

### 3.6 THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISION ACT, 1952

#### APPLICABILITY OF PE ACT

[Sec. 1]

- **Factory**
  1. every establishment which is a factory engaged in any industry specified in schedule I and in which 20 or more persons are employed on any single day, and
  2. 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.
- **Extension**  
*The Central Government by notification in the Official Gazette –*
  - (a) add to Schedule I any other industry, where it is of the opinion that a Provident fund scheme should be framed under this Act.[Sec. 4]
  - (b) may extend the provisions of this act to an establishment employing less than 20 persons after giving not less than 2 months notice of its intention.
- **Voluntary:**  
 The central PF Commissioner may apply of this Act on an application received from employer and majority of employees by notification in the Office Gazette.
- **Established to include all departments and branches [Sec. 2A]:**  
 If established consists of different departments of branches, whether situated in the same place or in different places, they shall be treated as part of the same establishment
- **Composite Factories:**  
 Composite Factories engaged in more than one industry, which may include activities covered in Schedule I as well as other activities. The test for determining the applicability of the Act is whether the activity falling in Schedule I is its primary and domination activity.

#### NON – APPLICABLE OF PF ACT

[Sec. 16]

- **Co-operative Society**  
*An establishment fulfilling the following conditions:*
  - (a) The establishment has been registered under the Co-operative Societies Act.
  - (b) It employs less than 50 persons.
  - (c) It is working without the aid of power
- **Government Undertaking**  
*Any establishment fulfilling the following conditions:*
  - (a) It belongs to the CG or SG, or is under the control of CG or SG.
  - (b) The employees of the establishment are entitled to benefit of contributory provident fund or old age pension.
- **Undertaking constituted under an Act**  
*Any establishment fulfilling the following conditions:*
  - (a) It has been set up under any Central or State or provincial Act.

(b) The employees of the establishment are entitled to benefit of contributory provident fund or old age pension.

➤ **Power of Central Government to exempt certain Establishments [Sec. 16(2)]**

(a) The Central Government may exempt certain establishments / class of establishments from the applicability of this Act by way of a notification in the Official Gazette.

(b) The exemption is granted taking into consideration –

- the financial position or
- other circumstances of the case and
- on the opinion of the Central Government that is expedient as specified, either prospectively or retrospectively.

**DEFINITIONS**

[Sec. 2]

➤ **Appropriate Government [Sec. 2(a)]**

- **AG means CG in the following cases:**

(i) In relation to an establishment belonging to, or under the control of, CG.

(ii) In relation to an establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry.

(iii) In relation to an establishment having departments or branches in more than one State.

- **In relation to any other establishment, AG means SG.**

➤ **Authorized officer [Sec. 2(aa)]**

- Central Provident Fund Commissioner
- Additional Provident Fund Commissioner
- Deputy Provident Fund Commissioner
- Regional Provident Fund Commissioner
- Such other officer as may be authorized by CG, by notification in Official Gazette.

➤ **Basic wages [Sec. 2(b)]**

- **'Basic wages' means –**

- all emoluments
- Which are earned by an employee
- In accordance with the terms of the contract of employment
- Which are paid or payable in cash to him
- While
  - (a) on duty; or
  - (b) while on leave with wages; or
  - (c) while on holidays with wages.

- **'Basic wages' does not include –**

(a) the cash value of any food concession

(b) 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)

(c) house – rent allowance, overtime allowance

➤ **Employer [Sec. 2(e)]**

- **In relation to an establishment which is a factory, employer means-**

(a) the owner or occupier of the factory (Occupier means the person who has ultimate control over the affairs of the factory);

(b) the agent of such owner or occupier,

- (c) the legal representative of a deceased owner or occupier
- (d) Person named as a manager of the factory under the Factories Act.
- ***In relation to any other establishment, employer means –***
  - (a) the person having the ultimate control over the affairs of the establishment;
  - (b) the manager or the managing director to whom the affairs of the establishment are entrusted.
- **Employee**
  - ***Employee means any person –***
    - who is employed for wages
    - in any kind of work, whether manual or otherwise,
    - in or in connection with the work of an establishment
    - who gets his wages directly or indirectly from the employer.
  - ***Employee includes any person –***
    - (i) employed by or through a contractor in or in connection with the work of establishment
    - (ii) engaged as an apprentice (not being an apprentice under the Apprentices Act, 1961 or under the standing order of the established)
- **Factory [Sec.2(g)]**  
***Factory means –***
  - any premises including the precincts thereof
  - in any of which a manufacturing process is being carried on or is ordinary so carried on,
  - whether with the aid of power or without the aid of power
- **Exempted employee [Sec.2(ff)]**  
Exempted employee means an employee to whom the Scheme does not apply by reason of exemption granted u/s 17-
- **Exempted [Sec. 2(e)]** **M 95, M 07**
  - ***In relation to – An establishment which is a Factory***
    - The owner or occupier of the factory, including agent of such owner or occupier,
    - The legal representative of a deceased owner or occupier, and
    - Where a person has been named as a manager of the factory u/s 7 of the factories Act, the person so named.
  - ***Any other Establishment***
    - The person, who, or the Authority which, has the ultimate control over the affairs of the establishment, and
    - Where the said affairs are entrusted to a manager, managing director or managing Agent, then such manager, managing director or managing agent.
- **Manufacture or manufacturing process [Sec. 2(ic)]**  
Manufacture or manufacturing process means any process for making, altering repairing ornamenting finishing, packing, oiling, washing cleaning breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal
- **Industry [Sec. 2(i)]**  
Industry means any Industry specified in Schedule I, and includes any other industry added to the Schedule by notification u/s 4.

*The following have been held to be “Industries” –*

- (a) A Company doing business in renewing and reconditioning worn – out machine parts.
- (b) A Company carrying on the work of repair and servicing of Motor Cars.
- (c) Sugar Factory, Confectionery, and Distillery located within one compound is one Factory.
- (d) A Laundry in which mechanical power was used for driving machines used in the aid of the work of washing clothes.
- (e) Department of publications and press run by a University.

## THE CENTRAL BOARD

(Sec. 5A)

*Both Central Board of Trustees and Executive Committee under the EPF Act, are constituted by the Central Government by Notification in the Official Gazette. The following are the comparative points of composition etc –*

### ➤ Administration of fund

- The fund vests in and is administered by Central Board of Trustees, i.e. Board of Trustees or simply the Board.
- The Central Board is formed by CG by notification in the Official Gazette.
- In other words, Central Board shall administer the following funds:
  - (a) The Employees Provident Fund
  - (b) The Employees Pension Fund
  - (c) The Employees Deposit Linked Insurance Fund.

### ➤ Board is a body corporate

The Board of Trustees is a body corporate having perpetual succession and common seal.

### ➤ Composition of Board

1	Chairman	
1	Vice Chairman	
1	Central Provident fund commissioner	
Maximum officials	5	Representing CG
Maximum officials	15	Representing SG
10 persons	Representing employers	- appointed by CG in consultation with association of employers
10 persons	Representing employees	- appointed by CG in consultation with organization of employees.

### ➤ Function of Central Board

Rights / Function	Duties
1. Administration of the Fund: Rights to administer the fund subject to Sec. 6A and 6C in such manner as specified in the scheme.	1. Maintenance of Proper Accounts: To maintain proper accounts of Income and expenditure in such from and manner as the Central Government may specify.
2. Performing Other Functions: Perform such other functions as required of it	2. Audit of Accounts: To get the

<p>under the Provident Fund Scheme, Family Pension Scheme and Insurance Scheme.</p> <p>3. Appointment of Officers: Central Board shall appoint Additional, Deputy, Regional or Assistant Provident Fund commissioners and other staff as may be considered necessary for efficient administration of the Scheme.</p> <p>4. Delegation of Functions: Central Board shall delegate in powers and functions to any of its officers as it may deem necessary for efficient administration.</p>	<p>accounts audited annually by the C &amp; AG of India.</p> <p>3. Forwarding Audit Report to Central Government: To forward the audited accounts together with explanations, if any, on any remarks of the Audit Report of the C &amp; AG to the Central Government.</p> <p>4. Submission of Annual Report: To submit to the Central Government an Annual Report of its work and activities.</p>
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**EXECUTIVE COMMITTEE****(Sec. 5AA)**➤ **Composition of the committee**

- Executive Committee is constituted by CG by notification in the Official Gazette.
- Executive committee shall consist of 13 members.
- The members of the Executive Committee are selected out of the members of the Central Board.
- The Executive Committee consists of the following members:

Chairman	- From amongst the members of the Central Board	- appointed by CG.
2 persons	- From amongst the representatives of CG elected to the Central Board	
3 persons	- From amongst the representatives of SG elected to the Central Board	
3 persons	- From amongst the representatives of employers elected to the Central Board	- elected by the Central Board
3 persons	- from amongst the representatives of Employees elected to the Central Board.	
Central Provident Fund Commissioner		

➤ **Purpose of constitution of Executive committee**

- The purpose of executive committee is to assist the Central Board in its function.
- The Scheme shall provide for –
  - (a) Terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee.
  - (b) The time, place and procedure of the meetings of the Executive Committee

**RECOVERY OF MONEY FROM EMPLOYER****(Sec. 8B)**➤ **Issue of certificate to recovery officer**

The authorized officer is required to issue a certificate to Recovery Officer specifying the amount due from the employer.

➤ **Which recovery officer**

*The recovery certificate shall be sent to the Recovery Officer within whose jurisdiction –*

- (a) the business or profession is situated; or
- (b) employer resides; or
- (c) Any immovable or movable property of establishment or employer is situated.

➤ **Mode of recovery**

- (a) Attachment and sale of the movable or immovable property of the establishment.  
If amount so recovered is insufficient for recovering the whole of the amount of arrears specified in the certificate, the movable and immovable property of the employer may also be attached and sold.
- (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 the employer.

➤ **Stay of proceeding**

- The authorised officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceeding until the expiry of the time so granted.
- The stay of proceedings may be granted notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount.

**TRANSFER OF ACCOUNTS**

**(Sec.17A)**

➤ **If the new establishment is covered under PF Act**

*If*

- an employer who is a member of PF, leaves an establishment
- he obtains re-employment in another establishment
- the new establishment is also covered under PF Act

*Then*

- the amount standing to his credit will be transferred to his account in the new establishment (i.e. the establishment where he is re – employed)

➤ **If the new establishment is not covered under PF Act**

*If*

- an employee who is a member of PF, leaves an establishment
- he obtains re-employment in another establishment
- the new establishment is not covered under PF Act
- the new establishment has a Provident Fund of its own
- the rules of such provident fund permit such transfer

*Then*

- at the request of employee
- within such time as be specified CG
- the amount standing to his credit will be transferred to his account in the new establishment

➤ **If the old establishment was not covered under PF Act**

*If*

- an employee is employed in an establishment to which the provisions of the PF Act do not apply
- such establishment has its own Provident Fund
- the rules of such provident fund permit such transfer
- the employee leaves such establishment
- he obtains re – employment in another establishment

- the new establishment is covered under PF Act
- Then*
- at the request of employee
  - the amount standing to his credit will be transferred to his account in the new establishment

**PROTECTION AGAINST ATTACHMENT****(Sec. 10)**➤ **Nature of protections**

The amount standing to the credit of any member in the fund –

- (a) shall not in anyway be capable of being assigned or charged:
- (b) shall not be liable to attachment under any decree or order of any court in respect of any debt or liability;
- (c) shall not be capable of being claimed by the official assignee or the official receiver:
- (d) Shall be free from debt or other liability (in the hands of the nominee) incurred by the deceased member.

➤ **No protection**

The employee cannot claim any protection in respect of the money which has been withdrawn him from the PF Account.

**LIABILITY OF EMPLOYER IN CASE OF TRANSFER OF ESTABLISHMENT (Sec. 17B)**➤ **Contribution due upto the date of transfer**

If an employer transfer (whether by way of gift, sale, lease or any other mode) an establishment, he as well as transferee of the establishment shall be jointly and severally responsible for contributions and other sums due upto the date of transfer of establishment.

➤ **Limitation on liability****Liability of transferor**

The liability of transferor shall be limited with respect to the period upto the date of transfer.

**Liability of transferee**

The liability of transferee shall be limited to the assets obtained by him by way of transfer of establishment.

**INSPECTORS****(Sec. 13)**➤ **Appointment**

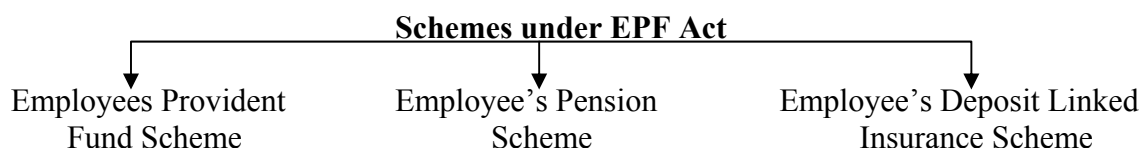
- AG is empowered to appoint the inspectors for the purpose of EPF Act, EPF Scheme, pension Scheme, and Insurance Scheme. The appointment of inspector shall be made by issue of a notification in the Official Gazette.
- The respective jurisdiction of the inspectors shall be specified by shall Appropriate Government.
- The inspector is a 'public servant' within the meaning of Sec. 21 or IPC.

➤ **Powers of inspector**

- (a) To call such information from the employer or contractor as he considers necessary.

- (b) To enter into any establishment and require production of any books, registers and documents.
- (c) To examine the employer, his agent or servants.
- (d) To make copies and take extracts of any book, register or other document.
- (e) To seize the books, registers or other documents as he considers necessary if he has reason to believe that any offence under this Act has been committed by an employer.
- (f) To exercise such other powers as may be provided in PF Scheme, Pension Scheme or Insurance Scheme.

## 17. SCHEMES COVERED UNDER THE ACT



### A. EMPLOYEES PROVIDENT FUND SCHEME

#### ➤ **Quantum of contribution**

##### ***Employer's contribution***

- 10% of pay (i.e., basic wages plus dearness allowance plus retaining allowance) –

##### ***Employer's contribution***

- 10% of pay.
- Employee may voluntarily contribute a higher amount.

##### ***Rounding off***

The contribution has to be rounded off to nearest rupee.

##### ***'Dearness allowance'***

Dearness allowance includes cash value of any food concession allowed to the employee.

##### ***'Retaining allowance'***

Retaining allowance means an allowance payable to an employee during any period during which the establishment is not working for retaining his services.

#### ➤ **Increase in rate of contribution**

- CG is empowered to increase the rate of contribution to 12%.
- The power shall be exercised by way of a notification in the Official Gazette.

#### ➤ **Employee earning more than Rs.6,500**

If the pay of an employee exceeds Rs.6,500, the Employer's contribution shall be 10% 12% of Rs.6,500.

#### ➤ **Diversion to Employees' Pension Scheme**

Out of employer's contribution of 10%/ 12%, the Employer's contribution of 8.33% shall be diverted to Employees' Pension Scheme.

#### ➤ **Investment of the contributions**

- The Board of Trustees is responsible for managing the Fund.
- The moneys of the Fund shall be invested by the Board of Trustees as per the investment plans approved by the Central Government.
- Members (i.e. Employees) get interest on the money standing to their credit at a rate recommended by the Government.



➤ **Advances and withdrawals**

Employees are allowed to withdraw from their account for specific purposes.

**B. EMPLOYEES PENSION SCHEME FROUDED BY (Sec. 6A)**

➤ **Quantum of contribution**

- Employer's contribution of 8.33% shall be diverted to Employer's Pension Scheme.
- CG can contribute to the pension fund, as approved by the parliament.

➤ **Benefit under the scheme**

(a) Members will get pension –

- on superannuation; or
- on retirement from service; or
- upon permanent total disablement during employment.

(b) Pension, will be available to widow/widower for life or till he/she remarries.

(c) Children will be entitled to pension, upto 25 years of their age. Benefit of pension to children is restricted only for 2 children.

(d) Orphans will be entitled to pension at enhanced rate. Benefit of pension to orphans is restricted only for 2 orphans.

(e) If the person is unmarried or has no family, pension is available to nominee for a specified period.

(f) Funds managed by 6A(4) : Central Board of Trustees constituted u/s 5A.

(g) Scheme provides for 6A(5): All or any of the matters specified in Schedule III.

(h) Period of effect of Scheme 6A(6): Prospectively, or  
: Retrospectively from such date as may be specified

**C. EMPLOYEE'S DEPOSIT LINKED INSURANCE SCHEME**

➤ **Quantum of contribution**

**Employer**

The employer is required to pay contribution which cannot be more than 1% of pay of employee. Presently, the rate of contribution is 0.5%.

**Employee**

The employees do not contribute any amount to the scheme.

**CG**

CG also contributes to the – Insurance Fund at the rate of 0.25% of pay of every employee.

**Administration charges**

Employer is also required to pay administration charges for the Insurance Scheme, which shall not be more than 0.25% of pay of employee. Presently, the rate of contribution is 0.01% of pay of employee subject to a minimum of Rs.2 per month per member.

➤ **Exemption from the scheme**

- Exemption from the scheme can be obtained if LIC Group Gratuity scheme is adopted by employer.
- If exemption is granted, only inspection charges of 0.005% of pay are payable to PF authorities.