AMENDMENTS APPLICABLE FOR IPC-NOVEMBER 2016 EXAMINATIONS

1. The Payment of Bonus Act, 1965

a. Definition of Employee [Sec 2(13)]

"Employee" means:-

- means any person (other than an apprentice)
- employed on salary or wage
- not exceeding ~~10,000 per month~~ **(Rs. 21000 per month)***
- in any industry
- to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical, or clerical work
- for hire or reward. .

*** Amended as per The Payment of Bonus (Amendment) Act, 2015**

b. Calculation of Bonus with respect to Some Employees (Sec 12)

Where the salary or wage of an employee exceeds Rs. ~~3500/month~~ **Rs. 7000/- month**, the bonus payable to such employee shall be calculated as if his salary or wage were Rs. ~~3500/month~~ **Rs. 7000/- month***

*** Amended as per The Payment of Bonus (Amendment) Act, 2015**

2. The Employee Provident Fund and Miscellaneous Act, 1952

a. Employee PF Scheme (Sec 6)

Covered employees:-At present, only employee getting not more than Rs. ~~6500~~ **Rs. 15000/- month** monthly salary and wages are covered by this Act.

Author's Comment

It means an employee who is drawing salary upto Rs. 15000/- month (earlier Rs. 6500/-) is mandatorily required to become a member of this scheme.
But, what about the employees who are drawing salary in excess of Rs. 15000/- ? Can they voluntarily contribute towards Provident Scheme??

Answer is Yes, they can voluntarily contribute along but with the mutual consent of Employer. But in that case, the contribution will be calculated on maximum 15000/-

b. Employee Pension Scheme (Sec 6A)

Covered employees:-At present, only employee getting not more than Rs. ~~6500~~ **Rs. 15000/- month*** monthly salary and wages are covered by this Act.

Author's Comment
It means an employee who is drawing salary upto Rs. 15000/- month (earlier Rs. 6500/-) is mandatorily required to become a member of this scheme.
But, what about the employees who are drawing salary in excess of Rs. 15000/- ? Can they voluntarily contribute towards Pension Scheme??
Answer is No (earlier yes), they cannot voluntarily contribute towards Pension Scheme. This provision applies only on new employees (those are employed beyond 1st September 2014), although existing employees can voluntarily contribute towards Pension Scheme but the contribution will be calculated on Rs. 15000/-*

c. Employee Deposit Linked Insurance Scheme (Sec 6C)

Covered employees:-At present, only employee getting not more than Rs. ~~6500~~ **Rs. 15000/- month*** monthly salary and wages are covered by this Act.

Author's Comment
It means an employee who is drawing salary upto Rs. 15000/- month (earlier Rs. 6500/-) is mandatorily required to become a member of this scheme.
But, what about the employees who are drawing salary in excess of Rs. 15000/- ? Can they voluntarily contribute towards Provident Scheme??
Answer is Yes, they can voluntarily contribute along but with the mutual consent of Employer. But in that case, the contribution will be calculated on maximum 15000/-

3. The Negotiable Instruments Act, 1881

a. Cognizance of Offences (Sec 142)

[Sec 142(2)]*

The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction:-
(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

Author's Illustration

X holds an account with Laxmi Nagar Branch, Delhi of Axis Bank, issues a cheque payable at par in favour of Y. Y holds an account with M.G. Road Branch, Indore of HDFC Bank, deposits the said cheque at Indore Branch of HDFC Bank and the cheque is dishonoured. The Complaint will have be filed before the Court having local jurisdiction where M.G. Road Branch, Indore of HDFC Bank is situated.

For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

Author's Illustration

A holds an account with Vaishali Branch, Ghaziabad of ICICI Bank, issues a cheque payable at par in favour of B. B holds an account with Sadar Branch, Jabalpur of SBI Bank, deposits the said cheque at Nagpur Branch of SBI Bank and the cheque is dishonoured. The Complaint will have be filed before the Court having local jurisdiction where Sadar Branch, Jabalpur of PQR Bank is situated.

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Author's Illustration

P holds an account with J.N. Nagar Branch, Jaipur of Yes Bank, issues a cheque payable at par in favour of R. R presents the said cheque at Udaipur Branch of Yes Bank, (but R does not hold account in any branch of XYZ Bank) and the cheque is dishonoured. The Complaint will have be filed before the Court having local jurisdiction where J.N. Nagar Branch, Jaipur of Yes Bank is situated..

*** Amended as Per Negotiable Instruments (Amendment) Act, 2015**

b. Validation for transfer of pending cases (Sec 142A)*

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of section 142 as if that sub-section had been in force at all material times.

- Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

- If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times.''.

*** Introduced as Per Negotiable Instruments (Amendment) Act, 2015**

Author's Simplification

Section 142A can be summed up as under:

• All cases pending before any Court, whether filed before it or transferred to it pending before 15th June 2015, shall be transferred to the Court having jurisdiction as per Sec. 142 (2).

• If a complaint is filed by the payee or the holder in due course against a drawer before the Court having jurisdiction u/s 142(2), all further complaints against that drawer shall be filed before the same Court where the first complaint is filed, irrespective of whether the cheque is presented or delivered for collection to the bank/ branch within the local limits of Court having jurisdiction where that bank/branch is situated.

•If on 15th June 2015, there are more than one cases u/s 138 NI Act pending between the same parties in different Courts, then the cases should be transferred to the Court having jurisdiction u/s 142 (2) and all subsequent complaints between the same parties should be filed before the same Court.

4. Companies Act, 2013

a. Minimum Share Capital

The minimum paid-up share capital requirement of INR 100,000 (in case of a private company) and INR 500,000 (in case of a public company) under CA 2013 has been done away with. Consequently, the definitions of private and public companies stand amended.

Accordingly, no minimum paid-up capital requirements will now apply for incorporating private as well as public companies in India.

b. Common Seal

Companies Act 2013 required common seal to be affixed on certain documents (such as bill of exchange, share certificates, etc.) Now, the use of common seal has been made optional. All such documents which required affixing the common seal may now instead be signed by two directors or one director and a company secretary of the company.

Consequently, several sections of CA 2013 dealing with common seal have been amended to incorporate the above requirement.

c. Requirements for commencement of Business

Companies Act 2013 required all companies to file following additional declarations with the Registrar of Companies prior to commencement of business or exercising any borrowing power: (i) declaration by a director that minimum paid-up share capital has been paid; and (ii) company has filed verification of registered office.

The CA Amendment 2015 has removed the above requirements and deleted Section 11 of CA 2013. This reduces the filings to be made by companies in India.

d. Violation for acceptance of deposits

Companies Act 2013 introduced stringent provisions in relation to acceptance/ renewal / repayment of deposits. However, no specific penalty was prescribed for non-compliance with the relevant provisions i.e. Section 73 and Section 76. This lacuna has been filled by the CA Amendment 2015.

A new Section 76 A has been introduced for the above non-compliances. The defaulting company will be liable for fine of a minimum amount of INR 10,000,000 and a maximum of INR 100,000,000 in addition to the amount of deposit or part thereof, along with interest. Further, every officer of the company in default is punishable with imprisonment which may extend upto 7 years or with a fine amounting to a minimum of INR 2,500,000 and maximum of INR 20,000,000 or both. Such officer may attract additional penalty for fraud under CA 2013 if the non-compliance was done knowingly or with the intention to deceive the company, shareholders, depositors, creditors or tax authorities.