

# CHAMBER OF SMALL INDUSTRY ASSOCIATIONS

Member, National Board for MSMEs [2010-2012]

ESTD.YEAR 1990

REGD.NO.11-67185

*Silver Jubilee Year*

Date: 28.12.2014

## Representation on proposed amendments in the Provident Funds Act.

Section No.	Present Provision in the Act	Amendment proposed by Govt.	Suggested amendment by COSIA	Remarks
1 (3)	<p>Subject to the provisions contained in section 16, it applies</p> <p><b>(a)</b> To every establishment which is a factory engaged in any industry specified in Schedule –I and in which twenty or more persons are employed and</p> <p><b>(b)</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</p>	<p>Subject to the provisions contained in section 16, it applies</p> <p><b>(a)</b> to be deleted</p> <p><b>(b)</b> to every establishment in which ten or more are employed.</p>	<p><b>(a)</b> any enterprise defined as Micro or Small Enterprise under the Micro, Small &amp; Medium Enterprises Development Act 2006 having employed more than 20 employees</p> <p><b>(b)</b> To every other establishment not covered by the MSMED Act 2006 in which more than 20 employees are being employed.</p>	<p>The Govt. has made a separate MSMED Act for the MSME Sector. Similarly, the Govt. is also planning to have a separate Act for Small Factories. It is essential to take the note of these developments.</p> <p>Similarly, the present threshold limit of 20 persons is appropriate. Bringing down this number will have ill effect on the working of Micro &amp; Small Enterprises. It may discourage to employ more persons which will also have effect on employment generation. Therefore, the threshold limit of</p>

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	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.			20% .
<b>2. (b)</b>	Basic wages – means all emoluments earn by an employee which does not include cash value of any food concession and any dearness allowance and any presents made by the employer.	Wages means all remuneration paid or payable to an employee but does not include [a] contribution of employer to ESIC [b] Traveling allowance or traveling concession [c] sum paid to employee to defray special expenses [d] Gratuity	Wages means basic wages plus dearness allowance or special allowance as declared by the Govt. from time to time	It is accepted fact that in real terms the wages include only dearness allowance and therefore it should be restricted to basic plus dearness only.
<b>2. (t)</b>	Nil	'Wage Ceiling' means, maximum amount of wages on which the contribution is payable as specified in the EPF Scheme, EDLI Scheme and Employees Pension Scheme.	Nil	COSIA welcomes this amendment.

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5.	<p><b>Employees Provident Funds Scheme</b></p> <p>1(b) 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 Schedule II.</p>	<p>Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters as under:</p> <p>c) 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.</p>	<p>Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters as under:</p> <p>c) The payment <b>by the employees or by the trade unions of employees</b> 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.</p>	<p>This Act is enacted for welfare of employees and the employers are also to contribute towards this fund. Since all the advantages and benefits are meant only for the employees then it would be appropriate and justifiable to recover the administrative cost of funds from the employees or the trade unions and they may be involved to pay at least the administrative cost. Therefore this suggestion.</p>
5. 1(b)O	Nil	The further powers, if any, which may be exercised by inspectors.	Delete this provision	There are enough powers prescribed under the Act. What are the further power is a big question and as such this provision is meaningless. In the days of good governance such provisions should be avoided.

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<b>5A.</b>	<p>Central Board</p> <p>(a) Chairman &amp; Vice Chairman (aa) Provident Fund Commissioner (b) 5 persons from Central Govts. (c) 15 persons of State Govts. (d) 10 persons of employers</p> <p>(e) 10 persons of employees</p>	<p>(a) Chairman &amp; Vice Chairman (aa) Provident Fund Commissioner (b) 5 persons from Central Govts. (c) 8 persons of State Govts. (d) 5 persons of employers</p> <p>(e) 5 persons of employees</p>	<p>(a) Chairman &amp; Vice Chairman (aa) Provident Fund Commissioner (b) 2 persons from Central Govts. (c) 5 persons of State Govts. (d) 7 representatives of organizations of employers out of which 3 shall be of Micro and Small enterprises sector. (e) 7 representatives of recognized trade unions</p>	<p>We welcome the move of the Govt. to reduce the number of persons on Central Board. The Act is for the welfare of the employees and for which employers are also to contribute. Therefore, the Central Board may have the more number of representatives of Employers and Employees than the Govt. Officers. Therefore, we have suggested this change.</p> <p>The Micro and Small enterprise is a very vital sector and 93% industries are in this sector only. Therefore, their representation on the Board must be provided and protected. Therefore, this provision is suggested.</p>
<b>5 AA.</b>	<p>Executive Committee</p> <p>(2) a) Chairman b) 2 persons of Central Govt. c) 3 persons of State Govt.</p>	<p>(2) a) Chairman b) 2 persons of Central Govt. c) 3 persons of State Govt.</p>	<p>2) a) Chairman b) 2 persons of Central Govt. c) 3 persons of State Govt.</p>	<p>The Micro and Small Enterprises is a very vital sector and 93% industries are in this sector only. Therefore, their representation on</p>



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	d) 3 persons of employers  e) 3 persons of employees	d) 3 persons of employers  e) 3 persons of employees	d) 3 representatives of <b>employers organizations of which minimum 1 shall be from Micro &amp; Small Enterprises Sector</b>  e) 3 persons of employees	the Executive Committee must be provided and protected. Therefore, this provision is suggested.
<b>6</b>	<b>Contributions and matters which may be provided for in Schemes –</b> The contribution which shall be paid by the employer to the Fund shall be 10% of the basic wages, dearness allowance and training 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 employee's 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 exceeding 10% of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the	<b>Contributions and matters which may be provided for in Schemes –</b> The Contribution which shall be paid by the employer to the fund shall be 12% of wages for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employee's 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 exceeding 12% of his wages 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:	<b>Contributions and matters which may be provided for in Schemes –</b> The Contribution which shall be paid by the employer to the fund shall be 12% of wages for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employee's 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 exceeding 12% of his wages 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:	We welcome this proposed change whereby the Govt. can notify reduction or waiver of the contribution payable by the employees in certain cases of financial difficulties of establishments.  Similarly, it would be appropriate to exempt the small employers also when they are in financial difficulties and their cases are under revival schemes. Therefore this provision is being suggested.  The Micro and Small Enterprises are in fact trainers of youth who are school dropouts. The youth join a small industry to gain



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	<p>employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:</p> <p>New Addition</p>	<p>Provided that, if the Central Government is of the opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient to do so, it may, by notification in the Official Gazette, and subject to such conditions, as may be specified in the notification, reduce or waive the contribution payable by the employees for such period as may be specified in the notification.</p>	<p>Provided that, if the Central Government is of the opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient to do so, it may, by notification in the Official Gazette, and subject to such conditions, as may be specified in the notification, reduce or waive the contribution payable by the employees for such period as may be specified in the notification.</p> <p><b>Provided that in case of a Micro or Small Enterprise which is a sick or under revival scheme the contribution of the employer shall be exempted.</b></p> <p><b>Provided also that in case of Micro and Small Enterprises, the</b></p>	<p>knowledge and experience as well as to acquire a technical skill. Initially they are not interested in contributing to the Provident Fund or any other such scheme. However, the small employer requires to make his contribution also from his own pockets. Thus, he has to there the double burden plus the administrative cost of the formalities to be completed under the Act. There is a big turnover of employees in the Micro &amp; Small Sector due to this scenario.</p> <p>To save the Micro and Small Entrepreneur from such burdensome situation MSEs be allow to make a fresh employee member of Provident Fund only after that employee completes minimum 240 days as a trainee. Therefore, this provision is suggested.</p>
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			<b>contribution of employee shall not be deducted unless the employee completes continuous service of 240 days in the enterprise.</b>	
<b>7A.</b>	<p><b>Determination of moneys due from employers.-</b>  (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 Pension</p>	<p><b>Determination of moneys due from employers.-</b>  (1)The Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,   (a) No change   (b) No change</p>	<p><b>Determination of moneys due from employers.-</b>  (1)The Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,   (a) No change   (b) No change</p>	<p>We welcome this suggestion of providing cap of five years. However, in order to bring further quickness and efficiency, this period may be restricted to three years. Therefore, this provision is suggested.</p>

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	<p>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.</p> <p>Nil</p>	<p>Provided further that no such order shall be passed by the officer in respect of period beyond five years from the date on which the contribution shall become payable.</p>	<p>Provided further that no such order shall be passed by the officer in respect of period beyond <b>Three</b> years from the date on which the contribution shall become payable.</p>	
<b>7c.</b>	<p><b>Determination of escaped amount</b> – 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 orders-</p> <p>(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,</p>	<p>No change</p>	<p><b>Determination of escaped amount</b> – 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 orders-</p> <p>(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,</p>	<p>We agree with the provision that provides for determination of escaped amount. However, it is essential that every care be taken by the officers so that no such things happened. The period of 5 years to re-open the cases is indeed too long period giving discretion to the officers and providing for hanging sword on the heads of entrepreneurs. Therefore, the period should be 2</p>



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	<p>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;</p> <p>(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7A of section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause a on the part of the employer, he may, within a period of five years from the date of communication of the order passed under</p>		<p>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;</p> <p>(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7A of section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause a on the part of the employer, he may, within a period of <b>Two</b> years from the date of communication of the order passed under</p>	<p>years only. Similarly, in such cases the provision of written notice must be there and therefore this amendment is being suggested.</p>
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	<p>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:</p> <p>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.</p>		<p>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:</p> <p>Provided that no order re-determining the amount due from the employer shall be passed under this section unless the employer <b>is given a written notice of 30 days to represent his case.</b></p>	
<b>7cc</b>	<b>No Provision</b>	(7) No appeal by the employer shall be entertained unless he has deposited with it 50% of the amount due from him as determined by an authorized officer referred to in section 7A, or section 7B, or section 7C or and section 14B as per the procedure provided in the rules.	(7) No appeal by the employer shall be entertained unless he has deposited with it 50% of the amount due from him <b>and 25% amount in case of Micro or Small Enterprises, due from him</b> as determined by an authorized officer referred to in section 7A, or section 7B, or section 7C or and	The capacity of Micro and Small Enterprise is always very limited. It is essential that such enterprises should not be forbidden from justice and therefore they should be allowed to make an appeal by depositing 25% amount only.

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		<p>Provided that the Appellate officer may, for reasons to be recorded in writing, reduce the amount to be deposited under this section but not less than 25% of the amount determined by the authorized officer.</p>	<p>section 14B as per the procedure provided in the rules.</p> <p>Provided that the Appellate officer may, for reasons to be recorded in writing, reduce the amount to be deposited under this section but not less than 25% of the amount determined by the authorized officer.</p>	
<b>14</b>	<p><b>Penalties</b></p> <p>1. False statement or representation by employer - Imprisonment upto 1 year or Rs.5,000/- fine or both</p> <p>2. Failure to pay employers contribution / inspection charges or administrative charges - imprisonment upto 3 years and fine of Rs. 10,000/-</p> <p>3. Penalty for default in complying with provisions of</p>	<p><b>Penalties</b></p> <p>False statement or representation by employer - Imprisonment upto 1 year or <b>Rs.35,000/-</b> fine or both</p> <p>Failure to pay employers contribution / inspection charges or administrative charges –[1] minimum imprisonment of <b>1 year</b> and fine of <b>Rs. 70,000/-</b></p> <p>3. Penalty for default in complying with provisions of pension scheme</p>	<p><b>Penalties</b></p> <p>False statement or representation by employer - <b>fine of Rs.25,000/-</b></p> <p>Failure to pay employers contribution / inspection charges or administrative charges – <b>fine upto Rs. 25,000/-</b></p> <p><b>Fine of Rs. maximum 50,000/-</b></p>	<p>The provisions of penalty suggested are too harsh. In fact the entrepreneurs are supporting the welfare measures by paying contribution out of their pockets. In rare cases of financial difficulties the payment of contribution comes to halt. There is need to recognize the contribution of entrepreneurs and particularly that of MSEs in the economy. Nonpayment of charges should not be looked upon as a criminal and very horrible offence.</p>

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	<p>pension scheme or insurance scheme-</p> <p>[1] Imprisonment upto 1 year</p> <p>[2] Fine of Rs. 4,000/-</p> <p>[3] or both</p> <p>4. Penalty for failure to comply with any provision of the Act –</p> <p>[1] Imprisonment of minimum 1 month and maximum 6 months and fine of Rs. 5,000/-</p>	<p>or insurance scheme-</p> <p>[1] Imprisonment upto 1 year</p> <p>[2] Fine of <b>Rs. 28,000/-</b></p> <p>[3] or both</p> <p>[4] or compounding fine of <b>Rs. 70,000/-</b></p> <p>Penalty for failure to comply with any provision of the Act –</p> <p>[1] Imprisonment of minimum 1 month and maximum 6 months and fine of <b>Rs. 35,000/- or compounding of offence penalty Rs. 1lakh.</b></p>	<p><b>Fine of Rs. maximum 50,000/-</b></p>	<p>At the same time to have a check provisions of penalties are essential. Considering this aspect we suggest that there should be a penalty of fines only and that of compounding of offences also. Therefore, this amendment is suggested.</p>
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P.S. Agwan  
Hon. Gen. Secretary

Date : 28.12.2014