

## ERGO

*Analysing developments impacting business*

### EPFO ISSUES GUIDELINES FOR CONDUCT OF INQUIRIES UNDER SECTION 7A

18 February 2020

Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) authorises Provident Fund Commissioners to initiate inquiries in order to determine amounts due from employers under the EPF Act. For the purpose of determining the shortfall in contributions, Section 7A vests Commissioners with the powers of a civil court.

Earlier, the Employees' Provident Fund Organisation (EPFO) had, on 28 August 2019, issued a notice directed at curbing unwarranted roving inquiries being initiated by authorities pursuant to a clarification issued by the Supreme Court of India (Supreme Court) in *Regional Provident Fund Commissioner (II) West Bengal v Vivekananda Vidyamandir and Others* [Civil Appeal Number 6221 of 2011] regarding the ambit of 'basic wages' under the EPF Act. In order to further regulate and uniformise conduct of inquiries under Section 7A, the EPFO has, *vide* its notice dated 14 February 2020, issued detailed guidelines for conducting inquiries.

#### The Guidelines

The following guidelines have been issued by the EPFO in supersession of all earlier instructions in this regard:

- Limited basis of inquiry: In line with the stipulations under Section 7A, inquiries may be initiated only for two purposes i.e. (a) to decide a dispute regarding the applicability of the EPF Act or / and (b) determination of shortfall in contributions. Any other default, such as failure to produce records or submit returns, cannot be the basis for initiating an inquiry under Section 7A.
- A prima-facie case: Existence of a *prima-facie* case is a prerequisite for initiating an inquiry. Accordingly, the Assessing Officer is required to record reasons in writing based on available evidence to establish a *prima-facie* case before initiating an inquiry. Further, the EPFO has clarified that a mere complaint does not constitute *prima-facie* evidence, unless it has been investigated and further substantiated through evidence gathered by Inspectors empowered to do so under the EPF Act.
- Procedure for initiation: A copy of the documents constituting the basis of the inquiry must be supplied to the relevant parties along with the notice under Section 7A. Further, the notice initiating an inquiry shall be assigned a computer generated diary number for the Compliance e-Proceedings Portal.

- Time frame and scope inquiry: The EPFO has criticised the practice of conducting inquiries for long durations ranging from 5 (five) to 20 (twenty) years, without evidence of prolonged default. Accordingly, the Assessing Officers are now required to record the intended period of inquiry based on the evidence of default available, prior to initiating the inquiry. Further, upon the initiation of an inquiry, the issues under inquiry or the period thereof cannot be extended and the records sought from the employer must also be reasonably limited to such scope. Any new issue or period of default may be inquired into only after issuance of a separate notice in that regard.

An inquiry conducted in non-compliance of any of the aforesaid guidelines is impermissible and will be treated as *non-est* in the eyes of law.

### Comment

The new guidelines issued by the EPFO for curtailing unwarranted inquiries under Section 7A are business friendly and likely to bring huge relief to employers. Given the wide scope of powers conferred upon Provident Fund Commissioners under Section 7A, the guidelines impose much-needed restrictions to check any arbitrary exercise of such powers by the authorities. Further, since the Limitation Act, 1963 is not applicable to inquiries conducted under Section 7A, the effort of the EPFO to reasonably limit the scope and period of enquiries based on credible evidence is a welcome measure that may help curtail unjustified harassment of employers brought under inquiry under the EPF Act. The guidelines will also bring transparency in inspections and provide an environment to the industrialist that facilitates ease of doing business.

- *Anshul Prakash (Partner), Abhinav Rastogi (Principal Associate) and Kosheel Gupta (Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

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#### **Mumbai**

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

#### **New Delhi**

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

#### **Bengaluru**

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

#### **Kolkata**

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)