbitration as the preferred mode for dispute resolution, over the last decade, there has been a concerted pro-arbitration approach by the Indian Government, recognizing that increasing efficiencies in arbitration and strengthening the enforcement process would increase its attractiveness as an investment destination. To that intent, key amendments were made to the Indian arbitration regime, in 2015, 2019 and 2021, in a bid to establish India as a pro-arbitration jurisdiction.

A truly international arbitration institution with sophisticated arbitral rules drawing on the best practices in international arbitration to administer the conduct of arbitral proceedings seated within its jurisdiction is on the cards. The Singapore International Arbitration Center ("**SIAC**") opened its representative office in GIFT City in 2017.[10] Additionally, India's first arbitration and mediation center exclusively focusing on shipping and maritime disputes - the Gujarat International Maritime Arbitration Center ("**GIMAC**"), is being developed by the Gujarat Maritime University

The 2022 Budget has further strengthened the Government's bid to establish a state-of-the-art dispute resolution mechanism by announcing an international arbitration center to be set up in GIFT City IFSC

and the Gujarat Government, and will form part of the Gujarat Maritime Cluster located at GIFT City.[11]

The 2022 Budget has further strengthened the Government's bid to establish a state-of-the-art dispute resolution mechanism by announcing an international arbitration center to be set up in GIFT City IFSC. An international arbitration center in the IFSC would go a long way in providing investor comfort in enforcement of contracts and enhance ease of doing business in the IFSC.

As mediation becomes more popular, it is hoped that the proposed bespoke legislation for mediation, will ensure amicable resolution of disputes and permit enforcement of mediated settlement agreements.

Opportunity for Third-Party Funding

Third-party funding refers to an arrangement between a funder and a litigant in which the funder 'funds' or provides monetary support to a litigant for pursuing and/or enforcing a claim, in return for a share in any ensuing award or settlement. The funding provided is 'non-recourse' so that the funder recoups its investment (with a profit if any) only in a successful outcome of the action, and not otherwise.

While there exists no specific formal legislation dealing with litigation financing in India, the prevailing view is that it is permissible, both under the Code of Civil Procedure, 1908 (governing the procedure of civil actions in courts), and the Arbitration and Conciliation Act, 1996. Various courts have also upheld funding agreements, albeit perhaps not with a sophisticated specially set up litigation funder. However, the Supreme Court in Bar Council of India v A.K. Balaji,[12] noted that there was no restriction on third-parties (as long as they were not lawyers acting in the case), to fund a litigation.

10 News article titled "GIFT IFSC signs MoA with Singapore International Arbitration Center" (June 2, 2016) available at https://www.indiainfoline.com/article/news-top-story/gift-ifsc-signs-moa-with-singapore-international-arbitration-center-116060200770_1.html4 See http://www.giftgujarat.in/tax-benifits

11 News article titled "India's first maritime arbitration center to be set up in GIFT City" available at https://timesofindia.indiatimes.com/city/ahmedabad/indias-first-maritime-arbitration-center-to-be-set-up-in-gift-city/articleshow/79765502.cms

12 Bar Council of India v A.K. Balaji (2018) 2 SCC (LS) 39, para 35.

GIFT City IFSC's investor-friendly ecosystem makes it a potentially ideal jurisdiction to serve as the cradle for third-party funding in India. A self-sustaining, efficient and sophisticated dispute resolution mechanism may be the key to unlocking the full potential of GIFT City IFSC as an optimal dispute resolution and arbitral seat globally, giving comfort to non-resident investors in particular.

Conclusion

A host of factors including the COVID-19 pandemic, slow progress of on-ground hard infrastructure development, slowdown in national economic growth and lack of a formal efficient dispute resolution mechanism have hindered GIFT City IFSC's global appealability. That being said, the Indian Government's proactive and investor-friendly policy initiatives along with the setting up of the IFSCA as a unified regulator, are steps in the right direction in positioning GIFT City IFSC as India's leading investor-friendly jurisdiction.

The Government's ambitions are clear - develop GIFT City as a world leading international financial hub and seat of arbitration - and presently, is well on its way to making this ambition an on-the-ground reality.

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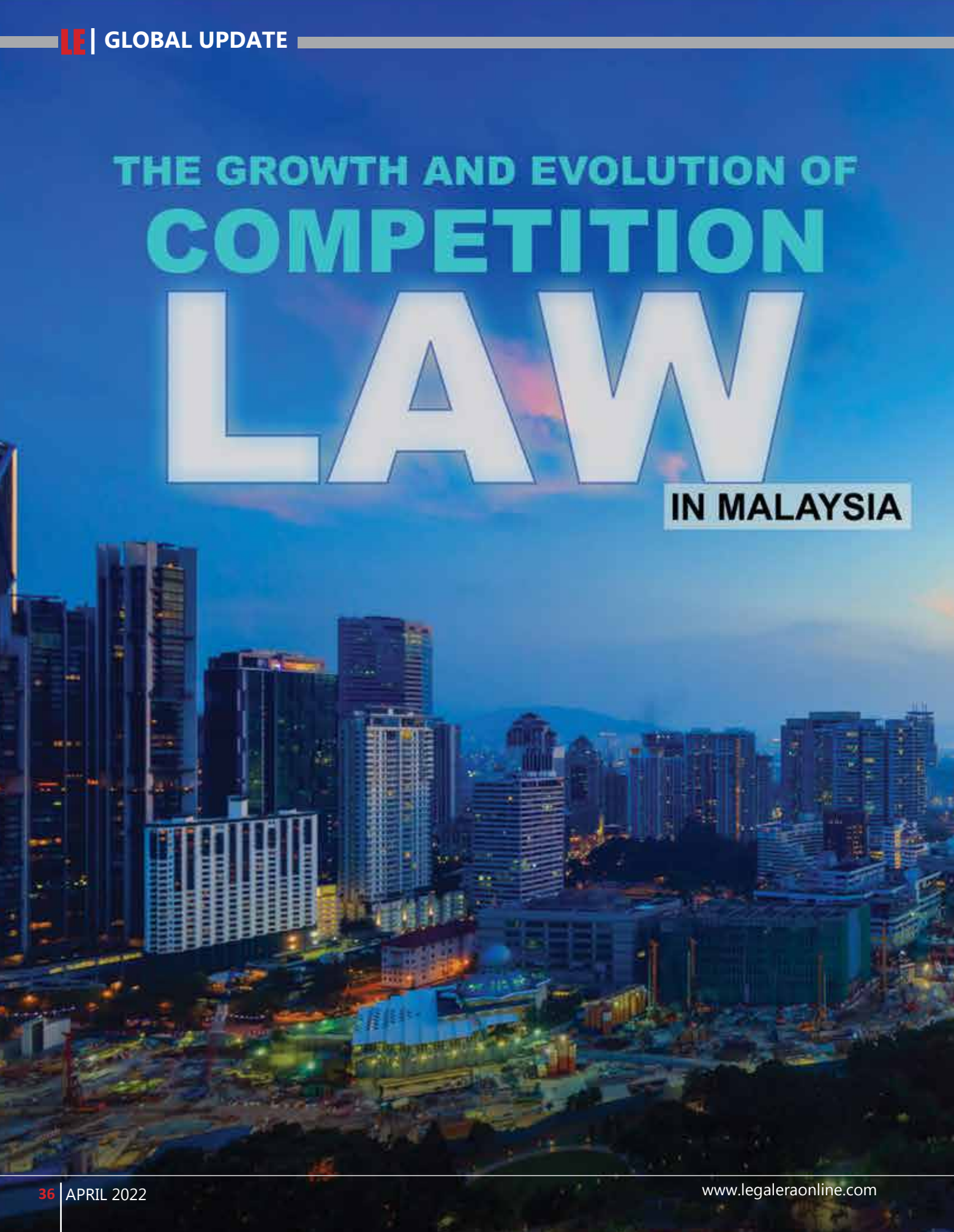
THE GROWTH AND EVOLUTION OF COMPETITION LAW IN MALAYSIA



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Ten years after the Competition Act 2010 ("Competition Act") came into force on 1 January 2012, its regulator, the Malaysia Competition Commission ("MyCC"), can proudly display a sizable number of enforcement actions. There is currently a respectable body of Malaysian competition law found not only in MyCC's decisions and those of its appellate tribunal, the Competition Appeal Tribunal's ("CAT") judgments but also in judgments of the High Court (as a number of CAT's cases were challenged by way of judicial review at the High Court) as well as in the Court of Appeal's and the apex Federal Court's judgments.

Briefly, save for certain exceptions and certain sectors with industry-specific regulators, the Competition Act applies to any commercial activity by any enterprise (including Government-linked companies) within and outside Malaysia, the latter only if it affects competition in any market in Malaysia. The Competition Act by and large follows the European Union's antitrust law principles save that merger controls are still pending (although the aviation and telecommunication sectors with their own sectoral regulator have already introduced merger notification requirements in Malaysia).

Anti-Competitive Agreements

Section 4(1) of the Competition Act prohibits horizontal agreements and vertical agreements between enterprises where an agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services. MyCC has in its guidelines (which are merely for illustration purposes and not a substitute for the law), set out a non-exhaustive list of the types of agreements that could potentially be anti-competitive.

Hardcore cartel arrangements between competitors (i.e. price fixing, fixing of trading conditions, market sharing, limiting or controlling production, market access and bid rigging) are deemed to be significantly anti-competitive and continues to be a key focus of MyCC's enforcement actions. MyCC's CEO has emphasized that "price fixing cartel is the supreme evil of competition law, which must be stopped in order to protect the consumers". MyCC has issued no less than 7 infringement findings on price-fixing, with two findings made in 2021, one against Langkawi Ro-Ro operators and the other against seven warehouse operators. We expect MyCC's enforcement against price fixing cartels to further strengthen in the coming years as well as CAT issuing its decision this year to the long-standing price-fixing case brought against PIAM, the general insurer's association and 22 general insurers for a whopping aggregated penalty exceeding Ringgit One Hundred Million. An interesting argument raised by the insurers was that they were merely complying with their sectoral regulator, namely the Central Bank of Malaysia in their alleged imposition of certain prices for spare parts and labor charges against panel workshops raising the very interesting question of which regulator having jurisdiction in the matter.

A decision issued by MyCC which has attracted significant media interest is the market sharing infringement finding made against Malaysian Airline System Berhad ("MAS") and AirAsia Berhad ("AirAsia"). In this case, MAS, AirAsia and AirAsia X entered into the Comprehensive

We expect MyCC's enforcement against price fixing cartels to further strengthen in the coming years as well as CAT issuing its decision this year to the long-standing price-fixing case brought against PIAM, the general insurer's association and 22 general insurers for a whopping aggregated penalty exceeding Ringgit One Hundred Million

Collaboration Framework with the purported goal of seeking cost savings and increase in revenues in relation to certain sectors and categories of aviation services. MyCC imposed a financial penalty of Ringgit Ten million on each of MAS and AirAsia. The airlines appealed to CAT who overturned MyCC's decision but MyCC appealed to the High Court seeking a judicial review of CAT's decision and succeeded there. The airlines however appealed against the High Court's judgment and succeeded at the Court of Appeal. Although MyCC sought to appeal to the Federal Court against the Court of Appeal's judgment, leave to appeal was not granted to MyCC by the Federal Court in February this year, bringing this saga which commenced with MyCC's infringement decision issued in 2014 finally to an end in 2022!

Despite its relative youth, MyCC has also tackled enforcement actions in respect of anti-competitive vertical arrangements which carries a heavier evidentiary burden on MyCC to prove significant anti-competitive effects (as opposed to hardcore cartels which are deemed to be significantly anti-competitive by Section 4(2) of the Competition Act). MyCC however did not find Coca-Cola Bottlers (Malaysia) Sdn Bhd and its affiliate, Coca-Cola Refreshments Malaysia Sdn Bhd as having implemented resale price maintenance (RPM) which MyCC considers a serious infringement of competition law.

MyCC succeeded in securing an undertaking from Giga Shipping Services Sdn Bhd and Nexus Mega Carriers Sdn Bhd. undertaking to MyCC to cease exclusivity relationships with their customers and to only impose exclusivity clauses which are for 2 years or a shorter term. It is important to note that exclusivity obligations may raise competition concerns under the prohibition against anti-competitive agreements as well as the prohibition against abuse of dominance.

Abuse of Dominance

Section 10 of the Competition Act addresses the conduct of dominant enterprises. The Competition Act does not prohibit any enterprise from becoming a monopoly. It however prohibits enterprises from engaging in any conduct which amounts to an abuse of a dominant position such as imposing an unfair purchase or selling price, limiting or controlling production, market outlets or market access, refusing to supply, applying discriminatory conditions that discourage new market entry, engaging in predatory behavior towards competitors or buying up scarce supplies in excess of the dominant enterprise's own needs.

MyCC's decisions issued for abuse of dominance seemed to focus on the technology sector. MyCC has found MyEG Services Bhd ("MyEG"), a monopoly which provides portal services for applications to certain Government agencies as having imposed different conditions for equivalent transactions. MyCC also took action against Grab Inc., GrabCar Sdn. Bhd. and MyTeksi Sdn. Bhd. (collectively, "Grab") for abusing its dominance

by imposing a number of restrictive clauses on its drivers that prevented the drivers from promoting and providing advertising services for Grab's competitors in the e-hailing and transit media advertising market. MyCC found Dagang Net Technologies Sdn Bhd for engaging in exclusive dealing through the imposition of an exclusivity clause in its agreement with its software suppliers. An important factor to note from MyCC's action against MyEG is the imposition of a daily penalty for every day MyEG failed to abide by the order to cease the abusive conduct.

Merger Control

Much ink has been spilt on the need for an economy-wide merger control regime in Malaysia and MyCC's endeavor to amend the Competition Act to include merger control provisions has been in progress for some years. In its most recent Strategic Plan, MyCC has reiterated its intention to carry out the mentioned amendments which will not only provide for a new merger control regime in Malaysia but also strengthen its investigative powers under the Competition Act.

Notwithstanding the lack of merger controls in the Competition Act, the first merger clearance decision has been issued by the Malaysian Aviation Commission ("MAVCOM") last year when MAVCOM approved the merger of Korean Air Lines Co, Ltd and Asiana Airlines, Inc. MAVCOM's decision was based on legal and economic principles such as the failing firm defense and was reflective of the market. Another merger assessment decision is expected to be issued this year by the telecommunications regulator, in respect of the Celcom-Digi merger.

Conclusion

Malaysian competition law and the body of caselaw continue to grow steadily. MyCC has achieved much in the past decade since its establishment. With merger controls in place which are expected soon, MyCC will finally have the full arsenal of legislative power to continue in its role of ensuring the process of competition takes place and ultimately protecting consumers.

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YON See Ting is the Managing Partner of Christopher & Lee Ong. She is ranked in Legal 500 and Chambers & Partners for both Corporate/M&A and Competition and Antitrust and listed as a distinguished practitioner in Asialaw for Competition.

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She has assisted and defended companies against investigations by the Malaysia Competition Commission (MyCC) including a ride hailing company as competition co-counsel in a divestment of its Malaysian business, a general insurer (which is a subsidiary of a leading international financial services group) in a cartel investigation by MyCC, logistic companies in cartel investigations, a financial institution and etc. She has also represented clients in negotiating settlements with MyCC and assisted clients in obtaining merger approvals in sectors with merger controls.

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UAE WELCOMES FOREIGN INVESTMENT AND BOLSTERS M&A ACTIVITY

By way of recent amendments to company law, including the New Company Law, the UAE government has demonstrated a positive commitment to welcoming foreign corporations into mainland UAE while also simultaneously easing corporate governance and providing greater autonomy

The government of the United Arab Emirates (UAE) announced 2020 to be the year of preparation for the next 50 years for the UAE - 'Projects of the 50'. This is a series of projects to be undertaken with the aim of uplifting the UAE to a truly global jurisdiction with reforms across various sectors including foreign investment.

The reforms seek to address modern day issues in relation to corporate and commercial law, corporate governance, intellectual property, data privacy, labor law, etc. For this article, we focus on the amendments to the UAE Commercial Companies Law (as described below) for the purpose of facilitating foreign investment in the region.

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Amendments to UAE Commercial Companies Law

Federal Law by Decree No. 32 of 2021 (New Company Law) was issued on 20 September 2021 which replaced Federal Law No. 2 of 2015 on Commercial Companies, as amended (Old Company Law).

Welcoming Foreign Cos

As per the Old Company Law, any company established in the UAE was required to have one or more UAE partners holding at least 51% of the share capital of the company (except in case of joint liability companies and simple commandite companies where all partners were required to be UAE nationals).

The above restriction was removed under the 2020 amendment to the Old Company Law (by Decree No. 26 of 2020) (**2020 Amendment**) and the New Company Law has codified these amendments. This has eased the concerns of foreign investors by reducing the complexity and limitations on investing in onshore UAE companies. However, this is subject to certain restrictions, including whether the business activities of the company are those having a 'strategic impact'. In consonance with the Old Company Law, the UAE cabinet issued a list of activities having a 'strategic impact' along with the rules for licensing for companies that proposed to engage in such activities. These included activities such as security and defense activities and activities of a military nature, money printing, telecommunications, etc. A similar list of activities is expected to be issued by the UAE cabinet in relation to the New Company law.

In addition to the above, some relief has also been provided to foreign companies operating through branches in mainland UAE. While the Old Company Law provided that foreign companies operating through a branch office will mandatorily be required to appoint a UAE national as a service agent, this requirement was removed under the 2020 Amendment and continues to be omitted under the New Company Law.

Investment vehicles to drive UAE's M&A

The New Company Law has introduced the concepts of Special Purpose Vehicles (SPVs) and Special Purpose Acquisition Companies (SPACs) which are commonly recognized in M&A friendly jurisdictions. Both SPVs and SPACs have been exempted from the provisions of New Company Law and will instead be governed by the regulations issued by the UAE Securities and Commodities Authority (SCA).

The SCA, through the Board Resolution No. 1 of 2022 issued the Regulations for Special Purpose Acquisition Companies (SPAC Regulations), a few key features of which have been summarized below:

- The issued capital of the SPAC, immediately upon the public

> *The UAE officially announced the entry of the SPAC regime into the GCC with promulgation of the regulatory framework governing SPACs in January 2022*

offering, shall not be less than AED 100 million;

- The sponsoring entities shall not be insolvent, have sufficient experience to manage the SPAC, shall not have been convicted of a penalty or crime against honor, etc.;
- The total shareholding of the sponsors in the SPAC shall not be less than 3% and shall not exceed 20% of the issued share capital of the SPAC.

Relaxation of governance norms

The UAE company law domain is flexible with respect to corporate structures and recognizes five kinds of companies i.e., a joint liability company, a limited partnership company, a limited liability company, a public joint stock company, and a private joint stock company. A few examples of the recent relaxations brought in by the New Company Law to Public Joint Stock Companies (PJSCs) are as follows:

- The restrictions on the nominal value of shares of the PJSC (earlier a minimum of AED 1 and maximum of AED 1,000) have been done away with, and PJSCs are free to determine the nominal value, provided the same nominal value is included in the articles of association;
- A PJSC is now permitted to issue shares at a discount where the market price of the shares falls below the nominal value;
- The limit on the maximum percentage of shares that could be offered for sale upon conversion to a public joint stock company (30% under the Old Company Law) has been removed and such sale or offer for sale of shares shall be in accordance with regulations issued by the SCA.

Some relaxations have also been offered to limited liability companies, under the 2020 Amendment and the New Company Law, such as:

- A general assembly can now be convened by a shareholder holding 10% of the share capital of the Company (as against the earlier threshold of 25% under the Old Company Law);

AYUSH SHARMA
Foreign Attorney

> *"Recent company law amendments in 2021 and 2022 offer relief to public joint stock companies and LLCs in terms of providing greater flexibility and less stringent compliances*

- An LLC is required to appoint a supervisory board in case the number of partners in the LLC exceeds 15 (as against the earlier threshold of 7 partners under the Old Company Law);
- An LLC is now required to set aside 5% of its net profits every year to form a statutory reserve (as against the earlier requirement of 10% under the Old Company Law).

By way of the recent amendments to company law, including the New Company Law, the UAE government has demonstrated a positive commitment to welcoming foreign corporations into mainland UAE while also simultaneously easing corporate governance and providing greater autonomy. A smooth implementation of the above changes by the authorities will go a long way in attracting foreign investment to the UAE, and further strengthening the image of the UAE as a truly global jurisdiction. It is no surprise that the region's M&A deal volumes for FY 2021 were up by approximately 60% from 2020.

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SEAT AND THE LAW OF ARBITRATION

The "seat approach" for determining the law of arbitration and the presumption of judicial consensus in its support has been challenged by the UK Supreme Court in its decision in Enka v. Chubb. Indian Courts, which steadfastly follow this approach, need to review their position and explore a more nuanced approach.

There is judicial consensus in India that the choice of seat of arbitration determines the forum for supervision of the arbitration proceeding and for challenge to the award made in it. But does the choice of the seat of arbitration also determine the law governing the arbitration agreement if the parties have not specifically chosen that law? This article seeks to explore this issue in light of the decisions of our courts and the decisions of the UK Supreme Court.

In Balco[1], the Indian Supreme Court ruled that "the law of the seat or place where the arbitration is held is normally the law to govern that arbitration. The territorial link between the place of arbitration and the law governing that arbitration is well established in the international instruments"[2]; and that "the choice of another country as the seat of arbitration inevitably imports an acceptance that the law of that country relating to the conduct and supervision of arbitrations will apply to the proceedings"[3].

Law of Arbitration

Following Balco, Indian courts, have consistently applied the principle that the choice of seat will generally imply the choice of law of the seat to govern the arbitration, i.e., the "seat approach". There is little or no room in current jurisprudence in India for the "main contract approach"[4], which advocates that in the absence of an express choice of law governing an arbitration agreement, the law governing the main contract (either expressly or by implication) ought to be construed as that law. Indian courts have leaned in favor of the seat approach relying mainly on a line of decisions of English courts[5] supporting this approach

[1] *Bharat Aluminium Company vs. Kaiser Aluminium Technical Services, INC. (2012) 9 SCC 552. (Balco)*
[2] *[Para 76], Balco*
[3] *Ibid. [Para 116].*
[4] *In a judgment reported as (2020) 10 SCC 1 [Para 92.2] the Supreme Court, confirming this approaach, held that "the law governing Arbitration Agreement must be determined separately from the law applicable to the substantive contract".*
[5] *C v. D [2007] EWCA Civ 1282; Roger Shashoua vs Mukesh Sharma [2009] EWHC 957 (Comm); and Sulamérica Cia Nacional de Seguros SA v Enesa Engenharia SA [2012] EWHC 42. (Sulamérica).*

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and have presumed there is international consensus in that regard. In a recent decision in Enka v. Chubb,[6] the UK Supreme Court has challenged this approach and the presumption that there is consensus supporting it.

Enka v. Chubb

In Enka v. Chubb, the UK Supreme Court considered the question: which national law governs the validity and scope of the arbitration agreement in the absence of an express choice by the parties, when the law governing the contract containing it is different from the law of the seat of arbitration.

The Court (by a majority decision) concluded that "As a matter of principle and authority there are therefore strong reasons why an agreement on a choice of law to govern a contract should generally be construed as applying to an arbitration agreement set out or otherwise incorporated in the contract." [7] It laid down the following rules for identifying the law governing the arbitration agreement:

(i) The choice of the governing law of the contract will generally apply to the arbitration agreement which forms part of the contract.

(ii) The choice of a different country as the seat of arbitration is not, without more, sufficient to negate an inference that a choice of law to govern the contract was intended to apply to the arbitration agreement.

(iii) Additional factors which negate such inference are (a) provision in the law of the seat which mandates its application to arbitration held there; and (b) if the application of the governing law of the main contract will render the arbitration agreement invalid or ineffective.

(iv) A clause providing for arbitration in a particular place will not by itself justify an inference that the contract (or the arbitration agreement) is intended to be governed by the law of that place. Where, however, the parties have chosen the seat of arbitration but have not made a choice of the law to govern the contract or the arbitration agreement within it, the arbitration agreement will be governed by the law to which it has the closest connection, i.e., the law of the seat[8].

In the facts of the case, the court concluded that the parties had not expressed their choice of law applicable to the contract or the arbitration clause contained in it.[9] It thus ruled that English law, as the law of the seat, will apply to the arbitration agreement[10].

Impact on jurisprudence in India

Enka v. Chubb ruled that while the parties' agreement on the seat will ordinarily imply their agreement that the law and the court of that country will regulate the arbitration, it does not always imply that such law will also govern the arbitration agreement. Choice of seat, thus, implies choice of curial law and curial court, and not always the law governing the

[6] *Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb [2020] UKSC 38 (Enka vs. Chubb).*
[7] *Ibid. [Para 54]*
[8] *Ibid. [Para 170*
[9] *Ibid. [Para 155]*
[10] *Ibid. [Para 156]*

arbitration agreement. Decisions of Indian courts do not clearly recognize this distinction. They often regard the parties' choice of seat as also their choice of law of the seat for all aspects of arbitration without any reference to choice of law for the contract.

Indian Courts have favored the seat approach mainly on the basis of Shashoua principle[11] (which is in turn founded on the decision in C v. D[12]) and the decision in Sulamerica (Commercial Court). The decision in Sulamerica was appealed. The decisions of Court of Appeal in Sulamerica and of in C v. D were critically examined in Enka v. Chubb.

Sulamerica[13]

In this case the Court decided against applying Brazilian law, the law governing the main contract, to the arbitration agreement, since it would have been invalid under that law. This the parties could not have intended. This was the decisive reason to construe the parties' intention to apply the English law to arbitration as an implication of choosing London as the seat. The construction was adopted to save the arbitration agreement from invalidity.[14] In fact, the Court approved the main contract approach.[15]

C v. D[16]

In Enka v. Chubb, the Court questioned the correctness of this decision. It noted[17] the reservation expressed by the Court of Appeal in Sulamerica (at Para 24) that the rule (followed in C v D) that an arbitration agreement is governed by the law of the seat even where there is a choice of law clause in the contract cannot easily be reconciled with the earlier authorities or well-established principle. It found the reason given for disapplying the law chosen by the parties to govern the insurance to the arbitration agreement contained in it, insufficient.[18]

In light of the decision in Enka v. Chubb, courts in India may need to reconsider the seat approach which they steadfastly follow, and perhaps adopt a more nuanced approach for determining the law governing arbitration agreements. In pre-Balco cases, which are still coming to the courts, and where the decision turns on the question whether or not parties had excluded Part I of the Arbitration Act by their choice of seat in a foreign country, the change in approach will have a particularly significant role.

> ***"Indian Courts have favored the seat approach mainly on the basis of Shashoua principle11 (which is in turn founded on the decision in C v. D12) and the decision in Sulamerica (Commercial Court)***

[11] *The principle of centrality of seat of arbitration laid down in Roger Shashoua & Ors. vs Mukesh Sharma & Ors. [2009] EWHC 957 (Comm)*
[12] *Supra, Note 5.*
[13] *[2012] EWCA Civ 638*
[14] *[Paras 101-105], Enka*
[15] *See Para 11 of Sulamerica:*
"It is common for parties to make an express choice of law to govern their contract, but unusual for them to make an express choice of the law to govern any arbitration agreement contained within it; and where they have not done so, the natural inference is that they intended the proper law chosen to govern the substantive contract also to govern the agreement to arbitrate."
(quoted at Para 49, Enka)
[16] *Supra, Note 4.*
[16] *[Para 50], Enka*
[16] *[Para 119], Enka*

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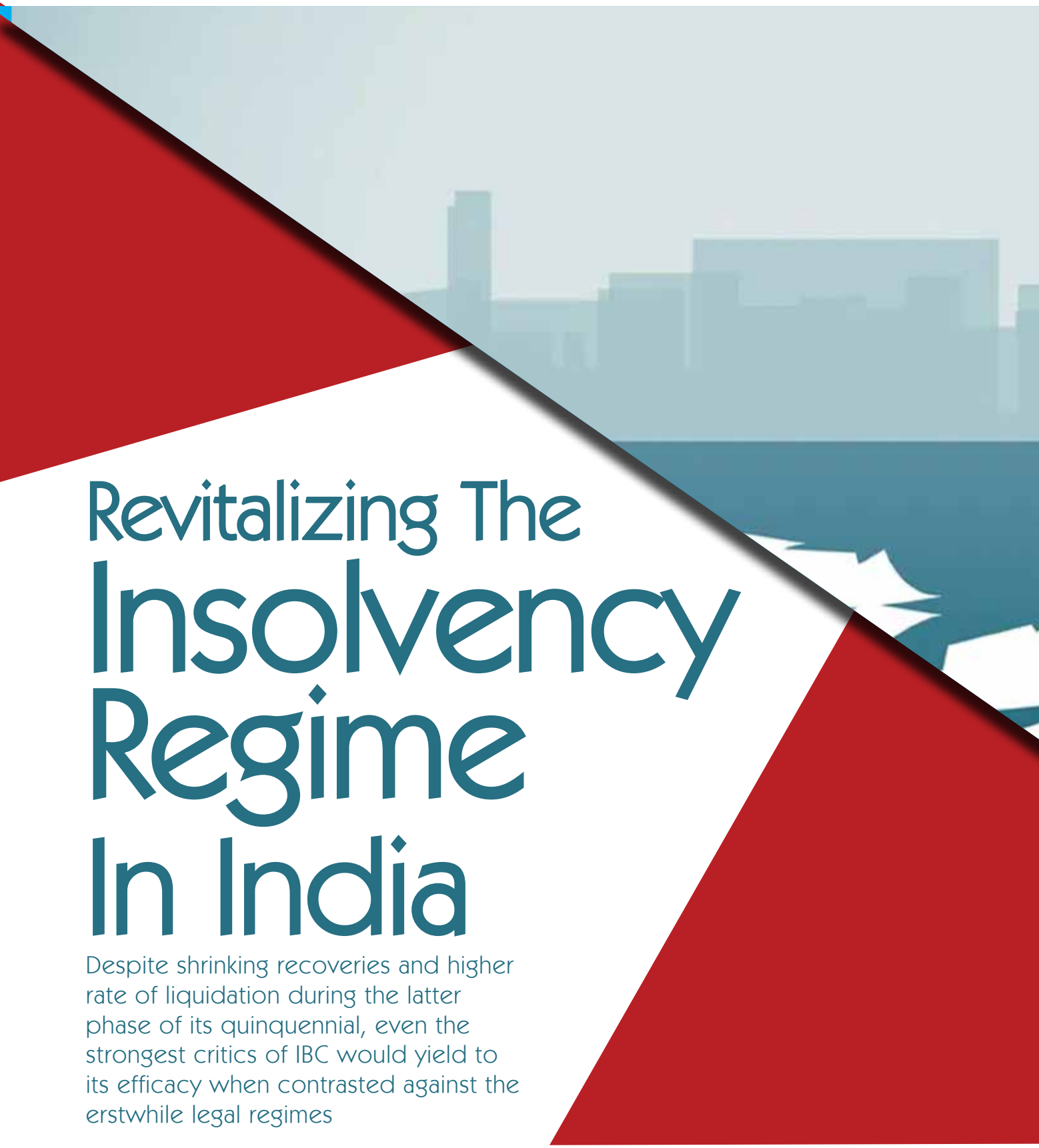

Revitalizing The Insolvency Regime In India

Despite shrinking recoveries and higher rate of liquidation during the latter phase of its quinquennial, even the strongest critics of IBC would yield to its efficacy when contrasted against the erstwhile legal regimes

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) has been a watershed moment in the Indian debt recovery landscape. Despite shrinking recoveries and higher rate of liquidation during the latter phase of its quinquennial, even the strongest critics of IBC would yield to its efficacy when contrasted against the erstwhile legal regimes. At this critical juncture in its journey, however, the revelation is over and what remains to be seen now is the performance of this landmark legislation in these testing waters. This has not only made the appreciation of its critiques necessary but also calls for the need to plug gaps in the insolvency regime based on such critiques. While some of these may require legislative fixes, most implementation gaps require a hands-on practical approach to re-invigorate the IBC towards the achievement of the lofty goals set out in its preamble.

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Burdened Adjudicating Authorities

The foremost objective of the IBC was the resolution of the insolvent entities in a time-bound manner. All typically mature insolvency jurisdictions aim to reduce the restructuring time to a minimum, to avoid the erosion of value within the distressed entities. However, India has been facing constant flak in this department, mostly due to the judicial delays. These delays can be attributed to a lower number of active benches or the huge number of judicial vacancies as well as the often sub-par quality of judgments rendered at the first instance level.

These judicial impediments both delay the admission of distressed entities into insolvency as well as prolong their restructuring process under the IBC. The former endangers the preservation of assets through fraudulent alienation pre-insolvency whereas the latter erodes the residual asset value in the corporate debtor, which is detrimental for all the stakeholders in the insolvency process.

The strengthening of the framework for adjudicating authorities under IBC is therefore, the need of the hour. This can be ensured inter alia through greater number of active benches, swifter filling of vacancies, directory timelines for adjudication, restricted acceptance of requests for adjournment, complete digitization of default and other records of the corporate debtors, and judicial training against ex-facie contra-statutory exercise of discretionary or equitable jurisdiction. Further, a mechanism for strict action against frivolous or abusive delay-causing litigation could foster greater stakeholder discipline in insolvency processes, which takes us to the next point.

Stakeholder Regulation

Throughout the implementation period of the IBC, a noticeable flaw has been the procedural impropriety exhibited by different stakeholders. The meddling of ousted promoters in the affairs of the corporate debtors, the acceptance/encouragement of disqualified or belated bids (albeit promising greater recovery) by the creditors, the abusive litigation by disgruntled losing bidders, or the failure of the resolution professional in ensuring transparency and confidentiality all have acted as a collective hindrance to the fulfillment of a successful and swift insolvency resolution. This has led to a greater need for regulation of stakeholders involved in the insolvency process.

The Insolvency and Bankruptcy Board of India (IBBI) has played a pivotal and pro-active role while donning its quasi-legislative hat through its insolvency regulations, however, there is still room for a greater presence in the consultative and monitoring spheres, to ensure the adequate fulfillment of its duties as the over-arching insolvency regulator.

Single-window clearance

The Supreme Court has framed the doctrine of 'fresh slate' under the IBC which postulates that the corporate debtor cannot be saddled with any pre-insolvency liability after completion of its insolvency resolution process (Essar Steel, Ghanashyam Mishra). Despite the aforesaid ruling having rendered moot the question of government or any other authority claiming

such dues post-approval of the resolution plan, the government authorities continue to threaten the resolved corporate debtor, often revoking licenses, permits, or grants on account of unpaid pre-insolvency dues.

This issue needs both a legislative and administrative fix. The government should endeavor to build capacity through training and education of its departments, authorities, and officials on the operation of IBC vis-à-vis law administered by such authority, to avoid unnecessary claims and abusive litigations. Legislatively, the IBC could also provide a single window clearance mechanism, which allows continuance or renewal of government grants, permits, concessions (which often is an asset of great significance in complex and regulated sectors) by virtue of the order of the adjudicating authority approving the resolution plan.

Marketing and trading reforms for distressed assets

Despite the multi-billion dollar opportunities in the distressed assets space, India currently lacks a developed market for trading and investment in such assets. In this regard, a greater involvement of financial institutions and easing out of foreign investment norms in the distressed assets space may bring more investors into the country. The IBBI may also look to provide greater transparency and marketing by establishing a central platform for the marketing/advertising of investment opportunities in this space.

Another key issue is of price discovery due to absence of competition and information asymmetry in the distressed assets. A positive step has been taken through the introduction of NARCL, similar to that used by South Korea through the establishment of Korea Asset Management Corporation during the 1997 Asian Financial Crisis. The security receipts issued by NARCL (backed by the government) may be provided greater boost through relaxations in retail investment options and greater transferability through stock exchanges or similar trading platforms. This can lead to a bigger investment market for distressed assets and the transparency of returns in the long run can pave the way for greater competition in the market in view of the impetus provided by market-linked price discovery.

Introduction of legislative reforms

When the IBC was introduced, the legislature in its wisdom had decided to not provide for certain complex mechanisms within the insolvency framework. However, with subsequent developments through judicial precedents, India has settled several key issues in its insolvency regime and the time is ripe to take the next step in its jurisprudential journey. These steps may include enactment/ notification of key provisions/ frameworks in relation to personal insolvency, cross-border insolvency (*Jet Airways*), group insolvency (*Videocon group*), wider application of informal (or pre-pack) arrangements, thereby ensuring the much-needed guidance for stakeholders in the grey areas presently surrounding the IBC.

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Anoop Rawat is a partner with Shardul Amarchand Mangaldas and Co with over 18 years of experience. His areas of specialization include insolvency and bankruptcy, projects, and banking and finance. In the field of insolvency and bankruptcy, Anoop has represented clients across various capacities, including resolution professionals, committee of creditors and resolution applicants. He has also represented various resolution applicants, foreign portfolio investors, Indian and foreign private equity players and other strategic investors in evaluating investment through debt, equity and/or other synthetic instruments in Indian opportunities and strategizing the investments inter alia for such investors, through asset reconstruction companies and other partners.

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Changes Made To The Rules On Issuance Of Share Based Employee Benefits To Non-Residents

While the clarification is much appreciated and is in line with making various sets of regulations such as the Companies Act, 2013, the SEBI Regulations and the FDI Policy in tune with one another, certain ambiguities have arisen which need further clarity

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> *"The FDI Policy has been amended by PN1 of 2022 to provide for issuance by Indian companies of "Share Based Employee Benefits" as well*

The Department of Promotion of Industry and Internal Trade ("**DPIIT**") issued Press Note No.1 (2002 Series) on March 14, 2022 (the "**PN1 of 2022**") which introduced amendments to the Consolidated FDI Policy of the Government of India ("**FDI Policy**").

This article discusses the amendment introduced by PN1 of 2022 to **Paragraph 5 of Annexure 3of the FDI Policy** to make provision for the "**Issue of Share Based Employee Benefits**". The previously subsisting FDI Policy only made provision for the issue of ESOP and sweat equity but did not make provision for "Share Based Employee Benefits". The FDI Policy has been amended by PN1 of 2022 to provide for issuance by Indian companies of "Share Based Employee Benefits" as well.

As per the PN1 of 2022, an Indian company may issue "Share Based Employee Benefits" to its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India, subject to the following conditions:

(a) The scheme its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013 (the "Act"), or as per any other applicable law, as the case may be.

(b) The share-based employee benefits issued to non-resident employees/ directors under the applicable rules/regulations follow the sectoral cap applicable to the said company.

(c) The share-based employee benefits by a company where foreign investment is under the approval route shall require prior approval of the Government of India.

(d) Issue of share-based employee benefits under the applicable rules/ regulations to an employee/director who is a citizen of Bangladesh/ Pakistan shall require prior approval of the Government of India.

(e) The issuing company shall furnish to the Foreign Exchange Department of the Reserve Bank of India, within 30 days from the date of issue of ESOPs, a return as per the form - "ESOP Reporting".

The applicable provisions of Indian law which have to be complied with for the issuance of share-based employee benefits by listed Indian companies to its employees/directors are the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 ("**SEBI Regulations**").

The SEBI Regulations apply to the following issuances by listed Indian companies:

i. Employee Stock Option Schemes;

ii. Employee Stock Purchase Schemes;

iii. Stock Appreciation Rights Schemes;

iv. General Employee Benefits Schemes;

v. Retirement Benefit Schemes; and

vi. Sweat Equity Shares.

This includes the issuances of Restricted Stock Units.

Comments: The amendment has made provision for the issuance of share-based employee benefits by Indian companies to their employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India. However, the amendments need further elaboration and lack clarity. For instance, is the valuation of the shares which has to be to be adopted for the purposes of the FDI Policy the same as the one acquired under the SEBI Regulations or is a separate valuation report required to be submitted with the RBI?

Additionally, there are no provisions of Indian law which govern the issuance of certain types of share-based employee benefits such as restricted stock units ("RSU") by unlisted Indian companies. Consequently, it is not clear from PN 1 of 2022 whether unlisted Indian companies can issue RSUs to their employees/directors resident outside India.

While the clarification is much appreciated and is in line with making various sets of regulations such as the Companies Act, 2013, the SEBI Regulations and the FDI Policy in tune with one another, certain ambiguities have arisen which need further clarity.

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VALUATION OF BIOLOGICAL RESOURCES

IN INDIA FOR RESEARCH AND PATENTING FOR COMMERCIAL

The BDA has been proposed to be amended by way the BDA Bill of 2021 (Bill) which is currently before the Parliament

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India is a mega biodiversity nation with only 2.4% of the land area of the world, but accounting for 7.8% of the recorded species of the world. The rapid economic growth in India since its Independence and post economic liberalization has brought her within the ambit of leading world trade regulations' framework related to biological resources as well as IPRs. In the early 1990s, the WTO and the CBD were negotiated almost simultaneously with trade experts and economists in the forefront in the former and environmentalists and conservators of traditional knowledge in the latter convention to arrive at the international treaties aimed at uniform procedures among the members. The TRIPS requirements of the WTO along with the CBD regime establishes specific requirements related to the use of biological resources to create innovations.

The objectives of the TRIPS Agreement are promotion of technological innovation and transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. The CBD is based on national sovereignty over indigenous bioresources, and national governments are to regulate access to genetic resources and ensure fair and equitable sharing of the benefits derived from biodiversity besides conservation and sustainable use of biodiversity. The mandate of CBD is threefold: (a) conservation of biodiversity, (b) sustainable use of its components, and (c) fair and equitable sharing of benefits arising from the use of genetic resources. 193 countries, including India, are signatories of CBD. The TRIPS Agreement, the CBD, and WIPO all have about 150 plus members emphasize the need of the countries to make the IPR and biodiversity regimes work together, while making the necessary adjustments or amendments to achieve their objectives.

The Indian Biological Act 2002 (BDA) accordingly regulates through the National Biodiversity Authority and its State Boards the Access and Benefit Sharing (ABS) of the bioresources thus requiring the users to obtain the prior permissions before using any bioresource. The Section 2(c) of BDA defines "biological resources" as plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value-added products) with actual or potential use or value but does not include human genetic material.

There are exemptions provided within the BDA to promote sustainable use of biological resources by way of notifying normally traded commodities and excluding value-added products and conventional agriculture, though they do not seem to be sufficient in view of their limited scope interpretation. Also, the specific exemptions to vaids and hakims require broadening to manufacturers of traditional products such as ayurvedic preparations, to encourage traditional industries. It may be noted that the prior permission requirement is not only for trading and transfer of bioresources but also for using bioresources for research and obtaining IPR on innovations related to them.

The prior permissions are granted under the BDA subject to the user signing an ABS agreement with the NBA or SBB agreeing to regularly update on the use of the bioresource and pay an amount as agreed upon in the said ABS agreement. The prior informed consent (PIC)

and permission based on mutually agreed terms (MAT) are to form the pillars of ABS agreement. The amount payable for research permissions is currently fixed by the NBA and that for IPR and commercial use is based on the final product being sold by the user. The economic value of the bioresource in question is therefore critical to arrive at MAT to allow sustainable use. Thus, valuation of bio-resources is an integral part in the operationalization of the CBD mandate.

As each bioresource and its utility is unique, development of standard yet flexible valuation methods for valuation of bio-resources is critical. Most of the environmental economics literatures emphasize on the valuation of biodiversity in view of the ecosystem at large. However, there is a requirement of developing the valuation methods for identifying the true value of bio-resources or their use and products from an innovation perspective. Current models of benefit sharing are generally based on fixation of a percentage of gross sale of products. However, the real economic value of biological resources is hardly understood by the providers as well as users, primarily due to the complexity in valuation and methodology deficiencies which is a fundamental problem in arriving at meaningful and suitable ABS agreements.

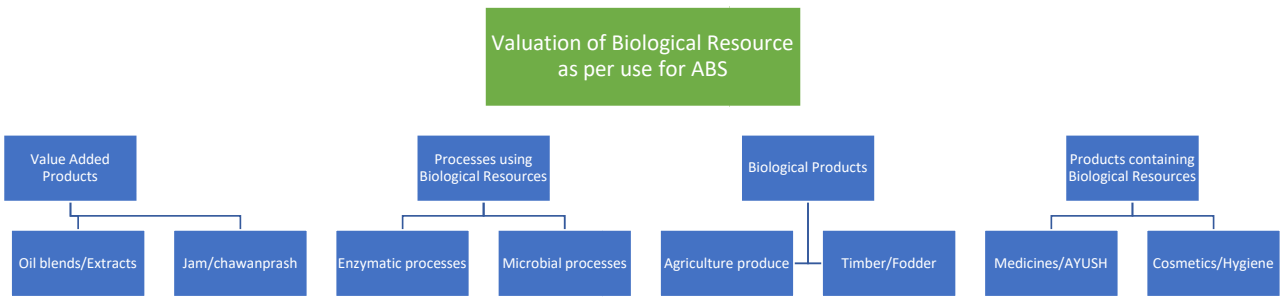
The negotiation between a provider and a user of resources should be based on the true/actual value of the resources and at the same time, provide incentive to the user to use the biological resource instead of looking for alternatives. Hence, understanding the real value of bio-resources is a pre-requisite for equitable benefit sharing and signing of ABS agreements.

There is no valuation mechanism for access of biological resource for research purposes currently. Research access permission is not required for Indians but if an Indian company has an NRI director/stakeholder, the permission is mandatory similar to non-Indians. A fixed fee is imposed for the prior permission for research using Indian Biological resource, irrespective of the same commonly being sold in the market. For example, permission for using coffee purchased from market for ₹ 1000 for research would require a fixed fee payment of ₹ 10000 at the time of signing the ABS agreement, which is a prerequisite even for Research permissions and not just at the time of commercialization of research results or transfer. This acts as hindrance to research using Indian bioresources and valuation for the fee to be imposed or not needs to be done. A simple intimation for research using common bioresources would be more logical and fairer.

The permission for IPR-related commercial use also lacks a proper valuation mechanism. The standard ABS agreement does not take into consideration the difference in bioresources or the difference in its use or products, leave aside the different industry sectors.

Valuation of Biological Resource for its various uses in the innovative products for which the commercial working statement is made by the patentee cannot be same for all inventions. The use of the bioresources in the final product may be very different (see Figure 1) including a value-added product to be the final commercial product (e.g. Jam). The contribution of a Biological Resource in a biotechnological process is completely different than that used in direct use products such as timber (e.g. Red sandalwood). The value chain analysis is essential for the herbal medicine industry, and the use of minor amounts of bioresources in otherwise chemical products (e.g. shampoo with natural fragrance). The process of chromatography of a bioresource to evaluate the chemical profile or the use of pests for testing of chemical pesticides are completely different uses of bioresources

Figure 1



> *"The standard ABS agreement does not take into consideration the difference in bioresources or the difference in its use or products, leave aside the different industry sectors*

and imposition of any ABS for such use would need to be evaluated using an entirely distinct approach.

The various valuations methodologies for bioresource valuation as being considered by NBA for ABS amount calculations include: (1) Maximum Willingness to Pay Approach: This method is for bio-resources that may be an unavoidable input factor in the final product. The industry negotiates the amount set by provider and the negotiated value can act as the "real value" for the resources. The current ABS agreements as provided as standard by the NBA are based on this method. However, this method does not take into consideration the contribution of the bioresource in the final product. (2) Value Chain Analysis: This method is suggested for bio-resources which are basic raw-materials for manufacturing final consumer products. It is important to realize that many other products (inputs) and knowledge/ skill (research and development) also contribute to the final product. Hence, the raw material costs and processing or manufacturing costs at different stages are significant factors and for valuation requiring use of an amortized pricing technique to estimate the real price of the bio-resources. (3) Minimum Support Price for Bio-resources: The authority should know the price of such goods / commodities to follow this method. The collector communities' willingness to accept is also to be considered. The expert committee on the "Development of Methodology for Economic Valuation of Bio-resources" established at NBA, proposed the concept of rent and its recovery for benefit sharing.

Concluding Remarks

The BDA has been proposed to be amended by way the BDA Bill of 2021 (Bill) which is currently before the Parliament. The Bill on one hand clarifies what the term "access" means by defining it to "collecting, procuring or possessing any biological resource occurring in or obtained from India or associated traditional knowledge thereto, for the purposes of research or bio-survey or commercial utilization". On the other hand, the Bill further covers within the definition the bioresource derivatives to mean 'a naturally occurring biochemical compound or metabolism of biological resources, even if it does not contain functional units of heredity', thereby creating another point of interpretation. There are several other concerns of various industries that remain unanswered in the proposed bill and hence a standing committee is deliberating on the same taking stakeholder comments. The amended BDA would hopefully have provisions for MAT and valuations method based on case-specific formulae which assess the true value of biodiversity and its products rather than imposing pre-set figures which do not take into consideration the real value of the bioresource.

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Dr. Wilson specializes in intellectual property management and protection with customized planning as per client's business needs and IP monetization-related strategic advice besides other IP areas including licensing, management, opposition, revocation and infringement.

Dr. Wilson is a lawyer with a Ph.D in applied sciences making her an expert in handling technical as well legal issues effectively. She appears before various legal authorities including Indian Patents, Designs and Trademark Office, Plant Variety Authority, National Biodiversity Authority, Intellectual Property Appellate Board (IPAB) and Judicial Courts in India.

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FROM GENERAL COUNSEL TO INDEPENDENT DIRECTOR

GCs with their business experience, legal acumen and as guardians of ethical practice are apt candidates with the requisite knowledge and expertise, to be appointed on the Board of Directors

In a recent study it has been observed that around 27% of General Counsels ("GCs") in Fortune 500 companies hold the position of executive vice president, while 26% hold the position of senior vice presidents. This reflects a new reality where the GC is being recognized as a strategic senior leader in the organization, with about 64% of GCs reporting in directly to the CEO. This trend is gaining momentum in India.

Today, a GC's role in a company is no-more just as in-house legal counsel, instead their role is much more complex and multi-dimensional. A GC is not only a legal expert, but also serves as a business partner to the CEO/CXO of a company and to its board of directors, both in listed and unlisted companies. An experienced GC contributes meaningfully to the company's important business decisions and strategy. The expansion of their role is reflected even more prominently in technology-based companies and in new start-ups where sound legal advice is critical in a still-developing legal landscape which is trying to keep up with non-conventional means of doing business. A GC's responsibility in this new landscape is even more crucial in ensuring that new-age companies understand and grow in compliance with the law.

TEJAL PATIL
Snr Legal Advisor, OYO Hotels and Homes

SHUKLA WASSAN
Independent Director

A GC's role tends to go beyond the law and includes policy, compliance, corporate governance, risk and crisis management. GCs are not just expected to be well-versed with the current regulations but also be able to anticipate the regulatory changes which would impact the business' future vision. With the changing legal landscape in India, GCs are expected to be one step ahead of regulations as they are playing a solution-oriented role to solve for how their business and legal advice will be operationalized and also shaping the regulations for the future.

GCs, at times, also serve as the company secretary, who is a key managerial personnel under the Companies Act and as chief compliance officer. They are, by education and practice, also well-versed in corporate and securities laws. As a pivotal figure, the GC often acts as the "bridge" between the board of directors and the senior management in regulatory and strategic business decisions. The GC is often a special/permanent invitee to the board and audit committee meetings and well versed with its conduct and expectations, giving advice on both procedural and substantive matters. Their well-informed perspective is a huge asset for the organization bringing unique insights to board-room debates. Right from forming the agenda to reviewing resolutions and enabling "enterprise risk" evaluation for the organization, many directors rely on the GC to play an independent part and support them in meeting their fiduciary obligations.

GCs are also the watchdogs of ethics and good corporate governance. They are trusted with leading regulatory compliances for the company and these form the bedrock for the Board to provide disclosures and representations in the annual reports. The GC is often the watchdog of the company as Ethics Officer or directly or indirectly supervises the compliance network. They are groomed to ask the right question in the interest of the organization as well as the law, in letter and spirit by leveraging their resources.

With companies going global and governance principles influencing cross-borders, GCs in India are progressively involved in formulating company's overseas strategies working with their peers and other functional leaders in framing the thought process behind doing business internationally in addition to mapping legal requirements in the country. They act as guardians of the Company's assets and intellectual property. Their primary duty lies to the company and this enables well-thought outcomes keeping in mind interests of all stakeholders.

To comprehend a GC as a company director and/or as a company's CEO is no more a far-fetched thought, instead is a natural progression to their role. As natural partners to the promoters/shareholders, they are regarded as wise counselors. In addition, they are also actively sought-after by companies and investors, to be appointed independent director(s), whose role on the Board has become even more critical with ever increasing emphasis on corporate governance. Recent changes by the Securities and Exchange Board of India, the Ministry of Corporate Affairs and other regulatory and supervisory bodies demands a more professional, independent and transparent approach. Being naturally trained to be balanced and question the status quo and challenge management as required, lawyers have found a seat on the table and we witness many leading legal luminaries (both law firm partners and individual practitioners) on corporate boards. Several

> *To comprehend a GC as a company director and/or as a company's CEO is no more a far-fetched thought, instead is a natural progression to their role*

GCs being even better placed as they have unique in-house corporate business and legal experience, have expressed desire, post retirement or as their second career, to contribute through Board memberships.

GCs with their business experience, legal acumen and as guardians of ethical practice, are apt candidates with the requisite knowledge and expertise, to be appointed on the Board of Directors. The Ministry of Corporate Affairs has recognized this and in their recently amended Companies (Appointment and Qualification of Directors) Rules and exempted "an advocate of a court/chartered accountant in practice for 10 years" from taking the online proficiency self-assessment test for becoming independent directors. This exemption hopefully will soon be extended to GCs.

Says Shukla Wassan, Independent Director and co-author *"Having worked for over 2 decades as General Counsel of various Indian companies and MNCs, I always aspired to transition as an Independent Director. This journey from GC to Independent Director has vindicated my belief that this is a wholesome evolution. As an Independent Director I have felt welcomed and valued. My perspectives are sought on all matters, which brings an opportunity for me to leverage my experience and contribute towards sustainable business growth of the company."*

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DEMYSTIFYING SUSTAINABILITY LINKED LOANS

SLLs are also referred to as ESG (environment social governance) linked loans and are based on the Sustainability Linked Loan Principles (SLLPs) which have been issued under guidelines[1] dated 19 March 2019 issued by Loan Market Association, Asia Pacific Loan Market Association and Loan Syndications and Trading Association.

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Advocates since 1911

1. Introduction

Sustainability linked loans or SLLs are loan instruments and/or contingent facilities which incentivize a borrower's achievement of predetermined sustainability performance objectives. SLLs are also referred to as ESG (environment social governance) linked loans and are based on the Sustainability Linked Loan Principles (SLLPs) which have been issued under guidelines[1] dated 19 March 2019 issued by Loan Market Association, Asia Pacific Loan Market Association and Loan Syndications and Trading Association. SLLs vary slightly from the green loans in terms of the use of proceeds. While green loan must be used for a specific "green project", SLLs can be used towards general corporate purposes.

The following form the four core principles of SLLPs:

(i) Relationship to borrower's overall sustainability strategy: The borrowers are required to communicate to their lenders, their sustainability objectives which align with its proposed sustainability performance targets.

(ii) Target-setting (measuring the sustainability of the borrower): The sustainability performance targets should be relevant to the borrower's business over the life of the SLL and should be linked to terms and conditions of the SLL to incentivize improvements to the borrower's sustainability profile. One of the aims of an SLL is to encourage positive change through incentives and this should form the basis of target-setting.

(iii) Reporting: The borrowers are required to maintain readily available up-to-date information on their sustainability performance targets and provide this to lenders on a regular basis. The availability of information regarding the sustainability performance targets should also form a part of the information covenants of the SLL loan documentation.

(iv) Review: External review of sustainability performance targets should be ensured. Where information relating to sustainability performance targets is not made publicly available or otherwise accompanied by an audit/assurance statement, it is strongly recommended that borrowers seek external review of its performance of their sustainability performance targets.

2. Salient features of SLLs

(i) The appraisal of SLLs is to be carried out with transparent manner in determining the applicable KPI/sustainability performance target for borrowers. The mechanism for the measurement of the borrower's improvement against a KPI must be carefully considered and should be documented in the SLL loan documentation. Following are the accepted methodologies for ascertaining the sustainability performance targets:

(a) ambitious ESG metrics and targets included in the borrower's sustainability strategies and/or policies;

[1] APLMA - Green and Sustainable Lending Microsite

> *Sustainability performance targets or KPIs built into the terms of the SLLs may apply entity-wide or to specific assets of the borrowers and are required to be identified in the SLL loan documentation. The borrowers are incentivized to fulfill the KPIs to avail the pricing benefits of the SLLs which are linked to such KPIs. In order to evaluate borrowers' compliance with such KPIs*

(b) external analysis to establish sector-specific ESG criteria and best-practice performance;

(c) verified industry metrics reported against frameworks, with verification or evaluation by civil society organizations or external reviewers who will determine if sustainability performance targets are ambitious for the borrower and the borrower's industry, and/or align the sustainability performance targets to existing regulatory targets (such as those set out in the Paris Agreement or in other country/regional/international targets).

(ii) Sustainability performance targets or KPIs built into the terms of the SLLs may apply entity-wide or to specific assets of the borrowers and are required to be identified in the SLL loan documentation. The borrowers are incentivized to fulfill the KPIs to avail the pricing benefits of the SLLs which are linked to such KPIs. In order to evaluate borrowers' compliance with such KPIs.

(iii) Consequences of breach of sustainability-linked provisions: Whilst there is no established market standard in relation to what constitutes a "sustainability" breach, this should be clearly documented in the facility agreement on a case-to-case basis. Although failure to meet the sustainability performance targets may not constitute an event of default under the facility agreement, it would affect the pricing of the SLL for the borrower.

(iv) Exit from sustainability-linked nature of the loan: The SLL can be structured in a manner that the borrower can opt out of setting annual targets or complying with the KPIs and ESG requirements upon such terms and conditions which are mutually agreeable to the parties.

3. International perspective v/s Indian perspective

Internationally, regulatory framework around SLLs have been structured around sustainability disclosure by financial and non-financial companies, by which the companies are asked to periodically report their exposure to the ESG-related risks from their operations. Such disclosures have picked up following the thrust given by G20 by encouraging a voluntary adoption by corporates of the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

RAJSHEKHAR UPADHYAY
Associate

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Associate

In several countries, directed and concessional lending is practiced to encourage compliance with sustainability-linked targets and disclosures in relation to the same. The establishment of green financial institutions to make available sustainability-linked finance has placed importance on the sustainability-linked targets rather than just production or economic targets.

In India, SEBI mandated the top 1000 listed entities by market capitalization to file Business Responsibility Reports (BRR) as part of their annual report, as per the disclosure requirement emanating from the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' (NVGs) in 2019. The BRR emphasizes on metrics which are quantifiable and allow for easy and accurate intra and inter sector measurement across time periods. Further, the disclosures on climate and social (employees, consumers and communities) related issues of the entity have been significantly enhanced and made more granular.

Further, the RBI has, in its bulletin dated 21 January 2021, highlighted reduction in borrowing cost and information asymmetry as issues which need to be addressed to avoid false claims of environmental compliance and to lead to an efficient resource allocation model. In addition to the above, policy measures such as deepening of corporate bond market, standardization of green investment terminology and consistent corporate reporting have also been stated to have the potential to make a significant contribution in addressing some of the shortcomings of the green finance market. In another bulletin published in May 2016, RBI has also stated that one of the major challenges before Indian and other developing economies is to ensure that sustainability-linked lending is integrated into commercial lending decisions while simultaneously balancing the needs of economic growth and social development. This would necessarily mean setting out on the journey of integrating financial systems and sustainable development which has numerous milestones viz. developing awareness about environmental vulnerabilities, developing a framework of metrics for measuring progress and enhancing capabilities for assessing the risks including environment risks.

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LEGAL CONSIDERATIONS FOR INVESTMENTS IN DATA CENTERS IN INDIA

The Government should prepare a data localization policy which covers aspects like development of adequate infrastructure for safe storage

With continuing focus on digitization accelerated by COVID lockdowns and rising demand for sustainability and green goals, there is an increase in activity relating to data centers for operators and investors as well as policymakers and regulators. In order to attract investment in data centers in India with a vision "to make India a global data center hub", the new Government policies intend to provide various incentives and exemptions to promote data center industry growth. In the recent past, several multinational and domestic companies have set up data centers in India. In the 2022 Budget speech, the Finance Minister announced that data centers will be considered as "infrastructure" to facilitate credit availability. In addition to this classification, two other policy initiatives announced in the Budget speech which are expected to incentivize data center investments are the 5G spectrum auction and the widening footprint of optical fiber.

CURRENT REGULATORY FRAMEWORK

India permits 100% foreign investment in data centers, subject only to the condition that investments by an entity of a country which shares land border with India (each such country, a "**Restricted Country**") or where the beneficial owner of an investment into India is situated in or is a citizen of any such Restricted Country will require prior Government approval.

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"In order to attract investment in data centers in India with a vision to make India a global data center hub, the new Government policies intend to provide various incentives and exemptions to promote data center industry growth

In November 2020, the Department of Telecommunications ("**DoT**") issued the New Guidelines for Other Service Providers (OSPs) ("**New OSP Guidelines**") which specifies that no registration certificate will be required for OSP centers in India. Pursuant to the New OSP Guidelines, "Other Service Provider" has been defined as "*...an Indian company, registered under the Indian Companies Act, 2013 or an LLP (Limited Liability Partnership) registered under LLP Act, 2008 or a partnership firm or an organization registered under Shops and Establishment Act or a Legal Person providing voice-based Business Process Outsourcing (BPO) services*" (emphasis added). Accordingly, the scope of the New OSP Guidelines do not appear to extend to companies engaged in data-related services. Prior to the issue of the New OSP Guidelines, companies providing data center services obtained registration as an Other Service Provider from the Telecom Enforcement, Resource and Monitoring Cell of the DoT.

In November 2020, the Ministry of Electronics & Information Technology also issued a Draft Data Center Policy 2020 applicable to data center park developers, data center operators as well as the allied ecosystem of the data center sector and took feedback from all stakeholders. The detailed scheme specifying implementation guidelines and incentives (fiscal and non-fiscal) is yet to be published. The Draft Data Center Policy proposes a policy framework for various structural and regulatory interventions, investment promotion in the sector, possible incentivization mechanisms along with an institutional governance mechanism, such as publishing a list of approvals required for operationalization of data centers along with defined timelines and granting a single window clearance in a time bound manner by State Governments and Union Territories for setting up data centers/data center parks. The Draft Data Center Policy also contemplates setting up of at least four Data Center Economic Zones in India under a central scheme as well as demarcation of specific zones by the States for setting up data center parks, which will provide inter-alia pre-provisioned land, power availability at low rates and pre-approved clearances. Further, the Draft Data Center Policy provides that it seeks to encourage joint ventures between foreign investors and domestic companies in the development of data centers.

While certain states such as Karnataka are finalizing their state-specific data center policy, other states such as Maharashtra, Telangana, Tamil Nadu and Uttar Pradesh have adopted their respective state data center policies

which seek to provide various concessions and incentives to operators, including real estate support and faster clearances. Maharashtra's policy 2016 provides certain fiscal incentives (such as stamp duty exemption, electricity duty exemption, VAT refund and property tax benefits) for data centers fulfilling certain eligibility criteria. Telangana's Data Centers Policy 2016 provides fiscal incentives (such as power incentives, building fee rebates and land at subsidized costs) as well as non-fiscal incentives (such as exemption from the purview of the Telangana Pollution Control Act (unless otherwise specified), exemption from statutory power cuts, exemption from inspection under specified labor legislations and permissions to file self-certificates). The Tamil Nadu Data Center Policy 2021 offers a single window facilitation portal to ensure time-bound processing of applications and coordination with various agencies and departments to get clearances from them, provides incentives (such as electricity tax subsidies on power, concessional open access charges and cross subsidies, dual power and stamp duty concessions) and permits self-certificates in relation to compliance with maintenance of statutory registers and forms under applicable labor legislations. The Uttar Pradesh Data Center Policy 2021 provides for various incentives to data center park developers as well as data center units, such as interest/capital subsidy, land subsidy, stamp duty exemptions and dual power grid network, as well exemption from inspection under specified labor legislations and permissions to file self-certificates.

DUE DILIGENCE CONSIDERATIONS

Set out below are certain relevant considerations in a legal due diligence exercise involving acquisitions of, or investments in, data centers:

Material Contracts

In order to maintain the customer base, agreements with customers need to be reviewed to ascertain the remaining term of the agreement, consent requirements for the proposed transaction as well as termination rights of the customers and any associated termination charges. Where a significant number of the customer contracts are due to expire soon after the proposed transaction or the proposed transaction requires consent from a material customer, the acquirer/investor could consider including renewal of such material customer contracts and obtaining such third party consent as a condition to closing in the transaction documents. In addition, the extent of any financial liabilities of the data service provider under the customer contracts as well as the circumstances under which such liability may arise should be reviewed as a part of the legal due diligence exercise.

Similarly, contracts with third party service providers (such as agreements with internet service providers, connectivity providers and security providers as well as management and maintenance agreements and power supply agreements which ensure continuous access to power) should be reviewed for their tenure, consent requirements, termination rights and liabilities of the parties to understand the potential risks involved in the business.

Real Estate

The property agreements should be reviewed for the type of property, i.e., freehold versus leasehold. In case of freehold property, independent local counsel opinions should be considered for purposes of title verification. In case of leasehold property, the term of the agreement, renewal options, rent escalation and termination rights of the parties need special attention. Further, the agreements should be reviewed for any consent requirements in case of any change of control or management of the data center provider.

Permits and Approvals

Data centers in India require a number of permits and approvals from the central and state governments for its operationalization. Such permits and approvals should be reviewed for its validity and consent requirements. Further, as a part of the legal due diligence exercise, the data center provider could be requested to confirm compliance with the terms of such permits and approvals.

Compliance with Applicable Data Protection Laws

In India, under the [Indian] Information Technology Act, 2000 and the [Indian] Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, each as amended, in the event that any body corporate possessing, dealing, or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such person will be liable to pay compensation to the person so affected. A body

corporate shall be considered to have complied with reasonable security practices and procedures if they have implemented such security practices and standards and have a comprehensive documented information security program and information security policies that contain managerial, technical, operational and physical security control measures that are commensurate with the information assets being protected with the nature of business. In this regard, past breaches or any ongoing investigation or litigation involving non-compliance with applicable data protection laws should be reviewed to identify any associated risks. In addition, a separate technical due diligence may be useful to ascertain if the data service provider has adopted "reasonable security practices and procedures".

Environment, Health and Safety (EHS)

While the validity of EHS permits and any past or ongoing investigations or litigations involving non-compliances in relation to environment, health and safety laws can be identified during legal due diligence, separate EHS audits by external agencies could be considered to identify potential operational risks and to recommend remedial measures.

Employees and Employee Benefits

Employment due diligence must involve a review of the employment contracts and employment policies of the data service provider to ascertain the annual cost to company, employer-employee obligations (including confidentiality obligations) and other terms of employment.

Additionally, any implications of the proposed transaction pursuant to applicable Indian labor legislations, including the [Indian] Industrial Disputes Act, 1947, as amended, should be considered. Further, companies in India are liable to pay social security contributions under the [Indian] Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the [Indian] Employees' State Insurance Act, 1948, each as amended. The data center provider could be requested to confirm if it provides any other benefits to its employees so that all accrued amounts (including in respect of accrued but unused leave) payable to the employees until the date of transfer are paid prior to closing.

CONCLUSION

The Report of the Joint Committee on the Personal Data Protection Bill, 2019 dated December 2021 recommended that India must gradually move towards data localization and the Government should ensure that a mirror copy of all sensitive and critical personal data already stored abroad be mandatorily brought to India and as such, the Government should prepare a data localization policy which covers aspects like development of adequate infrastructure for safe storage. Given the focus on data localization, there appears to be significant potential for growth for the data centers industry. In this background, the Government's move to grant 'infrastructure' status to data centers and introduce a national data center policy are welcome measures which will promote investments in data centers in India.

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MITIGATION OF ESG RELATED LITIGATION

The purpose of this article is to present a brief overview of the emerging ESG trends and the impact that various ESG factors have had on companies. Furthermore, the article delves into instances of potential ESG-related disputes that a company may be exposed to for their failure to adopt ESG-centric policies. In this manner, the article brings out the necessity for companies to adapt to emerging ESG trends and constantly monitor, identify and mitigate legal risks associated with ESG.

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Introduction

Profitability and sustainability have often been considered as incongruous to one another in relation to the objectives of a company. As a result, activities towards promoting sustainability have largely been ignored by companies. Moreover, the absence of any legal or regulatory oversight to enforce sustainable measures by companies, has bolstered the idea of profitability over sustainability.

However, with the global community acknowledging the need to mitigate climate change in the Conference of Parties (CoP 26)[1] combined with the drastic effects of the COVID-19 pandemic on the existence of businesses, ESG-related factors have emerged as a catalyst to compel companies to internalize their negative externalities and maximize their long-term value in society.

For the unacquainted, ESG refers to "environment, social and (corporate) governance" and serves as the whetting stone upon which a company can create long-term value rather than short-term profits. It also is used as a benchmark of business efficiency for a company in the eyes of investors and shareholders.

Impact of ESG on companies

The emergence of ESG factors has increased the scrutiny on the business activities of a company by investors, regulators and the general public. The market regulator and watchdog, Securities and Exchange Board of India ("**SEBI**") has jumped on the ESG wave and pursuant to India's pledge to achieve net-zero carbon emissions by 2070, introduced the 'Business Responsibility and Sustainability Reporting' ("**BRSR**") under Regulation 34(2)(f) of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015. As per the BRSR, SEBI has mandated that the top 1000 listed companies by market capitalization to include ESG disclosures as part of their annual report from the coming financial year. SEBI has further nudged companies in India to maintain transparency in their ESG disclosures by imposing legal sanctions[2] against a company and its directors for their failure to comply with the BRSR.

Furthermore, directors of companies have been tasked with the duty of balancing the interest of the shareholders of a company with that of the larger stakeholders involved, including the environment under Section 166(2) of the Companies Act, 2013. In a recent case[3], the Supreme Court of India analyzed the responsibility and accountability of directors of a company to the wider stakeholders under the Companies Act, 2013 and held that the expression "environment" would include the "*inter-relationship which exits among and between water, air and land and human-beings, other living creatures, plants, microorganism and property*".

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[1] https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop [last accessed on 24-03-2022].
[2] Regulation 98 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Section 23A and 24 of the Securities Contracts (Regulations), 1956.
[3] M. K. Ranjitsinh&Ors. v Union of India &Ors. (2021) SCC OnLine SC 326.

As a result, companies have been compelled to shift their policies towards promoting the interest of all the stakeholders of a company rather than only the shareholders.

ESG factors have also provided an opportunity to companies to showcase their good work and increase their business efficiency. For instance, Fab India Ltd., a clothing and furniture retail based on traditional Indian crafts has been able to reap the benefits of ESG-centric policies to increase its value among investors and potentially raise around $500 million in its up-coming IPO[4].

Instances of ESG related litigation

While the emergence of ESG has provided an opportunity to companies to showcase their good-work, it has also brought into the forefront the companies that have been evading ESG practices. The companies that have failed to adopt ESG-centric policies are vulnerable to ESG-related litigation. The objective of such litigation is two-fold –

a. To seek monetary compensation from a company for any damage caused to the environment or person or business,

b. To compel a company to change its business policies in tune with the ESG factors.

Therefore, it is imperative for a company to conduct regular risk assessments, identify potential risks, seek advice from experts, and comply with ESG related norms across borders to mitigate the risks associated with ESG-related litigation.

In India, ESG-related litigation remains largely underdeveloped as no court has had the opportunity to delve into ESG-related issues in a holistic manner. However, courts have dealt with ESG-related issues individually like minority protection, gender justice, labor welfare, CSR and environment-related issues.

In particular, companies in India have faced litigation since the 1980's for causing environmental damage and violating environmental norms. For instance, in the case of ***Tirupur Dyeing Factory Owners Association v. Noyyal River Ayucutadars Protection Association***[5], the Petitioners filed the petition to protect and conserve the Noyyal river in Tamil Nadu. In particular, the claim was made against the Tirupur Dyeing factory for discharging their effluents into the Noyyal river and thereby polluting the river. The Supreme Court ordered the factory to shutdown as it had breached emission standards. Companies have also been ordered to compensate persons affected by their business actions if there was evidence of environmental harm by a company[6].

While most ESG-related litigation has been synonymous with environmental claims, the COVID-19 pandemic has however sharpened the focus on various social and corporate governance issues within a company, such as – maintenance of a healthy work environment, diversity among the workforce, transparency and accountability among the company management, and conduct and behavior of the management. In recent instances such as the dispute between BharatPe and its former CEO[7], and the claims of breach of corporate governance norms against the Board of the National Stock Exchange[8]; the conduct and affairs of the board of directors of a company has come under increased scrutiny by regulators. This has severely affected the

[4] ArchanaChaudhary, "FabIndia IPO Targets ESG Investors Without Ticking 'Green Boxes'", BLOOMBERG, https://www.bloomberg.com/news/articles/2022-03-17/fabindia-ipo-targets-esg-investors-without-ticking-green-boxes [Last accessed on 24-03-2022].
[5] (2009) 9 SCC 737.
[6] Indian Council for Enviro-legal action v Union of India (1996) 3 SCC 212.
[7] https://www.moneycontrol.com/news/business/a-long-protracted-legal-battle-ahead-for-bharatpe-and-ashneer-grover-lawyers-say-8190921.html [last accessed on 25-03-2022].
[8] https://www.thehindu.com/business/markets/explained-sebis-order-against-former-nse-ceo-chitra-ramkrishna/article65062693.ece [Last accessed on 25-03-2022].

goodwill and reputation of the companies and resulted in a mass exodus of employees as well. Furthermore, the companies are at an increased risk of a long-drawn litigation that will severely reduce their revenue and profitability.

Conclusion:

Mitigation of ESG-related litigation

ESG is a benchmark of business efficiency vis-à-vis sustainability. A company that adopts ESG-centric policies and remains proactive to ESG-related risks, will be able to maximize their profitability and revenue. However, companies that fail to adopt ESG-related policies will be exposed to legal claims for non-compliance of ESG norms. Such litigation has a debilitating effect on the reputation and goodwill of a company as it brings the breaches of the company under the public eye. Furthermore, it can result in great financial loss for a company as a result of fines, damages, and legal expenses.

Moreover, a company facing such litigation will also have to spend huge amount of time and resources to rebuild the tarnished reputation of the company.

This collectively reduces the profitability and productivity of a company. Therefore, it is imperative for a company to conduct regular risk assessments, identify potential risks, seek advice from experts, and comply with ESG related norms across borders to mitigate the risks associated with ESG-related litigation.

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SUPREME COURT REVOKES HIGH COURT'S ORDER AGAINST OLX

The online marketplace connecting the sellers and the buyers was earlier advised to adopt a screening mechanism

The Supreme Court has quashed the directions issued by the Punjab and Haryana High Court to OLX India. The high court had ordered the online platform to adopt a screening mechanism for the sellers who posted their advertisements.

A bench comprising Justice UU Lalit, Justice S Ravindra Bhat and Justice PS Narasimha said, "There was no reason for the high court to pass these directions, particularly without hearing the appellant."

The Punjab and Haryana High Court had earlier issued directions to OLX to delete and re-list all advertisements on its platform only after attaching an open PDF file along with each advertisement.

It ordered that the file should contain – at least two ID proofs of the person, proposing to sell a property (movable or immovable) or asking any professional service; two mobile numbers with a screenshot/photocopy of the message sent by the server that issued the SIM verifying the name of the owner as per their record; details of the (movable or immovable) property to be sold and a document of the title like registration certificate or insurance paper for vehicles or sale deed for the property.

Other criteria were that in the five districts if the proposed seller was residing in a village or in the area of Municipal Corporation/Municipal Council, a certificate of the member of the Panchayat or

Justices UU Lalit, S Ravindra Bhat and PS Narasimha

Municipal Councilor certifying that the seller was not involved in any criminal case and was a genuine owner of the property was required.

The directions were passed while considering a case of a person impersonating another to upload an advertisement for the sale of a product on OLX.

OLX submitted before the apex court that it was only an intermediary making the services available so that the prospective vendors of goods and merchandise could issue appropriate advertisements soliciting responses from the intending purchasers. Therefore, it could not guarantee the quality of the goods or merchandise that were put up for sale. Also, it was not possible for it to certify the genuineness and correctness of the deals between the buyers and the sellers.

Refusing to comment on the contentions, the top court said, "Since the matter is pending consideration before the high court, we do not enter into and deal with the submissions advanced by the appellant. We leave the appellant to agitate all these issues before the high court."

CHIEF JUSTICE N V RAMANA LAUNCHES 'FASTER' PROGRAM FOR COURT RECORDS

The idea took shape on reading a news item

The Chief Justice of India NV Ramana has launched software that transmits court orders swiftly and securely through electronic mode. The Fast and Secured Transmission of Electronic Records (FASTER) will convey the judgments passed by the higher judiciary without any tampering by third parties.

Emphasizing the need for it, the Chief Justice said the software would communicate bail orders with the digital signatures of the Supreme Court officers, ensuring safety and privacy.

He stated, "The concept of the FASTER system took shape after reading a news item. We took up a suo motu case and roped in others including Justice AM Khanwilkar, Justice DY Chandrachud and Justice Hemant Gupta. The orders passed by the Supreme Court and the high courts have to be transmitted

Chief Justice of India NV Ramana

safely without tinkering by third parties,"

Explaining the functionality of the software, the CJI said that 73 nodal officers had been nominated at the high court level to oversee the process. A judicial communication network and 1,887 secure-pathway email IDs have been established and communication would be restricted to those channels.

"We will also look into the transmission of such records on the physical mode in the second phase. I thank all, including the Supreme Court judges, the chief justices and the judges of the high courts. I hope it eases the burden," he added.

SUPREME COURT NOTICE TO VI AND AIRTEL ON JIO'S PLEA

The telecom operators had moved TDSAT against the telecommunication department's demand for penalties

The Supreme Court has issued a notice to Vodafone-Idea Limited and Bharti Airtel Limited on a plea filed by Reliance Jio Infocomm Limited challenging the order of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).

It dismissed the application filed by Vodafone-Idea and Bharti Airtel against the demand notices issued in September 2021 by the Department of Telecommunications (DoT) levying a penalty of ₹ 3,050 crores on the two entities for allegedly denying adequate Points of Interconnection (PoI) to Reliance Jio in 2016.

A bench comprising Chief Justice NV Ramana, Justice Krishna Murari and Justice Hima Kohli issued the direction while considering a civil appeal by Reliance Jio. The three petitions arose out of complaints filed by Reliance Jio before the Telecom Regulatory Authority of India (TRAI).

The DoT had issued the notices, accepting the recommendations of TRAI after giving the petitioners an opportunity of being heard. It imposed a penalty on the petitioners before the TDSAT.

Reliance Jio argued that the notices had been impugned before the TDSAT and categorical assertions were made against it relating to the interpretation of the bilateral contracts between Reliance Jio and the petitioners. It was, therefore, directly affected by the outcome of the petitions.

It further submitted that even while rejecting its applications, the impugned order implicitly

recognized that Reliance Jio was a necessary and proper party whose presence would assist the adjudication of the issues. It also held that Reliance Jio was permitted to file written notes of not more than 10 pages, which the tribunal might look into at the time of the final adjudication.

Meanwhile, Vodafone-Idea, Airtel and Bharti Hexacom Limited challenged the demand notices and the realization of the penalty was summarily stayed in November 2021 by TDSAT.

According to the petitioner, it was as a consequence of the denial of adequate PoI to Reliance Jio that it suffered call failures of over ₹ 10.2 crores on a daily basis during that period. As a result, not only its subscribers had to suffer immensely, but enormous harm was also caused to Reliance Jio's reputation amongst the consumers, hampering its growth in the telecom sector.

Reliance Jio argued in its petition, "This was, of course, the very intention with which the concerned denial of POIs was orchestrated seeking to protect their monopoly in the telecom sector at the expense of the Indian consumers."

BOMBAY HIGH COURT

BOMBAY HIGH COURT RESERVES VERDICT IN INVESCO'S APPEAL

The US investment firm and Zee Entertainment have been in a bitter legal battle over the removal of Punit Goenka due to governance issues

The Bombay High Court has reserved its verdict in the appeal filed by the US investment firm Invesco Developing Markets Fund, the largest shareholder of Zee Entertainment Enterprises Limited. Earlier, a single-judge bench had granted an interim injunction in favor of Zee in the ongoing dispute between the two entities.

Disagreements began in September 2021; when Invesco requisitioned that Zee's Board of Directors hold an extraordinary general meeting (EGM), as it felt that the company was not running smoothly as expected. Desiring certain new directors to come on board in order to safeguard its interests, Invesco also wanted to remove three directors, including Punit Goenka, the Managing Director and Chief Executive Officer of Zee.

On Zee's refusal to meet the demand, Invesco filed a plea before the National Company Law Tribunal (NCLT), Mumbai. The tribunal directed Zee to consider Invesco's demand in accordance with the law.

Zee approached the high court seeking a declaration that Invesco's requisition notice was illegal and invalid. In October 2021, a single judge of the high court Justice GS Patel passed the order, which was challenged by Invesco.

The division bench of Justice SJ Kathawalla and Justice Milind Jadhav has now reserved its verdict on the appeal.

On behalf of Invesco, senior advocate Janak Dwarkadas had raised the following contentions:

- As per the Companies Act, it was mandatory for the board to call for a shareholders' meeting;
- The High Court had no jurisdiction to entertain a suit as the Companies Act ousted civil court jurisdiction for matters within the domain of the NCLT;
- The Board of Directors could not sit in judgment over any matter for which the meeting was requisitioned.
- Zee's suit was premature and they could have challenged the resolutions passed in the meeting;
- Shareholders holding 10 percent or more of the paid-up share capital were entitled to requisition for an EGM as a matter of right in corporate democracy.

On behalf of Zee, senior advocate Aspi Chinoy submitted:

- The order under challenge was in accordance with the law;
- A requisition under the Companies Act did not confer any special powers upon NCLT; matters pertaining to the illegality or ultra vires of any action could be challenged before any civil courts, which implied challenging the NCLT order was not barred;
- If one could challenge the resolutions, the requisition leading to the meetings could also be challenged in civil suits;
- Obtaining valid permission/approval from the Ministry of Information & Broadcasting was

crucial before moving a requisition to hold an EGM to remove a director, which was not done in the present case;

- Not obtaining prior approval from the Ministry to remove the present Managing Director could lead to the broadcaster losing its license;
- An independent director could not be appointed by the shareholders directly;
- For the appointment of independent directors, the Board of Directors was first required to accept the recommendations of the Nomination & Recommendation Committee, followed by the shareholders' approval;
- Having an executive director was crucial for such approval; after removing Goenka, the executive director would not be left on the board, which was against the statutory requirement.

Chinoy appeared alongside senior advocates Navroz Seervai, Pesi Modi and Birendra Saraf. Also, advocates from Trilegal comprising Prateek Seksaria, Nitesh Jain, Nisha Uberoi, Gautam Chawla, Atul Jain, Adrish Majumder, Vatsala Kumar, Ritika Ajitsaria, Brihad Ralhan, Hitesh Saini and Radhika Seth appeared for Zee.

Senior advocate Janak Dwarkadas along with senior advocates Ravi Kadam and Sharan Jagtiani appeared for Invesco. The team from Dhruve Liladhar & Co included advocates Gaurav Mehta, Rishika Harish, Kingshuk Banerjee, Bhavik Mehta, Zacarias Joseph, Sonali Aggarwal, Ritvik Kulkarni and Prakruti Joshi.

DELHI HIGH COURT

DELHI HIGH COURT'S INTERIM RELIEF TO MAGIC MOMENTS

The next hearing is scheduled for July 22

In a trademark infringement suit, the Delhi High Court has granted an interim injunction in favor of Radico Khaitan Limited, owners of liquor brand Magic Moments. It has restrained Sarao Distillery (OPC) Private Limited from selling or manufacturing alcohol under the name Evening Moment.

Deliberating upon the matter, Justice Prathiba M Singh held that the words Magic Moments and Evening Moments were deceptively similar.

She said that 'Moment' was being used by the defendant, which could mislead the consumers to believe that the two products were connected.

"It can be easily perceived that the defendant's product is another addition to the plaintiff's product stable. Moreover, the use of the word 'Evening' is not sufficient to distinguish the two products due to the very nature of the product, which is usually consumed in the evening times. The focus would be on the word 'Moment', which is the dominant part of the impugned mark," the court held.

Justice Prathiba M Singh

In its earlier order, the court had already granted an injunction in favor of the plaintiff where the defendants had been restrained from selling their liquor under the brand Evening Moment. However, it did not apply to the selling of whisky.

The counsel for the plaintiff argued that they were one of the largest manufacturers of Indian-Made Foreign Liquor (IMFL). Owing to a large number of sales and various registrations for the words Moments and Magic Moments, the mark deserved to be protected even with respect to a whisky brand.

The court noted that the records showed that the plaintiff had adopted the words Magic Moments in 1997. It launched gin and vodka products under the trademark in 2005 and 2006. Ever since, uninterruptedly, it had used the brand name and also launched other variants - Remix (2008), Verve (2012) and Electra (2015).

Granting an interim injunction in favor of the plaintiff, the court ruled, "The defendants and all others acting for or on their behalf, are restrained from using the mark Evening Moment or any other mark consisting of the word Moment/Moments in respect of any alcoholic beverages manufactured, sold or offered by sale."

Advocates Anirudh Bakhru, Ishani Chandra, Srijan Uppal, Abhishek Bhati and Yashasvi Gupta appeared on behalf of the plaintiffs.

DELHI HIGH COURT PERMITS JOHN DOE ORDER

Despite the Delhi High Court ruling that Dabur India Limited should receive interim relief, the court ordered the blocking of certain websites (John Doe) that use the 'DABUR' domain illegally. Rather than merely infringing or passing off, it is purported to be impersonating completely.

Justice Pratibha M Singh found that DABUR India Limited met the requirements for an ex-parte injunction on prima facie grounds and that the balance of convenience was in its favor.

The plaintiff would suffer irreparable harm if an ex-parte injunction is not granted in their favor and the public would also suffer irreparable harm, the Court said.

The order is John Doe as the owner of the impugned sphere names is hidden.

According to the Court, registering domain names with masking or hiding the information of the registrant is increasingly being practiced by person registering domain names which infringe on the rights of trademark or name owners.

It was found that such registrants seek to register domain names and host websites in an anonymous or concealment manner, without disclosing where they are located. They use the domain names, excluding the entire world, including the trademark owners, the Court confirmed.

When anyone or any entity registers a trademark, company name, joint venture, etc., the identity of the person is made publicly available. In contrast, this is not the case with domain names. It would therefore appear that disabling privacy protection features is necessary to ensure the identities of those registering domain names are made publicly available on https://www.whois.com database, as other such databases as well.

In response, the Court directed the Center to describe its position regarding privacy protection features offered by domain registrars to their clients.

Affidavits must be filed by the defendant's Nos. 2 and 3 one week before the next court date, the court instructed.

Furthermore, the Court acknowledged that the mark 'DABUR' has been known in India for centuries, having been coined way back in 1884, when contemplating the plaintiff's motion for a temporary injunction under Order XXXIX Rule 1 and 2.

In essence, it's an Indian brand that has been around for over 150 years, and it has also become a household name. The Plaintiff has produced a broad range of goods for the Indian public, ranging from pharmaceutical products to toiletries to food items and medicines. The Plaintiff's products are also exported abroad, and therefore its business and goodwill have no doubt," the Court stated.

According to the statement, "Subsequently, the use of the aforementioned domain names and the hosting of websites using the same should not be permitted so that the general public and small businesses can be misled into acquiring franchisees and distributorships to use the DABUR name."

A suit filed by Dabur India Limited in the High Court sought a permanent injunction and damages with respect to multiple infringements of intellectual properties, including the trademark 'DABUR', the copyright in the packaging and labels of its products, passing off, and unfair competition.

The plaintiff was thus arguing that various domain names and websites were now using the mark 'DABUR' and showing a variety of products associated with that trademark.

Consequently, the Court felt that Plaintiff's legal rights had been severely injured.

"Moreover, apart from violating the Plaintiff's rights, it would be detrimental to the public interest to permit these domain names and websites to continue operating so that they can continue to deceive and cheat the Indian and international public," the Court further stated.

The following directions are therefore given by the Court:

- Plaintiffs Nos. 4 & 5 shall immediately block the domain names, as well as the websites https://www.daburdistributor.com. https://daburdistributorships.in, and www.daburfranchisee.in.
- As for the said domain names, the status quo will be maintained and the same will be locked immediately. There can be no transfer by defendants 4 & 5 of the said domain names or any creation of another's interest in them.
- Defendant Nos. 2, 3 - DoT and MEITY shall issue instructions to all ISPs to block the websites as well as any other websites bearing the mark "DABUR" except those that belong to the Plaintiff.
- Defendant Nos. 4 & 5 shall also disclose this information to LD. Attorney for the Plaintiff should file an affidavit before this Court detailing the contact details of the persons whose names are related to the above-mentioned domain names. This includes their complete mailing address, email address, and bank account number. Contact details and telephone numbers are included as well. Within one week after receiving a copy of this order, the said affidavit will be due. If you receive this order, defendants 4 and 5 need to inform the registrants of the infringing domain name of the order immediately.
- There is immediate action mandatory for the Registrants of the domain names https://www.daburdistributor.com and https://daburdistributorships.in, as well as the domain name www.daburfranchisee.in, to cease using these names and remove the websites hosted on these domain names immediately. Additionally, the domain names of email addresses that appear on said websites will be deactivated
- The Defendants Nos. 4 & 5 are also prohibited from allowing any third-parties to register domain names incorporating the mark/name 'DABUR', except the Plaintiff.
- The Plaintiff is permitted to introduce the registrants of the domain names as defendants in the lawsuit upon disclosure of the registrant's names.

KARNATAKA HIGH COURT

LAKSHMIKUMARAN & SRIDHARAN ON LANDMARK JUDGMENT NO TAX CAN BE COLLECTED WITHOUT THE AUTHORITY OF THE LAW STATED CONSTITUTION OF INDIA

V. Lakshmikumaran

Recovery made under threat and without the authority of the law leads to violation of the person's Constitutional Rights

The division bench of the Karnataka High Court has affirmed the judgment of the single-judge of the Karnataka High Court in a case related to the Goods and Services Tax (GST) department.

The case pertained to Bundle Technologies Private Limited, wherein the Company deposited the amounts at odd hours during the course of the investigation. Held to be involuntary and without the due process of the law, the GST department was liable to refund that amount.

Speaking with V. Lakshmikumaran, the Managing Partner at Lakshmikumaran & Sridharan, he stated, "The judgment is a welcome relief for taxpayers facing departmental investigation or scrutiny. The timelines for concluding the GST investigation and issuing a show-cause notice for the first year of GST introduction are fast approaching. The lockdowns imposed due to the COVID-19 pandemic has hampered the investigations.

"The GST department has been provided with powers to audit and investigate for issuing the show-cause notice in relation to the amount that escaped assessment, wrong classification, availing, or utilization of inadmissible credit. The assesses shall exercise the option of voluntary payment provided under the CGST Act after independently examining the legal position."

He added, "The courts are reiterating the earlier jurisprudence on coercive recovery during the investigation as incorrect and any recovery made under threat and without the authority of the law leads to violation of the person's Constitutional rights."

Earlier, the Director-General of GST, Hyderabad (DGGI) had initiated an investigation against Bundle Technologies. It alleged non-payment of taxes by the third-party service providers and denied Input Tax Credit (ITC) availed by the Company under the Central Goods and Services Tax (CGST) Act.

During the investigation and recording of the statements of the Company's directors, the authorities threatened to arrest them and coerced them into paying the disputed amount.

Thereafter, the Company filed a writ petition before the High Court of Karnataka against the manner in which the investigation was conducted. It also sought directions from the court to the department to refund the amount.

The court observed that the recovery of the disputed amount by GST authorities during the investigation was incorrect. It stated that statutory powers must be exercised in consonance with the spirit and letter of the law and not in a manner to instil fear in the mind of a bonafide taxpayer.

The court ruled that the amount deposited by the Company was not a voluntary payment under the CGST Act. Also, under the Constitution of India, no tax can be collected without the authority of the law. Else, it amounts to depriving a person of his property. Therefore, the department is liable to refund the amount to the Company.

Russia

MOSCOW EXIT CONTINUES: TOP FIRMS ANNOUNCE PLANS TO LEAVE RUSSIA

International legal community increases response to the Russian invasion of Ukraine on the heels of a string of announcements

The withdrawal of six multi-national law firms from Russia has been announced today, including global giants Latham & Watkins and Freshfields Bruckhaus Deringer.

In addition to Morgan Lewis & Bockius and Squire Patton Boggs, Eversheds Sutherland and Gowling WLG, which announced similar plans, Norton Rose Fulbright and Linklaters are also winding down their operations in Russia.

On the other hand, Akin Gump has temporarily suspended operations.

Despite increasing public and political pressure on the international business community to isolate Putin's regime, today's announcements continue the rapid escalation of the international legal response to the invasion.

Around 90 lawyers and support staff are based at Freshfields in Moscow, making it one of the most large international law firms in Moscow.

A statement from the company stated, 'We have not taken this decision lightly. It is a fact that our presence in Moscow has lasted 30 years and we are very knowledgeable about the impact of this news on our valued colleagues in Russia. However, in light of the government of Russia's actions in Ukraine and the clear stance we have taken with respect to our work with Russia, we think that this is the right course of action.

Since the invasion was not discussed publicly until now, Latham & Watkins had faced criticism. Rich Trobman, chair and managing partner, said, "The humanitarian crisis unfolding in Ukraine is devastating to watch. We, along with many across the globe, condemn the violence that is taking place and the needless suffering inflicted upon the innocent people there.

He continued: "We will begin an orderly transition to wind down operations in Moscow in accordance with our ethical obligations to our clients. As we wind down operations in Moscow, our first priority is to ensure the safety and wellbeing of our colleagues in Russia."

At its site, Latham lists 24 lawyers in Moscow, among them office managing partner Mikhail Turetsky. He joined the firm in 2011 from Baker McKenzie.

A similar number of lawyers based in Moscow has been affected at Morgan Lewis, which lists 21 lawyers, whereas Squire has 16 lawyers in Moscow.

Today, Eversheds Sutherland became the first law firm to announce it would withdraw from the marketplace. This global law firm has 40 lawyers located in Moscow and St Petersburg. Our Moscow office has over 30 lawyers and patent attorneys working for Gowling WLG.

The Russian operations of Akin Gump have also been suspended today as Cleary Gottlieb Steen & Hamilton has done so too.

In a statement, the law firm said: "As a law firm founded by Robert Strauss, the last American ambassador to the former Soviet Union, and the first to the Russian Federation, we are truly saddened and shocked by the tragic and senseless loss of life in Ukraine."

Our business operations in Moscow have been suspended while we await further developments as a result of the current crisis. In order to ensure the safety and well-being of the long-standing colleagues and meet our obligations to clients' safety and well-being in Moscow, we will do so orderly.

According to an update by White & Case concerning their response to the crisis, they remain among the few firms still operating in Moscow.

Our Moscow office is actively assessing the impact on our Moscow staff, prioritizing their safety and wellbeing. We will not accept new instructions from Russian and Belarusian state-owned entities," a spokesperson said.

Additionally, it provides pro bono assistance and donates relief efforts like many other firms. As far as its employees are concerned, the company has made a US$1 million donation to the Ukrainian Red Cross Society and is matching employees' donations to qualifying relief organizations.

United States

SIMPSON THACHER AND NELSON MULLINS LEAD COINCHECK THROUGH SPAC MERGER

A large cast of international law firms is advising both entities in connection with the deal

Simpson Thacher & Bartlett and Nelson Mullins Riley & Scarborough are leading Tokyo-based cryptocurrency marketplace Coincheck through a special purpose acquisition (SPAC) merger with Thunder Bridge Capital Partners.

Worth $1.3bn, the transaction is expected to close in the second half of 2022. At that time, the combined company will list on the Nasdaq Global Select Market under the ticker symbol CNCK.

Providing there are no shareholder redemptions, the blank-check company is providing $237m in cash before expenses to the entity, which will become a publicly listed holding company domiciled in the Netherlands.

Gary Simanson, President and CEO of Thunder Bridge will run the merged company.

Simanson stated, "Thunder Bridge firmly believes that blockchain technology and digital assets will be a driving force in changing the financial services industry globally."

"We have patiently looked for the right entry point to allocate our focus, talents and financial resources to become global leaders in this evolution. Coincheck is exactly what we were looking for amid a global playing field," he added.

Oki Matsumoto, the CEO of Monex Group and Executive Director of Coincheck, said, "As the digital economic sphere becomes ever-flatter worldwide, it is an inevitable goal for us to develop the origination and exchange of digital assets."

Displaying his excitement, he said he was committed to, "Working with Thunder Bridge and Simanson and his team, who brings extensive experience in financial services mergers and acquisitions and deep knowledge and experience

in global capital markets to create a new global Coincheck Group, with Coincheck as the cornerstone."

Meanwhile, Thunder Bridge is receiving legal advice from Nelson Mullins, Mori Hamada & Matsumoto, Littler Mendleson and Allen & Overy. On the other hand, Coincheck and its parent company, Monex, the online securities firm, are being counseled by Simpson Thacher, Anderson Mori & Tomotsune and Dutch law firm De Brauw Blackstone Westbroek.

The Simpson Thacher team includes mergers and acquisitions partners Alan Cannon and Patrick Naughton and counsel Jonathan Stradling. While Naughton and Stradling are based in Tokyo, Cannon is based in New York.

The Nelson Mullins team includes corporate and securities practice co-chair Jon Talcott and partners Peter Strand, Mike Bradshaw, Kaylen Loflin and Richard Levin. While Levin works at the firm's Denver office, others are based in Washington DC.

SHEARMAN & STERLING GROWS, REVENUE TO HIT $1BN

MoFo reports its US financial results as well, with London revenue rising by 27percent to $82 million

Shearman & Sterling has recorded a strong rebound in its finances following a disappointing performance in 2021. The firm reported an impressive 58percent increase in a profit-per-equity partner (PEP) to approximately $3 million and revenue increased 18percent to $1.01 billion.

Morrison & Foerster also published its numbers this week, reporting that its global revenue grew 6percent to pass $1.2 billion for the first time, while profit rose 10percent from $2.22 million to $2.47 million.

Herman's increase in PEP comes after the firm's revenue declined 11percent in 2021, after declining 23percent. Shearman is one of a small number of top 100 firms unable to post positive growth. Nevertheless, the latest results more than make up for those declines.

David Beveridge, the senior partner at Shearman & Sterling, commented: "We generated our highest level of revenue and profitability in our history. We had a clear strategy throughout 2021 and we were able to deliver these results."

Shearman advised on a number of deals valued at more than $1 billion in 2021, including advising: SAP and Qualtrics International on a $1.56 billion deal to separate Qualtrics from SAP; Hitachi on its acquisition of Global Logic, a transaction valued at $9.5 billion; and Apax Partners and

Warburg Pincus on their acquisition of T-Mobile Netherlands for €5.1 billion.

The New York firm said that it has prevailed in courtroom battles also for clients like SS&C Technologies, Bank of America, Citigroup, General Electric and Morgan Stanley.

Throughout the year, Shearman added finance partners Florian Harder and Jann Jetter in Munich from Linklaters to re-launch the firm in the city. Additionally, the firm added partners at its offices in the US, London, and Singapore. A key new arrival was corporate lawyer Phil Cheveley, who joined the firm from Travers Smith in March to lead its EMEA M&A group, part of a broader strategy to expand the firm's global capabilities.

A quartet of partners joined the firm in October

from DLA Piper, specializing in advising financial sector clients on mergers and acquisitions, private equity, leveraged finance and restructuring matters. The meetings were attended by Xavier Norlain, co-managing partner of DLA Piper in France.

It did, however, part ways with eight arbitration partners in January 2020, including its global practice heads, who have now established their own firms.

According to MoFo, its 2021 financial results follow a string of strong financial results over the past four years. The revenue generated by the company's London office increased by over 20percent for the fifth consecutive year, rising from £48.2m ($60.8m) in 2020 to £59.9m ($82.1m) in 2018, an increase of 27percent.

Representative London deals include representing the official committee of unsecured creditors of Houston-based offshore drilling company Valaris and its affiliated debtors in their chapter 11 cases and parallel UK administration proceedings; advising Softbank on the $40bn sales of the multinational semiconductor and software design company Arm to US chip company NVIDIA.

United Kingdom

HOGAN LOVELLS UNVEILS NEW GUIDANCE TO AID LAWYERS

The guidance emphasizes on legally-recognized form of abuse including control of a partner's or ex-partner's resources.

The new practical guidance by Hogan Lovells for lawyers addressing cases of economic abuse survivors aims to increase awareness about economic abuse in the civil and criminal justice systems in the UK.

In the report titled 'Legal Remedies for Economic Abuse', the guidance is contained in the firm's pro bono. Partnering with a UK-based charity Surviving Economic Abuse, Hogan Lovells published it to raise awareness around the issue of economic abuse, on occasion of International Women's Day. According to the firm, the report strives to empower legal professionals with practical tools to help survivors with adequate compensation and obtain justice for the actions taken against them.

Believed to be first of its kind, the report, focusing on compensations for survivors of economic abuse specifically, was written by Richard Lewis, Partner, Hogan Lovells, Rhian Lewis, Senior Associate and Jade Rigby, Associate. They worked with Surviving Economic Abuse and several pro bono volunteers to populate the details of the guidance.

Speaking about the report, Lewis said, "This report covers a range of possible routes of reparation for those who have experienced

abuse, who are or were in an intimate relationship with their perpetrator at a relatively high level, to be as helpful as possible to as many people as possible. We are pleased to have worked on the report alongside Surviving Economic Abuse Charity."

A legally recognized form of domestic abuse, economic abuse is wherein one controls their partner's or ex-partner's economic resources, including money and assets like accommodation, and services like food or transport. In the UK, one in six women face economic abuse, stated the charity. The victims often face abusive situations given that their economic means are controlled by their abuser.

Hogan Lovells through the actionable guidance for lawyers is hoping to initiate an innovative way

on the compensation for the survivors of a form of domestic abuse which is rarely recognized in public and political spheres.

The report highlights key areas of focus requiring change including the reference for prosecutors to use the Controlling or Coercive Behavior offense in accordance with other charges that are simpler to be used.

It also urges legal professionals to look into occupation orders that initiate financial provisions to aid victims in securing housing and uplift their financial state which in turn lets them reshape their lives. To be able to seek satisfactory adequate legal support while accessing ways to address economic abuse, the victims should be also excused from the legal aid means test.

Nicola Sharp Jeffs, CEO and founder of Surviving Economic Abuse, noted that it was "vital" for the legal sector to focus on seeking ways to compensate survivors of economic abuse to help them gain economic justice and as basis for those experiencing abuse "to gain the economic safety which is often jeapordised by such abuse".

"We are delighted to have worked with Hogan Lovells to produce this report which provides practical steps for professionals to use legal channels available to them and help survivors move on with their lives," she said.

Hogan Lovells joined Travers Smith, Debevoise & Plimpton, Gibson Dunn, Latham & Watkins, Reed Smith and Slaughter and May in February, 2022 to launch the Domestic Abuse Response Alliance - an initiative to present pro bono legal advice and representation to survivors of domestic abuse, who required protective injunctions in the UK.

Hogan Lovells also onboarded its first-ever international pro bono partner last year following the promotion of Yasmin Waljee pro bono director to the partnership in January, nearly 25 years after Waljee became the firm's first dedicated UK pro bono lawyer in 1997.

DWF FORMS LATAM AND AFRICA GROWTH PROSPECTS

After the acquisition of 40-partner law firm RCD in 2019 Associations with Portuguese law firm and Spanish loss adjusting business

The UK-listed law firm DWF has announced exclusive partnerships with a Portuguese law firm and a Loss Adjustment company in the world's two fastest-growing regions, Latin America and Africa.

DWF will be joining NGA's Lisbon and Porto offices in Lisbon and Porto, where NGA has offices, with 19 lawyers, including four partners. With the leadership of managing partner Luis Nobre Guedes, the firm serves clients throughout Portugal, as well as in the United Kingdom, Spain, France, Lusophone Africa and Brazil.

Sir Nigel Knowles, DWF's CEO, commented that DWF and NGA share "strong cultural and sectoral alignments."

Our Spanish team has already worked with NGA on a number of projects and our positive experiences indicate that working together in close collaboration will yield success," he said.

NGA has been searching for a global business to partner with for some time and this partnership came along at just the right time, according to Nobre Guedes.

Our association with DWF provides us with the best platform to grow our business, expand our presence beyond the Lusophone countries and facilitate the delivery of integrated legal and business services to

our clients globally, including Spain, France and the United Kingdom.

RTS, meanwhile, runs a loss adjusting and claims management business based in Madrid with approximately 300 employees across 18 countries. The company has offices throughout Latin America, including Venezuela, Peru, Panama, Honduras, Guatemala, El Salvador, Ecuador, Costa Rica, Colombia, Chile, Brazil, Argentina and the Dominican Republic.

As DWF's first association of its kind, the RTS department will join the department's Connected Services division. This addition will enhance the firm's claims management and adjusting services, as it will be accessible for the first time to Spanish, Portuguese and Latin American clients.

Knowles views the association with RTS as a "significant step forward" in Building DWF's global claims management and adjusting the platform as a single global platform.

He stated that "RTS will enable us to offer our existing and new clients for the first time adjusting services in Latin America and the Iberian Peninsula."

Additionally, the latest deal follows DWF's acquisition of Rousaud Costas Duran (RCD) for €50.5 million (£42.5 million) at the end of 2019. The firm and DWF had previously formed an exclusive alliance earlier this year. In a statement at the time, DWF said the deal would give it more access to the Portuguese and Latin American markets and that it later boasted of growth of 33percent in international revenue to hit £92.5m during FY2020/21 due to the deal.

Europe

EU INTRODUCES CHANGES TO DIGITAL MARKETS ACT

As a result of changes to the Digital Markets Act, the European Parliament and Council have decided to stop big tech companies from acting in an anti-competitive manner

Upon implementation, gatekeeper platforms will serve as sanctions against the digital economy, preventing it from possessing market dominance in violation of EU competition law. Companies would be prohibited from bundling services and preferring themselves on these so-called platforms. If the company has an annual turnover of over 7.5 billion euros, or if at least 45 million end users are impacted, then sanctions will be imposed. The purpose of the bill is to focus on big tech companies to make sure they allow for "fair competition online," according to MEP Andrewa Schwab.

It was historically the lack of antitrust sanctions that resulted in lengthy antitrust cases and therefore the Digital Markets Act will provide consumers with "more choice." Companies like Meta (WhatsApp, Facebook) will now have to cooperate with smaller companies to

prevent market dominance within four years. A fine of 10-20 percent of a company's annual worldwide turnover could apply to big tech companies for infringement, increasing the compliance burden.

According to Cédric O, France's Minister of State, the rules are essential for "unlocking digital markets, promoting consumer choice and boosting innovation in the digital economy."

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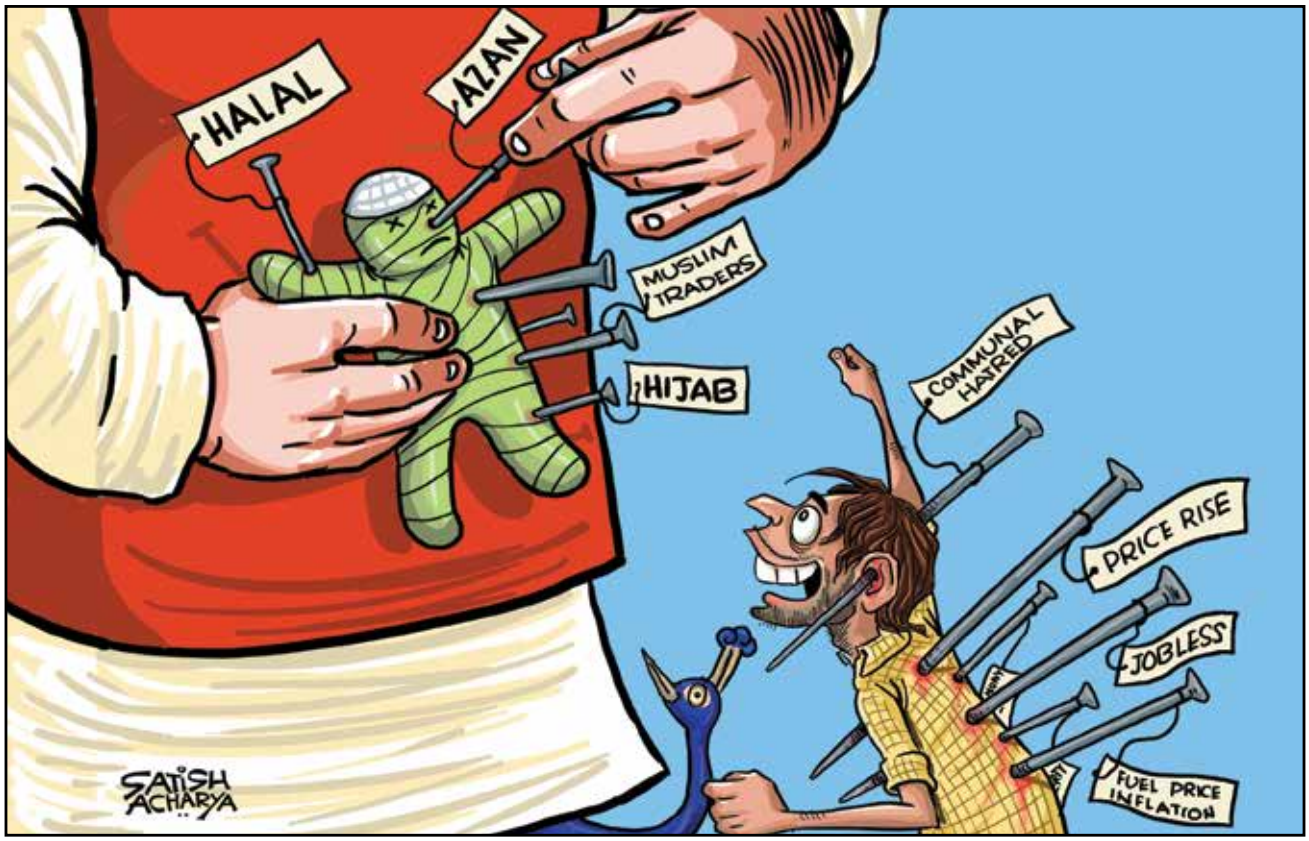
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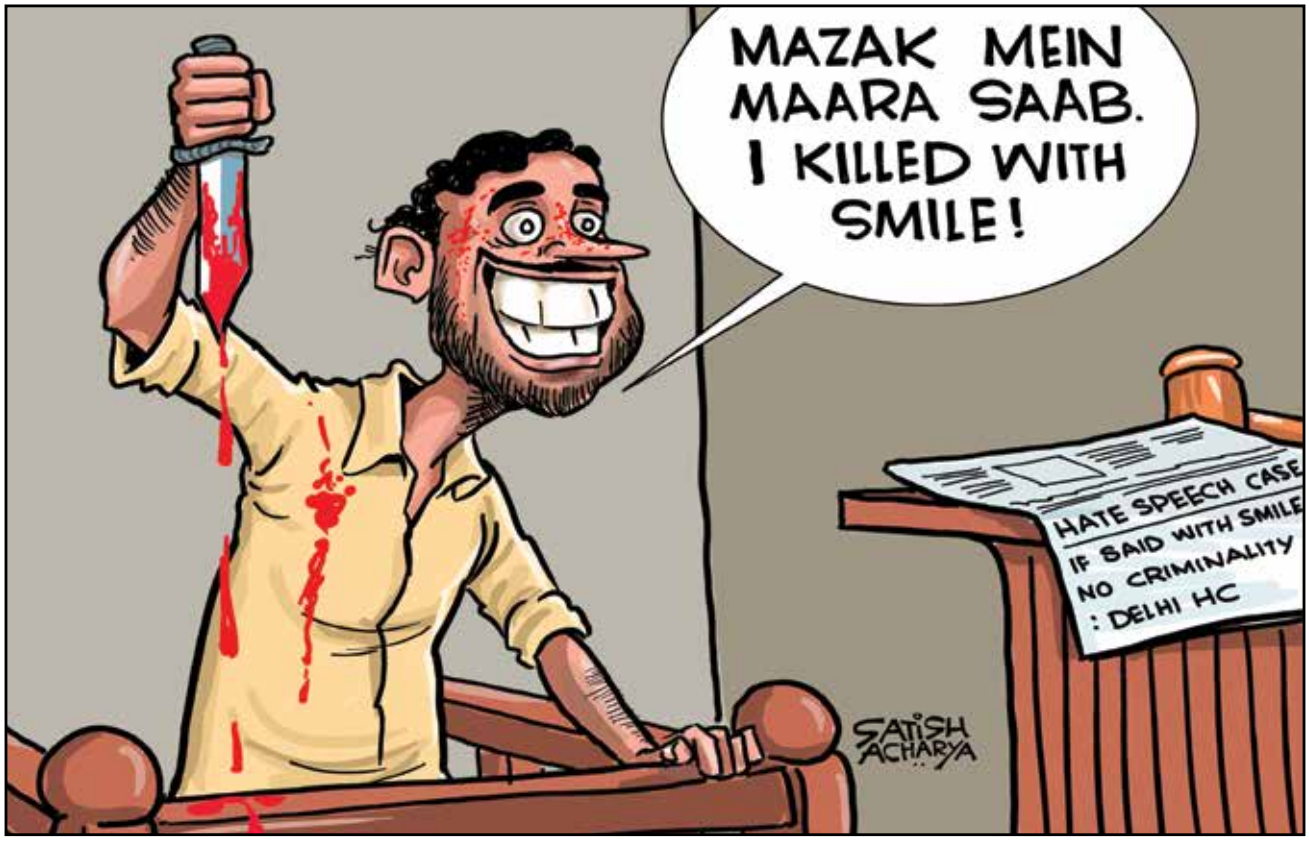
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