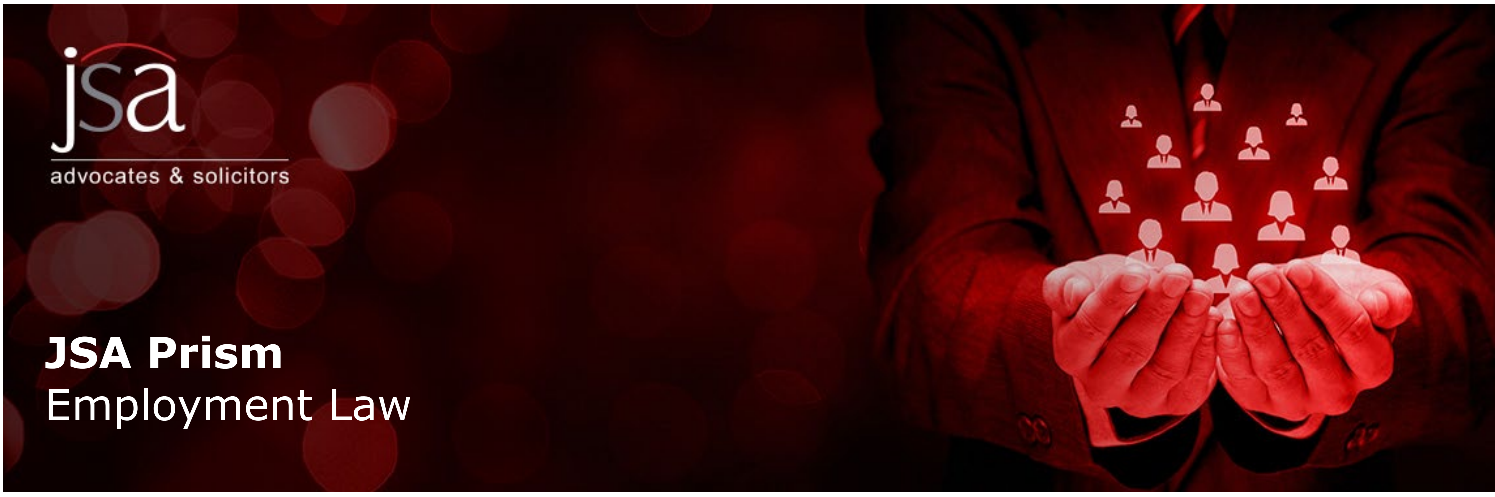


February 2024

# Government of Karnataka notifies the Karnataka Compulsory Gratuity Insurance Rules, 2024 under the Payment of Gratuity Act, 1972

In exercise of powers conferred under Section 4A of the Payment of Gratuity Act, 1972 ("**Gratuity Act**"), the Government of Karnataka recently introduced the Karnataka Compulsory Gratuity Insurance Rules, 2024 ("**Gratuity Rules**") *vide* notification[1] dated January 10, 2024.

## Applicability of Gratuity Rules

Section 4A of the Gratuity Act provides that on and with effect from the date notified by the 'appropriate Government', every employer within the ambit of such government and covered under the Gratuity Act would be required to obtain an insurance in prescribed manner, for their liability towards payment towards gratuity under the Gratuity Act. Appropriate Government also has the power to grant certain exemptions. 'Appropriate government' under the Gratuity Act means: (a) the Central Government, for *inter alia* establishments having branches in more than one state, and (b) the State Government, in other cases. For establishments within its ambit, the Central Government is yet to formulate and notify applicable rules under Section 4A of the Gratuity Act and hence, it is reasonable to infer that establishments having operations in more than one state are currently not required to obtain gratuity insurance and ensure associated compliances as mandated under the Gratuity Rules.

## Compulsory insurance under Gratuity Rules

Rule 3 of the Gratuity Rules requires (a) every new employer, within 30 (thirty) days from the Gratuity Rules commencement date ("**Commencement Date**"), and (b) employers of existing establishment, within 60 (sixty) days from the Commencement Date, to obtain a valid insurance policy and seek a registration in this regard (for registration compliance, please see, Rule 5 of the Gratuity Rules). The insurance policy can be obtained from Life Insurance Corporation of India ("**LIC**") or any other approved insurance company.

## Exempted establishments

Employers (a) of an establishment who have previously established an 'approved gratuity fund' ("**AGF**") and intend to continue with such arrangement, or (b) who have employed 500 (five hundred) or more persons and who now establish an AGF, are exempted from taking compulsory gratuity insurance provided that:

i) these employers submit an application in prescribed form with the prescribed authority;
ii) the existing or new AGF covers entire liability of all employees of the establishment under the Gratuity Act; and
iii) these employers register a gratuity trust with 5 (five) (but not equal) representatives of employers and employees with the registration authority notified under the Indian Trust Act, 1882 and ensure prescribed compliance under inter alia the Gratuity Act and the Income Tax Act, 1961.

[1] Notification no. LD 397 LET 2023

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Associated conditionalities under the Gratuity Rules would have to be complied with once the gratuity trust is set up and registered.

## Summary of observations

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| **1.** | **Will an establishment be compliant under the Gratuity Rules by only securing an insurance policy to over its gratuity obligations?**<br><br>*Yes. In our view, this should satisfy requirement under Rule 3 of the Gratuity Rules. Associated conditionalities such as filings with appropriate authorities as prescribed under the Gratuity Rules would also have to be complied.* |
| **2.** | **Is it mandatory to set up a gratuity trust as part of compliance under the Gratuity Rules?**<br><br>*No. In our view, it may not be mandatory unless an establishment opts for it, or where the establishment is able to secure a standalone insurance policy covering the entire gratuity liability of all employees in the establishment. The Labour Department is likely to issue clarifications on this in due course.* |
| **3.** | **Does an establishment employing more than 500 (five hundred) employees have the option to either secure an insurance policy or set up an AGF?**<br><br>*Yes. Based on our interpretation of the Gratuity Rules, establishments employing more than 500 (five hundred) employees can either seek a standalone insurance policy from LIC or any other approved insurance company, covering entire gratuity liability of all employees, or seek an exemption by creating an AGF and satisfying conditionalities mentioned above, including other associated conditionalities under the Gratuity Rules.* |
| **4.** | **Is it necessary to create a gratuity trust for securing a standalone insurance policy?**<br><br>*While this may not be necessary, however, remains subject to the products or schemes offered by LIC or other approved insurance companies or service providers. Logistics on such arrangements and facilities offered should be discussed with the service providers.* |
| **5.** | **Are there any relaxations in terms of timeline for compliance with the Gratuity Rules?**<br><br>*While currently there are no public announcements or notifications on relaxations or extensions on timeline for compliance with the Gratuity Rules, authorities may allow limited flexibility to establishments in ensuring fulfillment of stipulated conditions. However, as abundant caution, eligible establishments should ensure that all internal discussions and processes are initiated to avoid unnecessary delays.* |

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## Employment Practice

JSA has a team of experienced employment law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our key areas of advice include (a) advising on boardroom disputes including issues with directors, both executive and non-executive; (b) providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance; (c) providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals; (d) advising on compliance and investigations, including creating compliance programs and policy, compliance evaluation assessment, procedure development and providing support for conducting internal investigations into alleged wrongful conduct; (e) designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs; and (f) advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

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