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LEY BOLETÍN

OVERVIEW OF THE MATERNITY BENEFIT (AMENDMENT) ACT 2016

The Maternity Benefit (Amendment) Bill, 2016 (“**Amendment Act**”) passed by Rajya Sabha on August 11, 2016, proposes to amend the Maternity Benefit Act, 1961, (“**1961 Act**”). The Amendment Act is yet to come into force, however below captured are the salient features of the Amendment Act in comparison to the 1961 Act.

GENERAL ASPECTS:

- To be eligible for maternity leave, a woman should have actually worked in an establishment of the employer for at least 80 (Eighty) days in the 12 (Twelve) months immediately preceding the date of her expected deliver.
- No pregnant woman can be removed from her job due to her pregnancy.
- Any employer, who contravenes the provisions of the 1961 Act or dismisses any pregnant woman on account of her absence as provided for under the 1961 Act, shall be subject to a maximum fine of Rs. 5000 or with a maximum imprisonment of 1(One) year or both.
- It is pertinent to note 12 (Twelve) weeks of maternity leave will continue to apply to women with two or more surviving children.

IMPORTANT CHANGES:

S. No.	Benefit	1961 Act	Amendment Act
1.	Leave Entitled	12 (Twelve) weeks	26 (Twenty Six) weeks
2.	Commissioned Mothers	-	Introduced and defined as “biological mother who uses her egg to create an embryo implanted in another woman”
3.	Leave for Adoptive and Commissioned Mothers	-	12 (Twelve) Weeks
4.	Time Period to Avail the Benefits	6 (Six) weeks prior to the expected date of delivery	8 (Eight) weeks prior to the expected date of delivery
5.	Work from Home Option	-	If the nature of job is such that the new mother can work from home, she may be allowed to work from home, with the consent of the employer, for a duration mutually agreed upon, after the period of 26 (Twenty Six) weeks of leave

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S. No.	Benefit	1961 Act	2016 Act
6.	Nursing Breaks	Two nursing breaks (in addition to her rest interval)	Four nursing breaks (in addition to her rest interval)
7.	Crèche	-	Mandatory crèche within a prescribed distance either separately or along with common facilities, for every establishment employing 50 or more people
8.	Duty to Inform	An employer was required to place in a conspicuous place the maternity benefits available to expecting mothers under law in a local language in every part of the establishment	Employer to intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act

ARBITRABILITY OF DISPUTES UNDER TRUST ACT AND TRUST DEED

Arbitration in India is governed by the Arbitration and Conciliation Act, 1996 (“Act”). Currently, the Act cannot be invoked in cases relating to:

- rights and liabilities arising out of criminal offences;
- matrimonial disputes;
- guardianship matters;
- insolvency and winding-up matters;
- testamentary matters; and
- eviction or tenancy matters governed by special statutes.

On 17th August, 2016, the Supreme Court of India in *Vimal Kishor Shah & Ors. v. Jayesh Dinesh Shah & Ors* (Civil Appeal No 8164/2016) ruled that disputes governed by the Indian Trust Act, 1882 (“**Trust Act**”) and any dispute arising from a trust deed is beyond the scope of arbitration as the Trust Act itself provides for adequate remedies.

This issue first came before the Bombay High Court for consideration. An application under Section 11 of the Act was filed by one of the beneficiaries as the parties could not agree on the name of the arbitrator. The said application was opposed by the other beneficiaries on the grounds that no arbitration agreement existed between the beneficiaries as they were not signatories to the trust deed. It was held then by the Bombay High Court that a beneficiary accepts to be bound by all obligations, including the obligation to arbitrate allowed under the Section 11 application. Thus the concept of 'deemed acceptance' was invoked whereby when the beneficiary accepts the benefits under a trust, the beneficiary is deemed to be bound by all obligations under the relevant trust deed.

On appeal to the Supreme Court, apart from raising the issue of the beneficiaries not being signatories to the trust deed, it was also disputed as to whether differences under the trust deed were arbitrable at all, even though the Trust Act provided for adjudication of disputes between parties to a trust deed by the Civil Court. While deciding this point of law, the Supreme Court held that an arbitration clause in the trust deed does not constitute an arbitration agreement among the beneficiaries within the meaning of Section 7 of the Act.

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Further the Bench concluded that “*the intention of the legislature was to confer jurisdiction only on Civil Court for deciding the disputes arising under the Trust Act. The Trust Act exhaustively deals with the trust, trustees and beneficiaries and provides for adequate and sufficient remedies to all aggrieved persons by giving them a right to approach the Civil Court of principal original jurisdiction for redressal of their disputes arising out of trust deed and the Trust Act then, any such dispute pertaining to affairs of the trust including the dispute inter se between trustee and beneficiary in relation to their right, duties, obligations, removal etc. cannot be decided by the arbitrator by taking recourse to the provisions of the Act.*”

The Supreme Court has held that the scheme of the Trust Act comprehensively and adequately covers each subject pertaining to the trust laws and confers jurisdiction on Civil Courts to resolve disputes therein. Further the Supreme Court concluded that since the provisions in the Trust Act already provide for a forum for dispute resolution, the intention of the legislature is to bar the parties from referring such disputes to arbitration.

SNIPPETS OF OTHER KEY LEGAL UPDATES

The Insolvency and Bankruptcy Code, 2016: The Central Government *vide* notification dated 5th August 2016, has notified sections 188 to 194 (both inclusive) of the Insolvency and Bankruptcy Code, 2016 Code. The abovementioned sections deal with the establishment, constitution, term of office for the members, filling vacancy, removal of members, rules and procedure that the Insolvency and Bankruptcy Board of India can adopt.
(<http://mca.gov.in/Ministry/pdf/Notificationdated05.08.2016.pdf>)

RBI’s web initiative: The Reserve Bank of India (“**RBI**”) has launched a new website; www.sachet.rbi.org.in known as “sachet”, to bring about transparency in systems of deposits and has listed down institutions that are permitted to accept such deposits. Further the State and the public can lodge complaints and share information regarding illegal companies and entities that are unauthorised to accept such deposits. This has been done with an intention to promote transparency, accountability and as a means to increase public awareness.

Preferential Offer of Partly Paid Up Shares: The Ministry of Corporate Affairs (“**MCA**”) *vide* Notification No.G.S.R 704(E) dated 19th July 2016, has deleted Clause (c) of Rule 13 of Companies (Share Capital and Debentures) Rules, 2014, which requires securities allotted by way of preferential offer to be made fully paid up at the time of their allotment.
(http://mca.gov.in/Ministry/pdf/Rules_19072016.pdf)

The Factories (Amendment) Bill, 2016: The Factories (Amendment) Bill, 2016 (“**Factories Bill**”) has been introduced in Lok Sabha and the bill seeks to amend the provisions related to overtime hours of work.

- **Overtime hours of work in a quarter:** The Factories Bill intends to raise the overtime per quarter limit to 100 (One Hundred) hours from the already existing limit of 50 (Fifty) hours.
- **Overtime hours if factory has higher workload:** The Factories Bill permits the Central or State government to raise the work load **limit** in case of exceptional press of work for adult workers to 115 (One Hundred and Fifteen) from 75 (Seventy Five) per quarter.
- **Overtime in public interest:** The Factories Bill introduces a provision which permits the Central or State government to extend the total number of hours of overtime work per quarter to 125 (One Hundred and Twenty Five) hours in situations of public interest.

However this Bill is pending the approval of the Rajya Sabha

KEY CONTRIBUTORS Ms. Faiza E / Ms. Sumedha Giridharan / Ms. Vidhyutha Lakshminarayanan

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The Employee's Compensation (Amendment) Bill, 2016 ("Bill"): The Bill has been introduced in Lok Sabha to amend the provisions of the Employee's Compensation Act, 1923.

- **Duty to inform employee of right to compensation:** The Bill introduces a provision which requires an employer to inform the employee in writing of his right to compensation under the said legislation.
- **Penalty for failure to inform:** The Bill penalises an employer if he fails to inform his employee of his right to compensation. Such penalty may be between Rs. 50,000 to 1,00,000 (Rupees Fifty Thousand To One Lakh).
- The Act provides that any dispute related to an employee's compensation will be heard by a Commissioner (with powers of a civil court). Appeals from the Commissioner's order, related to a substantial question of law, will lie before the High Court. Further, the Act stipulates that appeals can be made against orders related to compensation, distribution of compensation, award of penalty or interest, etc. only if the amount in dispute is at least three hundred rupees.
- The Bill raises this amount to ten thousand rupees. It also permits the central government to further raise this amount.
- **Withholding payments pending appeal:** The Bill proposes to delete the provision (*Section 30A of the Employee's Compensation Act, 1923*) enabling the High Court to withhold any payments towards employees who have appealed against a Commissioner's order.

However this Bill is pending the approval of the Rajya Sabha.

Rules relating to Debentures not to apply to Rupee Denominated Bonds: The MCA *vide* G.S.R. 791(E) dated 12th August 2016 has inserted a sub-rule (11) under Rule 18 of the Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016, which states that, Rule 18 dealing with issue of debentures, will not be applicable for rupee denominated bonds issued exclusively to the overseas investors in accordance with A.P. (DIR Series) Circular No. 17 dated September 29, 2015.

(http://mca.gov.in/Ministry/pdf/CompaniesFourthAmendmentRules_17082016.pdf)

Exemptions of certain Non-Banking Financial Companies from the provisions of RBI Act, 1934: The RBI *vide* Master Direction number DNBR.PD. 001/03.10.119/2016-17 dated 25th August 2016 has consolidated the existing provision for exemptions under 45-IA (Requirement of Registration and Net Owned Fund), 45-IB (Maintenance of Liquid Assets), 45-IC (Creation of Reserve Fund), 45-MB (Power of Bank to Prohibit Acceptance of Deposit and Alienation of Assets) and 45-MC (Power of Bank to File Winding Up Petition) of Chapter III B of the RBI Act, 1934.

(https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10565)

Directions issued by the RBI as on August 25, 2016: the RBI *vide* Master Circular dated August 25, 2016 provided the following directions:

- **Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016**, applicable to every non-banking financial company hereinafter specified.
- **Core Investment Companies (Reserve Bank) Directions, 2016.**
- **Standalone Primary Dealers (Reserve Bank) Directions, 2016**, which works to regulate the financial system to the advantage of the country and to prevent the affairs of any Standalone Primary Dealer (SPD) from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such SPD.
- **Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 2016.**
- **Residuary Non-Banking Companies (Reserve Bank) Directions, 2016**, applicable to every residuary non-banking company.

(https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=37874)

UNIVERSAL LEGAL CONTACT INFORMATION

To reach any of our offices:

Ahmedabad | Shivalik High Street | +91 79 4800 0060
 Bangalore | Ulsoor Road | +91 80 6761 6000
 Chandigarh | Panchkula | +91 98 1121 3234
 Chennai | Nungumbakkam | +91 44 42187857
 Delhi | East of Kailash | +91 11 4658 1691
 Mumbai | Mahalaxmi | +91 22 4004 6647

For any queries or discussion on this Edition please contact
 Ms. Vidhyutha Lakshminarayanan at vidhyutha.l@universal-legal.com