

Employees Provident Funds Miscellaneous Provisions Act, 1952

UNION OF INDIA

India

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Act 09 of 1952

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1. [Amended by The Employees' Provident Funds And Miscellaneous Provisions (Amendment) Act, 1996 (Act 25 of 1996) on 1 January 1996]

An Act to provide for the institution of provident funds, [pension fund] and deposit linked insurance fund for employees in factories and other establishmentBe it enacted by Parliament as follows:-

1. Short title, extent and application

2. [(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.]

(2)It extends to the whole of India except the State of Jammu and Kashmir.(3)Subject to the provisions contained in section 16, it applies(a)to every establishment which is a factory engaged in any industry specified in Schedule I and in which 4[twenty] or more persons are employed, and(b)to any other establishment employing [twenty] 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 do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.](4)Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that 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.](5)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.]

2. Definitions

In this Act, unless the context otherwise requires, (a) "appropriate government" means—(i) in relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oilfield or a controlled industry, or in relation to an establishment having departments or branches in more than one State], the Central Government; and (ii) in relation to any other establishment, the State Government; (aa) "authorized officer" means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette]; (b) "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, but does not include: (i) the cash value of any food concession; (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment; (iii) any presents made by the employer; (c) "contribution" means a contribution payable in respect of a member under a scheme [or the contribution payable in respect of an employee to whom the Insurance Scheme applies] ; (d) "controlled industry" means any industry the control of which by the Union has been declared by a Central Act to be expedient in the public interest; (e) "employer" means: (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the 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 under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named; and (ii) in relation to 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, such manager, managing director or managing agent]; (f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment], and who gets his wages directly or indirectly from the employer, [and includes any person (i) employed by or through a contractor in or in connection with the work of the establishment; (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment]; (ff) "exempted employee" means an employee to whom a Scheme or the Insurance Scheme, as the case may be,] would, but for the exemption granted under section 17, have applied; (fff) "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 any Scheme or the Insurance Scheme, as the case may be], whether such exemption has been granted to the 16 [establishment] as such or to any person or class of persons employed therein]; (g) "factory" means any premises, including the precincts thereof, 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;(gg)*** (ggg)***](h)"Fund" means the provident fund established under a Scheme;(i)"industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;(ia)"Insurance Fund" means the Deposit-linked Insurance Fund established under sub-section (2) of section 6C;(ib)"Insurance Scheme" means the Employees' Deposit-linked Insurance Scheme framed under sub-section (1) of section 6C;(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] ;(j)"member" means a member of the fund;(k)"occupier of a factory" means the person who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;(kA)"Pension Fund" means the Employees' Pension Fund established under sub-section (2) of section 6A;(kB)"Pension Scheme" means the Employees' Pension Scheme framed under sub-section (1) of section 6A; [(ka)"prescribed" means prescribed by rules made under this Act;(kb)"Recovery Officer" means any officer of the Central Government, State Government or the Board of Trustees constituted under section 5A, who may be authorized by the Central Government, by notification in the Official Gazette, to exercise the powers of a Recovery Officer under this Act] ;(l)"scheme" means the Employees' Provident Fund Scheme framed under section 5];(ll)"superannuation", in relation to an employee who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years".](m)"Tribunal" means the Employees' Provident Funds Appellate Tribunal constituted under section 7D].

2A. Establishment to include all departments and branches

For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.]

3. Power to apply the Act to an establishment which has a common provident fund with another establishment

Where immediately before this Act becomes applicable to an establishment there is in existence a provident fund which is common to the employees employed in that establishment and employees in any other establishment, the Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall also apply to such other establishment.]AIR 1971 SUPREME COURT 2577(V 58 C 555)(From: BOMBAY)*G.K. MITTER, C.A. VAIDIALINGAM AND P. JAGANMOHAN REDDY, JJ.Union of India and another, Appellants v. Ogale Glass Works Ltd.

4. Power to add to Schedule I

(1)The Central Government may, by notification in the Official Gazette, add to Schedule I any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under this Act, and thereupon the industry so added shall be deemed to be an industry

specified in Schedule I for the purposes of this Act.(2)All notifications under sub-section (1) shall be laid before Parliament, as soon as may be, after they are issued.

5. Employees Provident Funds Scheme

(1)] The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Funds Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the [establishments] or class of [establishments] to which the said Scheme shall apply [and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.](1A)The Fund shall vest in, and be administered by, the Central Board constituted under section 5A.(1B)Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters specified in Sch. II.][(2) A Scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.

5A. Central Board

(1)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;(aa)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 plies, appointed by the Central Government after consultation with such organizations of employers as may be recognized 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 recognized by the Central Government in this behalf.(2)The terms and conditions subject to which a member of the Central Board may be appointed and the time, place and procedure of the meetings of the Central Board shall be such as may be provided for in the Scheme.(3)The Central Board shall, [subject to the provisions of section 6A] [and section 6C], administer the fund vested in it in such manner as may be specified in the Scheme.(4)The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme, [Family Pension Scheme and the Insurance Scheme].(5)The Central Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may, after consultation with the Comptroller and Auditor-General of India, specify in the Scheme.(6)The accounts of the Central Board shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor General of India.(7)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 such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, documents and papers and inspect any of the offices of the Central Board.(8)The accounts of the Central Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Central Board which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor-General.(9)It shall be the duty of the Central Board to submit also to the Central Government an annual report of its work and activities and 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.]

5AA. Executive Committee

(1)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.(2)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 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 section 5A; (f)the Central Provident Fund Commissioner, ex officio.(3)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.]

5B. State Board

(1)The Central Government may, after consultation with the Government of any State, by notification in the Official Gazette, constitute for that State a Board of Trustees (hereinafter in this Act referred to as the State Board) in such manner as may be provided for in the Scheme.(2)A State Board shall exercise such powers and perform such duties as the Central Government may assign to it from time to time.(3)The terms and conditions subject to which a member of a State Board may be appointed and the time, place and procedure of the meetings of a State Board shall be such as may be provided for in the Scheme.]

5C. Board of Trustees to be body corporate

Every Board of Trustees constituted under section 5A or section 5B shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.

5D. Appointment of officers

(1)The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board and shall be subject to the general control and superintendence of that Board.(2)The Central Government may also appoint 32[a Financial Adviser and Chief Accounts Officer] to assist the Central Provident Fund Commissioner in the discharge of his duties.(3)The Central Board may appoint, 26[subject to the maximum scale of pay, as may be specified in the Scheme, as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and such other officers and employees as it may consider necessary for the efficient administration of the Scheme, the 33[Pension] Scheme and the Insurance Scheme.(4)No appointment to 34[the post of the Central Provident Fund Commissioner or a Financial Advisor and Chief Accounts Officer or any other post under the Central Board carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government] shall be made except after consultation with the Union Public Service Commission:PROVIDED that no such consultation shall be necessary in regard to any such appointment(a)for a period not exceeding one year, or(b)if the person to be appointed is at the time of his appointment(i)a member of the Indian Administrative Service, or(ii)in the service of the Central Government or a State Government or the Central Board in a [Group 'A' or Group 'B' post.](5)A State Board may, with the approval of the State Government concerned, appoint such staff as it may consider necessary.(6)The method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner, 36[and the Financial Adviser and Chief Accounts Officer] shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the Fund.(7)(a)The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:PROVIDED that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.(b)In determining the corresponding scales of pay of officers and employees under cl.(a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.](8)The method of recruitment, salary and allowances, discipline and other conditions of service³⁷ of officers and employees of State Board shall be such as may be specified by that Board, with the approval of the State Government concerned.

5DD. Acts and proceedings of the Central Board or its Executive Committee or the State Board not to be invalidated on certain grounds

No act done or proceeding taken by the Central Board or the Executive Committee constituted under section 5AA or the State Board shall be questioned on the ground merely of the existence of

any vacancy in, or any defect in the constitution of, the Central Board or the Executive Committee or the State Board, as the case may be.]

5E. Delegation

The Central Board may delegate to the Executive Committee or to the Chairman of the Board or to any of its officers and a State Board may delegate to its Chairman or to any of its officers] subject to such conditions and limitations, if any, as it may specify, such of its powers and functions under this Act as it may deem necessary for the efficient administration of the Scheme, the 33[Pension Scheme and the Insurance Scheme].]

6. Contributions and matters which may be provided for in the Scheme

The contribution which shall be paid by the employer to the Fund shall be [ten per cent] of the basic wages, [dearness allowance and retaining allowance (if any)], for the time being payable to each of the employees [(whether employed by him directly or by or through a contractor)] and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires be an amount not exceeding [ten per cent] of his basic wages, dearness allowance and retaining allowance (if any), 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]:[PROVIDED that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words [ten per cent], at both the places where they occur, the words [twelve per cent] shall be substituted]:[PROVIDED FURTHER that] where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.Explanation [11: For the purposes of this [section], dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.[Explanation 2: For the purposes of this [section], "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.]

6A. Employees' Pension Scheme

(1)The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for:(a)superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and(b)widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.(2)Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, 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 eight and one-third per cent of the basic wages, dearness allowance and 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 sub-section (6) of 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, after due appropriation by Parliament by law in this behalf, specify.(3)On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.(4)The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.(5)Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.(6)The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.(7)A Pension Scheme, framed under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.

6C. Employees' Deposit Linked Insurance Scheme

(1)The Central Government may, by notification in the Official Gazette, 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)There shall be established, as soon as may be after the framing of the Insurance Scheme, a Deposit-linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may, by notification in the Official Gazette, specify.Explanation: For the purposes of this sub-section, the expressions "dearness allowance" and "retaining allowance" have the same meanings as in section 6.(3)***](4)(a)The employer shall pay in to the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which he is required to make under sub-section (2), as the Central Government may, from time to time, determine to meet all the expenses in connection with administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that Scheme.(b)[***](5)The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme.(6)The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.(7)The Insurance Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.]

6D. Laying of Schemes before Parliament

Every Scheme framed under section 5, section 6A and Section 6C shall be laid, as soon as may be after it is framed, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any notification in the Scheme, or both Houses agree that the scheme should not be framed, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the Scheme.]

7. Modification of Scheme

(1)The Central Government may, by notification in the Official Gazette, add to, [amend or vary, either prospectively or retrospectively, the Scheme, the [Pension] Scheme or the Insurance Scheme, as the case may be.][(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.]

7A. Determination of moneys due from employers

(1)The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,(a)in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and(b)determine the amount due from any employer under any provision of this Act, the Scheme or the 33[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 officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:(a)enforcing the attendance of any person or examining him on oath;(b)requiring the discovery and production of documents;(c)receiving evidence on affidavit;(d)issuing commissions for the examination of witnesses;and any such inquiry shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.(3)No order shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.(3A)Where the employer, employee or any other person required to attend the inquiry under sub-section (1) 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 enquiry and other documents available on record.](4)Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:PROVIDED that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.Explanation: Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-pert order.(5)No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]

7B. Review of orders passed under section 7A

(1)Any person aggrieved by an order made under sub-section (1) of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain for a review of such order may apply for a review of that order to the officer who passed the order:PROVIDED that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.(2)Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.(3)Where it appears to the officer receiving an application for review that there is no sufficient ground for review, he shall reject the application.(4)Where the officer is of the opinion that the application for review should be granted, he shall grant the same:PROVIDED that,(a)no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and(b)no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.(5)No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

7C. Determination of escaped amount

Where an order determining the amount due from an employer under section 7A or section 7B has been passed and if the officer who 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

the 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 7A or section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in cl. (a) on the part of the employer, he may, within a period of five years from the date of communication of the order passed under section 7A or section 7B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act:PROVIDED that 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.

7D. Employees' Provident Funds Appellate Tribunal

(1)The Central Government may, by notification in the Official Gazette, 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 and 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 a Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer) unless he is or has been, or is qualified to be-(i)a Judge of a High Court; or(ii)a District Judge.]

7E. Term of office

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

7F. Resignation

(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 misbehavior 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 misbehavior or incapacity of the Presiding Officer.]

7G. Salary and allowances and other terms and conditions of service of Presiding Officer

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: PROVIDED that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer shall be varied to his disadvantage after his appointment.

7H. Staff of Tribunal

(1) The Central Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit. (2) The officers and other employees of a Tribunal shall discharge their functions under the general superintendence of the Presiding Officer. (3) The salaries and allowances and other conditions of service of the officers and other employees of a Tribunal shall be such as may be prescribed.

7.

-I. Appeals to Tribunal (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order. (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

7J. Procedure of Tribunal

(1) A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings. (2) A Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in section 7A and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code, 1860 (45 of 1860), and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

7K. Right of appellant to take assistance of legal practitioner and of government, etc. to appoint presenting officers

(1) A person preferring an appeal to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal. (2) The Central Government or a State Government or any other authority under this Act may authorize one or more legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before a Tribunal.

7L. Orders of Tribunal

(1)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 or may 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 order, as the case may be, after taking additional evidence, if necessary.(2)A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal:PROVIDED that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.(3)A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.(4)Any order may by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law.

7M. Filling up of vacancies

If, for any reason, a vacancy occurs in the office of the Presiding Officer, 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 a Tribunal from the stage at which the vacancy is filled.

7N. Finality of orders constituting a Tribunal

No order of the Central Government appointing any person as the Presiding Officer shall be called in question in any manner, and 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.

7.

-O. Deposit of amount due, on filing appealNo appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in section 7A :PROVIDED that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

7P. Transfer of certain applications to Tribunal

All applications which are pending before the Central Government under section 19A before its repeal, shall stand transferred to a Tribunal exercising jurisdiction in respect of establishments in relation to which such applications had been made as if such applications were appeals preferred to the Tribunal.

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.]

8. Mode of recovery of moneys due from employers

Any amount due:(a)from the employer in relation to [an establishment] to which any [Scheme or the Insurance Scheme] applies in respect of any contribution payable to [the Fund or, as the case may be, the Insurance Fund], damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 [or under sub-section (5) of section 17] or any charges payable by him under any other provision of this Act or of any provision of the [Scheme or the Insurance Scheme] ; or(b)from the employer in relation to an exempted [establishment] in respect of any damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified 60[under section 17 or in respect of the contribution payable by him towards the [Pension] [Scheme or the Insurance Scheme] under the said section 17], may, if the amount is in arrears, [be recovered [in the manner specified in sections 8B to 8G.]

8A. Recovery of moneys by employers and contractors

(1)[The amount of contribution (that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme)]; and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.(2)A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution [under any Scheme] by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.(3)Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.Explanation: In this section, the expression "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6.]

8B. Issue of certificate to the Recovery Officer

(1)Where any amount is in arrears under section 8, the authorized officer may issue, to the Recovery

Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on 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: PROVIDED that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears. (2) The authorized officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

8C. Recovery Officer to whom certificate is to be forwarded

(1) The authorized officer may forward the certificate referred to in section 8B to the Recovery Officer within whose jurisdiction the employer (a) carries on his business or profession or within whose jurisdiction the principal place of his establishment is situate; or (b) resides or any movable or immovable property of the establishment or the employer is situate. (2) Where an establishment or the employer has property within the jurisdiction of more than one Recovery Officers and the Recovery Officer to whom a certificate is sent by the authorized officer (a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction; or (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do, he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the establishment or the employer has property or the employer resides, and 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 authorized officer.

8D. Validity of certificate and amendment thereof

(1) When the authorized officer issues a certificate to Recovery Officer under section 8B, it shall not be open to the employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer. (2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorized officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer. (3) The authorized officer shall intimate to the Recovery Officer any order withdrawing or canceling a certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of section 8E.

8E. Stay of proceedings under certificate and amendment or withdrawal thereof

(1)Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorized 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.(2)Where a certificate for the recovery of amount has been issued, the authorized officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.(3)Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of a further proceeding under this Act, the authorized 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.(4)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 authorized officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

8F. Other modes of recovery

(1)Notwithstanding the issue of a certificate to the Recovery Officer under section 8B, the Central Provident Fund Commissioner or any other officer authorized by the Central Board may recover the amount by any one or more of the modes provided in this section.(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 authorized 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, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorized, as the case may be:PROVIDED that nothing in this sub-section shall 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.(3)(i)The Central Provident Fund Commissioner or any other officer authorized by the Central Board in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.(ii)A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.(iii)A copy of the notice shall be forwarded to the employer at his last address known to the Central Provident Fund Commissioner or, as the case may

be, the officer so authorized and in the case of a joint account to all the joint-holders at their last addresses known to the Central Provident Fund Commissioner or the officer so authorized.(iv)Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.(v)Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.(vi)Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Central Provident Fund Commissioner or the officer so authorized to the extent of his own liability to the employer on the date of the notice, or to the extent of the employer's liability for any sum due under this Act, whichever is less.(vii)The Central Provident Fund Commissioner or the officer so authorized may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.(viii)The Central Provident Fund Commissioner or the officer so authorized shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the employer to the extent of the amount so paid.(ix)Any person discharging any liability to the employer after the receipt of a notice under this sub-section shall be personally liable to the Central Provident Fund Commissioner or the officer so authorized to the extent of his own liability to the employer so discharged or to the extent of the employer's liability for any sum due under this Act, whichever is less.(x)If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorized he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realization of the amount as if it were an arrear due from him, in the manner provided in sections 8B to 8E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 8B.(4)The Central Provident Fund Commissioner or the officer authorized 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.(5)The Central Provident Fund Commissioner or any officer not below the rank of Assistant Provident Fund Commissioner may, if so authorized by the Central Government by general or special order, recover any arrears of amount due from an employer or, as the case may be, from the establishment by distraint and sale of his or its movable property in the manner laid down in the Third Schedule to the Income Tax Act, 1961 (43 of 1961).

8G. Application of certain provisions of Income Tax Act

The provisions of the Second and Third Schedules to the Income Tax Act, 1961 (43 of 1961), and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in section 8 of this Act instead of to the Income Tax: PROVIDED that any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to an employer as defined in this Act.

9. Fund to be recognized under Act 11 of 1922

For the purposes of the Indian Income Tax Act, 1922, the Fund shall be deemed to be a recognized provident fund within the meaning of Chapter IX-A of that Act: [PROVIDED that nothing contained in the said Chapter shall operate to render ineffective any provision of the Scheme (under which the Fund is established) which is repugnant to any of the provisions of that Chapter or of the rules made thereunder.]]

10. Protection against attachment

(1) 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 and 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], and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, any such amount. (2) Any amount standing to the credit of a member in the Fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the Provident Fund shall, subject to any deduction authorized by the said Scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee [and shall also not be liable to attachment under any decree or order of any Court.] (3) The provisions of sub-section (1) and sub-section (2) shall, so far as may be, apply in relation to the family pension or any other amount payable under the 33[Pension] Scheme 11 [and also in relation to any amount payable under the Insurance Scheme] as they apply in relation to any amount payable out of the Fund.]

11. Priority of payment of contributions over other debts

(1) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due (a) from the employer in relation to [an establishment] to which any [Scheme or the insurance Scheme] applies in respect of any contribution payable to the Fund [or, as the case may be, the Insurance Fund], damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the [Scheme or the Insurance Scheme]; or (b) from the

employer in relation to an exempted [establishment] in respect of any contribution to the provident fund or any insurance fund] (in so far as it relates to exempted employees), under the rules of [the provident fund or any insurance fund] [any contribution payable by him towards the [Pension] Fund under sub-section (6) of section 17,] damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act under any of the conditions specified under section 17, shall where the liability therefor has accrued before the order of adjudication or winding up is made, be deemed to be included] among the debts which under section 49 of the Presidency Towns Insolvency Act, 1909, or under section 61 of the Provincial Insolvency Act, 1920, or under [section 530 of the Companies Act, 1956], are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.[Explanation: In this sub-section and in section 17, "insurance fund" means any fund established by an employer under any Scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.][(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer, [whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution], the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.]

12. Employer not to reduce wages, etc.

No employer in relation to [an establishment] to which any [Scheme or the Insurance Scheme] applies shall, by reason only of his liability for the payment of any 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 to whom the [Scheme or the Insurance Scheme] applies or the total quantum of benefits in the nature of old age pension, gratuity 74[provident fund or life insurance] to which the employee is entitled under the terms of his employment, express or implied.]

13. Inspectors

(1)The appropriate government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act [, the Scheme [, the [Pension] Scheme or the Insurance Scheme]], and may define their jurisdiction.(2)Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any [Scheme or the Insurance Scheme] or for the purpose of ascertaining whether any of the provisions of this Act or of any [Scheme or the Insurance Scheme] have been complied with [in respect of [an establishment] to which any [Scheme or the Insurance Scheme] applies or for the purpose of ascertaining whether the provisions of this Act or any [Scheme or the Insurance Scheme] are applicable to any [establishment] to which the [Scheme or the Insurance Scheme] has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted [establishment].(a)require an employer [or any contractor from whom

any amount is recoverable under section 8A] to furnish such information as he may consider necessary;(b)at any reasonable time [and with such assistance, if any, as he may think fit, enter and search] any [establishment], or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the [establishment];(c)examine, with respect to any matter relevant to any of the purposes aforesaid, the employer [or any contractor from whom any amount is recoverable under sections 8A], his agent or servant or any other person found in charge of the [establishment], or any premises connected there with or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the [establishment];(d)makes copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;](e)exercise such other powers as the [Scheme or the Insurance Scheme] may provide.(2A)Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with the [Pension] Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the [Pension] Scheme have been complied with in respect of an establishments to which the [Pension] Scheme applies, exercise all or any of the powers conferred on him under clause (a), (b), (c) or (d) of sub-s. (2).](2B)The provisions of the [Code of Criminal Procedure, 1898], shall, so far as may be, apply to any search or seizure under sub-section (2) [or under sub-section (2A), as the case may be,] as they apply to any search and seizure made under the authority of a warrant issued under [section 98] of the said Code.

14. Penalties

(1)Whoever, for the purpose of avoiding any payment to be made by himself under this Act [the Scheme, ,the [Pension] Scheme] or the Insurance Scheme] or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of five thousand rupees, or with both].(1A)An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (a) of sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or para 38 of the Scheme insofar as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to [three years] but(a)which shall not be less than [one year and fine of ten thousand rupees] in case of default in payment of employees' contribution which has been deducted by the employer from the employees' wages;(b)which shall not be less than six months and fine of five thousand rupees, in any other case:]PROVIDED that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term(1B)An employer who contravenes, or makes default in complying with, the provisions of section 6C, or clause (a) of sub-section (3A) of section 17 in so far as it relates to payment of inspection charges, shall be punishable with imprisonment for a term which may extend to [one year] but which shall not be less than [Six months] and shall also be liable to fine which may extend to [five thousand rupees]:PROVIDED that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term](2)[Subject to the provisions of the

Act, the Scheme,] the Pension Scheme or the Insurance Scheme] may provide that any person who contravenes, or makes default in complying with any of the provisions thereof shall be punishable with imprisonment for a term which may extend to [one year, or with fine which may extend to four thousand rupees, or with both].[(2A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to 146[six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees].]

14A. Offences by companies

(1)If the person committing offence under this Act, the Scheme , the [Pension] Scheme or the Insurance Scheme] is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.(2)Notwithstanding anything contained in sub-section (1), where an offence under this Act , the Scheme, the [Pension] Scheme or the Insurance Scheme]] has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.Explanation: For the purposes of this section(i)"company" means any body corporate and includes a firm and other association of individuals; and(ii)"director", in relation to a firm, means a partner in the firm.]

14AA. Enhanced punishment in certain cases after previous conviction

Whoever, having been convicted by a court of an offence punishable under this Act, the Scheme, , the [Pension] Scheme or the Insurance Scheme], commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to five years, but which shall not be less than two years, and shall also be liable to a fine of twenty-five thousand rupees.]

14AB. Certain offences to be cognizable

(1)Notwithstanding anything contained in [Code of Criminal Procedure, 1898 (5 of 1898)], an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.Employees Provident Funds and Miscellaneous Provisions Act, 1952 Back

14AC. Cognizance and trial of offences

(1) No court shall take cognizance of any offence punishable under this Act, the Scheme or, the [Pension] Scheme or the Insurance Scheme], except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf, by an inspector appointed under section 13. (2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the Scheme or, the [Pension] Scheme or the Insurance Scheme.]

14B. Power to recover damages

Where an employer makes default in the payment of any contribution to the Fund [, the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf] may recover [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:] PROVIDED that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:] PROVIDED FURTHER that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which Scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.] Comment: "Nor can it be accepted that there are no guidelines provided for fixing the quantum of damages. The power of the Regional Provident Fund Commissioner to impose damages under Section 14-B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the Statute. Having regard to the punitive nature of the power exercisable under Section 14-B and the consequences that ensue there from, an order under Section 14-B must be a 'speaking order' containing the reasons in support of it." AIR 1979 SUPREME COURT 1803, *Organo Chemical Industries v. Union of India*.

14C. Power of court to make orders

(1) Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund, the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17, the court may, in addition to awarding any punishment, by order in writing require him within a period specified in the order (which the court may, if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution or transfer the accumulations, as the case may be, in respect of which the offence was committed. (2) Where an

order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punished with imprisonment in respect thereof under section 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with.

15. Special provisions relating to existing provident funds

(1) Subject to the provisions of section 17, every employee who is a subscriber to any provident fund of [an establishment] to which this Act applies shall, pending the application of a Scheme to] the [establishment] in which he is employed, continue to be entitled to the benefits accruing to him under the provident fund, and 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. (2) On the application of any Scheme to [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, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument establishing the provident fund but subject to the provisions, if any, contained in the Scheme, be transferred to the Fund established under the Scheme, and shall be credited to the accounts of the employees entitled thereto in the Fund.

16. Act not to apply to certain establishments

(1) This Act shall not apply (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, or (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, or (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 benefits. (2) If the Central Government is of opinion that having regard to the financial position of any class of 163 [establishments] 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.]

16A. Authorizing certain employers to maintain provident fund accounts

(1) 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,

authorize 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 authorization 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 authorization.(2)Where an establishment is authorized 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)Any authorization 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 authorization or where he commits any offence under any provision of this Act:PROVIDED that before canceling the authorization, the Central Government shall give the employer a reasonable opportunity of being heard.]

17. Power to exempt

(1)The appropriate government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, 165[exempt, whether prospectively or retrospectively, from the operation] of all or any of the provisions of any Scheme:(a)any [establishment] to which this Act applies if, in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contribution are not less favorable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favorable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other 1establishment] of 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 favorable to such employees than the benefits provided under this Act or any Scheme in relation the employees in any other [establishment] of a similar character.[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.](1A)Where an exemption has been granted to an establishment under clause (a) of sub-section (1),(a)the provisions of sections 6, 7A, 8 and 14B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption, and where such employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of this Act, he shall be punishable under section 14 as if the said establishment had not been exempted under the said clause (a);(b)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;(c)the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme;(d)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.(1B)Where the Board of Trustees established under clause (b) of sub-section (1A) contravenes, or makes default in complying with, any provisions of clause (d) of that sub-section, the Trustees of the said Board shall be deemed to have committed an offence under sub-section (2A) of section 14 and shall be punishable with the penalties provided in that sub-section.(1C)The appropriate government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, 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 propose to be members of such pension scheme, where the pensionary benefits are at par or more favorable than the Pension Scheme under this Act,](2)Any Scheme may make provision for exemption of any person or class of persons employed in any [establishment] to which the Scheme applies from the operation of all or any of the provisions of the Scheme, if such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits, separately or jointly, are on the whole not less favorable than the benefits provided under this Act or the Scheme:PROVIDED that 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.(2A)The Central Provident Fund Commissioner may, if requested so to do by the employer, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, any establishment from the operation of all or any of the provisions of the Insurance Scheme, if he is satisfied] that the employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, whether linked to their deposits in provident fund or not, and such benefits are more favorable to such employees than the benefits admissible under the Insurance Scheme.(2B)Without prejudice to the provisions of sub-section (2A), the Insurance Scheme may provide for the exemption of any person or class of persons employed in any establishment and covered by that Scheme from the operation of all or any of the provisions thereof, if the benefits in the nature of life insurance admissible to such person or class of persons are more favorable than the benefits provided under the Insurance Scheme.](3)Where in respect of any person or class of persons employed in an establishment an exemption is granted under this section from the operation of all or any of the provisions of any scheme (whether such exemption has been granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment-(a)shall, in relation to the provident fund, pension and gratuity to which any such person or class of persons is entitled, maintain such accounts, submit such returns, make such investment, 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 or provident fund to which any person or class of persons was entitled at the time of the exemption; and(c)shall, where any such person leaves his employment and obtains re-employment 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 left by him to the credit of that person's account in the provident fund of the establishment in which he is re-employed or, as the case may be, in the fund established under the Scheme applicable to the establishment.](3A)Where, in respect of any person or class of persons employed in any establishment, an exemption is granted under sub-section (2A) or sub-section (2B) from the operation of all or any of the provisions of the Insurance Scheme (whether such exemption is granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment:(a)shall, in relation to the benefits in the nature of life insurance, to which any such person or class of persons is entitled, or any insurance fund, 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 life insurance to which any such person or class of persons was entitled immediately before the date of the exemption;(4)any exemption granted under this section may be cancelled by the authority which granted it, by order in writing, if an employer fails to comply, -(a)in the case of an exemption granted under sub-section (1), with any of the conditions imposed under that sub-section or sub-section(1A)or with any of the provisions of the sub-section (3);(aa)in the case of an exemption granted under sub-section (1C), with any of the conditions imposed under that sub-section; and(b)in the case of an exemption granted under sub-section (2), with any of the provisions of sub-section (3);(c)in the case of an exemption granted under sub-section (2A), with any of the conditions imposed under that sub-section or with any of the provisions of sub-section (3A);(d)in the case of an exemption granted under sub-section (2B), with any of the provisions of sub-section (3A).](5)Where any exemption granted under sub-section (1), sub-section (1C), sub-section (2), sub-section (2A) or sub-section (2B)] is cancelled, the amount of accumulations to the credit of every employee to whom such exemption applied, in the provident fund, [the [Pension] Fund or the Insurance Fund] of the establishment in which he is employed together with any amount forfeited from the employer's share of contribution to the credit of the employee who leaves the employment before the completion of the full period of service] shall be transferred within such time and in such manner as may be specified in the Scheme or the [Pension] Scheme [or the Insurance Scheme] to the credit of his account in the Fund or the [Pension] Fund [or the Insurance Fund], as the case may be.](6)Subject to the provisions of sub-section [(1C)], the employer of an exempted establishment to which the provisions of the [Pension] Scheme apply, shall, notwithstanding any exemption granted under sub-section (1) or sub-section (2), pay to the [Pension] Fund such portion of the employers contribution to its provident fund within such time and in such manner as may be specified in the [Pension] Scheme.]

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.]

17AA. Act to have effect notwithstanding anything contained in Act 31 of 1956

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Life Insurance Act, 1956.]

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 up to the date of such transfer:PROVIDED that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.]

18. Protection of action taken in good faith

No suit, prosecution of other legal proceeding shall lie against the Central Government, a State Government, the Presiding Officer of a Tribunal, any authority referred to in section 7A, an Inspector or any other person for anything which is in good faith done or intended to be done in pursuance of this Act, the Scheme, the 127[Pension] or the Insurance Scheme.

18A. Presiding officer and other officers to be public servants

The Presiding Officer of a Tribunal, its officers and other employees, the authorities referred to in section 7A and every Inspector shall be deemed to be public servants within the meaning of section 21 of Indian Penal Code (45 of 1860).]

19. Delegation of powers

The appropriate government may direct that any power or authority or jurisdiction exercisable by it under this Act, the Scheme 183[, the 127[Pension] Scheme or the Insurance Scheme] shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, 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 sub-ordinate 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.]

20. Power of Central Government to give directions

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

21. Power to make rules

(1)The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.(2)Without prejudice to the generality of the foregoing power, such 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 sub-section (2) of section 8C; and(d)any other matter, which has to be, or may be, prescribed by rules under this Act.(3)Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

22. Power to remove difficulties

(1)If any difficulty arises in giving effect to the provisions of this Act, as amended by the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the difficulty:PROVIDED that no such order shall be made after the expiry of a period of three years from the date on which the said Amendment Act receives the assent of the President.(2)Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.]Employee's Provident Funds Miscellaneous Provisions Act, 1952

I

(See sections 2(i) and 4)Any industry engaged in the manufacture [***] of any of the following, namely:Cement.Cigarettes.Electrical, mechanical or general engineering products.Iron and steel.Paper.Textiles (made wholly or in part of cotton or wool or jute or silk, whether natural or artificial).

1. Matches.

2. Edible oils and fats.

3. Sugar.

4. Rubber and rubber products.

5. Electricity, including the generation, transmission and distribution thereof.

6. Tea.

7. Printing [other than printing industry relating to newspaper establishments as defined in the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), including the process of composing types for printing, printing by letter-press, lithography, photogravure or other similar process or bookbinding.]

8. Glass.

9. Stone-ware pipes.

10. Sanitary wares.

11. Electrical porcelain insulators of high and low tension.

12. Refractories.

13. Tiles.]

1. Heavy and fine chemicals, including:

(i)Fertilizers,(ii)Turpentine,(iii)Resin,(iv)Medical and pharmaceutical preparations,(v)Toilet preparations,(vi)Soaps,(vii)Inks,(viii)Intermediates, dyes, colour lacs and toners,(ix)Fatty acids, and(x)Oxygen, acetylene and carbon-dioxide gases industry.]

2. Indigo.

3. Lac including shellac.

4. Non-edible, vegetable and animal oils and fats.]

[Mineral oil refining industry.][(i) Industrial and power alcohol industry; and(ii)Asbestos cement sheets industry.][Biscuit-making industry including composite units making biscuits and products such as bread, confectionery and milk and milk powder.][Mica industry.][Plywood industry.][Automobile repairing and servicing industry.][1. Rice milling.

2. Flour milling

3. Dal milling.]

[Starch industry.][1. Petroleum or natural gas exploration, prospecting, drilling or production.

2. Petroleum or natural gas refining.]

[Leather and leather products industry.][1. Stone-ware jars.

2. Crockery.]

[The fruit and vegetable preservation industry, that is to say, any industry which is engaged in the preparation or production of any of the following articles, namely:(i)canned and bottled fruits, juices and pulps,(ii)canned and bottled vegetables,(iii)frozen fruits and vegetables,(iv)jams, jellies and marmalades,(v)tomato products, ketchups and sauces,(vi)squashes, crushes, cordials and ready-to-serve beverages or any other beverages containing fruit juice or fruit pulp,(vii)preserved, canned and crystallized fruits and peels,(viii)chutneys,(ix)any other unspecified item relating to the preservation or canning of fruits and vegetables.][Cashewnut industry.][Confectionery industry.][1. Buttons.

2. Brushes.

3. Plastic and plastic products.

4. Stationery products.]

[The aerated water industry, that is to say, any industry engaged in the manufacture of aerated water, soft drinks or carbonated water.][The distilling and rectifying of spirits (not falling under industrial and power alcohol) and blending of spirits industry.][The paint and varnish industry.][Bone crushing industry.][Pickers industry.][Milk and milk products

industry.][Non-ferrous metals and alloys in the form of ingots industry.][Bread industry.][Stemming or re-drying of tobacco leaf industry, that is to say, any industry engaged in the stemming, re-drying, handling, sorting, grading or packing of tobacco leaf.][Agarbattee (including dhoop and dhoopbattee) industry.][Cair (excluding the spinning sector) industry.][Tobacco industry, that is to say, any industry engaged in the manufacture of cigars, zarda, snuff, quivam and guraku from tobacco.][Paper products industry.][Licensed salt industry, that is to say, any industry engaged in the manufacture of salt for which a license is necessary and which has land not less than 4.05 hectares.][Linoleum industry and indoleum industry.][Explosive industry.][Jute bailing or pressing industry.][Fire-works and percussion cap works industry.][Tent making industry.][Ferro-manganese industry.][Ice or ice-cream industry.][Winding of thread and yarn reeling industry.][Cotton ginning, baling and pressing industry.][Katha making industry.][Beer manufacturing industry, that is to say, any industry engaged in the manufacture of the product of alcoholic fermentation of a mash in potable water of malted barley and hops, or of hops concentrated with or without the addition of other malted or unmalted cereals or other carbohydrate preparations.][Beedi industry, that is to say, any industry engaged in manufacture of beedies.][Ferro-chrome industry.][Diamond cutting industry.][Myrobalan extract powder, myrobalan extract solid and vegetable tannin blended extract industries.][Brick industry.][All industries based on asbestos as principal raw material.][Industries manufacturing iron ore pellets.][Explanation:In this Schedule, without prejudice to the ordinary meaning of the expressions used therein,:(a)the expression "Electrical, mechanical or general engineering products" includes :(1)machinery and equipment for the generation, transmission, distribution or measurement of electrical energy and motors including cables and wires,(2)telephones, telegraph and wireless communication apparatus,(3)electric lamps (not including glass bulbs),(4)electric fans and electrical domestic appliances,(5)storage and dry batteries,(6)radio receivers and sound reproducing instruments,(7)machinery used in industry (including textile machinery) other than electrical machinery and machine tools,(8)boilers and prime movers, including internal combustion engines, marine engines and locomotives,(9)machines tools, that is to say, metal and wood working machinery,(10)grinding wheels,(11)ships(12)automobiles and tractors,(13)bolts, nuts and rivets,(14)power-driven pumps,(15)bicycles,(16)hurricane lanterns,(17)sewing and knitting machines,(18)mathematical and scientific instruments,(19)products of metal rolling and re-rolling,(20)wires, pipes, tubes and fittings,(21)ferrous and non-ferrous castings,(22)safes, vaults and furniture made of iron and steel or steel alloys,(23)cutlery and surgical instruments,(24)drums and containers,(25)parts and accessories of products specified in items 1 to 24;(b)the expression 'iron and steel' includes pig iron, ingots, blooms, billets and rolled or re-rolled products into basic forms and tool and alloy steel;(c)the expression 'paper' includes pulp, paperboard and straw-board;(d)the expression 'textiles' includes the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering.]

II : MATTERS FOR WHICH PROVISION MAY BE MADE IN A SCHEME

[See section 5(1B)]

1. The employees or class of employees who shall join the Fund, and the conditions under which employees may be exempted from joining the Fund or from making any contribution.

2. The time and manner in which contribution shall be made to the Fund by employers and by, or on behalf of, employees, [whether employed by him directly or by or through contractor)], the contributions which an employee may, if he so desires, make under section 6, and the manner in which such contributions may be recovered.

2A. The manner in which employees' contribution may be recovered by contractors from employees employed by or through such contractors.]

3. The payment by the employer of such sums of money as may be necessary to meet the cost of administering the Fund and the rate at which and the manner in which the payment shall be made.

4. The constitution of any committee for assisting any Board of Trustees.

5. The opening of regional and other offices of any Board of Trustees.]

6. The manner in which accounts shall be kept, the investment of moneys belonging to the Fund in accordance with any directions issued or conditions specified by the Central Government, the preparation of the budget, the audit of accounts and the submission of reports to the Central Government or to any specified State Government.

7. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.

8. The fixation by the Central Government in consultation with the board of trustees concerned of the rate of interest payable to members.

9. The form in which an employee shall furnish particulars about himself and his family whenever required.

- 10. The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.**
- 11. The registers and records to be maintained with respect to employees and the returns to be furnished by employers 152[or contractors].**
- 12. The form or design of any identity card, token or disc for the purpose of identifying any employee, and for the issue, custody and replacement thereof.**
- 13. The fees to be levied for any of the purposes specified in this Schedule.**
- 14. The contraventions or defaults which shall be punishable under sub-section (2) of section 14.**
- 15. The further powers, if any, which may be exercised by Inspectors.**
- 16. The manner in which accumulations in any existing provident fund shall be transferred to the Fund under section 15, and the mode of valuation of any assets which may be transferred by the employers in this behalf.**
- 17. The conditions under which a member may be permitted to pay premia on life insurance, from the Fund.**
- 18. Any other matter [which is to be provided for in the Scheme or] which may be necessary or proper for the purpose of implementing the Scheme.]**

[SCHEDULE III : MATTERS FOR WHICH PROVISION MAY BE MADE IN THE PENSION SCHEME[See Section 6A(5)]

- 1. The employees or class of employees to whom the Pension Scheme shall apply.**
- 2. The time within which the employees who are not members of the 127[Pension] Scheme under section 6A as it stood before the commencement of the Employees Provident Funds and Miscellaneous Provisions (Amendment) Act, 1996 (hereinafter, in this Schedule, referred to as the amending Act) shall opt for the Pension Scheme.**

- 3. The portion of employer's contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.**
- 4. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 6A as it stood before the commencement of the amending Act.**
- 5. The regulation of the manner in which and the period of service for which no contribution is received.**
- 6. The manner in which employees' interest will be protected against default in payment of contribution by the employer.**
- 7. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.**
- 8. The form in which an employees shall furnish particulars about himself and the members of his family whenever required.**
- 9. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.**
- 10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees.**
- 11. The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of returns relating thereto.**
- 12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.**
- 13. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.**

14. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.]

[SCHEDULE IV: MATTERS TO BE PROVIDED FOR IN THE EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME[See section 6C]

- 1. The employees or class of employees who shall be covered by the Insurance Scheme.**
- 2. The manner in which the accounts of the Insurance Fund shall be kept and the investment of moneys belonging to the Insurance Fund subject to such pattern of investment as may be determined, by order, by the Central Government.**
- 3. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.**
- 4. The nomination of a person to receive the insurance amount due to the employee after his death and the cancellation or variation of such nomination.**
- 5. The registers and records to be maintained in respect of employees, the form or design of any identity card, token or disc for the purpose of identifying any employee or his nominee or member of his family entitled to receive the insurance amount.**
- 6. 240[The scales of insurance benefits and conditions relating to the grant of such benefits to the employees.]**
- 8. The manner in which the amount due to the nominee or the member of the family of the employee under the Scheme is to be paid including a provision that the amount shall not be paid otherwise than in the form of a deposit in a saving bank account, in the name of such nominee or member of family, in any corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).**

9. Any other matter which is to be provided for in the Employees' Deposit Linked Insurance Scheme or which may be necessary or proper for the purpose of implementing that Scheme.]

EMPLOYEES' PROVIDENT FUNDS APPELLATE TRIBUNAL (PROCEDURE) RULES, 1997[Dated 2nd. June, 1997]In exercise of the powers conferred by sub-section (1) of section 21 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following rules namely: -

1. Short title and commencement

(1)These rules may be called the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997.(2)They shall come into force from the date of their publication in the Official Gazette.

2. Definitions

In these rules unless the context otherwise requires,-(a)"Act" means the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952);(b)"agent" means a person duly authorized by a party to present an appeal or a written reply on its behalf, before the Tribunal;(c)"appellant" means a person or the establishment making an appeal to the Tribunal under section 7-I;(d)"Form" means a form specified in Appendix;(e)"legal practitioner" shall have the same meaning as is assigned to it in the Advocates Act, 1961 (25 of 1961);(f)"legal representative" means a person who in law represents the estate of the deceased;(g)"Registrar" means the Registrar appointed for the Tribunal and includes any officer to whom the powers and functions of the Registrar may be delegated under these rules;(h)"Registry" means the Registry of the Tribunal;(i)"Tribunal" means the Employees' Provident Funds Appellate Tribunal established under sub-section (1) of section 7(D) of the Act;(j)The words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Language of the Tribunal

The language of the Tribunal shall be English:PROVIDED that the parties to the proceedings before the Tribunal may file documents drawn up in Hindi, if they so desire:PROVIDED FURTHER that-(a)the Tribunal may in its discretion permit the use of Hindi in the proceedings but the final order shall be in English;(b)the Tribunal hearing the matter, may in its discretion, direct English translation of pleadings and documents to be filed.

4. Procedure for filing appeals

(1)An appeal to the Tribunal shall be presented in Form I by the appellant in person or by an agent or by a duly authorized legal practitioner to the Registrar or any other officer authorized in writing by the Registrar to receive the same or be sent by registered post with acknowledgment due addressed to the Registrar of the Tribunal.(2)The appeal under sub-rule (1) shall be presented in

triplicate in a paper-book form along with one unused file size envelope bearing full address of the respondent.(3)Where the number of respondents is more than one, as many extra copies of the appeal in paper-book form as there are respondents together with unused file size envelopes bearing the full address of each respondent shall be furnished by the appellant:PROVIDED that where the number of respondents is more than five, the Registrar may permit the appellant to file the extra copies of the appeal at the time of issue of notice to the respondents.(4)The appellant may attach to and present with his appeal a receipt slip in Form II which shall be signed by the Registrar or the officer receiving the appeal on behalf of the Registrar in acknowledgment of the receipt of the appeal.

5. Presentation and scrutiny of appeals

(1)The Registrar, or the officer authorized by him under rule 4, shall endorse on every appeal the date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.(2)If, on scrutiny, the appeal is found to be in order it shall be duly registered and given a serial number.(3)If the appeal, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence, and if the said defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit.(4)If the appellant fails to rectify the defect within the time allowed under sub-rule (3), the Registrar may, by order and for reasons to be recorded in writing, decline to register the appeal and inform the appellant accordingly.

6. Place of filing appeals

The appeal shall ordinarily be filed by the appellant with the Registrar of the Tribunal within whose jurisdiction:-(i)the appellant is residing for the time being, or(ii)the cause of action has arisen, or(iii)the respondent or any of the respondents against whom relief is sought, ordinarily resides.

7. Fee, time for filing appeal, deposit of amount due on filing appeal

(1)Every appeal filed with the Registrar shall be accompanied by a fee of rupees two hundred to be remitted either in the form of crossed demand draft on a nationalized bank in favor of the Registrar of the Tribunal and payable at the main branch of that bank at the station where the seat of the said Tribunal is situated, or remitted through a crossed Indian Postal Order drawn in favor of the Registrar of the Tribunal and payable at the post office of the station where the said Tribunal is situate.(2)Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/ order, prefer an appeal to the Tribunal:PROVIDED that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days:PROVIDED FURTHER that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with the Tribunal 75% of the amount due from him as determined under section 7A:PROVIDED ALSO that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under section 7-O.

8. Content of the appeal

(1) Every appeal filed under rule 4 shall set forth concisely under distinct heads the grounds for such appeal. Such grounds shall be numbered consecutively. Every appeal, including any miscellaneous appeal shall be typed in double space on one side on thick paper of good quality.

9. Documents to accompany the appeal

(1) Every appeal shall be accompanied by a paper-book containing, - (i) an attested true copy of the order against which the appeal is filed; (ii) copies of the documents relied upon by the appellant and referred to in the appeal; (iii) an index of the documents. (2) The documents referred to in sub-rule (1) may be attested by a legal practitioner or by a gazetted officer and each document shall be marked serially as Annexures A1, A2, A3 and so on. (3) Where an appeal is filed by an agent, document authorizing him to act as such agent shall also be appended to the appeal: PROVIDED that where an appeal is filed by a legal practitioner, it shall be accompanied by a duly executed "Vakalatnama".

10. Plural remedies

An appeal shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

11. Service of notices and processes issued by the Tribunal

(1) Notices or processes to be issued by the Tribunal may be served by any of the following modes directed by the Tribunal: - (i) service by the party itself; (ii) by hand delivery (Dasti) through process server; (iii) by registered post with acknowledgment due. (2) Where notice issued by the Tribunal is served by the party himself by "hand delivery" (Dasti), he shall file with the Registry of the Tribunal, the acknowledgment, together with an affidavit of service. (3) Notwithstanding anything contained in sub-rule (1) the Tribunal may, taking into account the number of respondents and their places of residence or work and other circumstances, direct that notice of the appeal shall be served upon the respondents in any other manner including any manner of substituted service, as it appears to the Tribunal just and convenient. (4) Notwithstanding anything done under sub-rule (1), the Tribunal may in its discretion, having regard to the nature and urgency of the case, direct the service of the notice on the standing counsels appointed as such by the Central Government or any State Government or any other authority under the Act. (5) Every notice issued by the Tribunal shall, unless otherwise ordered, be accompanied by a copy of the appeal along with a copy of the paper-book. (6) Every appellant shall pay a fee for the service or execution of processes in such manner as the Tribunal may direct under sub-rule (3) such a sum, not exceeding the actual charges incurred in effecting the service, as may be determined by the Tribunal. (7) The fee for the service or execution of processes under sub-rule (3) shall be remitted in the manner prescribed in rule 7 within one week of the date of the order determining the fee or within such extended time as the Registrar may permit. (8) Notwithstanding anything contained in sub-rules (1) to (4), if the Tribunal is satisfied that it is not reasonably practicable to serve notice of appeal upon all the respondents, it may, for

reasons to be recorded in writing, direct that the appeal shall be heard notwithstanding that some of the respondents have not been served with notice of the application; provided that no appeal shall be heard unless, - (i) notice of the appeal has been served on the Central Government or the State Government or the Central Board, if such government or Board is a respondent; (ii) notice of the appeal has been served on the authority which passed the order against which the appeal has been filed; and (iii) the Tribunal is satisfied that the interests of the respondent on whom notice of the appeal has not been served are adequately and sufficiently represented by the respondents on whom notice of the appeal has been served.

12. Filing of reply and other documents by the respondents

(1) Each respondent intending to contest the appeal, shall file in triplicate the reply to the appeal and the documents relied upon in paper-book form with the Registry within one month of the service of notice of the appeal on him. (2) In the reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the appellant in his appeal and may also state such additional facts as may be found necessary for the just decision of the case. It shall be signed and verified as a written statement by the respondent or any other person duly authorized by him in writing in the same manner as provided for in Order VI, rule 15 of the Code of Civil Procedure, 1908 (5 of 1908). (3) The documents referred to in sub-rule (2) shall also be filed along with the reply and the same shall be marked as R1, R2, R3 and so on. (4) The respondent shall also serve a copy of the reply along with documents as mentioned in sub-rule (1) on the appellant or his legal practitioner, if any, and file proof of such service in the Registry. (5) The Tribunal may allow filing of the reply after the expiry of the prescribed period.

13. Date and place of hearing to be notified

The Tribunal shall notify to the parties the date and the place of hearing of the appeal in such manner as the Presiding Officer may, by general or special order direct.

14. Calendar of cases

(1) The Tribunal shall draw up a calendar for the hearing of the cases and, as far as possible, hear and decide cases according to the calendar. (2) Every appeal shall be heard and decided, as far as possible, within six months from the date of its registration.