

### **Budget 2021: Key Amendments**

The Ministry of Finance, Government of India introduced the Finance Bill, 2021 (“**Bill**”) on February 1, 2021 to give effect to the financial proposals of the Central Government for the financial year 2021-2022. We have enlisted below the changes proposed under Chapter VI (*Miscellaneous*) of the Bill, which, in particular, have an impact on the corporate or commercial transactions sector.

- **Indian Stamp Act, 1899**

Part I, Chapter VI of the Bill seeks to introduce Section 8G in the Indian Stamp Act, 1899 which stipulates that any instrument of conveyance or transfer of a business, asset or any right in an immovable property of a Government company (or its affiliates) by way of a strategic sale, disinvestment or demerger, or any other scheme of arrangement, to another Government company or the Central or State Government will not be amenable to stamp duty, subject to such transfer being approved by the Central Government.

For clarity, the Companies Act, 2013 defines the term “Government company” to mean any company or a subsidiary of a company in which the Central, State or local government(s) (either individually or collectively) holds not less than 51% of the paid-up share capital (being not less than 51% of the voting power) of such company.

- **Securities Contracts (Regulation) Act, 1956**

Part IV, Chapter VI of the Bill has introduced, with effect from April 1, 2021, the term “pooled investment vehicles” in the Securities Contracts (Regulation) Act, 1956 (“**SCRA**”). “Pooled investment vehicles” have been defined as funds established in India in the form of a trust or otherwise (including mutual funds, alternative investment funds, collective investment schemes or business trusts), which are registered with the Securities Exchange Board of India (“**SEBI**”) or such other fund, which raises or collects monies from investors and invests such funds in accordance with the SEBI regulations.

Further, Section 140 of the Bill introduces a new Section 30B in the SCRA, which stipulates that a pooled investment vehicle registered with SEBI shall be eligible to borrow and issue debt securities in such manner and to such extent as may be specified under the SEBI regulations. Additionally, pooled investment vehicles may also be permitted to provide security interest to lenders, subject to provisions of a trust deed (if constituted as a trust). In case of default, the lenders will be entitled to recover the default amount from the trust assets by enforcing the security interest against the trustee(s) acting on behalf of such pooled investment vehicle, and the remaining trust assets after such recovery shall be proportionately remitted to the unit holders.

- **Prohibition of Benami Property Transactions Act, 1988**

Part VI, Chapter VI of the Bill amends provisions of the Prohibition of Benami Property Transactions Act, 1988 (“**Benami Transactions Act**”), which shall come into force with effect

from July 1, 2021. The changes proposed to the Benami Transactions Act are in relation to the Adjudicating Authority (*as defined thereunder*) and the powers of such authority.

Under the current Benami Transactions Act, the Central Government is empowered, pursuant to Section 7 of the Benami Transactions Act, to appoint the Adjudicating Authority to exercise jurisdiction, powers and authority conferred to it under the Benami Transactions Act. Section 7 has been substituted with a new Section, and elects a competent authority authorised under Section 5 (1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 as the Adjudicating Authority instead, with the powers and authority as conferred to any Adjudicating Authority under the Benami Transactions Act.

The Bill, as a result, omits all other provisions in relation the constitution and composition of the Adjudicating Authority (Sections 8 to 17, Chapter III and Section 68, Chapter VIII of the Benami Transactions Act).

The Bill also proposes an amendment to Section 26 (7) stipulating that the time limit for passing of an order by the Adjudicating Authority expires during the period beginning from 1 July, 2021 and ending on 29 September, 2021, the time limit for passing such order shall be extended to 30 September, 2021.

- **Securities and Exchange Board of India Act, 1992**

Part VII, Chapter VI of the Bill proposes to include a new sub-section to Section 12 of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") with effect from April 1, 2021. The new sub-section stipulates that any person can only operate, sponsor or carry-on activities of an alternative investment fund or a business trust as defined in clause 13A of Section 2 of the Income Tax Act, 1961 after such person obtains a certificate of registration from SEBI in accordance with the SEBI Act.

- **Recovery of Debts Due to Banks and Financial Institutions Act, 1993**

Part VIII, Chapter VI of the Bill proposes to amend the definition of "debt" as stipulated in Section 2 (g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, to include dues from any person or a "pooled investment vehicle" as defined in SCRA. The definition of "debt" shall, with effect from April 1, 2021, read as follows.

*"debt" means any liability (inclusive of interest) which is claimed as due from any person or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 by a bank of a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.*

- **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**

Part X, Chapter VI of the Bill proposes amendments to certain definitions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") which are linked to the introduction of "pooled investment

vehicles” by SCRA. The definition of borrower (Section 2 (1) (f)) now includes “pooled investment vehicles”; and the definition of “secured creditor” (Section (1) (zd)) has been modified to cover debenture trustees registered with SEBI and appointed for secured debt securities as secured creditors, to cover debenture trustees appointed by pooled investment vehicles as well. These amendments will be effective from April 1, 2021.

- **Finance (No. 2) Act, 2004**

Part XII, Chapter VI of the Bill proposes to amend Section 97 (13) (b) of the Finance (No. 2) Act, 2004 to include the sale or surrender or redemption of a unit of an equity-oriented fund to the insurance company, on maturity or partial withdrawal, with respect to unit linked insurance policy issued by such insurance company on or after February 1, 2021, under the definition of “taxable securities transaction”. In addition, Sections 157 and 158 of the Bill seek to amend Sections 100 and 101 of the Finance (No. 2) Act, 2004 to include insurance companies wherever mutual funds are references in both Sections. These amendments shall be effective from February 1, 2021.

- **Finance Act, 2016**

Part XIII, Chapter VI of the Bill proposes various amendments to the Finance Act, 2016 in relation to the e-commerce sector, which have been made retrospectively applicable with effect from April 1, 2020. The proposed amendments are as below:

- i. Section 163 (3) will be amended to include a proviso which clarifies that the consideration received or receivable for e-commerce supply or services shall not include the consideration which are taxable as royalty or fees for technical services in India under the Income Tax Act, 1961 read with the agreement notified by the Central Government under Section 90 or Section 90A of the Income Tax Act.
- ii. Section 164 (cb) will be amended to include an explanation stating that for the purpose of Section 164, the terms “online sale of goods” and “online provision of services” shall include one or more of the following online activities:
  - (a) acceptance of offer for sale;
  - (b) placing of purchase order;
  - (c) acceptance of the purchase order;
  - (d) payment of consideration; or
  - (e) supply of goods or provision of services, partly or wholly.
- iii. Section 165A (3) will be amended to specify that consideration received or receivable from e-commerce supply or services shall include (a) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and (b) consideration for provision of services irrespective of whether such services are provided or facilitated by the e-commerce operator.

The Bill also retrospectively amends, with effect from June 1, 2016, Section 191 of the Finance Act, 2016 such that any excess amount of tax, surcharge or penalty paid in pursuance of a declaration made under the Income Declaration Scheme, 2016 shall be refundable to the specified class of persons (as may be notified by the Central Government) without payment of any interest.