SEC 1. APPLICABILITY OF THE ACT

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which **20 or more persons are employed**, and

(b) to any other establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:
PROVIDED that the Central Government may, after **giving not less than two months'** notice of its intention so to

(c) whether **on an application made to the Central Provident Fund Commissioner** by the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

(d) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty

(e) If an establishment is covered then all its dept.'s & branches shall also be covered

SEC-2 DEFINITIONS

1. 'Basic Wages' U/S 2(b) of E.P.F. and M.P. Act,1952 means –
   -all emoluments
   - which are earned by an employee
   - wages in either case in accordance with the terms of the contract of employment
   - and which are paid or payable in cash
   -while on duty or on leave or on holidays with to him,
   but does not include-
   (i) The cash value of any food concession.
   (ii) Any dearness allowance, house rent allowance, overtime allowance, bonus commission or any similar allowance payable to the employee in respect of his employment or work done in such employment.
   (iii) Any present made by the employer.

SEC.16. ACT NOT TO APPLY TO CERTAIN ESTABLISHMENTS

This Act shall not apply
(iv)
(a) to any establishment registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of Contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits

(v)

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefit.

(d) If the Central Government is of opinion that having regard to the financial position of any class of or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act or such period as may be specified in the notification.

SEC-16A. AUTHORISING CERTAIN EMPLOYERS TO MAINTAIN PROVIDENT FUND ACCOUNTS

(1) **Conditions for authorisation:**

The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an **establishment employing one hundred or more persons**, authorise the employer, by an order in writing, to maintain a provident fund account in relation to the establishment, subject to such terms and conditions as may be specified in the Scheme:

PROVIDED that no authorisation shall be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorisation.

(2) Terms & conditions of authorisation:

Where an establishment is authorised to maintain a provident fund account under sub-section (1), the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Scheme.

(3) Cancellation of authorisation:

Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Act:

PROVIDED that before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard.

SEC 17. POWER TO EXEMPT

Terms & Conditions

The appropriate government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification,exempt, whether prospectively or retrospectively, from the operation of all or any of the provisions of any Scheme:

(a) If in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in section 6 and

(b) the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme

(c) if the employees are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any scheme.

PROVIDED that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemption to the appropriate government within such time limit as may be specified in the Scheme

Duties of employer:

the employer shall establish a Board of Trustees for the administration of the Provident Fund consisting of such number of members as may be specified in the Scheme

Duties of Board of trustees:

(a) the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme;

(b) the Board of Trustees constituted under clause (b) shall-

(i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;

(ii) submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;

(iii) invest the provident fund monies in accordance with the directions issued by the Central Government from time to time;

(iv) transfer, where necessary, the provident fund account of any employee; and

(v) perform such other duties as may be specified in the Scheme.

Where the Board of Trustees or the employer contravenes, or makes default in complying with, any provisions of clause, the Trustees of the said Board shall be deemed to have committed an offence and shall be punishable with the penalties.

SEC-5A. CENTRAL BOARD

Composition of the Board

The Central Government may, be notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following persons as members namely:

(a) a Chairman and a Vice-Chairman to be appointed by the Central Government;

(b) the Central Provident Fund Commissioner, ex officio;

(b) not more than five persons appointed by the Central Government from amongst its officials;

(c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the central Government;

(d) ten persons representing employers of the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organizations of employers as may be recognised by the Central Government in this behalf; and

(e) ten persons representing employees in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organizations of employees as may be recognised by the Central Government in this behalf.

Functions

Administer the PF Scheme, Employees Pension Scheme & Employees deposit linked insurance schme & shall take policy decisions.

Accounts,Audit & Annual Report:

- Maintain proper accounts relating to income * expenditure as specified by CAG
- Audited annually by CAG & Annual report to be forwarded to the central government.

Delegation of powers:

May pass subject to such conditions & limitations to

- Executive committee or
- state board or Chairman or
- other officer of the board

SEC 5AA. EXECUTIVE COMMITTEE

Composition of the Board:

The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions.
The Executive Committee shall consist of the following persons as members, namely :

(a) a Chairman appointed by the Central Government from amongst the members of the Central Board;

(b) two persons appointed by the Central Government from amongst representatives of CG elected to the central board;

(c) three persons appointed by the Central Government from amongst representatives of SG elected to the central board;

(d) three persons representing the employers elected by the Central Board from amongst representatives of employers elected to the central board;

(e) three persons representing the employers elected by the Central Board from amongst representatives of employees elected to the central board;

(f) the Central Provident Fund Commissioner, ex officio.

Purpose of constitution:

The terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee and the time, place and procedure of the meetings of the Executive Committee shall be such as may be provided for in the Scheme

SEC 7A. APPLICATION OF ACT & MONEYS DUE FROM THE EMPLOYER

PF
Commissioner
Central/Additional/Deputy/Regional

- inquire, SCN & powers of civil court
- pass orders

Determine-
(a) Act applies
(b) Moneys payable under the Act(contribution,charges,Interest etc.)

- pass ex-parte order - if employer is absent or fails to produce any record
- set aside ex-parte order,- if (a) employer-sufficient reasons (b) no appeal

SEC 7B.REVIEW OF ORDER

Order u/s 7A

- Application by employer(within 45 days) or suo moto
- Condition- No appeal
- Reasons for Review (a) New & imp. Evidence
  (b)Mistake apparent from record
  (c) Other sufficient reasons

Review of order u/s 7B

- Reject application for review- No appeal
- Pass order after review -appeal possible

SEC 7C.Escaped Amount

Order u/s 7A or 7B

↓

- Employer did not disclose all material facts
- No omission or failure by employer
- Within 5 years

↓

Escaped amount u/s.7C

- SCN to employer
- Determine escaped amount

SEC 7I,7L,7O- APPEAL TO TRIBUNAL

Appeal by the employer

↓

- Deposit 75% of amount demanded(unless waived or reduced by Tribunal)
- SCN to parties

↓

Tribunal

- Orders of tribunal- Confirm, Modify, Set aside, Remand back the matter
- No further Appeal
- Rectification of Order -(a) Within next 5 yrs
- (b)After SCN to employer(if his liability increases)
- If mistake apparent from records

<u>Consitution of tribunal</u>

SEC 7D. PRESIDING OFFICER

- A Tribunal shall consist of one person only to be appointed by the Central Government
- A person shall not be qualified for appointment as a Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer) unless he is or has been, or is qualified to be-
- a Judge of a High Court; or
- a District Judge.]

SEC 7E. TERM OF OFFICE

The Presiding Officer of a Tribunal shall hold office for a term of 5 years from the date on which he enters upon his office or until he attains the age of 62 years, whichever is earlier.

SEC 7F. RESIGNATION & REMOVAL OF PRESIDING OFFICER

(1) The Presiding Officer may, by notice in writing under his hand addressed to the Central Government, resign his office:

PROVIDED that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office

- until the expiry of three months from the date of receipt of such notice or
- until a person duly appointed as his successor enters upon his office or
- until the expiry of his term of office, whichever is the earliest.

(2) The Presiding Officer shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the High Court in which such Presiding Officer had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Presiding Officer

SEC 7Q. INTEREST PAYABLE BY THE EMPLOYER

The employer shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

PROVIDED that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

SEC 8B.RECOVERY OF MONEYS DUE FROM EMPLOYER

Authorised officer
C/A/D/R

↓

- Issue recovery Certificate
- Grant time----→ Recovery Proceedings Stayed

↓

Recovery Officer-Jurisdiction:
a) Business situated
b) Employer Resides
c) Property of the westablishment or employer is situated

- Attachment & sale- Property of the establishment & employer
- Arrest the employer
- Appoint a receiver to manage the property of the establishment

SEC 17A. TRANSFER OF ACCOUNTS

(1) Where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

(2) Where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him may, if the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the provident fund of the establishment in which he is re-employed.

SEC 17B. LIABILITY IN CASE OF TRANSFER OF ESTABLISHMENT

Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme, as the case may be, in respect of the period **upto the date of such transfer**:
The liability of the transferee shall be limited to the value of the assets obtained by him by such transfer. The liability of the transferor shall be limited with respect to the period upto the date of transfer.

SEC. 10. PROTECTION AGAINST ATTACHMENT

Nature of protection:

The amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund

- shall not in any way be capable of being assigned or charged
- shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or the exempted employee,
- neither the official assignee appointed nor any receiver appointed shall be entitled to, or have any claim on, any such amount.
- Shall be free any debt or other liability(in the hands of the nominee) incureed by the deceased member.

No Protection:
The employee cannot claim any protection in respect of the money which has been withdrawn from his PF Account.

SEC 5 & 6. EMPLOYEES PROVIDENT FUND SCHEME

Quantum of contribution

- Employer's Contribution 10%(BW+DA+RA)
- Employee's Contribution 10%(BW+DA+RA) may contribute voluntarily a higher amount. Employer shall not bound to pay any contribution over and above his contribution
- dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.
- "retaining allowance" means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.
- The contribution can be rounded off to the nearest rupee.

CG may increase rate of contribution to 12% by way of notification in OG

Payment can be made to legal heir/nominee in case of death. While a meber in service, he may take partial withdrawal of balance standing to the credit in hi saccount for certain specified purposes.

SEC.6A EMPLOYEES PENSION SCHEME

- Employer's Contribution not exceeding 8.33%(BW+DA+RA)

SEC.6B EMPLOYEES DEPOSIT LINKED INSURANCE SCHEME

- Employer's Contribution not exceeding 1.00%(BW+DA+RA)

SEC.9. RECOGNITION UNDER THE IT ACT

For the purposes of the Indian Income Tax Act the Fund shall be deemed to be a recognised provident fund
In case of repugnancy between provisions of IT Act & any provisions of the Scheme, the provision contained in the scheme apply.

SEC.11 CONTRIBUTION TO BE PREFERENTIAL PAYMENT

The contribution due from the employer shall amount to 'preferential payment' within the meaning of Sec.327 of the Companies Act,2013

SEC. 12. EMPLOYER NOT TO REDUCE WAGES, ETC.

- No employer shall,
- by reason only of his liability for the payment of any amount(contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme)
- reduce,
- whether directly or indirectly,
- the wages of any employee
- the total quantum of benefits in the nature of old age pension, gratuity provident fund or life insurance to which the employee is entitled under the terms of his employment, express or implied.

NOMINATION:

- Only family member can be nominated
- If the employee does not have a family, then nomination may be made in favour of any person
- A nomination made in favour of a person who is not a member of the family becomes void immediately when the employee subsequently acquires a family. It is immaterial as to whether the person in whose favour nomination was made before marriage,is the same one to whom he has been married.

Q.No.1. Mrs. Tsunami who was an employee of M/s. Backbone Ltd. died in a sudden accident. She had taken a loan from a bank for purchasing a house and the loan was still out standing. After her death her legal representative applied for payment of her P.F dues. The bank lodged a claim with the authorities for payment of its balance loan amount from the P.F dues. Explain with reference to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952

i) Whether the bank can recover the loan amount from the P.F. dues and

ii) If, Instead of the bank, Mrs. Tsunami had taken any loan from her

legal representative what would have been the answer?

Sol.: As per Sec.10(2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 any amount standing to the credit of a member in the Fund at the time of his death and payable to his nominee shall vest on the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before death of the member and shall not be liable to attachment by any decree or order of any court. So,

i) The bank cannot recover its loan dues from the P.F. dues,
ii) Answer would be same in case the nominee had paid any loan to Mrs. Tsunami before her death.

Q.No.2. M/s Harsh Ltd. has been regularly depositing the P.F. contributions to the Government in respect of the company's contribution as well the employees' contribution. The company is doing well and earning huge profit. But due to reverse market conditions the company suffered loss for the last two years. The management is thinking to reduce the salary/wages of the employees to reduce the company's contribution to P.F. and instead, to pay certain compensatory allowance so that the employee's pay packet remains same. Explain in terms of the provisions of Employee's Provident Fund and Miscellaneous Provisions Act, 1952 whether the company can reduce the salary/wages.

Sol.: As per Sec.12 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, M/s Harsh Ltd. cannot reduce the salary/wages of its employees so that lower contribution will be made by the company to the Fund which will reduce the benefit to the employees under the Scheme.

Q.No.3. M/S Atwal & Co. Pvt. Ltd. is engaged by M/s. Mine managers Ltd. for doing operational work at its mines. There are about 300 employees employed by M/s Atwal & Co. Pvt. Ltd. to do the mining operation. M/s Minemanagers Ltd. deducted from the amount payable to M/s Atwal & Co. Pvt. Ltd. a sum of Rs.2,00,000 being the P.F. contribution of the employees engaged by it. M/s Atwal in response to such deduction, deducted from the employees the entire amount of Rs. 2,00,000 in two installments to which the employees protested. Explain in terms of the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

i) Whether M/s Atwal & Co. Ltd. Can deduct from the salary/wages of the employee;
ii) Whether it can deduct the employee's contribution from the salary/wages paid to the employees in one installment.
iii) Can it recover the amount from the employees by entering into an agreement with employees?

Sol.: As per Sec.8A of Employee's Provident Fund and Miscellaneous Provision Act, 1952, i). M/s Atwal may deduct the employee's contribution from the salary/wages of employees. ii). M/s Atwal may deduct the employee's contribution only from the salary/wages of the employees in one or more installments.

iii) M/s Atwal cannot recover the employer's contribution from the salary/wages of the employees even by entering into any agreement with the employees.

Q.No.4. Manorama Group of Industries sold its textile unit to Giant Group of Industries. Manorama Group contributed 25% of the total contribution in pension scheme, which was due before sale under the provisions Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The transferee company (Giant Group of Industries) refused to bear the remaining 75% contribution in the Pension Scheme. Decide in the light of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and upto what extent?

Sol.: As per Sec.17B of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Both Manorama Group of industries and giant Group of industries are liable to bear the amount of contribution. However, Giant Group of industries will bear only upto the value of the assets obtained by it.

Q.No.5. The P. F. authorities passed an order in 2000 determining dues from Feedback Co. Ltd. in July 2003 the concerned officer who passed the order issued a notice to the company as to why the amount determined earlier should not be re-determined. Explain in terms of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 as to power of the concerned officer to re-open the case if any amount hand been escaped his determination.

Sol.: Based on Sec.7C of aforesaid Act, the P.F. authorities may re-open the case.

Q.No6.State whether the following statement is true or false and give reason therefor with reference to the Employee's Provident Fund and Miscellaneous Provisions Act, 1952.

"Basic Wages include the cash value of food concesssions"

Sol:-This statement is false because the expression basic wages does not include the cash value of food concessions. Basic Wages means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him.

Q.No7.State whether the following statement is true or false and give reason therefor with reference to the Employee's Provident Fund and Miscellaneous Provisions Act, 1952.

"The Chairman of the Executive Committee is appointed by the Central Board"

Sol:-This statement is false because the chairman of the Executive Committee is appointed by the Central Government and not the Central Board.

Q.No8.While an employee may increase his contribution to Provident Fund, is an employer also liable to proportionately increase his contribution to the above under the Employee's Provident Fund and Miscellaneous Provisions Act, 1952? Explain.

Sol:-Section 6 of the Employee's Provident Fund Act and Miscellaneous Provisions Act, 1952 provides that an employee can at his will contribute beyond 10% if the scheme makes provision therefore subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Q.No9.State whether the following statement is true or false and give reason therefor with reference to the Employee's Provident Fund and Miscellaneous Provisions Act, 1952.
"Employee Provident Fund Appellate Tribunal shall consist of three judges".

Sol:-This statement is false as the Employees' Provident Fund Appellate Tribunal shall consist of one judge.

Q.No10.State whether the following statement is true or false and give reason therefor with reference to the Employee's Provident Fund and Miscellaneous Provisions Act, 1952.
"An employer generally has to deposit 50% of the money due from him so as to go on appeal".

Sol:-This statement is false as an employer under Section 7-O of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 has to deposit 75% of the money due from him so as to go on appeal.