

The Code on Social Security, 2020

A year after the Code on Wages, 2019 (**Wage Code**) received the President's assent, the Parliament has taken the next step towards consolidating various Central labour legislations into comprehensive labour codes. The Parliament passed three labour codes viz. the Occupational Safety, Health and Working Conditions Code, 2020, the Code on Social Security, 2020 (**SS Code**) and the Industrial Relations Code, 2020, (collectively with the Wage Code, the **Labour Codes**) on September 23, 2020, for the purpose of consolidating and harmonising India's vast array of Central labour legislations, with the ultimate objective of propelling ease of doing business in the country.

The SS Code consolidates Central laws that govern and regulate the social security entitlements of the Indian workforce. To this end, the SS Code subsumes the following legislations, which will stand repealed once the SS Code is implemented:

1. the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**);
2. the Employees State Insurance Act, 1948 (**ESI Act**);
3. the Payment of Gratuity Act, 1972 (**POGA**);
4. the Employees Compensation Act, 1923 (**ECA**);
5. the Maternity Benefit Act, 1961 (**MB Act**);
6. the Building and Other Construction Workers Cess Act, 1996 (**BOCW Cess Act**);
7. the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
8. the Cine Workers Welfare Fund Act, 1981; and
9. the Unorganised Workers' Social Security Act, 2008.

The stated objective of the SS Code is to amend and consolidate the laws relating to social security and related matters, with the goal to universalise social security benefits i.e. to extend social security to all employees and workers in the organised and unorganised sector or in any other sector, including to employees, wage workers, contract labourers, gig workers, platform workers, home-based workers or self-employed individuals.

The SS Code was passed by both the Houses of Parliament on September 22, 2020 and September 23, 2020, respectively, and received the President's assent on September 28, 2020. The SS Code will be brought into force once the appointed date for its implementation is notified by the Central Government. It may be noted that the Government is empowered to bring into force the various provisions of the SS Code in a staggered manner, meaning that different provisions of the SS Code could come into effect on different dates. It may be noted that the rules and schemes under each of the Labour Codes will also have to be drafted and adopted for the proper implementation of the Labour Codes.

The key aspects of the SS Code have been summarised below:

This Client Alert sets out the key aspects of the Code on Social Security, 2020. This is accompanied by Client Alerts on the Occupational Safety, Health and Working Conditions Code, 2020 and the Industrial Relations Code, 2020. You may also refer to our [Insight](#) setting out key aspects of the Code on Wages, 2019.

A. Definitions:

At the outset, it may be noted that the definition of various terms used across the current labour legislations in India have been made uniform to a certain degree under the Labour Codes and the confusion brought about by varying definitions in the current regime has to some extent, been addressed under the Labour Codes.

i. Social security

The SS Code introduces a new concept, that of a unified definition of 'social security', according to which 'social security' includes measures of protection afforded to (i) employees, (ii) gig workers, and (iii) unorganised workers and (iv) platform workers:

- ⌋ To ensure access to healthcare; and
- ⌋ To provide income security particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner.

ii. Different categories of employees and workers

The SS Code has defined the following categories of workers and employees, in its bid to extend the applicability of social security benefits to workers in all organised and unorganised sectors.

a. Building worker:

Presently, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 defines 'building or other construction work' to generally exclude any building or other construction work to which the Factories Act, 1948 applies, leading to anomalies in its application to green-field versus brown-field projects. The exclusions under the SS Code from the ambit of 'building and other construction work' now include building or other construction work related to any factory or mine, or where such work is for residential purposes, and the total cost of such work does not exceed INR 50,00,000, or a higher amount and employing more than the number of workers, as notified by the appropriate Government.

b. Contract labour:

The definition of 'contract labour' under the SS Code, is aligned with the definition of the term in the other Labour Codes, and includes workers who are deemed to be employed in or in connection with the work of an establishment, when hired for such work by or through a contractor, with or without the knowledge of the principal employer, including inter-state migrant workers, but does not include those persons that are regularly employed by the contractor for any activity of his establishment on mutually accepted standards of conditions of employment on a permanent basis, and get periodical increments in pay, social security coverage and other welfare benefits in accordance with the law.

c. Employee:

The SS Code definition of 'employee' is in alignment with the definition provided in the other Labour Codes; it includes any person employed on wages in an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment are express or implied. The definition of an employee under the SS Code specifically includes those persons employed through a contractor. It also includes any person who is declared as an employee by the appropriate Government. Clarifying the scope of the term, the definition excludes an apprentice engaged under the Apprentices Act, 1961 or any member of Armed Forces of the Union.

For the purposes of provident fund and ESI (*defined below*) benefits, wage ceilings for employees to be covered under the SS Code will be prescribed by the Central Government.

For the purposes of employee's compensation, the definition of employee refers to such persons as specified in the Second Schedule of the SS Code. It may also be noted that the appropriate Government can only make additions to the

Second Schedule by way of an amendment and cannot remove any categories of employees provided in the said Schedule.

d. Fixed-term employees:

The SS Code defines a ‘fixed-term employment arrangement’ as one where an employee is engaged on the basis of a written contract of employment for a fixed period provided all benefits extended to permanent workers (such as hours of work, wages, allowances and other benefits) doing the same work or work of a similar nature, are made available to such fixed-term employees as well, for the period that such person is employed.

e. Gig Workers:

The definition of ‘gig workers’ includes any person who (i) performs work or participates in a work arrangement, and (ii) earns from such activities, outside of a traditional employer-employee relationship. The definition indicates that gig work is a category outside the typical employee-employer framework.

f. Platform Workers:

Platform workers includes those persons who have entered into a work arrangement outside the traditional employer-employee relationship, and who access organisations or individuals through an online platform and provide services or solve specific problems or provide specific services, in lieu of payment.

g. Home-based workers:

The definition of ‘home-based workers’ include persons engaged in the production of goods or services for an employer at home or any other premises, other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs. Home-based workers are covered within the definition of unorganised workers and consequently, benefits extended to unorganised workers, will be applicable to home-based workers under the SS Code.



h. Inter-state migrant workers:

The definition of an ‘inter-state migrant worker’ under the SS Code is the same as the definition in the other Labour Codes, and includes any person who (i) is recruited by the employer or a contractor in one State for employment in an establishment in another State, and (ii) has come from one State and obtained employment in an establishment in another State (destination State) or has subsequently changed the establishment within the destination State. Further, this should be pursuant to an agreement/work arrangement, and the worker should not draw wages of more than INR 18,000 per month or a higher amount as may be notified by the Central Government. It may be noted that the definition of inter-state migrant workers, has been widened to include workers who are recruited by the employer, or those workers who have changed an establishment in the destination State and a wage threshold has also been made applicable to the definition.

i. Self-Employed Worker:

The definition of ‘self-employed worker’ includes any person, who is not employed by an employer, but is engaged in any occupation in the unorganised sector subject to a monthly ceiling on earnings, as may be prescribed by the Central Government.

j. Wage worker:

The definition of 'wage worker' includes persons employed for remuneration in the unorganised sector. The following are the features of a wage worker:

- ▮ Wage worker may be directly employed by an employer or by a contractor;
- ▮ The place of work is immaterial;
- ▮ A wage worker could be employed exclusively for one employer or for many employers;
- ▮ Remuneration may be made in cash or in kind;
- ▮ Wage worker includes a home-based worker, a temporary or casual worker, a migrant worker, or workers employed by households including domestic workers; and
- ▮ Wage worker is a person who earns monthly wages as may be notified by the Central Government and the State Government, as the case may be.

k. Unorganised workers:

Introducing another concept, the SS Code defines an 'unorganised worker' to mean a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes any worker in the organised sector, who is not covered by the Industrial Disputes Act, 1947 or under Chapter III (PF) and Chapter IV (**ESI**) of the SS Code.

iii. Wages

The definition of the term 'wages' under the SS Code is aligned with the other Labour Codes, thereby bringing consistency across legislations. The scope of the definition of wages has been widened to include all remuneration by way of salaries, expressed in monetary terms, which includes basic wages, dearness allowance and retaining allowance.

It is an exhaustive definition, which also provides a list of exclusions, such as:

- a. Statutory Bonus,
- b. Provident Fund,
- c. Pension,

- d. House rent allowance,
- e. Value of house accommodation and utilities,
- f. Conveyance allowance,
- g. Sum paid to defray special expenses due to the nature of work,
- h. Any overtime allowance,
- i. Any commission,
- j. Any retrenchment compensation, and
- k. Gratuity.

In an important proviso to the abovementioned exclusion, the SS Code provides that if the aggregate amount of the exclusions specified in points (a) to (i), exceeds 50% (or such a notified percentage) of the total remuneration payable to the employee, the amount in excess of the said threshold, will be deemed as remuneration and be added to wages, a concept that has been reflected in the Wage Code as well. Further, if any part of the remuneration is given in kind then the value of the said remuneration, which does not exceed 15% of the total wages payable to the employee, will also form part of the employee's wages.

iv. 'Employer' and 'contractor'

The SS Code has expanded the definition of 'employer' to cover contractors and legal representatives of a deceased employer. Additionally, the definition also clarifies that the head of department, occupier/manager of the factory, or person having ultimate control over the affairs of the establishment (where such affairs are entrusted to a manager or managing director, such manager or managing director) are all covered within the ambit of the term employer.

Under the SS Code, the definition of contractor is the same as contained in the other Labour Codes, and in relation to an establishment, a 'contractor' means a person who: (a) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour, or (b) supplies contract labour for any work of the establishment as a mere human resource, and includes a sub-contractor.

v. Aggregator

The SS Code includes the definition of an ‘aggregator,’ which is a new concept, that refers to a digital intermediary or a marketplace for a buyer or user of a service to connect with the seller or the service provider. An aggregator has been bestowed with responsibilities under the SS Code including obligations on funding social security benefits extended to their workers.

vi. Appropriate Government

Under the SS Code, the appropriate Government for central public sector undertakings (**PSU**) is the Central Government, even if its shareholding in the PSU falls below 50% post the commencement of the SS Code. The appropriate Government for any industry controlled by the Central Government or so notified in this regard, or for specified industries in the SS Code such as railways, mines, oil, field, major ports, etc., is also the Central Government. In all other cases, the State Government is the appropriate Government.

B. Registration under the SS Code

Registration is mandatory for each and every establishment covered by the SS Code. The SS Code also makes provisions for electronic registration. To avoid duplicity of registrations, the SS Code provides that if any establishment is already registered under any other central labour law, it does not have to obtain registration under the SS Code again. Such an existing registration will be deemed registration under the SS Code.

Further, the SS Code mandates Aadhaar-based registration for all categories of workers.

C. Provident Fund (PF)

i. Applicability of the chapter on PF

Chapter III of the SS Code, which deals with employees’ provident fund, will be applicable to every establishment in which 20 or more employees are employed. The SS Code thus expands the applicability of provident fund benefits to all establishments, as

opposed to scheduled or notified establishments under the current EPF Act. The SS Code also permits establishments, which are not statutorily required to contribute to employees’ provident fund, to apply for coverage under the same, provided there is an agreement between the employer and a majority of its employees to this effect.

In addition to exempting certain establishments registered under legislations relating to cooperative societies, or certain establishments belonging to, under the control of or set up by any law of the Central or State Government, or employees who immediately before the enactment of the SS Code were receiving provident fund benefits under any Central or State enactment, the SS Code also permits the Central Government to exempt establishments from its applicability on the basis of their financial position or other relevant circumstances. It is to be noted that the SS Code, specifically lays down that schemes existing under the EPF Act such as the Employees’ Provident Funds Scheme, 1952 and the Employees’ Pension Scheme, 1995 etc. will to the extent that they are not inconsistent with the provisions of the SS Code, remain in force for a period of one year from the date of commencement of the SS Code.

The Central Government has been granted authority to frame schemes for the governance of provident fund entitlement of employees or a class of employees and to specify the establishments or class of establishments to which PF benefits under the SS Code will apply. Additionally, the Central Government, may by notification, frame an employees’ pension scheme to govern *inter alia* superannuation pension, nominee pension, widow or widower’s pension etc. For providing life insurance benefits to the employees of any establishment or class of establishments governed by the chapter on PF in the SS Code, an ‘employees’ deposit linked insurance scheme may be framed by the Central Government. The matters that the abovementioned schemes on provident fund, pension and insurance may provide for, have been identified in the Fifth Schedule to the SS Code. A significant introduction in this regard is the provision whereby, the Central Government has been vested with the authority to frame schemes for the purpose of providing social security benefits to ‘self-employed’ workers or ‘any other class of persons’.



thereby ensuring that any and all categories of workers may avail social security benefits under the SS Code. The aforementioned schemes may be made effective and/or modified, either prospectively, or retrospectively.

ii. Quantum of contributions

Under the SS Code, both the employer and employee are required to make a matching contribution at the rate of 10% of the employee's wages (12% in case of establishments notified by the Central Government), to a provident fund established by the Central Government for this purpose. Further, the Central Government, after making such inquiry as it deems fit, may, by notification, specify rates of employees' contributions and the period for which such rates shall apply for any class of employee. As under the EPF Act, the SS Code also permits employees to make contributions at a rate higher than the statutorily mandated rate, provided that an employer is not obligated to contribute at such a higher rate.

The SS Code explicitly empowers principal employers to recover any provident fund contributions remitted in respect of employees of contractors, including any administrative charges incurred in this regard, from the said contractor. It may be noted that international workers are not specifically mentioned in the SS Code.

With regard to pension, the SS Code provides that an employer's contribution in respect of an employee who is a member of a pension fund established by the Central Government; (a) shall not exceed 8.33% of the employer's PF contribution; (b) may be specified in the pension scheme formulated, by the employers of exempted establishments; and (c) be such sums as may be specified by the Central Government after due appropriation by the Parliament.

In relation to the insurance scheme, the Central Government has been empowered to establish a deposit-linked insurance fund (**EDLI Fund**) in the manner specified in such an insurance scheme. The employer will pay into such an EDLI Fund an amount not exceeding 1% of the wages or such percentage of wages of covered employees as may be notified by the Central Government. Further, the employer will be required to pay into the aforementioned EDLI Fund, any such further sums of money not exceeding one-fourth of the abovementioned contribution, as the Central Government may, from time to time, determine to meet all expenses in connection with the administration of the insurance scheme other than the expenses towards the cost of any benefits provided by or under the insurance scheme.

Other provisions in relation to provident fund under the SS Code have not undergone any significant change from the current law under the EPF Act.

D. Employees' State Insurance (ESI)

i. Applicability of the chapter on ESI

The chapter on ESI is applicable to every establishment (other than a seasonal factory) in which 10 or more persons are employed. This takes away the ambiguity around whether the ESI provisions would only apply to establishments having more than 10 employees, earning below the threshold amount. Employers having less than 10 workers can opt for voluntary coverage under the SS Code, provided there is an agreement to this effect between an employer and a majority of its employees. The SS Code expands the applicability of ESI benefits to all establishments, as opposed to scheduled or notified establishments under the current ESI Act. The chapter on ESI is also applicable to an establishment carrying out hazardous or life-threatening occupation as notified by the Central Government, irrespective of the number of persons employed in such an establishment thereby, increasing the onus on employers in hazardous occupations to protect their workers. With regard to plantations, employers can opt for coverage under the SS Code for the purposes of ESI, provided employees continue to receive more beneficial terms, if they are so entitled. The date from which contributions towards ESI benefits will become payable under the SS Code will be notified by the Central Government.

ii. Benefits

The rate at which the ESI contributions (both employer and employees' share) will be payable under the SS Code, will be prescribed by the Central Government. In addition to the various benefits available under the aegis of the ESI chapter of the SS Code, including inter alia sickness benefit, maternity benefit, disablement benefit etc., the Employees' State Insurance Corporation (**ESIC**) has been vested with powers to promote other measures for the health and welfare of covered persons. The SS Code confers additional powers on the ESIC to recover the capitalised value of the benefit payable to the employee, calculated in the manner prescribed, from an employer (subject to providing a chance of being heard) for failing/neglecting/delaying insuring its workers under the SS Code and in paying contributions towards ESI

benefits. The onus is on the employer to ensure that all employees of covered establishments under the SS Code, are insured.

As is under the current regime, a woman employee availing maternity benefits under the SS Code will not be entitled to avail similar benefits under the provisions on ESI under the SS Code.

Other provisions in relation to ESI under the SS Code have not undergone any significant change from the current law under the ESI Act.

E. Gratuity

i. Applicability of the chapter on gratuity

The chapter on gratuity is applicable to every factory, mine, oilfield, plantation, port, railway company and to every shop or establishment employing 10 or more employees on any day in the preceding 12 months or to every shop and establishment so notified by the appropriate Government from time to time.

ii. Eligibility for gratuity

Similar to the POGA, gratuity is payable to employees at the time of termination of their employment, provided they have rendered continuous service for a period of five years, except if such termination of employment is due to death, disablement, expiration of a fixed-term employment, or on the happening of any such event as may be notified by the Central Government. In a marked change, the SS Code has extended the benefit of gratuity to fixed-term employees, irrespective of the duration of their employment, making it mandatory on employers to disburse gratuity amounts to fixed-term employees even if they are employed for less than five years. Further, 'working journalists' as defined under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, will be entitled to gratuity after rendering three years of continuous service.

iii. Calculation of gratuity

The formulae for calculation of gratuity remains similar to the one provided for under the POGA i.e.

15 days' wages (or such number of days as may be notified by the Central Government) for every completed year of service, based on the rate of wages last drawn by the employee concerned, subject to a ceiling to be prescribed by the Central Government. The SS Code further clarifies that for fixed-term employees or deceased employees, gratuity is payable on a *pro rata* basis. As under the POGA, the Code also recognises an employee's right to receive better terms of gratuity under any award or contract with the employer.

Other provisions in relation to payment of gratuity under the SS Code have not undergone any significant changes from the current law under the POGA.



F. Maternity Benefit

i. Applicability

Maternity Benefit is applicable to every establishment that is a factory, mine or plantation including any such establishment belonging to the Government, and to every shop and establishment in which 10 or more employees are employed or were employed on any day of the preceding twelve months, and to such other shops and establishments as may be notified by the appropriate Government from time to time.

ii. Prohibition of Employment

The SS Code prohibits the employment of any woman in any establishment, during the six weeks immediately following the day of her delivery, miscarriage, or medical termination of pregnancy. Furthermore, a pregnant woman may excuse herself of performing any arduous work for a period of one month immediately preceding the period of six weeks, and in the six weeks before the expected date of delivery. The SS Code also describes "any work of arduous nature" to mean any work which involves or requires strenuous effort or is difficult and tiring in nature.

iii. Benefits

Similar to the MB Act, the SS Code confers on every woman the right to receive maternity benefit and prescribes 26 weeks as the maximum period for

which any woman would be entitled to maternity benefit. Furthermore, every woman who is entitled to maternity benefit is also entitled to medical bonus amounting to INR 3,500, where pre-natal confinement and post-natal care is not provided by an employer, free of charge. The amount of medical bonus can be modified by the Central Government by way of a notification, and while the MB Act imposed an upper ceiling of INR 20,000 on such a notified amount of medical bonus, which could be revisited by the Government every three years only, the SS Code does not prescribe any upper limit to such a modified amount, nor does it prescribe a period of three years for revisiting the amount of medical bonus payable. Another concept introduced by the SS Code is that of common creche facilities. While the requirement to provide creche facilities continues to apply to establishments having 50 or more employees, the SS Code allows an establishment to now avail a common creche facility of the Central Government, State Government, municipality, private entity or of a non-governmental organisation or of any other organisation. A group of establishments can now, under the SS Code, pool their resources for setting up of a common creche in a manner agreeable to the establishments concerned.

Other provisions in relation to maternity benefit under the SS Code have not undergone any significant changes from the current law under the MB Act.

G. Employees' Compensation

i. Applicability

Similar to the ECA, the provisions pertaining to employees' compensation are applicable to every person employed in the scheduled categories including *inter alia* persons employed in railways, mines etc. or to those employed in categories that may be further notified by the Central Government, for this purpose. Employers and employees who are covered under ESI are excluded from the applicability of provisions on employees' compensation.

ii. Notice of accident

An employer is required to give notice to the competent authority of any accident occurring in the employer's premises within seven days of such accident that results in death or serious bodily injury.

iii. Compensation

An employer will be liable to pay compensation to employees if any injury is caused to them due to an accident or occupational disease (as defined in the Third Schedule of the SS Code). However, employers will not be required to pay any compensation in the following circumstances;

- ⌞ If the injury does not lead to total or partial disablement for more than three days,
- ⌞ If the injury does not lead to death or permanent disablement, and was caused when the employee was under the influence of drugs,
- ⌞ If the injury was caused to employee in wilful disobedience of on order, or
- ⌞ If the injury was caused as a consequence of wilful removal or disregard of safety gear.

The SS Code also deems certain accidents or occupational diseases as specified in the Third Schedule to be necessarily arising in the course of employment. It may also be noted that the appropriate Government can only make additions to the Third Schedule by way of amendment and cannot remove any categories of accidents or occupational diseases, provided in the said Schedule.

Further, the SS Code clarifies that any accident that occurs to an employee while commuting from the

residence to workplace or vice versa, will be deemed to be in the course of employment.

The amount of compensation payable when:

- a. An injury results in death is 50% of the monthly wages of the deceased employee multiplied by the relevant factor. The current ceiling of INR 1,20,000 is removed under the SS Code;
- b. An injury results in permanent disablement is 60% of the monthly wages of the deceased employee multiplied by the relevant factor. The current ceiling of INR 1,40,000 is removed under the SS Code;
- c. For partial disablement, either 60% or in proportion to the loss in earning capacity, as applicable, and
- d. For temporary disablement, half monthly payment equal to 25% of the monthly wages of the employee.

The State Government is responsible for appointing a competent authority who will be responsible for determining the compensation payable by an employer.

The SS Code provides for an increase in certain amounts payable towards employee's compensation, for instance, funeral expenses to be provided under the SS Code have been increased to INR 15,000 from the existing INR 5,000 under the ECA.

Other provisions in relation to employee compensation under the SS Code have not undergone any significant changes from the current law under the ECA.

H. Social Security and Cess in Respect of Building and Construction Workers (BOCW)

i. Applicability

The provisions relating to social security for BOCW in Chapter VIII of the SS Code are applicable to every establishment which performs activities that fall under the definition of building and other construction work under the SS Code. For this purpose, building and construction work does not include any building or other construction work which is related to any factory or mine or any building or other construction work employing less than 10 workers

or where such work is related to own residential purposes of an individual or group of individuals for their own residence and the total cost of such work does not exceed INR 50,00,000 or such higher amount and employing more than such number of workers as may be notified by the appropriate Government. Further, every BOCW is required to register with the Building Workers' Welfare Board (**BOCW Board**) as a beneficiary, upon completion of 18 years of age.

ii. Benefits available to BOCW

The SS Code permits the levy of cess for the purpose of social security of BOCW at the rate of 1-2%, as may be notified by the Central Government. The cess so levied is to be collected and deposited with the local authority as prescribed by the State Government to the BOCW Board, in a manner as may be prescribed by the Central Government in this regard.

Further the SS Code mandates the setting up of the Building and Other Construction 'Workers' Welfare Fund to which the cess so levied will be credited.

Other provisions in relation to building and construction workers under the SS Code have not undergone any significant changes from the current law under the BOCW Cess Act.

I. Social Security for Unorganised, Gig and Platform Workers

The most distinguishing element of the SS Code perhaps is that it extends social security benefits to categories of workers who thus far, by virtue of being outside the framework of traditional employer-employee relationships, formed part of India's freelance workforce or the informal sector and hence, remained outside the purview of any such employee benefits. While for gig and platform workers, the Government now has the freedom to enact social security schemes under the SS Code, for other unorganised workers such as home-based workers and self-employed workers, the Central Government must enact such social security and welfare schemes. A brief overview of the social security benefits that the Central Government must extend to such unorganised workers and may extend to gig and platform workers is as follows.

i. Applicability

The provisions relating to social security in Chapter IX of the SS Code are applicable to the unorganised sector i.e., to unorganised workers, gig and platform workers. Further, every unorganised worker, gig and platform worker has to be registered as per the provisions of the SS Code and is required to submit his/her Aadhar card to avail the benefit of any schemes under the SS Code.

ii. Benefits

Schemes for gig and platform workers

The SS Code allows the Central Government to launch schemes for gig and platform workers on matters relating to (i) life and disability cover, (ii) accident insurance (iii) health and maternity benefits, (iv) old age protection, (v) creche, and (vi) other benefits as determined by the Central Government. This is a novel move and expands the coverage of social security benefits to erstwhile unprotected categories of workers not being employees.

The SS Code further states that in addition to unorganised workers, the National Social Security Board may also act as the board for the purposes of welfare of gig workers and platform workers and can recommend and monitor schemes for gig workers and platform workers.

The SS Code envisages setting up of the Gig and Platform Workers' Social Security Fund (**Gig and Platform Workers' Fund**), to provide social security and welfare benefits to the gig and platform workers. The Gig and Platform Workers' Fund will be set up and administered by the Central Government and will be funded by a combination of contributions from the Central Government, State Governments, and scheduled aggregators specified under the SS Code. This scheme by the State Government may be funded by the State Government, contributions from beneficiaries, and by corporate social responsibility funds defined under the Companies Act, 2013. For this purpose, scheduled aggregators include those involved in *inter alia* ride sharing services, food and grocery delivery services, content and media services, and e-marketplaces. The contribution from an aggregator has to be at a rate specified by the Central

Government, between 1-2% of the annual turnover of the aggregators. However, such contribution cannot exceed 5% of the amount paid or payable by an aggregator to gig workers and platform workers. The SS Code also clarifies that if an aggregator has more than one business, such a business will be treated as a separate business entity or aggregator for the purpose of remitting contributions under the SS Code.

Schemes for unorganised workers

Further, the SS Code **mandates** the Central Government to launch schemes for unorganised workers on matters relating to (i) life and disability cover, (ii) health and maternity benefits, (iii) old age protection, (iv) education, and (v) other benefits as determined by the Central Government. These schemes may be partly funded by Central Government, State Government, contributions by beneficiaries of the scheme and its employers, and by corporate social responsibility funds defined under the Companies Act, 2013.

The State Government has the responsibility to formulate suitable welfare schemes for unorganised workers, for (i) provident fund, (ii) employment injury benefit, (iii) housing, (iv) educational schemes for children, (v) skill upgradation schemes for workers, (vi) funeral assistance, and (vii) old age homes. These State Government schemes too may be funded by the State Government, contributions from beneficiaries, and by corporate social responsibility funds defined under the Companies Act, 2013.

J. Employment Information and Monitoring

The SS Code also provides that the appropriate Government may require employers to report vacancies to career centres (similar to the current employment exchanges), as notified. However, the SS Code does not impose an obligation on the employer to recruit persons from the career centre. Further, these provisions will not apply to vacancies in employment in agriculture, domestic service, staff of Parliament or State, or whose duration is less than 90 days or to any establishment with less than 20 employees.

Furthermore, the vacancies which are proposed to be filled through promotion or absorption in recruitment agencies such as the Union Public Service Commission, Staff Selection Commission or a State Public Service Commission are also outside the purview of such vacancy reporting requirements, under the SS Code.

K. Penalties and Offences

Enhanced Penalties

While laying down uniform penalties for non-compliance with social security-related obligations, the SS Code enhances the penalties for offences committed thereunder, adding to their deterrence value. Given below is an overview of the penalties envisioned under the SS Code.

Sr. No.	Offence	Penalty
1.	Failure by an employer to pay employees' share of contributions deducted by the employer from the employee's wages.	INR 1,00,000 and imprisonment for a period between 1 to 3 years.
2.	Failure by an employer to pay any contribution under the SS Code.	INR 50,000 and imprisonment for 2 to 6 months.
3.	Failure to pay any amount of gratuity to which an employee is entitled under the SS Code.	Up to INR 50,000 or imprisonment for a term of up to 1 year, or both.

4.	For <i>inter alia</i> contravening provisions on ESI and maternity benefit, obstructing any Inspector-cum-Facilitator or other officers from performing their duty, failing to produce documents on inspection, failing to pay cess for building workers and filing dishonest returns, reports or information under the SS Code. For contravention of the provisions of duties relating to hazardous processes.	Up to INR 50,000 or imprisonment for a term of up to 6 months, or both.
5.	For <i>inter alia</i> deducting employer's share of contributions from employees' wages, reducing or deducting any benefits payable to workers, failing to submit reports, returns etc., failing to pay any compensation payable under the SS Code, failing to comply with conditions subject to which an exemption has been granted under the SS Code etc.	Up to INR 50,000.
6.	For a second or subsequent offence in the form of failure by an employer to pay any contribution, charges, cess, maternity benefit, gratuity or compensation, which the employer is liable to pay under the SS Code.	INR 3,00,000 and imprisonment for a term of 2 to 3 years.
7.	For any other second or subsequent offence.	INR 2,00,000 and imprisonment for a term of up to 2 years.

H. Other Salient Features

i. Emphasis on ensuring compliance and not on penalizing an employer

The thrust of the SS Code is to ensure compliance and it introduces various measures to achieve this objective:

a. Inspector-cum-Facilitator

The SS Code provides for the appointment of an Inspector-cum-Facilitator, whose role is enlarged to encompass not just inspection but also to supply information and sensitise employers and workers of the provisions of the SS Code and compliance therewith.

b. Inspection

The Central Government (as the case may be) or the appropriate Government is empowered to frame an inspection scheme that may provision for web-based information and calling for information electronically as well as assign duties to carry out such inspections based on a random selection. If properly framed, it could cut down on abuses that are rampant in the inspection regime currently in place. The factors that will be considered while devising an inspection scheme under the SS Code include *inter alia* the practice of assigning a unique number to establishments (which will be the same as the establishment's registration number) and the assignment of such a unique number to

each Inspector-cum-Facilitator as well as to each inspection undertaken under the SS Code.

c. Prior opportunity to rectify

The SS Code permits the employer to rectify any non-compliances under certain circumstances, and further restricts the Inspector-cum-Facilitator from initiating action unless the employer has been given such an opportunity to rectify the non-compliance within a stipulated period, from the date of notice giving such opportunity. However, the employer would be disqualified from availing such an opportunity if it subsequently indulges in similar violation within a period of 3 years.

d. Compounding of offences

Unlike the current legislations, the SS Code provides for compounding of certain offences either before or after an enquiry is held or prosecution is initiated in a prescribed manner, by paying 50% of the maximum penalty in case of a penalty, and 75% of the maximum fine in case of an offence. However, the option of compounding is not available for the offence committed the second or subsequent time within a period of 3 years from the date of either: (i) commission of a similar offence which was earlier compounded; or (ii) commission of a similar offence for which conviction order has been passed.

ii. Maintenance of registers and records

By consolidating the various registers and records, and permitting the maintenance of the same electronically, the SS Code offers substantial relief to employers. Returns may also be filed electronically under the SS Code. Further, the SS Code recognises the issuance of wage slips in electronic format to the employees.

iii. Introduction of limitation period for inquiry

With regard to disputes regarding the applicability of the chapters on employees' PF and ESI and in relation to any dues payable under the aforementioned chapters, the SS Code lays down that no inquiry may be undertaken by a relevant authority after the expiry of 5 years from the date on which such a dispute would have arisen or amounts are alleged to be due from an employer. The SS Code further lays down that any

such inquiries undertaken in respect of applicability of PF and ESI benefits or payment of dues thereunder will be completed within 2 years, which may be extended for a further period of maximum 1 year.

The SS Code clarifies that within a maximum period of 2 years from the date of its commencement, the concerned authority will conclude all prior pending cases. This move will provide considerable relief to employers, who often find themselves embroiled in long-drawn inquiries regarding PF or ESI dues.

iv. Exemptions under the SS Code

While permitting the appropriate Government to grant exemptions from the applicability of the provisions of the SS Code to an establishment or class of establishments, subject to fulfilment of certain conditions as may be prescribed by the exempting authority, the SS Code clarifies that any such exemption will initially be operative for a period of three years unless extended by the appropriate Government for a further period that may be prescribed by the Central Government. In case of exemptions in relation to PF, the same shall be governed by the PF scheme, pension scheme and insurance scheme as and when enacted.

v. Misuse of benefits

Currently, the ESI Act provides that if the Central Government finds any insured person in a factory or establishment to be misusing the benefits under the ESI Act, the Government can disentitle such a person from availing benefits under the ESI Act. This power to deprive persons or establishments who misuse any social security benefits provided to them under the SS Code, has now been extended to all benefits under the SS Code and the appropriate Government -- after giving reasonable opportunity to such persons of being heard-- under which such establishment or persons can be deprived from availing benefits under the SS Code by way of a notification. The manner to ascertain misuse of PF benefits shall be specified in the PF scheme, pension scheme and insurance scheme as and when enacted.

vi. Appeals/disputes to be accompanied by prior deposit

Under the SS Code, in order to raise disputes before authorities such as the Employees' Insurance Court or

to appeals to tribunals with regard to determination and assessment of PF dues, an employer must deposit a certain percentage of the amount claimed before the concerned social security organisation or the court, as the case may be.

vii. Social Security Organisations

The SS Code also provides for the setting up of different statutory bodies to administer and regulate social security schemes formulated thereunder. These include (i) a Central Board of Trustees, to be headed by the Central Provident Fund Commissioner, to administer the schemes formulated with regard to employees' PF, pension and employees' deposit linked insurance (this will be a body corporate of trustees, to replace the existing Employees' Provident Fund Organisation); (ii) the ESIC to administer a scheme for the regulation of ESI benefits and (iii) state-level BOCW Boards to administer schemes for building workers. Further, a completely new set of authorities in the form of (i) National and State Social Security Boards headed by the Central and State ministers for labour and employment, respectively, to administer schemes for unorganised workers including gig and platform workers; and (ii) the State Unorganised Workers' Social Security Board, may be constituted.

viii. Establishment of a social security fund

To ensure that benefits to gig, platform and unorganised workers are provisioned for and for implementation of schemes framed in this regard, the SS Code requires the Central Government to establish a social security fund and maintain separate accounts in relation thereto.

ix. Powers during an epidemic, pandemic or disaster

Drawing from the experience of the COVID-19 pandemic, the SS Code provides for an expedited passing of rules, regulations and schemes in relation to the provisions of the SS Code, except those pertaining to the chapter on PF. While in every other circumstance any such rules, regulations or schemes to be promulgated under the SS Code are to be published in the Official Gazette as general

information, for at least 45 days, the Central Government may dispense with this requirement of previous publication in case of an epidemic, pandemic or disaster. Additionally, the SS Code empowers the Central government to defer or reduce the employer and/or employee's contribution towards PF and ESI, for a period of up to three months at a time, in the event of a pandemic, epidemic or national disaster.

x. Prioritising employees' dues

In the event of an employer becoming insolvent under the Insolvency and Bankruptcy SS Code, 2016 (**IBC**), the SS Code provides that any dues payable to employees towards *inter alia* PF, ESI, gratuity, maternity benefit etc., will be paid in priority in accordance with the provisions of the IBC.

xi. Overriding effect

The provisions of the SS Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement or contract of service whether made before or after the commencement of the SS Code. Any award, agreement, contract of service or otherwise under which an employee is entitled to more beneficial benefits than under the SS Code will, however, to that limited extent, prevail. The Insolvency and Bankruptcy SS Code, 2016 (**IBC**), the SS Code provides that any dues payable to employees towards *inter alia* PF, ESI, gratuity, maternity benefit etc., will be paid in priority in accordance with the provisions of the IBC.

xii. Preservation of actions taken under existing laws

Once the SS Code is notified, the corresponding legislations will stand repealed. However, any actions taken under those enactments or any rule, regulation, notification, nomination, appointment, order or direction made thereunder will be deemed to have been done or taken or provided for such purpose under the corresponding provisions of the SS Code and will be in force to the extent they are not contrary to the provisions of the SS Code or until they are repealed by the Central Government.

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