# Key Takeaways from Roundtable on SARAL Private Instruments Manual 26th July 2025

## Context

The SARAL Private Instruments Manual ("**Manual**") provides a set of guidelines following a principle-based approach to drafting of private legal instruments such as contracts, service agreements and privacy policies. The Manual examines contract drafting trends and provides drafting solutions that may make the document **S**imple, **A**ccessible, **R**ational and **A**ctionable. Recommendations include changes to how language and grammar is deployed in a legal document as well as some re-imagination and re-thinking of the form and structure of a private legal document including the arrangement of clauses.

The Roundtable Discussion focused on application of the principles propounded in the Manual to real-world contracts in an engaging and insightful discussion featuring transaction lawyers, legal practitioners, and academics, who shared their experiences of dealing with private legal documents and perspectives from their practice.

## Attendees

The discussion was attended by the following attendees:

- Kevin Joseph (Principal Associate, Khaitan & Co.),
- Siddharth Raja (Senior Partner, VERTICES PARTNERS),
- Amarta Roy (Partner, Cyril Amarchand Mangaldas),
- Navin Kumar (Partner, Cyril Amarchand Mangaldas),
- Moulshree Shukla (Principal Associate, Shardul Amarchand Mangaldas) and
- Eashan Ghosh (IPR Advocate and In-Charge of the IPR Chair, NLUD)

## Key Themes

Some of the key themes and takeaways from the discussion are outlined below. The discussion was aimed at arriving at workable solutions and building consensus informed by experience from the private sector.

***Templatisation***

- The primary problem was identified as "the tyranny of the template" and "the all-pervasiveness of the precedent"
- Templates are, prima facie, tools of simplification, but over time rigidity sets in, and they transform into a new precedent that cannot be challenged
- There needs to be a way of making flexible templates, for example, through use of placeholders.

- Some templates are created internally by law-firms which include drafts of various types of agreements with different indicative variations of provisions that may be inserted into a document as and when they best fit a situation
- The Legislature and some regulators like SEBI have seen the benefit of templates and some attempts have been made to create templates and formats for commonly used agreements, such as Debenture Trust Deeds — however, these have seen varying levels of success, with some attempts being scrapped
- Any crystallisation of templates runs the risk of becoming an enforceable precedent with no scope of flexibility in application
- **AI can be a useful tool for developing templates** – the Manual has come at an opportune time.

***Types of agreements that are most conducive to SARAL drafting***

- Share Purchase Agreements ("**SPA**") and Shareholder Agreements ("**SHA**") have huge scope for simplification.
- **Operational clauses such as those relating to governance, both for executive management, rights management such as the appointment of Directors, determining the composition of Board, duties of Board, manner of conducting of meetings may be replaced by a simple clause saying that this will be as per applicable laws** – in case of deviation, such deviation may be noted – most of these clauses are standard in form and can be simplified and incorporated into SHAs and SPAs without much pushback
- Indemnity clauses and schedule of representations in these SPAs and SHAs run into multiple pages and can be simplified – specific disclosures can be clubbed instead of having them at multiple places in an agreement
- In contrast, certain other clauses relating to Reserved Matters which could deal with the rights of investors, and those governing information rights, are often more difficult to standardise and simplify because in many instances they are drafted keeping in mind a future right of the investor (which may not be in existence yet).
- Where possible, referencing legal procedures established by law or using detailed, albeit pre-approved documents like business plans, can help reduce the bulk without losing substance
- Certain classes of documents and provisions are accepted without too much negotiation, such as those which involve the hospitality industry, distribution agreements, franchise agreements often have large chunks of standard clauses, such as those relating to employee transfers, production etc which can be simplified across the board -– they tackle the "floor" relationships and behaviour of a business
- Merger & Acquisition agreements are most difficult to simplify since there are a lot of value protections (against risks) that the document is trying to protect the company against — from this perspective a longer document is necessary to cover all risks
- Template lease agreements and tenders used by government agencies such as Bangalore Development Authority, Gujarat Development Authority, and National Highways Authority of India's standard contracts can be examined further to understand the incremental simplification that can be done.

***Deliberate ambiguity***

- Most complex clauses in contracts operate on deliberate ambiguity to leave scope for expanded interpretation in courts For example, post Covid-19, *force majeure* is an instance of a clause where ambiguity helped in interpreting "pandemic" within the purview of "epidemic" post Covid-19
- **Ambiguity is retained to protect against future unidentified risks.**
- In some cases, ambiguity is cleared only when certain provisions are brought before courts for interpretation.
- In the present context, laws are changing rapidly, and sometimes the client demand is to include clauses that may not be legally tenable at the time, with the caveat that it is 'subject to applicable laws' so that the clause may be enforceable if the law changes in future

***Context of the agreements***

- Contracts between two sophisticated parties need to be distinguished from contracts between a big company and a smaller party, such as an employee or contract worker
- **Shrink-wrap agreements or take-it-or-leave-it agreements such as Privacy Policies and Terms and Conditions are a great starting point since they are public facing agreements**
- In David v Goliath contracts, in some cases courts have relied on the principle of interpretation in favour of the weaker party, but this is not consistent.
- Between sophisticated parties, the focus needs to be on "precision" while in case of unequal parties, the focus can be more on "comprehensibility" and "accessibility"

## Way forward

Themes and takeaways emerging from the discussion on the SARAL Private Manual provide significant guidance to effectively incorporate the SARAL approach into drafting of private legal instruments. These takeaways would inform further evolution of the SARAL principles with an aim to not only make legal documents more accessible but also potentially save time and money — through collaborative illustrative re-drafts of some common agreements and large-scale sensitisation within the industry.

*Some next steps are identified below:*

- As a first step, some common B2B and B2C agreements must be identified that may see maximum impact through incorporation of SARAL principles outlined in the Manual in re-drafting;
- Workshops may be conducted with different stakeholders within the industry, including lawyers and law-firms – there is already a palpable shift that is being experienced globally;
- With sufficient proof of concept, the SARAL initiative can give inputs to AI language models being leveraged by law firms for developing workable and flexible templates.

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