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INDIA

Environment, Social And Governance (ESG) Disclosures By Companies Under The "Business Responsibility And Sustainability Reporting" Framework by SEBI

The Securities and Exchange Board of India (SEBI) has stipulated disclosure requirements for top one thousand listed companies- covering environmental, social and governance (ESG) perspectives, through a new format, namely the Business Responsibility and Sustainability Report (BRSR). The BRSR replaces the existing Business Responsibility Report (BRR) and can be followed voluntarily for Financial Year 2021-2022 and then on a mandatory basis 2022 onwards.

What is the Business Responsibility and Sustainability Report (BRSR)?

The BRSR is based on the nine principles that have been stipulated in the "National Guidelines on Responsible Business Conduct" (RBC Guidelines) which intend to define responsible business conduct for all Indian Companies. These guidelines have been influenced by international standards including the UN Sustainable Development Goals, UN Guiding Principles on Business & Human Rights and the Paris Agreement.

The BRSR aims to help companies demonstrate their sustainability objectives in a better way, to ensure that investors are able to identify risks and make better investment decisions.

Key Takeaways:

1. India made corporate social responsibility (CSR) mandatory, with the Companies Act 2013 and before BRSR was introduced by SEBI in the year 2021, top five hundred companies were to disclose indicators of business responsibility through Business Responsibility Reporting (BRR).
2. As per these new directions, the disclosure requirements for companies comprise the following: general management and process disclosures on ESG risks, sustainability related goals, resource usage & intensity metrics, air pollutant emissions and greenhouse gas emissions. In addition to these, disclose the gender and social diversity including measures for differently abled employees, turnover rates, median wages, trainings and welfare benefits to employees as well as social impact assessments to promote inclusive growth.
3. Companies shall also disclose governance related information such as anti- corruption and anti-bribery policies and awareness & training programs for members of the Board, senior managers and employees as stipulated in "National Guidelines on Responsible Business Conduct"

Investor Education & Protection Fund Authority (Second Amendment Rule), 2021

The Ministry of Corporate Affairs on 09th November 2021 notified the Investor Education & Protection Fund (IEPF) Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021 to amend the existing rules of 2016.

IEPF was introduced with the idea of using money of investors for their benefits of investor education and awareness programme and later the government made it mandatory that underlying shares of investors on which dividends had not been claimed for 7 years, be transferred to the IEPF. Shareholders can then claim the same from IEPF.

Through the Amendment of 2021, the process of claim settlement by investors from IEPF has been simplified, through rationalization of requirements under the rules. The new regime aims at building a trust-based model to make services expeditious and citizen- centric.

Key Features Of The Amendment:

1. Rule 6A has been inserted, which specifies “Manner of transfer of shares under Section 90 (9) of the Act to the Fund”; namely: The shares shall be credited to the DEMAT account of the Authority to be opened by the Authority within a period of 30 days of such shares becoming due to be transferred to the Fund. For this purpose, the Board shall authorize the Company Secretary or any other person to sign the necessary documents.
2. Under Schedule II of the Rules, under “Documents to be submitted to the Authority to register transmission of securities” under the sub-headings of securities held in physical mode”, the word “nominee” shall be substituted by “claimant.” For sub-item 1.2, “Original or copy of death certificate duly attested” shall e substituted with “copy of death certificate of security holder attested by claimant”.
3. The threshold value of the securities per issuer company requiring such filings is increased to Rs. 5 lacs from Rs. 2 Lacs.
4. Upon the loss of securities held in physical mode, “self- attested” copy of the FIR instead of a notarized one, containing prescribed information shall be submitted as proof.

Implications Of Using Bankruptcy Code Against State Government-Owned Electricity Distribution Companies (DISCOMS)

The Indian Government has recently clarified that the Insolvency & Bankruptcy Code, 2016 (IBC) could be triggered against State Government owned Electricity Distribution Companies (DISCOMS) which will in turn have major implications for the electricity sector. Ministry of Power is of the view that DISCOMS do not fall under the category of government companies as defined under the Companies Act, and hence, they are under the ambit of IBC and insolvency resolution process can be initiated against them.

Background & Key Takeaways:

1. The Electricity Act of 2003 mandated the State Electricity Boards to be classified into separate generation, transmission, and distribution companies. While most of the electricity is now generated privately, most of the distribution companies are still state owned.
2. Since a long time, DISCOMS have been suffering from grave financial problems owing to low collections, increasing power purchase cost, subsidy disbursement, rise in tariffs and dues from government departments.
3. Proceedings under IBC have effectively been used by operational creditors to recover dues as the initiation of corporate insolvency resolution process does not discriminate state-owned enterprises from the private ones.
4. Ministry of Power in its official communication of November 2021 to the Department of Legal Affairs, Ministry of Law & Justice cited a Supreme Court judgment of 27.11.2019 in Writ Petition (Civil) No. 1074 OF 2019 titled Hindustan Construction Company Vs. Union of India wherein it was held that the only exemption from IBC was to statutory bodies having a sovereign function. Ministry of Power in light of this judgment observed that DISCOMS cannot be categorised as a government body formed by way of statute for performing sovereign government function.
5. This clarification and communication by the Ministry of Power is a positive step towards holding DISCOMS accountable and for creditors to recover dues from these debt-ridden distributors.

Seeding Of Universal Account Number (UAN) In The Insurance Module

Employees State Insurance Corporation (ESIC) under the Ministry of Labour and Employment, Government of India has issued a circular dated 08.11.2021 regarding the provision for the seeding of UAN data in the Employer's Module of Corporation. The Employers can hence use the screen to enter the UAN details of insured persons in the Insurance module of the ESIC.

Key Takeaways:

1. As per the Circular, UAN data of minimum 75 lac workers shall be added to the Insurance Module of ESIC by 24th February 2022.
2. UAN Number is an identification number allotted by the Employees' Provident Fund organization (EPFO) which acts as an umbrella for multiple Member Ids allotted to an individual by different establishments.
3. Once the UAN data of the insured persons that is entered in the system by the employers, the authenticity and correctness can be validated from EPFO through Application Programming interface (API) software.
4. All regions have submitted weekly report to the headquarters for number of UAN data of Insured Persons entered in the system in the prescribed proforma and the weekly progress will be monitored by the Headquarters Office of ESIC and apprise the same to the Director General.

UAE

Regulation of Labor Relations under Federal Decree Law No. (33) of 2021

The UAE President issued a new Decree in November, coming into force on 2nd February 2022, with an aim to regulate and respond to challenges in labour relations between employers and employees. This Decree is applicable to all companies, employers and employees of the private sector and as such excludes the federal and local government employees, in addition to the armed forces, police and security and any other group as proposed by the Minister of Labour.

The objective behind this new Labour law is to create an environment where talent is nurtured from all over the world and the workers are provided with a safe, constructive, and stimulating working environment, while at the same time affording protection to the employers as well.

Key Takeaways:

1. New forms of work have been introduced which include part-time work, temporary work, and flexible work. This gives flexibility to employers to follow different kinds of models when hiring employees.
2. Fixed Term Contacts are introduced by the new law wherein the term of the contract may not exceed three years and can also be renewed upon the mutual agreement by the parties for a similar or a lesser period of time. This provision enables the employment contracts to be converted from unlimited to limited within one year of the enforcement of the law.
3. In the private sector, maternity leave can be extended up to 60 days wherein 45 days leave shall be with full wage and the rest 15 days shall be on half wage.
4. There is a prohibition on recruitment of minors below the age of 15 years and further guidelines regarding timings are also provided.
5. The employees are not permitted to work for over five consecutive hours without taking a break for at least an hour and are permitted to work overtime for only 2 hours in a day.
6. The new law safeguards the workers against bullying, sexual harassment, verbal, physical, or any kind of abuse and prohibits discrimination on the basis of race, cast, sex, religion, or disability.
7. Non-compete clause are now enforceable for a maximum of 2 years after the expiry or termination of an employment contract.
8. Additionally, the new law also clarifies that a foreign employee who completes at least one year of continuous service shall be entitled to severance pay, which is calculated on the basis of their basic salary. This basic salary excludes any other allowances or benefits.
9. The law also introduces the concept of special leave. This includes 5 days of paid bereavement leave for death of spouse and 3 days for death of parent, child, sibling or grandparent.

Amendment to UAE Bankruptcy Law under Federal Decree Law No. (35) of 2021

A pivotal amendment to certain provisions of Federal Decree No. (9) of 2016 on Bankruptcy was notified on 1st November 2021. This amendment replaces certain provisions of the existing UAE Bankruptcy Law with the intent to provide a boost to market confidence by providing clarifications on bankruptcy obligations when assessing liabilities of individuals in financial distress. Additionally, it has given clarity on the right of named individuals to a fair hearing and to subsequently defend themselves when dealing with such bankruptcy proceedings.

Key Takeaways:

1. If during a court declaration of a company bankruptcy, the assets are insufficient to settle at least 20% of its debts, the court may order the members of the board of directors or the managers to pay all or any of the company's debts.
2. Pursuant to such a court order being issued against such individual or individuals, the same shall be appealable under the provisions of the Civil Procedure Code.
3. An appeal of order issued against such individuals will not automatically result in the stay of execution or affect the res judicata force of the order declaring bankruptcy of the company.
4. The amendment has also listed down an exhaustive list of acts, that if committed, result in imprisonment for up to 2 years and/or a fine not exceeding AED 100,000.
5. Some of the punishable acts include disposing off company assets after cessation of payments, deliberate withholding or submitting false information to the trustee, deliberately failing to keep commercial books sufficiently reflecting the actual financial position of the company or spending gross amounts on gambling or speculative ventures that are outside the scope of the company's business among other things.
6. The penalty provided will not apply to a person whose participation in the acts prohibited hereunder is not established, or whose reservations on the company decision to perform the said acts are established.
7. Further, when any member of the board of directors or manager against whom a decision was rendered by the competent court has his funds placed under provisional attachment, the same is now appealable under the provisions of the Civil Procedure Code. An order of stay of execution may also be passed by the court if there exists a fear of irreparable injury.

New Data Protection Law under Federal Decree Law No. (45) of 2021

What is Federal Decree Law No. (45) of 2021?

As part of a wide-ranging reform of the country's legal system, the President of the UAE has approved Federal Decree No. (45) of 2021 for the regulation of Data Protection in UAE.

The main intent behind this law is to create a framework that ensures confidentiality and protects the privacy of individuals, or Data Subjects as defined in the law. This law will help in facilitating ease of business between UAE and other jurisdictions by giving an adequate safety net to companies for the purpose of data transfers.

This Decree, coming into effect on 2nd January 2022, is applicable to "personal data" which has been defined in Article (1) as "Any data relating to an identified natural person, or a natural person who can be identified, directly or indirectly, through the linking of data, by reference to an identifier such as his name, voice, picture, identification number, electronic identifier, geographical location or one or more physical, physiological, cultural or social characteristics." Additionally, it also includes Sensitive Personal Data and Biometric Data.

Key Takeaways:

1. Creation of a UAE Data Office in the form of a national regulator to regulate and maintain the effective implementation of this Decree-Law. The mandate of this regulator also includes, among other things, setting up a system for complaints and grievances.
2. Further, the Decree has listed an exhaustive list of dos and don'ts for the establishment to follow when in possession of personal data or when processing personal data.
3. The establishment must implement the appropriate technical and organizational measures to ensure complete compliance with these obligations.
4. In the event that there exists a high risk to the privacy and confidentiality of personal data, the establishment shall appoint a Data Protection Officer. This officer shall possess the requisite skills and knowledge needed to protect such data and will monitor compliance with the law. His main role is to act as a point of contact between the establishment and the UAE Data Office.
5. Data Subjects have also been granted rights with respect to their personal data which is being processed or has been processed. This includes the right to obtain rectification of data in case of inaccurate data. Additionally, subject to certain legislation or for reasons of public interest, a Data Subject shall also have a right to require the establishment to erase any personal data concerning him/her.

Employment Law Amendment Law No. 4 of 2021 - Dubai International Finance Centre

On 21st September the Dubai International Finance Centre (DIFC) announced changes to the DIFC Employment Law by way of the Employment Law Amendment Law No. 4 of 2021 to come into effect immediately. This is in line with the DIFC's commitment to maintaining a transparent and robust regulatory framework for employment law by being aligned with global best practices.

Key Takeaways:

1. The amendment has clarified the procedural rules with respect to claims brought before the courts in cases of unlawful deduction from the Employee's Remuneration. The court has to now take into account the time between payment received by the employee and when the claim is actually brought before the court before entertaining the same.
2. The limitation period for employees to bring claims remains 6 months, however the amendment now clarifies that the employee may bring claims during the term of their employment.
3. The definition of "Additional Payment" has been amended so that it now includes bonuses, incentives, grants commission, drawings, distributions and any other payments which are discretionary, non-recurring or calculated by reference to the profits of the employer or, importantly, an affiliate of the employer.
4. Further, the amendment has strengthened the rights of Secondees and Short-term Employees. Secondees will now be subject to provisions relating to settlement agreements and. protection from workplace discrimination and victimization. The general duties of an employee shall be applicable to them too.
5. Pension scheme rules have now been brought in line with the Dubai Financial Services Authority Employee Money Purchase Scheme so that only a single layer of regulation is applied to these schemes.
6. Lastly, in the wake of the COVID-19 pandemic, the amendment has also clarified that certain employer health and safety duties do not apply if the employee is working from home. This brings about a marked change in the previous Employment Law assumption that an employee is working from the employer's DIFC premises.

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