

PRACTICE LEADERS

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Part of the Employment Practice at Cyril Amarchand Mangaldas, with over nine years of experience. Her practice spans complex advisory and contentious matters across the employee lifecycle, including on employee benefits, provident fund compliance and dispute representation, cross-border employee movements, trade union engagements, and structuring senior management contracts. She has also assisted clients with sensitive workplace investigations and conduct matters, and assisted clients navigate complex employee exits. Krithika has been closely involved in guiding companies through the transition to the new Labour Codes regime, helping align legal compliance with business and operational realities.

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Between Reform and Litigation: Navigating India's International Worker PF Regime

On June 29, 2026, the Government of India notified the Employees' Provident Fund Scheme, 2026 (the "**2026 Scheme**") under the Code on Social Security, 2020 (the "**Code**"). The 2026 Scheme replaces the earlier Employees' Provident Funds Scheme, 1952 (the "**1952 Scheme**") and forms part of India's new Labour Codes framework, which came into force on November 21, 2025.

For multinational employers, the matter of key significance was how the new framework would treat "international workers" ("**IWs**"), a category of workers whose social security contributions under Indian law have been at the centre of divergent judicial interpretations over recent years. Now confirmed by a corrigendum issued in August 2026, it is clear that the 2026 Scheme largely preserves the *status quo* as contained under the 1952 Scheme, under which contributions for IWs remain higher than for Indian domestic employees, as the usual wage ceiling does not apply to them.

This places the IW regime in a unique situation where legislative reform and judicial scrutiny are running in parallel, leaving global employers to plan around a moving target.

A Brief History: The IW Regime Under the 1952 Scheme

The earlier 1952 Scheme under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the "**EPF Act**"), now replaced by the Code, created a compulsory retirement savings scheme for employees working in covered establishments. Under this regime, both the employer and employee contribute 12% of the employee's wages to the provident fund. However, for Indian employees, these contributions are generally subject to a salary ceiling of INR 15,000 per month. (recently amended to INR 25,000 per month, from September 17, 2026)

In 2008, the government introduced a separate set of provident fund rules for certain foreign nationals working in India, known as "International Workers" (IWs). These rules were introduced through Paragraph 83 of the 1952 Scheme (and the related Paragraph 43A of the Employees' Pension Scheme, 1995, "**Pension Scheme**"). The key difference in the IW-specific regime was that provident fund contributions for IWs had to be made at 12% of their entire fixed monthly salary, with no salary cap equivalent to that applicable to Indian employees. IWs are also generally unable to withdraw their provident fund savings until they reach 58 years of age, regardless of their working tenure in India.

The government's stated reason for introducing these rules was to strengthen India's negotiating position when entering into social security agreements (**SSAs**) with other countries. Under these agreements, employees from partner countries may avoid making social security contributions in both countries and may benefit from arrangements such as detachment certificates and reciprocal treatment. However, the IW provisions in the 1952 Scheme apply not





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The IW regime operated with relatively little controversy, apart from occasional disputes over contribution amounts and active enforcement measures by provident fund authorities. That changed significantly from 2024 onward, when the validity of the framework itself came under increased judicial scrutiny.

The Karnataka High Court: A Successful Constitutional Challenge

On April 25, 2024, a Single Judge of the High Court of Karnataka delivered judgment in *Stone Hill Education Foundation and Ors. v. Union of India* (**2024 SCC OnLine Kar 49**). The court struck down Paragraph 83 of the 1952 Scheme and Paragraph 43A of the Pension Scheme as unconstitutional and beyond the rule-making power under the EPF Act, noting these provisions to be *ultra vires* the EPF Act. Its key reasons were:

- The EPF Act was designed mainly as a retirement savings law for employees in lower salary brackets. The court was not persuaded that this objective justified uncapped contributions for employees earning much higher salaries.
- Since the EPF Act itself refers to a monthly wage threshold of INR 15,000, the court found that applying an unlimited salary base to IWs under the delegated legislation (i.e., the Schemes) went beyond what the parent law allowed.
- The government's contention that the IW regime helped India secure reciprocal social security arrangements with other countries was rejected, because the IW regime equally applied to workers from countries that do not have such arrangements with India.

On this basis, the Karnataka High Court concluded that the classification embedded in the IW regime violated the fundamental right to equality under Article 14 of the Constitution of India, and struck down the relevant provisions, rendering all consequent orders passed under them unenforceable.

In practical terms, the ruling mattered beyond Karnataka. A High Court decision striking down a central legislation has implications throughout the country, unless it is stayed or overruled by the Supreme Court. The Karnataka ruling



has been appealed to a Division Bench of the same High Court, but no interim stay has been granted so far. This means the judgment remains operative while the appeal is pending.

The Delhi High Court: A Contrary Ruling

On November 4, 2025, a Division Bench of the High Court of Delhi reached the opposite conclusion in *Spice Jet Ltd. and Ors. v. Union of India and Ors.* (**W.P. 2941/2012** and others). The court upheld the same notifications that introduced the IW regime in 2008 and 2010.

The petitioners raised many of the same objections that had succeeded in Karnataka. They argued that the framework discriminated against foreign nationals, unfairly restricted withdrawal of IW accumulations until 58 years of age, despite typical assignments lasting only two to five years, and exceeded the scope of the EPF Act.

The Delhi High Court focused on the constitutional principle of reasonable classification under Article 14. Put simply, Article 14 requires equal treatment, but it does not require the law to treat *unlike* situations identically. The court accepted that IWs can be treated differently because they are usually assigned to India for shorter periods and may then return to their home countries. On that basis, the court accepted the government's argument that uncapped contributions for IWs would not result in economic duress, and had to be treated differently from domestic employees who contribute over a full working life, and would face economic duress if they were mandated to contribute to the fund in the same uncapped manner. The court also upheld the withdrawal restriction until age 58 and accepted that Paragraph 83 supports India's ability to enter into and implement social security agreements with other countries.

The Delhi High Court expressly considered the Karnataka High Court's decision in *Stone Hill* but declined to follow it. It took the view that the Karnataka decision had not fully addressed the government's economic-duress argument. The Delhi High Court also relied on an earlier Bombay High Court ruling from 2019, which had rejected a constitutional challenge to Paragraph 83.

A Divergent Judicial Landscape

Two High Courts have reached opposite conclusions on the same central provision. Interestingly, other High Courts across the country have also chosen their sides on the debate—the Bombay High Court (***Maharashtra***) continues to follow the *Spice Jet* ruling, noting the constitutional validity of the IW regime under the 1952 Scheme; while the Madras High Court (***Tamil Nadu***) and Punjab & Haryana High Court have applied the *Stone Hill* ruling.



In practical terms, employers may be faced with different arguments and outcomes depending on where a dispute arises, with local provident fund authorities also following the opinions taken by their territorial High Court, if any.

The constitutional question reached the Supreme Court in March 2026, when the Court issued notice on a special leave petition filed by one of the aggrieved petitioners in the *Spice Jet* proceedings, challenging the Delhi High Court's judgment. A separate appeal against the Karnataka High Court's *Stone Hill* judgment remains pending before a larger bench of that court.

Both threads of litigation—the appeal against the ruling that struck the regime down and the appeal against the ruling that upheld it—are therefore now before appellate forums, and only a final Supreme Court determination is likely to resolve the underlying constitutional question with binding, nationwide effect.

This uncertainty has real compliance consequences. Employers that made additional provident fund contributions for IWs, or that received show-cause notices, assessment orders, interest demands or damages demands, have relied on the Karnataka ruling to challenge those demands. On the other hand, authorities' enforcement trends largely continue to take the position upheld by the Delhi High Court.

The 2026 Scheme: Continuity with Select Changes

Against this backdrop, the 2026 Scheme is significant because it does not substantially change the position with respect to IW coverage and contributions.

The standard contribution framework is largely retained: employers and employees generally contribute 12% of "wages" to the provident fund, subject to the INR 15,000 wage ceiling for ordinary cases, and employees may continue to make additional voluntary contributions. The scheme also supports digitisation, administrative simplification, amnesty mechanisms for specified historical non-compliances, and clearer obligations for exempted provident fund trusts.

On IWs, however, the government has chosen continuity rather than reform. After some initial ambiguity, an August 4, 2026 corrigendum makes the position clear: monthly PF contributions for IWs continue to be calculated at 12% of all fixed salary components, without the INR 15,000 wage ceiling available to domestic employees.

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This creates an unusual situation: the new scheme effectively preserves a position that one High Court has declared unconstitutional and that is still pending before the Supreme Court.

What This Means for Multinational Employers

The 2026 Scheme signals the government's intention to retain the existing framework for IWs, despite the ongoing litigation. For global employers with internationally mobile employees in India, the key takeaway is that the IW regime remains fully in force today. Employers should not assume that the issue has been settled simply because the Karnataka High Court ruled against the regime. The Delhi High Court has since taken a different view, and the matter is now pending before the Supreme Court.

At the same time, it is worth noting that the current framework is not beyond challenge. The Supreme Court is still considering whether the regime, albeit under the 1952 Scheme, is constitutionally valid, and its final decision could have significant consequences, particularly if imported into the context of the 2026 Scheme. Depending on the outcome, questions may arise regarding provident fund contributions already made, as well as related interest liabilities and enforcement actions.

Until there is a final ruling, employers should continue complying with the existing rules, including the provisions reflected in the 2026 Scheme and the August 2026 corrigendum. Where there are ongoing disputes, such as assessments, show-cause notices, or proceedings relating to damages, employers should carefully document their positions and preserve any arguments that could benefit them if the Supreme Court ultimately rules in favour of the challengers.

Employers should also review whether any social security agreements (**SSAs**) apply to their international employees. Workers from countries that have an SSA with India may be eligible for benefits such as detachment certificates or other reciprocal arrangements, which could significantly reduce or eliminate their contribution obligations regardless of the outcome of the constitutional challenge.

The rapid change in the legal position over the past few years, with contrary rulings from High Courts and fresh legislation that largely reinforces the existing framework, no doubt creates ambiguity in an already complex web of social security regulations. Organizations with internationally mobile employees should therefore continue to assess provident fund exposure, review the availability of social security agreement exemptions, and ensure payroll practices remain aligned with the prevailing framework, while closely monitoring judicial developments.

This article does not constitute, and is not intended to be, legal advice, and should not be relied upon as such.

