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ISSUE BRIEF

KNOWLEDGE

WEB-SERIES

SESSION VI

**DECODING
THE SOCIAL
SECURITY
CODE 2020**

Jointly Organised by



SUMMARY

On 21st November 2020, Hammurabi & Solomon Partners and the India Strategy Group jointly convened a Knowledge Web-Series (“KWS”) to decode the Code on Social Security, 2020 (“Code”) by discussing the implications that the Code is likely to have on industries and practitioners. This report captures the discussions with the distinguished speakers and highlights the relevant key takeaways in this regard. The KWS was convened with the aim to interactively discuss, deliberate, and analyze implications of the Code.

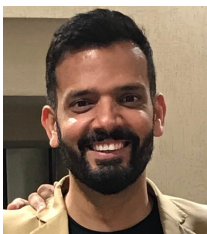
DISTINGUISHED SPEAKERS



Dr. Manoj Kumar
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Mr. Jatin Jalundhwala
Joint President – Legal &
Company Secretary,
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Ms. Deepika Chaudhry
Executive Director Legal,
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KEY POINTS

Overview of the Code

Upon introduction of the Code by the Ministry of Employment and Labour it received Presidential Assent on 28th September 2020. Importantly, the rules related to the Code were notified on 13th November 2020 and the same are now open for the feedback and comments from industries and public at large.

The Code subsumes nine regulations relating to social security, retirement and employee benefits, namely: (i) The Employees Compensation Act, 1923, (ii) The Employees State Insurance Act, 1948, (iii) The Employees Provident Fund and Miscellaneous Provisions Act, 1952, (iv) The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, (v) The Maternity Benefit Act, 1961, (vi) The Payment of Gratuity Act, 1972, (vii) The Cine Workers Welfare Fund Act, 1981, (viii) The Building and Other Construction Workers Cess Act, 1996, and (ix) The Unorganized Workers' Social Security Act, 2008).

However, the Code is far from being a mere consolidation of previous legislations, as it has increased subjective governance and has given room for interpretation also. It is clear that policymakers have made the Code a whole lot more comprehensive than its predecessors to enable a wider, vibrant, progressing, but most of all secure labour in the country.

Key takeaways from the Code

1. The most important part of the Code is the definition of Social Security. Security concerns measures to protect the workers by providing certain schemes and by trying to uplift them in situations of emergencies and exigency in the family. For example, in case of ill-health, maternity benefit, and such similar circumstances.
2. The major aspect about the Code is that it has expanded its coverage. The Code has widened coverage by including the unorganized sector, fixed term employees and gig workers, platform workers, work from home model, etc., in addition to contract employees. Moreover, aggregators, meaning "digital intermediaries or a market place for a buyers or users of a service to connect with the seller or the service provider", are specifically required to contribute to the social security fund.
3. Standardization/Uniformity in the definitions is another key highlight given the ambiguity in the current regulations. This has resulted in a wider definition for "wage" and at the same time specific exclusions with ceilings have been provided for discouraging inappropriate structuring of salaries to strike a balance.
4. The limitation period of 5 years for starting an inquiry or for recovery is another major change. This step has given major comfort to corporates struggling with inquiries.

5. Consultative approach: The Code has brought in a facilitating approach by the authorities. Unlike the existing role of inspectors, the Code provides for an enhanced role of inspector-cum-facilitator whereby employers can look for support and advice to enhance compliances.
6. Career Centre: To enable that demand for human resources is met and to monitor employment information, career centres will be established. Employers will have to report vacancies to career centres before filling up the same.
7. Digitisation is the new buzzword and covers almost all sectors, with the Code being no exception. As per the Code, all records and returns have to be maintained electronically. Digitisation of data will help in exchange of information among various stakeholders / funds set up by the Government, which will in turn ensure effective compliance and also facilitate governance.
8. Stringent penalties: the strength of implementing any legislation lies in the ease of compliances as well as in the penalties that deter non-compliance. The Code captures it all. Any failure to deposit employees' contributions not only attracts a penalty of Rs 100,000, but also imprisonment of one to three years. In case of repeat offence, the penalties and prosecution are severe, and no compounding is permitted for repeated offences.
9. Gratuity has been extended to fixed term employees in addition to permanent employees. The distinction between the two is that the fixed term employees become eligible to benefit after completing one year whereas the same is five years for permanent employees. Thereby creating some sort of financial burden on the organisations which may also lead to disparity due to different eligibility criteria.
10. Moreover, another major change introduced by the Code is that where the gratuity fund or any other fund is concerned, corporates can approach any of the insurance companies as per the requirements of the concerned corporate.
11. Additionally, ESI coverage has been expanded to all categories of workers across 740 districts across India.

Code a paradigm shift of all time or just an old wine in new bottle?

One cannot flip things overnight and hence a lot of learning from previous laws has gone into this Code, which is in the best interest of the employees and thus the Code tries to strike a right balance between them and the changing times.

The code is not a paradigm shift but just a mid-way towards a right path. There're a few things which are required to be done i.e. offers of government still remain the same, they want to run the scheme on the basis on employers. The government should not completely leave it up to the employers and should intervene in between and help both the employees and the employers.

The Code has been designed keeping in mind the loopholes of past legal framework and has worked to eliminate them. Therefore, the Code seems to be more realistic and implementable in the interest of the workers. The Code can, thus, be rightly called an old wine but a more mature one at that.

Governance of the code

For the governance of the Code certain bodies have been formulated and certain others are likely to be formulated by the government like National Ward, which will monitor the schemes proposed vide the Code. As the landscape develops further, the government may bring some more changes to enhance vigilance.

National Ward will play a very vital role like a watchdog just like that of SEBI. It is crucial to ensure that the Code be implemented in the desired manner.

Decriminalization and Penal Provisions

Decriminalization is a step in the right directions as the previous mechanisms were not only time consuming which would have defeated the very purpose of the Code, but also in view of the fact that the need of the hour is to curtail penalties in the form of monetary liabilities as the same if directed to the welfare funds will later on be of benefit to the workers. Therefore, the instant corrective action is what one should believe in and try to achieve.

Funds and Corpus Issues

The government is keen on certain issues on how to fund the schemes. For gig and platform workers, a specific scheme will be launched on which Central/State governments will provide funding. CSR activities may also be included under this umbrella. The modality of funding as of now is not clear but a corpus is to be certainly created for uplifting unorganized workers and it may take at least next 1-2 years to achieve the same keeping in mind the current scenario of global pandemic.

Code being General Neutral in the light of availing creche facility

Whether the Code can operate deliver upon gender neutrality in workplaces – such as by providing for a crèche within 500 metres of the establishment where the threshold of workers and not women/female workers has been defined – ought to be considered from a practical perspective.

There have been mixed views pertaining to whether the Rules of the Code should be linked to female employees specifically or to employees in general with respect to the creche facility.

In one view linking creche facility threshold only to women employees is much more practical as in the present societal norms women are largely dedicated to caring for children. It would have been an additional cost if this compliance had the rules linked this compliance to male employees in present date. The Code leaves room for achieving further gender neutrality in its application as the Rules may be changed in keeping with evolving societal norms in the nation.

Limitations

- The Code lacks universalization of the provisions i.e. what applies to one should also be applicable to others.
- A lot of financial burden has been imposed upon organizations by the Code and hence the government should work hand in hand with the organizations to help them cater to the needs of the workers.
- Concern with regard to the unorganized workers is still prevalent because the Code only emphasizes upon them in 6 sections and a lot more should be done for their upliftment.
- There is a conflict in the definition of wages as provided under the Code and the jurisprudential understanding.
- Another aspect is the mandatory nature of Aadhar registration which is in conflict with the jurisprudence on right to privacy.

TAKEAWAYS

Conclusion

The Code should not be just a brick but a wall and live up to being a landmark change as addressing the entire workforce is the intention behind the Code. Though the steps are tiny but will take major and huge shape in near future, especially since the cost implications will be a push and pull factor for all the stakeholders and the government.

The main objective of the Code is how to enhance the outlook and productivity; and it should also focus on productivity linked to incentives of the workers which is important from India's economic growth point of view. Importantly, balance of convenience should always be the aim while implementing various provisions of the Code.

In nutshell, the Code is a welcome step in a right direction and if implemented in the right way the same will help in building the nation.

Click below to watch the KWS session

<https://youtu.be/4SBdmIN4IPI>



KNOWLEDGE WEB-SERIES
Decoding The Social Security Code 2020
To discuss and review the Social Security Code 2020: Enhanced Social Security benefits and simplification for Employees - Clearer regime enabling better governance and compliance for Employers

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PODCAST

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