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Analysing developments impacting business

EMPLOYMENT OF WOMEN IN NIGHT SHIFTS AND MORE: GOA LEGISLATIVE ASSEMBLY PASSES AMENDMENTS TO THE FACTORIES ACT

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On 1 August 2019, the Goa Legislative Assembly passed the Factories (Goa Amendment) Bill, 2019 (Goa Bill), which can be accessed [here](#). The Goa Bill introduces certain significant changes to the Factories Act, 1948 (Factories Act) as applicable to Goa, which are set out below:

- Women allowed to work in night shifts: Section 66 of the Factories Act allows women to work in factories only between 6 am and 7 pm. Further, under the proviso to Section 66, such hours may be extended by a notification of the state government, provided no variation authorises the employment of any woman between the hours of 10 pm and 5 am. The Goa Bill removes such restrictions imposed by the proviso. Therefore, the Government of Goa (Government) may now allow factories to employ women in night shifts between 7 pm and 6 am, provided the factories comply with such conditions relating to the safety of women as may be notified by the Government.
- Increased hours in case of 'exceptional press of work': Section 65 of the Factories Act permits the state government / Chief Inspector to exempt factories which are dealing with an 'exceptional press of work' from the application of Section 51 (weekly hours), Section 52 (weekly holidays), Section 54 (daily hours) and Section 56 (spread-over). The exemption may be made for any adult worker within certain maximum permissible limits. The Goa Bill increases such limits on maximum weekly hours, including overtime, from 60 to 72 and maximum hours of overtime in a quarter from 75 to 125. Moreover, it restricts the scope of the exemption to only male workers.
- Provision for compounding of offences: The Goa Bill adds a new Section 92A for compounding of certain offences. Under this provision, the Chief Inspector or Inspector may compound any offence listed in a newly introduced Fourth Schedule, provided that such offence does not lead to an accident resulting in death, serious bodily injury or dangerous occurrence. Compounding may be done before or after prosecution is initiated, and the accused shall be discharged accordingly. It may be noted that the offences in the said schedule relate to stipulations mandating provision of facilities such as drinking water, cleanliness, urinals and first aid. Further, Section 92A allows the Government to prescribe fines in respect of these offences, capped at the maximum fine provided under Section 92 (INR 1,00,000), and also modify the Fourth Schedule in any manner.
- Longer limitation period: Under Section 106 of the Factories Act, for the court to take cognizance of an offence, the complaint must be filed within 3 months of the

date on which the alleged commission came to the knowledge of an Inspector. Only in a case that the offence pertains to disobeying an Inspector's written order, the complaint may be filed within 6 months. The Goa Bill increases the limitation period for filing a complaint to 6 months for all offences.

Comment:

The aforesaid changes introduced by the Goa Bill seem to be a positive move as the same intend to promote equality at the workplace. It may be noted that several states have permitted workers, including women, to work during night shifts in shops and commercial establishments. However, Goa is one of the few states to have extended such permission to factories. Pursuant to the enabling provision relating to stipulation of conditions, it is imperative that the Government prescribes adequate safety and security measures, including the requirement of prior consent of women workers and provision of transportation facilities, to prevent any unwarranted exploitation or untoward incidents.

Further, the introduction of compounding of offences provides a viable option to deal with offences which are less grievous in nature, in a timely and cost-effective manner by avoiding litigation. One also needs to be mindful of the extended limitation period of 6 months under the Goa Bill to raise any complaint under the Factories Act.

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