

**ASIAN LEGAL BUSINESS**

**INDIA**

**E-magazine**

**Volume No. 9 / 2020**



**A NEW WAY OF WORKING,  
A NEW WAY OF THINKING**

By the time you read this, you will have spent the better part of three months working from home. While some will no doubt appreciate the shortened commutes and the increase in quality time spent with loved ones, many others will no doubt be struggling with challenges like being productive in a distracting environment, as well as the difficulty to switch off from work now that so many avenues for recreation have been closed off. But the one realisation that should be common to all of us is how much work can be accomplished remotely, without having to be present in the office, and how easily we are able to embrace technology to achieve a majority of our goals.

This is a good time for individual lawyers to make that transition as well. Technology has obviously gone from a good-to-have to a must-have, but additionally the pandemic is also forcing us to streamline processes and clarify priorities. We need to now look back on the ways we use to accomplish tasks and ask ourselves: how much of this is still viable and/or necessary? The answer will help us define our paths for the future. — **RANAJIT DAM**

In August, we ask clients to pick their preferred lawyers in India. Fill out the form here:

**[www.surveymonkey.com/r/IndiaSuper50](http://www.surveymonkey.com/r/IndiaSuper50)**



HEAD OF LEGAL MEDIA BUSINESS,  
ASIA & EMERGING MARKETS

**Amantha Chia**

amantha.chia@tr.com

MANAGING EDITOR

**Ranjit Dam**

ranajit.dam@tr.com

EDITORIAL ASSISTANT

**Aparna Sai**

aparna.sai@tr.com

COPY & WEB EDITOR

**Rowena Muniz**

rowena.muniz@tr.com

SENIOR DESIGNER

**John Agra**

john.agra@tr.com

TRAFFIC / CIRCULATION MANAGER

**Rozidah Jambari**

rozidah.jambari@tr.com

SALES MANAGER

**Krupa Dalal**

(91) 22 6189 7087

krupa.dalal@tr.com

the answer company™  
THOMSON REUTERS®

# LAW IN THE TIME OF CORONA

A global pandemic has resulted in a lockdown of the entire country and slowed business to a crawl. But Indian law firms, like other enterprises, are finding a way to adjust to this new reality, with some saying they are learning valuable lessons now that will hold them in good stead in the future. **BY APARNA SAI**

The novel coronavirus outbreak sent India into a nationwide lockdown starting in March. While the country is taking small steps in emerging from this lockdown, the threat of the virus still lurks, and individuals and businesses continue to feel the brunt of its impact.

The lockdown has caused businesses across the country to adapt to the demands of both the pandemic and the ensuing lockdown. Changes have included reducing working hours, altering lawyer compensation, and have adopted work-from-home (WFH) routines; in short, a deviation from the usual ways of working.

Gunita Pahwa, joint managing partner at Singh & Associates, says that even before the outbreak of the virus, the firm prided itself on being available to clients around the clock. So when the pandemic occurred and to brace for the tough times ahead, the firm started putting in place an action plan to keep their clients at the top of their priority list.

“We focused aggressively on our people, our technology, internal and external communication, client support and knowledge sharing to stay at the top of the game during these unprecedented times. We are happy to share that our forthcoming approach has led to a stronger client connect during the lockdowns,” Pahwa says.

For Khaitan & Co., the transition from working in the office to working from home was a smooth process, according to the firm’s executive director for HR, Amar Sinhji, who says that it had been making large-scale investment in IT infrastructure over the years. The lockdown also allowed the firm to digitalise most of its processes.

While most firms across the country asked their lawyers to move to working from home after the lockdown was imposed, a few firms had begun implementing the routine before the official announcement.

One of them is Lex Consult. Naresh Pareek, a partner at the firm, says that





imposing the WFH process helped it to “set up adequate infrastructure to ensure that we can provide services to our clients seamlessly and efficiently. Also, we have become cognizant of the fact that the lockdown will severely impact cash flow and earnings of the clients, so we introduced flexible billing arrangement and reduced our billing rates.”

Another such firm was J Sagar Associates, which adopted WFH across all its seven offices from Mar. 16, more than a week before the lockdown was imposed on Mar. 25.

Amit Kapur, a joint managing partner at the firm says the transition was seamless. “All attorneys and critical staff members including secretaries and court assistants are provided with laptops, WIFI dongles, smartphones, digital access to research tools and facilitative software. Most of our clients were similarly placed and we could work in virtual meetings and platforms,” he notes.

#### **NEW NORMAL, NEW CONDITIONS**

Remote working can pose challenges if lawyers are unable to experience smooth communications with their clients or colleagues. But given advancements in technology, law firms have generally faced few obstacles.

Sinhji says that although physical interaction has gone down to zero, verbal engagement has gone up substantially.

“As an example where one only met colleagues from other offices when one travelled or there was a firm/client event, now any colleague, in any part of the world is available at the click of a button,” Sinhji says. “As a result of which, working has become much more collaborative, process efficiencies have increased and turnaround times have come down.”

In the case of Lex Consult, the firm found its lawyers displaying even more empathy to clients and colleagues than before. “We have seen that lawyers have been working with colleagues and clients with increased congeniality and sensitivity. This lockdown has forced us to consider the viability of working from home (WFH), flexi-hours, working remotely, etc. We see an acceleration in the adoption of such policies at all firms,” Pareek adds.

Pahwa says that when the widespread extent of the outbreak became known, her firm had quick conversations with all their clients, assuring them that lawyers would remain available and

business continuity would be maintained. With a crisis action plan put in place, the firm’s goal “was to ensure constant risk management for our clients and their businesses,” she says.

“We have been continuously working on our knowledge-sharing responsibility by writing various articles, providing analyses on numerous aspects of the economy, pandemic-led effects, expectations from the government, regulatory announcements, etc., with the backing of legal provisions,” Pahwa adds.

#### **ADAPTING TO TECHNOLOGY**

To make the WFH process efficient, firms are making sure that necessary technologies are in place to ensure smooth functioning and uninterrupted connectivity.

---

**“BE BY THE SIDE  
OF YOUR CLIENT  
IN TOUGH TIMES  
AND THEY  
WILL REMEMBER  
YOU FIRST IN  
GOOD TIMES.”**

– Amar Sinhji, Khaitan & Co.

---

As a result, the transition has been seamless for most law firms.

Khaitan’s Sinhji says that as the firm was always focused on technology, no major change was required. According to him, the firm was ahead of the “curve in many ways in the early adoption of technology.”

Sinhji adds that Khaitan intends on staying ahead of that curve, and is closely looking into the security and compliance issues arising from shifting the work environment from office to the home. “We will sharpen our focus on our disaster management/business continuity plans and systems and digitise systems and processes that we would otherwise not have had on our priority list for the same.”

Similarly, in the case of Singh & Associates, Pahwa says that technology has been at the forefront for the firm. “We have developed our core think tank team of IT experts who keep abreast with the latest technological development and enhancements required by the firm to accelerate its core competencies,” she says. Along with this, she says that regular refresher training modules are being conducted by the IT team for all legal professionals from time to time to ensure they keep pace with modern technologies.

“As a result, during the lockdown period, it was a seamless shift for our team members from work-from-office to work-from-home full time and delivery of our work was as excellent as before,” Pahwa adds.

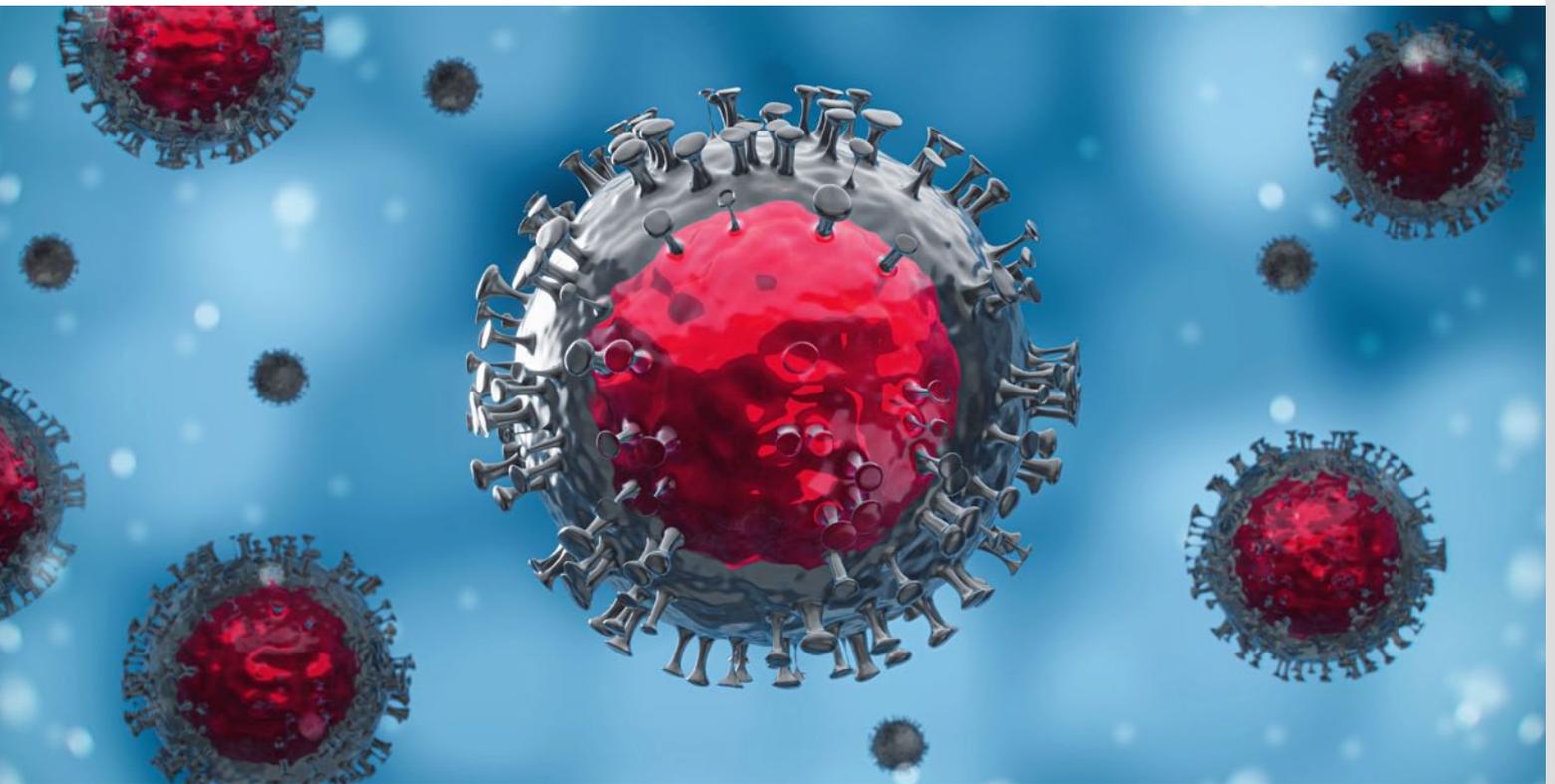
Some firms have also used this period to explore technologies they had little knowledge about earlier. “This has been an exciting phase of reinventing our work environment and rediscovering some tools that we did not use much in the pre-COVID era,” says Kapur at J Sagar Associates. “The change has brought home the significant advantage and efficiencies of a digitally-enabled law practice to the few of us who were slow in adapting.”

And with that, a chance for lawyers to gain new working skills. “We have experimented to evolve several tools to suit our client and practice needs. It has moved digitisation from a good-to-have to a must-have for the firm. Several of us have been regularly conducting virtual court hearings over the past two months,” adds Kapur.

#### **LESSONS LEARNT**

The transition to remote working might have been seamless, but few would deny that the overall impact of the pandemic has been damaging for the legal industry. Still, lawyers can take heart from the fact that this difficult period has provided some important lessons, not the least among which is how to prepare for the next pandemic or other similarly disruptive event.

For Sinhji, the takeaways from this situation are as follows: Expect the unexpected, be prepared for such a scenario, always plan for the unexpected and know that your world can turn upside down in a split second. He also believes that there is always an opportunity within a crisis.



Communication and trust are critical at this time. “Communicate, communicate, communicate – it is never enough. Trust people to deliver and they will,” Sinhji says. “To stay ahead of the curve, invest in people and technology. Be by the side of your client in tough times and they will remember you first in good times. Give people space to balance their lives and deliver and they will. Backup everything!”

Pahwa believes that the biggest lesson to be learnt from this crisis is to always “be crisis-ready and that the work must always go on.” According to her “the use of technology, remote working, continued communication, our client’s faith in the firm, employee-employer relationship, and trust in our external partners are some of the key takeaways that we will always keep with us for our professional lives and organisational journey.”

Meanwhile, Kapur believes that along with being prepared, well-knit teams play a major role in helping tide over situations like this. “Never undermine the ability of well-knit teams to innovate without taking anything for granted and never under-value the various tools and systems that are in place,” he says.

And in the case of Lex Consult, being a smaller firm has proved to be a blessing

in disguise as it was not difficult for it to manage work during the lockdown. “This period has strengthened our core philosophy of maintaining lean teams and partner involvement from start to end,” says Pareek. “The structural fluidity will allow us to manage significant disruptions.”

#### **NO RETURN JUST YET**

Even as lockdown is being gradually lifted across India, firms like Lex Consult plan to play it safe for now. “We will be cautious and are in no rush to reopen our offices,” Pareek says. “Our plans to return to office are not linked to the easing of the lockdown but the reduction of the coronavirus threat to safe levels. We are still quite a long way away from it. At the same time, our colleagues have responded to the current situation with efficient and effective WFH routines.”

The continuation of WFH is echoed by other firms as well. According to Pahwa, the firm will continue in the current way “until it is entirely safe to return to our workstations. That too, when we start returning to our offices, we are going to make sure our workplaces are altogether safe, hygienic, sanitised to protect our workforce and provide them with a conducive and comfortable work environment to deliver high-quality output.”

Agrees Sinhji: “We are treating the easing of the lockdown with extreme caution. The easing of the lockdown is due to economic reasons however the pandemic is very much still raging amongst us and will continue for a while. So we are in no rush to head physically back to office – the health, safety and well-being of our members takes precedence above all else.”

While echoing the thoughts of the other interviewees, Kapur adds that the current situation might help J Sagar Associates integrate WFH into the firm’s working culture. Although returning to office can take place soon, he believes that “the return to physical attendance in offices is perhaps likely to never return to pre-COVID scenario.”

Even as firms contemplate the duration of the WFH period, one fact is for sure – we now have a new normal. With the threat of the virus still looming and the lack of a vaccine at the moment, going back to the working methods of last year does not seem on the cards, at least soon.

As Pahwa says: “I think we all agree and realise that, given the uncertain prospects of vaccines and timeframe, COVID-19 is going to stay here and there is no specific date by which we will have a full recovery. Hence, we must accept this as a new normal, and we should expect a gradual transition to the new reality.” 

# 'DEMOCRATISATION IS THE ONLY SUSTAINABLE WAY'

Trilegal's founding partners, Rahul Matthan and Karan Singh, recently stepped down from their leadership roles to make way for two elected managing partners – **Sridhar Gorthi** and **Nishant Parikh**. *ALB* spoke to the new leaders about how their roles will work, as well as the firm's growth strategy. **BY APARNA SAI**

## **ALB: As joint managing partners, how do you plan to share the responsibilities going forward?**

**PARIKH:** We have intentionally decided not to have a formal split of responsibilities. In line with Trilegal ethos, we are following a collaborative decision-making approach. Having said that, both Sridhar and I intend to continue our respective practice roles. So given our individual practice commitments, one or the other may take the lead on management matters from time to time. The intention is to be flexible.

## **ALB: Tell us about the firm's broader leadership structure, including the seven-member consultative board. How will your roles work with the other members of the board?**

**PARIKH:** Along with an elected two-member management committee (MC) that has a term of three years, the new governance structure, which came into effect Apr. 1, includes a seven-member board with a term of four years, new heads of practice groups with a term of three years, and office heads for each of our offices.

The seven-member consultative board is a repository of wisdom and past experience, including the previous MC, founding partners and experienced senior partners. The MC will look to the board for advice and guidance on key initiatives.

## **ALB: What do you think are the advantages to elected managing partners? Do you expect to see more large and mid-sized firms in India adopting this approach?**

**GORTHI:** Internationally, democratisation

is the only sustainable way for law firms to evolve and manage themselves, especially as they grow beyond a certain size. Those that don't will start to see constraints in terms of size and growth, as well as their ability to nurture the leadership aspirations of the next generation.

## **ALB: What aspects of your predecessors' work are you both expecting to build on? What new paths are you looking to forge?**

**GORTHI:** Over the last five years, the previous MC has overseen the doubling of revenues and partners at the firm. For the most part, we intend to further build and cement the solid platform created over 20 years to become the premier law firm in India. As part of the inter-generational transition in leadership, we are focusing on dispersing management responsibilities to allow a larger number of second-generation leaders within the firm to hone their skills.

## **ALB: What are your immediate priorities for the firm, particularly given the impact COVID has had on the flow of work?**

**PARIKH:** The immediate priority is obviously to ensure that our people remain safe and our clients continue to be serviced seamlessly. In the near term, we expect specialised practices and expertise within the firm will see growth. For example, given the evolving legal landscape across data privacy and India's contact-tracing application - Aarogya Setu – our TMT practice remains very busy. Competition, employment, distressed M&A and litigation are all areas which are likely to be very busy in the coming months. ALB



SRIDHAR GORTHI



NISHANT PARIKH

# \$7.03 BLN

## **Reliance Industries' rights offering**

**Deal Type:** ECM

**Firms:** AZB & Partners; Khaitan & Co; Latham & Watkins; Sidley Austin

**Jurisdiction:** India

# \$5.7 BLN

## **Facebook's acquisition of stake in Jio Platforms**

**Deal Type:** M&A

**Firms:** AZB & Partners; Davis Polk & Wardwell; Hogan Lovells; Shardul Amarchand Mangaldas & Co.

**Jurisdictions:** India, U.S.

# \$3.4 BLN

## **GlaxoSmithKline's sale of stake in Hindustan Unilever**

**Deal Type:** M&A

**Firms:** AZB & Partners; Cleary Gottlieb Steen & Hamilton; Latham & Watkins

**Jurisdictions:** India, UK

# \$1.5 BLN

## **Vista Equity Partners' acquisition of stake in Jio Platforms**

**Deal Type:** M&A

**Firms:** AZB & Partners; Kirkland & Ellis; Shardul Amarchand Mangaldas & Co.

**Jurisdictions:** India, U.S.

# \$1.2 BLN

## **Mubadala Investment's acquisition of stake in Jio Platforms**

**Deal Type:** M&A

**Firms:** AZB & Partners; Davis Polk & Wardwell; Nishith Desai Associates; Shardul Amarchand Mangaldas & Co.; Skadden Arps Slate Meagher & Flom

**Jurisdiction:** India

## 3-D Mark: Design or Trademark Protection

Although sufficiently distinct protection regimes, design and trademark protection regimes often cross paths when the subject matter is a three-dimensional mark - capable of protection both as a design and a trademark. Such overlap between the design and trademark protection regimes has given way to numerous debates regarding policy implications, statutory interpretation and many more issues with a variety of different opinions.

Often the shape of a product or a distinct pattern displayed/embossed on a product are capable of protection, both as a source designator under the Trade Marks Act, 1999 and as novel and original design under the Design Act, 2000. While there is no straightforward answer for which protection regime should be preferred over the other, the facts and circumstances of each case dictates design or trademark protection or both. However, simultaneous registrations both as a design and a trademark are not permissible under the Indian law, as the Design Act, 2000 specifically excludes a 'trademark' from the definition of 'design'. However, despite this exclusion, it may not be correct to conclude that the two protection regimes are mutually exclusive.

A trademark registration provides the



**Mr. Rahul Beruar**  
Managing Partner  
[rahul.beruar@beruar.com](mailto:rahul.beruar@beruar.com)

**Ms. Jyotsana Sinha**  
Senior Associate

**Beruar & Beruar LLP**  
D-155, Third Floor, Defence Colony,  
New Delhi 110024  
T: +91 11 41079789, 41556787  
W: [www.beruar.com](http://www.beruar.com)

owner an exclusive right to use the registered shape/pattern etc. as the source designator for its range of products for a term of 10 years, which may be renewed in perpetuity. On the other hand, a design registration offers protection only on the aesthetic appearance of the product for a

limited term of 15 years, where-after, the design is considered to be in public domain, available for use by the public in general. While a proprietor would wish to opt for trademark protection to get a longer term of protection, it may in certain instances be difficult to prove distinctiveness of the subject shape/pattern (mark) or that the subject shape/pattern (mark) is capable of distinguishing the goods and services of its proprietor from those of others, as is required for registration under the Trade Marks Act. This is particularly the case where proprietors are yet to launch their products and do not have any commercial use to substantiate their claim for trademark registration. In such instances, where the subject shape/patterns have not been disclosed to the public or put to commercial use, the proprietors may (first) secure a design protection, provided that the design is novel (not known to public) and original and thus have exclusive rights for the first 15 years. Thereafter, once the three-dimensional mark/products bearing the shape/pattern etc. are popular in the market and acquire the requisite distinctiveness in favour of the proprietor, the said shape/pattern (mark) may then be protected as a trademark.

## INDIA'S PURSUIT OF GLOBAL INVESTORS HITS TURBULENCE

**(Reuters)** India's ambition to attract more foreign money into its financial markets is being buffeted again, having only just started to make progress after years of talk but very little action.

Deadly clashes between Indian and Chinese troops on the Himalayan border, a surge in coronavirus cases and a second sovereign credit rating cut of the month has thrown the country back into the international spotlight this week.

It is unfortunate timing, coming just months after Indian policy makers embarked on a fresh drive to open the country's bond markets to global investors, but adds to a list of issues stacking up.

After years of rapid growth, India's economy is facing its worst recession in recent history, unemployment has been catapulted to an unprecedented 24 percent, and extra government spending

is expected to leave a yawning 11 percent budget deficit that will push the debt-to-GDP ratio beyond 80 percent.

"The coronavirus pandemic has significantly weakened India's growth outlook for this year and exposed the challenges associated with a high public-debt burden," ratings agency Fitch said as it joined Moody's in cutting the country's rating.

The moves leave it teetering on the last rung of investment grade and a possible return to 'junk' status for the first time in nearly 14 years. Fitch cited doubts whether growth rates of 6-7% could be reclaimed, while Moody's broader concern is that remedies needed to strengthen fiscal health have barely begun.

Mark Evans, investment analyst for emerging market debt and currency at Ninety One, said a further downgrade

would "likely trigger a knee-jerk negative reaction across all Indian assets".

"The coronavirus pandemic is a global shock and is not unique to India," Sanjeev Sanyal, principle chief economic adviser at the Ministry of Finance, New Delhi told Reuters in response to questions about the rating worries.

"As far as our ability to service external debt is concerned, India's foreign exchange reserves of \$500 billion and rising are more than adequate to meet all foreign obligations."

Policymakers have been talking about opening up India's financial sector and internationalising the use of the rupee for more than a decade, with little progress.

One element of the recent reform plans was to bring foreign investors into Indian markets in broadly the way China has over the last decade. 

## Explainer

# VIRTUAL COURTS COULD BE THE NEW REALITY

With India going into a nationwide lockdown due to the COVID-19 pandemic, normal court proceedings have been disrupted. This has led to judicial proceedings at various levels being conducted virtually.

## HOW DO VIRTUAL COURTS FUNCTION?

As the name suggests, virtual courts conduct their judicial proceedings online. This includes both the filing of cases and virtual hearings. Charanya Lakshmikumar, partner at Lakshmikumar & Sridharan, says that under this system each lawyer is given access to an account, using which they can scan the required documents and file their cases. Once the case is ready to come up before the court, the lawyer will be informed that the case has been listed for a specified date before a specific bench.

"On the main day, the lawyer will receive a link for the virtual hearing through which access to the virtual courtroom is given. The link allows two advocates and one client per party/side. The judges assemble and their proceedings in the courtroom are live-streamed to the lawyers," Lakshmikumar says.

Cases are heard in a pre-established sequence. While a case is being heard, only the lead lawyers for both parties and the judges can be heard, while the remaining lawyers in the courtroom are muted by the administrator.

## WHAT ARE THE PROS AND CONS OF VIRTUAL COURTS?

Like any new process, virtual courts also have their share of pros and cons. Lakshmikumar says that virtual courts save a lot of time as clerks and other employees of law offices do not have to stand in the long queues that are present every day in front of counters.

Additionally, "all communication and correspondence between the officials of the registry and lawyer are documented. In case of any laxity on the part of any party, the communication trail can always be used to trace and capture the exact issue," Lakshmikumar adds. Another advantage of this system is that unlike in the past, when counters would stay open between 10 a.m. to 4 p.m. excluding on Sundays and court holidays, cases can now be filed at any time.

But virtual courts also has their limitations. The first challenge is that only lawyers who are financially capable and have the requisite awareness of the technology can benefit from this process, and that is a small section of the total number of lawyers. Additionally, the implementation of virtual courts in rural and semi-rural areas as well as remote locations will be a challenge.

Another problem with virtual courts, according to Lakshmikumar, is that currently this method is feasible only for small matters, thus proving to

be a hindrance to lengthy arguments. "Virtual courtrooms suffer from problems such as disruptions in transmission and fluctuation in the video which can break the momentum of arguments," he says.

## ARE VIRTUAL COURTS HERE TO STAY?

Virtual courts have proved to be a boon during the lockdown. These courts have provided an effective solution to many issues plaguing India's judicial system, and if persisted with beyond the lockdown, could continue to bring benefits. "Every year, the courts are burdened with transfer petitions and matrimonial disputes where people request the courts to transfer the cases to easily accessible city courts. The virtual court system, if implemented extensively, can ensure that in whichever part of India the litigants reside, they can always be heard," says Lakshmikumar.

Other advantages of this process are that it is cheaper and environmentally friendly. To file a case for a physical hearing, a lawyer must make multiple copies of the brief, which need to be submitted to the registry as well served to the opposite parties. The online method ensures that there are minimal litigation costs involved, and courts can go paperless.

Citing another reason why virtual courts hold promise for the future, Lakshmikumar mentions that important cases can be heard without placing an undue burden on the existing judicial system. "In the Supreme Court there are currently a large number of cases concerning critical issues of constitutional law which are pending. Such cases take time to be heard and involve an assembly of a large quorum of judges and multiple stakeholders who are represented by several lawyers," Lakshmikumar says. "Such cases can be argued and heard extensively through the online system without putting any pressure on the existing infrastructure." 



## Recent Developments in the Agri-Business Sector

Agriculture has held an important place in the Indian economy and of late, consistent with global trends, there has been an increased interest in agri-business and agri-food tech sector. The bulk of investments in this space has been directed at food delivery and retail. However, investors are looking further up the supply chain and the next phase is likely to involve novel farming systems, alternate proteins, fintech for agriculture and agribusiness marketplaces.

It, therefore, comes as welcome news that the Central Government has recently introduced a series of reforms (through ordinances referred to below) towards increasing farmers' access to markets (*inter-state and intra-state*) and removing barriers to free trade of agricultural produce.

*The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020*

Some of the key features of the ordinance are:

- **Stocking:** Restrictions on stocking of commodities under the Essential Commodities Act 1955 ("ECA") or any other law shall not be applicable to produce procured under a farming agreement. Further, the ordinance has overriding effect on all contrary state laws.
- **Registration:** Unlike the compulsory registration requirement introduced by certain states under the agriculture produce market



**Majid Siddiqi**

Partner

majid@lexconsult.co.in

**Shubham Soni**

Associate

shubham@lexconsult.co.in

**Lex Consult**

Nyay Sagar, 2nd Floor, Kalanagar, Bandra East, Mumbai – 400 051, India

E: contact@lexconsult.co.in

W: lexconsult.co.in

committee ("APMC") regime, there is currently no registration requirement.

- **Model Format:** We expect the Central Government to issue a model farming agreement to be used as a template by parties.
- **Claims:** A farmer will not be considered in default if breach arises due to *force majeure*. In

any case, no action for recovery will be maintainable against agricultural land.

Consistent with the earlier practice, a farmer includes a corporation, and these benefits will also extend to a corporate farmer.

*Farmer's Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020*

- **Freedom of Movement:** Breaking the mandi monopoly, any farmer or trader or electronic trading and transaction platform shall have the freedom to carry on trade throughout India, including on e-trading platforms (other than market yards under each State APMC Act). This move extends the ability to trade in farm produce beyond the scope of conventional marketplaces to newer boundaries.
- **No market fees or levies:** Market fees and levies previously paid to the APMC to undertake contract farming have been done away with.

Separately, an amendment to the ECA has now removed 'food stuffs', including cereals, pulses, potato, onion, edible oilseeds and oils, from the general purview of the ECA.

*Lex Consult is a firm based in Mumbai and has extensive experience in dealing with funds, corporates, and start-ups on their corporate and commercial advisory requirements including in the agri-business and the agri-food tech sector.*

## Appointments



**Shabbeer AHMED**

**LEAVING**

Kochhar & Co.

**JOINING**

IndusLaw

**PRACTICE**

Civil, Commercial

**LOCATION**

Hyderabad

**POSITION**

Partner



**Namita DAS**

**LEAVING**

Shardul Amarchand Mangaldas

**JOINING**

Link Legal

**PRACTICE**

Corporate, Commercial

**LOCATION**

Delhi

**POSITION**

Partner



**Gautam GANJAWALA**

**LEAVING**

Wadia Ghandy & Co.

**JOINING**

AZB & Partners

**PRACTICE**

Finance

**LOCATION**

Mumbai

**POSITION**

Partner



**Mayank MISHRA**

**LEAVING**

J.Sagar Associates

**JOINING**

IndusLaw

**PRACTICE**

Disputes

**LOCATION**

Delhi

**POSITION**

Partner



**Bhalchandra PALAV**

**LEAVING**

Cyril Amarchand Mangaldas

**JOINING**

Link Legal

**PRACTICE**

Litigation

**LOCATION**

Mumbai

**POSITION**

Partner

# REDOUBLED FOCUS ON CLIENTS

With COVID-19 bringing business to a halt, companies need their external counsel more than ever. And law firms are stepping up to the task by being there when clients need them.

## HOW ARE YOU GUIDING YOUR CLIENTS THROUGH THE PANDEMIC? IN WHAT SPECIFIC AREAS ARE THE ADVICE OF LAW FIRMS THE MOST VALUABLE?

### **Shardul Shroff, executive chairman, Shardul Amarchand Mangaldas**

We are a full-service law firm. During the pandemic, we have advised our clients in relation to all the special and general practice areas of the firm. The predominant questions during the commencement of lockdown related to labour and employment issues, as government directions insisted that full wages should be paid during lock down.

Legal issues in connection with health and safety, social distancing, consequences of any employee suffering from the COVID-19 virus were also among queries raised to the firm.

Issues related to IBC, general corporate law, litigation matters, forensic and white-collar crime, insurance, investment proposals and M&A have all been areas where the firm has been guiding its clients during the pandemic.

Importantly, we have been acting as lawyers to all private equity investors and Facebook for investment into Jio platforms, and that has been the most significant and valuable area of advice that the firm has handled during the pandemic. The disputes for LG Polymer related to the Vizag gas leak was another significant matter the firm has handled during the pandemic.

### **Waseem Pangarkar, senior partner, MZM Legal**

I am guiding my clients, by analysing unique difficulties being faced by each of them and identifying their problems, without billeting such difficulties into pre-COVID-19 categories. Having identified the problem, I believe in providing a possible and practical solution, which is extremely challenging, because currently the law is extremely volatile and unpredictable. As such, my approach towards the current solutions, unlike in the pre-COVID world, have large room to manoeuvre.

The largest advisory inputs have been on contractual disruptions, which have been deeply affected by the ongoing pandemic. Second is bails for imprisoned undertrials, who are at the risk of contracting COVID-19 in prisons. Third is obtaining urgent relief for large corporate clients even while

courts and tribunals are functioning at minimal capacity. The final area is advising large corporates on employment law, in the context of government orders in respect to payment of wages and salaries.

### **Pravin Anand, managing partner, Anand and Anand**

We are assisting our clients by offering them uninterrupted advice, enforcing their IP rights before various forums such as High Courts, the IPAB and so on through virtual hearings and have obtained reliefs, such as interim injunctions in patents, trademark infringement cases and cyber-fraud matters involving intermediary liability. Various webinars with judges, associations, practitioners, and stakeholders are being conducted to continue with our legacy of continued legal education for all.

Our advisory work covers all aspects of IP during this time. We have seen an increase in the infringement of pharmaceutical patents, counterfeiting of known trademarks particularly those on the Internet, cases involving comparative advertising particularly high during this period. Our focus has been on protecting our clients' monetary interests, and therefore in addition to securing injunctions, we have secured reliefs in the form of securing bank guarantees and statements of accounts for the sale of infringing products for computation of damages at a later stage. 



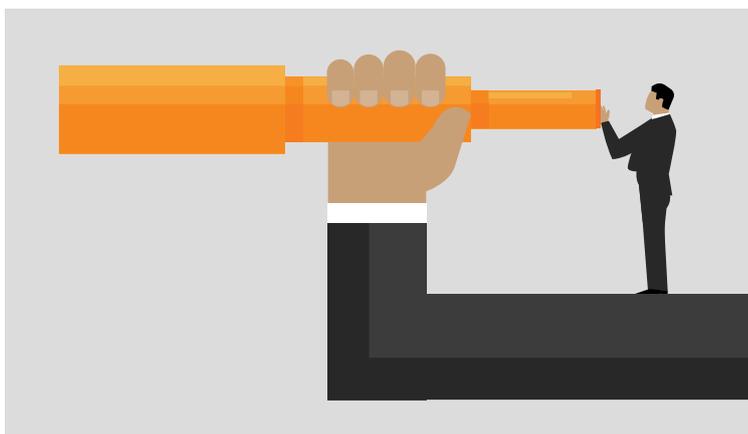
SHROFF



PANGARKAR



ANAND



THOMSON REUTERS

**PRACTICAL LAW™**



# **Practical guidance and trusted answers when you need them most**

## **Thomson Reuters Practical Law**

Legal guidance and know-how that gives you a better starting point, so you hit the ground running.

For more information or free trial:

Email

[legal.hk@thomsonreuters.com](mailto:legal.hk@thomsonreuters.com) (for North Asia)

[legal.sea@thomsonreuters.com](mailto:legal.sea@thomsonreuters.com) (for ASEAN)

The intelligence, technology and human expertise  
you need to find trusted answers.



the answer company™

**THOMSON REUTERS®**

# UNDERSTANDING SMART CONTRACTS

BY AMBER GUPTA

Advancements in technology have created numerous solutions and innovations for business, and one of them is smart contract. The use of smart contracts in commercial and financial transactions has been claimed to help parties improve efficiency, and give reliability and authenticity to transactions and the performance of obligations of parties, without the intervention of any third party.

So, what is a smart contract? Is this a legal contract or an agreement under a law or it is just another technological tool which assists in the execution of a contract, or is the term "smart contract" a misnomer? Let us analyse.

A smart contract in simple terms is a coded instruction that self-performs when certain pre-defined criteria are met. The key characteristics of smart contracts are as follows:

- **Digital:** It is in the form of code, data and programs.
- **Embedded:** Contractual clauses are embedded as computer code in software.
- **Performance mediated by technological means:** The release of payments and other actions are enabled by technology and rules-based operations.
- **Irrevocable:** Once initiated, the outcomes which a smart contract is encoded to perform cannot typically be stopped.

Smart contracts are a computer code which enables the fulfillment of pre-determined obligations or conditions in any transaction. They use blockchain technology to record and execute these transactions.

An example is smart contract-enabled insurance policies, based on blockchain technology, which automatically pay out to a policyholder on the occurrence of an insured event like an earthquake or a fire. Another example could be the execution of derivative transactions, which are based on pre-determined prices. Upon achieving



the price, the options contract gets executed.

## ADVANTAGES AND CHALLENGES

The key advantage of smart contracts is that it eliminates the need for any intermediary. Since smart contracts are based on blockchain technology, the codes are encrypted in blockchain, which makes it secure and bring more reliability, efficiency and authenticity without manual intervention.

However, there are also challenges. To create a legally binding contract, there are a number of elements and conditions which need to be satisfied. These are: offer and acceptance; consideration; intention of parties to create a legal relationship; and certainty as to terms of the contract.

Further, every legal agreement typically contains both operational and non-operational clauses. The operational clauses can be coded for automation through programming, unlike non-operational clauses, which are subjective. Vanilla obligations of parties can be converted into smart contracts, which provide certainty of execution.

However, no legal or regulatory framework regulating smart contracts currently exists. There is no central

authority or rules to settle any dispute arising out of smart contracts. Smart contracts are self-executed based on complex computer code, and being based on blockchain technology, cannot be reversed. This leaves many open areas with regard to the validity, jurisdiction, enforceability and how the liabilities will be determined.

## THE WAY FORWARD

Given the widespread use of blockchain technology and the advantages smart contracts provide, there appears to be a need for some central authority or organization who can come up with a common set of rules as regards the validity and enforcement of smart contracts. It can also facilitate a hybrid version of laws of obligations, evidence, information technology and dispute resolution procedures, which may aid in providing legal recognition to the world of smart contracts and create a win-win situation between law, technology and e-commerce. 

Disclaimer: Article is for educational purposes. Views expressed are strictly personal do not in any manner reflect the organization.



### About the author:

*Amber Gupta is head of legal and company secretary at Aditya Birla Sun Life Insurance Company Ltd. He has two decades of experience in the field of legal, compliance*

*and corporate secretarial in the financial services domain. He can be reached at [ambergupta78@gmail.com](mailto:ambergupta78@gmail.com).*

**ALB is soliciting articles from in-house counsel based in India for its bi-monthly e-magazine. For submission guidelines, email [aparna.sai@tr.com](mailto:aparna.sai@tr.com).**