cl!ent alert

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ahead of the curve

EPF, Pension and EDLI Schemes under the SS Code

Background

As the new labour law regime under the Labour Codes continues to take shape, in a significant development, the Ministry of Labour and Employment (**MoLE**), published new schemes under the Code on Social Security, 2020 (**SS Code**) in the Gazette of India, to govern key social security benefits contemplated thereunder:

- the Employees' Pension Scheme, 2026 (**EPS Scheme 2026**), in supersession of the Employees' Pension Scheme, 1995 (**EPS Scheme 1995**), published on June 30, 2026;
- the Employees' Deposit-Linked Insurance Scheme, 2026 (**EDLI Scheme 2026**), in supersession of the Employees' Deposit-Linked Insurance Scheme, 1976 (**EDLI Scheme 1976**), published on June 30, 2026; and
- the Employees' Provident Funds Scheme, 2026 (**EPF Scheme 2026**), in supersession of the Employees' Provident Funds Scheme, 1952 (**EPF Scheme 1952**), published on July 01, 2026.

As per the Gazette notification, all three schemes will come into force on the date of their publication in the Official Gazette.

This Alert provides a preliminary overview of the three schemes, the key changes introduced and key stipulations maintained from the earlier schemes, with a focus on the EPF Scheme 2026.

1. The EPF Scheme 2026:

a. The EPF Scheme 2026 has provisions that are broadly in line with the EPF Scheme 1952. The default employee and employer contribution rate remains at 12% of wages each (with a 10% rate applicable to categories of establishments notified by the Central Government), subject to the wage ceiling notified from time to time (*currently, this remains as INR 15,000*); and the principal employer remains liable in respect of employees engaged through contractors.

b. The rate of damages also remains the same as the EPF Scheme 1952 (as amended on June 14, 2024), and may be levied as a percentage of arrears per month, based on the period of default: (i) 0.25% for a default period of less than 2 months, (ii) 0.50% for more than 2 months but less than 4 months, and (iii) 1% for default periods exceeding 4 months.

c. Importantly, the EPF Scheme 2026 continues to have specific provisions in relation to International Workers, broadly similar to the International Worker regime under the EPF Scheme 1952, and these provisions are built into operative paragraphs of the Scheme. It is pertinent to note that the challenge to the constitutionality of the International Worker regime under the EPF Scheme, 1952 is currently pending before the Hon'ble Supreme Court of India (*appeal from Spice Jet Ltd. and Ors. v. Union of India and Ors.* (W.P. 2941/2012, decided on November 4, 2025)) and before the Division Bench of the Karnataka High Court (*appeal from Stone Hill Education Foundation v. Union of India* (2024 SCC OnLine Kar 49, decided on April 25, 2024)). The implications of the EPF Scheme 2026 for these pending proceedings will require careful consideration, particularly given that the impugned International Worker framework appears to have been substantially retained.

d. **Exempted trusts:** A few key changes introduced by the EPF Scheme 2026 in relation to exempted trusts and their operations:

- in relation to the manner in which exempted trusts will operate vis-à-vis interest payments – in this regard, Paragraph 13(9) of the EPF Scheme 2026 states that the rate of interest cannot exceed 200 basis points above the rate of interest declared by the Central Government;
- Paragraph 13(36) expressly states that on cancellation or surrender of exemption, all accumulations, surplus, reserves and employee balance shall be transferred to the Employees' Provident Fund Organisation (**EPFO**) (*a mandatory stipulation pursuant to circulars/ manuals of the EPFO, now codified in the EPF Scheme 2026*).
- While the EPF Scheme 1952 created some ambiguity on revocation of an exemption in case of a "change in legal status", the EPF Scheme 2026 provides clarity on the consequences of specified types of transactions – in case of a merger, demerger, acquisition, sale, amalgamation or formation of a new subsidiary, the exemption status will be governed by the order of the competent forum and the employer of the new establishment may continue with the exemption or surrender the exemption, in accordance with the process to be prescribed.
- The EPF Scheme 2026 also provides that an order of exemption will initially be valid for 3 years, and may be renewed by application, though renewal will ordinarily be automatic if conditions continue to be satisfied, provided the net worth of the establishment is positive during each of the last three years.
- Mirroring related stipulations under the EPF Scheme 1952, Paragraph 13(10) of the EPF Scheme 2026 requires an employer to make good any shortfall in interest payments.

e. The EPF Scheme 2026 also introduces the following one-time compliance relief and regularisation measures. These measures appear to be in line with similar measures introduced by the EPFO under publications/ circulars in the recent past:

(i) **The Employees' Enrolment Campaign, 2026,** comes into force on the date of <u>publication</u> of the EPF Scheme 2026 and ceases to operate on October 31, 2026. Any employer, whether previously covered under the SS Code or not, may apply for coverage and enroll employees who joined the establishment between April 01, 2009, and March 31, 2026, and are employed as on the date of declaration, but were not enrolled under the EPF Scheme 1952 for any reason. Upon such enrolment, for past periods, the employer is required to deposit only the employer's share (where the employee's share was not deducted), and the employee's share of contribution is waived. Interest and administrative charges will be payable under section 127 of the SS Code. However, damages for the default period between July 01, 2009, and March 31, 2026, are fixed at a nominal INR 100 under this campaign.

(ii) The **Vishwas, 2026** is a set of special provisions relating to damages, valid for 6 months from the date of <u>notification</u> of the EPF Scheme 2026 (extendable by a further six months by the Central Provident Fund Commissioner). It applies to damages for defaults in payment of contributions for the period prior to June 14, 2024. Vishwas, 2026 covers cases involving levy of damages at all stages, namely, where an order has been issued and is under dispute before any judicial forum, where an order has been issued but recovery is pending, where a notice has been issued but a final order is yet to be passed, or where a notice is yet to be issued. Notwithstanding the rate of damages otherwise applicable, the damages under Vishwas, 2026 will be as specified under the EPF Scheme 2026. Once damages at the prescribed rates are deposited by an employer, any appeal filed or order passed will stand abated.

(iii) The **Amnesty, 2026** is a set of special provisions relating to exempted establishments and is valid for 6 months from the date of notification of the EPF Scheme 2026 (extendable by a further six months on the Central Board's recommendations). It applies specifically to establishments that have been operating a Provident Fund Trust on the basis of recognition under applicable income tax laws, but without a formal notification of grant of exemption by the appropriate Government under the SS Code or the erstwhile Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Eligible establishments fall into two categories - Category I establishments seeking retrospective regularization who opt to comply as un-exempted establishments going forward, and Category II establishments seeking retrospective regularization who wish to continue as exempted establishments under the SS Code. Subject to contributions and interest credited to member accounts being at par with or better than statutory rates, establishments will not be treated as in default solely on account of the absence of a formal exemption notification, and any pending proceedings will be withdrawn and abated.

2. The EPS Scheme 2026:

The provisions of the EPS Scheme 2026 are mostly in alignment with the erstwhile EPS Scheme 1995, and it continues to have the provisions regarding the increased contributions to the pension scheme that were introduced by the Employees' Pension (Amendment) Scheme, 2014, and provisions relating to International Workers. A key change in the EPS Scheme 2026 is that in cases where employees have exercised the joint option under EPS Scheme 1995 to contribute on wages over and above the wage ceiling (*currently INR 15,000*), employers are required to contribute 9.49% of the wages of each member (increasing it by 1.16% from the general rate of 8.33% of the wages). Previously, under the Employees' Pension (Amendment) Scheme, 2014, the responsibility to make this additional contribution was initially placed on employees and this provision was struck down by the Supreme Court in *EPFO v. Sunil Kumar* (2022 SCC OnLine SC 1521).

3. The EDLI Scheme 2026:

The provisions of the EDLI Scheme 2026 broadly align with the erstwhile EDLI Scheme 1976. That said, the EDLI Scheme 2026, expressly applies the Employees' Enrolment Campaign, 2026 under the EPF Scheme 2026 to the EDLI Scheme 2026 as well (mutatis mutandis). This means the campaign's relief provisions, including the INR 100 damages rate and waiver of employee contributions, extend to EDLI compliances as well.

In line with the key tenet of digitization, the new schemes have now codified the digitization of processes. Provisions related to filing forms and maintaining registers in physical form have been removed to a large extent, although, in practice, key actions related to the schemes, such as making contributions, updating information, and paying interest and damages were primarily done online on the portal of the EPFO under the erstwhile schemes as well.

Further, the EPF Scheme 2026 and the EDLI Scheme 2026 have also introduced a provision which permits the Central Board to write off any losses if the Central Board is satisfied that the amount of contributions, cess, interest, or damages due to it under the schemes are irrecoverable.

We are in the process of analyzing the provisions of the EPF Scheme 2026, EDLI Scheme 2026, and EPS Scheme 2026 in detail, and will share our in-depth observations in future publications.

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