

ities market key players



	TYU division			FRT division		
GHT	254	550	254	274	154	415
RDW	650	320	754	273	825	154
TRG	241	450	144	364	954	174
RTG	254	650	874	657	125	274
	2	741	759	1	741	345

Manubhai & Shah LLP

Chartered Accountants

Ahmedabad • Mumbai • NCR • Rajkot • Baroda • Gandhinagar • Udaipur

NEWSLETTER

FEBRUARY 2021

COVERING UPDATES FOR
THE MONTH OF JANUARY 2021

For private circulation and clients only



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LABOUR LAW UPDATES

Since so many years, numerous labour laws have been enacted for specific issues when existing laws do not cover or address those matters. As a result, some duplications and contradictions in certain provisions of the different laws have been experienced. Even compliance with numerous labour laws have become a big challenge for business entities.

In view of these controversies and complications in different labour laws, a strong need was felt among to consolidate numerous labour laws. As an outcome of this, after great efforts, some 29 labour laws have been consolidated in the **FOUR LABOUR CODES** as follows:

1. **The code on wages, 2019** consolidates FOUR labour legislations. (Acts on Payment of Wages, Minimum Wages, Payment of Bonus and Equal Remuneration)
2. **The Industrial Relations Code, 2020** consolidates THREE labour legislations (Acts on Trade Union, Ind. Employment Standing Orders and Ind. Disputes)
3. **The Code on Social Security, 2020** consolidates NINE labour laws. (Mainly Acts on Emp. Compensation, ESI, PF, Maternity Benefit, Gratuity, etc.)
4. **The Occupational Safety, Health and Working Conditions Code, 2020** consolidates THIRTEEN labour laws. (Mainly Factories Act, Contract Labour Act. Etc.)

These CODES will become effective from the date they are NOTIFIED. The Four Codes mainly consolidate earlier legislations. Practically, separate Acts are included in each Labour Code as separate Chapters. Key HIGHLIGHTS of new Labour Code are as stated below:

1. Code on Wages, 2019:

- New Definition of “Establishment” covers any place where industry, trade, business, manufacture or occupation is being carried on. Any establishment where even ONE employee or worker is employed will be “establishment”
- The Provisions of Minimum Wages will apply to ALL employees and employers instead of being applied to ‘Scheduled employment’ in current regulations.
- Overtime Rate shall not be less than TWICE the normal rate of wages in all cases. (Earlier this was mandatory only for the workers covered under Factories Act)
- Full wages are payable to part time employees also.
- Time Limit for payment of wages in case of Monthly payment has been made uniform as 7th of the following month.
- Deduction from wages can be maximum up to 50% of wages.
- Upper limit of salary of Rs. 21000 for eligibility of Bonus removed from definition.
- Contractors and Sub- Contractors have been included in the definition of ‘Employer’.

2. The Industrial Relations Code, 2020:

- Prior permission of the government before closure, lay-off or retrenchment mandated to establishments with atleast 300 workers instead of 100 workers.
- The Code prohibits strikes or lock-outs in any establishment unless a prior notice of 14 days is provided
- Fixed Term Employment introduced in the code. Fixed Term Employee (FTE) will get all statutory benefits like ESI, EPF, bonus wages, etc. The termination of FTE service on completion of fixed term tenure would not be a retrenchment. The employee would be eligible for gratuity if he renders service for a period of one year.
- Establishments with less than 300 workmen can lay-off, retrench, close without government Approval. Earlier this limit was 100 employees.
- Definition of wages has been revised. Now it includes basic salary, reimbursements, all allowances and benefits. Bonus, Conveyance Allowance, House Rent Allowance, Overtime Allowance, House Accommodation, Commission, Contribution to PF /Pension, Gratuity, Retrenchment Compensation are EXCLUDED in Wages Definition. However total **excluded** components should not exceed 50% of the total remuneration. Additional part above 50% would be termed as wages.
- In case any worker is suspended by the employer pending investigation or inquiry, such worker to be paid subsistence allowance at 50% of the wages for first 90 days of suspension and at 75% of wages for the remaining period of suspension.

3. The Code on Social Security, 2020:

- Aadhaar based registration is mandated for PF.
- Systems has been designed for covering the category self-employed or any other category under the purview of EPF scheme.
- All establishments having 20 or more workers come under the purview of EPF. Earlier it was applicable only on those establishments included in the schedule.
- Penalty amount increased from 10,000 to 1,00,000 and imprisonment of one to three years on non-depositing employee contribution deducted from salary. For subsequent failure to pay contributions, imprisonment of two to five years and fine of three lakh rupees provided in new code.
- If employer and majority employees agree then voluntary registration allowed under the Code to apply ESI scheme.

4. The Occupational Safety, Health and Working Conditions Code,2020

- Daily work hour limit fixed at **MAXIMUM** 8 Hours per day.
- No employee shall work for more than 6 days a week.
- Appointment letter made Statutory.
- For overtime work, an employee shall be paid **twice** the rate of daily wages.
- Women will be entitled to be employed in all establishments for all types of work. Now women can work during night shifts with their consent.
- Code provides single registration for an establishment instead of multiple registrations. This will help centralized database and an ease of doing business.
- Where contract labour is deployed, Principal Employer to provide welfare facilities, and shall be liable to make payment of wages to them.



The Four new Labour Codes practically consolidate separately dispersed different Labour Acts in each Labour Code as Separate Chapters which are mostly independent of each other. However, various definitions are commonly defined in each code. Accordingly, all Four Codes uniformly define “Employee”, Employer, Worker, Wages, Factory, Industry, Establishment, Industrial Establishment etc. to state as to which category these Codes are applicable.

All Four Codes define "employee" means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.

It is also pertinent to note that with the unique uniformity of definitions given in all four Codes, it has become clear as to which categories of employees and entities these provisions apply.

In view of this, it is pertinent to note that new Codes consistently continue to apply to all categories of employees covered under existing separate labour laws. In other words, there is no change, addition or deletion considered in the present categories of employees covered in the new legislation.

As a direct outcome and interpretation of this, it can be concluded that provisions of New Codes cover and apply to Working Directors, Key Management Personnel and Senior Managers in the same manner and extent of present labour legislations. It is however important to add that in the new present era labour legislations enacted with the prime objective to provide more secure and safe labour environment, responsibility and accountability of these “senior cadre employees” may be extended to ensure proper compliance by all concerned categories.

Conclusion:

The merging and consolidation of various detached labour laws is expected to extend ease in compliance and support in strengthening labour legislation. Uniformity in definitions will also help to reduce disputes in differently interpreted distinct labour matters. It may be noted here that “THE CODE” cannot be called to be the Law of Twenty First Century but still long-awaited improvement has definitely been added in the most critical and complex labour legislation. At this juncture it may also be added that The Labour Laws have been made moderately more business friendly and supportive in ‘ease of doing business’ in India. To conclude, let us hope that the new Labour Codes will benefit both employees and employers.





COMPANY LAW UPDATES

A. Filing of E-form AOC-4:

MCA has clarified that E-form AOC-4 / AOC-4 (CFS) / AOC-4 XBRL and AOC-4 Non XBRL can be filed without levy of additional fees upto February 15, 2021.

Notification can be accessed at:

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.4_29012021.pdf

B. Clarification on Holding AGM:

An option of holding AGMs through Video Conferencing (VC) or Other Audio Visual Means (OAVM) has been extended upto December 31, 2021.

Notification can be accessed at:

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.02_14012021.pdf

C. CSR Activities:

It has been clarified that spending of CSR funds for carrying out awareness campaigns / programmers or public outreach campaigns on COVID-19 vaccination programme is an eligible CSR activity.

Notification can be accessed at:

http://www.mca.gov.in/Ministry/pdf/CSR2021_13012021.pdf

D. Scheme for condonation of delay for companies restored u/s 252 of Companies Act, 2013:

A Scheme for condonation of delay has been notified for companies restored between December 1, 2020 to December 31, 2020 u/s 252 of the Act for the purpose of condoning the delay in filing forms with the Registrar, in so far as it relates to charging of additional fees on account of delay in such filing.

The Scheme is applicable w.e.f. February 1, 2021 and will end on March 31, 2021 for all e-forms except where any increase in authorised capital is involved and charge related documents i.e forms under "CHG" series.

Notification can be accessed at:

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.3_15012021.pdf

E. CFSS-2020 Form available for filing:

Pursuant to MCA General Circular 12/2020, a Company can seek immunity in respect of belated documents filed under the Scheme by filing e-form CFSS-2020 after closure of the scheme and after the documents are taken on file, or on record or approved by the Designated authority. The e-form cannot be filed after the expiry of six months from the date of closure of the Scheme.



SEBI UPDATES

Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the COVID -19 pandemic.

The relaxations with respect to sending physical copies of Annual Report to shareholders and requirement of proxy for general meetings held through electronic mode, are extended for listed entities, till December 31, 2021.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/jan-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-pandemic_48790.html



ACCOUNTING UPDATES

EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Creation of an Intangible Asset (License) on Account of Pre-operational Expenditure.

The relevant text of the Opinion is reproduced below:

“the Committee notes that when an intangible asset is separately acquired, only the purchase price (including any import duties and other taxes) and the expenditure which are directly attributable for making the asset ready for its intended use are included in the cost of asset. The Committee is of the view that the cost incurred on account of salaries of engineers/technicians from October to December 2014 are the cost of holding the team of engineers till the time the License is acquired rather than the cost incurred to acquire the License as during this period, the engineers are rendering services to the holding Company or on its behest to the third party. Although these may be incurred during the period when the License is being acquired and having a team of engineers may be a pre-requisite for obtaining the License, these are neither incurred to acquire or generate the license nor are directly attributable or allocable to acquisition/generation of license.

It was not appropriate to capitalise expenditure incurred on salaries of engineers during October to December 2014, as cost of License as per the requirements of AS 26.”

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/62614cajournal-jan2021-10.pdf>



ARTICLE ON NEW PROCEDURE FOR LEVY OF PENALTIES UNDER THE INCOME TAX ACT

The Finance Act, 2020, has amended Section 274 of the Income Tax Act dealing with the procedure for levying penalties under various sections in Chapter XXI of the Act, in order to reduce human interface from the system. The Central Government has, by Notification dated 12th January, 2021, notified “Faceless Penalty Scheme, 2021”. This scheme has come into force on 12th January, 2021. Some of the important provisions relating to the new procedure for levy of penalties under Chapter XXI of the Income Tax Act, are discussed hereunder:

1. Authorities to Administer the Scheme.

Following Income Tax Authorities will decide about levy of Penalty under the scheme-

- i. National Faceless Penalty Centre.
- ii. Regional Faceless Penalty Centre.
- iii. Penalty Unit or Review Unit.

2. Procedure for levy of penalty.

- i. If any Income Tax Authority or National Faceless Assessment Centre (herein referred to as the “Assessing Authority”) has initiated penalty proceedings and issued show cause notice for the same, it shall refer the case, to the National Penalty Centre. Thereafter, the National Penalty Centre shall refer the case to a penalty unit in any one of the Regional Penalty Centres.
- ii. Where, in a case, initiation of penalty proceedings has been recommended, the penalty unit, after examination of available records, may accept the recommendation and prepare a draft show cause Notice for the same and send to the National Penalty Centre. If the Penalty Unit is of the view that no penalty proceedings should be recommended, it may record its reasons and send to National Penalty Centre. Thereafter, the National Penalty Centre shall send the show cause notice to the assessee specifying the date and time for filing response or it may intimate to drop the Penalty Proceedings.
- iii. In a case it is referred to the Penalty Unit, the Penalty proceedings are already initiated, the penalty unit shall prepare a Draft Notice and send to the National Penalty Centre. Thereafter, the National Penalty Centre shall serve the show cause Notice to the assessee for submitting the response.
- iv. When the assessee has filed the response to the above, following procedure will be followed.
 - a. The National Penalty Centre shall send the said response to the Penalty Unit.
 - b. The Penalty Unit may request the National Penalty Centre to obtain further information, documents or evidence from the Assessing Authority or the assessee or seek technical assistance for conducting verification.
 - c. The National Penalty Centre shall issue notices to the Assessing Authority or the assessee calling upon the required information, documents or evidences.

- d. On receipt of the above information, documents or evidence, the National Penalty Centre shall send the same to the Penalty Unit.
- e. Where the Penalty Unit has made a request for conducting certain enquiry or verification or technical assistance, the National Penalty Centre shall refer the matter to National Faceless Assessment Centre. On receipt of its report the National Penalty Centre shall send the said report to the Penalty Unit.
- v. The Penalty Unit, after considering the material on record, will have to prepare a Draft Order for imposition of Penalty or not to impose the Penalty. Thereafter the draft of the Penalty Order shall be sent by the Penalty Unit to the National Penalty Centre. If the Penalty Unit has suggested to drop the Penalty proceedings it shall send the recorded reasons for the same.
- vi. Upon receipt of the above, the National Penalty Centre has to examine the proposal in accordance with the specified risk management strategy and using an automated examination tool, and take the following actions
 - a. To pass and serve on the assessee, a final penalty order; or
 - b. Intimate to the assessee about not to levy Penalty; or
 - c. Refer the matter to a Penalty Review Unit in case of any disagreement of the views.
- vii. If the Penalty Review Unit agrees with the view of the Penalty Unit, the National Penalty Centre shall follow the procedure as stated in (vi) (a) or (b). If the Penalty Review Unit suggests any modification in the proposal of the Penalty Unit, the National Penalty Centre shall assign the case to another Penalty Unit.
- viii. If the Penalty Unit to which the case is assigned as stated above, after considering the material on record, finds that the modifications proposed by the Penalty Review Unit is prejudicial to the interest of the assessee, it will have to follow the procedure as stated in (iii) and (iv) above and will have to prepare a Revised Draft Order for imposing the penalty. It may also decide not to impose Penalty after recording reasons for the same. Thereafter, this Penalty Unit has to send the Revised Draft Order or the reasons recorded for not imposing Penalty to the National Penalty Centre. Thereafter, the National Penalty Centre will pass the Penalty Order and serve the same upon the assessee or drop the Penalty proceedings and intimate the same to the assessee.
- ix. The National Penalty Centre has also to send copy of the Penalty Order passed by it, as stated above, to the Assessing Authority to take necessary action in the matter.
- x. The National Penalty Centre can transfer the penalty proceedings in any case from the Penalty Unit to Assessing Authority having jurisdiction over the assessee with the prior approval of CBDT.

3. No Personal appearance before the Authorities.

The assessee or his authorised representative is not required to appear personally in connection with any penalty proceedings under this scheme before the National Penalty Centre or Penalty Unit unless requested by them to make an oral submissions or present his case before the Penalty Unit under this scheme. The Chief Commissioner or Director General, in charge of the jurisdictional Regional Penalty Centre, may approve the request for personal hearing of the assessee. Such personal hearing shall be conducted exclusively through video conferencing or video telephony in accordance with the procedure laid down by CBDT.

4. Exchange of communication exclusively by electronic mode.

It is provided that all communications between the National Penalty Centre and the assessee or his authorised representative, as well as, all internal communications between the National Penalty Centre, the Regional Penalty Centres, the Assessment Authority and the Penalty Unit shall be exchanged exclusively by electronic mode.

5. Rectification of Penalty Orders.

Any mistake in the Penalty Order can be rectified by an application under section 154 or 155 by the National Penalty Centre upon receipt of such application. For this purpose also the above procedure is to be followed.

6. Appeal before Commissioner (Appeals)

An appeal against an order passed by the National Penalty Centre can be filed before the jurisdictional Commissioner (Appeals). Where any order passed by the National Penalty Centre or Commissioner (Appeals) is set-aside and remanded back to the National Penalty Centre by the Income Tax Appellate Tribunal or High Court or Supreme Court, the National Penalty Centre shall pass the order following the procedure under this scheme.



Article on Corporate Social Responsibility {CSR}

1. Background

The law on corporate social responsibility has been continuously evolving with the intention of urging the corporates to take up CSR activities in the right direction which will help the society at large. The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, which have come into force on 22nd January, 2021, emphasize on putting additional responsibilities on the Boards / CSR committee of respective companies in ensuring that the funds have been spent in the right direction, monitoring of ongoing projects, formulating annual CSR plan etc., undertaking impact assessment of projects involving outlay of Rs. 1 crore or more and last but not the least ensuring complete transparency through significant disclosures in new Annual CSR report format being rolled out.

2. Amendments in Legal Requirements:

A. CSR related Cash Flows:

i. CSR Liability

Every company covered under section 135(1) is required to spend at least 2% of average net profits of 3 preceding years.

ii. Unspent CSR

The unspent amount on CSR is required to be transferred to Schedule VII Fund within 6 months from end of particular FY. This is explained in following example

2% of Avg Profits:	100
Less: CSR spent:	(70)
Less: Earmarked CSR Fund	(10)
Unspent CSR:	20 (To be transferred to Fund)

iii. Excess CSR Spent

Excess amount spent in a particular year can be adjusted in 3 immediately succeeding financial years subject to:

- Excess amount shall not include surplus arising out of CSR activities
- Board resolution for set off should be passed to that effect.

iv. Earmarked CSR Spent

Funds earmarked towards ongoing project (Rs. 10) as per the example given above needs to be transferred to a special bank account within 30 days from the end of the financial year. The bank account is to be opened in any scheduled bank in the name as Unspent CSR Account – FY XXXX-XXXX.

Balance in such bank account should be utilized within 3 years and if not so utilized within three years, balance at the end of 3rd year should be transferred to Schedule VII fund within 30 days from end of 3rd FY.

v. Penalty for above default:

Company shall be liable to pay penalty as under :

Twice the Amount not transferred to Schedule VII Fund; OR

Twice the Unspent CSR Amount; OR

Rs. One crore

Whichever is LESS

B. Disclosure in Board Report:

The recent amendment in CSR Rules has inserted new Annexure II which is revised format of annual report on CSR required to be disclosed in Board reports for financial years commencing on or after 1st April, 2020. The format of Annexure II is attached below. It requires significant additional information to be disclosed in comparison to Annexure I which is applicable up to FY 2019-20.

C. Disclosures in Financial Statements:

Schedule III to the Companies Act requires amount of expenditure on CSR to be disclosed separately in financial statements.

3. Activities which cannot be considered as CSR:

- a. Activities undertaken in pursuance of normal course of business;
- b. Activities undertaken outside India except for training Indian sports personnel representing any state or union territory at national level or India at International level;
- c. Contribution of any amount directly or indirectly to any political party under section 182;
- d. Activities benefiting employees of the Company as defined in section 2(k) of Code on Wages, 2019
- e. Activities supported by companies on sponsorship basis for deriving marketing benefits for its product or services;
- f. Activities carried out for fulfillment of any other statutory obligations under any law in force in India.

4. CSR Implementation:

CSR activities can be undertaken by;

- a. Company itself; or
- b. through another section 8 company, registered public trust or registered society, registered under 12A and 80G of Income Tax Act established by the Company either singly or along with another company; or
- c. section 8 company, registered public trust or registered society established by central government or state government; or
- d. any entity established under an act of parliament or a state legislature; or
- e. through section 8 company, registered public trust or registered society, registered under 12A and 80G of Income Tax act, and having an established track record of at least 3 years in undertaking similar activities.

The above entities which wish to undertake CSR activities are required to register themselves with the central government by filing the form CSR-1 electronically with ROC w.e.f. 1st April, 2021. The form shall be verified digitally by CA, CS or Cost Accountant in practice. Thus, if the Company itself is doing CSR activity it should fill up this form. On submission of the said form, a unique CSR registration number shall be generated by the system.

5. CSR Expenditure:

- a. The board shall ensure that the **administrative overheads shall not exceed 5% of total CSR expenditure** for the financial year. Administrative overheads are defined in the rules as “expenses incurred by the Company for general management and administration of CSR functions in the Company but shall not include the expenses directly incurred for designing, implementation, monitoring and evaluation of particular CSR project or program”.
- b. **CSR amount can be spent for creation or acquisition of capital asset, which shall be held by.**
 - a. section 8 company, entity registered as public trust (under Trust Act) or society (under Societies Registration Act) having charitable objects and CSR registration number; or
 - b. beneficiaries of the said CSR project, in the form of self help groups, collectives, entities; or
 - c. a public authority.

Also, any capital asset created before 22nd January, 2021 shall be transferred by the Company as per the above rule within 180 days which may be further extended for up to 90 days with the approval of board.

- c. Amount spent on hiring agency for impact assessment can be booked as CSR expenditure, but such cost should not exceed 5% of total CSR expenditure or Rs. 50 lakh whichever is less.

Notification in respect of amendment can be accessed at:

http://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_23012021.pdf





DUE DATES OF VARIOUS COMPLIANCES FALLING IN THE MONTH OF FEBRUARY 2021

Due Date	Act/Authority	Compliance Description
07-02-2021	GujRera	In case of projects whose dynamic quarter completes in January- 2021
07-02-2021	Income Tax	Deposit of Tax Deducted/Collected (TDS/TCS) during the month of January-2021
10-02-2021	GST	GSTR-7/GSTR-8 for the month of January-2021 for persons required to deduct TDS
10-02-2021	GST	GSTR-8 for the month of January -2021 for e-commerce operator required to Collect TCS
11-02-2021	GST	GSTR-1 for the month of January-2021
13-02-2021	GST	Filing of Invoice Furnishing Facility (IFF) for the month of January-2021 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
13-02-2021	GST	GSTR-6 for the month of January-2021 for Input Service Distributor
15-02-2021	Income Tax	Filing of Income Tax Returns for A. Y 2020-2021 for following: <ul style="list-style-type: none"> i. Corporate Assesseees ii. Non Corporate Assesseees whose books of accounts needs to be audited iii. Working partner of the Firm/LLP whose accounts needs to be audited iv. Assessee who is required to furnish report u/s 92E of the Income Tax Act
15-02-2021	PF/ESIC	Payment of PF / ESIC for the month of January-2021
20-02-2021	GST	Payment of GST & Filling of GSTR-3B for the month of January-2021 , for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
20-02-2021	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of January-2021
22-02-2021	GST	Payment of GST & Filling of GSTR-3B for taxpayers having turnover upto Rs.5 Crore in preceding Financial year for the month of January-2021 depending on place of business(State)
24-02-2021		
25-02-2021	GST	Payment of GST in form GST PMT-06 for the month of January-2021 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
28-02-2021	GST	Filing of GSTR-9/9A/9C-Annual Return and Annual Audit for the financial year 2019-2020



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BRANCHES

RAJKOT	UDAIPUR
BARODA	GANDHINAGAR

