



*Vinuja Menon*  
*Associate*

## SUMMARY OF CODE ON SOCIAL SECURITY, 2020

### Introduction

The Parliament passed the Code on Social Security, 2020 (the “**Code**”) and it received the assent of the President of India on 28<sup>th</sup> September. This Code was notified as law on 29<sup>th</sup> September 2020.<sup>1</sup> It will be brought into force on the date appointed by the Central Government (**CG**) and different provisions may be enforced on differing dates.<sup>2</sup>

The Code replaces the following nine legislations:

- (a) Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (“**EPF Act**”);
- (b) Employees’ State Insurance Act, 1948 (“**ESI Act**”);
- (c) Payment of Gratuity Act, 1972 (“**Gratuity Act**”);
- (d) Maternity Benefit Act, 1961 (“**MBA**”);
- (e) Employee’s Compensation Act, 1923 (“**ECA**”);
- (f) Building and Other Construction Workers’ Welfare Cess Act, 1996;
- (g) Unorganised Workers Social Security Act, 2008 (“**Unorganised Workers Act**”)
- (h) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (“**EE Act**”);
- (i) Cine-Workers Welfare Fund Act, 1981;

### Key Features of the Code

1. **Applicability:** It provides for applicability of EPF scheme and ESI on a voluntary basis even if the number of employees or workers<sup>3</sup> is less than the threshold prescribed.<sup>4</sup>
2. **Definition of Employee:**<sup>5</sup> Contract labourers come within the definition of ‘employee.’ For contributions with respect to employee provident fund (**EPF**),<sup>6</sup> state insurance fund<sup>7</sup> and employees’ compensation,<sup>8</sup> made by the employer in respect of the contract labourers, the employer can recover these payments from the contractor. However, there is no similar recovery option available to the employer in the Code on gratuity.

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<sup>1</sup> *Gazette of India Extraordinary* No. 61 dated 29<sup>th</sup> September 2020. Full text of the code at: [https://labour.gov.in/sites/default/files/SS\\_Code\\_Gazette.pdf](https://labour.gov.in/sites/default/files/SS_Code_Gazette.pdf)

<sup>2</sup> Section 1(3).

<sup>3</sup> Replacing the term ‘workman’ with this gender-neutral reference.

<sup>4</sup> Section 2(26). The threshold prescribed for applicability for EPF is 20 employees and 10 employees for ESI.

<sup>5</sup> Section 2(26).

<sup>6</sup> Section 17.

<sup>7</sup> Section 31.

<sup>8</sup> Section 85.

3. **National Social Security Board (NSSB):** Provides for setting up of NSSB<sup>9</sup> with powers to recommend schemes to the CG and monitoring them for different types of unorganised workers and advising the CG on administration of the Code.
4. **Definition of Wages:**<sup>10</sup> A uniform definition is made applicable for all social security benefits. ‘Wages’ means “*all remuneration by way of salaries, allowances or otherwise and includes basic pay, dearness allowance and retaining allowance.*” It lists exclusions *viz.*, house rent allowance, overtime allowance, commission payable and conveyance allowance. It is mandated that: “*if the exclusions from wages is in excess of 50% of the total amount of wages, such excess amount shall be deemed to be wages.*” This means that at least 50% of the remuneration must form a part of wages. The definition uniformly applies to all benefits.
5. **Differential Rates for EPF Contribution:**<sup>11</sup> An Employee has an option of contributing more than 10%<sup>12</sup> with the condition that the employer’s liability shall remain at 10%. The CG may also specify different rates for employees by way of a notification, enabling it to increase the employee’s take home salary.
6. **Recognition of Fixed-Term Employment (FTE):**<sup>13</sup> FTE is legally recognized and fixed-term employees are entitled to the same benefits as that of a permanent employees doing the same or similar work. The benefits will apply proportionately despite the consideration of completion of the number of years mandated under law. This implies that gratuity shall apply proportionately to such an employee even if the five years of ‘continuous service’ is not completed.<sup>14</sup>
7. **Payment of Medical Bonus:**<sup>15</sup> A woman entitled to maternity benefit is also entitled to receive a medical bonus of Rs. 2,500 or any other amount as the CG may prescribe if no pre-natal confinement and post-natal care is provided by the employer at no cost.
8. **Career Centres and Notification of Vacancies:**<sup>16</sup> When notified by the appropriate government, every employer, before filling up any vacancy in an establishment must report the vacancy to the career centre. The Employment Exchange Act applied only to private establishments that employed more than 25 employees, however, the Code has no such threshold.
9. **Use of Aadhaar Number:**<sup>17</sup> An employee or an unorganised worker or any other person must register through their Aadhaar number for seeking all benefits, whether in cash or kind or for using the services of a career centre or for receiving payment as an insured person.
10. **Recognition of Unorganized Workers, Gig Workers & Platform Workers:**<sup>18</sup> The Code provides that the CG and State Government will notify suitable welfare schemes for such workers.<sup>19</sup> ‘Gig Workers’ refer to “*a person who performs work or participates in a work arrangement outside of traditional employer-employee relationship and earns from such an activity.*”<sup>20</sup>

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<sup>9</sup> Section 6.

<sup>10</sup> Section 2(88).

<sup>11</sup> Section 16(1).

<sup>12</sup> Or 12% by employer and employee as when notified by CG.

<sup>13</sup> Section 2(34).

<sup>14</sup> Section 53(1)(b).

<sup>15</sup> Section 64.

<sup>16</sup> Section 139.

<sup>17</sup> Section 142.

<sup>18</sup> Sections 2(86), 2(35) and 2(61).

<sup>19</sup> Section 109.

<sup>20</sup> Section 2(35).

**11. Inspector-cum-Facilitator:**<sup>21</sup> As against inspectors under the existing law, the appropriate government will appoint Inspector-cum-Facilitator to advise employers and employees and inspect establishments for implementing the Code.

**12. Digitisation:**<sup>22</sup> All records must be maintained by establishments and returns must be filed electronically, which are expected to enhance compliance and improve governance under the Code.

**13. Increased Penalties for Non-Compliance with the Code:**<sup>23</sup> Imprisonment and fines are prescribed for offences committed under the Code. Prison terms range from 6 months to 3 years depending on the nature of offence. The Code allows for compounding of offences if punishable with only fine only or prison term of up to 1 year if not a repeat offence.

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<sup>21</sup> Sections 2(37) and 122.

<sup>22</sup> Section 111 and 123.

<sup>23</sup> Section 133 and 134.