



NEWSLETTER

Legal, Compliance and ESG

06 September 2020

Dear Readers,

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A. LEGAL AND REGULATORY UPDATES:

I. Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020¹

The Ministry of Electronics and Information technology (MEITY) on August 05, 2020 has issued the Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020. The Central Government may allow Aadhaar authentication by requesting entities in the

interest of good governance, preventing leakage of public funds, promoting ease of living of residents and enabling better access to services for them, for digitalisation, social welfare benefits and innovation.

The Ministry or the Department of the Government of India or the State Government shall prepare a proposal with justification in regard to such purpose for which Aadhaar authentication is sought and submit the same

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https://uidai.gov.in/images/Aadhaar_Authentication_for_Good_Governance_Rules_2020.pdf

to the Central Government for making a reference to the Authority. If the Authority is satisfied that the proposal, it may allow to perform Aadhaar authentication.

II. Online Dispute Resolution (ODR) System for Digital Payments²

RBI vide its Circular dated August 6, 2020 announced introduction of Online Dispute Resolution (ODR) system for resolving customer disputes and grievances pertaining to digital payments, using a system-driven and rule based mechanism with zero or minimal manual intervention.

As a step in this direction, authorised Payment System Operators (PSOs) – banks and non-banks – and their participants are advised to put in place system/s for ODR for resolving disputes and grievances of customers.

III. New definition of Micro, Small and Medium Enterprises – Clarifications³

RBI vide its circular dated August 21, 2020 has, inter alia, clarified the following:

- (a) Classification of Enterprises as per new definition
- i. Classification / Re-classification of MSMEs is the statutory responsibility of the GOI, Ministry of MSME, as per the provisions of the MSMED Act, 2006.
 - ii. As per Para 2 of the said Gazette notification all enterprises are required to register online and obtain 'Udyam Registration Certificate'. All lenders may, therefore, obtain 'Udyam Registration Certificate' from the entrepreneurs.

- (b) Validity of EM Part II and UAMs issued till June 30, 2020

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<https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/21ODR602F0A579EB246AA885776A76122DB0C.PDF>

3

<https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NOTI262654FEA1F3864D858960F92C2E329696.PDF>

- i. The existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAMs) of the MSMEs obtained till June 30, 2020 shall remain valid till March 31, 2021. Further, all enterprises registered till June 30, 2020, shall file new registration in the Udyam Registration Portal well before March 31, 2021.
- ii. 'Udyam Registration Certificate' issued on self-declaration basis for enterprises exempted from filing GSTR and / or ITR returns will be valid for the time being, upto March 31, 2021.

(c) Value of Plant and Machinery or Equipment

The online form for Udyam Registration captures depreciated cost as on 31st March of each year of the relevant previous year. Therefore, the value of Plant and Machinery or Equipment for all purposes of the Notification No. S.O. 2119(E) dated June 26, 2020 and for all the enterprises shall mean the Written Down Value (WDV) as at the end of the Financial Year as defined in the Income Tax Act and not cost of acquisition or original price, which was applicable in the context of the earlier classification criteria.

- (d) In view of the above, instructions contained in circular FIDD.MSME & NFS.BC.No. 10/06.02. 31/2017-18 dated July 13, 2017 on 'Investment in Plant and Machinery for the purpose of classification as Micro, Small and Medium Enterprises – documents to be relied upon' are superseded.

IV. IBBI provides option to replace liquidator under voluntary liquidation process⁴

IBBI vide its notification dated August 05, 2020 notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second

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<https://ibbi.gov.in/uploads/legalframework/41dae71b62c3fa756602c8fec7848b58.pdf>

Amendment) Regulations, 2020 to amend the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

The amended regulation provides an option to the Corporate Persons to replace the insolvency professional as liquidator by appointing another insolvency professional as liquidator by a resolution of members or partners, or contributories, as the case may be.

V. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) (fourth amendment) Regulations, 2020.⁵

IBBI vide its notification dated August 07, 2020 notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2020 to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The amendments have substituted sub-sections and sub-regulations to provide further clarity to the end user.

Key highlights of the Amendment are as follows:

- (i) In regulation 4A, in sub-regulation (2), after clause (a), the following clause shall be inserted, namely: -

“(aa) having their addresses, as registered with the Board, in the State or Union Territory, as the case may be, which has the highest number of creditors in the class as per their addresses in the records of the corporate debtor:

Provided that where such State or Union Territory does not have adequate number of insolvency professionals, the insolvency professionals having addresses in a nearby

State or Union Territory, as the case may be, shall be considered;”.

- (ii) In regulation 39, for sub-regulation (3), the following sub-regulations shall be substituted, namely:

“(3) The committee shall: (a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix; (b) record its deliberations on the feasibility and viability of each resolution plan; and (c) vote on all such resolution plans simultaneously.

(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.

(3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved: Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting: Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

VI. The Trade Marks Registry has issued a public notice to conduct show-cause hearing through video conferencing⁶

Trade Marks Registry vide its Public Notice dated August 26, 2020 announced to conduct Show-Cause Hearing through Video Conferencing. It stated that hearings will be scheduled in those matters where the applicant or authorised agent gives consent and confirm their participation for the hearing through Video Conferencing. In this regard, all Applicants / Agents who are interested in

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<https://ibbi.gov.in/uploads/legalframework/691983ad021bf2a65a708f57d17595b8.pdf>

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http://www.ipindia.nic.in/writereaddata/Portal/News/707_1_Public_Notice_TLA.pdf

hearing of their matters through video conferencing are requested to submit their consent to attend Show-Cause Hearing by sending an email at tlahearing-tmr@gov.in. Email sent to any other email address shall not be entertained. It may be noted that only cases for those parties will be scheduled for hearing where concern applicants or their authorised agent submit consent on or before 05/09/2020. Other applications will be kept in abeyance to schedule hearing in person as and when hearing with a physical presence are started. It may further be noted that if the applicant or its authorised agent as the case may remain absent on the date of hearing the application will be decided as per law. For submitting consent for hearing through video conferencing applicant or its authorised agent shall submit his request by writing in subject "consent for show-cause Hearing through Video Conference". The Office will try to schedule all pending applications of concern applicant/agent on the same day in sequential order as per available time.

VII. Maharashtra government slashes stamp duty by 3% until December 2020

Government of Maharashtra has issued an Order dated August 29, 2020 to reduce the stamp duty on the instrument of Conveyance or Agreement to Sell of any immovable property (otherwise chargeable under clause (b) of Article 25 of Schedule I):

- (a) by 3% in Mumbai District and Mumbai Sub-Urban District and by 2% in the rest of the State of Maharashtra, for the period starting from 1st September, 2020 and ending on 31st December 2020; and
- (b) by 2% in Mumbai District and Mumbai Sub-Urban District and by 1.5% in the rest of the State of Maharashtra, for the period starting from 1st January, 2021 and ending on 31st March, 2021.

B. The Consumer Protection Act, 2019: An Overview⁷

The Parliament passed the Consumer Protection Bill, 2019 on 06.08.2019 to replace the Consumer Protection Act, 1986 (“1986 Act”). The President of India gave its assent to the Consumer Protection Act, 2019 (“2019 Act”) on 09.08.2019 and the same has come into force majorly from 20.7.2020.

The 2019 Act has been enacted for the purpose of providing timely and effective administration and settlement of consumer disputes and related matters.

The Government instead of bringing an amendment in the 1986 Act, enacted a new Act altogether so as to provide enhanced protection to the consumers taking into consideration the booming e-commerce industry and the modern methods of providing goods and services such as online sales, tele-shopping, direct selling and multi-level marketing in addition to the traditional methods.

Key Highlights of the new Act:

- E-Commerce and false advertisement:** The definition of “consumer” under the new Act includes the consumers who make purchases through e-commerce platform. The earlier Act did not include the consumers who buy products online and this lacuna has been filled by the 2019 Act. There is a separate provision for endorsement of goods and services, which are normally endorsed by the celebrities are covered under the provision of false and misleading advertisement. The onus on the celebrities is additional to the liability placed on the manufacturers and service providers. Misleading advertisement shall also mean deliberately hiding important information. CCPA which shall be discussed later also regulates false and mis-leading advertisement.
- Food Safety and Standards Act, 2006:** The 2019 Act includes the definition of “food” as defined under the Food and Standards Act, 2006. This has replaced the definition of “goods” under the 1986 Act. This would help in bringing the number of food delivery platforms to come under the ambit of consumer protection.
- Telecom Services:** In order to bring the telecom services under the 2019 Act, “telecom” has been added to the definition of “services”.

4. Pecuniary Jurisdiction:

| Forum | As per old Act | As per the New Act |
|---------------------|--------------------|--------------------|
| District Forum | Upto 20 Lakhs | Upto 1 Crore |
| State Commission | 20 Lakhs – 1 Crore | 1 Crore – 10 Crore |
| National Commission | Above 1 Crore | Above 10 Crore |

5. Structural Reforms:

| Particulars | District Forum | State Commission | National Commission |
|------------------|---|---|---|
| Composition | 1 President and at least 2 members | 1 President and at least 4 members | 1 President and at least 4 members |
| Location | In district of the State | In each state | At NCR |
| Qualification | As given by Central Government | As given by Central Government | As given by Central Government |
| Filing Complaint | By Central Authority; may be filed electronically | By Central Authority; may be filed electronically | By Central Authority; may be filed electronically |

⁷ <https://www.latestlaws.com/articles/consumer-protection-act-2019-analysis-and-challenges-for-future/#:~:text=The%202019%20Act%20includes%20the,%20ambit%20of%20consumer%20protection.>

| | | | |
|-----------------------|--|--|--|
| Place of Suing | Where the complainant resides or works | Where the complainant resides or works | |
|-----------------------|--|--|--|

A case is deemed to be admitted if no decision is given within 21 days. If complainant do not reach the consumer forum then case shall be decided on merit.

6. Appeals:

| From orders of District Commission to State Commission | From State Commission to National Commission | From National Commission to Supreme Court |
|--|--|--|
| <ul style="list-style-type: none"> • Within 45 Days (earlier 30 days) • Fees shall be 50% of Pre-deposit (earlier 25,000 INR) • No appeal applicable if decision passed through mediation | <ul style="list-style-type: none"> • Within 30 Days • Fees shall be 50% of Pre-deposit (earlier 35,000 INR) • Ex-parte orders | <ul style="list-style-type: none"> • Within 30 days • Fees shall be 50% of Pre-deposit (earlier 50,000 INR) • Ex-parte orders |

- Central Consumer Protection Authority:** Central Consumer Protection Authority (CCPA) has been set up to promote, protect and enhance consumer rights. The headquarter shall be in NCR and regional offices shall be decided by the government. The authority shall regulate the violation of consumer rights, unfair trade practices, and misleading advertisements. There shall be an investigation wing headed by Director general (DG).
- Unfair Contracts:** An unfair contract shall mean a contract between manufacturer/trader/service provider and a consumer which causes harm to the consumer or significant change in the rights of the consumer. One of such examples can be unilateral termination of the contract without any prior information. For the same purpose a complaint can, be filed in the State Commission up to 10 Crore INR and in National Commission above 10 Crore INR.
- Product Liability:** The Manufacturer, Product Service Provider and Product Seller shall be liable under the new Act for any kind of harm caused by their product(s) which results in any injury or death of the consumer. However, the liability on the part of the manufacturer will be more. This shall also apply to the e-commerce platforms as well. The harm should be caused by the defective good which results in injury, death, mental agony, loss of consortium or any other harm. The harm must be real and does not include any economic loss.
- Mediation (Alternate dispute Resolution):** The new Act provides facility for mediation which shall be voluntary and not binding on the parties. Median shall make the process quicker, simpler and help with speedier resolution of disputes. The Consumer Mediation Cell (CMC) shall be attached to each district, state and national level which is itself a tedious and lengthy task owing to the funding that courts get and the lack of infrastructural facilities especially at the district level.
- Filing of Complaint:** The complaint can be filed by the consumer himself or the parents and legal guardian of the consumer. The new Act allows the consumer to file a complaint at the place where he/she resides or at the place he/she works. The complaint can also be filed electronically and heard vial video conferencing in certain circumstances.
- Stricter Penalties:** The new Act provides for imposition of stricter penalties on the violators in event of (i) failure to comply with directions of the Act, (ii) false or misleading advertisements, (iii) manufacture/sale/storage of adulterated goods, (iv) manufacture/sale/storage of spurious goods, to deter violators from committing any wrong under the act.

C. Case-Study: Vineeta Sharma Vs. Rakesh Sharma & Ors. [Civil Appeal 32601 of 2018, Judgment Date: 11 August 2020]

Introduction

The Supreme Court on 11th August, 2020 said that a daughter is entitled to equal property rights under the amended Hindu Succession Act. A woman can claim equal share in family property as a daughter, the Supreme Court reiterated today as it stressed that the Hindu Succession Act, that was amended in 2005 to give women equal inheritance rights has a retrospective effect.

Issue in Brief:

The Hindu Succession (Amendment) Act, 2005, an amendment to the Hindu Succession Act, 1956 ("Act"), received the assent from President of India on 5 September 2005 and was given effect from 9 September 2005. It was essentially meant for removing gender discriminatory provisions regarding property rights in the Hindu Succession Act, 1956.

The daughter could now have the same rights in the coparcenary property (ancestral property of the Hindu undivided family) as a son. This amendment also repealed Section 23 of the Act which disentitled a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares.

Section 24 of the Act which denied rights of a widow to inherit her husband's property upon her re-marriage were repealed. This Act has brought about a central amendment which was applicable to all the state governments.

Prior to the amendments made by the Hindu Succession (Amendment) Act, 2005, only male members of a family had a right to the Ancestral property by birth and they were only entitled to demand partition in the HUF Property and thus only male members were called coparceners.

In 2005, the amendment did not provide a retrospective operation. The amendment stated that sons and daughters of a coparcener become coparceners by virtue of birth.

A three judge bench that pronounced a judgment on 11th August, 2020 in a batch of appeals that raised an important legal issue of the Hindu Succession (Amendment).

The apex court in its ruling added that daughters will have the right over parental property even if the co-parcener had died prior to the coming into force of the Hindu Succession (Amendment) Act, 2005, thus making the Act retrospective in nature

The three-judge bench, said, "Once a daughter, always a daughter... a son is a son till he is married. The daughter shall remain a coparcener (one who shares equally with others in inheritance of an undivided joint family property) throughout life, irrespective of whether her father is alive or not."

The Supreme Court held that daughters would have equal coparcenary rights in Hindu Undivided Family (HUF) properties even if they were not alive at the time of the 2005 amendment to the Hindu Succession Act, 1956.

D. ESG: From BRR to BRSR: Road ahead for sustainability reporting by businesses⁸

A business entity incorporated with an objective to earn profits has certain responsibilities towards its stakeholders. These stakeholders may include investors, employees, suppliers, customers etc. The stakeholders track the developments in the company by means of the disclosures which such incorporated entities are mandated to make under laws applicable to them. The disclosures to be made by such entities are of two kinds viz, financial and non-financial. The financial disclosures include various documents like the balance sheet, profit and loss account, cash flow statements etc. Whereas the non-financial disclosures include the Boards' Report, Corporate Social Responsibility reporting and various Corporate Sustainability Reporting. These disclosures enable stakeholders to make informed decisions.

In the recent times, investors have become quite conscious of the fact that the society in particular and the environment at large are also a part of the stakeholders' chain. There has been a worldwide trend in people questioning the impact of a business entity on environment and other sustainability factors.

Internationally, the Global Responsibility Initiative's Sustainability Standards (GRI standards) are considered to be the first and the most widely accepted standard for sustainability reporting. The GRI Standards helps businesses to communicate their impact inter-alia on climate change, governance, human rights and social well-being.

History of Sustainability Reporting – Indian Scenario

In India, the Ministry of Corporate Affairs (MCA) had in 2009, issued the 'Voluntary Guidelines on Corporate Social Responsibility' as a step towards mainstreaming the concept of business responsibility. In July, 2011, MCA issued the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVG)' for voluntary adoption by all businesses. The NVG Guidelines provided 9 principles which emphasized that businesses have to endeavor to become responsible actors in society, so that their every action leads to sustainable growth and economic development. Although the NVG was voluntary for adoption by companies, the Securities and Exchange Board of India (SEBI) vide its circular dated August 13, 2012 mandated top 100 listed entities to submit a Business Responsibility Report ("BRR") as a part of their Annual Reports. Pursuant to the notification of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations), the BRR was made a part of the Listing Regulations for top 100 listed entities based on market capitalization. Later, the Listing Regulations was amended in 2015 itself to make BRR applicable to top 500 listed entities which was again altered in 2019 to extend the applicability of BRR to top 1000 listed entities.

The Article analyses the framework of BRR in India amidst the recent report[3] of the Committee constituted by MCA under the Chairmanship of Mr. Gyaneshwar Kumar Singh for finalizing the BRR format on the basis of the updated NVG released in March, 2019 in the name of 'National Guidelines for Responsible Business Conduct' (NGRBCs)'.

BRR to BRSR – Sustainability Reporting for all

One of the most notable recommendations of the Committee is the change in name of the reporting framework from Business Responsibility Report (BRR) to Business Responsibility and Sustainability Report ("BRSR"). The nomenclature has been refashioned to enhance the scope of the Report and more accurately convey the thrust on sustainability and business responsibility. Analyzing the current reporting framework of the BRR as mandated by SEBI vis-à-vis the proposed BRSR, the following notable differences/ modifications can be observed:

| BRR | BRSR | Remarks |
|-----|------|---------|
|-----|------|---------|

⁸ <https://taxguru.in/corporate-law/brr-brsr-road-sustainability-reporting-businesses.html>

| | | |
|--|--|---|
| Applicable to top 1000 listed entities based on market capitalization. | Applicable to all listed and unlisted companies (to be done in a phased manner). | The scope of BRSR has been enhanced to make it applicable to all companies. |
| Reporting done by companies as a part of their annual reports. | Reporting to be done on the MCA21 portal preferably in XBRL format. | Thus, a listed company may have to report twice. Firstly, in the annual report and second on the MCA21 portal. |
| Format of BRR prescribed by SEBI. | Two formats prescribed by the Committee. A comprehensive format and a <i>Lite</i> version. | The comprehensive format would be for the large companies and the companies already reporting under the Listing Regulations. Whereas the <i>Lite</i> version is for the companies who may be unfamiliar with any sort of sustainability reporting and the BRSR would be their first effort at developing a sustainability report. |

Structure of the BRSR framework

In contrast with the SEBI prescribed format for BRR to be disclosed in the annual report, the BRSR framework emphasize on the basic and most desired elements of sustainability and responsibility reporting. The BRSR formats have been formulated to serve as a single source of sustainability information reporting for companies across the country.

The broad components of the BRR as compared to the BRSR are as follows:

| Components of BRR (As per SEBI prescribed format) | Components of BRSR (Comprehensive and <i>Lite</i> version) |
|---|---|
| General information about the Company | General disclosures about the Company: More detailed than the SEBI format. Certain data would be pre-filled based on disclosures filed in Form MGT-7/ AOC-4. |
| Basic financial details of the Company | Basic financial details of the Company |
| Other details: information about subsidiaries and BR initiatives of the subsidiaries if any | Details of whether subsidiary company if any, participates in the BR initiatives of the parent company |
| <ul style="list-style-type: none"> • BR information: details of the BR efforts of the Company based on the 9 principles of the NVG • Principle-wise performance | <ul style="list-style-type: none"> • Management and process disclosure <ul style="list-style-type: none"> ○ Structures, policies and processes put in place toward adopting the principles and core elements of sustainability reporting ○ Based on the NGRBC framework. • Principle-wise performance disclosure |

Conclusion:

The step to make applicable the BRSR framework to all types of companies will go a long way in instilling the practice of responsible business with a sustainable behavior. Although this is a first attempt to bring even the small/ unlisted companies to the platform of sustainability reporting, the success of the same would be achieved only if companies imbibe the tradition of sustainability in spirit and not just for the matter of compliance.