

Employees' Provident Fund (Amendment)

Act No 1 of 1985

AN ACT TO AMEND THE EMPLOYEES' PROVIDENT FUND ACT, No. 15 OF
1953.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows : -

Short title. **1.** This Act may be cited as the Employees' Provident short title. Fund (Amendment) Act. No. 1 of 1985.

2. Section 5 of the Employees' Provident Fund Act, Amendment No. 15 of 1958 (hereinafter referred to as the "principal of Act No" 15 enactment") is hereby amended in subsection (1) thereof of 1958. as follows; -

(1) by the insertion immediately after paragraph (o) thereof, of the following new paragraph : -

" (bb) the Board shall determine with the concurrence of the Minister, the amount of surcharge to be distributed, among the members affected by the failure of their employers to pay the contributions due from him to the Fund, on the day such contribution is due, out of the money received by way of surcharge under the provisions of section 16 ; " ; and

(2) by the substitution for paragraph (k) thereof, of the following paragraph:- "

(k) shall deduct from the income from the investment of moneys of the Fund, the expenses incurred by the Board and the Commissioner in carrying out their respective functions under this Act; "

Replacement of section 7A of the principal enactment. **3.** Section 7A of the principal enactment is hereby repealed and the following section substituted therefor: -

Expenses incurred in 7A, The expenses incurred by the Commissioner and the Monetary Board the in carrying out the provisions of this Act shall be the Act' charged on the administrationincome from the investment of moneys of the Fund.".
of the Act.

Amendment of Section 10 of the principal enactment. **4.** Section 10 of the principal enactment is hereby amended as follows : -

(1) in subsection (1) thereof, by the substitution for the words from " employment during that month: Provided that " to the end of that subsection, of the words "employment during that month. " ; and

(2) in subsection (2) thereof, by the substitution for the words " to pay to the Fund before the last day of the succeeding month", of the words "to pay to the Fund on or before the last day of the succeeding month " .

Amendment of Section 23 of the principal enactment. **5.** Section 23 of the principal enactment is hereby amended as follows : -

(1) by the renumbering of that section as subsection (1) thereof;

(2) in the renumbered subsection (1), by the substitution for paragraph (e) thereof of the following paragraph: -

" (e) after such member ceases to be employed in a covered employment and takes up pensionable employment-

(i) in the public service ;

(ii) in the Local Government Service constituted by the Local Government Service Act, No. 16 of 1974;

(iii) in the District Service established under section 47 of the Development Councils Act, No. 35 of 1980 ;

(iv) in the service of any local authority other than as a member of the Local Government Service : " ; and

(3) by the addition immediately after the renumbered subsection (1) of the following new subsection : -

" (2) The Commissioner of Labour may, where he has reason to doubt the genuineness of a Medical Certificate submitted by a member under paragraph (c) of subsection (1) of this section, refer the member concerned for re-examination by a duly constituted Medical Board or a Government Medical Officer and where on such re-examination the original Medical Certificate is found to be false in any material particular, the Commissioner shall reject such certificate, and he shall be entitled to refuse to accept future medical certificates issued by such registered medical practitioner."

Amendment of
Section 27 of the
principal enactment.

6. Section 27 of the principal enactment is hereby Amendment amended as follows :- of the .

(1) by the insertion immediately after subsection (2) thereof, of the following new subsections: -

" (2A) Where contributions payable under this Act by the employers or administrators of any approved provident fund or approved contributory pension scheme in respect of any month have not been paid to such fund or scheme on or before the last day of the succeeding month and the employer or administrator is unable to explain to the satisfaction of the Commissioner that the failure to pay such contribution was due to circumstances beyond his control, he shall be liable to pay to such fund or scheme in addition to the amount of the contributions due, a surcharge on such amount calculated in the following manner:-

(a) Where the contributions are in arrears for a period not exceeding ten days, a surcharge of five per centum of the amount of the contributions due;

(b) where the contributions are in arrears for a period exceeding ten days but not exceeding one month a surcharge of fifteen per centum of the amount of the contributions due ;

(c) where the contributions are in arrears for a period exceeding one month but not exceeding three months, a surcharge of twenty per centum of the amount of the

contributions due;

(d) where the contributions are in arrears for a period exceeding three months but not exceeding six months, a surcharge of thirty per centum of the amount of the contributions due;

(e) where the contributions are in arrears for a period exceeding six months but not exceeding twelve months, a surcharge of forty per centum of the amount of the contributions due; and

(f) where the contributions are in arrears for a period exceeding twelve months, a surcharge of fifty per centum of the contributions due.

(2B) The moneys received by way of surcharges and paid into the fund of any approved provident fund or approved contributory pension scheme shall be deemed to form part of the income of such fund or scheme as the case may be and shall accordingly be distributed among the members of the respective fund or scheme. " ; and

(2) by the addition immediately after subsection (11) thereof, of the following new subsection: -

" (12) Where the Commissioner has been notified of the existence of a dispute, between an employer or administrator as the case may be, and any member of an approved provident fund or approved contributory pension scheme he shall issue such directions as he may deem appropriate in the circumstances for the settlement of such dispute. Any directions issued by the Commissioner under this subsection shall be binding on the parties to the dispute."

Amendment of Section 34 of 7. Section 34 of the principal enactment is hereby of section 34 amended as the principal enactment. follows enactment.

(1) in paragraph (b) thereof, by the substitution for the words "untrue or incorrect; or", of the words " unique or incorrect";

(2) in paragraph (c) thereof, by the substitution for the words " powers under section 32 ", of the words " powers under section 32 ; or " ; and

(3) by the insertion, immediately after paragraph (c) thereof, of the following new paragraph : -

" (d) contravenes any direction made by the Commissioner in the exercise of his powers under section 27,".

Amendment of Section 38 of the principal enactment. 8. Section 38 of the principal enactment is hereby Amendment amended as follows :-

(1) in subsection (1) of that section, by the substitution enactment. for the words "having jurisdiction in any district where the defaulting employer resides or in which any property, movable or immovable owned by such employer is situate,", of the words " having jurisdiction in any district in

Amendment of
Section 47 of the
principal enactment.

which the member or members of the fund in respect of whom default is made, is or was employed by such defaulting employer,"; and
(2) in subsection (2) of that section, by the substitution for the words " to the Magistrate having jurisdiction in the division in which such place is situate ", of the words " to the Magistrate having jurisdiction in the division in which the place of work of the member or members of the fund in respect of whom default is made, is situate."

9. Section 47 of the principal enactment is hereby Amendment amended as follows:-

(1) by the insertion, immediately after the definition of enactment, "covered employment", of the following definition :-

"duly constituted Medical Board" means a Medical Board nominated by the Director-General of Health Services on an application made by the Commissioner for the purpose of examining persons whose medical certificates give rise to reasonable doubt;";

(2) by the substitution for the definition of " earnings " of the following definition : -

earnings" means-

(a) wages, salary or fees;

(b) cost of living allowance, special living allowance and other similar allowances ;

(c) payment in respect of holidays ;

(d) the cash value of any cooked or uncooked food provided by the employer to employees in prescribed employments and any such commodity used in the preparation or composition of any food as is so provided, such value being assessed by the employer subject to an appeal to the Commissioner whose decision on such appeal shall be final;

(e) meal allowance ; and

(f) such other forms of remuneration as may be prescribed ;';

(3) by the substitution for the definition of "employee" of the following definition : -

' " employee " means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, or oral or in writing, and whether it is a contract of service or of apprenticeship or a contract personally to execute any work of labour, and includes any person ordinarily employed under any such contract, whether such person is or is not in employment at any particular time ;'; and

(4) by the substitution for the definition of " employer " of the following new definition: -

"employer" means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade union), and any person who on behalf of any other person employs any workman, and includes the legal heir, successor in law, executor or administrator and liquidator of a company; and in the case of an incorporated body, the President or the Secretary of such body, and in the case of a partnership, the Managing Partner or Manager ;'.

