THE EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

Date ______
Page ______

SEC 1 Applicability :- Factories
- engaged in any industry in Sch-I
- employs ≥ 20 persons

Other Establishments
- employ ≥ 20 persons
- notified est. by CG
  - ↳ educational institution employing ≥ 20 person

Establishments employing ≤ 20 persons
- if notified by CG and made applicable
- before notification - 2 month notice

Applicability on request (voluntary basis)
- Application to Central PF Commissioner
  - ↳ by employer & majority of employees
- Notification by CPFC for applicability
  - cannot opt-out later

* Like Bonus Act, here also, once applicable, forever applicable

SEC 2A Applicability of Act to department & branches
- if applicable to establishment
- then also to dept. & branches
  - ↳ wherever situated

SEC 2(g) Factory — any premises + precincts
- ↳ manufacturing process in any part
  - ↳ with/without power

SEC 2(ic) Manufacture or Manufacturing Process
- making, repairing, packing, cleaning, demolishing etc.
- for use, sale, transport, delivery, disposal

SEC 2(e) Employer — Same as bonus act

SEC 2(f) Employee — for wages, any work (manual/otherwise)
- ↳ directly or indirectly from employer

↓

Includes
- employed by / through contractor
- Apprentice (Except Apprentice Act 1961 or standing order of est.)

variable pay and not fixed like salary (wages)

SEC 2(b) Basic Wages — all emoluments earned as per terms
paid in cash
on duty, leave/holiday with wages

* anything else, not included

SEC 2(aa) Authorized officer — Central, Additional, Deputy, Regional PFC
other notified by CG

SEC 2(a) Appropriate Govt. — CG — est. under CG control
" connected with railway co., port, mine, oil field or controlled industry
" with branches in more than 1 state

SG — other than above

SEC 2(ff) Exempted Employee — to whom scheme does not apply
exemption u/s 17

SEC 2(fff) " Establishment — ↑ same reason

SEC 16 PF Act Non-Applicability

— Co-op. Society — Registered
Employee < 50
Works without power

— Govt. Undertaking — belong to/under control of CG/SG
employees entitled to contributory PF or old age pension

2nd point applicable for non-applicability to est. set up under Central/State act

← Exemption by Notification — prospectively / retrospectively
by CG
Period and terms in notification
Before it, CG will consider financial position / other fact

Date ______
Page ______

SEC 16A Authorising certain employers to maintain PF A/c's

Conditions — 1. Generally employee a/c maintained in PF office
2. To permit est., following conditions :-
- application to CG
- by employer and majority employees
- Est. → employ → ≥ 100 persons
- No payment default / other offence in 3 immediate PY
- CG → authorises → order → writing

Terms of authorisation (for compliance) — Manner of a/c maintenance
- Return submission
- Contribution deposit
- Inspection facilities, Admin. charges payment, others

Cancellation — fails to comply with terms
— commits offence
— before cancellation, hearing opportunity
↓
Order in writing

SEC 17 Exempted Est. — A) Exemption from PF Scheme
- by AG
- by notification, subject to conditions therein
- prospectively / retrospectively
- Act / Any provision

Conditions — • PF rules framed by est. vs. Specified in Act / Scheme } for contribution rates and other benefits ↓ are on equal terms / not less favourable

- Before exemption, AG to consult Central Board
Replies as per time in Scheme ←

Applicability of prov. on ex. est. — T&C as per notification
— Default in compliance — Punishable u/s 14
— Est. not exempted

Employer Duty — Establish Board of Trustees for administration of PF

Duties of Board — • Detailed A/c's (Cr., withdrawal, interest)
• Timely return submission
• PF money investment as per govt. directives
• PF A/c trf., if any
• Other specified duties

* Non-compliance by trustees → punishable offence u/s 14

B) Exemption from Pension Scheme
• by AG • by Notification, subject to conditions therein
↳ also specifies pattern of investment of fund
• prospectively / retrospectively • from all/any provision
Condition — Benefit to employees vs. Pension Schemes } At par / more favourable

c) Exemption from Insurance Scheme
• by CPFC • by Notification, subject to conditions therein • pro/retro
• from any/all prov. • Condition — no extra contribution; benefit like life insurance; more favourable than scheme

SEC 5A Central Board
• Contribution to PFS, EPS, EIS credited to a fund administered by Central Board of Trustees
↳ formed & notified by CG
↳ as body corporate

• Composition — 1 → Chairman, Vice-Chairman, CPFC
Officials representing — CG — Max. 5
SG — Max 15
Representing employer — 10 person
" employees — " "

Date
Page

A/c's < Income & Expenditure / Form & Manner – by CG

Audit < Annually / by CAG

Annual Report – To CG

Delegation of Power < As deemed fit / To Executive Committee / State Board / Chairman / other

SEC 5AA Executive Committee < Constituted & Notified by CG / 13 members from Central Board

Members – 1 chairman
2 from CG representative
3 " SG "
3 " employer "
3 " employees "
CPFC

Appointed
By CG (chairman, CG and SG representatives)
By Central Board (employer and employees representatives)

Purpose < To assist Central Board / Scheme to Provide < T&C for appointment / Procedure of meeting

SEC 7A Determination of application of act and money due from employer

- Disputes < applicability of act / amount due from employer < Contribution / Admin charges / Int. for payment delay / other amount payable

↓

Determined by

↓

officer u/s 2(aa)

↓

Powers ⟶ Inquiry ⟶ Judicial Proceedings
Principles of natural justice ⟶ Order as per Act & Scheme

↓

Same as civil court ⟶
1. enforcing attendance
2. discovery & prod.n of documents
3. Receiving evidence on affidavit
4. issuing commission for witness examination

Ex-parte order → employer does not attend hearing / produce record
(in the interest of one side only)

↓
ex-parte order passed
↓
employer request officer for setting aside + fresh hearing
↓
may do*, if satisfied
- Sufficient reason by employer
- No appeal filed against ex-parte order

* before doing so, notice shall be given to opp. party

SEC 7B Review of Order u/s 7A
- Any person aggrieved by order
- officer himself on his own motion

} Within 45 days of order u/s 7A

↓
Not possible if appeal filed

Case for review application
- New evidence, not produced earlier as not within knowledge after due diligence
- mistake / error apparent (i.e. obvious)
- other sufficient reason

officer may reject if no sufficient ground
↓
appeal cannot be filed for rejection

may grant the review
↓
order passed (if)
↓
appeal possible

SEC 7C Escaped Amount — re-determination of amount due from employer if escaped earlier
↓
when — earlier, all material facts not disclosed by employer
— even if no failure by employer in

Conditions
- only when initial determination made u/s 7A/7B
- within 5 years from date of communication of order u/s 7A/7B
- reasonable opp. to employer for representation before redetermination

Date
Page

⟹ Appeal Against Order

SEC 7I → To → EPF Appellate Tribunal

" 7O → Condition — deposit 75% of demand amount

↳ tribunal can waive/reduce

" 7L → T gives hearing opp. before order

↓

Following types

Confirm, modify set aside (cancel) the order appealed against

Remand the matter back to officer for fresh decision with directions

→ T order copy sent to parties to appeal

↳ is final. No appeal in any court.

→ Rectification

- apparent mistake
- within 5 yrs. from order date
- if order increases employer liability, R" after notice and hearing opp.

↓

T has power to R its own order

SEC 7Q Interest payable by employer → For delay in payment of any amount → S.I. @ 12% p.a., OR Higher rate in scheme

↓ from due date till actual payment date

↓ <= lending rate by any Scheduled bank

SEC 8B Recovery of money from employer → Recovery Certificate from authorised to recovery officer

↓ mentions the amount due

↓ within jurisdiction

business situated OR Employer resides OR Property of est. and emp. is situated

Date
Page

Recovery Mode — Attach & sale est. property
↓
if insufficient
↓
Attach and sale employer property

— Arrest and detention in prison

— Appoint a receiver for property management

Stay of Proceedings → Time granted for payment by AO
↓
Proceedings stayed by RO until time expiry

↓
even if certificate has been issued
(notwithstanding)

SEC 17A Transfer of A/c's

Case 1 → Employee leaves → re-employed elsewhere → new est PF Act X → Own PF by est. which permits trf. → Request by employee → time by CG → Cr. amount trf. to A/c in new est.

Case 2 → Here, old est → PF Act X → Own PF by est. which permits trf. → Emp. leaves → re-employed elsewhere → new est. PF Act ✓ → employee request → Cr. amount trf. to A/c in new est.

SEC. 10

Not applicable to amount withdrawn from PF A/c

Protection against attachment of amount standing to the credit of any member in fund ⟹

1. Not capable of being charged
2. Not liable to attachment under any court order/decree in respect of any debt
3. Cannot be claimed by official receiver
4. For nominee :- Free from any debt incurred by the deceased member

Date ______
Page ______

SEC 17B Liability of Employer in transfer of establishment → He and transferee jointly & severally liable for cont^n & other payment upto trf. date
↳ any mode

Liability
- Transferor → Limited upto date of transfer
- Transferee → Limited to assets obtained in transfer

SEC 5&6 EPF SCHEME

Contribution
- Employee — *10% of Basic + DA + retaining allowance
  - DA ↓ incl. Cash value of food concession
  - retaining allowance ↓ payable when est. not working for retaining services
- Employee
  ↓
  equal to employees
  ↓
  Employee can contribute higher as well (Employer not bound)

↓
R/off to nearest rupee

* 10% can be increased to 12% by CG via notification
→ Scheme can cover all or any matter in Schedule II

Contribution accretion with interest to the credit in A/c of member → Lump Sum payment
- to member — at termination
- to nominee or legal heir → in death of the member

\# During service, partial withdrawal allowed for specified purposes

SEC 6A Employee Pension Scheme

- Framed & notified by CG
  ↳ after framing, pension fund established → administered by central board
  ↓
  following paid to member employee (time to time)
  - from employer contribution u/s 6
    ↓
    $\leq$ 8.33% (Basic + DA + Retaining All.)
  - Sum payable by employers of ex est. u/s 17
  - Net assets of Employees Family Pension Fund
    ↓ as on date of establishment
  - Sum specified by CG

Old Family Pension Scheme ceased => Pension fund established → old one ceased

all assets & liabilities trf to pension fund

↓ vest in ↓ enforceable against

↓

Beneficiaries → entitled to draw benefits from pension fund

↓

= entitled amount under ceased scheme

Pension Scheme Benefits
- Member Employees : Pension (superannuation, retiring, permanent total disablement)
- Beneficiaries of Employees : Pension (widow, children, orphan)

Provisions of Pension Scheme → May specify any/all matters in Schedule III

↓

1. Employees to whom scheme applies
2. Time limit for non-members to opt for scheme
3. Portion of employer's contribution to PF, credited to pension fund & its manner.
4. Min. qualifying service for eligibility and manner of granting benefit.
5. Regulation of manner & period of service for which no contn received
6. Manner of employee interest protection, if contn default by employer
7. " " A/c keeping and fund investment, subject to pattern by CG
8. Form for furnishing details of employee & his family
9. ", registers & records to be maintained for administration
10. Pension, its benefits and conditions relating to grant to employees
11. Manner of contn and return submission for exempted establishment
12. Mode of pension disbursement & arrangements with disbursing agencies
13. Manner of meeting adminn exp. from income of the fund
14. Any other matter necessary for implementation

Date
Page

SEC 6C Employee Deposit Linked Insurance Scheme

- Framed and notified by CG
  ↳ deposit linked insurance fund established
- Employer contn — for his every employee
  — ≤ 1% of Basic + DA + retaining allowance
  ↳ incl. cash value for food concession
  — Further sum — ≤ 1/4th of req. contn
  ↳ paid for admin. exp. and cost of benefits

- Fund under control (vest in) & administered by Central Board
- Benefit — life insurance to employees of est. to which act applies
- Provisions — all or any matter in Schedule-IV

EDLI (Amendment) Scheme, 2014:-

At the time of death → employee was member → following lump sum to nominee

(Avg. monthly wages (max. 15000) — during the 12 months preceding the month of death) × 20 — (A)

Avg. balance in the fund A/c of deceased = x — (B)
During → lower of → membership period and preceding 12 months

↓
If $x > 50,000$
↓
50,000 + 40% of above 50,000
↓
Max. 1,00,000 (1 lakh)

Take higher of A and B as C

Now, C × 120% = final amount payable

↑ increased by 20%

SEC. 9 For Income-tax Act – Deemed as Recognised PF
↳ vs. provisions of scheme
↳ shall prevail

SEC 11 Contribution to Preferential Payment → If
- employer is a company and ordered to wound up
- 'OR'
- others – employer judged insolvent

↓

Effect →
- Amount due from employer (employee/employer contⁿ)
- Before the order of winding up

Where employer is company ⟹
- Include such amount in debts u/s 530 of CA'1956
- Such amount to be paid in priority basis in the distribution of property of the company

Others ⟹ Amount due before order of adjudication
↳ include in debt

u/s 49 of Presidency Towns Insolvency Act 1909 'OR' u/s 61 of Provincial Insolvency Act, 1920

and to be paid on priority basis in distribution of the property of the insolvent

SEC 12 Employer not to reduce wages (directly or indirectly) of an employee to whom fund or scheme applies → Cannot do so only because of his liability for contribution payment to fund/scheme
'OR'
Shall also not reduce total quantum of benefits
$\underbrace{\text{old age pension, gratuity, PF, life insurance}}$
to which employee is entitled under his terms of employment, express/implied