IPCC

Business Laws

EMPLOYEES PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT

Revision Summary based on Arihant Spiral and Bare Act

Special features:

- *Full coverage of Employees Provident Funds & Miscellaneous Provisions Act*
- *Strictly based on Bare Act and Arihant Spiral*
- *With summarize and easy to remember format*
- *Useful sections and Landmark judgments*
- *Very useful for Practical Questions*

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EMPLOYEES PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT

DEFINITIONS

1. '*Appropriate Government*' means

(a) In relation to an establishment
- Belonging to, or under the control of the Central Government; or
- Connected with
  - A railway company;
  - A major port;
  - A mine;
  - A controlled industry, the Central Government.

(b) In relation to any other establishment,
- The State Government [Section 2(a)]

2. '*Authorised Officer*' means

(a) The Central Provident Fund Commissioner,
(b) Additional Central Provident Fund Commissioner,
(c) Deputy Provident Fund Commissioner,
(d) Regional Provident Fund Commissioner, or
(e) Such other officer as may be authorised by the Central Government, by notification in the official Gazette [Section 2(a) (a)].

3. '*Basic Wages*' means all emoluments which are earned by an employee while on

(a) Duty; or
(b) Leave; or
(c) Holidays with wages as per the terms of employment.

'*Basic wages*' must be paid or is payable in cash. The term, however, does not include

(i) The cash value of any food concession;
(ii) Any dearness allowance, i.e., all cash payments by whatever name called paid to an employee on account of a rise in the cost of living - House Rent Allowance (HRA);
- Overtime Allowance;
- Bonus;
- Commission

(iii) Any presents made by the employer [See. 2(b)]

4. *Contribution* means a contribution payable in respect of a member under a scheme [or the contributions payable in respect of an employee to whom the Insurance Scheme applies] [Section 2(c)]

5. '*Employer*' means

(a) In relation to an establishment which is a factory, the following:
(i) The owner or occupier or the factory including the agent of such owner or occupier;
(ii) The legal representative of a deceased owner or occupier
(iii) Where the person has been named as a manager of the factory under Section 7 of the Indian Factories Act, 1948, the person so named;

(b) In relation to any other establishment, the following:
- The person who, or the authority which, has the ultimate control over the affairs of the establishment and where such affairs are entrusted to a
  - Manager
  - Managing director;
  - Managing agent.

  Such manager, managing director or managing agent [Section 2(e)]

6. '*Employee*' means any person who is employed for wages which he may get directly or indirectly from the employer. The person may be engaged in any kind of work, namely
(a) Manual or otherwise; or
(b) In connection with the work of establishment.
The term '*employee*' includes any person
(a) Employed by or through a contractor or in connection with the work of the establishment;
(b) Engaged as an apprentice not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment [Section 2(f)]

7. '*Exempted establishment*' means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of the scheme, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein [Section 2(fff)]

8. '*Factory*' means any premises in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power [Section 2(g)]

9. '*Occupier of a factory*' means the person who has ultimate control over the affairs of the factory. Where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory [Section 2(k)]

10. '*Superannuation*' in relation to an employee who is a member of the Pension Scheme, means the attainment by the employee, of the age of 58 years [Section 2(11)]

ADMINISTRATION OF THE SCHEMES

Central Board of trustees (Section 5A)

1. The Central Government may constitute a Board of Trustees called the Central Board for administering
(a) The Employees' Provident Fund;
(b) The Pension Fund, and
(c) The Employees' Deposit Linked Insurance Fund.

2. The Central Board shall have the following members, namely:
(a) A Chairman and a Vice-Chairman to be appointed by the Central Government;
(b) The Central Provident Fund Commissioner, ex officio;
(c) Not more than 5 persons appointed by the Central Government from among its officials;
(d) Not more than 15 persons representing Government of such states as the Central Government may specify in this behalf, appointed by the Central Government;
(e) 10 persons representing employees of the establishments to which the Employees' Provident Fund Scheme applies, appointed by the Central Government after consultation with such organisation of employees as may be recognised by the Central Government in this behalf.

3. (a) The terms and conditions subject to which a member of the Central Board may be appointed; and
(b) The time, place and procedure of the meeting of the Central Board shall be such as may be provided for in the Employees' Provident Fund Scheme.

4. The Central Board shall administer Employees' Provident Fund, Pension Fund and Deposit-linked Insurance Fund vested in it in such manner as may be specified in the schemes.

5. It shall perform such other functions as it may be required to perform by or under any provision of the,
(a) Employees' Provident Fund Scheme;
(b) Pension Scheme; and
(c) Employees' Deposit-linked Insurance Scheme.

6. It shall maintain proper accounts of its income and expenditure. The accounts shall be maintained in the manner to be specified by the Central Government in this regard.

7. The accounts of the Central Government shall be audited annually by the comptroller and Auditor-General of India. Any expenditure incurred by the Comptroller and Auditor-General in connection with such audit shall be payable by the Central Board to him.

8. The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Central Board shall have the same rights and privileges and authority in connection with the audit of Government Accounts.

9. The accounts of the Central Board as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Central Board.

10. It shall be the duty of the Central Board to submit also to the Central Government any annual report of its work and activities. The Central Government shall cause a copy of the annual report, the audited accounts together with the report of the Comptroller and Auditor General of India and the comments of the Central Board, thereon to be laid before each house of Parliament.

ADMINISTRATION OF THE SCHEMES

Executive Committee (Section 5AA)

1. The Central Government may constitute an executive committee to assist the Central Board in the performance of its functions.

2. The executive committee shall have the following persons as members
- (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 the persons referred to in clause (b) of sub-section (1) of Section 5A;
- (c) three persons appointed by the Central Government from amongst the persons referred to in clause (c) of sub-section (1) of Section 5A;
- (d) three persons representing the employers elected by the Central Board from amongst the persons referred to in clause (d) of sub-section (1) of See. 5-A;
- (e) three persons representing the employees elected by the Central Board from amongst the persons referred to in clause (e) of sub-section of Section 5-A;
- (f) The Central Provident Fund Commissioner, ex officio.

3. (a) The terms and conditions subject to which a member of the Central Board may be appointed or elected to the executive committee; and
- (b) The time, place and procedure of the meetings of the executive committee shall be as provided in the scheme.

State Board of Trustees (Sections 5B, 5C and 5D)

1. The Central Government is empowered to constitute a State Board only after consultation with the Government of that State.
2. The State Board shall exercise such powers and perform such duties as may be assigned by the Central Government.
3. (a) The terms and conditions of appointment of a member of a State Board; and
   (b) The time, place and procedure of the meeting of a State Board; shall be as provided in the scheme.
4. The State Board shall be a body corporate, having perpetual succession and a common seal. It shall by the said name, sue and be sued.
5. The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board.
6. The Central Government may also appoint
   (a) A financial adviser; and
   (b) Chief accounts officer to assist the Central Provident Fund Commissioner in the discharge of his duties.
7. The Central Board may appoint as many,
   (a) Additional Central Provident Fund Commissioners;
   (b) Deputy Provident Fund Commissioners;
   (c) Regional Provident Fund Commissioners;
   (d) Assistant Provident Fund Commissioners; and
   (e) Such other officers and employees as it may consider necessary for the efficient administration of the scheme.
8. No appointment to the post of
   (a) The Central Provident Fund Commissioner; or
   (b) An Additional Central Provident Fund Commissioner; or
   (c) A Financial Adviser; and
   (d) A Chief Accounts Officer shall be made except after consultations with the Union Public Service Commission.
9. A State Board may, with the approval of the State Government concerned, appoint such staff as it may consider necessary.
10. The method of recruitment, salary and allowances discipline and other conditions of service of the Central Provident Fund Commissioner and the Financial Adviser and Chief Accounts Officer shall be specified by the Central Government.
11. The method of recruitment, salary and allowances, discipline and other conditions of service of the
    (a) Additional Provident Fund Commissioner;
    (b) Deputy Provident Fund Commissioner;
    (c) Regional Provident Fund Commissioner;
    (d) Assistant Provident Fund Commissioner; and
    (e) Other officers and employees of the Central Board shall be specified by the Central Board of trustees.
12. Similarly, the method of recruitment, salary and allowances; discipline and other conditions of service of officers and employees of a State Board shall be specified by that Board, with the approval of the State Government concerned.

Contribution by the employer (Section 6)

1. The contribution payable by the employer to the Fund shall be 10 per cent of the
   (a) Basic wages;
   (b) Dearness allowances; and
   (c) Retaining allowance (if any).

   A person may be employed directly or by or through a contractor. The amount payable towards encashment of leave forms part of basic wages for the purpose of calculating the contribution towards provident fund.

Explanation:

For the purposes of this section:

(i) 'Dearness allowance' includes the cash value of any food concession allowed to the employee.

(ii) 'Retaining allowance' means an allowance payable to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.

2. The employee's contribution shall be equal to the contribution payable by the employer in respect of him.

3. The amount of employee's contribution may exceed 10 per cent of his basic wages, dearness allowance and retaining allowance (if any) if he so desires.

Employees' Pension Scheme (Section 6A)

1. The Central Government may form a scheme to be called the Employees' Pension Scheme for the purpose of providing for
   (a) Superannuation pension;
   (b) Retiring pension;
   (c) Permanent total disablement pension to the employees of any establishment or class of establishment to which this Act applies.

2. The aforesaid Scheme may also provide for
   (a) Widow or widower's pension;
   (b) Children pension; or
   (c) Orphan pension payable to the beneficiaries of such employees.

3. There shall be paid into a Pension Fund in respect of every employee who is a member of the Pension Scheme
   (a) Such sums from the employer's contribution under Section 6, not exceeding 81/3 per cent of the (i) Basis wages; (ii) dearness allowance; and (iii) retaining allowance (if any) of the concerned employees, as may be specified in the Pension Scheme.
   (b) Such sums as are payable by the employers of exempted establishments under Section 17;
   (c) The net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;
   (d) Such sums as the Central Government may specify in this behalf.

4. The Pension Fund shall vest in and be administered by the Central Board of trusees.

5. Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

Employees' Deposit-linked Insurance Scheme (Section 6C)

1. The Central Government may frame a scheme to be called the 'Employees' Deposit-linked Insurance Scheme' for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

2. An employer in respect of every such employee in relation to whom he is the employer upto 1 per cent of the
   (a) Basic wages;
   (b) Dearness allowance; and
   (c) Retaining allowance (if any)

3. The employer shall pay into the Insurance Fund an amount not exceeding ¼th of the contribution which he is required under Section 6-C. The payment is required to be made to meet all the expenses in connection with the administration of the Employees' Deposit-linked Insurance Scheme other than the expenses towards the cost of any benefits provided for or under that scheme.

4. The Insurance Fund shall vest in the Central Board of trustees and be administered by it.

5. The Insurance Scheme may provide for all or any of the matters specified in Schedule

DETERMINATION OF MONEYS DUE FROM EMPLOYERS, THEIR RECOVERY

Determination of moneys due from employers (Section 7A)

1. The Central Provident Fund Commissioner; any Additional Provident Fund Commissioner; any Deputy Provident Fund Commissioner; any Regional Provident Fund Commissioner; or any Assistant Provident Fund Commissioner, may
   - In a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and
   - Determine the amount due from any employer under any provision of the Act, the case Scheme, or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.
2. The inquiry officer shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1928 for trying a suit in respect of the following matters, namely
   - Enforcing the attendance of any person or examining him on oath;
   - Requiring the discovery and production of documents;
   - Receiving evidence on affidavit;
   - Issuing commissions for the examination of witnesses
3. An order under Section 7-A shall not be made unless the employer concerned is given a reasonable opportunity of representing his case.
4. Where the employer; employee; or any other person required to attend the enquiry under Section 7-A, fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

Determination of escaped amount (Section 7C)

1. Where an order determining the amount due from an employer under Section 7A or Section 7B has been passed and if the officer who has passed the order
   (a) Has reason to believe that by reason of the omission or failure on the part of the employer, to make any document or report available, or to disclose fully and truly, all material facts necessary for determining the correct amount due from employer, any amount so due from such employer for any period has escaped his notice;
   (b) Has, in consequence of information in his possession, reason to believe that any amount to be determined under Section 7 A or Section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer;

   In the above cases, the officer may, within a period of 5 years from the date of communication of the order passed under Section 7-A or Section 7-B, reopen the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of the Act.
2. No order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case.

APPELLATE TRIBUNAL

Employees' Provident Funds Appellate Tribunal (Section 7D)

1. The Central Government may constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act. Every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.
2. A Tribunal shall consist of one person only to be appointed by the Central Government.
3. A person shall not be qualified for appointment as Presiding Officer of a Tribunal unless he is, or has been, or is qualified to be a Judge of (a) a High Court; (b) a District Court.
4. The Presiding Officer of a Tribunal can hold office for a maximum period of 5 years.
5. The Presiding Officer may by notice in writing under his hand addressed to the Central Government,

resign his office. But he shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of 3 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.

6. 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 the Presiding Officer had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

7. The salary and allowances payable to; and the other terms and conditions of service (including pension, gratuity and other retirement benefits), of the Presiding Officer shall be such as may be prescribed.

8. The Central Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in the discharge of this functions and provide the Tribunal with such officers and other employees as it may think fit.

9. Any person aggrieved by, a notification issued by the Central Government; or an order passed by the Central Government; or any authority under Section 7-A or Section 7-B, or Section 7-C or Section 14-B. may prefer an appeal to a Tribunal against such notification or order.

10. A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or the discharge of its functions including the places at which the Tribunal shall have its sittings.

11. A Tribunal shall have all the powers which are vested in the officers referred to in Section 7-A and any proceeding before the Tribunal shall be deemed to be a judicial proceedings within the meaning of Indian Penal Code.

12. ***(a)*** A Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit confirming; modifying; or annulling, the order appealed against. The Tribunal may also refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication; or an order, after taking additional evidence, if necessary. ***(b)*** The Tribunal, may, at any time within 5 years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it. Further, it shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal. ***(c)*** If the amendment of an order has the effect of enhancing the amount due from, or otherwise, increasing the liability of an employer, it shall not be made, unless the Tribunal has given notice to the employer of its intention to do so and has allowed him a reasonable opportunity of being heard. ***(d)*** The Tribunal shall send a copy of every order. Disposing of an appeal shall not be questioned in any court of law.

13. If, for any reason, a vacancy occurs in the office of the Presiding Officer of a Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act, to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

14. No order of the Central Government appointing any person as the Presiding Officer shall be called in question in any manner.
Likewise no act or proceeding before a Tribunal shall be called in question in any manner on, the ground merely of any defect in the constitution of such Tribunal.

15. No appeal by an employer shall be entertained by a Tribunal unless he has deposited with it 75 per cent of the amount due from him as determined by an officer referred to it in Section 7-A.
However, the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

16. An employer is liable to pay simple interest @ 12% per annum or at such higher rate as may be specified in the Employees' Provident Fund 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.
The higher rate of interest specified in the Employees' Provident Fund Scheme shall, however, not

exceed the lending rate of interest charged by any scheduled bank.

Mode of recovery of moneys due from employers (Section 8)

1. Any of the following amounts due from an employer in relation to an establishment to which any Provident Fund Scheme or Employees' Deposit-linked Insurance Scheme applies may, if the amount is in arrear, be recovered in manner specified in Sees. 8-B to 8-G :
   (a) Any contribution payable to the Employees' Provident Fund or, as the case may be, the Employees' Deposit-linked Insurance Scheme; or
   (b) Damages recoverable under Section 14-B;
   (c) Accumulations required to be transferred under Section 15 or under Section 17; or
   (d) Any charges payable by the employer, any other provision of the Act or of any provision of the Employees' Provident Fund Scheme or the Employees' Deposit-linked Insurance Scheme.
2. Similarly, any of the following amounts due from an employer in relation to an 'exempted establishment' may, if the amount is in arrear, is recovered in the manner specified in Sees.8B to 8G.
   (a) Any damages recoverable under Section 14-B, or
   (b) Any charges payable by the employer to the appropriate Government under any provision of the Act or under any of the conditions specified under Section 17, or
   (c) The contribution payable by the employer towards the Employees.

Issue of certificate to the Recovery Officer (Section 8B)

1. Where any amount is in arrear under Section 8, the authorised officer may issue, to the Recovery Officer a certificate under his signature specifying the amount of arrears. The Recovery Officer, an receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:
   (a) Attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;
   (b) Arrest of the employer and his detention in prison;
   (c) Appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer.
2. The attachment and sale of any property Under Section 8-B shall first be effected against the properties of the establishment. Where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may then take proceedings against the property of the employer for recovery of the whole or any part of such arrears.

Recovery Officer to whom certificate is to be forwarded (Section 8C)

1. The authorised officer may forward the certificate of recovery referred to in Section 8-B to the Recovery Officer within whose jurisdiction the employer carries on his business or profession or within whose jurisdiction the principal place of his establishment is situate; or resides or any movable or immovable property of the establishment or the employer is situate.
2. Sometimes the Recovery Officer to whom a certificate is sent by the authorised officer may not be able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction. In such a case if he is of the opinion that, for the purpose of expenditing or securing the recovery of the whole or any part of the amount, it is necessary so to do, he may send the certificate to another Recovery Officer within whose jurisdiction the establishment or the employer has property or the employer resides. Where only a part of the amount is to be recovered, he may send a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered. Thereupon that Recovery Officer shall also proceed to recover the amount due under this Section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

Validity of certificate and amendment thereof (Section 8D)

1. When the authorised officer issues a certificate to a Recovery Officer under Section 8-B, it shall not

be open to the employer to dispute before the Recovery Officer the correctness of the amount. Further, no objection to the certificate on any other ground shall be entertained by the Recovery Officer.

2. Even where a certificate has been issued to a Recovery Officer, the authorised officer shall have power to withdraw the certificates or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer. The authorised officer shall, however, intimate to the Recovery officer any orders withdrawing or cancelling a certificate or any correction made by him or any amendment made under Section8-E.

Stay of proceedings under certificate and amendment or withdrawal thereof (Section 8E)

1. Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted. Further, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

2. The order giving rise to a demand of amount for which a certificate for recovery has been issued may be modified in appeal or other proceeding under this Act, and as a consequence thereof, the demand may be reduced. In such a case if the order is the subject-matter of further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

3. Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorised officer shall amend the certificate or withdraw it, as the case may be. He shall do so only when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive.

Other modes of recovery (Section 8F)

1. Notwithstanding the issue of a certificate to the Recovery Officer under Section 8-B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by anyone or more of the modes provided in Section 8-F.

2. If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act. Thereupon, such person shall comply with the requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorised, as the case may be. These provisions shall, however, not apply to any part of the amount exempt from attachment in execution of a decree of a Civil Court under Section 60 of the Code of Civil Procedure, 1908.

- ***Application to the Court for release of money:*** The Central Provident Fund Commissioner or the officer authorised by the Central Board in this behalf may, apply to the Court in whose custody there is money belonging to the employer for payment to him of the entire amount of such money, or if it is more than the amount due an amount sufficient to discharge the amount due.
- ***Recovery by distraint and sale of movable property:*** The Central Provident Fund Commissioner or any officer not below the rank of Assistant Provident Fund Commissioner is empowered to recover any arrears of amount due from an employer by distraint and sale of his movable property.

Protection against attachment (Section 10)

The amount standing to the credit of any member of the fund cannot be (a) Charged; (b) Assigned; and (c) Attached under any decree or order of the Court.

Priority of payment of contributions over other debts (Section 11)

- Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due from the employer in relation to any establishment to which any Employees' Provident Fund Scheme or Employees' Deposit-linked Insurance Scheme applies in respect of

(a) Any contribution payable to the Provident Fund or the Deposit-linked Insurance Fund;
(b) Damages recoverable under Section 14-B;
(c) Accumulations required to be transferred under Section 15;
(d) Any charges payable by the employer under any other provision of the Act or any provisions of the Employees' Provident Fund Scheme or the Employees' Deposit-linked Insurance Scheme.

- Any amount due from the employer in relation to an exempted establishment in respect of
  (a) Any contribution to the provident fund or any insurance fund (in so far as it relates to exempted employees)
  (b) Any contribution payable by him towards the Pension Fund under Section 17;
  (c) Damages recoverable under Section 14-B; or
  (d) Any charges payable by him to the appropriate Government under any provision of the Act or under any of the conditions specified under Section 17.

Employer not to reduce wages, etc. (Section 12)

Any employer in relation to an establishment to which the Employees' Provident Fund Scheme or Employees' Deposit-linked Insurance Scheme applies shall not by reason only of his liability for the payment of any contribution to the Fund or Scheme reduce, the wages of an employee to whom the Fund or the Scheme applies.

Inspectors (Section 13)

- The appropriate Government may appoint such persons as thinks fit to be inspectors for the purposes of this Act, the Pension Scheme or the Insurance Scheme. It may also define the jurisdiction of the Inspectors.
- Powers of Inspectors. The Inspectors have been assigned certain powers for the purpose of
  (a) Inquiring into the correctness of any information furnished in connection with the Act or with any Scheme or the Insurance Scheme; or
  (b) Ascertaining whether any of the provisions of the Act or of any Scheme or the Insurance Scheme have been complied with in respect of an establishment to which any Scheme or Insurance Scheme applies; or
  (c) Ascertaining whether the provisions of the Act or any Scheme are applicable to any establishment, to which the Fund or the Insurance Scheme has not been applied; or
  (d) Determining whether the conditions subject to which exemption was granted under Section 17 are being complied with by an employer in relation to an exempted establishment.

MISCELLANEOUS

Special provisions relating to existing provident funds (Section 15)

1. Every employee who is a subscriber to a provident fund of an establishment to which this Act applies shall, pending the application of a scheme to that establishment, continue to be entitled to the benefits accruing to him under the provident fund. And in such a case the provident fund shall continue to be maintained in the same manner and subject to the same conditions as it would have been if this Act had not been passed. This is, however, subject to Section 17 which empowers the appropriate Government to exempt certain establishments from the operation of all or any of the provisions of any scheme (Section 15(1)].

2. On the application of any Employees' Provident Fund Scheme to an establishment the accumulations in any provident fund of the establishment standing to the credit of the employees who become members of the fund established under the scheme shall be transferred to the Employees' Provident Fund established under the Employees' Provident Fund Scheme, and shall be credited to the accounts of the employees entitled thereto in the Employees' Provident Fund. The transfer will not be subject to anything to the contrary contained in any law for the i time being in force or in any deed or other instrument establishing the provident fund. But any such transfer shall be subject to the provisions, if any, contained in the Employees' Provident Fund Scheme [Section 15(2)].

Act not to apply to certain establishments (Section 16)

This Act shall not apply to

1. ***(a)*** Any establishment registered under the Co-operative Societies Act, 1912 or under any law for the time being in force in any state relating to cooperative societies, employing not less than 50 persons and working without the aid of power; or

(b) 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 benefit.

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

It may be noted that an establishment is not deemed to be newly set up merely by reason of a change in its location.

2. If the Central Government is of opinion that having regard to the financial position of any class of establishments, it may by notification in the official gazette, exempt that class of establishments from the operation of this Act as may be specified.

Authorising certain employers to maintain provident fund accounts (Section 16A)

1. The Central Government may, on an application made to it in this behalf by the employer and a majority of employees in relation to an establishment employing 100 or more persons, authorise the employer, to maintain a provident fund account in relation to the establishment. The authorisation shall be subject to such terms and conditions as may be specified in the Employees' Provident Fund Scheme.

2. No authorisation shall be made under Section 16-A of the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under the Act during the three years immediately preceding the date of such authorisation.

3. Where an establishment is authorised to maintain a provident fund account under Section 16-A, the employer in relation to such establishment shall maintain such accounts, submit such returns, deposit the contributions in such manner and abide by such other terms and conditions, as may be specified in the Employees' Provident Fund Scheme.

4. Any authorisation made under Section 16-A 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.

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

Power to exempt (Section 17)

1. The appropriate Government may exempt from the operation of all or any of the provisions of any Scheme
   (a) Any establishment to which this Act applies if the appropriate Government is of opinion that the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6; and the employees also enjoy other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the Act or any Scheme in relation to the employees in any establishment of a similar character; or
   (b) Any establishment if the employees of such establishment 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 in relation to employees in any other establishment of a similar character.

Exemption from Pension Scheme: The appropriate Government may exempt any establishment or class of establishments from the operation of the Pension Scheme, if the employees of such establishment or class of establishments are either members of any other pension scheme or proposes to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act.

Exemption from Employees' Provident Fund Scheme: The Employees' Provident Fund Scheme may make provision for exemption of any person or class of persons employed in any establishment to which this Scheme applies from the operation of all or any of the provisions of this Scheme, if

(i) Such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old-age pension, and

(ii) Such benefits, separately or jointly, are on the whole not less favourable than the benefits provided under the Act or the Employees' Provident Fund Scheme. But no such exemption shall be granted in respect of a class of persons unless the appropriate Government is of opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits.

Exemption from Employees' Deposit-linked Insurance Scheme: An employer may i request the Central Provident Fund Commissioner for exemption from the; operation of all or any of the provisions of the Employees' Deposit-linked. Insurance Scheme. In such a case the Central Provident Fund Commissioner may, by notification in the Official Gazette, grant the exemption. The exemption may be granted prospectively or retrospectively and shall be subject to such conditions as may be specified in the notification.

Obligations of employer granted exemption under Section 17: Where in respect of any person or class of persons employed in an establishment, an exemption is granted under Section 17 from the operation of all or any of the provisions of the Employees' Provident Fund Scheme or Employees' Deposit-linked Insurance Scheme, the employer in relation to such establishment

(a) Shall, in relation to the provident fund, pension, gratuity or benefits in the nature of life insurance to which any such person or class of persons is entitled to maintain such accounts, submit such returns, make such investments, provide for such facilities for inspection and pay such inspection charges, as the Central Government may direct;

(b) Shall not at any time after the exemption, without the leave of the Central Government, reduce the total quantum of benefits in the nature of pension, gratuity, provident fund or life insurance to which any such person or class of persons was entitled at the time of the exemption;

(c) Shall, where any such person leaves his employment and obtains reemployment in another establishment to which this Act applies, transfer within such time as may be specified in this behalf by the Central Government, the amount of accumulations, to the credit of that person in the provident fund of the establishment in which he is re-employed or, as the case may be, in the Employees' Provident Fund established under the Employees' Provident Fund Scheme applicable to that establishment.

Transfer of accounts (Section 17-A)

1. ***(a)*** Where an employee employed in an establishment to which the Act applies leaves his employment; and

(b) 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 Employees' Provident Fund, or 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 permits such transfer.

2. ***(a)*** Where an employee employed in an establishment to which the Act does not apply leaves his employment; and

(b) Obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in 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,

(i) In the Employees' Provident Fund; or

(ii) In the provident fund of the establishment in which he is re-employed.

Liability in case of transfer of establishments (Section 17B)

Where an employer, in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or license 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 provisions of the Act; Employees' Provident Fund Scheme; or the Pension Scheme as the case may be, in respect of the period up to the date of transfer.

However, the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

Delegation of Powers (Section 19)

1. The appropriate Government may direct that any power or authority or jurisdiction exercisable by it under this Act, the Employees' Provident Fund Scheme, the Pension Scheme or the Employees' Deposit-linked

Insurance Scheme shall, in relation to such matters and subject to such conditions, be exercisable also

(a) Where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) Where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

Power of Central Government to give directions (Section 20)

The Central Government may give such directions to the Central Board as it may think fit for the efficient administration of this Act and when such direction is given, the Central Government shall comply with such direction.

Power to make rules (Section 21)

1. The Central Government is empowered to make rules to carry out the provisions of this Act.

2. The aforesaid rules may provide for all or any of the following matters, namely:

(a) The salary and allowances and other terms and conditions of service of the Presiding Officer and the employees of a Tribunal;

(b) The form and the manner in which, and the time within which, an appeal shall be filed before a Tribunal and the fees payable for filing such appeal;

(c) The manner of certifying the copy of the certificate, to be forwarded to the Recovery Officer under Section 8C; and

(d) Any other matter which has to be, or may be, prescribed by rules under this Act.