

Section 7A Inquiry of EPF

1. Is the Regional Assessing Officer of Goa, Ministry of Labour and Employment empowered to send the notice in question?

Section 7A of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to 'EPF'):

"[(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 3 [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 (5 of 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 a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860). {

3) No order 4*** shall be made under sub-section (1), unless 5 [the employer concerned] is given a reasonable opportunity of representing his case."

Guidelines for Initiation of Section 7A Inquiries under EPF Act, 2020 (<https://taxguru.in/corporate-law/guidelines-initiation-section-7a-inquiries-epf-act.html#>) :

"2.The minimum standard of evidence for commencement of any legal proceedings is "existence of a prima-facie case" and the same applies to proceedings u/s 7A as well... Therefore, the Assessing Officers shall record reasons in file, on the basis of evidence available on record, regarding existence of a prima-facie case of default, or of an applicability dispute, before initiating process u/s 7A."

"4. Sometimes the inquiries are initiated for prolonged durations such as 5 to 20 years without any evidence of such prolonged default. This practice is legally untenable and must be eschewed. Therefore, before initiating the inquiry, the assessing officer shall record in writing proximate nexus

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