



LEGAL UPDATE

February 2021 - PART I

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## **I. MINISTRY OF CORPORATE AFFAIRS (MCA)**

### **1. Companies (Share Capital and Debentures) Amendment Rules, 2021**

MCA vide [Notification dated February 11, 2021](#) has amended the Companies (Share Capital and Debentures) Rules, 2014 by inserting Rule 12A after Rule 12 which notifies the period for notice of issue of share capital under section 62. Hence post amendment, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, the offer shall be made by notice specifying the number of shares offered and the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer.

### **2. MCA21 Version 3.0 to be launched in Fiscal 2021-22**

MCA vide [Press Release dated February 05, 2021](#) has declared the launch of data analytics driven MCA 21 Version 3.0. by Fiscal year 2021-2022. The key components of MCA 21 to be launched during Fiscal Year 2021-22 are:

- 1) e-Scrutiny: MCA is in process of setting up a Central Scrutiny Cell which will scrutinize certain Straight Through Process (STP) Forms filed by the corporates on the MCA21 registry and flag the companies for more in depth scrutiny.
- 2) e-adjudication: E-adjudication module will facilitate end to end digitization of the process of adjudication, for the ease of users. It will provide a platform for conducting online hearings with stakeholders and end to end adjudication electronically.
- 3) e-Consultation: To automate and enhance the current process of public consultation on proposed amendments and draft rules etc.
- 4) Compliance Management System (CMS): CMS will assist MCA in identifying noncompliant companies/LLPs, issuing e-notices to the said defaulting companies/LLPs, generating alerts for internal users of MCA.
- 5) MCA Lab: As part of MCA21 V3, a MCA LAB is being set up, which will consist of corporate law experts. The primary function of MCA Lab will be to evaluate the effectiveness of Compliance Management System, e-consultation module, enforcement module, etc.

### **3. Companies (Incorporation) Second Amendment Rules, 2021**

MCA vide [Notification dated February 01, 2021](#) has amended the Companies (Incorporation) Amendment Rules, 2014 which shall come into force from April 01, 2021. The amendment substitutes rule 6 which deals with Conversion of One Person Company into a Public company or a Private company.

### **4. Companies (Specification of Definitions Details) Amendment Rules, 2021**

MCA vide [Notification dated February 01, 2021](#) has issued the Companies (Specification of Definitions Details) Amendment Rules, 2021 to extend the scope of the term 'Small Companies'. The amendment provides that from now on, companies

with paid up capital and turnover not exceeding rupees two crores and rupees twenty crores respectively shall be considered as small companies.

**5. Relaxation of additional fee in filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, and AOC\_4 Non-XBRL**

MCA vide [Circular dated January 28, 2021](#) has extended the due date for filing the financial statements for financial year ended on March 31, 2021 with the Registrar of Companies (ROC) in forms AOC-4. MCA has waived additional fee payable for late filing of forms AOC-4, AOC-4 (CFS), AOC-4 XBRL and AOC-4 Non XBRL if the forms are filed within February 15, 2021.

**II. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)**

**1. Revised disclosure formats under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulation, 2015**

SEBI vide [Circular dated February 09, 2021](#) has revised the relevant disclosure formats (Forms B to D) in Regulation 7 of PIT Regulations due to the amendments effecting the inclusion of member of the promoter group, and designated person in place of employee, and on the basis of feedback received from market participants and stock exchanges. The updated/revised formats are annexed to the circular.

**III. LABOUR**

**1. Payment of Labour Welfare Fund Contribution by February 20, 2021 in Karnataka**

The Karnataka Government [vide Notification dated January 30, 2021](#) informed that the last date for payment of labour welfare contribution under Karnataka Labour Welfare Fund Act, 1965 is been extended to February 20, 2021. The contribution is to be remitted online in [www.klwb.karnataka.gov.in](http://www.klwb.karnataka.gov.in). Delay in payment of contribution will attract penalty of interest at the rate of 12% for first 3 months and after 3 months, at the rate of 18% of the amount due.

**2. Holiday declared on in the state of Andhra Pradesh for Gram Panchayat elections**

The Andhra Pradesh Government [vide Notification dated February 3, 2021](#) declared February 9, February 13, February 17 and February 21, 2021 as paid holiday for Gram Panchayat elections for all the employees and workers employed in Shops and Establishments to franchise/cast the vote situated in areas of Gram Panchayats where elections are being conducted.

### **3. Kerala Labour Welfare Fund (Amendment) Bill, 2021**

The Kerala Government [vide Notification dated January 22, 2021](#) issued the Kerala Labour Welfare Fund (Amendment) Bill, 2021 to amend the Kerala Labour Welfare Fund Act, 1975. As per the amendment, every employee shall contribute forty five rupees per half year to the Fund and every employer shall in respect of each such employee contribute forty five rupees per half year to the Fund.

### **4. Online application for various services through Haryana Enterprises Promotion Centre (HEPC)**

The Haryana Government [vide Notification dated January 28, 2021](#) issued the online application system for various services under Ease of Doing Business as mentioned below:

- Registration of Factories under The Factories Act, 1948
- Approval of plan and permission to construct/extend/or take into use any building as a factory
- License for contractors under provision of The Contracts Labour (Regulation and Abolition) Act, 1970
- Registration under The Shops and Establishment Act (including 365 days license)
- Registration/Renewal of principal employer's establishment under provision of The Contracts Labour (Regulation and Abolition) Act, 1970
- Registration/Renewal under The Building and Other construction workers (Regulation of Employment and Conditions of Service) Act, 1996
- Registration of establishment under the Inter State Migrant Workmen (RE&CS) Act, 1979

All the applications with respect to mentioned services can be availed through Haryana Single Window System (HEPC Portal) (<https://investharyana.in/#/>)

### **5. Amendment to Madhya Pradesh Factory Rules, 1962**

The Madhya Pradesh [Government vide Notification No. F. 01-02-2021-A-XVI dated February 8, 2021](#) issued the amendment to Madhya Pradesh Factory Rules, 1962. Rule 6 of Madhya Pradesh Factory Rules, 1962 has been substituted as follows:

- In sub-rule (1), for the words and figure “Form No. 4, in duplicate”, the words “online form no. 4 available on official portal of the Labour Department, Government of Madhya Pradesh ([www.labour.mp.gov.in](http://www.labour.mp.gov.in))” shall be substituted.
- In sub-rule (2), for the words and figure “register the factory and grant a license in Form No. 3”, the words and figure “register the factory and grant a license in Form No. 3 for ten years or more as may be prescribed by the State Government” shall be substituted.

**6. Addition of new work activities under Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 in Madhya Pradesh**

The Madhya Pradesh Government [vide Notification No. R. F-14-5-2013-XVI dated February 4, 2021](#) includes new work activities as mentioned in the notification as building and other construction works.

**7. Amendment Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975**

Government of Maharashtra [vide Notification No. PFT-1221/C.R. 2/Taxation-3, dated February 4, 2021](#), has amended the Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975, namely :—

- These rules may be called the Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Rules, 2021.
- They shall come into force with effect from the 1st April 2021.
- For FORM IIIB appended to the Maharashtra State Tax on Professions, Trades, Callings and Employments Rules, 1975, the FORM shall be substituted as provided in the Notification.

#### **IV. HEALTHCARE**

**1. Fixation of retail price of different devices and formulations by National Pharmaceutical Pricing Authority**

The National Pharmaceutical Pricing Authority [vide Notification No. S.O. 575\(E\) dated February 9, 2021](#) fixed the retail price, exclusive of goods and services tax, if any, in relation to the formulation and device specified in the Table as provided in the Order with the strength, unit and name of manufacturer & marketing company

#### **V. FOOD SAFETY**

**1. New features of Food Safety Compliance System (FoSCoS)**

FSSAI [vide Notification No. 15\(31\)2020/FoSCoS/RCD/FSSAI dated January 12, 2021](#) announces new features with respect to Food Safety Compliance System (FoSCoS). Key features are as follows:

- Informative User Interfaces to avoid applicants making common mistakes while filling of application for FSSAI license and registration.
- Clean list of Kind of Business-wise required mandatory documents
- Simplifying the payment mechanism
- Online submission of annual returns

Please refer to the link provided for further details

## VI. ENVIRONMENT

### 1. Maintenance of pass-book for E-waste in Odisha

The State Pollution Control Board, Odisha [vide Notification No. 1033 dated January 25, 2021](#) declares the maintenance of record in pass book for E-waste in the state of Odisha. It shall be mandatory for all E-waste Generators.

### 2. Special Dispensation Scheme for industries for a period of ninety days

The Rajasthan State Pollution Control Board [vide Notification No. F14\(56-B\)/Policy/Plg/RPCB/195-229 dated February 1, 2021](#) issued Special Dispensation Scheme for a period of ninety days starting from February 15, 2021 to May 16, 2021. The Scheme will be applicable for all industries covered under Red, Orange and Green Category and seeking consent for the first time.

### 3. Mandatory installation of sensors for STPs in Karnataka

The Karnataka State Pollution Control Board [vide Notification No. KSPCB/SEO-INFRA/SENSOR-STP/2020-21/4792 dated January 29, 2021](#) mandates the installation of sensors for STPs.

Please refer to the link for further details.

### 4. Timeline for registration/renewal under E-waste (Management) Rules 2016 and Plastic Waste Management Rules 2016

To facilitate Ease of Doing Business, the Delhi Pollution Control Committee [vide Notification No. F.No. DPCC/IT Cell/79/2020/283-284, dated January 19, 2021](#), has reviewed and reduced the timeline for registration/renewal under E-waste (Management) Rules 2016 and Plastic Waste Management Rules 2016 from 120 days and 90 days respectively to 30 days from receipt of complete application. Further, DPCC shall continue to accept the application for registration/renewal under E-waste (Management) Rules 2016 and Plastic Waste Management Rules 2016 without fee.

## VII. TAX

### 1. Extension of Direct Tax Vivad se Vishwas Act, 2020

Central Board of Direct Taxes vide [Notification No. 04/2021 dated January 31, 2021](#) has extended Direct Tax Vivad se Vishwas Act, 2020 from January 31, 2021 to February 28, 2021.

### 2. Auto-population of e-invoice details into GSTR-1

Central Board of Indirect Taxes and Customs ('CBIC') vide [GSTN updates dated February 01, 2021](#) has advised the taxpayers not to wait for the complete auto-population of invoices, and instead proceed with preparation and filing of GSTR-1 (by the due date), based on actual data as per their records.

### **3. SOP for for implementation of the provision of suspension of registrations**

CBIC vide [Circular No. 145/01/2021-GST dated February 11, 2021](#) has issued Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017.

### **4. Key highlights of Union Budget 2021**

#### **CORPORATE LAW**

- a. Announcement that de-criminalization under the Companies Act, 2013 is complete and now the decriminalization of LLP Act, 2008 will be undertaken.
- b. Definition of small companies: Companies with a paid-up capital not exceeding INR 2 Crores and a turnover not exceeding INR 20 crores are to be considered small companies. More than 2 Lac companies to benefit from this provision.
- c. For Start Ups and Innovators - The Finance Minister has announced that One Person Company (OPC) can be incorporated without a limit for turnover or paid-up capital. Further, it has also been proposed that NRIs can now incorporate an OPC in India. The residency limit of NRIs have been reduced from 182 to 120 days.
- d. Proposal of a special framework for MSME.
- e. The Finance Minister also announced that MCA 21 v3.0 to be introduced with additional modules for e-scrutiny and e-adjudication.

#### **SECURITIES LAW**

##### **Proposed amendments to SCRA**

- a. Concept of 'Pooled Investment Vehicle' introduced which means any fund formed either as a trust or otherwise (such as MF, AIF, CIS or a business trust as defined under Income Tax Act, or any other fund regulated by SEBI.
- b. Such Pooled Investment Vehicle will be eligible to (i) borrow and issue debt securities as per SEBI regulations and also provide security interest to lenders subject to provisions of the trust deed.
- c. In case of any default by such Pooled Investment Vehicle, the lender can initiate proceedings against the trustee (who shall not be personally liable and his assets shall not be utilised for recovery of any such debt).

##### **Proposed amendment to SEBI Act, 1992**

- a. Restriction on sponsoring or carrying out an activity of an AIF or a business trust (either directly or indirectly) without obtaining a certificate of registration from SEBI.

#### **FOREIGN DIRECT INVESTMENT**

- a. FDI in Insurance sector - increase the permissible FDI limit from 49% to 74% in insurance companies and allow foreign ownership and control with safeguards. The majority of directors on the board and key management persons (KMP) would be resident Indians with at least 50% of directors being independent directors.

## DIRECT TAX

- a. Reduction in time for Income Tax Assessment - The time limit to reopening the assessment reduced to 3 years from the erstwhile 6years. Further the tax evasion cases where there is an evidence of concealment of income more than INR 50 lac can be re-opened to a period of 10 years after approval of Principal Commissioner of Income Tax (PCIT).
- b. Setting up of Dispute Resolution Panel (DRP) for small taxpayers- In order to reduce litigation and provide relief to the tax payers the Vivad se Vishwas (VSV) scheme has already been implemented and tax dispute of INR 85,000 crores has already been addressed under the VSV Scheme. Currently, Faceless DRP to be set-up, tax payers with a taxable income upto INR 50 lac and disputed income upto INR 10 lac can approach this panel.
- c. Faceless Income Tax Appellate Tribunal (ITAT) to be set-up, all matters and issues between the ITAT and the Appellant to be conducted through video conferencing.
- d. The definition of the term "liable to tax" has been inserted in section 2 of the Income-tax Act, 1961. The term "liable to tax" in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.
- e. Incentive to start-ups - Eligibility to claim tax holiday to 31st March 2022. Further, capital gains exemption for the outer date of transfer of residential property extended by another year to 31st March 2022.
- f. In relation to Non-Resident Indians (NRIs) - issues with respect to their accrued income in India, rules to be notified to remove the double taxation impact which would apply from 01 April 2022.
- g. Tax Audit limit increased from current INR 5 crores to INR 10 crores in cases cash receipts or payments do not exceed 5% of total receipts / payments.
- h. For ease of compliance to REITs and INVTs dividend payment are exempt from TDS.
- i. For the Foreign Portfolio Investors (FPI) TDS rates to be taken at lower treaty rates for dividend income.
- j. For ease of compliance, the Advance tax liability on dividend income only will arise on declaration or payment of dividend.
- k. The budget proposes to make notified Infrastructure Debt Funds eligible to raise funds by way of tax efficient zero-coupon bonds.
- l. To ease filing of Income tax returns, ITRs to have more pre-filled information on dividend, interest & capital gains to ease compliance.
- m. Affordable and rental housing projects can extend their tax holiday up-to 31 March 2022 and an additional interest deduction of INR1.5lac.
- n. In order to rationalize MAT provisions, it is proposed to align calculation of book profit for the purposes of MAT with the year of taxability of income agreed in APA or on account of secondary adjustment. Also it is proposed, both specified dividend income and the expense claimed are reduced and added back, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.
- o. Equalisation levy provisions - In order to provide certainty, it has been clarified that transaction taxable under income-tax (i.e. any income which is chargeable to tax as royalty or fees for technical services in India under the Income-tax Act read with the agreement notified by the Central Government under section 90 or section 90A of the



Income-tax Act) are not liable for equalisation levy. Further, it is also proposed to clarify regarding applicability of equalisation levy on physical/offline supply of goods and services.

- p. In order to incentivize the investment by the Sovereign Wealth Fund (SWF) of foreign governments in the priority sectors, there would be a 100% tax exemption to their interest, dividend and capital gains income in respect of investment made in infrastructure and other notified sectors before 31st March, 2024 and with a minimum lock-in period of 3 years.
- q. Rationalization of the provision of presumptive taxation for professionals under section 44ADA - it has now been clarified that this section applies only to the resident individual, Hindu Undivided Family (HUF) or a partnership firm, other than LLP.
- r. Slump exchange - Proposes to amend the scope of definition of "Slump Sale" u/s. 2(42C) to include all types of transfers within its scope to provide certainty. It proposes that the transfer of one or more undertakings "by any means" would constitute 'slump sale' and explains the word "transfer" at par with Sec. 2(47) relying on SC rulings in Dhampur Sugar Mills and Artex Manufacturing to cover non- monetary consideration under 'transfer' which "in effect and substance" is in the nature of sale. The proposal effectively overrules the Bombay HC ruling in Bharat Bijlee where distinction was drawn between slump sale and slump exchange.
- s. Goodwill on depreciation - The budget furthermore proposes that no depreciation on goodwill to be allowed.
- t. Small charitable trusts running educational institutions and hospitals, there is a proposed increase the limit of annual receipts from INR 1 crore to INR 5 crore

#### **INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)**

- a. Section 9A specifying activities which do not constitute business connection in India to be amended to provide for exemption from clauses (to be specified by the government) to qualify as eligible investment fund and its eligible fund manager.
- b. Benefit of exemption on transfer of capital asset on recognised stock exchange in any IFSC where the consideration is in foreign exchange shall be extended to investment division of offshore banking unit to the extent attributable/ computed in prescribed manner.
- c. Amendment to the definition of 'specified fund' to include investment division of offshore banking unit which has been granted Cat III AIF registration and fulfils other conditions to be prescribed. Investment division of offshore banking unit is proposed to be defined as an investment division of a banking unit of a non-resident in an IFSC which has commenced operations prior to 31 March 2024.
- d. Income accrued/ arising/ received by non-resident on transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC which commenced operations prior to 31 March 2024 and fulfils prescribed conditions shall be exempt.
- e. Income of a non-resident by way of royalty on account of lease of an aircraft by a unit in IFSC shall be exempt if the unit is eligible for deduction u/s 80LA and commenced operations prior to 31 March 2024.

## **INDIRECT TAX: GOODS AND SERVICES TAX**

- a. Mandatory requirement of getting annual accounts audited and reconciliation statement submitted by a Chartered Accountant or a Cost Accountant is removed, annual return can be submitted a taxpayer with self-certified reconciliation statement.
- b. Supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa for consideration is included under the definition of 'supply' with retrospective effect from 1 July 2017.
- c. No appeal shall be filed against the order issued by the proper officer detaining or seizing goods or conveyances in transit for payment of tax and penalty unless a sum equal to 25% of penalty has been paid by the appellants.
- d. Input tax credit can be claimed only when invoices or debit notes are uploaded by the supplier in their GST returns.
- e. Supply to SEZ is considered as zero rated only when the said supply is for authorised operations within SEZ.
- f. Only notified class of taxpayers will be allowed make zero rated supplies with payment of tax.
- g. Provisions has been inserted in the Act to charge interest only on net tax liability payable in cash with effect from the 01 July 2017.

## **LABOUR**

- a. Labour welfare- Late deposit of employees' contribution not to be allowed as deduction to the employer.
- b. Amendment to National Apprenticeship Promotion Scheme- Proposal to amend National Apprenticeship Promotion Scheme with a view to further enhancing apprenticeship opportunities for our youth. Realign the existing scheme of National Apprenticeship Training Scheme (NATS) for providing post-education apprenticeship, training of graduates and diploma holders in Engineering
- c. Tax exemption for notified Affordable Rental Housing Projects- To promote supply of Affordable Rental Housing for the migrant workers, it is also proposed to allow a new tax exemption for the notified Affordable Rental Housing Projects.
- d. Separate Portal for Gig worker- A separate portal for Gig workers will be set up to collect information on Gig and Platform workers, Building and Construction workers, so as to help formulate Health, Housing, Skill, Insurance, Credit, and food schemes for migrant workers.
- e. Social security benefits will extend to gig and platform workers- Minimum wages will apply to all categories of workers, and they will all be covered by the Employees State Insurance Corporation.
- f. Women employees- Women will be allowed to work in all categories and also in the night shifts with adequate protection to be allowed to work during night shift
- g. Single registration and licensing, and online returns- compliance burden on employers will be reduced with single registration and licensing, and online returns
- h. The National Nursing and Midwifery Commission Bill- to bring about transparency, efficiency and governance reforms in the nursing profession, The National Nursing and Midwifery Commission Bill will be introduced by the government for passing.

## VIII. MUNICIPAL

### 1. Karnataka Municipal Corporation Model Building (Amendment) Bye-Laws, 2021

The Karnataka Government [vide Notification No. UDD 12 TTP 2018 dated January 27, 2021](#) issued the Karnataka Municipal Corporation Model Building (Amendment) Bye-Laws, 2021. A new chapter 16 namely Karnataka Energy Conservation Building Code (KECBC) is being added in the Karnataka Municipal Corporation Model Building Bye-Laws 2017. Key points are as follows:

- The Code will be applicable to buildings or building complex that have a connected load of 100kW greater or a contract demand of 120 KVA or greater and are intended to be used for commercial purposes.
- A building is classified as “Commercial”, if it is used for any of the following purposes, namely;- a) Hospitality: All hotels and resorts;  
b) Healthcare: Hospitals, Out-patient units and other health care units;  
c) Business: Day-time use and 24 hour use business units;
- No objection Certificate with respect to the compliance with the Code, for electrical installation shall be obtained from the State Electrical inspectorate

Please refer to the link for further details.

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