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GNOSIS

Victoriam Legalis - Advocates & Solicitors | Newsletter



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



Media and Entertainment

1. Startups recognized by DPIIT to be eligible for rebate in trademark and patent filing fee

Since the launch of Startup India Initiative, the Department for Promotion of Industry and Internal Trade (“DPIIT”) has recognized a total of 44,534 startups under the government’s flagship initiative launched in January 2016. These start-ups will be eligible for substantial rebates in patent filing fees as well as trademark filing fees. As many as 339 startups have been granted income tax exemptions till January 2021.

2. Sakshi Malik v. Venkateshwara Creations: Bombay HC restrains Defendants from releasing their film

Allegedly seeking to use an image of the model and actress Sakshi Malik, without consent from her, the defendants were restrained by order of the Hon’ble Bombay High Court, in the case of Sakshi Malik v. Venkateshwara Creations Pvt. Ltd. & Ors. COM IP 3510/2021, to release their film on any media platform or through any medium or in any version until the deletions indicated are brought into effect.

3. India’s GI registration for Basmati Rice challenged by Nepal

Nepal has opposed India’s application to receive GI tag for Basmati in the EU, claiming, inter alia, that Basmati rice has been grown, sold and consumed in Nepal since ancient times. Nepal also claims that Nepal Agriculture Research Council has been working on Basmati rice using local landraces since 1960s. Under the current framework, potential GIs are protected by trademark law. Though there have been voices from stakeholders for creating sui generis legislation for GIs, unfortunately in absence of such, potential products such as ‘Nepal tea’, ‘Nepal coffee’ and ‘Chyangra Pashmina’, is branded under collective trademark.

4. ASCI issues draft guidelines for social media influencers

The Advertising Standard Council of India (“ASCI”) has issued new guidelines for social media influencers as per which, any kind of promotional post or collaboration shall mandatorily be disclosed by the influencer. These guidelines shall be applicable to posts published 15th April 2021 onwards.

5. Govt. notifies Copyright (Amendment) Rules, 2021

On March 31st 2021, the Central Govt. notified the Copyright (Amendment) Rules, 2021 which has brought about a number changes including relaxation in compliance requirements for copyright registration of computer programmes/software; provision for Annual Transparency





Technology and E-Commerce Updates

1. U.S. senators criticize Apple for not testifying on antitrust concerns

Apple Inc is refusing to testify at an upcoming U.S. Senate subcommittee hearing on competition issues related to mobile app stores, the bipartisan leaders of the panel said on Friday. App makers long have accused Apple's App Store for iPhones and iPads, along with Google's Play store for Android devices, of engaging in anticompetitive behavior by requiring certain revenue sharing payments and setting strict inclusion rules. A subcommittee hearing was being planned for late April but no date has been set yet.

2. Judge hands Amazon a setback in New York lawsuit over COVID-19 shortfalls

A federal judge on Friday ruled against Amazon.com Inc as the company defends against New York Attorney General Letitia James' lawsuit claiming it prioritized profit over worker safety during the COVID-19 pandemic at two New York City warehouses. U.S. District Judge Jed Rakoff in Manhattan granted James' request to return her lawsuit to a New York state court, and rejected Amazon's bid to move it to Brooklyn federal court, where the online retailer had sued James to stop her from suing.

3. Study flags gender bias in Facebook's ads tools

Facebook users may not be learning about jobs for which they are qualified because the company's tools can disproportionately direct ads to a particular gender "beyond what can be legally justified," university researchers said in a study published on Friday. According to the study, in one of three examples that generated similar results, Facebook targeted an Instacart delivery job ad to a female-heavy audience and a Domino's Pizza delivery job ad to a male-heavy viewership.

4. LinkedIn says some user data scraped and posted for sale

Some LinkedIn data, including publicly viewable member profile, has been scraped and posted for sale, Microsoft Corp's professional networking site said based on an investigation. The incident was not a data breach and no private member account data from the platform was included, LinkedIn said in a blog post on Thursday, adding that the information on sale is a collection of data from a number of websites and companies.

5. China set to clear Tencent's \$3.5 billion Sogou deal subject to data security conditions

China's antitrust regulator is ready to clear tech giant Tencent Holdings Ltd's plan to take the country's no.3 search engine Sogou private, three people with knowledge of the matter told Reuters, a move that signals the watchdog is willing to wave some deals through even as it ratchets up sector scrutiny.





Fashion & Sports Law Updates

1. Nike agrees to settle lawsuit with ‘Satan Shoes’ maker

The company behind the "Satan Shoes" released in collaboration with rapper Lil Nas X has settled with Nike over the sneakers the corporate giant said were trademark infringement. MSCHF, the Brooklyn studio that developed 666 pairs of customized Nike Air Max 97s complete with an apparent drop of human blood in the midsole issued a voluntary recall for the kicks. Nike had alleged in federal court documents that the sneakers prompted boycott calls against them from offended consumers, who erroneously associate the sneaker giant with the bloody soled-shoes due to their trademark swoosh symbol.

2. H&M forced to shut 20 stores in China over remarks on Xinjiang cotton

H&M was forced to close 20 stores in China following its statement on forced labour in Xinjiang that leads to uproar among Chinese nationals and authorities. Several companies including H&M and Nike faced tremendous pressure after they said that they were concerned about allegations that forced labour has been used to produce cotton in Xinjiang. H&M, the world's second-largest clothing retailer, has been pulled from major e-commerce stores in China and blocked by several major navigation, review and rating apps. Dozens of Chinese celebrities have terminated contracts or said they would cut ties with these brands, including Nike, Adidas, Puma, Converse, Calvin Klein, Tommy Hilfiger, and Uniqlo.

3. Lux to clock Rs 1800cr revenue post-merger

Lux Industries, one of India's leading knitwear producers, would have a consolidated revenue of close to Rs 1,800 crore after the merger of group companies with itself. It was announced that the composite scheme of amalgamation of J M Hosiery & Co and Ebell Fashions Private with Lux Industries, has been sanctioned by the National Company Law Tribunal. The merger enables them to increase its share in the overall wardrobe spending by offering a value-added product in mid-economy and mid-premium price category. Lux Industries, incorporated in 1995, has a market share of 14-15% of the organised Men's innerwear industry.

4. IMG Arena acquires FlightScope Services

IMG Arena, a leading sports betting service and content hub, has acquired FlightScope Services, the data collection, audio-visual production and tracking technology specialist in golf and tennis. IMG Arena will invest significant funds and resource to introduce FlightScope Services' innovative technology into other sports in its portfolio, including football, basketball and volleyball and major US sports. IMG Arena will also use the FlightScope Services' technology to introduce additional products and services to federations and rights holders under the new pillar of IMG ARENA Rightsholder Solutions.





Corporate & Commercial Law Updates

1. President promulgates IBC amendment ordinance to allow pre-packaged insolvency Process for MSMEs

The Central Government has promulgated Insolvency and Bankruptcy Code (Amendment) Ordinance 2021 to allow pre-packaged insolvency resolution process for corporate debtors classified as micro, small or medium enterprises under the Micro, Small and Medium Enterprises Development Act, 2006.

2. Lawyers exempted from paying GST/Service Tax

The Orissa High Court directed the Commissioner GST to issue clear instructions to all the officers in the GST Commission rates in the state not to issue any notice demanding payment of service tax/GST to practicing lawyers.

3. Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2021

The Securities and Exchange Board of India has notified the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2021. The amendment provides that every merchant banker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as an underwriter and the said agreement shall provide points as notified in the amendment.

4. Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021

The President has promulgated the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 effective immediately. The Ordinance seeks to dissolve several appellate bodies and transfer their functions to judicial bodies. These acts include, the Cinematograph Act, 1952, the Customs Act, 1962, the Airports Authority of India Act, 1994, the Trade Marks Act, 1999 and the Protection of Plant Varieties and Farmers' Rights Act, 2001 and certain other Acts.

5. DRT Cannot Adjudicate Civil Rights Claimed Vis-a-Vis Security Interest Which Are Outside Sec 13/17 SARFAESI: Bombay High Court

The division bench of Bombay High Court (Nagpur bench) held that the bar under Section 34 of the SARFAESI Act, is not absolute, but is restricted to examination by the DRT of the actions of the secured creditor under Section 13 of the SARFAESI Act and the rights available under Section 17 of the SARFAESI Act.

6. Person claiming to be an operational creditor should demonstrate their claim can be treated as operational debt under the IBC: NCLT

The Kochi Bench of the National Company Law Tribunal has underscored the importance of examining the nature of debt involved in a transaction before a Corporate Insolvency Resolution Proceeding is instituted upon an application to the effect. NCLT has stated that firstly, the applicant must demonstrate a claim as defined in Section 3(6) Secondly, the claim must be capable of being classed as a debt in terms of the IBC, and thirdly, the debt must arise of transaction for goods and services.



7. Public issues: Sebi reduces timelines for refunding investor's money

Market regulator Sebi has reduced the timelines for refund of investors' money to four days in case of non-receipt of minimum subscription and the issuer failing to obtain listing or trading permission from the stock exchanges. The timelines have been reduced after taking into consideration that Application Supported by Blocked Amount has been mandated for all applicants in public issues.

8. MCA notifies amendment in Section 149 & 197 of Companies Act 2013

The Ministry of Corporate Affairs has notified the amendments made to Sections 149(9) and 197(3) of the Companies Act, 2013 by the Companies (Amendment) Act, 2020 -to enable companies faced with absence or inadequacy of profits to pay certain minimum guaranteed remuneration to Non-Executive Directors and Independent Directors ('IDs'), as may be prescribed.





Hospitality & Real Estate

1. Oyo Hotels & Homes announces it will cover COVID 19 vaccination costs for all employees and their families

Oyo has revised its employees' policies to include free annual health checks, doctor consultation, one on one counselling sessions as well as booking of COVID 19 tests and more. It has also been announced that the company will cover COVID 19 vaccination costs for all of its employees and their families.

2. InterMiles publishes Consumer Sentiment Index Report 2.0

Based on numerous responses from across India, InterMiles has published its Consumer Sentiment Index Report. The Report reveals that the "workcation" trend is growing in India and that business travel is also anticipated to pick up with more and more consumers inclining towards work travel in 2021.

3. Restaurants; bars in Maharashtra to be shut in view of state government's decision in response to the surge in COVID 19 cases

With new guidelines and night curfew regulations, the Maharashtra government has decided that restaurants and bars shall remain closed and can operate only for delivery services till 30th April, 2021.

4. FHRAI collaborates with IRCTC to offer accommodation to tourists

The Federation of Hotel & Restaurant Associations of India (FHRAI) and the Indian Railway Catering and Tourism Corporation (IRCTC) have partnered to provide users, convenient booking of quality rooms while booking their travel through IRCTC. The collaboration is aimed at allowing hotel members of the FHRAI and its Regional Associations to provide their inventory for sale as online Accommodation Partners through the IRCTC tourism website and its associate portal.

5. MoU signed between Shri Kedarnath Utthan Charitable Trust (SKUCT) and Power Grid Corporation of India Limited for development projects in Badrinath, Uttarakhand

Shri Kedarnath Utthan Charitable Trust (SKUCT) and Power Grid Corporation of India Limited entered into a MoU in furtherance of which Power Grid Corporation of India Limited will contribute a sum of INR 19.3 Crores towards the construction of a 2.5 km long and 10.5 m wide road for efficient traffic management, façade enhancement, Devasthanam Board buildings, battery-operated public transport system, installation of property and wayfinding signages, ambient lightings, water supply service and drainage management. This is aimed at attracting more and more pilgrims and travelers and thereby creating employment opportunities for the stakeholders in the hospitality industry.





Litigation & Dispute Resolution

1. ICDR® Amends International Dispute Resolution Procedures, Including its Arbitration & Mediation Rules

The International Centre for Dispute Resolution (ICDR) amended arbitration rules and regulation as result of yearlong review by an ICDR drafting committee comprised of arbitration and mediation practitioners from around the world. The review was undertaken due to change in international dispute resolution, including third-party funding, the necessity of videoconferencing in the wake of COVID-19, heightened concerns regarding cybersecurity, privacy and data protection, and the adoption of the Singapore Convention on Mediation.

2. US, UK, 3 other Court confirms \$ 1.4 billion Carin arbitration awards against India.

The arbitration award passed by the Permanent Court of Arbitration in the Netherlands between Carine Energy and Indian Government has been recognized by courts in 5 countries including United States and U.K. Carine has started process of registering the award in Singapore, Japan, the United Arab Emirates and Cayman Islands towards its enforcement of the award in the event of the Indian Government failing to comply with the award.

3. Supreme Court Suggests Amendments To Sections 11(7), 37 To Bring Section 8 & 11 At Par On Appealability.

Supreme Court in Pravin Electricals Pvt. Ltd. v. Galaxy Infra and Engineering Pvt. Ltd (LL 2021 SC 147) has observed that the amendments to Section 11(7) and 37 of the Arbitration and Conciliation Act, 1996 might be necessary so as to provide appeal against the order passed under section 8 and 11.

4. Short delay in filing appeals under section 37 of the Arbitration Act can be condoned in exceptional cases

Supreme Court in Government of Maharashtra v. Borse Brothers Engineers and Contractors Pvt. Ltd., 2021 SCC OnLine SC 233 has observed that short delay in filing appeal under section 37 of the arbitration and Conciliation Act shall be condone in exceptional cases. The Supreme Court overruled last year's judgment in N.V. International v. State of Assam, (2020) 2 SCC 109 wherein it observed that appeal under section 37 are governed by article 5 of the Limitation and held that the delay in filing appeal from an application being either dismissed or allowed under Section 34 cannot be allowed.

5. “No absolute right to demand passport in her favour:” Jammu and Kashmir High Court dismisses Mehbooba Mufti’s plea seeking issuance of passport

The J & K high Court rejected the plea of Mehbooba Mufti for renewal of passport and observed that the Court has very limited scope in matter related to granting of passport to an individual. The Court relied on the Supreme Court judgment in Satwant Singh which said that an individual did not have the absolute right to demand a passport.

6. Madras High Court Judge while dealing with plea by same-sex couple for protection

Justice N Anand Venkatesh of Madras High Court, in plea filed by same sex couple for protection observed that he himself is in process of unlearning the preconceived notion on such issues. The Court, with consent of the Petitioner, has enlisted the Petitioner for the aid of counselor who specializes in working with LGBTQI+ persons and has directed the counselor to submit the report on 26.04.2021.



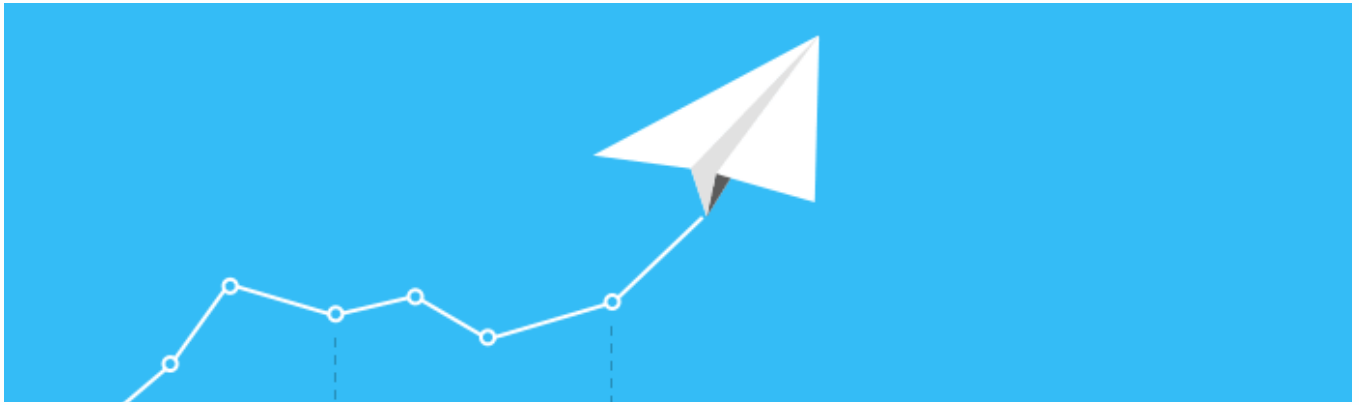
7. NIA Court rejects bail plea moved by Swapna Suresh, Sandeep Nair, others

The Special Court constituted under the PMLA Act has rejected the plea of bail by Swapna Suresh. The Court observed that Suresh in her statement under section 50 of the PMLA Act made to Enforcement Directorate has admitted to hatching the conspiracy and smuggling the gold from the foreign country.

8. Govt clears creation of 22 commercial courts

The Delhi Government has sanctioned the setting up 22 commercial Court and creation of addition 42 posts for judges in Delhi. The Delhi Govt has placed reliance on the analysis carried out by the Department of Justice of the Union Law Ministry for reducing the timeline for adjudication of commercial disputes in Delhi.





Start-Up Advisory & Consultancy

1. Companies Need To Disclose Crypto Currency Dealings Under Revised Rules: Govt

The Ministry of Corporate Affairs has amended 3rd Schedule of the Company Act by making it compulsory for the companies to disclose their dealing in crypto currencies. Senior official from the ministry said that they have received complaints from investors with promise of high returns by investing in crypto currencies and there were also instances of people losing money. The official also said the latest changes in rules are complimentary ones to CARO -- Companies (Auditor's Report) Order.

2. Amounts Paid By Indian Companies To Use Foreign Software Not Royalty; No Tds Liability: SC

The Supreme Court Bench comprising Justices R F Nariman, Hemant Gupta, and BR Gavai held that TDS shall not be applicable on purchase of software manufacture in foreign countries. The Court further held that the amount paid to towards the purchase of the said software does not constitute royalty and same does not rise to any income taxable in India.

3. Indian spacetech startup Pixxel gets \$7.3 million in funding as it announces a new product even before the launch of its first satellite

Pixel a Indian space tech startup has raised 7.3 million US dollar (52.8 cr) in a seed funding round from Techstars, Omnivore VC and others. The startup is one of most hyped space tech companies in India and is planning to launch 'world's highest resolution hyperspectral satellite constellation'. The company had previously raised 5 million US dollar (36 Cr) in August 2020, which was one of the largest seed funding round back then.

4. Bank of New York Mellon invests in crypto startup

The Bank of New York Mellon is embracing crypto currency by investing in crypto startup. The startup Fireblock is in the business of providing safe and secured storage and transfer of crypto currencies. BNYM in their official statements stated that it has plans to use Fireblock technology to support its own business in which it has plans to serve as custodians of crypto assets of the intuitional investors.





Moral Rights- Should they be waived?

- Prashasti Agrawal

Historically, in civil law jurisdictions, an attack on a creator's work was deemed to be an attack on the creator's personality. Hence, in such jurisdictions, copyright law aims to protect a creator from attacks to their personhood. Moral Rights, translated from 'Droit Moral' in French, are the personal rights given to the authors, recognized in civil law jurisdictions. Moral rights have been broadly described as the legal link that allows authors to retain control over the integrity of their work. This refers not to "morals" as advocated by the religious right, but rather to the ability of authors to control the eventual fate of their works. An author is said to have the "moral right" to control her work. These rights are an addition to the pre-existing economic rights and are inalienable. Hence, one could say that these rights of the authors permit them to defend the integrity and reputation of their works.

Under Indian law, Section 57 of the Copyright Act 1957 protects creative works by having the effect of lifting the author's rights beyond the material gains of copyright[1]. The Section reads as:

"57. Author's special right.—

(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right:

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation: Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation.—Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author."

Upon a quick reading of the section, it can be noted that the 4 basic moral rights of the authors include:

1.Mannu Bhandari v Kala Vikas Pictures Private Limited and Ors, AIR 1987 Delhi 13.



- Right of attribution, also called the right of paternity, which means that the author's name is always shown with his work. This gives the author a claim of ownership to his work.
- Right of integrity, which means that the work shall not be distorted, or mutilated in a way that shall be prejudicial to the author's reputation.
- Right of having the work/creation published anonymously or pseudonymously.
- Right of not having the work falsely attributed to the creator.

An author's moral rights cannot be assigned, but they can be waived. Even though an author may sell his economic rights to a publisher for publication, the moral rights shall remain with him which cannot be taken away from him. The question that arises here is that should artists waive their moral rights?

However, the restrictive nature of the Indian approach becomes apparent in the limited remedies offered by Section 57 and certain exceptions it lays down. For instance, the Section states that authors can only claim damages or seek an order of restraint in response to a distortion. There are no other remedies available to them. This Section goes as far as prohibiting inappropriate "display" as a valid ground to initiate a claim. This indicates that an artist cannot protest their work being displayed in an environment that is inappropriate or alien to what its originally intended environment of display was. For instance, the creator of a children's literary character cannot protest to their work being used in or associated with a tobacco advertising campaign. Naturally, this restrictive approach of Article 57 has caused controversy amongst Indian artist forums and societies[2].

Before proceeding further, it is pertinent to note that the Act does not include a provision for waiver of moral rights, and the same has been elucidated by judgments. The first case that dealt with this was of *Amarnath Sehgal v Union of India*[3], where a bronze statue made by the plaintiff was brought down by the Government, and dumped. The court passed a judgment in favour of the plaintiff, and the relevant portion reads as:

"Section 57 confers additional rights on the author of a literary work as compared to the owner of a general copyright. The special protection of the intellectual property is emphasised by the fact that the remedies of a restraint order or damages can be claimed "even after the assignment either wholly or partially of the said copyright.."

Subsequently, through various precedents, it was established that the authors can waive their moral rights. However, there still lies ambiguity as to who can waive the moral rights and in which situation they cannot be waived.

Coming to the question, if authors should waive their moral rights, I believe that they shouldn't. Time and again, courts have reiterated that the moral rights of an author are sacrosanct. They also offer sufficient protection, even after he commercially exploits his work.

The decision to waive moral rights is one that the author might take considering using to monetize his rights. By way of example, an author might demand a higher licensing fee in exchange for a waiver of moral rights that permits the licensee to use the work more freely. The author might also be able to get a better deal while assigning copyright, if he waives his moral rights.

The concept of moral rights thus relies on the connection between an author and her creation. Moral rights protect the personal and reputational, rather than purely monetary, value of a work to its creator. Waiver is also considered to be against public policy, as public has a right to know the author of a certain piece of work.

To conclude, I'd like to quote Justice Pradeep Nandrajog, who spelt out the rationale behind moral rights in *Amar Nath Singh v. Union of India*[4].

"In the material world, laws are geared to protect the right to equitable remuneration. But life is beyond the material. It is temporal as well. Many of us believe in the soul. Moral Rights of the author are the soul of his works. The author has a right to preserve, protect and nurture his creations through his moral rights."

2. P. NARAYANAN, LAW OF COPYRIGHT AND INDUSTRIAL DESIGNS 36 (2nd Edition, ELH 1995).
 3. (2002(2)ARBLR130(Delhi); 2005(30)PTC253(Del)
 4. Ibid.





VICTORIAM LEGALIS
ADVOCATES & SOLICITORS

Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

You can get in touch here:

Corporate Office:

1085, Hotel Sahara Star,
Opposite Domestic Airport,
Vile Parle East,
Mumbai - 400099,
Maharashtra, India

Litigation Office:

DBS Heritage House,
Prescott Road,
Opposite Cathedral School,
Fort, Mumbai - 400001,
Maharashtra, India

Phone: 022 - 40779254

Email: info@victoriamlegalis.com