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(केवल कार्यालय प्रयोग हेतु)
प्रथम संस्करण
फरवरी – 2011

REVENUE MANUAL

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बीमा प्रभाग
INSURANCE DIVISION



मुख्यालय
कर्मचारी राज्य बीमा निगम
(आई.एस.ओ. 9001 : 2008 प्रमाणित)

Headquarters
Employees' State Insurance Corporation
(ISO 9001 : 2008 Certified)

सत्यमेव जयते

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भारत सरकार के सचिव
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FOREWORD

The ESI Corporation has been providing comprehensive social security benefits to workers and their family members for about six decades. Keeping in view the changed economic and social scenario in the country, ESIC has been constantly striving to improve the infrastructure as well as delivery of services to the insured persons and their family members. It is with this end in view that the ESI Act, 1948 has been amended from 1st June, 2010 with a view to improve the benefits, streamline the procedures for delivery of benefits and revenue functions. ESIC has also been striving to upgrade and modernize the infrastructure for delivery of medical care and cash benefits.

Another important development is the ongoing IT enablement project which once fully rolled out, will provide facility of online registration of establishments and employees, online generation of challans and payment of contribution. Separate Pehchan Cards for insured person and his family to enable them avail medical care anytime anywhere, availability of information about entitlements, and monitoring of contribution payment.

In order to carry out all these improvements, it is of utmost importance to ensure that the scheme continues to remain financially sound. With this aim in view, the Corporation has been taking measures to streamline its Revenue Management Systems and procedures from time to time. Hon'ble Supreme Court and High Courts have also delivered many landmark decisions on various aspects of coverage and revenue management from time to time. Till now, however, all these decisions and instructions were not available in a systematic compilation for ease of use and reference. The Revenue Manual prepared by a Committee under Shri B.K. Venkatesh, Retired Additional Commissioner and other serving and retired officers of the Corporation is a commendable work wherein all the ongoing IT enablement have been systematically compiled. The manual fulfills a long felt need and I am sure this will help the officers and staff of ESIC in managing its revenue in a better and systematic manner. I also take this opportunity to congratulate the Insurance Commissioner, Shri B.K. Sahu and his team in bringing out this manual for the first time on Revenue Management of ESIC.

Prabhat

[Prabhat C. Chaturvedi]

February 3, 2011

Dr. C.S. Kedar, IAS
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FOREWORD

It is gratifying to dedicate this Revenue Manual, which is a monumental work incorporating the latest provisions of the Act, Rules, Regulations, instructions and Court decisions, to ESIC establishments across the country. I am sure that availability of this exhaustive compilation of laws and procedures concerning various aspects of revenue administration will go a long way in further enhancing the efficacy of our field offices and will add value to the service delivery.

All the members of Venkatesh Committee and the Officers and Staff of the Insurance Division of Headquarters as well as Regional Directors who were associated in preparation of this Manual have done commendable work. I look forward to its extensive use by our officers and staff.

Dr. C.S. KEDAR
Director General

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PREFACE

The ESI scheme has been in operation for over six decades and during this period a lot of changes have taken place in the law and procedure relating to Revenue Administration. During this period Courts have pronounced a number of landmark judgements clarifying the meaning and scope of different terms used in the Act, Rules and Regulations relating to Coverage and Revenue Administration.

Though efforts were made on many occasions in the past to bring out collections of instructions relating to revenue matters for different periods, it is for the first time that the entire gamut of law and procedure and all available instructions/ judgements relating to Revenue Administration have been compiled in book form in a systematic and lucid manner. This Revenue Manual will be of immense help to the Officers and Staff of Revenue Branches and Social Security Officers as well as Officers and staff of policy-making branches at Headquarters in efficient discharge of their duties. I congratulate *S/Shri B.K. Venkatesh (Retd. Addl.Commissioner), K.V. Ramana Murthy (Retd. Dy.Director), B.N. Samant (Retd. Jt.Director), L.K. Pattanaik (Addl.Commr. Gujarat), N. Parasuraman, (Addl.Commr. Tamil Nadu), A.K. Verma (Addl.Commr. Delhi), S. Ravichandran, (Jt.Director, Tirunelvelli), C.N. Ravindranath (Jt.Director, Karanataka), R.C. Sharma, Director(P&D) and H.K. Mehta, Dy.Director(P&D)* who coordinated the work of the Venkatesh Committee and Officers and staff of Regional Offices, Karanataka, Hyderabad, Mumbai, Delhi and P&D, Revenue and PR Divisions of Headquarters for their contribution in bringing out this momentous work.

Though utmost care has been taken in compiling this Manual, suggestions for further improvements are welcome.

B.K. SAHU
INSURANCE COMMISSIONER

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CHAPTER I

IMPLEMENTATION OF ESI SCHEME (LAW & PROCEDURE

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CHAPTER I

IMPLEMENTATION OF ESI SCHEME (LAW & PROCEDURE)

L.1.1 The provisions of the ESI Act are made applicable in the first instance to the employees of the factories covered under the Act by virtue of their location in areas where the Central Government has implemented the provisions of the Act through a Gazette Notification under section 1 (3). The employees of other sectors of employment in those areas can be brought under the Scheme by the appropriate Government by issue of Notification under Sec.1 (5) of the Act.

L.1.2 The relevant provisions of the Act read as under:

Section 1(2): It extends to the whole of India.

Section 1(3): It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette appoint and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof.

Section 1(4): It shall apply, in the first instance, to all factories (including Factories belonging to the Government) other than seasonal Factories.

Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

As per the clarification issued by the Government of India in its communication No: S-38014/61/88-SS-I, G.O.I; Ministry of Labour/Shram Mantralay dtd. 26th November 1990/3rd January 1991, only departmental undertakings under the Government i.e. factories/establishments whose employees are Government servants stand excluded and the Act continues to be applicable to all the Public sector undertakings/Corporations, autonomous bodies etc.

L.1.3 A reading of these sections makes it explicit that the Central Government, by a Notification in the Official Gazette appoints the date from which the provisions of the Act comes into force in any particular part (or area) of a State. Once the Act is implemented in a given area by the Central Government, then the provisions of the Act are applicable to all the Factories located in that area in accordance with sec.1(4) of the Act and their employees would also become coverable from that date. There is no need to give any notice through a preliminary Notification for implementation of the Scheme under Section 1(3) by the Central Government. The scheme is extended by the Central Government in a phased manner to different States and different areas in each State, depending on the industrial concentration, the employment potential, and availability of the infrastructure for administration of medical benefit to the persons covered under the scheme and their families.

L.1.4 Section 1(5): The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government with the approval of the Central Government after giving one month's notice (prior to. 1/6/2010 the notice period was six month's) of its intention of so doing by notification in the Official Gazette extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

Provided that where the provisions of this Act have been brought in to force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of the State.

"Appropriate Government" means, in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oil field, the Central Government, and in all other cases, the State Government.

L.1.5 Thus, under Section 1(5), both the Central Government and the State Government have powers to extend the provisions of the Act in such implemented areas to other class of establishments i.e other than the factories coverable under section 1(4) of the Act. The scope for such further extension is enormous as the construction of the statute "any class of establishments, industrial, commercial, agricultural or otherwise".

The provison to Section 1(5) was inserted by an amendment to the Act in 1989 and brought into force from 16/5/90 . Prior to this amendment, the State Governments were empowered to fix different dates for different implemented areas to extend the provisions of the Act to a new class of establishments. After amendment, once a date is fixed for covering a new class of establishments, all the establishments belonging to that class throughout the State get covered under the Act from that date. Thus, from 16-5-1990, any implementation of the scheme to a new area is only in one stage both for the factories and establishments notified by the State Government in that State. There is no need for the State Government to issue a separate notification under section 1(5) for each area. Similarly, for the establishments under the control or management of the Central Government, if the Central Government has issued any notification extending the scheme to any other establishment in any part of a State, there is no need to issue a separate notification to extend the scheme to any other areas of that State again under Section 1(5) and extension of the scheme to those areas under Section 1(3) takes care of the establishments notified by the Central Government under Section 1(5) also.

L.1.6 Section 1(6): A factory or establishment once covered under the Act shall remain covered under the Act throughout irrespective of the fact that the number of persons employed falls below the limits specified for coverage of the unit or the manufacturing process there on ceased to be carried on with the aid of power.(now after amendment the word power has no significant relevance)

L.1.7 Court Judgments: Various Courts have upheld the Constitutional Validity of Section 1(3) and 1(5) of the Act.

1. The Supreme Court while examining the scope of *Section 1(3) in the case of Basantkumar Sarkar and others vs. Eagle Rolling Mills Ltd., and others-1964(2) LLJ 105, AIR 1964-SC 1260*, observed that the scheme of this kind, though very beneficent, could not be introduced in the whole of the country all at once. The legislature evolves the socio-economic welfare, makes elaborate provisions in respect of it and leaves it to the Government concerned to decide when, how and in what manner the scheme should be introduced and it does not amount to excessive legislation. It was held that Section 1(3) is an illustration of conditional legislation and not delegated legislation.

2. The provision of Section 1(3) neither violate Article 14 of the Constitution nor do they constitute excessive delegation. (*K.C. Varma Vs. ESIC-AIR, 1962, Assam 120*)

3. The Division Bench of Bombay High Court observed that the scheme of the Act does not provide that the provisions should be made applicable to all the areas and all the establishments at one stroke or to none at all. It would defeat beneficial scheme prescribed by the Act. It was held that the power conferred on the State Government under s. 1(5) of the Act can be exercised only with the approval of the Central Government, and therefore, it cannot be said that the limit of extension only to certain areas out of the areas covered under s. 1(3) of the Act would amount to encroachment of the powers of the Central Government. In order to give effect to the policy of the Government clearly indicated in the statute, it is open to the executive authority to make a geographical classification so as to apply the law to selected areas with a view ultimately to cover by stages the whole territory for which the law was enacted. *(ESI Corpn. v. Fariyar Hotel (P) Ltd. 1988(1) LLN.247, 1989 (1) LLJ 356)*

4. Section 1(5) is not unconstitutional: Section 1(5) can be more appropriately described as enabling "conditional legislation" and cannot be challenged on the ground that the legislature has failed to lay down the legislative policy and has left it to be determined to a delegate. This provision is not unconstitutional. *(Sadaf Enterprises vs. E.S.I.Corporation Kanpur and another -1981 LIC. 490: 42 FLR.365*)

5. The expression "any other establishment or class of establishments" in Section 1(5) of the Act includes classification either on the basis of the nature of the establishments or on the basis of their geographical situation or based on both of them. The State Government can extend the jurisdiction of the Act not only with regard to the entire State but also with reference to any specific part or parts of the state. There may be difficulty in extending the Act simultaneously to all the establishments situated throughout the State in as much as before any such extension, the Corporation has to build the necessary infrastructure by providing the necessary funds, buildings, hospitals and also by employing necessary personnel to administer the Act effectively. *(Andhra Pradesh Handloom weavers Co-operative Society Ltd., vs. E.S.I.Corporation, Hyderabad – 1991(2) LLN.1053 and E.S.I.C vs. Kidyoor Janardhana Rao-1979(1) LLN.423*

IMPLEMENTATION OF ESI SCHEME (PROCEDURE)

Unlike other Central Legislations that have pan India applicability, the ESI Act is made applicable to well defined areas in a State by notifications by the Central Government depending on the Employees' concentration in that area and the medical arrangements available there.

P.1.1 Implementation in stages: The ESI Scheme is thus extended to different areas in the State in a phased manner depending on the industrial concentration, number of coverable employees, and the State Government's readiness to make acceptable levels of arrangements for providing Medical treatment

P.1.2 Collection of information from other Departments: The Regional/Sub-Regional/Divisional Office would be constantly on the look-out for identifying areas that have potential for implementation of the Scheme. With this aim it regularly collects, that is, at least once in three months the information of newly registered factories/establishments and new industrial centers from the following Government Agencies.

1. Chief Inspector of Factories or his Subordinate Offices;
2. Labour Commissioner or his sub-ordinate Offices;
3. Director of Industries and Commerce or District Industries Centre.
4. Employees' Provident Fund Organisation.

The Regional/Sub-Regional/Divisional Office may also collect the information frequently from the Registrar of Companies, Registrar of Firms, Employer's Associations like FCCI, CCI, CII, Small Scale Industries Associations, Employees' Association , members of the Regional Board and Local Committee and from any other available source like petitions received from individuals or groups of employees or employers.

P.1.3 Pre-implementation survey: On receipt of information from these sources the Regional Office undertakes the exercise of identifying the areas having potential for implementing the scheme and arranging to get the full details from the field by deputing its Social Security Officers or Branch Managers or any other Officer to the spot. Particularly full details of the units coverable under Sections 1(3) and 1(5), Number of coverable employees in each such unit, their residential concentration, details of existing Medical facilities available in that area, whether any tie up facilities are feasible or new Dispensaries are to be set up or whether there is scope for IMP System in that place, etc. should be collected by the Officers visiting the spot. Additional particulars like the details of Public Sector undertakings that have come up, actual distance from the nearest ESI Dispensary to the Centre, transport facilities available etc., are to be highlighted. Most importantly, authenticated information that have the evidentiary value regarding the Revenue Demarcations, jurisdictional Revenue village, Hobli, and all the connected details in full should be collected from the Tahsildar, Mandal Revenue Officer, Village Panchayat, Municipality etc by the Social Security Officers and the report complete in all respects shall be submitted to the RO within 15 days.

P.1.4 Action by the Social Security Officer/Branch Manager on the field: On receipt of directions from Regional/Sub-Regional/Divisional Office, the Social Security Officer/Branch Manager may draw his tour programme on top priority basis and send intimation to the Regional/Sub-Regional/Divisional Office about his proposed survey in deviation of his approved tour programme and proceed to conduct the pre implementation survey.

P.1.5 Identification of the Area: At the time of visit to the area, the SSO/BM shall contact the Panchayat, Mandal Revenue Office, Tahsiladar's Office or Municipal Office Authorities, to obtain the Revenue Demarcation of that Geographical area.

P.1.6 Visit to the Factories: The SSO/BM may thereafter visit each factory/establishment in the list supplied by the Regional/Sub-Regional/Divisional Office for survey. During his visits to the area he should also find out all other new units which are not in the list. He may survey such units also.

P.1.7 SURVEY: Detailed examination of the books of accounts etc. as in the case of regular survey is NOT required in the pre-implementation survey. The SSO/BM, may visit each unit and ascertain the name and postal address of the unit, nature of ownership and the details of the principal employer i.e name and address of the proprietor/partners/Directors, nature of manufacturing process or business activity, total number of persons employed directly and through the immediate employers/contractors, number of coverable employees, the existing medical arrangements made by the employer or available in that area etc. and furnish these details in a statement form prepared in triplicate.(a proforma for the same is given. Explanatory note may be given wherever necessary). Wherever possible, these details may be obtained in writing from the employer. The statement may be prepared separately for factories and establishments. If any public sector units are functioning, those details may also be specified. The existing Government/ Local Body Dispensaries/Hospitals/Employer's Dispensaries available in that area with details of facilities, and the distance from the nearest ESI Dispensary in any adjoining area and the Branch Office, and the mode of conveyance available may also be furnished. Also a sketch of the area to be implemented vis-à-vis adjoining implemented area to be included.

The officer may also have dialogue with the Employees' and Employers' Associations and Representatives to ascertain their practical suggestions and views regarding the Medical facilities and tie-up arrangements for super-specialty treatment that are feasible in that area. Efforts should also be made to create awareness of various benefit provisions and advantages of the Scheme

P.1.8 Report along with the statement to be sent to R.O.: The Revenue demarcations, statement of details of employers and other details relating to existing medical arrangements etc. may be sent to the Regional/ sub-Regional/Divisional Office in duplicate in the following proforma for processing further. The third copy is for the record of the SSO/BM.

P.1.9 Proforma:

1. Name of the Area proposed for implementation:

2. Revenue demarcations (including a sketch of the area):

3. Details of existing Govt. /Local body/Employer's dispensaries and hospitals available in the area.

4. Distance from the nearest ESI Dispensary in the adjoining area and the mode of conveyance available.

5. Nearest ESI Branch Office and the distance thereof.

6. Nearest Branch of State Bank of India or its subsidiary Bank with its address and the distance from the proposed area of implementation.

7. Residential concentration of the employees in that area.

8. Recommendations of the SSO/BM. for implementation of the Scheme to that area.

9. Whether a cluster of villages within a radius of 8 Kilo meters can be formed for arriving at the minimum number of employees (1000) required for implementation.

10. Particulars of Factories/Establishments found functioning in the area including public sector units. (Separate statement may be given for factories to be covered under Sec. 2(12) and establishments to be covered under Sec. 1(5).)

11. Statement: Details to be furnished in the following Statement in duplicate.

Serial number	Name & Postal address of the factory/establishment.	Name, designation & address of the principal employer	Nature of mfg. process/business activity	Number of persons employed Direct/contract/ Total	Number of coverable employees- Direct/contract/ Total	Existing medical arrangements made by the employer	Remarks
1	2	3	4	5 6 7	8 9 10	11	12

P.1.10. Action at Regional Office: On receipt of the above information, the Regional Office may scrutinize the report and statement of the SSO/BM to ensure that all the information required has been furnished. The report is expected to be full and complete in all respects but, if any information is required, RO may obtain such information from the SSO/BM on priority basis. Thereafter, if the area is eligible for implementation as per the existing norms, R.O. may take up the matter with the ESI Directorate in the State Government asking for making medical benefit arrangements in the area proposed to be implemented.

P.1.11 Medical arrangements before implementation:-The State Government then proceeds to make necessary Medical arrangements which should be in place from the very first day of implementation to provide medical benefit to the covered employees and their families to avoid any inconvenience to them. Further, if an ESI Dispensary is already functioning within a radius of 8 km, then the same Dispensary can normally be designated for catering to the needs of the Insured population. Thus, if a new area under consideration is small and contiguous to the already implemented zones, there is no immediate need for creation of another Dispensary. Further if the Insured population has a potential of 3000 then a Dispensary is a necessary pre-requisite. If it is less than 3000, alternatives like IMP System or tie-up system with other local Dispensary/hospital have to be contemplated. Proper arrangements should also be made for super-specialty treatment to the beneficiaries.

P.1.12 Phased programme: Hqrs. Office would monitor the pace of implementation to the newly identified areas and fix realistic targets for implementation, known as Phased Programme and communicates the same to Regional office and the State Government for strict adherence to these targeted dates and the State Medical Commissioner and the Regional Director have to strongly pursue the State Government so that if necessary, the Director General would address the State Government demi officially.

P.1.13 Bearing entire expenditure on medical benefit by the Corporation: In order to facilitate speedy implementation of the Scheme in the qualifying areas, the Corporation has attached utmost priority and has come forward to foot the entire expenditure of the cost of medical benefits for the first three years of implementation. Thus, the RO has to constantly keep reminding the State Government for early completion of Medical arrangements and also keep Hqrs. Office posted about the latest developments. The Corporation has also introduced another alternative that in case the State Government is not in a position to make Medical arrangement as per priorities, the Corporation would make these arrangements, instead, in fit cases after obtaining the consent of the State Government

P.1.14 State Government to furnish details of arrangements made: The State Government after getting the sanction from Headquarters (Medical Division) shall make medical arrangements in the proposed area of implementation and furnish the full details to the Regional Office in the proforma at Annexure - 1.

P.1.15 Further action at R.O: On receipt of full particulars from the State Government, RO may write to the Hqrs. Office duly enclosing the Statement received from the SSO/BM and the details received from the State Government, recommending extension of the Scheme to the new area. The most important pre-requisite is that the RD and the SMC are satisfied that the arrangements are adequate enough to provide the required standards of Medical treatment The letter to be addressed to the Hqrs. (P &D) is at

Annexure-2. All the required particulars, complete in all respects should be furnished to avoid back-references. A draft notification containing correct and full demarcation of the area to be implemented to be issued by the Central Government should also be enclosed.

P.1.16 Action at Hqrs. Office: Hqrs. Office would examine the proposal and after satisfying that the area is ripe for implementation and that the medical arrangements are in place , prepare a draft notification extending the scheme to that area and move the Ministry of Labour for issuing notification in the Official Gazette under Section 1(3) of the Act. Proforma of the notification is at Annexure-3.

P1.17 Notification by the Central Government: Once the Central Government (Ministry of Labour) issues the notification specifying the area and the date of implementation, the area defined therein stands implemented from such date. The date specified in the said notification is the appointed day (date of implementation of the scheme) for that area. There is no need for the Central Government to issue any preliminary notification calling for objections, if any, from the public. Only one notification extending the provisions to the specified area from a specific date is required.

P.1.18 Action by Regional Office after receipt of notification: The provisions of the Act shall come into force from the date or dates as the Central Government may by notification in the Official Gazette, appoint. From that day the Act becomes applicable to all the Factories coverable under the Act and to all the class of establishments already made applicable by the Appropriate Government As soon as the Notification is issued, the RO may give wide publicity and take all the necessary steps to educate the employers and employees about all the salient features of the Scheme and their responsibilities and obligations under the Scheme. The procedure to be followed should also be familiarized .It will also inform all the employers of the coverable units and start allotting the code numbers to the factories/ establishments for which a proper Form-01/required information is already available with the report of the SSO/BM. However, code numbers should not be allotted on the basis of survey conducted prior to preceding 12 months from the date of implementation (No. T-11/14/43/1/2001-Ins1V dated 24/10/2002). In all other cases, RO may call for Employer's Registration Form (form-01) and initiate the Registration process. In the meantime necessary Banking arrangements for payment of Contributions should be properly made so that there are no hassles in making timely payment of Contributions. The Branch Manager shall also start the process of Registration of employees on receipt of Employer's code numbers from the Regional Office.

It is very essential to ensure that the Medical arrangements and the arrangements for Registration of Factories and Insured Persons are in place from the very first day of Implementation. The Regional Office and the Branch Office would give every guidance to all the employers in filling the Registration forms by the employers and Declaration Forms by employees and also in securing Pehchan (Identity) Cards by arranging to take the Photographs of the eligible beneficiaries in the families of the Employees.

EXTENSION OF THE SCHEME UNDER SECTION 1(5):

P.1.19 Section 2(1): "Appropriate Government" means, in respect of establishments under the control of

the Central Government or a railway administration or a major port or a mine or oil field, the Central Government, and in all other cases, the State Government.

Thus, for establishments under the control or management of the Central Government, the Central Government is the "Appropriate Government" for extending the scheme to those establishments or class of establishments. For all other establishments under private management and establishments under the control of the State Government, the State Government is the "Appropriate Government".

P.1.20 Notification under Section 1(5) by the State Government: The notification under Section 1(5) by the State Government is in two stages. First a Notice of Government's intention to extend the scheme (known as preliminary notification) to any other class of establishments is to be published in the Official Gazette, in consultation with Corpration and after obtaining prior approval of the Central Government and call for objections if any from the General public within one month. The notice period was earlier six months from the date of its issue. Now the notice period has been reduced to one month with effect from 1st June, 2010 vide ESI Amendment Act 2010. The proforma of the notification is at Annexure-4. After taking in to consideration the objections if any received within the notice period, a final notification extending the scheme to any other establishment or class of establishments within the State is to be issued by the State Government. The proforma of the final notifications to be issued under Section 1(5) by the State Government is at Annexure- 5.

P.1.21 Notification under Section 1(5) by the Central Government: If the class of establishments to which the scheme is to be extended, belong to or under the control of Central Government, then both preliminary and final notification for extension of the scheme to them is to be issued by the Central Government being the Appropriate Government, in consultation with the Corporation . The procedure and the proforma of the notifications is the same as shown in P.1.20 above.

P.1.22 Extension to NEW CLASS OF establishments: There is no need for the State Government to issue a separate notification under section 1(5) of the Act to the newly implemented area for coverage of categories of establishments already covered in other areas in the State in view of proviso to Section 1(5). If a proposal is being made for extension of the scheme to a new class of establishments in the State, the State Government may submit its proposals to the Corporation (Hqrs. Office). In this task, the RO is also required to gather and furnish to the State Government all the required data regarding number of such Establishments in that category and No of Employees who may enter into the Scheme after implementation. Hqrs. Office may forward the proposal to the Central Government (Ministry of Labour) for its approval, and on receipt of the approval, forward the proposals to the concerned State Government for issue of the preliminary notification under Section 1(5) and follow up action thereon.

P.1.23 Action at Regional Office and Branch Office after the scheme is extended to other Class of establishments: The procedure to be followed by the Regional Office and the Branch Office after the scheme is extended to other class of establishments is the same as explained in P.1.18 above.

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CHAPTER II

COVERAGE OF A FACTORY (LAW & PROCEDURE

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CHAPTER II

COVERAGE OF A FACTORY (LAW & PROCEDURE)

Introduction: Once the notification of implementation of the Act from a specified date in a particular area is issued, all the coverable factories and establishments falling in that area would be amenable to the provisions of the Act from that date and the first step is to get them registered as per section 2(A) of the Act.

Section 2(A): Every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

WHAT IS A FACTORY?

L 2.1 Factory has been defined under Section 2(12) of the Act in the Amendment Act 2010 with effect from 1st June, 2010 as follows:

"Any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of Mines Act, 1952 (35 of 1952) or a railway running shed."

L 2.2 Prior to the amendment from 1st June, 2010, the definition was as follows.

2(12): Factory means any premises including the precincts thereof:-

(a) Whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) Whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a railway running shed.

Based on the Supreme Court's Judgment dated 28-10-1998 in the case of *ESIC-Vs-M.M.Suri & Associates Pvt. Ltd., New Delhi*, it was decided by the Corporation to consider only 'Coverable employees under Section 2(9)' for coverage of a Factory or Establishment. This decision is applicable from 28-10-1998, i.e. the date of Judgment of the Supreme Court.

In view of this decision, the word "persons" appearing in the definition was understood as "Coverable employees" till the amendment of this definition with effect from 1st June, 2010

L 2.3 The significant difference between the two definitions is in the new definition after amendment, the words "for wages" and "carried with the aid of power" have been deleted, and sub-section (b) has been completely omitted.

The word "wages" has been omitted to overcome the Supreme Court Judgment in the case of *M/s M.M. Suri Associates Pvt. Ltd., New Delhi*. Prior to the amendment, only coverable employees WERE counted for the purpose of coverage of a factory. Now after the amendment, all persons employed irrespective of their wages are counted for coverage of a factory.

Deletion of the word "Power" and sub-section (b) is aimed at bringing more small units in to the fold of the scheme to provide social security benefits to the employees employed in those small units also.

(However, till the definition of the establishments notified under Section 1(5) is amended by the respective State Governments and by the Central Government as the case may be for the establishments under its control or management, the Establishments continue to be covered with 20 or more persons (coverable employees) employed for wages.)

L2.4 From an analysis of this definition, the following three DOMINANT INGREDIENTS DETERMINE the coverage of a factory.

a) A Premises including the precincts thereof;

b) A manufacturing process is being carried on; and

c) A minimum of 10 persons are employed therein.

L 2.5 Premises: The term 'Premises' and 'Precincts' have not been defined either in the Factories Act or in the ESI Act.

However, as per the observations of the *Honorable Supreme Court (Criminal appeal No. 32 of 1953 contained in Supreme Court Labour Judgments (Vol. 3)1950-37 page 1323)* the word 'premises' in the definition of 'Factory' in Section 2(m) of the Factories Act, 1948, "is a generic term meaning open land, or land with building, buildings or shed or building alone"

It is the decided position of law that this expression should not be assigned narrow, restricted interpretation only to mean areas surrounded by compound walls within which factory buildings or sheds are located. But the expression is so designed to mean and include even 'separate buildings located quite apart or at any distance when used for a single continuous manufacturing process'. In other words, if different stages of a particular manufacturing process are carried out in different places or localities, all these work- spots together constitute premises of the same factory.

Some of the illustrations of court cases are provided hereunder to serve as important guidelines:

Cutting of cloths and stitching them done at one place and buttoning and embroidering done at another distant place after which they were sold as ready-made garments were treated as premises of the same garment factory for the purposes of the ESI Act.

Assembling parts of the furniture at one place and polishing/painting them at another place before they were sent for sale were treated as the premises of the same furniture factory. Here physical distance between the two spots of work was not the determining factor.

In a printing press composing and printing were done at one place and the stitching and binding them into a book were done at a far away place. Considering that all these were stages of the same process and all these formed integral part of the process without which it would remain incomplete, the premises where they were carried out were held as the premises of the same factory.

Composing section and printing section of a press located in different buildings away from each other constitute a premise for the purpose of the definition 'Factory', and persons employed in both the sections are to be counted for its coverage.

Separate buildings, even though located at some distance apart, when used for one continuous manufacturing process, will constitute a singly factory. *(Delhi High Court's decision in Agents and Manufacturers, Delhi V ESIC 1973(2) LLJ.447, 1973(44) FJR.57, 1974 LIC 220, and 1974(28) FLR.27)*

A similar decision has been taken by the Delhi High Court in another case of *M/s Imperial Metal Industries vs. ESIC, New Delhi) and by Madras High Court in the case of an Iron safe Manufacturing Company where painting of safes was done at a different place.(N.V.Radhaiah and Bros. v. ESI. Madras-LLJ 1933(1).235)*

A factory having separate buildings away from each other constitute a single unit, if there is unity of purpose. It may not be possible for the employer to find out a common place to run its different units. For some reasons, that may be convenient or economical. The point of greatest importance is unity of purpose of the different units notwithstanding their location apart. *(Calcutta High Court's decision in ESIC vs. Bengal Printing works 1983(2) LLN.793, 1984 LIC.1)*

Separate premises with no link with one another is not a single unit: Common ownership of factories in separate premises which have no link with one another in the nature of work and not employing twenty persons in any of the units, do not constitute one single unit for the application of the ESI Act. *(ESIC vs. Ahmed Hussain and others1933 (2) LLJ.238)*

There must be a definite premises fastened to the earth. In the case of pantry cars, they are moving on Railway track from one place to the other. Hence 'Pantry cars' are treated as not covered as 'Factory'. (Hqrs. Letter No. P-11 (21)-33/Misc./95-Ins.IV dated 02-02-1999.)

Geographical proximity alone is not a deciding factor to define the premises.

The geographical limit of a factory stands extended to various places where part of the same manufacturing process is carried on *(Allahabad High Court judgment in the case of S.P.Varma, Managing Proprietor, Electric Company, Aligarah v. ESIC, circulated vide Hqrs. Office Memo. no. INS.III. 1(2) 3(1)/69-II dated 19-5-1973 and Ins.III 1(1)8/74 dated 30-9-1975)*

L.2.6 Manufacturing process shall have the meaning assigned to it in the Factories Act, as per Section 2(14-AA) of the Act. It is defined in Section 2(k) of the Factories Act as follows:

Manufacturing Process means any process for

1) Making, altering, repairing, ornamenting, finishing, packing, Oiling, washing, cleaning, breaking up, demolishing, or otherwise Treating or adopting any article or substance with a view to its use, sale, transport, deliver, or disposal; or

2) Pumping of oil, water, or sewage, or any other; or

3) Generating, transforming, or transmitting power; or

4) composing types for printing, printing by letter press, lithography, photogravure of other similar processes, or book binding; or

5) Constructing, reconstructing, repairing, refitting, finishing, or breaking up ships or vessel; or

6) Preserving or storing an article in cold storage; and

7) Tapping, collecting, cross matching and keeping in bottles, the blood or human blood.

Based on various Court judgments, the following processes have been considered as 'Manufacturing Process'.

Beedi making, breaking and roasting of cashew nuts, conversion of a raw film in to a finished product, curing of ginger, cutting and drying of Arecnuts, garbing of pepper, dry-cleaning of cloths, stitching of clothes (tailoring), fermentation of toddy without the aid of human agencies or machinery, grading-coconut or fruits, and packing with a view to sale, preparation of salt from sea water, preparation of food stuffs, coffee/tea, and eatables, fruit juices, peeling, washing, refrigeration air-conditioning and maintaining artificial temperature as in hatcheries, preserving milk in cold storage with an intention to its sale and cleaning of prawns, ironing of clothes, stitching of gunny bags, alteration of magnetic tape in to disc/floppy in software development, Medical transcription/ Legal encryption services involving satellite communications, data processing, web designing, web development, C-DAC/CAM/CAE/GIS product life cycle management, cable TV operation/internet service providing etc. amount to manufacturing process.

Some of the illustrations of court cases are provided hereunder to serve as important guidelines:

1. Manufacturing process merely refer to the particular business carried on and does not necessarily refer to the production of some articles. *(ESIC vs. southern Motors- 1998 (92) FJR.724)*

2. To fall within the definition of a 'factory', it should carry on a manufacturing process. It does not require that the process should end in a substance being manufactured. *(Alkali Metals (P) Ltd., v ESIC – 1973 LIC.83)*

3. Beedi making is a manufacturing process. *(Bombay High court-LLJ1935. 182 to 198).Beedi Industry covered.(Ramchand Omkarlal Agarwal v. Union of India and others- 2006(3)LLJ.441; 2006(4)LIC.4014) The provisions of ESI Act are applicable to Beedi workers. (Division Bench of Karnataka High court in Gaffar and Jahangir Beedi works, Mysore vs. Union of India and others- 1991(78)FJR.342)*

4. Breaking and roasting of cashew nuts is a manufacturing process. *(Andhra Pradesh High court (LLJ -July 1963)*

5. Curing ginger is a manufacturing process-*Supreme Court (SC LJ(Vol.3) 1950-6*7, page 1540 to 1557)

6. Cutting and drying of Arecnuts and garbing of pepper amounts to manufacturing process- *Kerala High Court LLJ 1959.page 50)*

7. Preparation of food stuffs, coffee and eatables is held to be manufacturing process. *– A.P. High Court (LLJ 1959-page 5.)*

8. Preparation of salt from sea waters is a manufacturing process-*Supreme Court-SCLJ(vol.3-Page 1623)*

9. Conversion of a raw film in to a finished product amounts to manufacturing process-*Calcutta High Court (Indrapuri studio (p) Ltd. v. ESIC – 1961(2) LLJ. 306).*

10. Dry cleaning process is a manufacturing process. *–Punjab and Haryana High Court (1992 CLR-469)*

11. Fermentation of toddy without the aid of human agencies or machinery held to be a manufacturing process.- *Kerala High court (LLJ 1966(2).369).*

12. Grading of Coconut or fruits and packing in a bag with a view to their sale is a manufacturing process.-*Kerala High court LLJ –1959(2), Page 750)*

13. Ghee purchased, sampled, and analysed chemically is held to be a manufacturing process. *A.P. High court (LLJ-1960(1).55*)

14. Handloom weaving, mat weaving by persons engaged in an industrial school for imparting instruction to pupils is held NON-manufacturing process. –*Kerala High Court LLJ-1961(1).184)*

15. Peeling, washing, cleaning of prawns is held to be a manufacturing process.-*High Court of Madras (LLJ-October 1968 .473)*

16. Packing masala constitutes a manufacturing process and the premises where the activity takes place is a factory. *(ESIC vs. Dave Griha Udyog-2001 (1) LLN.564: 2001 (99) FJR.490)*

17. Slicing of Bread with the help of machine electrically operated has been held as 'manufacturing process'. *(New Grand High Class Bakery v. ESIC – 1975 LIC.533)*

18. Stitching of gunny bags amounts to manufacturing process-*High Court of Madras LLJ-1966(2).3)*

19. The operation of 'crushing boulders' in to various smaller sizes, falls within the expression 'breaking up' and amounts manufacturing process. *(M/s Desai Metal Works v. ESIC and another-1993(1)LLJ.1085)*.

20. The equipment maintenance and repairing department of a hospital which repairs and maintains the equipment is covered by the term 'factory'. *(Supreme Court's decision in Civil Appeal No. 3125 of 1998 between Christian Medical College and ESIC- dated 23rd November, 2000* communicated vide Hqrs .letter No. T-11/13/51/98/Ins.IV dated 30-1-2001)

21. Peeling of potatoes, toasting bread, and boiling of water for preparation of coffee, if done with the aid of power and that work is closely connected with the preparation of food, then manufacturing process is said to be carried on with the aid of power. Division Bench of Madras High Court's decision in the case of *ESIC, Madras vs. Spencer& Co. Ltd., Madras- 1979 (38) FLR-204)*

22. 'Storing of milk' procured by the society from its members for sale amounts to manufacturing process. (Decision of the Division Bench of Madras High Court in the case of *Kumbhakonam Milk Supply Co-operative society v ESIC, Madras – 2003* LLR 844; 203 LIC 3604; 2003(3) LLJ, 416; 2003 (3) LLN.303; 2003 (98)FLR.1108; 2003(2)CLR.738).

23. Pasturisation of Milk amounts to manufacturing process (Madras High Court's decision in *P.Natarajan v ESIC and Coimbatore Co-operative Milk supply union Ltd., v ESIC-1973(26)FLR.19; 1973LIC.747; 1973(1)LLN.113; 1972(42)FJR.546)*

24. 'Tailoring' amounts manufacturing process. (1985 LIC.1104- *Vasanth Agenda Kumar singh v All India Handloom Fabrics Marketing Co- operative Society Ltd.)*

25. software development using computer (both server based or otherwise), UPS, Printer, etc. (head Quarter's instruction No.S-11/13/01/02.Ins IV Dated 9/12/2003)

The above examples are only illustrative and not exhaustive but they show how extensive and far-reaching are the applications of the expression manufacturing process under the Act.

L 2.7 Power: After the amendment of the definition of 'Factory' from 1st June, 2010, the definition of 'Power' has no significance. However, for covering the units prior to 1st June2010, under the old definition, it is necessary to understand the definition of 'power'. According to Section 2(13-C), power shall have the meaning assigned to it in the Factories Act, 1948.

Section 2(g) of the Factories Act defines 'power' as 'electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency' i.e. any power, force or energy required in the process is generated other than through human or animal agency

Use of L.P.Gas for cooking, Industrial Gases for welding etc., use of steam in manufacturing process has been held as "power".

Non-use of power for a short period does not take a factory out of the ambit of coverage, if power is ordinarily used. Once the manufacturing process as explained is carried out anywhere irrespective of the place, institution, objective such activity qualifies to be called a factory. for ex, a printing press run by a University for the purpose of printing academic books for its students, a laundry run by hospitals for its own purpose, an automobile workshop run by a PWD department to service and repair its vehicles, a canteen run in a bank or insurance department that was serving outsiders as well as employees, were all held as factory irrespective of the objectives and purpose of the main institution.

L 2.8 On any day of the preceding 12 months: In newly implemented areas, it is possible that a unit may not be employing ten persons on the day of implementation. In such cases the employment position of the unit for the preceding months should be checked and if on any day during the last twelve months if ten or more persons are employed, then the factory stands covered from the date of implementation. However, the employment position for twelve months preceding the date of implementation only need to be considered and not beyond. (Hqrs. Instructions in letter No. T-11/14/43/1/2001-Ins.IV, dated 24-10-2002 and Judgment of Guwhati High Court in the case No. M.A. No. 31 of 1998 between *Muktar Singh Mohan Singh Workshop, Nogaon vs. ESIC)*

L 2.9 For coverage prior to 1st June, 2010: Employees employed for wages: All employees coming within the definition of Section 2(9) and employed within the premises including the precincts thereof are to be counted for the purpose of coverage of a factory. So long as the efforts of all the departments are coordinated to achieve the main objective of the Factory, employees employed in all the departments and offices within the premises will count for deciding the coverage of the factory.

L 2.10 For coverage after 1st June, 2010: Persons employed: All persons employed within the premises including the precincts thereof, irrespective of their wages are to be counted for the purpose of 10 persons. Out of ten persons, only one may be drawing the wages within the ceiling limits, and termed as employee while all others may be drawing wages in excess of the ceiling limit and not coverable as 'employees' or all may be drawing wages beyond the ceiling limit. But still, the premise is covered as a factory as the number of persons employed touches 10, though coverable employee is only one or none.

For the purpose of counting of persons both under Section 2(12) and 1(5), number of employees engaged for construction/repairs and maintenance of the building of a factory or establishment including those engaged through a contractor/immediate employer is to be taken in view of the Supreme Court Judgment in *M/s South India Floor Mills. (Hqrs. Memo. No.P-11/13/85-Ins. IV, Instruction No. 11, dated 14-10-1986 and 116-4-1987)*

Care should be taken to ensure that the persons reckoned in the factory are only employed which is different from casual engagement.

L 2.11 Broadly, the following categories are to be taken in to consideration SO LONG AS THEY WORK ON THE PREMISES OF THE FACTORY INCLUDING ITS OFFICES IF ANY WITHIN THE PREMISES OF THE FACTORY.

1. All persons employed directly by the principal employer or through a contractor (immediate employer) with in the premises of the factory. i.e. time rated, piece rated, casual, contract, substitute/ badli, and a part-time employee employed on contract of service;

2. Employees who were on rolls but on leave with or without wages; (Hqrs. Memo. No. P-11/14/ 4/79. Ins. Desk I dated 26th December, 1979) are also to be reckoned in computing the number of persons employed.

Since the expression used is on any day, it is not necessary that all the persons employed are working at the same time in a day in the premises. Even if the persons are working in the premises at different points of time or in different shifts on the same day, they are all treated as employed on the same day on the premises.

3. Directors employed in case of a company drawing remuneration; *(Supreme Court's decision in M/s Apex Engineering PVT. Ltd. - 1997(77) FLR.878 and Hqrs. Letter No. T/11/13/23/20/75-Inws. IV dated 4-3-1998)*

4. Persons employed on construction, repairs, extension or maintenance of plant, machinery, building etc. in the premises of the factory either employed directly or through a contractor(immediate employer);

5. Hamalies engaged on loading and un-loading and movement of material;

6. Trainees, learners, or apprentices other than those engaged under the Apprentice Act, 1961;

7. Persons whose services were taken on hire i.e. Employees of security Agencies, Labourkeeping contractors etc will come under this category. In other words, these employees are counted for the purpose of coverage in their Principal employer's establishment and also in the factory in which their services were lent on hire; and

8. Persons employed in the Registered/sale /Head Office of the factory within its premises.

L 2.12 Exceptions: The following categories need not be counted for the purpose of coverage of the factory or for their own coverage.

a) A proprietor or a partner whether drawing salary or not; *(Supreme Court's decision in Ms/ Ramanuja Match Industries-1985(1) LLJ.69; 1985(66) FJR.108; AIR.1985 S. C.278)*

b) A contractor lending the services of his employee;

c) An apprentice engaged under the Apprentice Act, 1961excluding the Apprentice whose training period is extended to any length of time.

d) Persons employed on contract for service, e.g. legal, technical, tax consultants;

e) Persons employed in branch/sales offices etc. away from the factory Premises are not to be counted for the purpose of coverage of the factory. However, they are to be covered as employees under Section 2(9), if their wages does not exceed the ceiling limit prescribed.

L 2.13 Court decisions:

Coverage of Directors:

a) In case the Managing Director or other Director of a company or a firm is paid monthly remuneration to carryout extra duties, he is to be treated as an employee for his own coverage and also to be counted for the number of persons for coverage of a factory. *(Supreme Court's decision in ESIC vs. Apex Engineering Pvt. Ltd., -1997 (77) FLR.878* in civil Appeal No. 3411 of 1996, dated 6th November, 1997, communicated vide Hqrs. Letter No. T-11/13/232/20/75-Ins.IV dated 4-3-1998)

b) If Directors of a company were not paid any remuneration for doing any additional work, they are not to be covered under the Act.(Delhi High Court's decision in *ESIC v. Navachetan Press (private)Ltd.,-2004(4)LLN.1000; 2004(103)FLR.465; 2004(3)LLJ.963)*[the relevance is changed after amendment]

c) The Directors could be added to the number of employees of a company to examine its coverage, if they were paid monthly remuneration to carry out extra duties.-A.P. High Court's decision in *M/s Pawan Chit Funds (P) Ltd., Mahaboobnagar v. ESIC., Hyderabad & another-2007(114)FLR.667; 2007(3)LLJ.224)*

Coverage of partners:

a) The partnership business belongs to the partners and each one of them is an owner thereof. It may be that a partner is being paid some remuneration for any special attention which he devotes but that would not involve any change in his status and bring him within the definition of employee. *(Supreme court's decision in ESIC Trichur v. Ramanuja Match Industries- 1985(1) LLJ.69, 1985(66) FJR.108, AIR.1985S.C.278.)*

b) The partners looking after the business for a remuneration of a certain percentage from net profit of a firm cannot be treated as 'employee' of that establishment. (Madras High Court's decision in *ESIC v. Ananda Silks Paradise- 2008(119) FLR.577; 2008 LLR.1243; 2008(4) LLN. 580; 2008(1) LLJ.275)*

c) A partner and a partnership firm have no separate legal existence. Hence the partner of a firm is not an 'employee'. (Kerala High Court in the case of *ESIC v. Arun Granites- 2008(1) LLJ.211)*

Coverage of self-employed persons:

Self-employed persons are excluded and not to be counted for the number of persons 'employed for wages' for determining applicability of the Act.(*ESIC, Hyderabad vs. Maharaja Bar and restaurant, Hyderabad- 56, FJR.279)*

L 2.14 Clubbing of different units for coverage of a factory under Section 2(12) of the ESI Act.

All or any of the following factors may be taken in to consideration for clubbing of different units for the purpose of coverage of a factory under section 2(12) of the Act.

1. Unity of Management;
2. Unity of Premises;
3. Unity of purpose or functional integrality;
4. Interdependence of manufacturing process; and
5. Unity of employment or inter-changeability of employees.

As contained in head quarter instruction no.INS. III.1.(3). 1(3)1/73-1 dated 26/8/1975.)"

For the sake of convenience, if the employer diversifies the same manufacturing process or a part of it and conducts it in different places, as long as the above conditions are fulfilled, the different parts constitute a 'premise' for coverage of a factory.

L 2.15 Court decisions:

Petrol Pump and Service Station under the same ownership are to be clubbed for examining its coverage. *(Baranger Service Station v. ESIC- 1998 LIC.302)*

However, Power-loom units under different ownership in the same premises or shed are not to be clubbed. Their coverage is to be examined independently.

Clubbing two units together if "the financial, managerial and functional integrality of the two units of the employer have been established is justified. *(A. Gangadharan Vs. Govt. of India – 1978 (2) LLJ 317*, High Court of Madras).

Clubbing together of three establishments functioning in the same premises which have functional unity, and common management is justified. (*RD, ESIC Thrissur vs. Trade Link Enterprises, Ernakulam – 2003(4) LLN. 333, 2003 (99) FLR. 308, 2003 LLR 993, 2003 LIC. 2183, 2003 (3) LLJ: 323).*

The Division Bench of Madras High Court Held that if there is functional integrality between two units, then they should be considered as one unit for the purpose of industrial law. *(RD, ESIC, Madras v. Aruna Sotres, and another-2005LLR.50)*

When different units have unity in management, functional integrality etc. they are considered as one establishment.- In the case of *M/s Sumangali v. ESIC-2008(118)FLR.828; 2008LLR.94;2008(3)LLN.338; 2008(3)LLJ.831 and 2008(4)LIC.4405),* the Supreme court held that the factual findings in the instant case shows that there was unity in management, supervision and control, geographical proximity, financial unity, general unity of purpose and functional integrality between the different units and for the sake of coverage under the ESI Act, the different units could be treated as "one establishment".

L 2.16 The following aspects may be examined for clubbing of two or more units.

a) Whether both / all the units concerned are independent legal entities.

b) Whether the principal employers of all these units are coparceners of a Hindu Undivided Family. Even if the Management is separate, when other factors like functional integrality, interdependence of manufacturing process, inter-changeability of employees etc. exists, they may be considered for clubbing.

c) Whether the work which is carried on by all the units is inter-connected/ inter- Related/identical.

d) Whether the employees employed in all the units are interchangeable.

e) Whether the Manager/Accountant/Watchman/cash counter/packing section/dispatch section is common for all the units. If so, examine whether the salaries/wages of these persons are booked in the accounts of one unit only or in the accounts of all the units. If it is booked in only one unit, how they are sharing this expenditure?

f) Examine the title to the ownership of the premises in which the units are functioning. If only one unit or only one of the persons involved is the owner, examine whether the others pay rent to the owners. There must be necessary entries to that effect in the Books of Account.

g) If the electricity connection is common to all the units, how they are sharing the expenditure? Are they separated by sub-meters, and the cost of consumption of each unit is paid to the unit having main meter, and the unit having the main meter is paying the total bill?

h) In case the units are functioning in a rented premise, examine the share of rent paid by all the units. The tenancy agreement has to be examined to ascertain whether the landlord was really aware of there being two or more independent legal entities as tenants in his building.

i) The procedure adopted by the units in purchasing raw materials from the Suppliers. If only one unit is purchasing raw materials for all the establishments, the functional integrality can be established very clearly.

Whether the end product (finished product) of one unit is used as raw-material for another unit? If so the procedure followed in settling the bills etc. may be examined.

j) Whether there is any godown in addition to the business premises. If so, find out who is the owner of the godown. Examine whether all the units store goods in the same godown. If the godown is the property of one of the units, or one of the partners, examine whether the other units pay any rent to the owner. If it is a rented one, how the rent is shared by them?

k) How the common facilities like water, sewerage, toilets, security etc. are used and shared by them. Especially, in cases of Hotels and Lodges, commonness of the parking lot, Telephone facilities ,same kitchen being used for the Hotel and the Guests at the lodges, supply of food items prepared in the Hotel and Billing for them at the time of finalization of payment, location of Reception, Security Guards being common are some of the factors that prove to be crucial in clubbing these units and courts have accepted these arrangements as inter-connected functions of the same activity.

l) Sharing of advertisement charges in case of common advertisement, Sharing of professional and technical services, and how the expenditure is incurred and shared by them.

L 2.17 'FACTORY' – COURT JUDGMENTS:

a) Cricket club of India Ltd., covered The Cricket Club of India Ltd., having a catering department which provides food and refreshments for their members and guests coming to the club is covered by the Act. *Bombay High Court- 1992)2)LLN.180)*

b) The Bombay High Court observed that the fact that the manufacturing activity is carried on in one part of the premises and the rest of the work is carried on in the other part of the premises cannot take the premises out of the definition of the 'factory', which means that the manufacturing process is carried on 'in a part'. *(Bhararti Udyog v. ESIC 1982 (2) LIC 1344, 1982 (2) LLN.728.)*

c) The sub-stations of the electricity board engaged in distribution of energy, generated and or transformed at different premises, confirms to definition of 'factory. *–Rajasthan High court (2003(1) LIC.931; 2003(93) FLR39; 2003(5)LLN (SNOC)31; 2003(1)LLJ.104)*

d) Hotels where kitchen activities are carried out are factories so that they are covered under Section 1(4) and 2(12) of the Act.*(G.L.Hotel vs. IC Sarin 1993(37)FLR 787(SC)*, Madras High court in the case of *Spencer & Co vs. ESIC-1978 (53)FJR.123; 1981(2)LIC.1759*; and the division Bench of Bombay High court in *Poona Industrial Hotel Ltd. v. ESIC -1983 (33)FJR.354; 1984(1)LLN.300*

L 2.18 Seasonal Factories.

Section 2-19 A of the Act defines a 'Seasonal Factory' as a factory which is "exclusively engaged in one or more of the following manufacturing processes namely, cotton ginning, cotton or jute pressing, decortication of ground nuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur), or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year—

a) in any process of blending, packing or re-packing of tea or coffee; or

b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify.

L 2.19 Explanation:

Manufacturing tea or coffee means converting garden plucked tea leaf to the first stage of tea; or converting coffee beans procured from plantation to the first stage of coffee powder.

Blending, packing or re-packing of tea or coffee is done by using manufactured tea or coffee that has taken place elsewhere.

Thus, a clear distinction has been made between factories exclusively engaged in manufacturing process incidental to or connected to the manufacturing of coffee or tea, and the manufacturing process of blending, packing or re-packing of tea or coffee.

While blending, packing or re-packing of coffee or tea is considered 'seasonal' under clause (a) of the definition of 'seasonal; factory' if they are engaged for a period not exceeding seven months in an year, factories that are functioning for more than seven months in a year doing the same activity, are not to be considered as 'Seasonal', but to be covered under the Act.

It may be noted that;

The factories and establishments procuring such manufactured tea or coffee solely for the purpose of their subsequent blending, packing or re-packing or converting to value added products such as converting to instant coffee or tea bags and different varieties of blended tea or coffee are not covered under clause (a) of Section 2(19-A) defined above .i.e they are not seasonal factories.

(Headquarters' instructions contained in DO letter No. P-11(21) -34/2/94-Ins.IV dated 30th November, 2002)

L 2.20 The Central Government had notified the following manufacturing processes as 'seasonal' in certain States and directed the respective State Governments to issue a notification exempting the employees working in the factories engaged in these seasonal manufacturing processes under Section 88 of the Act vide Government of India notification No. S-38014/90, SSI, dated 23/28-9-91. Previously, the exemption was given under section 87 to these factories in which case, it was on a year to year basis requiring renewal every year, as exemption of a factory under Section 87 can be given only for a period not exceeding one year at a time and can be renewed for a period not exceeding one year at a time. However, the employees working in a factory or establishment can be exempted by the appropriate Government from the operation of this Act, without any time limit under Sec. 88. Accordingly, employees working in the factories engaged in these processes were exempted by the State Governments under Section 88.

1. Re-drying un-manufactured leaf tobacco;
2. Salt manufacture in certain States;
3. Ice manufacture in certain States;
4. Wool pressing with or without cotton pressing and ginning; and
5. Decortication of walnuts.

L 2.21 It may be noted that "Rice Mills" are not 'seasonal factories'. The exemption given earlier to' Rice Mills' considering them as 'seasonal' has been withdrawn from 01-7-1989 vide Government of India notification No. S-38014/90, SSI, dated 23/28-9-91. Hence 'Rice Mills" are now to be covered as a factory under section 2(12).

L 2.22 Court decisions:

Where the factory is exclusively engaged in cleaning or pressing cotton waste, it is a seasonal factory exempted from the Act. It is immaterial whether the process was carried on by the factory continuously or only intermittently due to non-availability of raw-material *(Suresh Gokudas and another v. ESIC- 1934(2) LLJ.299)*

Subsidiary activities- not seasonal: If any activity referred to in the definition of 'seasonal factory' is not undertaken 'exclusively', but is carried on as a subsidiary or ancillary activity, it is not possible to treat the entire factory or that part of it, which is engaged in such ancillary activity, as seasonal. A spinning mill undertaking the spinning and ginning is not be considered as seasonal, unless ginning of the cotton was its exclusive and principal activity. (Andhra Pradesh high Court's decision in *ESIC v. Chirala Co-operative Spinning Mills Ltd., Chirala.- CMA No. 2905/2001 decided on 9th November, 2004- 2005(2)LLN.584; 2005(105)FLR.703; 2005(1)LLJ.1013; 2005LLR.591)* Similar judgments were given in the following cases.

1. *ESIC, Hyderabad V. Jayalakshmi Cotton and Oil Products (p) Ltd., and another-57FJR.182 and ESIC, Karnataka v. Brook Bond India Ltd., Bangalore-1982(2) LLJ.395*

CHAPTER III

COVERAGE OF ESTABLISHMENTS (LAW & PROCEDURE)

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CHAPTER III

COVERAGE OF ESTABLISHMENTS (LAW & PROCEDURE)

L 3.1 Section 1(5) : The State Government may in consultation with the ESI Corporation and with the approval of the Central Government, extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial agricultural or otherwise in the said State, after giving one month's notice of its intention of so doing by notification in the Official Gazette. The notice period has been reduced from six months to one month with effect from 1st June, 2010 vide ESI Amendment Act 2010. If these establishments belong to or managed by the Central Government, the provisions are to be extended by the Central Government by issuing such notification, in consultation with the ESI Corporation.

In accordance with these provisions, the respective State Governments have issued notifications extending the ESI Scheme to other class of establishments from time to time.

Likewise, the Central Government has issued notification extending the ESI Scheme to some class of establishments belonging to it or under its control where the number of casual and contract employees employed is 20 or more and the scheme is made applicable to the casual and contract employees of such establishments (Government of India, Ministry of Labour and Employment Notification dated 20/07/09 and subsequent corrigendum dated 24/2/2010).

L.3.2 Consequent to the addition of a proviso to the above Section vide ESI Amendment Act 1989, made effective from 16th May, 1990, in all the Sates, where the provisions of Section 1(5) are already in force in any part of that State, no separate notification is necessary for extension of the scheme to any such class of establishments or class of establishments in a new area. The Central Government notification issued under Section 1(3) of the Act extending the provisions of the Act to any new area from a particular date, itself is sufficient to cover both the 'Factories' under Section 2(12) and 'establishments' under section 1(5) in that area.

L 3.3 The State Governments have vide notifications extended the provisions of the E.S.I Act to the following establishments wherein 20 or more persons (coverable employees) are employed, or were employed for wages on any day of the preceding twelve months namely :

1. Shops;
2. Hotel or restaurants not having any manufacturing activity but only engaged in sales ;(that are not covered as factory under Sec. 2(12))
3. Cinemas including preview theatres;
4. Road Motor Transport Establishments;
5. News paper establishments. (That is not covered as factory under Sec. 2(12)); and

6. Private Educational Institutions.

7. Private Medical Institutions.

(Very shortly the State Governments are expected to fix the number of persons required for coverage to 10 on the lines of recent amendment.)

The Government of India, Ministry of Labour and Employment vide notification dated 20/07/2009 and subsequent corrigendum dated 24/2/2010 have extended the provisions of the E.S.I Act , 1948 to establishments belonging to or under the control of the Central Government engaged in Insurance Business, Non-Banking Financial Companies (NBFC), Port Trust, Airport Authorities and Warehousing in addition to the categories of establishment cited at sl. nos 1 to 5 above with the rider that the Act applies to All casual and contract employees (coverable) only.

L 3.4 The word 'establishment' is not defined in the Act. It is to be understood as any entity carrying out any of the notified activity and employing the prescribed number of persons but not necessarily confined to a premises or place and has, therefore, a wider meaning. The words 'premises' and 'precincts' used in the definition of 'factory' have not been used in the notifications issued by the State Governments, while extending the provisions of the Act to the establishments under Sec. 1(5) of the Act. So long as the establishment employs a minimum of twenty coverable employees / 10 persons from the date fixed in revised notification {(not necessarily employees u/s 2(9)}, it will stand covered under the Act whether these employees are employed at one place or at a number of places away from each other, as they are engaged in the organized activity of the same establishment.

L 3.5 SHOP: The word 'Shop' has not been defined in the Act. The expression 'Shop" refers to any activity that leads to sale or purchase of goods ' or 'services are rendered' for a price or both the activities are carried on. Physical delivery of goods sold to the purchaser is only one aspect of the trading activities. It is not necessary that the delivery of the goods to the purchaser should take place at the premises in which the business of buying and selling is carried on. Places where initiation of activities like booking orders for supply or sale or Negotiations of the terms of sale, carrying on the survey of the goods sold, imported, arranging for delivery of the goods sold and collection of the price for the goods sold and delivered at a different place are all trading activities and constitute a 'shop'. The departmental stores, super bazaars, etc. or any other establishment engaged in sale or service is to be covered as a 'shop' by taking in to consideration the employees employed in various branches offices/depots and retail outlets working as sub-tenants.

It was held by the *Supreme Court in C.A. No 314/99 dated 29-11-2000 in M/s Southern Agencies, Rajahmundry against the order of the A.P. High Court*, that "any economic activity is carried on leading to sale or purchase in any premises, that premises will have to be held as "shop" for the purpose of the Act even though there is no actual giving or taking of goods in such premises and if business carried on in a

premises results in having some nexus with the purchase or sale of goods, the said premises can be termed as "shop" for the purpose of the Act"(Hqrs. instructions in letter no. T.11/13/32/1/99-Ins.IV dated 16-01-2001)

The definition of "Shop" under Section 1(5) of ESI Act has been expanded by Supreme Court in the case of *M/s. Cochin Shipping Vs ESI Corporation* (reported in1992(4)SCC 245) as "any establishment carrying on systematic, economic, or commercial activities, arising from customer service."

Coverage of 'Railway contractors' as a shop: The railway contractors are basically contractors engaged in labour oriented jobs, hence such contractors having 20 or coverable employees can be covered like other labour supply contractors and security agencies. On getting contract from the Railways, these contractors arrange workers as per the requirement of the contract and engage them on work sites till completion of the work. The work sites for various jobs undertaken by these contractors may be in implemented areas as well as in non-implemented areas. Therefore, the employees of such contractors who are employed for wages for various jobs undertaken in implemented areas can be covered under section 2(9) as employees read with notification issued under section 1(5). Some regular employees are also in the employment of such contractors who are automatically coverable as employees provided their wages are within the ceiling limit prescribed by the Central Government. (Hqrs. Instructions in letter No. 11 (21)-1/1/2000-Ins.IV dated 14-2.2003)

L.3.6 Court decisions:

(Recently, the High Courts of Rajasthan, Kerala, Allahabad & Madras have upheld the powers of the State Government under Section 1(5) of ESI Act to extend to the Private Medical and Educational Institutions. However some of the judgements have been challenged in Supreme Court.)

a) Establishments of distributors of cinematographic films are shops *(Kerala High Court-Central Pictures, Kottayam Vs. ESIC Trichur.MFA No. 42 and 43 of 1977 dated 14th Aug. 1978.*

b) To constitute a shop, the sale need not be goods; it can be resources services also. *(Kerala High Court-1980 LIC.72).*

c) The business premises of the employer engaged in arranging for musical performances on occasions such as marriages other social functions etc., is a shop. It was held that the place where the services are sold on retail basis is also a 'shop'. *(M/s Hindu Jea Band,V. Jaipur-ESIC, Jaipur- Supreme court- Feb.1987 in special leave petition No. 1743 of 1987.)AIR1987 S.C.1166;1987(1)LLJ.502).*

d) The premises where services to their foreign stem ship companies by booking cargo on their behalf are rendered falls within the definition of shop.-*Madras High Court in the case of M/s New India Maritime Agencies (P) Ltd., 1984(64)FJR.383).*

e) A finance company which advances money to purchase motor vehicles on hire falls within the definition of shop.-*Madras High Court in the case of M/s Sundaram Finance Ltd.*, in petition No. 700 of 1978 dated 10th October, 1980.

f) The International Ore & Fertilisers (India) pvt. Ltd., carrying on the business of importing fertilizers is a shop. It was held by the Supreme Court that the delivery of goods to the purchaser need not take place at the premises in which the business of buying or selling is carried on to constitute the said premises in to a 'shop'. (AIR 1988 S.c.79; 1987(4)SCC.203; 1988(1)LLJ.235).

g) A place where activity of holding races takes place by the club is a shop. *(Supreme Court decision in Hyderabad Race Club V.ESIC 2004(104) FLR.1036; 2004(3) LLN.1226; 2004(3) LLJ.547; 2004LIC.3201; 2004SCC. (L&S).855)* But The two member bench of the Supreme court in Bangalore turf club (2009(121) FLR.1115) has given a different view that turf clubs are not included in 'shop' and the Act does apply to them and further opined that the decision of Apex court in ESIC v. Hyderabad race Club should be reconsidered by a larger bench. The Court observed that the word 'shop' has not been defined in the Act nor in the notification issued by the appropriate government under section 1(5) of the Act. Hence the meaning of the 'shop' will be that used in common parlance. When we go for shopping to a market, we do not mean going to a race club, hence prima facie, the apex court is of the opinion that the appellant club is not a shop. The apex Court has reversed the decision of the *Karnataka High court in this case (2002(95) FLR.1149; 2003(1) CLR.82; 2003(1) LLJ.73; 2003(1) LLN.272)* by allowing the appeal of the Bangalore Turf Club Ltd.

h) Establishments engaged in stevedoring, clearing and forwarding operations, covered as a shop. - The *Supreme Court in P.K. Mohammad Pvt. Ltd., v. ESIC 1993(1)LLJ.482*, dealing with the notification issued by the Government of Kerala, extending the provisions of the Act to the establishments specified in the schedule to the notification, held that the appellant is carrying on stevedoring, clearing and forwarding operations. Clearing the documents, even it be in custom house, is necessary for the export and import of goods. These services form part of the carrier's job. The appellant is rendering service to cater the needs of exporters and importers and others who want to carry the goods, further. Therefore it is a shop carrying on systematic economic and commercial activity.

i) Establishment rendering technical services covered. –Though buying and selling of goods and commodities have not been undertaken by the firm, rendering technical services to its customers brings the establishment within the purview of 'shop'. *(Bal Chandra Agarwal and another vs. Union of India and another-2002 (3) LLN.275; 2002(2)CLR.985; 2002LLR828; 2002(3)LLJ.127)*

j) Bangalore Amateur Riders Institute comes within the definition of 'shop' under Section 2(u) of the Karnataka Shops and Establishment Act. Hence the provisions of ESI Act are applicable. *(Karnataka High Court decision-2001(90)FLR.587)*

k) Advertising firm covered: Any one who has a product to sell may approach an advertising agency for publicity of their product. The advertising agency will prepare an advertising campaign for them utilizing the services of the experts it employees in this behalf. Essentially, the advertising agency sells its expert service to a client to enable the client to launch an effective campaign of its products. Therefore, the advertising agency can be termed a 'shop'. *(Supreme Court's decision in the case of ESIC v. R.K.Swami and others-1993-CLR.1068(SC); 1994(84)FJR 67).*

l) Agricultural Produce Marketing Committee is carrying on a systematic economic and commercial activity and renders services. Hence it is 'Shop'. *(Dhule Agricultural Produce Marketing Committee V. ESIC and others.- 2003(3)LLJ.780; 2003(99)FLR.878.*

m) Co-operative Marketing Federation covered: In the case of *Karnataka State Co-operative Marketing Federation vs. ESIC and others (2004(1) LLJ880; 2004LLR.50)* It was held by the Karnataka High Court that the Co-operative Marketing Federation is selling fertilizers and pesticides to the farmers either directly or with the help of the societies as intermediaries. Hence it is a shop for the purpose of coverage under the ESI Act.

n) Karnataka state seeds corporation Ltd. is within the meaning of the word 'shop' and is required to comply with the provisions of the Act. *(Karnataka High Court- 2002(100) FJR.715; 2002(2) LLJ.1068.*

o) A co-operative society is a legal entity distinct from its share holders and a society is a shop for the purpose of Sec. 1(5) of the Act.-Kerala High court in The Taj textiles Industrial Co-operative Society Ltd. Calicut. MFA No. 404 of 1978 dated 27th January, 1980.

p) Office of the construction company employing 20 persons is covered as a 'shop'. *(Kerala High court's decision in Beeyems Construction Company v. Government of Kerala-1978(2) ILR. Ker.1.*

q) It was held by the Madras High court "it was not necessary that there should be a building or land for conducting a shop. If there is a systematic, economic or commercial activity that will be sufficient to bring that place within the purview of the Act". *(Madras Government Servants' Co-operative Society Ltd;, Madras v. ESIC, Madras- 1997(1)LLJ.606).*

r) It was held by the Andhra Pradesh High court that a professional firm of consultancy service having branches and giving advice on various engineering products is a 'shop'. *(Tata Projects Ltd., v. ESIC 2006LIC(NOC)244).*

s) It was held by the Karnataka High Court that 'Nidhi company' which is providing loans to its members and charging interest amounts to rendering service for a 'price'. Therefore it is within the fold of an establishment carrying on systematic commercial or financial services. Hence the Act is applicable to it. *(ESIC v. Manipal Sowbhagya Nidhi Ltd., Manipal-2007(3) LLJ.142; 2007(3) LLN.292; 2007(114) FLR.529, 2007.LLR.1109.)*

t) Amusement park covered: While upholding the decision of the EI court, the Kerala High court observed that for enjoyment of various sports and amusements, every customer will have to pay money. Therefore, the activities carried on in water theme park are nothing but commercial, business or technical and they are being parted with for a price. It was held that an amusement park is a 'shop'. *(Silver Storm Amusement Parks (P) Ltd., v. ESIC- 2007(3)LLJ 533; 2007(3)LLN.908, 2007(3)LLJ.533; 2007(3)LIC.2830)*

u) "toddy shop" covered: *(Supreme Court's decision in an appeal filed by Amitha K.R. and others v. ESIC- 2003(3)LLJ.855; 2003(103)FJR.797; 2003(99)FLR.341: 2003(4)LIC.3497)*

v) It was held by the *Supreme court in its judgment dated 14th Nov. 2000 in the civil Appeal No. 4668 of 1995 filed by M/s Kirloskar Consultants Ltd.*, that the company engaged in several activities including giving advice to its clients in respect of industrial, technical, marketing and management activities and was registered as a commercial establishment under the provisions of the Bombay Shops and Commercial establishments Act, is a shop for coverage under Section 1(5) of the Act. (Hqrs. Letter No. T-11/13/31/1/95-Ins.IV dated 28-8-2002)

L.3.7 HOTELS AND RESTAURANTS: Hotels and Restaurants engaged in preparation of food stuffs and eatables and employing 10/20 or more persons are brought under coverage as a factory within the scope of Section 2(12) itself. However, Hotels and Restaurants without any manufacturing process, but engaged only in sale of food products with 10/20 or more employees are to be considered as a 'shop' for coverage under Section 1(5). This number is 10/20 till the revised notification is issued.

L.3.8 CINEMAS INCLUDING PREVIEW THEATRES: In the case of coverage of cinema theatres, not only the employees in cinema theatre, but also those employed in the canteen/Restaurant, cycle stand/ scooter & car parking, pan shop, Book stall etc. and the security guards engaged through a contractor within the premises of the theatre are also to be taken in to consideration for counting of 10/20 or more persons for coverage of the theatre and also for their individual coverage as 'employee' even though the units carrying out these allied activites /security agencies are owned/run or managed by separate contractors/ licensees etc. The reason is that these subsidiary units within the premises are aimed at serving the customers of the theatre for a price. *The Supreme Court Judgments in M/s Royal Talkies, Hyderabad (Judgment dated 9th August 1978 in Civil Appeal No. 1226-1244 of 19781978 (4) SCC.204; 1978(1) LIC.1245 (S.C.); SCR 80 AIR 1978 S.C.1478)* and that of *M/s Saraswathi Films (CA NO. 3533/3534 of 2002 dated 1-5-2002- 2002(94) FLR 386; 2002 LLR.930; 2002(3) LLJ.169)* are relevant in this regard.

L.3.9 ROAD TRANSPORT ESTABLISHMENTS: In the case of Road Transport Establishments, the Office may have only a small number of clerical staff, but most of the employees would normally be working outside the premises, on the vehicles such as Drivers, cleaners, mechanics, booking clerks, conductors, traffic Inspectors, supervisors etc. There may be branches at different places.

For coverage of the establishment, and also for coverage of individual employees, all such employees are required to be taken in to account irrespective of the fact whether or not they are working in the premises where the main business of the Motor transport is located. Coverage is therefore not limited to those who are employed on the premises or precincts but extended to all those connected with the whole activity of the establishment. If any of the employees of the establishment are working in Non-implemented areas, they can seek exemption under Section 88 of the Act. In case the transport establishment is having a workshop with 10/20 or more presons, it may be considered for coverage as a Factory under Section 2(12) itself, as the work done in the work shop amounts to manufacturing process.

L.3.10 NEWS PAPER ESTABLISHMENTS: In the case of a News paper establishment, Where the manufacturing process i.e. composing/printing/lithography/photogravure/binding etc. is involved, it is covered as a 'Factory' under Section 2(12). Employees employed in various offices/branches for purchasing, sale, distributions etc. of such factories are also covered as per the amended definition of the term 'employee.' However, where a News paper establishment not involved in a manufacturing activity, but engaged only in sale or distribution or service employing 10/20 or more persons can be brought under coverage as an establishment under Sec. 1(5).

L.3.11 PRIVATE EDUCATIONAL & MEDICAL INSTITUTIONS : Private Educational Institutions(those run by individuals, trustees, societies or other organizations) and Medical Institutions(including Corporate, Joint Sector, trust, charitable, and private ownership hospitals, nursing homes, diagnostic centers, pathological labs) with 10/20 or more persons are brought under the scheme by a separate notification. However, Medical and Educational Institutions established and run by Ramakrishna Math and Ramakrishna Mission are excluded from this coverage.

Court decision: Educational institutions covered: The Allahabad High court held that the word "otherwise" in section 1(5) of the Act is of wide amplitude covering all other establishments including educational institutions. The Act is a beneficial legislation and in case of any ambiguity it requires to be interpreted in favour of those, who are to be benefited by the application of the Act. *(Maharshi Shiksha Sansthan and another v. State of U.P. and another – 2008(119) FLR.935; 2009(1) LLN.381; 2009(75) AIC.432; 2009LLR.265; 2009(1) LIC (NOC 350).88)*

L.3.12 Clubbing of different units of an establishment for coverage:

Head Office of an Establishment is located in implemented area or located in a State where the provisions of Sec. 1(3) are in force.	Total number of coverable employees employed in the whole establishment including the employees working in different branches in the same State or else where whether in implemented area or not including the employees working outside the territorial limits of India are counted for the purpose of coverage of the establishment and all those employees are covered as employees under sec. 2(9). However, those working outside the territorial limit of India, and employed in non-implemented areas are eligible for exemption under Section 88 of the Act. The R.O. in whose jurisdiction the HO is situated will initiate action for its coverage and inform the other Regions about the coverage of HO and the branches with its code number. The other Regions will take action for registration of the employees of the branch situated in their Region and calling for compliance in all respects. Inspection of records is being arranged by the Region in which the HO is situated. Hqrs. Office Memo. No. P-11-21/4/75-Ins Desk-I dated 2-2-1977) *Supreme Court's decision in Civil Appeal No. 810 of 1995 decided on November 5, 1999, (200(1) SCC.332)* communicated vide Hqrs. Letter No.T-11/13/31/2/94/Ins.IV dt. 26-12-200.
Coverage of Branch office independently when the HO is in non-implemented area or in a State where the provisions of Sec. 1(3) are not in force.	If the H.O/Registered Office of an establishment is in non-implemented area or in a State where the provisions of Section 1(3) are not in force, the coverage of any of its branches is to be examined independently based on the strength of coverable employees of each branch without counting the number of employees in HO or other branches. By virtue of coverage of that branch, the other branches or its employees can not be covered. (Hqrs. Office Memorandum No. P-11/21/4/75-Ins. Desk-I dated 2-2-1977 and P-11/21/4/79 Ins. Desk-I dated 26-2-1979)

Where a Branch Office is covered on its own strength and a code number is allotted, and later on its Head Office situated in another region is also covered under a different code number due to extension of the scheme in that area, as soon as the Head Office is covered, the code number allotted to the branch office is replaced with the code number of the Head Office to watch the overall compliance, and to ensure inspection of records of the whole establishment.

Court Decisions:

1. Clubbing of employees of all branches for coverage of an establishment: Merely because the branches of a company have separate supervision by a Manager and separate accounts for convenient purpose in order to administer the day to day affairs, it does not mean that they are independent entities. The Corporation was justified in clubbing the employees in all the units due to functional integrality between them for the purpose of the contribution. *(Durvent Fans (P) Ltd., v. RD., ESIC, Bangalore-2001(90)FLR.939)*

2. Contra decision by Bombay High Court: Where the Act is not applicable to the Head Office, It could not be made applicable to the branch offices. It was also held by the Bombay High Court that the persons employed in head office and persons employed in branch offices cannot be clubbed together for applying the provisions of the Act. *(H. Fillunger and Co. Pvt. Ltd., v. ESIC, Pune-2005(3)LIC.2939; 2005LLR.1165; 2006(1)LLJ.106)*

3. The establishment M/s Southern Agencies with its Head Office at Rajahmundry, purely engaged in administration, supervision and controls the sale taking place at different branches, falls within the definition of 'shop'. Since the whole group would constitute one entity, the Act applies even if individual outlets do not have more than the required workmen. *(A.P. High Court's decision in Southern Agencies, Rajahmundry, Andhra Pradesh, v. ESIC, upheld by the Supreme Court.-2001(1)LIC.387; 2001(1)SCC.411; 2001(2)LLN633; 2001(98)FJR4; 2001(88)FLR347) (Hqrs. Letter No. T-11/13/-Ins.IV dated 16th Jan. 2001)*

L.3.13 CONTINUOUS COVERAGE OF FACTORIES/ESTABLISHMENTS:

Once a factory or an Establishment is covered under the Act, it continues to be covered notwithstanding the fact that the number of employees employed therein at any time falls below the required limit or the manufacturing process there in ceases to be carried on with the aid of power. Thus, there is no need to examine the continuity of coverage of a factory or establishment every time.

The above proviso has been added by Section 1(6) of the Act with effect from 20-10-1989.

Hqrs instructions in letter No. P-11/14/12/22/2001-Ins.IV dated 07-10-2002 on Continuance of coverage of a unit under the Act which changed its ownership by splitting different sections of the unit claiming each section to be an independent unit is as under:-

" Some cases have come to the notice of this Office that partnership firms engaged in hotel and restaurant business and covered under the Act report closure from a particular date and from the following day different sections are leased out to different individuals who were formerly partners of the same firm. This change of ownership pattern overnight even if genuine, will not change the coverage since the establishment continued to function without any closure.

The term 'closure' would indicate physical closure and cessation of business along with proper termination of employees after paying the statutory dues such as gratuity etc., surrender of license under the Municipal Act as well as Catering Establishment act, surrender of commercial power connection etc.

For coverage under the Act, singularity of ownership is not a legal requirement. Separation of books of account is also not a relevant factor. As long as the establishment continued to function with the same good will, it should continue to be covered under section 1(6) of the Act. Decision on continuance of coverage may be taken accordingly."

L.3.14. The following establishments employing 20 or more coverable employees may be considered for coverage as 'Shop' under Section 1(5) of the Act.

a) Hotels, and canteens in the premises of the Legislature House, Legislature Hostel, Railway Platforms, or within Railway Boundaries, Bus stands etc.

b) Sales Offices of Mining establishments where trading activities are transacted are shops for coverage. (Letter. No. T-11/13//32/2/97-Ins.IV dated. 23-3-2003)

c). Coverage of construction agencies/offices of the builders: If the construction agencies are employing 20 or more employees in their offices and the office is situated in an implemented area, it is coverable. However, workers engaged by these agencies and working on the site of the construction project should not be considered either for the coverage of the establishment or for their own coverage as employees. If these construction workers are engaged in a covered factory or establishment, they are to be considered to be the employees of that covered factory/establishment which engaged them.

(Hqrs. letter No. P-12(11) -11/27/99-Ins.IV, dated 14-06-1999)

d). Stock Exchanges.

e) Medical/chemist shops/Pharmaceutical distributors.

f) Clearing and Forwarding Agencies

g) Chit fund companies and motor Finance companies.

h) Companies playing music on occasions such as marriages and other social Functions.

i) Clubs providing facilities for recreation, sports and other entertainment.

j) Agencies providing public utility services such as M/s.Sulabh International Social Service Organization, providing services for a consideration.(Hq. Instructions P-12(11)-44/3/2002-Ins.IV dated 2.4.2002)

L.3.15. The establishments engaged in the following type of services are treated as "shop" for coverage under Section 1(5) of the Act, vide Hqrs. Letter No. S-11/13/01/2002-Ins.IV, dated 22-11-2002.

a) Call centers providing IT enabled services dealing with inbound and outbound customers servicing, mailing service, market research , tele-marketing, customers contact solution for various organizations.

b) Medical/Legal encryption/transcriptions services

c) Dot Com services providing a host of e-services including on line shopping.

d) Back office operation which involves large scale data processing and data based decision making capabilities wherein raw data on electronic mode or plain paper documents from the clients are sent to remote locations called IT enabled destinations where the data entry and processing is carried out, reconciled or analysed and sent back to the clients. There are several key players such as American Express, e-Server International, GE-Capital, Spectramind, e-Fund etc who carry out such work as independent service function.

e) Content Development agencies engaged in developing websites, CDAC/Cam/CAE/GIS product life cycle management, remote and photo grammatery, image processing, engineering services for various designs.

f) Computer training centers

g) Accounting & Auditing Firms- both national and international.

h) Chain of Jewelry shops.

i) National/International Law firms.

j) Architect firms.

k) Real estate Developers.

l) Market survey organizations.

m) Consultancy firms.

n) Teleservices/mobile phone services.

o) Cable TV operators

p) Private TV channels.

q) Amusement parks/Resorts.

r) Gymnasium/Health club

s) Contractors' establishments engaged in toll tax collection.

t) Flight catering services

u) Labour contractors providing House keeping, sanitary services, Electrical, grass cutting, maintenance, painting, white washing ,plumbing etc. ministerial Services like stenography, type writing, word processing, data-entry, including contractors engaged in ground handling services in air ports.

v) Event management contractors providing complete supporting services for holding events.

w) Pathological Laboratories and diagnostic centers.(The Memo No.P-11/21/87-Ins-1V, dated 6/1/89 as per which Pathological Labratories are hitherto not covered as Shop u/s 1(5) of the E.S.I.Act stands modified accordingly)

x) Estabishments belonging to or under the control of Central Government (Public Sector Undertakings) employing 20 or more contract and casual employees [coverable u/s 2(9)]

employed for wages on any day of the preceding 12 months.(Hqrs Instructions No.P-12/11/ Misc/2010-Rev-II dated 07.08.2010)

L.3.16. The following establishments employing the required number of persons may also be considered for coverage.

a) Advertising Agencies;

b) Beauty Parlors;

c) Clearing & Forwarding Agents;

d) Cargo Services;

e) Courier Services;

f) Chit Funds;

g) Chartered Accountant's firm;

h) Consulting Engineers/Architect firm;

i) Catering services;

j) Co-operative Societies engaged in different activities;

k) Distribution Agencies;

l) Export & Import Houses;

m) Entertainment Halls;

n) Fashion Designers;

o) Florist;

p) Financial agencies/institutions of any description;

q) Film distributing Companies;

r) Hiring Agencies;

s) Housing Societies;

t) Hair Dressing Saloons;

u) Interior Decorators;

v) Leasing organizations;

w) Marriage Halls;

x) Marketing Federations/societies;

y) Motor driving School;

z) Publishing House;

aa) Potable water supply company(Mineral water supply companies);

bb) Social clubs;

cc) Stadium of any kind;

dd) Share/stock broker's firm;

ee) Shipping Companies;

ff) Travel Agents.

gg) Establishments of Railway Contractors

hh) Massage centres

ii) Software support services (Hqrs Instruction No. P-12.11.33.Misc. 05/Ins IV dated 12/8/2005)

CHAPTER IV

IDENTIFICATION OF FACTORIES / ESTABLISHMENT FOR COVERAGE (PROCEDURE)

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CHAPTER IV

IDENTIFICATION OF FACTORIES/ESTABLISHMENTS FOR COVERAGE (PROCEDURE)

P.4.1 The law mandates, the employers of the factories/establishments coverable under the Act to register them under the Act. The Corporation also takes parallel steps on its own to unearth unregistered coverable units and bring them under the ambit of the Act. The Regional Office also keeps a close watch on border-line units employing close to the number required for coverage say, factories employing 7 or more but less than 10 persons and establishments employing 15 or more but less than 20 coverable employees. Section 44(2) of the Act and Regulation 10-B(c) of ESI (General) Regulations 1950 also provides power to Corporation to gather the required information. The Regional Office/Sub Regional Office performs the following drill regularly and maintains records and documents to show the details of action taken from time to time.

P.4.2 Registration of a factory/establishment with the Employees' State Insurance Corporation is a statutory responsibility of the employer under section 2-A of the Act read with Regulation 10-B. The employer in respect of a factory/establishment to which the Act applies for the first time, is liable to furnish to the appropriate Regional Office/Sub Regional Office within 15 days after the Act becomes applicable, a declaration of registration in Form 01(Employers registration form). This is obligatory on the part of the employer. In addition to this, the employer will have to indicate in a separate sheet, the name and address of the factory/establishment, number of employees, nature of duty and name, designation and address of the manager, controlling such persons in respect of any other office (s) situated outside the premises.

However, many employers may not register their unit unless reminded by the Regional Office or visited by the SSO for survey. Section 44(2) of the Act and Regulation 10-B (c) in such cases requires the Regional Office to direct the employer within the time stated therein to furnish to that Office, Employer's Registration Form duly completed within such further time as may be specified and such employer shall, there up on, comply with the instructions issued by that Office in this behalf.

For this purpose, the Regional Office should have a list of units to which the Act is likely applicable. Therefore it depends upon the other Government and non-Government agencies for this purpose.

P.4.3. Source of information:

Regional/Sub-Regional/Divisional Office collects the information of new factories/establishments from the following Government Agencies at periodical intervals.

1. Chief Inspector of Factories or his Subordinate offices.

2. Labour Commissioner or his sub-ordinate Offices.

3. Director of Industries and Commerce or District Industries Centre.

4. Employees' Provident Fund Organization (with which there is a reciprocal arrangement for exchange of data on coverage of factories/establishment).

The Regional/Sub-Regional/Divisional Office may also collect the information from the Registrar of Companies, Registrar of Firms, Employer's Associations like FCCI, CCI, small scale Industries Associations, yellow pages of the telephone directory etc.

P.4.4 Processing of the information collected:

Regional/Sub-Regional/Divisional Office scrutinizes the information collected from different agencies at prescribed intervals, and all uncovered units requiring survey (Factories employing 7 or more persons, and establishments employing 15 or more persons) are entered area-wise in a register called 'C-1 Register, and letters issued to the individual employers in a standard form C-2, with an endorsement to the area SSO for conducting the survey and submitting his reports.

In case, the lists are not received from any agency, they may either be reminded or an official from Regional Office/SSO may be deputed to the concerned Office for collection of the list for the relevant period.

The C-1 list of Factories/establishments requiring survey is sent to all the area/division Social Security Officers for doing intensive survey in the months of April-May, September-October, and December-January every year.

P.4.5 Action by the Social Security Officer

a) The C-2 endorsements or list of C-1 surveys received from the Regional/Sub-regional/Divisional office are entered in a register called the survey Register, and plan the survey of these units on priority

basis. As per the latest Inspection policy, the SSO is required to do one survey each working day, with a target of 20 surveys per month. He is required to do intensive survey in the months of April-May, September-October, and December-January every year.

b) RO/SRO/DO may also refer the Form -01 Registration Forms received from the contractors (security, Labour, House-keeping, Landscaping, electrical etc.) or any doubtful case to the SSO for spot verification and confirmation of the facts furnished in the Registration Form before allotting the code number to them. These cases are also entered in the survey register, and action taken immediately to complete the survey/verification. These pending cases are to be vigorously pursued till the final decision is taken. The branch Officer at Regional Office would personally monitor such cases to ensure that coverable units do not remain uncovered/un-coded for any length of time.

c) The SSO himself may notice 'new units' or existing un-covered units in his area during the course of his visit to the other units for inspection. All such cases are also to be entered in the survey register and surveyed at the earliest. In fact the SSO of the area is responsible for the coverage of all the coverable units coming up in his jurisdiction and he is required to be extremely vigilant to ensure that all coverable units are duly covered and there is no scope for evasion.

All units requiring survey is to be completed in the same year, and at the end of the financial year, the SSO is required to give a certificate to the effect that "no coverable unit is left uncovered in my area".

d) The procedure for conducting the survey and submission of report by the Social Security Officer is explained in the relevant Chapter.

P.4.6 Under the IT Rollout, the units requiring survey after scrutiny of the lists received at periodical intervals from various agencies are entered in to the computer, area/division-wise and C-2 letters to the employer are generated for issue to the respective employers for submission of Employer's Registration form. The SSO can view the cases requiring survey in his division and shall attend to them and submit his reports on line. Regional Office may periodically review the position and reminders issued to the employers for submission of Form-01/SSO for completing the survey.

CHAPTER V

REGISTRATION OF FACTORY / ESTABLISHMENT (LAW & PROCEDURE)

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CHAPTER V

REGISTRATION OF A FACTORY/ESTABLISHMENT (LAW & PROCEDURE)

A) LAW:

What is Registration?

L 5.1. Registration is the process by which every employer/factory/establishment and its every employee is, identified for the purpose of the ESI Scheme, and their individual records are set up for them.

L.5.2. The first step in the process is the obtaining of particulars about each coverable Factory/ establishment and fix its identification by allotment of a number i.e. A distinct Code Number by the Regional Office/Sub-Regional Office/Divisional Office, so as to facilitate keep track of contributions payable/paid and the connected obligations of the employers.

Subsequent step is the registration of employees of covered factory/establishment by the Regional Office/Sub-regional Office/Divisional Office. Where the work of registration of employees is decentralized, this work of registration of employees is done by the concerned Branch Office by allotting an identification number known as insurance number for each insured employee for issue of identity and family identity cards and setting up of other records for recording the contributions paid and benefits availed by the insured employee according to his eligibility.

L. 5.3. Registration of Employers: Registration of a Factory or Establishment, to which the Act applies, is now mandatory as per Section 2(A) of the Act.

Section 2(A) of the Act states as under: - Registration of factories and establishments: - Every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

As a follow-up of this provision in the Act, Regulation 10-B was inserted in the ESI (General) Regulations 1950. This regulation reads as follows:

10-B. Registration of Factories or Establishments:-

a) The employer in respect of a factory or an establishment to which the Act applies for the first time and to which an Employer's Code number is not yet allotted, and the employer in respect of a factory or

an establishment to which the Act previously applied but ceased to apply for the time being, shall furnish to the appropriate Regional Office not later than 15 days after the Act becomes applicable, as the case may be, to the factory or establishment, a declaration of registration in writing in Form-01 (herein after referred to as Employer's Registration Form).

b) The employer shall be responsible for the correctness of all the particulars and information required for and furnished on the Employer's Registration Form.

c) The appropriate Regional Office may direct the employer who fails to comply with the requirements of paragraph (a) of this regulation within the time stated therein to furnish to that Office, Employer's Registration Form duly completed within such further time as may be specified and such employer shall, there up on, comply with the instructions issued by that Office in this behalf.

cc) The employer in respect of a factory or establishment to which a code number has been issued by the Corporation based on the information collected or decision taken regarding applicability of the Act to such factory or establishment, shall, within fifteen days of receipt of information of allotment of code number, furnish a declaration in Form-01.

d) Upon receipt of the completed Employer's Registration Form, the appropriate Regional Office shall, if satisfied that the factory or the establishment is one to which the Act applies, allot to it an Employer's Code number (unless the factory or the establishment has already been allotted an Employer's code Number) and shall inform, the employer of that number.

e) The Employer shall enter the Employer's code number on all documents prepared or completed by him in connection with the Act, the rules and these regulations and in all correspondence with the appropriate Office.

PROCEDURE FOR REGISTRATION OF FACTORY/ESTABLISHMENT

P. 5.1 Supply of blank Form-01 (Employer's Registration form) to the employer: AN EMPLOYER WHO IS REQUIRED TO REGISTER HIS UNIT UNDER THE ACT IS TO SUBMIT THE PARTICULARS IN A FORM PRESCRIBED BY THE REGULATIONS FOR THE PURPOSE KNOWN AS FORM-01. THE Blank Form-01 shall be supplied by the Branch Office/Regional Office/Sub-Regional Office/Division Office concerned on placing an indent by the employer or it may be down loaded by the employer from ESIC web site www.esic.nic.in Proforma of Form-01 is at Annexure 6.

P. 5.2. Employer to submit Declaration Forms (Form-1) in respect of all coverable employees along with the Employer's Registration Form (Form-01). An employer while submitting the Employer's Registration

Form to the Regional/Sub-Regional/Divisional Office is required to submit the Declaration Forms also in respect of all his coverable employees who were not registered earlier. This has been made mandatory under the IT rollout procedure. These forms after scrutiny are forwarded to the Branch Office concerned for allotment of insurance numbers and other follow-up action. If any employee was already registered, his insurance number is to be furnished. Proforma of Form-1 is at Annexure-7.

P. 5.3. Submission of Employer's Registration Form by the Contractors (Immediate Employers): A contractor or the immediate employer to whom the Act applies, but is letting out the services of all his employees to only one covered factory or establishment, no separate ESI code number is allotted to him. He is required to comply with the provisions of the Act, rules and regulations under the code number of the principal employer, with a sub-code number to identify him and his compliance.

P. 5.4. Allotment of a code number to a contractor or immediate employer : If a contractor or immediate employer to whom the Act applies, and letting out the services of his employees to an uncovered factory or establishment or to more than one covered factory or establishment, such contractor or immediate employer may be registered separately and a separate code number allotted to him. For this purpose, the following points may be kept in view.

i) There must be 20 coverable employees in the employment of the contractor. The question of having requisite number of employees in the 'premises' does not arise since the establishment need not have any premises. All coverable employees in any location including those whose services are lent on hire or lent are to be included for this purpose.

ii) Contractor's Establishment is an identifiable entity having premises.

iii) The Contractor has a Permanent Income Tax number from the Income Tax Department.

iv) The Establishment of the contractor is registered as a 'shop' under the Shops and Establishment Act

or

v) The Establishment is a company registered under the Company's Act or is a partnership firm

If all the relevant columns in Form-01 are duly filled in satisfying the above conditions, code no may be allotted without requirement of a survey. If the agency is owned by an individual but they have shown actual employment figure for the past period at a level sufficiently higher than the threshold limit for the coverage and the address details furnished, the same may be verified by deputing SSO available in the RO or through Branch Manager immediately and while doing so any wanting information may also be

collected through such official. In other words no routine survey should be insisted upon in the case of security and labour contractor and the survey should only be conducted in the limited cases as mentioned above and the need for such a survey should be justified and approved by JD/DD. But under all circumstances, it should be ensured that the code no is allotted within 15 days. Further, it is necessary to make it clear that "the registration of a contractor / immediate employer independently under the ESI Act as a shop or as a factory with code no , does not absolve the principal employer of their liability under section 40(1) and section 41. Where necessary, in case of such C-11 issued to labour contractors / security agencies , additional remarks in the form of rubber seal may be affixed in the first page of C-11 to see 'Principal Employers' are not absolved of their liability u/s 40(1) and section 41 of the Act in respect of the employees engaged through a contractor with or without ESI code no.(Hqrs instructions No. P-11/14/ 1/97-Ins IV dtd 3.5.2002).

However, the above instructions have been modified in view of the fact that such security / labour supplying contractors apply for code nos only to participate in the tender and once the code number is allotted to them, either they do not make regular compliance or they are not found at the address given by them in the Form -01. In order to ensure that such contractors make compliance under the Act and register their workers with the Corporation to enable them to avail the benefits under the ESI Scheme, the Standing Committee in its 179th Meeting held on 15.6.2008 has authorised the Director General under Regulation 33 of ESI (General) Regulations 1950 " to accept contributions subject to such terms and conditions as he may impose , at times and in a manner other than those specified in the Regulations". Accordingly, after going through the pros and cons of the issue, Director General has ordered that when such Security Agencies /Labour Supplying Contractors / placement agencies etc. become coverable under Section 1(5) of the Act by employing 20 or more persons and apply for issue of code number in Form -01, it should be submitted along with the list of workers employed, their Declaration Forms along with family photographs as required under Regulation and Bank Draft towards payment of advance contributions for six months in respect of such workers from the date they become coverable. Employer however will recover employees' share of contribution at the time of payment of wages to the individual employees on monthly basis and in no case they can deduct advance contribution from the employees for making advance payment to Corporation. On receipt of Form 01 along with duly furnished Declaration Forms, family photograph and documentary evidence of payment of advance contribution, the Regional Directors / Jt . Directors (I/c) may allot code number to the employer and IP number to the workers immediately and also ensure that Identity Cards are issued to the workers within three days. Further , after issue of code numbers, the unit must be got inspected within a period of three months. (Hqrs instructions No. P-11/14/1/08-Rev II dtd 11.7.2008).

P. 5.5. Survey/Intensive survey guidlines; While the SSO will attend to all the cases of pending survey and C-1 cases as per the records in the Inspectorate/Coverage Section, they will also take up the Survey/

Intensive Survey of all factories/Estts that are likely to attract the coverage under the provisions of the Act. The information regarding the coverable factories/establishments functioning in the area can be collected from all possible sources such as the Office of the Local Factory Inspector, Labour Inspector, Corporation/Municipality/Panchayat, E.P.F. Department, Association of the Employer's, Trade Unions, Tata Yellow Pages in telephone directory etc. The information about the existence of identical coverable units can even be elicited from such of those factories/establishments that have been eventually found coverable under the Act during the Survey /Intensive Survey.

Even as no hard and fast rule can be laid down for conducting the Survey/ Intensive Survey, a few broad guidelines under which the Survey may be undertaken are given below :-

1. While Inspections are generally conducted with prior intimation, surveys are invariably conducted by the SSO/TIO without giving any hint to anyone of his /her visiting the premises. Immediately on entering the premises of the factory/establishment, the SSO/TIO would take a round of the unit and note down the number of persons working , their names, the number of shifts in the unit, nature of activities going on in the premises, places of branch offices, administrative offices etc. that are functioning . Thereafter, the SSO/TIO shall call for the attendance registers and check the same with the list of names gathered during physical verification done by him/her. In case all the names are not entered and omissions are noticed , the SSO/TIO may immediately collect all the particulars of such employees viz: their names, their father's names, age , place and nature of their work , date of employment , length of service , wages received (daily/weekly, fortnightly/ monthly) and obtain the signature of the employees concerned with the signature of one or two witnesses and get the statement so prepared countersigned by the principal employer or his representative together with date and time and seal affixed. The SSO/TIO may try to get these names entered in the attendance register. The SSO/TIO may try to get the statement of the employees who do not figure in the attendance register recorded in the letter head containing the name and address of the unit under survey. In case, however, the employee(s) or the Principal Employer refuses to sign the list, the same should be clearly and unambiguously recorded in the survey report and copy of the same may be sent to the employer by regd post with acknowledgement due on the same day or latest by the following day and the report transmitted to the RO/SRO .If the unit is found prima facie coverable, Employers Registration Form (Form 01) should be handed over to the employer and after getting all the relevant details like: name of principal employer(s),address,nature of activity,no. of persons employed(seperatly for regular & contract) etc,alongwith copies of all the required documents to establish the coverge of the unit, the same should be collected and sent to RO/SRO for allotment of code number vis-à-vis issue of coverage letter It has to be ensured that the particulars filled in the Form 01 are not in variance with the information given in the Survey Report.

NOTE : It must be very clearly remembered that , while the factory falling within the purview of section 2(12) would get covered where 10 or more persons (without any reference to the quantum of wages received with effect from 1st June 2010) are employed or were employed for wages on any day of the preceeding 12 months,and if in any part of which a manufacturing process is carried on or is ordinarily so carried on, the number required for coverage of establishments u/s 1(5) is 20 coverable employees at present. But, very shortly this threshold limit for coverage is about to be brought on par with sec 2(12) of the Act by the State governments by issue of necessary notification u/s 1(5) of the Act by following due process. The effective dates fixed by the Appropriate governments in the notification for the change in the number of persons employed required for coverage of establishments would be the reference date for coverage .

It should also be remembered that for coverage of establishments u/s 1(5) where the "appropriate government" is the State government, 20 coverable employees are taken into account irrespective of whether they are regular , temporary , casual, contract, daily rated, piece rated etc. whereas , for coverage of establishments u/s 1(5) where the "appropriate government" is the Central Government, the 20 coverable employees are to be taken into account belonging to the category " casual and contract only".

2. The verification of records such as Attendance Register, Wages Register, Ledger, Cash Book etc. may be undertaken thereafter and in case the coverage could be established on the basis of records made available, proper references should be got seen and signed by the Inspecting Authority giving cross references to the Page Nos. of the Register Ledger etc. in the Report. Wherever, possible extracts of the records of the employer establishing coverage should be collected on the spot under due attestation by the Principal Employer. In case where the employment position as reflected in the records maintained by the employer vary from the factual position verified physically by the SSO, proper indication with regard to the variation so noticed alongwith names of employees not reflected in the records maintained by the employer should be clearly made. In case any statuary Inspection has been undertaken by the officers of other department, as revealed from the records maintained by the employer, proper reference regarding the number of persons indicated in the records seen by the concerned officer, vis-à-vis the position seen by the Inspector on the date of the survey/intensive survey should be clearly specified. Efforts should be made to note down the names of all employees found in employment at the time of survey/Intensive Survey without giving any scope for the employer to drive away a section of the workers during the course of the survey. In case of power using establishments, name of at least one machinery with its details, such as make, power consumption etc should be brought out in the Report. The basic information such as name and address of the Principal

Employer as available in the factory license, Registration under shops and establishments Act, Local Municipality/Corporation etc. as also the telephone No., Electricity consumption No. etc alongwith source of each such information should be clearly brought out in the Inspection Report.

The following aspects may kindly be kept in mind while undertaking the survey of different types of establishments:

1. In the case of Hotels, Restaurants and Lodges manufacturing foods and/or beverage items. It should be closely examined that no section is artificially separated by seeing the common aspects such as common entrance, common signboard, common telephone, common generator/lift, and other common facilities like lawn, laundry etc. In the cases of big hotels, attempting evasion of coverage, it should be clearly brought out in the Report the Class of Hotel, Viz. Three Star, Five Star etc. types of food served like Indian(Vegetarian and non-vegetarian), Foreign, Chinese, bar the lodging facilities, viz., the number of rooms with A/C Deluxe /A/C and non A/C, provision of lawn etc. The total seating capacity in the hotel with number of chairs, tables etc. along with other luxurious facilities provided by the employer, for purpose of clubbing the lodging house with the Restaurant section, the complementary aspects relating to interconnecting passages, services of food by the Restaurant section to the inmates of the lodging section with common billing arrangements, ownership of the premises alongwith details of lease hood if any, etc. should be brought out in the Report.

2. In the cases of Cinema houses/theaters, employees of the canteen, cycle stand, security etc. particularly during peak hours should be taken into account in addition to the regular employees borne in the records of the employer.

3. While surveying the Branch Office/Sales Office etc. the details of branches all over the country with particular reference to the Head Office should be brought out in the Report.

4. In the case of super bazaars, shopping complex, Financial Institutions, Chits Fund, Non-banking institutions, Private Educational & Medical Institutions, Insurance Business Companies, Non-Banking Financial Companies(NBFC), Port Trust, Airport Authorities and Ware-Housing etc. which are carrying on systematic, economic, or commercial activites and are not only engaged in the sale of commodity, but also in the sale of service to the customers for a price together with

details of Branches functioning elsewhere, should be taken into consideration for purpose of coverage.

5. While drawing of petrol in Petrol Pumps by mechanical power amounts to usage of power in the manufacturing process, the petrol Pumps attached to service stations should be considered together for purpose of coverage. In the case of Transport Establishments, a list of running staff with details number of routes/buses must be taken into consideration, so as to ensure compliance in respect of all the running staff as also the office staff of the establishment.

6. The following Estts. may be covered under sec 1(5) of the ESI Act as "Shop":

   i) The category of Establisments mentioned under Chapter III-Para. L3.14.

   ii) The category of Establisments mentioned under Chapter III-Para. L3.15.

   iii) The category of Establisments mentioned under Chapter III-Para. L3.16.

While undertaking the Survey/Intensive Survey, utmost care should be taken to keep the Principal Employer into confidence by bringing home to him the advantages of coverage under the provisions of the E.S.I. Act, by way of passing over the liability for payment of compensation in the event of employment injury, maternity etc. from the individual employer to the Corporate body of the E.S.I. Corporation, the reduced rate of contribution under the amended provisions of the Act with effect from 01.04.92 etc. In all cases where coverage is established in the course of Survey/Intensive Survey, all efforts should be made to obtain written statement from the employer under his letter head admitting the employment of the requisite number of persons for coverage alongwith usage of power. As far as possible Form 01 should be got completed on the spot under the signature of the principal Employer. In case this is not possible, the acknowledgement of Form 01 handed over to the employer on the spot should be obtained in the letter head of the employer under proper seal and designation of the employer his authorized representative.

The SSO should also give a certificate at the end of the Intensive Survey that all the coverable units in the Zone/Area allotted to them have been properly surveyed and survey of the area is completed. It should be emphasized in this connection that in the event of any factory/establishment coverable under the E.S.I. Act that was in existence at the time of the Intensive Survey but is detected only later will be considered as a serious omission in the part of the SSO.

P. 5.6. Scrutiny of Employer's Registration Form 01 and Survey Report: The Form 01/Survey Report may be scrutinized at R.O/SRO/DO to ensure that the Employer/SSO has filled in all mandatory columns, furnished all material facts and enclosed valid copies of all the supporting documents.

The particulars furnished are to be meticulously scrutinized to ensure that the documents submitted support the information furnished in the Form 01/Survey Report. Whether the number of employees employed, manufacturing process carried out on the premises qualify it for coverage under the Act and whether the location of the factory is in the implemented area are to be clearly found out among various other factors. After satisfying that the form is complete in all respects, the factory/establishment was not registered earlier, and the Act is applicable to it, the appropriate Office may allot a 17 digit code number to the employer as follows:

P. 5.7. Allotment of Code number: The 17 digit code number consists of the following:

(a) First two digits represents the Region Code issuing code or subcode.

Each Region/Sub-Region is assigned with Arabic numerals of two digits beginning with 11 which could go up to 99. It is easy to identify the Region/Sub-Region with the number assigned to it.

Example: Delhi- 11; Tamilnadu- 51; Andhra Pradesh- 52;, Karnataka- 53; Kerala- 54; Sub-Regions: Coimbattore- 56; Madhurai- 57; Hubli-58, Mumbai-31, Marol-35 .

(b) The next two digits represents the Region Code in respect of whom sub code is issued

Each Region/Sub-Region is assigned with Arabic numerals of two digits beginning with 11 which could go up to 99. It is easy to identify the Region/Sub-Region with the number assigned to it.

Example: Delhi- 11; Tamilnadu- 51; Andhra Pradesh- 52;, Karnataka- 53; Kerala- 54;

Sub-Regions: Coimbattore- 56; Madhurai- 57; Hubli-58, Mumbai-31, Marol-35

(c) The next six digits represents the Employer Code (right justified)

The digits from 5^{th} to 10^{th} place (6 digits) are for entering the running serial code number of the employer. This covers 1 Lakh numbers. For writing the number 789, it should be 000789, for 1304 it should be 001304 and so on.

(d) The next three digits represents the Sub Code number of the employer

The next 3 digits are for allotting a sub code number to a sales office/ branch office. For branch –1 in the same region, sub code shall be 001; for branch – 2 it shall be 002 and so on.

For branch – 1 in another region, sub code shall be 001 , for branch -2 it shall be 002 and so on.

(e) The next four digits represents the Industry Code

The 4 digit industry code has been circulated vide Hqrs Letter No. P-11/19/2009-Rev1 dated 3/8/2009 (Annexure – 8)

Allotment of 17 digit employer's code no in different circumstances are illustrated below for clarity :-

eg : 1 Old Code No at Mumbai – 31-36334-64

New 17 digit Code No - 31 00 036334 000 0604

eg : 2 Branch Office / Sales Office in Mumbai

1st Branch : New 17 digit code no – 31 31 036334 001 0604

2nd Branch : New 17 digit code no – 31 31 036334 002 0604

eg : 3 Branch Office / Sales Office at Andhra Pradesh of the main Unit at Mumbai

1st Branch : New 17 digit code no – 52 31 036334 001 0604

2nd Branch : New 17 digit code no – 52 31 036334 002 0604

eg : 4 Branch Office / Sales Office at New Delhi of the main Unit at Mumbai

1st Branch : New 17 digit code no – 11 31 036334 001 0604

2nd Branch : New 17 digit code no – 11 31 036334 002 0604

eg : 5 Branch Office / Sales Office at Marol of the main Unit at Mumbai

1st Branch : New 17 digit code no – 35 31 036334 001 0604

2nd Branch : New 17 digit code no – 35 31 036334 002 0604

P.5.8 Rubber stamps for use by employer:

Employer should be advised to get the following rubber stamps prepared to cut down writing on the declaration forms:

a) Employer's Code No

b) Name and designation of the officer countersigning the declaration form

c) Name, address and Code no of the employer.

P.5.9. Date of coverage:

In view of recent amendment to the ESI Act, which puts a bar on issue of Speaking order u/s 45-A for a period beyond 5 years from the date on which the contribution shall beome payable, the desirability of FDC (Final Date of Coverage) for old cases which fall beyond 5 year period has been examined and it has been decided that in all such cases provisional date of coverage may be accepted as FDC, as no purpose would be served by stretching coverage for a period beyond 5 years.

For the new cases, it has been decided to drop the nomenclature as provisional date of coverage/Final Date of Coverage. The term to be used shall be "DATE OF COVERAGE". During the survey itself, invariably, the SSO shall recommend the date of coverage and not provisional date of coverage. The recommendation should be there from the date the unit is coverable.

In case where Form -01 is submitted by the employer at RO/SRO/DO, necessary information such as details of persons engaged month-wise, certificate of incorporation, inception of power etc. may also be obtained based on which coverage date should be communicated.

Moreover, the above instructions are issued without prejudice to the right of the Corporation to check the records of the past period i.e ledger Balance sheet, vouchers etc in case of any doubt, complaints and court cases etc.

This revised guidelines will be operative from 1st October 2010 with rider that in total, 5 percent of the cases of new coverage may be marked for Test Inspection and monthly return in this regard may be submitted to this office.

Further, all pending cases for FDC may be decided on available papers/ documents by RDs/JD I/cs within next three months time and compliance sent to Revenue division of Hqrs office.

(Head Quarters instruction No.S-11/13/1/1/2009-Rev-II Dated 30/09/2010)

NOTE : If at the time of allotment of code number, the unit gets covered from the date of implementation of the Act itself or if the documents provided with Form 01 conclusively establish the date of coverage ,then the coverage section of RO/SRO/DO should decide it as the DATE OF COVERAGE at the time of allotment of code number.

P.5.10. Communication of coverage intimation to the employer and all others concerned:

Seven copies of the Coverage intimation (in form C-11) are prepared and communicated to the following :

1. Employer (main copy)

2. Company / Factory (main copy)

3. Concerned Branch Manager-ESIC (endorsement)

4. Social Security Officer of the concerned I.O. (endorsement)

5. Challan Posting / C-6 Branch of R.O/SRO/DO (endorsement)

6. Inspection Control Branch of R.O/SRO/DO (endorsement)

7. EDP Branch of R.O/SRO/DO (endorsement)

P.5.11. Back references on the form O1: There may be instances where the Form 01 is not properly or completely filled in, necessitating a back-reference calling for clarification/further information. Such cases are to be followed up vigorously to get the particulars so that a coverable unit does not remain uncovered for a long time. They should be pursued to its logical conclusion within 15 days and delayed and incomplete cases should be monitored by the BO personally and take special steps to clear them. . The address of the employer is to be filled in and the discrepancies to be rectified are to be ticked before sending the letter to the concerned employer.

P.5.12 Registration of employees at the Branch Office: On receipt of the Declaration Forms from the Regional Office, along with the coverage intimation, the Branch Office shall allot the insurance number and issue temporary identity cards to the employees directly to their addresses, as per the procedure laid down in the Branch Office Manual. Thereafter, action for providing pehchan cards to the IP and his

family is initiated by the Branch Manager. The Insured person along with his family will be required to visit the Branch Office or any other place fixed for this purpose for capturing the biometrics and photographic details for preparation of the Pehchan Cards.

P.5.13 Online Registration: An employer who desires to submit his Registration Form 'online', may login to ESIC Website www.esic.in and click on 'on line application. He will be prompted to furnish his Email ID and the State in which the Factory/Establishment is located. He may furnish these details and click on 'submit'. On receipt of these details, the employer is provided with a user ID and password. By logging in to the website with his user ID and pass word for employer registration, the employer can fill-in the Form-01 available in the website, and submit the same online along with the scanned documents required for this purpose. On receipt of the Form-01, the Regional Office issue a code number and communicate the coverage intimation and code number to the employer through the Email ID provided by him.

P.5.14 Procedure for registration of employees under the I.T. Rollout: Along with the Code number allotted, the employer will be allotted a user ID and pass word to login themselves into the official ESIC website for registering their employees, pay contributions, submit the returns etc.

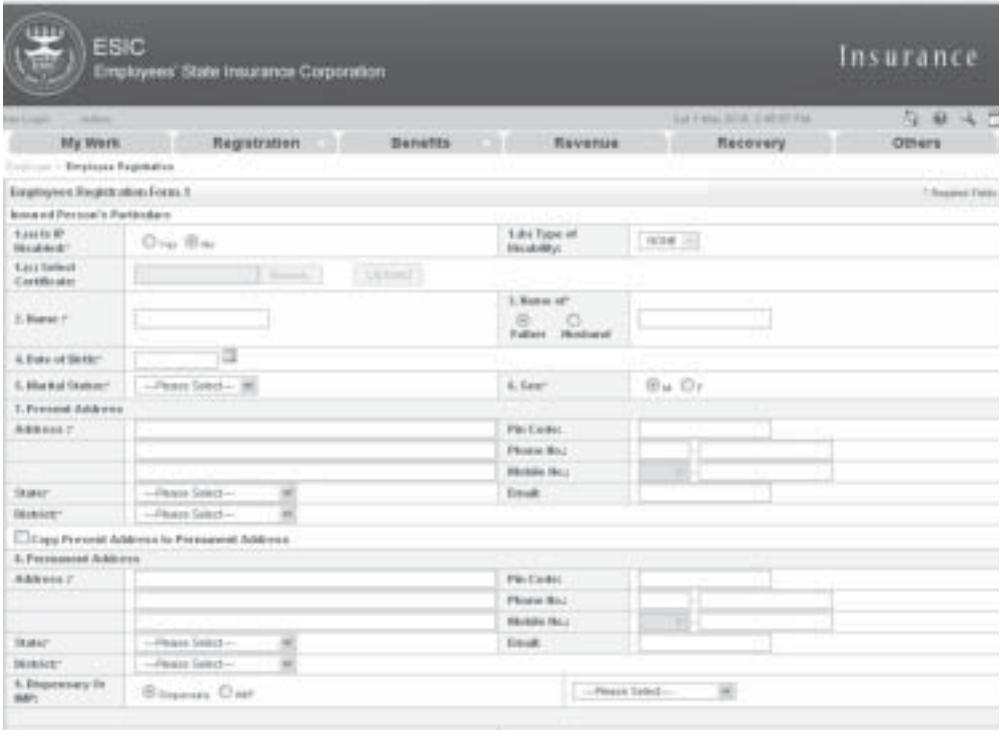
THE PROCEDURE FOR REGISTRATION OF EMPLOYEES UNDER THE COMPUTERISED PROCESS WILL BE AS FOLLOWS:-

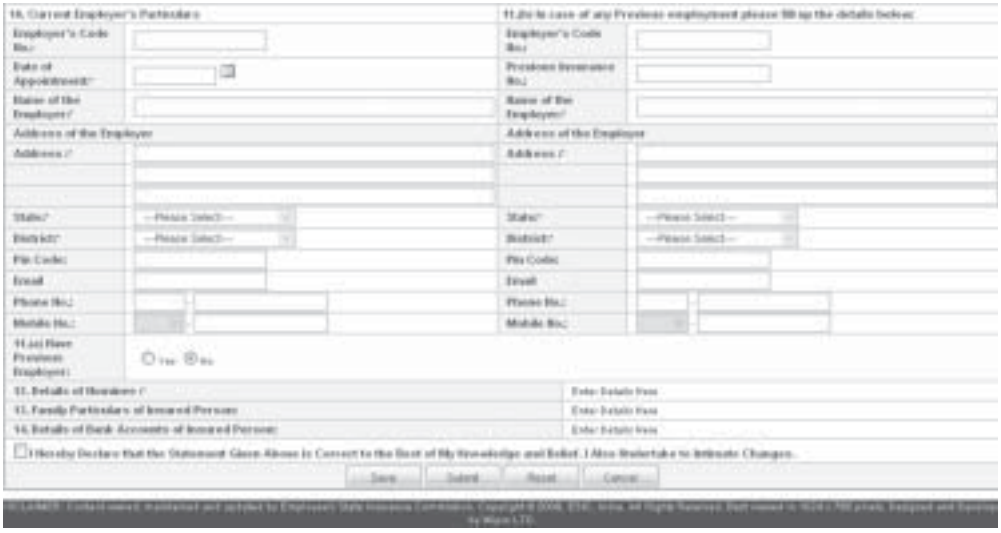
- The Employer will log into the official website of ESIC www.esic.in
- The Employer will log in as Employer using the Login User ID/Password
- On entering the user ID and Password the Employer will be directed to the Employer landing page.
- On this page Employer will have to click Registration > Register your Employees link
- A screen as follows will appear.



- On clicking as above the Employer will be directed to Employee Registration Screens.
- The Employer will be required to fill in all the fields; however mandatory fields marked with red asterisk are must to be filled.

EMPLOYEE'S REGISTRATION FORM (DECLARATION FORM)





Save – To save the entries in this screen

Reset – To clear the entries made in this screen

Cancel – To cancel the entries and go back to the landing page

Submit – For submission of the application

Registration of Employees with disability: In case of an employee who is a person with disability(40%) under the Persons with Disabilities (Equal Opportunities , Protection of Rights and full Participation) Act,1995 (1of 1996), and under the Nation Trust for Welfare of Persons with Autism, Cerebral Palsy , Mental Retardation and Multiple Disabilities Act , 1999 (44of 1999) and drawing wages upto Rs.25000/ - per month (excluding O.T.) and where the employer wishes to avail the incentive under the scheme for employment of Disabled Employees, a medical certificate as per the prescribed Proforma will be required to be uploaded. .

- Generating Insurance Numbers: On successful completion of the Declaration Form the same can be submitted and 10 digit Insurance No will be automatically allotted.
- The Employer will be able to take a printout of Code allotment letter and can also generate the insurance numbers and take the print out of the Temporary Identity Certificate for the Insured Persons. A family photograph will be affixed on the designated space in the Temporary Identity Certificate and countersigned by the Employer for getting treatment till the Pehchan Card is delivered to the Insured Person.
- The Insured person along with his family will be required to visit the Branch Office of his choice or any other nearby place as directed by the Corporation for capturing the biometrics and photographic details for preparation of the Pehchan Cards.

P.5.15. Registration of employees employed by or through an immediate employer or a contractor : In case the immediate employer is independently covered and having a code number, the immediate employer himself will submit the declaration form for his employees and obtain the insurance numbers/identity

cards. However, before taking such employees by the principal employer, he should ensure that the employee engaged through the immediate employer is duly registered and possesses the insurance number/ identity card. Otherwise, he should insist on the immediate employer for registration of such employees before deploying their services to the principal employer. If the immediate employer/contractor is not coverable under the Act, then the responsibility of registration of employees engaged through such unregistered immediate employer/contractor lies with the principal employer. He should register all such employees in the usual manner as if they are his own employees and obtain the insurance numbers/ temporary and permanent identity cards.

P.5.16 Registration of employees of Head Office/Branch Office/sales office/Administrative office away from the factory/establishment premises.

The employer is required to obtain a sub-code number for each such office outside his Factory/ premises whether in the same city, State or else where.

1. Within the state where main factory / establishment is covered :

The employer has to apply for a sub-code no. to the Regional Office /SRO/DO by furnishing full particulars of the branch i.e. its locations, nature of activity, Head of the Office, number of employees (coverable and not coverable), date from which functioning place of compliance, place of maintenance of records etc.

2. Outside the state where main factory / establishment is covered :

The employer has to apply for a sub-code no to the RO/SRO/DO of the state where the BO/SO is located by furnishing full particulars of the branch, nature of activities, Head of the Office, number of employees (coverable and not coverable), date from which functioning place of compliance, place of maintenance of records etc alongwith copy of coverage letter(C-11) of the main factory/establishment. However, in case the employer is unable to produce any local address as they are not having any established office in that area and the employee(s) posted in such areas do not have any permanent address in that area as they are reported to reside in areas other than their place of working. Whether falling in implemented or non-implemented area, the employer may be asked to submit the address of the nearest / immediate controlling office which will ensure the compliance in respect of the employee(s) of such areas. The person responsible for compliance will be designated by that controlling office. Similarly in declaration form of employee(s) so covered the residential address as declared by the employee(s) should be accepted.(Hqr's instructions no. P-12/11/31/21-99-Ins-IV dtd 01/05/2000 and subsequent instructions no P-12/11/31/21-2008-Rev-II dtd 31/12/2008.)

NOTE: However, in order to avoid delay in issues of sub- code ,it is decided that the name,address and code no. of all registered employers should be posted on the website of respective regions & sub-code no. Should be allotted even if C-11 form(Coverage letter) is not available by referring to the website of the region from where main code no. is allotted .The concerned RD/JD(i/C) may be asked to send the copy of C-11 for record after allotment of sub-code no. (Hqrs. Letter No; P-12/11/11/103/2008-Rev II dated;12/ 01/2011)

P.5.17 Action at Regional Office/SRO : On receipt of letter from the employer requesting for a sub-code number, the Regional Office/SRO scrutinizes the particulars furnished by the employer and if found in order, verify the sub-code numbers if any allotted to that employer earlier, and allot the sub code as detailed in the illustrations given under P.5.7.

The sub-code number allotted may be intimated to the Main factory, branch /sales office, of the employer, other Regional Office, concerned branch office, and the Social Security Officer concerned for submission of declaration forms, watching submission of the declaration forms & their registration and inspection of records of the sales office respectively. .

P.5.18 Court decisions on Regulation 10-B:

1. According to Regulation 10-B (b), the employer shall be responsible for the correctness of all the particulars and information required for and furnished on the Employer's Registration Form (Form-01). The employer cannot dispute its correctness at a later date. In the instant case, the employer furnished 11 employees in the Form-01 and obtained the code number. Later he disputed this figure and contended that his factory is not coverable. Dismissing the order of the EI Court, the AP High Court held that the employer's contention against the figures furnished by him in form-01 has no merit, and upheld the claim of the Corporation for payment of contributions. *(ESI Corporation, Hyderabad v. M/s Ganapathi vilas, Buttaipet, Machilipatnam, Andhra Pradesh.-2007(3) LLJ.1078, 2007(4) LIC.198)*

2. An identical judgment was given by the *Karnataka High Court in RD, ESIC v. M/s Ganesh Mahal-2007(1) LIC.32; 2007(1) AIR.Kar.R.137)*

3. Failure of the employer to submit the Form-01, not a ground to take shelter for non- payment of contribution with in the time limits prescribed.-

The pre-condition for allotment of a code number by the Regional office under Regulation 10-B(d) is the submission of a completed Form-01 to the appropriate office by the employer within 15 days after the Act becomes applicable to the factory or establishment as the case may be under Regulation 10-B(a). In the present case, even after receipt of the code number allotted by the regional Office, the employer entered in to unnecessary communication with the regional Office for supply of challan and requisite form. There is further communication on various dates by the employer. The Calcutta High Court observed that the employer tried to frustrate the operation of law by entering in to various communications with the Corporation, and therefore the employer cannot be permitted to take the plea that in view of the delayed allotment of code number, he was not in a position to deposit the contribution in time. To accept such proposition will be to defeat the very purpose of the Act. When the employer failed to furnish the Form-01 within 15 days kin terms of Regulation 10-B(a), he cannot be permitted to take shelter on the various communications made to the Corporation, as a bonafide ground for non-deposit of contribution within the period as required under law. The High Court therefore dismissed the judgment of lower court and upheld the claim of the Corporation. *(ESIC v. M/s Jaiswal Rolling Mill-2008(2) LLJ.1021; 2008(1160flr.1060; 2008(3) LLN.256; 2008LLR.606 and 2008(2) LIC.1155)*

CHAPTER VI

COVERAGE OF EMPLOYEE

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CHAPTER VI

COVERAGE OF 'EMPLOYEE'

INTRODUCTION: The preceding chapters explained how to register the Factories and Establishments under the ESI Act and secure a code number for making compliance under the Act. The statute thereafter places the mandatory responsibility on the Employer to register all the employees. Section 38 postulates that all the employees should be insured in the manner prescribed.

Section 38: Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

L.6.1 The term 'employee' is defined under Section 2(9) as follows:

Any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies; and

(i) Who is directly employed by the Principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) Who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) Whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered in to a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment;

or any person engaged as an apprentice, not being an apprentice engaged under the Apprentice Act, 1961(52 of 1961), "and includes such person engaged as apprentice whose training period is extended to any length of time." (These words in inverted commas were substituted vide ESI (Amendment) Act, 2010 (No.18 of 2010) with effect from 1st June, 2010 for the words "or under the standing orders of the establishment")

But does not include—

a) any member of the Indian naval, military or air forces; or

b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government.

Provided that an employee whose wages excluding remuneration for overtime work exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

L.6.2 The Act mandates the Employer of the Unit to comply with all the provisions of the Act. Regulation 2(g) further amplifies that Employer means the Principal Employer as defined in the Act. The term 'Principal employer' and 'immediate employer' appearing in the above definition are explained below.

(i) PRINCIPAL EMPLOYER: (Section 2(17))

(A) In the case of a factory: (any of the following)

(i) Owner;

(ii) Occupier;

(iii) Managing Agent of the owner or occupier;

(iv) Legal representative of a deceased owner or occupier;

(v) Manager of the factory under the Factories Act, 1948 (63 of 1948) if any person is named as such.

(B) In the case of Establishments under the control of Government of India:

(i) The Authority appointed in this behalf.

(ii) The Head of the Department (In the absence of specified Authority).

(C) In the case of other establishments:

Any person responsible for the supervision and control of the establishment.

(ii) IMMEDIATE EMPLOYER: (Section 2(13))

Any or all of the following:-

(i) A person who undertakes to execute any work inside the premises of the principal employer of a factory or establishment;

(ii) A person who undertakes to execute any work of the principal employer of a factory or establishment which is ordinarily part of the work of the factory or establishment or is preliminary to the work carried on in, or incidental to the purpose of, such factory or establishment, outside the premises under the supervision of its principal employer or his agent;

(iii) A person who lets on hire the services of his employees to the principal employer of a factory or establishment; and

(iv) A contractor.

L.6.3 The wage limit to be prescribed by the Central Government under section 2(9)(b) of the Act for the purpose of coverage as an employee is fixed under Rule 50 of the ESI (Central) Rules, 1950 and this limit is raised from time to time as given below.

From 19th April 1948 to 27th Jan. 1968 Rs. 400/- a month;

From 28th Jan. 1968 to 29th Nov. 1975: Rs. 500/- a month.;

From 30th Nov. 1975 to 26th January 1985 Rs.1,000/-a month;

From 27th Jan. 1985 to 31st March 1992 Rs.1,600/- a month;

From 1st April 1992 to 31stDecember 1996 Rs. 3,000/- a month;

From 1st Jan.1997 to 31st March 2004 Rs. 6,500/- a month;

From 1st April 2004 to 30th Sept. 2006 Rs. 7,500/- a month;

From 1st October 2006 to 30th April 2010: Rs. 10,000/- a month; and

From 01-5-2010 onwards: Rs. 15,000/- a month.

Wage limit for coverage of employees with disability: (Second proviso to Rule 50 of the ESI (Central) Rules, 1950).This new provision has been introduced from 1-4-2008.

The wage limit for coverage of an employee with disability shall be Rs. 25,000/- a month. (Twenty five thousand rupees a month).

L.6.4 In order to qualify to be an 'employee' under the Act, a person should be employed in any of the following categories.

1) Those who are directly employed for wages by the Principal employer of a factory or establishment within the premises or outside;(thus, if he is directly employed by the principal employer the employee can be either working inside the Unit or anywhere outside)

2) Those employed for wages by or through an immediate employer in the premises of the principal employer of a the factory or establishment or when employed outside under the supervision of the principal employer or his agent;(if employed through an Immediate Employer outside the premises of the Factory there must be an element of identifiable supervision of the Principal Employer or his agent)

3) Employees whose services are temporarily lent or let on hire to the principal employer of a factory

or establishment by the person with whom the person whose services are so lent or let on hire has entered in to a contract of service; .

In all the three categories, they should be employed for wages in or in connection with the work of, or incidental or preliminary to or connected with the work of, the factory or establishment to which the Act applies.

The above provisions shows that for a person to be termed an employee, the following characteristics must exist qua his service conditions:-

1) He should be employed for wages;

2) Such employment must be in or in connection with the work of the factory or establishment to which the Act applies or incidental or preliminary to or connected with the work thereof.

3) He must be employed directly by the principal employer on the premises of the factory or outside; or through an immediate employer on the premises of the factory or establishment or outside under the supervision of the principal employer or his agent; or his services are lent or let on hire to the principal employer by a person with whom he entered in to a contract of service.

Exclusions are:

(1) An Apprentice engaged under the Apprentice Act 1961. Consequent to the Amendment to the Act in 2010, only the Apprentices covered under Apprentice Act 1961 are not coverable as employees under the Act. Apprentices engaged under Apprentice Act whose training period is extended to any length of time and all other trainees working under the Standing Orders of the companies are coverable as employees.

(2) Any member of the Naval, Military or Air forces and

(3) any person whose wages exceeds R.15,000/- a month (from 1-5-2010) or Rs. 25,000/- a month in respect of an employee with disability (from 1-4-2008).

The most crucial part of the Statute "on any work of or ordinarily part of the work of the factory or establishment or connected with the work of, or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment has been examined and analysed at great length by several Courts including the Supreme Court and in a land-mark judgement i.e. in the famous Royal Talkies case it was opined that the expressions used are so far reaching and all embracing that they are designed to cover all the persons who are employed on any work even if it is remotely or loosely connected with the purpose or objective of the factory . It was emphatically highlighted that the philosophy and the intent of the Statute was to provide the benefits of the Social Security Legislation to all sections of

workers. Taking Cue from this historical judgment several Courts have upheld the coverage of vast sections of workers and some of them are illustrated in the foregoing paras.

Here are the excerpts of the judgement:

"The expression {in connection with the work of an establishment} ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. The expression only postulates some connection between what the employee does and the work of the establishment. …. He may not do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment…..

The language used extensive and diffusive, imaginatively embracing all possible alternatives of employment by or though an independent employer."

Some nexus must exist between the establishment and the work of the employee, however loose the connection may be ……A thing is incidental to another if it merely appertains to something else as primary and not as extraneous or contrary to the main purpose

Sec.2(9) (i)covers cases of employees who are directly employed by the principal employer .The language used in this clause and expressions used therein also include employees other than traditionally so regarded" *Bhopal Motors V ESIC 1983 LIC 282 (MP)DB:1982II LLN 837.*

These illustrations show the Courts' views about the liberal interpretation of the statute in holding that all cross sections of employees whether directly employed or by an Immediate Employer are to be provided with all the benefits of the Act.

L.6.5 Thus, all categories of employees, regular, casual, Badli, substitute, temporary; contract etc. come under the covered category. Employees engaged on loading, unloading, movement of material, gardening, Guest house maintenance, house-keeping, watch & ward, security, cleaning, civil constructions, repairs and maintenance of Factory buildings, machinery, plant, furniture and other equipment, etc., either engaged directly by the principal employer or by or through a contractor/immediate employer stand covered. Part-time employees on contract of service also stand covered.

L.6.6 If the contractor/immediate employer's employees are engaged on any work of the factory or establishment outside its premises, the supervision of the Principal employer or his agent must be established, while in the premises, it is implied. The onus of establishing the element of supervision squarely rests on the Corporation . It has been the experience of the Corporation that several Courts have upheld the coverage wherever the element of supervision was reasonably established and wherever it was vague and not logically linked the courts had ruled against it.

L.6.7 Even the paid Directors of a Company drawing remuneration within the wage ceiling limits are employees. The Hon'ble Supreme Court while allowing the appeal in *C.A. No. 3411 of 1996 held on 6th November 1997 in the case of M/s Apex Engineering Pvt. Ltd.*, that the Managing Director who was entrusted with the work of Managing the affairs of the Company on a remuneration of 12,000 p.a. i.e. Rs. 1000/- p.m. is an employee. This judgment was communicated by Hqrs. Office vide letter No. T-11/13/23/20/75-Ins.IV dated 4-3-1998. (1997(77) FLR.878)

However, a proprietor, a contractor, and the partners of a firm are excluded from the coverage even if they are in receipt of any remuneration. (It was held by the Supreme Court that a partner of a firm even drawing remuneration cannot be termed as an employee.- *M/s Ramanuja Match Industries-1985 AIR S.C.278, 1985(1) LLJ 69, 1985(66) FJR. 108*

L.6.8 In all these cases, the wages of an employee should not exceed Rs. 15,000/- a month (from 1-5-2010) and in case of an employee with disability, Rs. 25000/- a month (from 1-4-2008).

Computation of wages for the purpose of wage ceiling is done as follows:

1. Time rated employees:

   a) Monthly rated: - The amount of wages (excluding remuneration for over time work) fixed by the employer as monthly rate be reckoned as the wages for a month.

   b) Other categories of time rated employees: i.e. fortnightly, weekly or daily rated employees:

   c) The average daily wages** may first be worked out and then multiplied it by 26 to get the monthly wages.

(Hqrs. Instruction No. 1/99 under letter No. P-11/14/96-Ins.IV dated 02-2-1999, and Rule 2 (1-B) of the ESI (Central) Rules read with rule 50 thereof)

**Average daily wages: The amount of wages which would have been payable to him for the complete wage period had he worked on all the working days in that wage period divided by 13 if he is fortnightly rated, 6 if he is weekly rated and by 1if he is daily rated. (Rule2 (1-B) of ESI (Central) Rules, 1950.

2. Other basis: (Piece rated): The amount of wages earned during the complete wage period divided by the number of days in full or part for which he worked for wages in that wage period and then multiplied by 26 to get the monthly wages.

In both the cases, if the average daily wages exceeds Rs. 576.92 (15000 divided by 26) he is not coverable.

L.6.9 Continuance of coverage during the currency of the contribution period:

If the wages of an employee (excluding remuneration for overtime work) exceeds the wage limit prescribed by the Central Government in the middle of Contribution Period after April or October i.e not

at the beginning of the contribution period but in the middle of the Contribution Period he continues to be an employee till the end of that contribution period i.e. September and March respectively and contribution is payable during this period on the total wages including the remuneration for overtime work.

L.6.10 Effect of retrospective increase of wages: In case the wages of an employee is increased from a retrospective date resulting in his crossing the wage limit prescribed, the employee will not go out of coverage till the end of Contribution Period in which such increase are announced . In other words, he continues to be an employee even though his wages has crossed the ceiling limits for coverage till the contribution period ends. The contribution on enhanced wages is however, payable from the month in which such increase is announced/declared/wage settlement made. There is no need to pay the contribution on the arrears prior to the month of declaration/announcement

L.6.11 Excluding overtime for determining the wage ceiling for coverage of an employee under the proviso to Section 2(9) of the Act.

Overtime wage is not a regular type of payment as it does not conform to any fixed pattern and quantum of payment, but it is of an incidental nature. If overtime is also taken for wage limit for coverage of an employee, he may be going out of coverage for some time and again coming within the orbit of the scheme, when overtime is not there. This frequent interruption from the scheme deprives him of the benefits admissible under the scheme even after making payment of contribution for part of a contribution period. To ensure continued security and protection, overtime is excluded for determining the wage ceiling for coverage of an employee. However, it is included for payment of contribution to cover the risk during the period he was on overtime work, and to enable him to draw the cash benefits at the rates corresponding to his wages and the OT Wages on which contributions were paid .

L.6.12 <u>CONTRACT OF SERVICE AND CONTRACT FOR SERVICE:</u>

The broad principles recognized by the Courts are: 'Master and Servant relationship'. The servant is one who is subject to the command of the master as to the manner in which he should do his work. This implies-

i) He is bound by the discipline and managerial controls of the employer;

ii) The master has the right to direct the method or manner of work and to control and supervise his work ;

iii) The master's right to choose the person;

iv) The payment of wages and other remuneration; and

v) Master's right to disciplinary control like suspension, dismissal or any other punishment.

Case law: Master-servant significance:

1. 'Whether in a given case the relationship of master and servant exists is a question of fact which may be determined on a consideration of all materials and relevant circumstances having a bearing on that question. In general, selection by the employer coupled with payment by him of remuneration or wages, the right to control the method of work and power to suspend or remove from employment are indicative of the relation of master and servant. But coexistence of all these indicia is not predicated in every case to make the relation of master and servant. In special classes of employment a contract of employment may exist, even in the absence of one or more of these indicia. But ordinarily the right of the employer to control the method of doing the work and the power of superintendence and control may be treated as strongly indicative of the relation of master and servant, for that relation imports the power not only to direct the doing of the work but also the power to direct the manner in which the work is to be done. If the employer has this power, prima facie; the relation is that of a master and servant. *(Supreme Court's decision dated 9th March, 1964 in civil Appeal No. 120 of 1963 between U.P.Govt. and Audh Narain Singh and another- Vol. 5 of Supreme Court Judgments 1950-67* pages 3163 to 3169)

2. The distinguishing characteristics of contract of service against a contract for service are (1) The existence of relationship of master and servant and (2) Applicability of Labour laws. *(Judgmenet of Madras High court in A.A.O. No. 2 of 1976 dated 29th June, 1978 between Sagsons Chemical Co. and ESIC, Tamilnadu)*

3. There may be engagements which may not amount to service and so long as it is not service by one under another, there is no question of a relationship of a master and servant calling for coverage under the Act. *(Kerala High court between ESIC Trichur and The Ayurvedic Industrial Co-operative pharmacy, Phuturu- 1980(1_ LIC 557; 56 FJR, 53. There was a similar judgment in ESIC v. United electricl Industries Ltd., -49 FJR.453)*

Employment and engagement- Comparison:

The Delhi High Court held that 'employment' denotes a larger concept than what is denoted by

the term 'engagement'. Employment connotes a master and servant relationship and a concept of non-casual service. Engagement connotes a casual engagement, casually made for a casual work. Many instances can be envisaged where a person does work for another without entering in to his service, and on the basis merely of contract to carry out such work. No doubt, service is also a contractual relationship, but where there is no case of a person entering in to the service of another, employer-employee relationship does not come in to being. For instance, a porter undoubtedly works for a passenger for wages, but he is not employee for the passenger whose work he does. Similarly, a plumber called in to repair is no doubt paid for his work but for that reason he does not either enter in to a contract of service or employment. …… The other facet of disciplinary control would be 'supervision' which was highlighted by the majority view in *Calcutta Electricity Supply Corporation and others vs. Subhash Chandra Bose and others (1992(1) L:LN. 353 (S.C.).(Indian Oil Corporation Ltd., and another v. ESIC-2009)1)LLJ.364; 2008(3) LIC.2921; 2008 LLR.1070; 2008(119)FLR.184; 2009(1) LLN.424)*

Before deciding whether an employee is on contract of service or contract for service, his nature of job, timings, general conditions of work , supervision and control of the employer, remuneration, leave with wages, paid holidays, payment of bonus, coverage under EPF and deduction of PF contribution, deduction of professional tax and income tax, sanction and payment of long term advances etc, is to be examined. Generally, the Courts have opined that if the work is done by different persons working under him at different points of time and not a particular person, the same is a Contract for Service. For example : in a Service contract of Air Conditioner someone is sent for servicing each time and no fixed person is sent. Similarly, Auditing of Accounts by a Chartered Accountants Firm, Consultancy services rendered by Professional Tax Consultants ,Technical Professional Consultants are examples of Contract for Service. These will serve as guidance in deciding the cases .

A part-time doctor employed in ambulance room as required under the Factories act, is an employee. *(Madras High court in the case of T.I. cycles of India v. ESIC Madras- 1977(2) LLJ 223; 1977 LIC. 1335, 1977(1) MLJ. 5*

L.6.13 Annual service contracts: Normally, the work done by the contractor's employees within the premises of the factory is deemed to have been supervised by the principal employer or his agent. However, technical experts deputed by outside firms for servicing or repairing the machinery or equipment etc. as a part of 'Annual service Contract' are to be considered as employees on 'contract for service'. Their work can not be supervised by the principal employer or his agent in the absence of the required technical expertise. Hence such employees are not to be considered for coverage.

L.6.14 JOB WORKS THROUGH CONTRACTORS/IMMEDIATE EMPLOYERS: The Principal employer of a factory or establishment may entrust certain works relating to the factory or establishment to the immediate employers/contractors. This work may be inside the premises or elsewhere. If the work is inside the factory or establishment, the supervision of the principal employer is implied. However, for

the works done outside the premises through the employees of the immediate employers/contractors, the supervision of the principal employer or his agent is to be established. These immediate employers may again be of two types. Those who are already covered independently under the Act and possessing their employer's code number and others not covered under the Act, as they are not employing the requisite number of persons to come under the provisions of the Act. Coverage of employees employed through such immediate employers/contractors in each category is explained below.

A) Job Work done inside the factory/establishment premises through Contractors/Immediate Employers having Independent Code Numbers:

Under this category, contribution is not to be claimed from the Principal Employer in respect of the employees of the Job Contractors / Immediate Employers who are independently covered. In this category the supervision is implied. However, at the time of inspection, the Social Security Officer will verify the records of the Principal Employer in respect of Contractors/Immediate Employers required to be maintained by the Principal Employers, according to the provisions of Section 41(1 A) and Regulation 32 (1) (a) and bring the facts in his report. (The BO (Revenue) shall forward the report of the SSO to the concerned Revenue Branch Officer under whom the code No. of the immediate employer is dealt with for cross examination of compliance against the executed value / work order for which inspection was conducted.)

B) Job work done inside the factory premises through contractors/immediate employers not having independent code numbers:

Employees of the Job Contractors/ Immediate Employers who are not having independent Code Number, but working in the factory/establishment of the Principal Employer is coverable and the compliance is to be made by the Principal Employer. Under this category supervision is implied. Compliance is to be made by the Principal Employer in respect of coverable workers of the Contractors/Immediate Employers. The Social Security Officer will verify the records maintained by the Principal Employer in respect of Contractors not having independent Code Nos. (The Revenue Branch Officers shall keep this in view at the time of passing 45-A order)

C) Job work done outside the factory/establishment premises through factories/establishments which are having independent code numbers:

Under this category, compliance is to be made by the factories / establishments having separate Code Numbers. Supervision by Principal Employer is not involved under this category. Social Security Officer will ensure the quantum of the work done by the outside factories/establishments independently covered with reference the Gate Passes, Return Gate Passes, Challans and bills, etc., prepared for sending the material outside the Principal Employer's factory/establishment and returning back after the job work. Principal Employer is required to keep the Code Number of such factories / establishments from which he gets the job work done. The Social Security Officer will collect this information from Principal Employer

/ from his records and reporting. (The BO (Revenue) shall forward the report of the SSO to the concerned Revenue Branch Officer under whom the code No. of the immediate employer is dealt with for cross examination of compliance against the executed value / work order for which inspection was conducted.)

D) Job work done outside the factory/establishment premises through factories/establishments which are not having independent Code Nos. but the supervision being exercised by the Principal Employer:

Employees engaged in jobs outsourced by the Principal Employer to outside factories/establishments which are not having independent Code Nos. but such outsourced job is being undertaken under the supervision of the Principal Employer or his agent are to be covered under Section 2 (9) (ii) of the Act. In this case also compliance in respect of employees engaged in such work is to be made by the Principal Employer. (The SSO has to clearly bring out supervision exercised by the Principal Employer in his report and the Revenue Branch Officer will elaborate this aspect in 45-A order)

SUPERVISION DEFINED

Although the degree of control and supervision would be different in different types of industries, the following parameters for construing supervision will be kept in view:-

i) The right to control the manner of work is not the exclusive test for determining the relationship of employer and employees. It is also to be considered as to who provides the equipment. The fact that the sewing machines on which the workers do the work, generally belong to the employer, is an important consideration for deciding that the relationship is that of Master and Servant. The degree of control and supervision would be different in different types of business. If an ultimate authority over the worker in the performance of his work resided in the employer so that he was subject to the latter's direction that would be sufficient. This has been held by Hon'ble Supreme Court in the case of *M/s. Silver Jubilee Tailoring House and others Vs. Chief Inspector of Shops and Establishments* (AIR 1974: SC 37)

ii) However, in the case of *M/s Calcutta Electric Supply Company Limited vs. Subash Chandra Bose and others (Civil Appeal Nos. 3197-98 of 1988: SC-1992(1) LLN.353 (S.C.,) AIR 1992 S.C.573),* it was held that checking of the work after the same is completed and the supervision of the work while it is in progress is not the same. The right of the Principal Employer to reject the finished product after the work is over would not alone constitute supervision. The 'supervision' has to be established while the work is in progress. In case where the employee is put to work under the eye and gaze of the Principal Employer, or his agent, where he can be watched secretly, accidentally or occasionally, while the work is in progress so as to scrutinize the quality thereof and to detect faults therein, as also put to timely remedial measures by direction given, finally leading to the satisfactory completion and acceptance of work amounts to supervision, for the purpose of Section 2 (9) of the Act.

iii) *The Hon'ble High Court of Madras in its judgment dated 9-1-2003 in the case of Ms. Poonam Easwardass, Proprietrix of M/s Kaleel Corporation* held that the 'control over the employees of the

immediate employer by the principal employer need not be direct day to day supervision. It would be sufficient if the employer has the right to direct the employee to rectify the defects which would establish that there exists an element of control and supervision as formulated by the decision of the Supreme Court. The SLP filed by M/s Kaleel Corporation was dismissed by the Honorable Supreme Court.

However, these parameters are illustrative in nature and the Social Security Officer will examine the process of outsourcing in each case based on the spot' verification as well as verification of records so as to ascertain the factual position. Regional Office may also examine each case on the facts furnished by the SSO/employer.

E) Job work done outside the factory premises through units engaging less than 10/20 persons.

This category of employees is coverable under Section 2(9) (i) of the Act as this amount to 'notional extension of factory premises'. In this category the supervision is implied. Employer has to maintain a record under Section 41 (1 A) and Regulation 32 (1) (a). Social Security Officer will verify this aspect at the time of inspection for necessary reporting. (The SSO should verify this aspect at the time of inspection and should bring out the same in his report so as to enable the Branch Officer (Revenue) to repeat the same in 45-A order)

F) Job work done outside the factory/establishment premises through factory/establishment engaging less than 10 / 20 employees which are not independently coverable, and where no supervision is exercised and who are undertaking the work for more than one employer

The employees of such Job Contractors are not coverable under 'the provisions of the Act. Social Security Officer will verify the details of such employees for necessary reporting. (The SSO shall collect the details of such employees in his report, which will be subject to cross examination)

G) Job work done outside the factory premises through Contractors/Immediate Employers who perform the work through Home workers or works in non-implemented areas:

The employees falling in this category are not coverable. Social Security Officer will verify and report the details in his report. (Headquarters' letter No. P-12(11) -11/83/05-Rev.II,dated 25th October, 2007)

NOTE: For the purpose of verification and inspection, the details in respect of the above 07 categories of employers/employees should be obtained by the SSO from the Principal Employer in proforma prescribed in Annexure – 9 and shall be attached with the inspection reports. The Revenue Branch Officer shall scrutinize the information provided in Annexture – 1 attached with the report of SSO to arrive at a conclusion/take further necessary action. (Hqrs Office instructions No. P-12(11)-11/83/05-RevII dated 25/10/2007)

L.6.15 COVERAGE OF CONSTRUCTION WORKERS ENGAGED IN A COVERED FACTORY/ ESTABLISHMENT DIRECTLY OR THROUGH A CONTRACTOR:

(1). Employees engaged on the following items of construction work are coverable.

a) Additional buildings constructed within the premises/precincts of already covered factory / establishment for the purpose connected with that factory/establishment.

b) Guest House, Residential accommodation, canteen or club or dispensary for employees of the factory/ establishment within the premises/precincts of already covered factory/establishment, but does not include the construction place of worship (temple) and school building.

c) The work of maintenance/repair including whitewashing, painting etc. of a factory/establishment.

d) Repairs and maintenance work of a residential accommodation/staff colony situated outside the factory/establishment if such work is supervised by the principal employer or his agent.

(II). The employees engaged directly or through a contractor on the following items of work <u>are not coverable.</u>

a) On building constructed within the premises/precincts of already covered factory/establishment but not utilized for the expansion of the factory/establishment and the said building is rented out/sold to an outside party may be even for residential purpose. The Inspector (Social Security Officer) should examine and refer all such cases with full facts and his recommendation to the Regional Office for suitable decision.

b) Another building for the factory/establishment away from the present premises/precincts of a factory/ establishment already covered, the employees engaged for the construction of such building are not coverable till the work of the factory/establishment including trial run is commenced in the new building, even though the new building is ancillary or incidental to the already covered factory/establishment.

c) Repairs and maintenance work of a residential accommodation/staff colony situated outside the factory/ establishment if such work is not done under the supervision of the principal employer or his agent.

d) Employees engaged on construction of place of worship (temple)/school building even within the premises/precincts of the factory/establishment. If there is any other type of construction, not covered by these instructions, the question of coverage of such employees may be decided on merits in consultation with Hqrs. Office. (Hqrs. Memorandum No. P-12(11)11/27/99-INS IV dated 31-3-2000).

L.6.16 Case laws:

A) Cinema Theatre:

1) Persons employed in the canteen, cycle stand, etc. in the premises of a cinema theatre by contractor are employees: In a historical judgment dated 9th August 1978 in *civil appeal No. 1226-1244 of 1978 filed by M/s Royal Talkies Hyderabad against ESIC,(AIR 1978 S.C. 1478)* the Hon'ble Supreme court held that the two operations of keeping a cycle stand and running a canteen in the premises of the cinema theatre are incidental or adjuncts to the primary purpose of the theatre within the meaning of clause (ii) of Section 2(9) of the Act and therefore, the persons employed by the cycle stand and canteen are 'employees' under section 2(9) (ii) of the Act.

2) Security guards engaged in the premises of a cinema theatre are employees. *(Supreme Court Judgment in C.A. No. 3533/3534 of 2002 dated 1-5-2002-M/s Saraswathi Filims v. ESIC Trichur- 2002(94) FLR. 386, 2002 LLR.930; 2002(3) LLJ 169)* Hqrs. Office Letter dated T-11/13/54/4/2001- Ins. IV dated 24-9-2002.

B) Directly employed employees:

1. All persons employed for wages directly by the principal employer in a covered factory including such persons not directly connected with the manufacturing process are covered. (A.A.O. No.2 of 1976, dated 29-6-78 by Madras High court)

2. Persons employed for wages in any administrative office/head office/registered office/sales office/ branch office or any other office located outside the factory premises including those working outside the territorial limits of India are employees. *(AIR 1978 Supreme Court, 356; A.P. High Court in Hyderabad Asbestos Cement Products Ltd., v. ESIC and another- 1976 LIC. 868; Calcutta High Court in Indian Jute Mills co. v. ESIC West Bengal region-1977(2)LLJ 467; Division Bench of Kerala High Court in D.V.Jakati and others v. ESIC and others-1981(59)FJR.259; Boehringer Knoll Ltd., v. ESIC 1977 LIC.1116; Hemalata Textiles Ltd., v. ESUIC Madras- 1975(1)LLJ.497*

3. Persons employed in Branch Office Covered. *(Modi Rubber Ltd., v. ESIC -1988(1) LLJ.9) Similar decisions were made in ESIC Gauhati v. Rajashri Pictures (P) Ltd., Gauhati- 1991 (1) LLJ.109)*

4. It was held by the Supreme court that a conjoint reading of sub-sections (9), (13) and (17) of Section 2 of the Act clearly shows that if the head office of the establishment is controlling its branch office, the employee working in the branch office can obviously be treated to be an employee working under the supervision and control of the principal employer or his agent even if such branch is situated in a different State where similar notification for extension of ESI Scheme to such type of Establishments has not been issued u/s 1(5). *(Transport corporation of India v. ESIC and another – 2000 (1) LLN.70; 2000 (1) SCC.332)*

5. Persons employed in head office which administers and does work incidental to the factory are covered. *(Bombay high Court's decision in Cemendia Company Limited v. ESIC- 1995(2) LLJ.519)*

6. Outside the premises also covered: *The Supreme Court observed in the case of Hyderabad Asbestos Cement Products Ltd. (1978(1) LIC.307; AIR.1978S.C.356; 1978(52) FJR.367 S.C.)* that the word 'employee' would include not only persons employed in the factory but also persons connected with the work of the factory. The employee may be working within the factory or outside the factory or may be employed for administrative purposes or for purchase of raw-materials or for sale of finished goods. All such employees are included in the definition.

7. Persons working outside the business premises but duties being related to business purpose come under section 2(9) of the Act. *(International Ore and Fertilisers (India) Pvt. Ltd., 1988(1) LLJ.235)*

C) Immediate employer/Contractor's employees:

1. The contractors are the immediate employers and the employees engaged by or through them in a covered factory or establishment are employees. (LLJ-1968(2). 106)

2. Persons employed by or through an immediate employer within the premises of a covered factory/ establishment are employees. *(AIR. 1978. 1478 Supreme Court)*

3. Persons engaged by the contractor within the premises of a covered factory are 'employees'. The contractor being immediate employer under Sec. 2(13) and the appellant being the principal employer under sec. 2(17) of the Act. Hence the employer is liable to pay contribution under the Act. *(Bajaj Tempo. Ltd., V. ESIC- Bombay High Court's decision-2006 LLR.982; 2006(110) FLR. 461; 2006(3)LLN.256).*

4. Persons engaged in hotel through a contractor covered: *Madras High Court's decision in Udipi Hotel Sudha. (2009(2) LIC.1884)*

D) Temporary/casual employees:

1. A casual worker employed even for a day or two or a few days in a week is an employee. *(A.P. High court between A.P.State Electricity Board v. ESIC 1977 LIC.316)*

2. The word "employee" under Section 2(9) of the Act does not make any difference between a casual or temporary or permanent employee. It is wide enough to include even a casual employee employed for wages on any work connected with the work of a factory or establishment to which the Act applies except those exempted by the definitions fall within the definition of the word 'employee'. Section 38 of the Act specifically states that all employees in factories in factories or establishments to which the Act applies shall be insured in the manner provided by this Act. *(Full bench of Karnataka High court in ESIC v. Suvarna Saw Mills – 1980(57) FJR.154)*

3. Similar decision in *ESIC v. South India Flour Mills (P) Ltd. (AIR 1986 S.C. 1686, 1986(2)LLJ.304); ESIC Bangalore v. Davanagere Cotton Mills-1977(2)LLJ.404; ESIC Chandigarah v. Oswall wollen Mills Ltd.,-1980(57) FJR.171; E.K.Haj Mohammed Meera Sahib and sons v. ESIC- 2003(96) FLR.1174,; 2003(102)FJR.228.*

4. Temporary employees are covered by the Act. Employees who left the service long ago and are unidentifiable are also coverable and the employer is liable to pay the contribution in respect of all such employees. *(Division Bench of Kerala High Court in ESIC v. Premier Timber Supplies- 1991 (78) FJR.307)*

5. Contrary decision: While rejecting the appeal filed by ESIC, the Panaji bench of Bombay High court referred to the judgment of the *Apex Court in Harrisons Malayalam (Pvt.) Ltd case(1993(2)LLN.675)* where in it was observed that though casual workmen are covered by section 2(9) of the Act, workmen of casual contractors like plumbers, electricity repairers, air-conditioner repairers, computer repairers, T. repairers etc., who are engaged for temporary work, would not be covered by the Act as their work cannot be supervised or controlled by the employer. This observation applies to the instant case where there is no supervision or control over the four employees who were doing some electrical work on the premises of the first respondent (R.K.Furnaces) and as such M/s R. K.Furnaces was not covered under the Act.(In this case the unit, the unit was covered by counting those four persons) *(ESIC v. R.K.Furnaces and another- 2007(1) LLJ.549, 2007(1)LLN.474; 2006(111)FLR.478; 2007LLR.14.)* This is only the decision of a High court .

6. Casual workers are employees. *(Mohan Meakin Ltd., v. ESIC – Himachal Pradesh High court's decision – 2006(1) LLJ.164, 2006(108) FLR.117)*

7. Clerical labourer covered- The term 'employee' would include within its scope every clerical labourer and part-time worker and that it is not confined to actual worker employed in manufacturing plant. *(ESIC v. Sriramulu Naidu 1960(LLJ).699- Similar decision in ESIC v. Ganapathia Pillai 1961(1) LLJ. 593, 1961(2) FLR.391)*

8. Daily wages and part-time employees are also employees under the Act. *(International Ore and Fertilizers (India) Pvt. Ltd., v. ESIC- 1988(1) LLJ. 235*

9. The Act provides for contribution to be paid by employers even in respect of such labour engaged in work for a part of week also. *(ESIC v. Jaipur Enterprises-1988(56) FLR.207)*

E) Hamalis/Mutha Coolies not covered:

1. The A.P. High Court held that the mere entry of hamalis in to the premises of the factory for loading and unloading the cylinders does not mean 'working in the premises' and they are not covered by the definition. *(BOC India Ltd., formerly known as Indian Oxygen Ltd., Calcutta v. ESIC and another-2004(103) FLR.593; 2005(1) LLN.726; 2005(1) LLJ.224)*. Similar decision by *Madras High court in ESIC Madras v. S.S.R.S. Brothers, Madurai, represented by its partner S.Sahasranamam-2000(1) LLN.873)*

2. The material on record discloses that out of the several registered and recognized coolies in the local market committee, some of them were allotted to the respondent, from time to time, depending upon the need. There is nothing to indicate that the respondent employed these mutha coolies. The mere fact of providing a shelter for the mutha coolies, does not by itself, bring about the relationship of employer and employee between the coolies and the respondents. Hence it was held by the Andhra Pradesh High Court that the respondent cannot be held liable to make contribution for the mutha coolies. *(ESIC Hyderabad v. Chirala Co-operative Spinning Mills Ltd., Chirala- CMA No. 2905.2001 decided on 9th November, 2004- 2005(2) LLN.584; 2005(105) FLR.703; 2005(1) LLJ.1016; 2005 LLR.591)*

3. Contra decision: Persons loading and unloading goods, whose activities are controlled by their employer, are covered. *(Jain Plaster and Minerals- 2002(94) FLR.533; 2002(3) LLJ.141)*

F) Construction/repairing work:

1. Casual Labourers employed in construction work of a factory building or remodeling or addition or alteration of the building are employees. *(Rajasthan High Court in C.M.A. No. 260 of 1984 dated 11th March, 1985)*

2. Workers engaged in construction work of a new factory building for the expansion of the factory are employees. *(Supreme Court- SC Labour Cases- 1981-90 Vol. III, Pages 755 to 759)*

3. Employees engaged for the purpose of the construction work of a factory or setting up its machinery are employees. *(Calcutta High Court in Appeal No. 503 of 1976 dated 29th June, 1976)*

4. Labourers engaged for maintenance and repairs of factory/establishment building are employees. *(R.D. ESIC v. Vinod, 1991 II CLR 392 (Kerala division Bench)*

5. Workers engaged through a contractor in the work of construction of additional buildings to spinning mills are employees. *(RD., ESIC V. Vijay Mohini spinning Mills 1990 CLR (I). 625- Division Bench of Kerala High Court)*

6. Building workers, gardeners office attendants, and watchman employed by a covered factory or in an office located in its premises are covered. *(Madras High Court- LLJ (2) 1963.207, AIR 1963 Mad. 361 in Thiagarajan Chettiar (K) v. ESIC)*

7. Persons employed in construction of an additional building covered. – *Punjab & Haryana High court judgment in ESIC v. Enkay (India) Rubber Co. Pvt. Ltd (2009 (2) LIC. 1884)*

G) Guest House:

Persons employed in a Guest House owned by a covered factory are employees *(Gujarat High Court- SCA No. 829 of 1974 dated 14th Jan. 1975 M/s Atul Products v. ESIC)*

H) Representatives:

1. Medical Representatives are covered under section 2(9). (1978. 35 FLR.230)

2. Sales representatives are employees1979. *(Punjab and Haryana High Court- CMA No. 150/C11 of 1979 dated February 14,)*

3. Persons employed for wages connected with distribution or sale of products covered. *(Bombay High Court's decision in ESIC v. Indian sewing Machine Company Ltd., Bombay- 1995(2) LLJ. 514)*

4. Employees working in sales department of an establishment whose head office and sales organization are completely distinct and separate, are also covered by this Act. *(Bata India Limited Calcutta v. ESIC and another -2003(98) FLR.990; 2003 (3) LLN 1069; 2003 (3) LLJ 716; 2003 (2) CLR.1010; 2003 LLR. 1018)* Similar decision in *Sirajuddin Ahmed v. ESIC (1965-(1) LLJ. 644, 1964 (9) FLR.353) Hqrs. Office Letter No. S-11/12/1/2002-Ins.IV Col. IV dated 28-8-2002.*

I) Hospital staff:

1. Persons employed in Hospitals maintained by a factory for its employees are covered. *(Karnataka High Court's decision in ESIC Bangalore v. Associated Cement Co. Ltd-1979 LAB IC 1060; 55 FJR. 307)*. Similarly, staff employed in schools run by factories are coverable.

J) Directors:

1. Director of a company who is named as a Manager is an employee. *(Madras High Court-1977 LAB.1706)*

2. Director of a company getting remuneration is an employee. *(Kerala High court in As No. 513 of 1974 dated 28th Jan. 1978)*

3. Managing Director who was entrusted with the work of Managing the affairs of the Company on a remuneration of 12,000 p.a. i.e. Rs. 1000/- p.m. is an employee. *(Supreme Court in C.A. No. 3411 of 1996 held on 6th November 1997 in the case of M/s Apex Engineering Pvt. Ltd.)* This judgment was communicated by Hqrs. Office vide letter No. T-11/13/23/20/75-Ins.IV dated 4-3-1998. (1997(77) FLR.878)

K) Apprentice not covered:

In the following cases, 'apprentice' is treated as not covered for the purpose of Section 2(9) of the Act.

1. By Madras High Court:

*a) Kwality spinning Mills Ltd. (1976(1) LIC.324_*

b) Southern Roadways Limited, Madras (2007(115)FLR.946; 2007(1) LLJ.922)

2. Gujarat High Court: Arvind Mills Ltd. (2009)2) LIC. 1885)

3. Madhya Pradesh High Court: Bharat Commerce and Industries Ltd., Birlagram, Nagada. (2004 LLR.1115, 2005(1) LLJ.482; 2005(105) FLR. (SOC-24).10)

4. *Andhra Pradesh High Court: Andhra Prabha (Private) Limited, Vijayanagar and others. (2004 (4) LLN.73*

5. *Karnataka High Court: M/s Fibre Mangalore (P) Ltd.)1986(1) LLJ.216)*

6. *Mumbai High Court: Indian Hume Pipe Company (1963(2) LLJ.104)*

7. *Supreme Court: Tata Engineering and Locomotive Company Ltd., and another. (1975(2) SCC.835, 1976 SCC. (L&S)41; 1976SC.66; 1976(1)LLJ.81*

L) Trainees are covered:

1. *Bombay High Court: Golden Gate Restaurant (2002(1) LLJ.972; 2002(92) FLR.1078; 2002 LLR.341; 2002(1) LLN.957)*

2 *Premier Ploytronics Ltd., (2001(1) LLN.954; 2001(98) FJR.208; 2001(FLR.10; 2001(1) LLJ.1293; 2002; 2002 LLR.102)*

3. *Madras High court Judgment in Management of Jawahar Mills Ltd. (2001(2)LLJ.793)*

3. Contrary Decisions: Persons sent by polytechnic institute as trainees in spinning Mills are not 'employees'. *Andhra Pradesh High court in the case of M/s Chirala Co-operative spinning Mills, Chirala- CMA NO. 2924/2000, dated 29th September, 2004: 2005 LLJ (1).910; 2005(105) FLR.430.*

M) Partners not covered:

1. The position of a partner of a firm is that of a master and servant or employer and employee, which involves an amount of subordination, but that of quality. The partnership business belongs to all the partners and each one of them is an owner thereof. It may be that a partner is being paid some remuneration for any special attention which he devotes but that would not involve any change of status and bring him within the definition of employee. *(Supreme court's judgment in Ramanuja Match Industries- 1985(1) LLJ.69; 1985(66) FJR.108, AIR 1985 SC.278)*

2. A partner and partnership firm has no separate legal existence whereas the Managing director and the Company are separate legal persons. Hence Partners are not employees under the Act. – *Kerala High Court (Arun Granites-2008(1) LLJ.211)*

N) Race Club/turf club covered:

1. Hyderabad Race club is a 'shop' to be covered under the Act and contribution is payable in respect of employees employed by them for wages from the year 1987 onwards. This was based on the judgment in Hindu Jea Band, Jaipur decided in 1987)1987(1) LLN.778). *(Supreme court Judgment-2004(102) FLR.1036, 2004(3) LLN.1226; 2004(3) LLJ.547; 2004SCC (L&S).855)*

2. It was held by the Bombay High Court that the activity of holding race is a continuous activity and therefore on all these days, when races are held, service of those persons are required and they have to be paid for the work done by them, and therefore, looking to the judgment of the supreme court in

Hyderabad race club case and cochin shipping company case (1992(4)SCC.245), it has to be held that the appellant is a 'shop' and the payment to these workers are covered by the ESI Act. *(Royal Western India turf Club Ltd., Mumbai-2005(3) CLR.947)*

3. Contra decision: The two member bench of the Supreme court in *Bangalore turf club (2009(121) FLR.1115)* has given a different view that turf clubs are not included in 'shop' and the Act does apply to them and further opined that the decision of Apex court in ESIC v. Hyderabad race Club should be reconsidered by a larger bench. The Court observed that the word 'shop' has not been defined in the Act nor in the notification issued by the appropriate government under section 1(5) of the Act. Hence the meaning of the 'shop' will be that used in common parlance. When we go for shopping to a market, we do not mean going to a race club, hence prima facie, the apex court is of the opinion that the appellant club is not a shop. The apex Court has reversed the decision of the *Karnataka High court in this case (2002(95) FLR.1149; 2003(1) CLR.82; 2003(1) LLJ.73; 2003(1) LLN.272) by allowing the appeal of the Bangalore Turf Club Ltd.*

O) Other decisions:

1. Band boy covered: The work of playing music by the band boys for wages was connected with the establishment in the matter of sale of its products and they are employees under Sec. 2(9) of the Act. (1987(1) LLN 778)

2. Driver on payment of each trip covered: *AP High court's decision in Rajakamal transport and others (1995(1) LLJ.94)*

3. Members of co-operative societies are owners as well as employees coverable under the Act - *Kerala High Court's decision in Kunnathud Chalakudy Samkethika Co-operative Society Ltd. (1989(2) LLJ.27*

4. Persons employed in canteen, by contractor in the premises of the factory covered.-If the workmen in the canteen are employed in connection with any work incidental to the purpose of the factory, then even if they are employed by an independent contractor, they will be employees, if they work on the premises of the factory. *(United Electrical Industries Ltd.-1976 LIC.25)*

4. Persons employed in hotel covered: there cannot be any distinction between the workers employed in the kitchen and those in hotel. All persons employed for the purpose of supply and distribution of food prepared in the kitchen and for doing other incidental duties in the hotel are 'employees' of the factory. *(All India ITDC employees' union-(Unit Hotel Ashok, Bangalore) v. Hotel Ashok Bangalore and another.1984 (64) FJR.184; 1984(LIC (NOC).1075.-Similar decision by Supreme Court in Hyderabad Asbestos Case-1978(52) FJR.367; 1978LIC.307)*

CHAPTER VII

WAGES

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CHAPTER - VII

WAGES

Introduction: The Principal employer is obliged to ensure that ALL the coverable employees in his unit are duly registered in accordance with the Act and contributions payable in respect of each employee is remitted within the time-limits laid down periodically. Contributions are paid at a percentage of the wages paid or payable to the employee as fixed by the Central Government in accordance with Rule 51(a) and (b) of ESI Central Rules. Thus, both the applicability of the Act to a person and the periodical contributions payable are with reference to the wages of the employee. Equally important is that the cash benefits payable to the Employee or other benefits are also vitally linked with the wages of the employee. Contributions are computed after identifying the 'quantum' of wages. Even the revenues of the Corporation and its expenditure on 'cash benefits' have relevance to the "wages" paid to the 'employees'. Thus, the term 'wages' plays crucial role in the coverage of an employee, payment of contributions and cash benefits.

L7.1 Definition: The term 'wages' has been defined u//s 2(22) as follows:

1. All remuneration paid or payable in cash to an employee, if the terms of contract of employment, express or implied, was fulfilled;
2. and includes any payment to an employee in respect of any period of authorized leave, lockout, strike which is not illegal or lay off;
3. and other additional remuneration, if any paid at intervals not exceeding two months;
4. but does not include:-
    a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
    b) any traveling allowance or the value of any travel concession;
    c) any sum paid to the person employed to defray the special expenses entitled to him by the nature of his employment; or
    d) any gratuity payable on discharge.

L7.2 The definition of " wages" has been divided into FOUR parts and each part is examined as under :

The Hon'ble Supreme Court, in the historic case of M/s Harihar Polyfibres case comprehensively analysed the construction of each and every portion of the definition and laid down unmistakable guide-lines for interpreting it .According to it, whatever remuneration is paid pr payable to an employee in terms of contract of the employment , express or implied is wages; thus if remuneration is paid in terms of the original contract of employment or in terms of a settlement arrived at between the employer and the

employees, which, by necessary implication becomes part of the contract of employment it is wages; second, whatever payment is made to an employee in respect of any period of authorized leave, lock-out strike which is not illegal or lay-off is wages; and third, other additional remuneration, if any, paid at intervals not exceeding two months is also wages: this is unqualified by any requirement that it should be pursuant to any term of the contract of employment, express or implied. …..The interposition of the clause 'and' includes any payment to an employee in respect of any period of authorized leave, lock out strike which is not illegal or lay off…….. makes it abundantly clear that while remuneration under the first clause has to be under a contract of employment express or implied, remuneration under the third clause need not be under the contract of employment but may be any additional remuneration outside the contract of employment….So there appears to our mind no reason to exclude 'House rent allowance' 'Night Shift Allowance' , 'Incentive Allowance' and Heat, Gas and Dust Allowance from the definition of wages. In arriving at this conclusion various other High Court Judgments were also considered. Hence this is considered as a land mark judgement and the ratio of this judgement has come to be applied by all the courts in deciding the cases.

In the light of various judgments, the following facts emerge:

Part I

1. The remuneration must be paid or payable only in 'cash' and not in any other 'kind'.

2. It need not necessarily be paid. It is sufficient that it has become payable. An employee may leave the employment in the middle of a month without receiving his wages for the period he worked. Though, the salary was not paid to him, contribution is due on it as the salary has accrued to him and is payable.Similarly, contributions are payable on the amounts of Lay-Off Compensation, Wages for the period of Strike which is not illegal even if they are not physically paid.

3. There is no periodicity or duration. Salary paid once in a quarter or annually is also thus wage .Even Annual Bonus is wages. However, to tide over practical difficulties in deciding the coverage and rate of various Benefits etc., Hqrs have instructed not to treat Annual Bonus and arrears of wages payable from a back date pursuant to a wage hike announcement as wages both for the purpose of coverage and payment of contributions and cash Benefits.

4. The remuneration paid or payable must be as per the terms of contract of employment. They may be oral or written(express) or implied. Thus, the wages payable as per the offer of appointment specifying the nature of job and quantum of wages admissible to an employee or an agreement between the employer and the employees' union/Association, whether orally agreed to or reduced to writing can be termed as contract of employment. The orders or rules of the company regulating the pay structure and other fringe benefits binding on the employee are also a contract of employment. Normally, the following items come under this category.

a) Basic Pay, Wages, Salary;

b) D.A./HRA/CCA/Overtime/officiating allowance /Night shift allowance/efficiency allowance/Heat, Gas, Dust allowance/Education allowance/Food & Tea allowance/conveyance allowance etc;

c) Wages/salary/pay for weekly off and public holidays;

d) Commission paid to sales staff;

e) Subsistence allowance paid to an employee during the period of suspension;

f) Attendance Bonus or incentive or ex-gratia in lieu of Attendance Bonus or production incentive paid or payable under a contract of service express or implied;

g) Regular Honorarium or salary or remuneration paid to a Director;

h) Collection Batta paid to running staff.

This list is only illustrative and not exhaustive. It is to be remembered that any amount payable in accordance with any scheme introduced by the employer announced unilaterally or in pursuance with an agreement with the union or settlement are wages irrespective of its periodicity as it constitutes implied term of contract .It is a widely held perception by the Courts that any allowance paid without reference to the fact of his having actually spent the money for the purpose for which it is paid they are wages, but, if these amounts paid as reimbursement or payment of actual expenditure they are not wages. For Example, House Rent Allowance, Medical Allowance, Conveyance Allowance,Lunch Allowance paid without any reference to the fact whether the amount has been entirely used for the purpose specified , they are wages.

Any amount paid in return for the work/service rendered by a person either in the form of daily wages to daily rated workers, or paid once in a week or once in a month are wages even if there are no written contract. Similarly amounts paid to part-time employees, persons employed sporadically for any occasional work, piece-rated workers even without any written contract are wages under the Act.

Part II:

The second category includes any payment for:-

a) Authorized Leave

b) Lock-out

c) Lay-off and

d) Legal strike.

The remuneration for authorized leave, lock-out, lay-off and legal strike need not necessarily be paid. It is sufficient that it is accrued and payable. An employee may leave the employment without receiving his remuneration for the period of authorized leave, lock-out, lay-off and legal strike, yet contribution is due and payable.

Case Law :

Payment for authorized leave is wages. - The Karnataka High Court in the case of RD, ESIC Bangalore v. Mizar Govind Annappa Pai and Sons, Mangalore held that any payment made to an employee in respect of any period of authorized leave would come with in the ambit of "wages" and the employer is liable to pay the contributions on such payments.

Part III:

This part deals with "any additional remuneration, if any, paid at intervals not exceeding two months" which is not covered under part I and II explained above, and also not covered by any service condition or terms of contract of employment or under a settlement. The additional remuneration must have been actually paid, and the duration or interval between each such payment should not exceed two months. Even where the employer pays this kind of remuneration of his own volition and pleasure without any 'right' for the employee to claim its continuance and the employer has the 'right' to withdraw, modify, alter or revise the scheme of payment unilaterally, comes under this category of wages.

Therefore, any additional remuneration paid other than the remuneration payable under the contract of employment or under a settlement and if this additional remuneration is paid at intervals not exceeding two months it becomes wages by virtue of the third part (Part III) of the definition of "wages".

Case Laws :

i) In *Wellman(India)(Private) Ltd vs ESI Corporation-1993(2) LLN.645*, the Court observed that the expression "additional remuneration , if any, paid " not only refers to remuneration payable under any contract but refers to such remuneration which is payable at the will of the employer. Every remuneration that is payable under the contract would , therefore, fall under the first part (Part I) of the definition .

ii) "Production incentive" paid by the employer quarterly without any agreement with employees comes under this category and was held as " not wages" by the *Supreme Court in Civil Appeal No 1903 of 2000 (arising out of SLP(c) no 4029 of 1999) M/s. Whirlpool of India Ltd v/s E.S.I. Corporation*.

(Brief of the judgement circulated by Headquarters office vide Circular No. T-11/13/13/1/99-Ins IV dated. 2/5/2000)

iiii) Additional remuneration which is paid not on account of the fulfillment of the terms of the contract of employment at intervals exceeding two months is "not wages". *(Baidyanath Ayurvedic Bhawan (P) Ltd. V. ESIC.-1975(2) LLJ. 128)*

N.B: In case of 'additional remuneration' paid at an interval beyond 2 months, the Social Security Officer or any other inspecting authority has to verify thoroughly as to whether there is any agreement/

settlement between the employer and the employees' union either express, or implied, and report the facts with documentary evidence in his report for taking a decision by the Regional Office. Some employers were showing some additional payments(remuneration) was payable once in a quarter as per announcement but were paying every month some amounts as advance and were setting off the advance amounts from the quarterly payments and were booking the final amount paid for the quarter under the Head "quarterly Incentives". In such a case, the fact was that the payments were made every month although the final quantum was decided once in a quarter and they were therefore, wages under the Act.

Part IV:

Deals with exclusions - viz:

(a) employers' share to any Pension fund or PF/ESI Contribution,

(b) any traveling allowance or the value of any travel concession,

(c) any sum paid to defray the special expenses entitled to him / her by the nature of his / her employment such as : washing allowance paid/payable to employees provided with Leveries, payment for jaggery in cement factories etc.

(d) any gratuity payable on discharge.

Besides , the following items are treated as "not wages'.

- Salary drawn by the proprietor, Partners and the contractor himself;
- Daily allowance paid to running staff; (i.e bata)
- Reimbursement of actual cost of conveyance for coming to work and going back on production of tickets or season ticket or bus pass subject to proof of actual expenditure;
- Washing allowance if dress is provided by the Employer;
- Cycle allowance, if the cycle is used for official purpose;
- Shoe allowance for polishing the shoes, if shoe is supplied;
- Service charges collected by the Hotel management on behalf of their employees in lieu of direct tips and the same are paid to the employees at a later date. *(M/s Rambagh palace Hotel, Jaipur, vs. ESIC)*
- Annual Bonus;
- Annual sales commission;
- Payments made for Annual/periodical service contracts;

- Commission paid to dealers/agents;
- Payments made to Labour consultants, Lawyers, Engineers, Counsels, Chartered Accountants and Stipends paid to Apprentices under the Apprentices' Act;
- Encashment of un-availed leave;
- Inam or incentive or production bonus paid at an intervals exceeding two months in the absence of any agreement or contract and the employer has got the right to withdraw, modify, alter or revise the scheme at his will;
- Employer's contribution to ESI or Provident Fund;
- Notice pay or retrenchment compensation;
- Terminal benefits paid by the employer;
- Cash benefits received from ESIC under the scheme.

This list is not exhaustive but only suggestive.

N.B : Further, in deciding whether any particular payment is wages or not under the Act, it is imperative to examine all the aspects of payments like the documents showing the decision making process of the payments, qualifying conditions to be eligible for payment, mode of fixing the quantum of such extra payments, the type and system followed in deciding the conditions and periodicity etc should all be taken into consideration and examine with reference to the laws and court decisions in the matter.

L7.3 Why all allowances are to be included?

The cash benefits payable to an employee are always a percentage of total wages he could have earned. An employee who loses his wages during his abstention from work due to sickness, disablement etc. is expected to get cash compensation proportionate to the total wages and allowances he would have received had he been working during this period. It is therefore, necessary to include all allowances for the purpose of wages and payment of contribution. If the contribution is confined to only basic wages, the cash benefits would be too low, to subsist the employee during his absence from duty on loss of wages. It also tempts the employers to keep the basic wages to the barest minimum and show the balance as package of various allowances, to avoid their share of contribution, but the employee is put to loss when he receives the cash benefit at a lower rate.

L7.4 Why overtime should be included in wages for payment of contribution but not for deciding coverage of an employee?

Overtime is not a regular and continuous payment, but it is of an occasional nature. If overtime is also taken for wage limit for coverage of an employee, he may be going out of coverage for some time and again coming within the orbit of the scheme, when overtime is not there. This frequent interruption from the scheme deprives him of the benefits admissible under the scheme even after making payment of contribution for part of a contribution period. To ensure continued security and protection, overtime is excluded for determining the wage ceiling for coverage of an employee. However, it is included for payment of contribution to cover the risk during the period he was on overtime work, and to enable him to draw the cash benefits at an enhanced rate, as by adding overtime wages to his average daily wages, he is fitted in to the next higher slab in the Standard Benefit Rate table in Rule 54 for claiming cash benefits.

L7.5 Why contribution should be paid on the total wages beyond the wage ceiling limit when an employee crosses the wage limit prescribed by the Central Government?

Though there is a wage ceiling limit for coverage of an employee, he continues to be an employee till the end of the relevant contribution period even if his wages crosses that limit during the currency of a contribution period. Wages has been defined as "all remuneration paid or payable to an employee…" without any ceiling limit. Since no ceiling limit is prescribed in the term "wages", contribution is payable on the total wages without restricting it to the ceiling prescribed by the Central government for coverage of an employee. As the cash benefit is regulated on the average daily wages during the corresponding contribution period, such employee gets fitted in to higher wage slab in the standard benefit rate table in view of payment of contribution on the total wages.

L7.6 "Wage period" related to an employee is the period in respect of which wages are ordinarily payable to him in terms of the contract of employment, express or implied or otherwise. It may be daily, weekly, fortnightly or monthly. (Sec. 2(23))

L7.7 Average daily wages during a wage period: (Rule 1-B)

i) Time-rate basis: in respect of an employee who is employed on time rate basis, the amount of wages which would have been payable to him for the complete wage period had he worked on all the working days (including paid holidays) in that wage period, divided by 26 if he is monthly rated, 13 if fortnightly rated, 6 if weekly rated and 1 if he is daily rated.

ii) Other basis (piece rated): in respect of an employee on any other basis, the amount of wages earned during the complete wage period (including paid holidays) divided by the number of days in full or part for which he had worked for such wages in that wage period.

L7.8 Average daily wages during a contribution period: (Rule 1-A)

Means, in respect of an employee for the purpose of the daily rate of sickness benefit, maternity benefit, disablement benefit and dependant benefit, the sum equal to one hundred and fifteen percent of the aggregate amount of wages paid or payable to him during that contribution period, divided by the number of days (including paid holidays and leave days) for which such wages are payable.

Thus, the average daily wages worked out on RC are enhanced by another 15 percent before fitting it in to the standard benefit rate table to determine the daily rate of SB/MB/TDB/PDB/DB.

However, this 15% enhancement of average daily wages is not permissible where the benefit rate is calculated on ESIC-32. (The enhancement is admissible only in cases where the rate is calculated on Return of Contributions).

L7.9 In order to form a uniform policy as to what constitute part of wages u/s 2(22), a consolidated instructions was issued by Hqrs office vide Memorandum No.P-11/13/97-Ins IV dated 6/11/2000 which is detailed below alongwith modifications based on subsequent instructions / court rulings as under :

1. WASHING ALLOWANCE:

It is a sum paid to defray special expenses entailed by the nature of employment and as such this amount does not form part of wages. (Old instructions issued vide Memo. No.III.J/2/1/65 dated 8-2-1967)

2. SUSPENSION ALLOWANCE/SUBSISTENCE ALLOWANCE:

During the suspension period the employee is not allowed to actually work and he is not given full remuneration but the permissible subsistence allowance is paid to the employee by way of remuneration for remaining attached to the services of the employer as per the relevant service regulations governing his contract of service, therefore, the subsistence allowance is part of wage as defined under Sec.2(22) of the ESI Act and consequently on the amount of subsistence allowance paid to the suspended employee, contribution is payable. (Earlier instructions were issued vide Memo No.3 (2)-1/67 dt. 3.6.67 & letter No. Ins.lll (2)-2/71 dt. 10.8.1971).

The Supreme Court has also held in the case of RD, ESIC Vs .M/s. Popular Automobiles etc. in its judgment dt; 29.9.97 in Civil appeal no.3 850 of 1993 that suspension/subsistence allowance is wage and contribution is payable under Sec 2(22) on the said amount. The said judgment has been circulated by Hqrs office vide instructions no T.11/13/54/3/93-Ins IV dated 11/11/99.

3. OVERTIME ALLOWANCE :

When the employer finds the need to have work done expeditiously, in addition to the normal work during the course of the working hours, the employer offers to the employee to do the overtime work after the working hours. When employee does overtime work it amounts to the acceptance for the same, hence there emerges concluded implied contract between the employer and the employee. Both the remuneration received during the working hours and overtime constitutes a composite wage and thereby it is a wage

within the meaning of Sec.2 (22) of the ESI Act. Therefore, the contribution is payable on the overtime allowance.

Though, overtime allowances will be considered as wage for the purpose of charging the contribution, the same will not be considered for the purpose of the coverage of an employee under the E.S.I. Act/ Scheme, in view of a specific mention in the definition of an "Employee" under sub-section 9 of Section 2 of the Act. (Old instructions issued vide memo No.3-1 (2)13(1)168 dt. 31.5.68).

The same view was upheld by the *Supreme Court in its judgment delivered on 6.11.96 in the case of Indian Drugs & Pharmaceuticals Ltd. vs. ESIC, in Civil Appeal No.2784 of 1980 and 1087/81 an Writ Petition (C) No.1554 of 1987 (1997(1) CLR.193)*, the gist of which is as under :

"In 'Indian drugs and Pharmaceuticals Ltd., V. ESI Corporation - 1997 (1) CLR 193, the Supreme Court held that when an employee does overtime work, there emerges an implied contract between the employer and employee. There is no need to write on each occasion separately on the letter of appointment. It becomes an integral part of original or revised contract of employment from time to time. The employer is obligated to pay wages when the employee does work. This will be, in addition to payment of the wages he receives for normal work. In other words, both the remuneration received during the working hours and overtime constitutes a composite wage and thereby it is a wage within the meaning of Section 2(22) of the Act. The Court held that the view expressed by the *Bombay High Court in Shivraj Fine Art Litho Works, Nagpur v. Director, Regional Office, ESIC, Mumbai and others (1974 LIC.328)*, by the *Delhi High Court in ESIC New Delhi v. Birla Cotton Spinning and weaving Mills Ltd., Delhi (1977(2) LLJ.420)*, and by *Andhra Pradesh High Court in M/s The Hyderabad Allwyn Metal Works Limited v. ESIC (1981 LIC.457)* and the earlier decisions referred to are correct in law. The ratio laid in the *Supreme Court's judgment in Braithwaite & Co. Ltd. V. ESIC (1968 (16) FLR. 237: 1968 (1) SCR.771)* is no longer applicable, since it was prior to the amendment of the definition. As a result, it no longer operates as a ratio."

4. ANNUAL BONUS:

Bonus paid to the employee could not be treated as wage for the purpose of charging of contribution, provided the periodicity of the payment is more than 2 month. The said issue was also considered in the meeting of the ESI Corporation held on 19.12.1968 and the Corporation agreed to the recommendation of the Standing Committee that annual bonus may not be treated as wage. Hence no contribution is payable on annual bonus. (Earlier instructions were issued vide Memo. No. Ins.III/2(2)/67 dated 8-2-1967)

5. INCENTIVE BONUS :

The Supreme Court in the case of *M/s. Whirlpool India Ltd v/s ESIC in Civil Appeal No.1903 of 2000 (Arising out of SLP (c) No 4029 of 1999) (JT2000(3) Supreme Court 147:2000 LLR 431 (SC))* held that" incentive bonus" paid on the basis of a scheme voluntarily promulgated by the employer and not arising out of contract of employment/settlement does not fall within the first part (Part I) of the definition of

wages . Hence, the same was an "additional remuneration" which falls within the third part (Part III) of definition of wages for which periodicity of payment was relevant factor. As the incentive bonus was paid quarterly which means at intervals exceeding two months, the same was "not wages" u/s 2(22) of the Act. (Hqrs instructions T-11/13/13/1/99-Ins IV dated 2/5/2000)

However, the *High Court of Kerala in MFA No.1497of 2001 in the case of M/s. United Breweries Ltd v/s ESI Corporation (2003 LLR 272)* held that incentive bonus paid under a settlement is wages. The Honorable High Court has clarified that the judgement of the Supreme Court in the case of *M/s. Whirlpool India Ltd v/s ESIC in Civil Appeal No.1903 of 2000 (Arising out of SLP (c) No 4029 of 1999) (JT2000(3) Supreme Court 147:2000 LLR 431 (SC))* holding that incentive bonus does not form part of wages is applicable when incentive is paid on the basis of a scheme voluntarily promulgated by the employer and not arising out of contract of employment or settlement . In that case incentive was not paid under a contract of employment or settlement , hence it was an additional remuneration where periodicity was relevant factor in terms of definition of wages u/s2(22) of the ESI Act. (Hqrs instructions No S-11/12/1/ 2002-Ins IV Col.II dated 2/4/03)

Therefore, the question as to whether "incentive bonus" is wages u/s 2(22) may be decided based on the facts and circumstances of each case on its merit, keeping in view the general guidelines given by the Supreme Court vis-à-vis the High Court of Kerala referred to above.

6. PRODUCTION BONUS:

Production Bonus like incentive bonus is paid to the workers as additional remuneration and hence like incentive bonus such additional remuneration in order to become wages has to be paid at intervals not exceeding two months as distinguished from being payable. Thus, there has to be actual payment and hence no contribution is payable provided the periodicity of payment is more than two months. (Earlier instructions issued vide letter dated 4(2)/13/74-Ins.IV dated 2-9-1985)

Case laws:

a. Production bonus covered: *Supreme Court's decision in Modella Woolens Ltd. (1994 Supp. (3) SCC. 580; 1995 SCC. (L&S) 1640)* in this case production was paid quarterly, but as a part of agreement with the employees. Hence the periodicity has no relevance.

b. Production bonus paid at intervals not exceeding two months, though the payment was de hors the terms of employment would fall within the expression "wages". *(Shourie Duplicators (P) Ld. and others v. ESIC-1992(1) LLN.170)*

c. Production bonus paid as additional remuneration beyond the interval of two months, and not covered by any contract of employment is not wages.

(a) *Andhra Pradesh Paper Mills Ltd., Rajahmundry- 1978(1) LIC.19*

(b) Lamina Suspension Products Pvt. Ltd., (2002(93) FLR.81; 2002(1) CLR.894; 2002LLR.558).

(c) Luktex III-(2002 (95)FLR.468; 2002(2) CLR.169)

(d) Whirlpool of India Ltd. (2000 (3) SCC.185

(e) Bata Shoe Company (p) Ltd. (1986(1) LLN.73)

7. INAM/EXGRATIA PAYMENT:

Inam represents a payment made by the employer to an employee as a reward for the service rendered by him for which he is/was not under obligation to render the same under the contract of service which is expressed or implied but does not include the payment which has been made to an employee in fulfillment of contract of service. This may include exgratia payment also.

Where the employer has introduced the scheme of Inam but according to the terms and conditions, the employer has no right to withdraw or revise it, the same may be treated as wages and contribution is payable.

Where the employer has introduced the scheme of Inam and he has the right to revise or withdraw it at his discretion, the payment of Inam under such scheme may not be treated as wages and contribution is not payable provided the payment is made at an interval exceeding two months.

Where Inam is being paid for special skill or higher responsibilities/additional duties, it may be treated as wages and contribution is payable.

Where there is no scheme of Inam in writing but still the employer might be making payment under the head Inam on the basis of some undertaking with the employees, in such cases, the nature of payment and its periodicity may be ascertained and whether payment of Inam is an exgratia payment which is not covered by the contract of service. In case the periodicity is more than 2 months, it may not be treated as wages and no contribution may be charged.

(Last instructions were issued vide letter No. D-Ins. 5(5)/68 dated 21-2-1975)

Case Laws: 1. The Division Bench of Kerala High Court held that additional remuneration paid to the employee at the will of the employer without any agreement, styled as 'gift' or 'inam' at intervals not exceeding two months, will partake the character of "wages" under section 2(22). *(Kuttukaran Engine Rebuilders v. ESIC-1998 (1) LCR.217)*

2. In the case of *M/s Vijayawada Bottling Co. Ltd., v. ESIC, the Andhra Pradesh High Court held that inam does not come within the meaning of "wages". (2004(4) LLN.155; 2004(3) LLJ.245; 2004(102) FLR.406)*

8. WAGES PAID DURING LAYOFF:

During the period of layoff though the employee is not given actual work and is also not given full remuneration but certain wages are paid to the employee by way of remuneration for remaining attached to the factory/establishment of the employer, therefore, such payments paid for the period of layoff are also wages for the purpose of Sec.2 (22) of the ESI Act and hence contribution is payable on such payments. (Earlier instructions were issued in 1968).

9. SALES COMMISSION

Sales Commission would fall within the 3rd category of wages as defined under the Act as additional remuneration and there has to be actual payment as the word used is paid and not payable, at intervals not exceeding two months. The question as to why the period of 2 months is fixed was debated in Supreme court in the case of *Handloom House, Ernakulam Vs. RD, ESIC in Civil Appeal No.2521 of 1999* when it was held that no employer shall have the permission to dodge the payment of contribution under sec. 40 on the premise that annual payments have to be worked out. Normally, the wage period is one month, but the Parliament would have thought that such "wage period" may be extended a little more but no employer shall make it longer than two months. This could be the reason for fixing a period of two months as the maximum period for counting the additional remuneration has to make it part of 'wage' under the Act. Therefore, the annual commission is excluded from the definition of the wages and hence no contribution is payable on the annual commission. (Earlier instructions were issued vide Hqrs. letter No. Ins.III (2)-2/71 dated 10.8.71).

Case law: - Sales commission received by employees once in a month, which is an additional remuneration paid at intervals not exceeding two months would attract contribution under the Act. - *Gem and Company, Madras V. ESI Corporation, Madras - 2000 (3) LLN 310*.

10. HOUSE RENT ALLOWANCE

House Rent Allowance is wage in cases where it is being paid. Notional amount of house rent can not be presumed as wages for deciding the coverage. In cases where an employee is being paid house rent allowance, the same will be included both for coverage and contribution. In cases where the staff quarters have been allotted, the amount of salary and wages paid will count for coverage and contribution and no notional house rent allowance is to be presumed in such cases.

In the cases of *Braith wait & Co. Vs. ESIC and M/s.Harihar Polyfibres Vs. ESIC, Bangalore, Supreme Court* has also held that house rent allowance is 'wages' under Sec.2(22) of the ESI Act. (Earlier instructions were issued vide memo No.T-11/13/11/15-Ins.III Dt. 28.9.75, No .Ins.III(2)/15/15/74-Ins.Desk.I dated Dec., 76, No.T-11/13/53/19-84/Ins.IV Dt. 19.9.84 & No.D.Ins.II/11/3087/303 dated 1.3.1985).

11. NIGHT SHIFT/HEAT/GAS & DUST ALLOWANCE:

It is an additional remuneration paid to the employee for performing duty at night time during the hours of darkness. This amount is paid by way of incentive under the scheme of settlement entered into between the Management and its workmen and hence is wages within the meaning of Sec.2 (22) of the ESI Act. This view was observed by the *Full Bench of Karnataka High Court in the case of NGEF Ltd. vs. Dy. Regional Director, ESIC, Bangalore.*

The Supreme Court in the case of *M/s.Harihar Polyfibers vs. RD ESIC, Bangalore-1984 (4) SCC. 324 : 1984 (65) FJR.199 : 1984 (2) LLN 747 : 1984 (2) LLJ. 475 (S.C.)* has held that Night Shift Allowance, Heat, Gas & Dust allowance are wages under Sec.2(22) of the ESI Act and contribution is payable on the said amount. (Earlier instructions were issued vide Memo No.T-11/13/53/19/84-Ins.IV dated 19.9.94).

12. CONVEYANCE ALLOWANCE;

Fixed conveyance allowance flowing out of a wage settlement should be treated as wages for all purposes w.e.f 01.04.2002.

The above decision was based on conflicting judgments by some High Courts which necessitated the review of the Hqrs Instructions No.P-11/13/97-Ins IV (2/97) dated 27.01.97 and Memo of even No. dated 06.11.2000 wherein conveyance allowance was not wages. The *Madras High Court in its judgment dated 14-11-2000 in LPA No. 50/98 (2001 LLR 489)* held that the conveyance allowance paid by the employer to the employees for commuting between residence and place of work should not be taken as wages as the same is nothing but travelling allowance for the purpose of Section 2(22)(b) of the Act. In another case where transport allowance was paid to the employees by the employer as per settlement signed by the *Employees' Union and the Management, the High Court of Karnataka has held in its judgment dated 16th March 2001 in MFA No. 2867 of 1999* that the transport allowance should be treated as wages as it flows out of a wage settlement thereby it has come within the first part of the definition of wages under section 2(22) of the Act. There is a small difference in prospective. Whereas, the Madras High Court has taken conveyance allowance per se, the High Court of Karnataka has specifically dealt with a case of transport allowance/conveyance allowance payable under a wage settlement. However, two different interpretations cannot be made for same nature of payment allowed under identical circumstance. Therefore, it has been decided to accept the rationale behind the decision of the Karnataka High Court and accordingly it is advised that fixed conveyance allowance flowing out of a wage settlement should be treated as wages for all purposes

However, the following should not be treated as wages u/s 2(22) of E.S.I Act and also for the purpose of deciding the coverage of an employee under section 2(9) of the Act :

Amount towards conveyance paid or reimbursed to any employee for incurring expenses for specific duty related journey.

a) Reimbursement of actual cost of conveyance for coming to work and going from work on production of ticket or season ticket to proof actual expenditure.

b) Payment of certain amount for maintenance of vehicle depending upon cadre of the Official and category of the vehicle and subject to production of records for actually marinating the vehicles.

c) Fixed conveyance allowance paid at an interval exceeding two months, unless such payment is made as per contract of service or agreement.

(Hqrs instructions No.T-11/13/53/08/2001-Ins IV dated 21/11/01 and subsequent instructions of even No. dated 21/3/02)

Other Case laws:

1. Payment of conveyance allowance at a uniform basis regardless of whether the employee concerned has or has not incurred any expenditure on his journey to the place of his work and back home is part of "wages" *(Karnataka High Court in the case of M/s Rajashree Cement and others v. ESIC 2004 LIC.2244; 2004(102) FLR.836)*

2. Similar view has been expressed in the case of I.T. Solutions (India) p. Ltd.

13. SERVICE CHARGES :

Service charges are collected by management of the hotel on behalf of their employees in lieu of direct tips and the same is paid to their employees at a later date. Such amount collect as 'service charges' will not constitute wages u/s 2(22) of the ESI Act.

In the case of *ESIC v/s M/s.Rambagh Palace Hotel, Jaipur, the High Court of Jaipur* has held that 'service charges' are not wages under Section 2(22) of the ESI Act. This verdict of the High Court of Jaipur was accepted in the ESIC and hence no contribution is payable on 'service charges.

(Earlier instructions were issued vide letter No.P-12/11/4/79-Ins.Desk.I dt.18.9.79)

Moreover, the Supreme Court in the case of *M/s Quality Inn Southern Star v. ESIC* held that Service charges are collected by management of the hotel on behalf of their employees in lieu of direct tips and the same is paid to their employees at a later date and such amount collected as "service charges" will not constitute wages u/s 2(22) of the ESI Act. (2008(1) LLJ.907; 2008 (2) LLN.198; 2008 (116) FLR.1136 2008 LLR.119; 2008 (1) LIC. 420)

14. MEDICAL ALLOWANCE :

The employees working in factories/establishments are being provided medical services in kind by the employer but in certain factories/establishments instead of providing medical services in kind, the amount

spent by the employees on medical care is reimbursed while in some other organisations, employees are being paid monthly cash allowance in lieu of medical aid/reimbursement of medical expenses. Where such payments are made by the employer in lieu of the medical benefit, the same are to be treated as wages under Sec.2 (22) of the ESI Act and the contribution is chargeable (Earlier instruction were issued vide letter No.Ins.5(5)/68-Ins.III dt. 21.8.71 & Ins.III/2(2)2/68 dated 24.6.71)

15. NEWSPAPER ALLOWANCE :

In certain factories/establishments the employees are reimbursed the cost of Newspapers while in some other factories/establishments the employees are paid monthly newspapers allowance instead of reimbursement of the cost of the Newspapers. Where the amount is being paid regularly to the employees by the employer as Newspapers allowance the same will be treated as wages under Sec.2 (22) of the ESI Act and the contribution is chargeable. However, where the cost of Newspapers is reimbursed to the employees, no contribution is to be charged on such payments.

16. EDUCATION ALLOWANCE:

Employees are being paid monthly Education allowance for the children studying in the Schools/Colleges. Where such education allowance is being paid monthly, the same is to be considered as wages under Sec.2 (22) of the ESI Act and the contribution is chargeable on the said amount.

However, in such cases where instead of paying the education allowance on monthly basis, the amount spent as fee is reimbursed to the employees and booked under education allowance, in such cases no contribution is payable.

17. DRIVERS' ALLOWANCE :

In some of the factories/establishments the officers employed as employees are being paid drivers' allowance per month. This allowance is being paid to enable the officers to appoint a driver at their own level and such drivers employed are not being paid salary directly by the factories/establishments. Where such allowance is being paid to the employees and the drivers are not engaged by the employees, in such event the allowance paid as such will be considered as wage under Section 2(22) of the ESI Act and contribution will be chargeable provided the employee is coverable under the Scheme..

However, where the services of the drivers are being utilised, in such event the drivers so engaged will be covered as employee and contribution will be payable on the amount paid to the drivers as salary and booked in the ledgers of the employer under the heading 'Drivers' Allowance'.

18. FOOD/MILK/TIFFIN/LUNCH ALLOWANCE :

Each case of payment of Food/Milk/Tiffin and lunch allowance has to be examined on its merits depending on following conditions under which allowance is payable:

i) Tiffin/Food/Milk/Lunch Allowance paid in cash at a fixed rate irrespective of whether the person is absent or on authorised leave etc. may be treated as wages. (Hqrs instructions No.P-11/13/97-Ins IV dated 2/2/99.)

ii) Tiffin/Food/Milk/Lunch allowance paid in cash to the employees under a contractual agreement between the employer and the employees/unions, including award, settlement etc., will be considered as wages both under Section 2(22) of ESI Act for claiming contribution and for the purpose of sec 2(9) of the act for coverage of employees. (modified by Hqrs instructions No.P-11/13/97-Ins IV dated 6/5/03.)

iii) Tiffin/food/Milk/lunch allowance etc., paid outside a contract, settlement, award etc., will be considered as 'additional remuneration and contribution may be claimed if the same is paid at an interval not exceeding two months. (modified by Hqrs instructions No.P-11/13/97-Ins IV dated 6/5/03.)

iv) Tiffin/Food/Milk/Lunch allowance paid in kind i.e. canteen subsidy/food subsidy etc. may not be treated as wages. (Hqrs instructions No.P-11/13/97-Ins IV dated 2/2/99.)

19. GAZETTED ALLOWANCE :

Certain factories/establishments are paying gazetted allowance to its employees in lieu of duties performed by them on gazetted holidays. Such gazetted allowance is not wage for the purpose of Sec.2 (9) of the ESI Act. However, it will be wage for the purpose of Sec.2 (22) of the ESI Act and the contribution is to be recovered on such payments.

20. WAGES AND DEARNESS ALLOWANCE FOR UNSUBSTITUTED HOLIDAYS:

Such wages and dearness allowance paid to the employees for the unsubstantiated holidays are to be treated as wages under Sec.2(22) of the ESI Act and the contribution is payable. *High Court of Gujarat in the case of ESIC v/s New Assarw Manufacturing Co Ltd* held the same view.

21. EXGRATIA PAYMENT DURING STRIKE FOR TRAVELLING EXPENSES : Like conveyance allowance if any exgratia payment is made during the period of strike to some of the employees to incur certain travelling expenses such amount will neither be considered as wage under Sec.2(9) nor under Sec.2(22) of the ESI Act and no contribution is payable on such amount. High Court of Bombay in the case of ESIC vs. Willman (India) (P) Ltd. in case No.210 of 1976, held the same view.

22. INTERIM RELIEF :

Interim relief paid to the employees is normally paid when either the wage is under revision or when the payment of Dearness Allowance is delayed due to any reason. Whatsoever may be the case, if the interim relief is paid to the employees by any employer, the same will amount to wages within the meaning of Sec.2(22) of the ESI Act and contribution is payable thereon.

23. SAVING SCHEME :

Certain factories/establishments are contributing towards the saving scheme for the welfare of the workers. Such amount paid by the employer as his contribution to the saving scheme, will not constitute wages under Sec.2 (22) of the ESI Act and the contribution is not payable.

(Earlier instructions were issued vide Memo No.P-12/11/4/77-Ins.IV dt. 15.11.80)

24. ATTENDANCE BONUS: It is a special allowance being paid by certain employers to their employees to discourage the workers absenting from their duty. Any amount paid by the employer to its employees as Attendance Bonus will constitute wage and the same opinion was held by Bombay High court in the case of ESIC v. India Dyestuff Industries Ltd., However, the periodicity aspect has to be kept in mind. In case the periodicity is more than 2 months, the same will not constitute wages and no contribution will be payable as in the case of incentive bonus provided such payment is not within the terms of contract of employment.

Case Law:

1. If the attendance bonus payable to the employees is under the terms of a settlement which has become a part of the contract of employment, that bonus will fall within the first category of "wages" under the Act and therefore constitute wages.*(Supreme Court's decision in Wellman (India) Pvt. Ltd., v. ESIC-1994 LLR.1)*

2. Employer making payment of Attendance Bonus as a part of a scheme which was neither statutory nor under a settlement which is payable once in three months out of employer's own volition, does not fall with in the meaning of wages under Section 2 (22) of the Act. *(RD, ESIC, Ahmadabad v. Accumax Ltd.-2001 (2) LLN.72; 2001(1) LIC.546)*

25. PAYMENT MADE TO RICKSHAW PULLERS, HATHRAIRY PULLERS AND TRUCK OPERATORS (INCLUDING LOADING & UNLOADING CHARGES WHEN THE LOADERS/ UNLOADERS ARE THE EMPLOYEES OF THE TRUCK OPERATORS :

Rickshaw pullers, Hathrairy pullers and Truck Operators (who bring labour with them) no contribution is payable on the amount paid by the employer if the amount paid is lump sum amount including loading/ un-loading charges and no separate wages are paid by the employer. (Normally, in such cases Loading, Unloading charges are not separately booked as it is paid only to the driver or the truck operator.)

Similar view was held by *Bombay Division Bench in 1990 in the case of Raisaheb Tekchand, Mohate Mills vs. R.D. ESIC.*

26. HAMALIS/COOLIES EMPLOYED AT A PARTIULAR TIME :

Where Hamals & Coolies are employed at a particular place and a particular time,i.e. not frequently as a routine and regular part of the work outside the premises of the factory/establishment to perform a specific job on the spot in such cases no contribution is payable on the amount paid to such Coolies/Hamals, however the contribution is payable on the amount paid to the coolies and hamals for services rendered within the premises of the employer.

Bombay High Court in the case of Parley Bottling Co.Ltd. VS. ESIC,Bombay 1989 and Supreme Court in the case of ESIC VS. Premier Clay Products, have held this view.

27. SHORT PERIOD CONTRACT FOR SERVICE – ELECTRICIAN, CARPENTERS, MECHANICS, PLUMBERS ETC. /REPAIR WORK DONE ON SHOP:

In such cases also contribution is payable on the amount paid by the Employer if the services are rendered within the premises. This view was also held by *Punjab and Haryana High Court vide its judgment dated 29.3.84 in the case of Modern Equipment Vs. ESIC in Civil Appeal No.3218 of 1989.*

28. EXPENDITURE ON SERVICING OF MACHINES :

No contribution is payable on the servicing of machines where the job awarded is under an annual maintanence and service contract with a servicing unit and instead of contract of service, there is a contract for service for servicing of machines. (The underlying reason is that generally that it is a purely technical job of a short duration done by different persons at different points of time and they are done at infrequent intervals at times convenient to him , thus leaving no scope for their coverage and control over their wages,)

29. EXPENDITURE ON ANNUAL/PERIODICAL SERVICE CONTRACT :

In the factories/establishments certain amount is being paid by the employer to the supplier of machines or to the firms of repute for the annual/periodical servicing of the machines and for such purposes the contract is awarded. In such cases no contribution is payable on the amount paid for annual/periodical service contracts.

30. COMMISSION TO DEALERS/AGENTS:

Where dealers/agents are appointed by the employers but no regular wages are paid and it is not obligatory on the part of such dealers/agents to attend to the factories/ establishments and they are paid commission only on the quantum of sales, in such cases the amount paid by the employer as commission/dealership does not constitute wage under Section 2(22) of the ESI Act and hence no contribution is payable.

31. SERVICE CONTRACT :

Amount paid to an organisation for maintenance of Machinery/Equipments as part of service contract will not attract ESI contribution.

32. PAYMENT MADE TO LABOUR CONSULTANTS, LAWYERS, ENGINEERS, COUNSELS, and CHARTERED ACCOUNTANTS:

The amount paid by the employer to professional labour or tax consultants, lawyers, engineers, counsels, chartered accountants are not wages as per provisions under Section 2(22) of the ESI Act and hence no contribution is payable.

33(1)The following items will form part of the wage both under Section 2(9) i.e for considering the employee for the purpose of coverage and Section 2(22) of the ESI Act for the purpose of charging of contribution:-

a) Matinee allowance which is being paid to employees in Cinema Houses;

b) Shift allowance paid to employees who work on shift duty at odd shifts;

c) Location allowance paid, in addition to Dearness Allowance to meet the cost of higher house rent.

d) Compensatory allowance.

e) Cash handling allowance paid to Cashier.

f) Supervisory Allowance.

g) Additional pay paid to training staff.

h) Charge allowance

i) Steno/Typist allowance

j) Plant allowance

k) Honorarium for looking after the hospital/dispensary

l) Computer allowance

m) Gestetner/Photocopier/Printer allowance

n) Personnel/Special allowance

o) Machine alowance

p) Canvassing allowance

q) First-aid allowance

r) Personnel allowance – Pay over and above the basic wage and Dearness allowance for skill, efficiency or past good records.

s) Area allowance - given to employees living in a particular area to meet the high cost of living in that area.

t) Exgratia payment if payment is made within an interval of two months.

33 (2) The following items will not form part of the wage either under Section 2(9) or under Section 2(22) of the ESI Act:-

a) Payment made on account of un-availed leave at the time of discharge. Commission on advertisement secured for Newspapers, if not paid to the regular employee.

b) Fuel allowance/Petrol allowance

c) Entertainment allowance

d) Shoes allowance

e) Payment made on account of gratuity on discharge/retirement.

f) Payment made on encashment of leave.

Other case laws:1. Daily Bata not covered. *(Kerala High Court in ESIC v. K.P.Vinodkumar-1991 (79) FJR. 207.)* It was held that the amount paid to running staff as daily bata or allowance while on travelling duty fell within the exclusion clause © of the definition.

2. Travelling Bata not covered – Travelling Bata paid to the employees does not form part of their "wages", and it is covered by the exclusion clause of Section 2 (22) of the Act. *(Madras High Court in the case of S. Ganeshan, Prop. Sonamuthu Roadways, PalayamKottai v. RD, ESIC, Madras. - 2004 LIC.2244; 2004 (102)FLR.836.*

3. Free boarding and lodging, covered under wages: *The Bombay High Court held in the case of RD, ESIC Mumbai v. Golden Gate Restaurant*, that the remuneration in the form of free lodging and boarding for work is wages as per Section 2(22) of the Act.(2002 (1) LLJ.972; 2002 (1) CLR.500; 2002 (92)FLR.1078 2002 LLR.341; 2002 (1) LLN. 957; 2002(2)LIC.1570.

CHAPTER VIII

CONTRIBUTION

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CHAPTER VIII

CONTRIBUTION

Introduction :

The Act places a mandatory responsibility on the principal Employer to remit the prescribed quantum of Contributions for every coverable employee in his unit within the time-limits specified every month. While he has to make the total Contributions for each and every employee he is allowed to recover the Employees' Share from the wage Bill as expressly specified in the Act. As the contributions thus garnered form the major component of the corpus to incur all the expenditure of the Corporation, especially, payment of Benefits, both in cash and in kind as well as the entire administrative and infrastructural expenditure as provided under section 28, 28A strict and timely compliance is expected. And the Act has provided effective safe guards and a supporting enforcing machinery for ensuring a fool-proof system in place.

L 8.1 What is Contribution: The relevant provisions of the Act relating to "contributions" are as under:-

i) Section 2(4) : "Contribution" means the sum of money payable to the Corporation by the Principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act.

ii) Section 39 (1) : The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

L.8.2 Rate of Contribution:

i) Section 39(2) : The contributions shall be paid at such rates as may be prescribed by the Central Government:

Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendement) Act, 1989(29) of 1989

ii) Rule 51 of ESI (Central) Rules 1950 :– The amount of contribution for a wage period shall be in respect of :-

a) Employers' contribution, a sum (rounded to the next higher rupee) equal to four and three-fourth percent of the wages payable to an employee.(i.e. 4.75% of the wages). And

b) Employees' contribution, a sum (rounded to the next higher rupee) equal to one and three-fourth percent of the wages payable to an employee. (i.e. 1.75% of the wages).

(N.B.: The rates of contribution were 7% of the total wages of the employee till 26.1.1985-7.25% of the total wages, from27.1.1985 to 31.3.1992-5.5% of the total wages from 1.4.1982 to 31.12.1996 and at 6.5% of the total wages from 1.1.1997 onwards)

L 8.3 Wage Period :

i) Section 2(23) : "wage period" in relation to an employee means the period in respect of which wages are ordinarily payable to him/her whether in terms of the contract of employment, express or implied or otherwise.

ii) Section 39(3) : The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.

L 8.4 When Contribution falls due :

i) Section 39(4) : The Contributions payable in respect of each (wage period) shall ordinarily fall due on the last day of the (wage period), and where an employee is employed for part of the (wage period), or is employed under two or more employers during the same (wage period) the contributions shall fall due on such days as may be specified in the Regulations.

ii) Regulation 31 of ESI (General) Regulations 1950 : Time for Payment of Contribution – An employer who is liable to pay contributions in respect of any employee shall pay those contributions within 21 days of the last day of the calendar month in which the contributions fall due :

Provided that where a factory/establishment is permanently closed, the employer shall pay contribution on the last day of its closure :

Provided that an employer may opt, in such manner as may be prescribed , by the Director General for payment of amount in advance towards contribution to be adjusted against contributions payable by him (including employees' contribution) for a wage period so that the balance of advance amount

continues to be more than the contributions due and payable at the end of the concerned wage period. Such an employer shall furnish in the prescribed pro forma(Form 5-A), a six monthly statement of contributions payable and paid in advance with the balance left at the end of each month along with return of contributions to the appropriate Regional Office of the Corporation.

iii) Regulation 36 of ESI (General) Regulations 1950 : Employment for part of a wage period – Where an employee is employed by an employer for part of a wage period, the contributions in respect of such wage period, shall fall due on the last day of the employment by such employer in that wage period.

iv) Regulation 38 of ESI (General) Regulations 1950 : Scheme by joint employers: Where an employee is ordinarily employed by two or more employers in a wage period, the employers of such an employee may, if they think fit, submit to the Corporation a scheme for the payment of the contributions in respect of such employee and the Corporation may, if it is satisfied that the scheme is such as will secure the due payment of the contributions, approve such a scheme subject to such terms and condition as it may think necessary :

PROVIDED that if no such scheme is submitted to or approved by the Corporation, the Corporation may specify that any one of such employers shall be treated as the employer for the purposes of the provisions of the Act and the regulation relating to contributions, and in such a case the contribution for any wage period shall fall due on the last day of the wage period on which an employee was employed by the employer so specified.

v) Regulation 39 of ESI (General) Regulations 1950: Reckoning of wages of an employee employed by two or more employers in the same wage period: Where an employee is employed by an employer for only a part of the wage period or where an employee is employed by two or more employers in a wage period, only the wages payable to him for the days up to and including the day on which the contribution falls due for that wage period shall be taken into account in reckoning wages for the purposes of determining the average daily wages of the employee for that wage period.

L 8.5 Who is liable to pay the contributions in the first instance :

i) Section 40 (1) : Principal employer to pay contributions in the first instance – The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

ii) Section 40 (2) : Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by reduction from his wages and not otherwise:

Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable) or in excess of the sum representing the employee's contribution for the period.

iii) Section 40 (3): Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

iv) Section 40 (4) : Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

v) Section 40 (5) : The principal employer shall bear the expenses of remitting the contribution to the Corporation.

Explanation:

i) For the month of April, the contribution falls due on the last day of April. The Employees' contribution is to be paid by the principal employer to the Corporation in the first instance @ 1.75 of the wages of an employee payable for the month of April rounded to the next higher rupee. The employer is entitled to recover this employees' contribution from the wages of that employee only for the month of April as and when such wages were paid to the employee. If the employer failed or neglected to recover the contribution from the wages paid for April, he cannot recover the contribution paid for April from the wages of any subsequent month. It should be borne by the principal employer himself.

ii) In case of a factory or establishment covered from a retrospective date, the principal employer is not entitled to recover the contributions for the past period from the present wages of or otherwise from the employees. The entire arrears of employees' contribution for the past period should also be borne by the principal employer himself.

iii) The contribution falling due for a particular wage period shall be paid by the principal employer in the fist instance to the Corporation within the time limits prescribed. Recovery of the contribution from the employee arises only as and when the wages for the relevant wage period is disbursed or paid to that employee. There may be cases, where an employee worked for a full or part of the wages period and goes on long leave or leaves the employment without receiving the wages for that wages period. But in all such cases, the principal employer is liable to pay the Employees' contribution and Employer's contribution even though the wages were actually not paid to the employee for the period for which he worked. In other words, contribution is due on the wages payable whether actually paid or not.

iv) Contribution cannot be recovered from the employee in excess of the amount of Employees' contributions. Deduction of any amount in excess of the rate prescribed is irregular and against the provisions of the proviso to Section 40(2) of the Act.

v) The Principal employer/immediate employer is not entitled to recover the Employer's share of contribution from the wages of the employee. (Section 40(3))

CASE LAWS:

1. Contribution to be paid even if the employees leave their employment mid way: In the case of Kerala State Drugs and Pharmaceuticals Limited (1995 (3) SCC.148), the Supreme Court held that once the Act is applicable to an establishment, the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment.

2. Liability of principal employer not to be absolved even if deduction is not made from the wages of the employees: The temporary as well as casual employees and the workmen employed through a contractor are covered under the Act and the principal employer has to pay contributions in respect of such workmen in the first instance and he has the right to recover the same from the immediate employer under Section 41. Even the employees whether temporary or casual who had left the service

long ago and who were unidentifiable are also covered under the Act and the wages paid to them are also liable to contribution under the Act and the scheme. The Division Bench of Kerala High Court held that the mere fact that no deductions were made from the wages does not absolve the employer with liability to pay contributions to the Corporation. *(ESIC v. Premier Timber Supplies – 1991 (78) FJR.307)*

3. Principal employer liable to pay the contributions in the first instance: in Section 40, the statute give a clear mandate and categorically imposes an obligation on the principal employer to pay both the contributions in the first instance, subject to a right of reimbursement from the employee or employees concerned in regard to his or their portion or portions of the contribution.

Further, in Section 40(5), it is stated that the expenses of remitting the contributions to the Corporation should be borne by the employer, thus making it clear beyond dispute in the proceedings or aforesaid context, that vis-à-vis the Corporation, the liability for both the above type of contributions is of the employer – at least, in the first instance. That being so, it is idle to contend that, the employer not having deducted the 'employees' contributions' from their wages, he cannot be made liable for the same. He cannot certainly take advantage of his own negligence or omission that would be allowing him to defeat the Act by not availing himself of a right there under and seeking, on that ground, to avoid his statutory obligation. In this view, it is also no answer to say that the employer may not find it possible to recover the contributions in terms of the Act. It was held by the Division Bench of the Calcutta High Court that whether he has lost the right in that respect is irrelevant so far as his primary liability under Section 40 is concerned. *(Indrapuri Studio (Pvt.) Ltd., and another v. ESIC-1961 (2) LLJ. 306)*

4. Liability to pay the contribution for the past period after closure of the business: In the case of *Hotel Kalpaka International (1993 I CLR 332 (SC); 1993 (1) LLJ.939)*, while admitting the appeal filed by the Corporation, the Supreme Court rejected the contention of the employer that he cannot be called upon to pay the contributions for the past period prior to the closure of the business, as the contribution was not collected from the employees. In this case, the employer's business was closed from 31-3-1988, and the employer defaulted in payment of contributions from 11-7-1985 to 31-3-1988. The Corporation raised demand for payment of contributions for this period. It was held that the contention of the employer cannot be accepted. Under Section 26 of the Act, all contributions are paid in to a common fund. Such a fund is to be administered under section 28. Therefore, the employer cannot contend that he did not collect contributions from the employees and hence he cannot be called upon to pay. Section 40(1) imposes liability to pay the contributions, in the first instance, on the principal employer. Section 40 (4) puts the matter beyond doubt that there is an entrustment and the employer is a trustee. Section 40(4) will be rendered negated if the employer's contention is accepted. The

Supreme Court did not accept the High Court ruling and observed that if the demand for payment of contributions prior to the date of closure cannot be enforced after closure of the business, it would not promote the scheme and avoid mischief. On the contrary, it would perpetuate the mischief. An employer can easily avoid this statutory liability and deny the beneficial piece of social security legislation of the employees by closing the business before recovery of the contribution. The proceedings of the Corporation for recovery of the contribution were for the period prior to the date of closure of the establishment. Therefore it matters little when notice was issued upon to pay contributions. Such a notice was only a reminder to the employer for payment of contributions.

5. Liability not absolved of, because of the financial incapacity of the employer: The Division Bench of Madras High Court while upholding the decision of the EI Court, observed that the ability of the Society to the contribution is not relevant even assuming that the society has no resources. That is not a ground which can be urged against the liability imposed by statute. If that were the legal position, practically every one who is made liable to pay the contribution under the Act will say that he has no sufficient resources and so the statutory liability cannot be enforced. Therefore, whether the appellant has sufficient resources or not, its liability under the Act cannot be disputed.

The appellant cannot rely on his own default for saying that since the employees of his establishment would not have the benefit for the past period, the contribution is not payable. If the appellant had paid the contributions for the said period, the employees would have had the benefit of the provisions of the Act. Thus, the appellant cannot take advantage of his own default and say by his default, the employees of the Society had no benefit of the Act and that, therefore, the appellant is not liable to pay the contribution for the past period. The division Bench held that the second ground also has been rightly rejected by the Insurance Court. *(South India viscose Co-operative Stores Ltd., v. R.D., ESIC (1986 (2) LLJ. 149)*

6. Sick company is not exempted from payment of contributions: The payment of contributions is the responsibility of the principal employer after it becomes due and that responsibility does not start only after payment of the wages to the employees. Simply because an establishment is declared sick by the Board for Industrial and Financial Reconstruction, it does not mean that it is exempted from the payment of ESI contribution. The Karnataka High Court held that the capacity to pay the contributions has nothing to do with an order passed under Section 45-A, more so, when the scheme of the Act is kept in mind with the purpose for which the Act has been enacted. The High Court referred to the *Supreme Court Judgment in ESIC v. Hotel Kalpaka International (1993 (1) LLJ.939; 1993 (66) FLR.375)* wherein it was held that even if an industry is closed, it cannot be said that the liability to pay contribution ceases or that the demand to enforce payment of contribution cannot be

enforced against a closed business since, if such a stand is accepted, it cannot promote the scheme and avoid mischief. *(ESIC, Hubli v. A P S Star Industries Ltd. Dharwad- 2003 LLR. 972; 2003 (98) FLR. 1207; 2003(103) FJR. 573; 2003(3) LIC. 336; 2003(3) LLN.34.)*

A similar view has been held by the *Andhra Pradesh High Court in the case of ESIC v. Chirala Co-operative Spinning Mills Ltd., Chirala, Prakasham District (CMA No. 2905/2001 dated 9th November 2004; 2005(2) LLN. 584; 2005 (100) FLR. 703; 2005 LLR. 591)*

7. Employer can deduct contribution employees' contribution from their wages: Two conditions have to be satisfied before an employer is entitled to deduct the employees' contribution:-

a) The deduction must be from the wages of the employee;

b) The deduction must relate to the period in respect of which the contribution is payable.

(ESIC v. G.N. Mathur and others. 1992 (80) FJR. 343) These judgments make it abundantly explicit that the employer is bound to pay the periodical payments of contributions notwithstanding that wages have not been disbursed, factory was sick or closed and for the period of non compliance no benefits have been paid. Irrespective of the financial position of the unit, employee no longer being in service, his not getting any benefit for the past periods of non compliance the statutory dues of contributions should be compulsorily paid in time failing which the employer has to pay the accrued interests and also the Damages that may be imposed on him by the Corporation.

L 8.6 Manner of recovery from Immediate Employer :

i) Section 41(1) : Recovery of contributions from immediate employer – A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

ii) Section 41(1-A) : The immediate employer shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub-section (1).

iii) Section 41(2) : In the case referred to in sub-section (1), the immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to sub-section (2) of section 40.

Case Law : Principal employer entitled to recover the amount from the immediate employer: The Principal employer is required to meet the liability in the first instance, and he is entitled to recover the same from the immediate employer. *(RD, ESIC v. FACT Engineering Works and others- 2003 (97) FLR.308; 2003 (2) LLN.669; 2003(1) LLJ.27; 2002 (4) LIC.3909)*

L.8.7 General Provisions as to payment of contributions :

A) Exemption from payment of employee's contribution :

i) Section 42 (1) : No employee's contribution shall be payable by or on behalf of an employee whose average daily wages (during a wage period are below {such wages as may be prescribed by the Central Government}

Explanation – The average daily wages of an employee shall be calculated (in such manner as may be prescribed by the Central Government).

ii) Rule 52 of ESI (Central) Rules , 1950 : The average daily wages during a wage period for exemption from payment of employee's contribution under section 42(1) shall be upto and inclusive of (rupees seventy) w.e.f 1.8.2007. (This was Rs. 25/- upto 31.12.1996, Rs.40/- from 1.1.1997 – 31.3.2004 and Rs.50/- from 1.4.2004 to 31.7.2007. In fact, such employees whose average daily wage during a wage period is upto and inclusive of Rs.70/- are termed as "exempted employees" u/s 2(10) of the Act. Therefore, an "exempted employees" is not liable to pay the employee's contribution under this Act.

iii) Section 42(2) : Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each wage period in r/o the whole or part of which wages are payable to the employees and not otherwise.

B) Exemption from payment of employer's share of contribution in respect of certain employees:

i) Rule 51(A)(1) of ESI (Central) Rules, 1950 : In respect of any employee who is a person with

disability under the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and under the National Trust and Welfare of Persons with Autism, Cerebal Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999), the employer shall not be required to pay employer's share of contribution upto a maximum period of three years from the date of commencement of the contribution period.

ii) Rule 51(A)(2) of ESI (Central) Rules, 1950 : The employer's share of contribution in respect of such employees and for such period under sub-section (1) shall be reimbursed to the Corporation by the Central Government

L 8.8 Manner of payment of contribution :

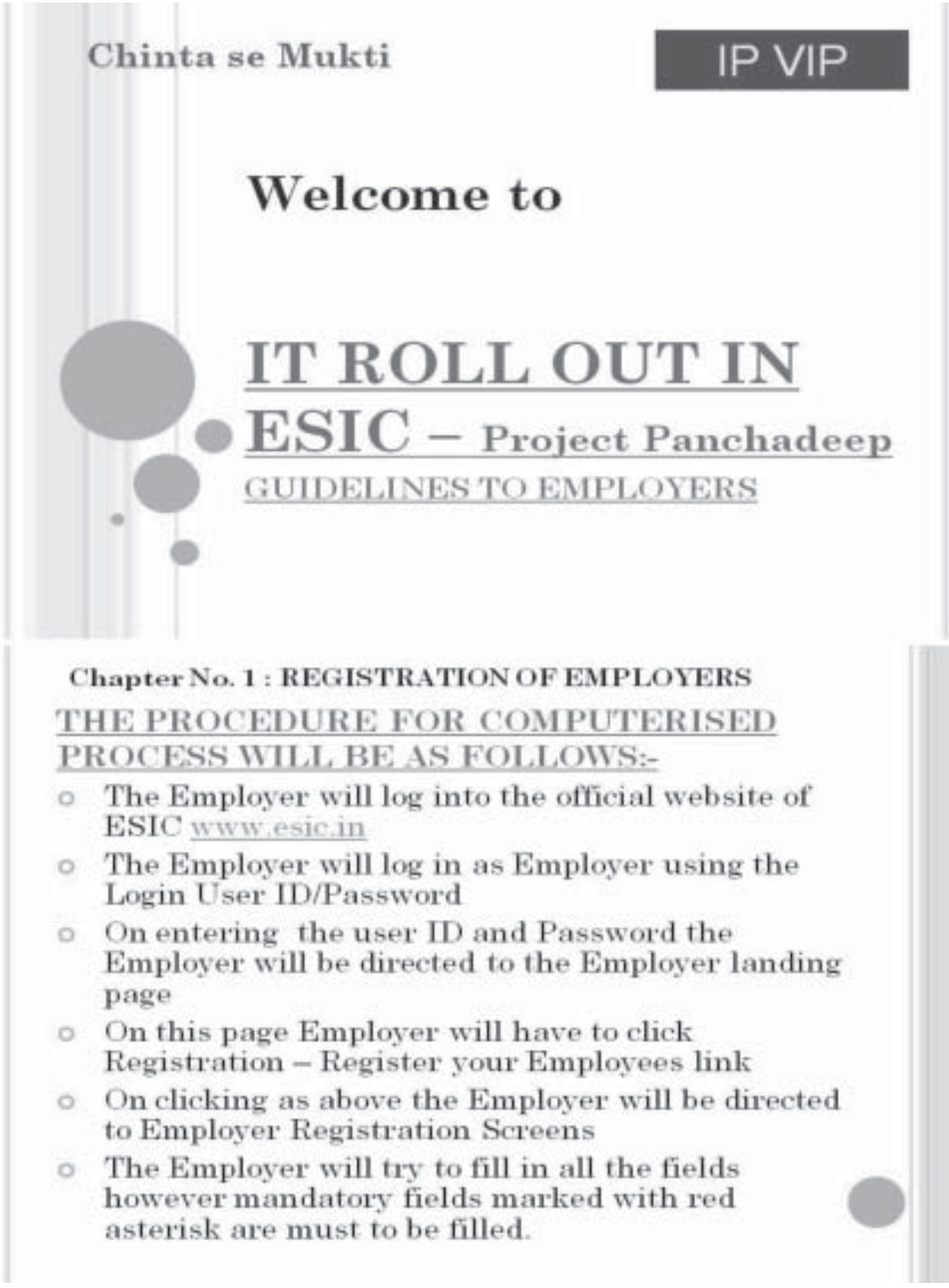
i) Section 43 : Subject to the provisions of this Act, the Corporation may make Regulations for any matter relating or incidental to the payment and collection of Contributions payable under this Act.

ii) Regulation 29 of ESI (General) Regulations 1950 : Contribution payable under this Act shall, except when otherwise provided, be paid into a bank duly authorized by the Corporation.

N.B : Prior to " IT roll out in ESIC", the total amount of contribution (both the shares) in respect of all the employees for each month is to be deposited by the employer with the authorized bank branches in cash or by cheque or demand draft through a challan in the prescribed form in quadruplicate. The challans prescribed for this purpose is supplied free of cost by the concerned Branch office on placing the indent by the employer.

However, with the ongoing "IT roll out in ESIC", necessary guidelines have been issued for online payment of contribution by the employers in the booklet "IT Roll out in ESIC – Guidelines to Employers". In addition, Hqr's Office have issued instructions on Collection / Remittance of ESI Contributions through System Generated Challans vide file no F-23/13/IT/10/A/cs-II dated 25/10/2010 , 10/11/2010, 22/11/2010 and 6/12/2010 inter-alia informing SBI branches where System Generated Challans shall be accepted and the branches where the conventional challans are to be accepted till further orders. The contents of the above instructions may be seen in the website www. esic.nic.in

The detailed guide-lines provided to the employers are furnhished hereunder for ready reference.


Chinta se Mukti
IP VIP
Welcome to
IT ROLL OUT IN ESIC – Project Panchadeep
GUIDELINES TO EMPLOYERS
Chapter No. 1 : REGISTRATION OF EMPLOYERS
THE PROCEDURE FOR COMPUTERISED PROCESS WILL BE AS FOLLOWS:-
The Employer will log into the official website of ESIC www.esic.in
The Employer will log in as Employer using the Login User ID/Password
On entering the user ID and Password the Employer will be directed to the Employer landing page
On this page Employer will have to click Registration – Register your Employees link
On clicking as above the Employer will be directed to Employer Registration Screens
The Employer will try to fill in all the fields however mandatory fields marked with red asterisk are must to be filled.

THE PROCEDURE FOR COMPUTERISED PROCESS WILL BE AS FOLLOWS CONTD.

- In case of the employees with 40% and above disability, where employer wish to avail the incentive under the scheme for employment of disabled employees Employer will have to upload a medical certificate as per the prescribed Proforma.
- On successful completion of the Declaration Form the same can be submitted and Insurance No will be automatically allotted.
- The Employer will be able take a printout of Code allotment letter and can also take the print out of the Temporary Identity Certificate for the Insured Persons. A family photograph will be affixed on the designated space in the Temporary Identity Certificate and countersigned by the Employer for getting treatment till the Pehchan Card is delivered to the Insured Person.
- The Insured person along with his family will be required to visit the Branch Office of his choice for capturing the biometrics and photographic details for preparation of the Pehchan Cards.

Chapter - II
SCREEN FOR LOGIN AND REGISTRATION.

ON LOGIN TO THE WEBSITE OF ESIC WWW.ESIC.IN THE EMPLOYER WILL REACH THE FOLLOWING SCREEN.



The Employer can click the sign up as Employer using his login User ID and Password

THE EMPLOYER WILL BE DIRECTED TO THE FOLLOWING SCREEN.



The Employer can click Registration – Register your Employees for registration of his employees

Chapter – III

IT ROLL OUT IN ESIC

GUIDELINES TO EMPLOYERS-

Payment of Monthly Contribution

Note

Chapter – IV

MAINTENANCE OF REGISTER OF EMPLOYEES (FORM 6) UNDER REG. 32 (1)/32 (1A) OF ESI (GEN) REG., 1950

IN THE COMPUTERISED PROCESS THE PROCEDURE FOR ONLINE MAINTENANCE OF FORM 6 WILL BE AS FOLLOWS:-

1. Under the computerised process the Employers are required to maintain the Form 6 (Register of Employees) under Reg. 32 (1) and 32 (1 A) of ESI (General) Regulation, 1950, as amended from time to time, online.

2. The Form-6 for each employer will be generated initially on the basis of the information available with the Corporation.

3. The employers can access the Form 6 through their login/password and update it on the basis of the latest employment position. The detailed guidelines for updating the Form 6 are available in our website as well as with all the Branch Offices, Regional Offices, Sub Regional Offices and Divisional Offices.

4. In future the names and Insurance nos. of the newly appointed Employees will be directly up dated as and when they are registered online. The names and Insurance Nos of such employees who are already registered with ESIC can be done through a mechanism available online.

5. If any person is already registered with ESIC employer need not submit his Declaration Form again as his earlier Insurance No. will be valid for the purposes of Form-6.

Note on Pyt of Contribution

Chapter – V

IN THE COMPUTERISED SET UP THE PROCEDURE WILL BE AS FOLLOWS:-

1. The Employer will have to first fill up the particulars in Form 6 maintained .

2. In case of employers with small number of employees the entries of number of days and wages can be done online.

3. In case of Employers with large number of employees they can download Excel Sheet/X Form and after updating the number of days and wages paid/payable upload the same.

4. The total Employees' Contribution and Employer's Contribution will be calculated by the system on the basis of the inputs.

1. From there the Employer will have the option to make online payments through the payment Gateway. (Will be introduced shortly)

2. In case the Employer wants to make offline payment then he will have to generate the challan from the system with an unique challan number which will be system generated.

3. The Employer can take this challan to the authorised branch of the designated Bank and deposit along with Cash/Cheque/Draft.

4. Employer will have the option to make partial payment of the due amount. However, in such case he will be identified as a defaulter for follow up action.

Chapter – VI

THE SCREEN FOR ONLINE MAINTENANCE OF FORM 6 AND PAYMENT OF CONTRIBUTION.

ON LOGIN TO THE WEBSITE OF ESIC WWW.ESIC.IN THE EMPLOYER WILL REACH THE FOLLOWING SCREEN:-



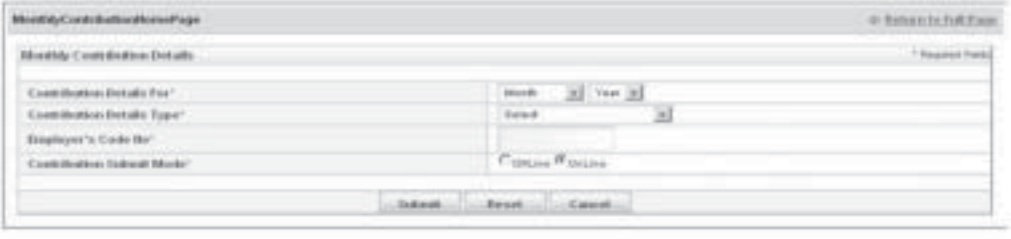
The Employer can click the sign up as Employer by entering the login User ID and Password.

THE EMPLOYER WILL BE TAKEN TO THE FOLLOWING SCREEN.



The Employer can click Payments – Monthly Contribution

ON CLICKING THE LINK THE EMPLOYER WILL BE REDIRECTED TO "MONTHLY CONTRIBUTION HOME PAGE" PAGE.



Employer will select the month and year for Contribution Details;
Contribution Details Type will be "Monthly Contribution"
Employer's code No. will be auto-populated – It will come automatically as per log-in user-ID and password.
Select Mode of Filing Contribution Details – Online/Offline
On Clicking 'Reset': All the entered fields will get cleared.
On Clicking 'Cancel': The page will get redirected to Main page.
On Clicking 'Submit': If Employer has selected "Online" the page will get redirected to 'Monthly Contribution Details' page. Else the page will redirect to X-forms or Excel Sheet upload.



The Form-6 for Monthly Contribution will display as mentioned in the above figure. All the IPs who are working for the employer and are registered with ESIC will automatically appear in the above sheet. Employees will be arranged in IP Number ascending order. Pagination is provided for ease of the employer in case Employees strength goes beyond 10. Employer can navigate to any page and fill the IP details.
Against the IP Name the Employer has to provide "No. of days for which Wages Paid/Payable" and "Total Monthly Wages (In Rupees)".
Automatically the system will calculate the IP contribution and will be displayed in IP contribution (in Rs.) column. IP contribution will be rounded to next higher rupee. Employer is required to fill the complete details for all the IPs in the Form-6.
If number of days worked for IP is '0' (Zero) and wages paid is '0' then Employer must specify the reason for '0' wages. The Employer will select the appropriate value from the drop-down provided.

Drop-down will have following reasons:

- Leave
- Compliance by Immediate Employer
- Suspension of work
- Strike/Lockout
- No Work
- Out of Coverage
- Left Service
- Retired
- Death
- Retrenchment

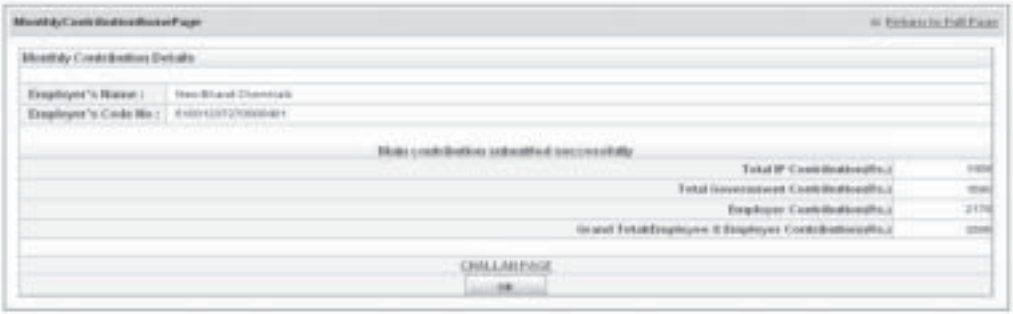
"Out of Coverage" will appear only for month of April and October.

For all the reasons except point 1 to 6, the employer must provide the date i.e. Date of Leaving Service, date of death and others. The data need not be of the same month and year, it could also be earlier month and year. If the date is provided, the IP will not appear in succeeding months Form-6.

- On Clicking 'Reset': All the entered fields will get cleared.
- On Clicking 'Cancel': The page will get redirected to Revenue Main page.
- On Clicking 'Preview': This will give a brief to the employer on what is the amount due for the employer as per the details provided by the Employer.



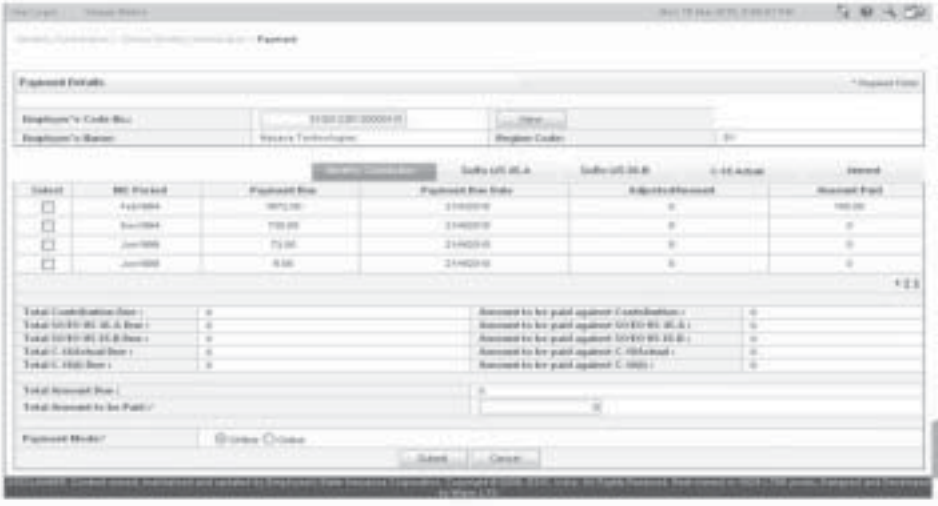
On Clicking 'Submit': The page will get redirected to 'Monthly Contribution Page'.



Employer can take Challan link from Successful Submission page and make payment towards the contribution.

CONTRIBUTION PAYMENT.

Employer will be provided a link in the Portal "Challan and Payment".
On taking the link below it will redirect to 'Payment' page.



Monthly Contribution details which are provided by the Employer will appear in the screen. This screen will show all the dues which are pending against the employer.

1. Employer will select the due against which Employer wishes to make payment. On selecting it will be displayed accordingly in the grid below.
2. Total amount due will be populated as per Employer selection.
3. Employer will enter the amount to be paid. This amount should be less than or equal to amount due mentioned.
4. Employer should Select Payment mode 'Online' or 'Offline'.



CONTD.....



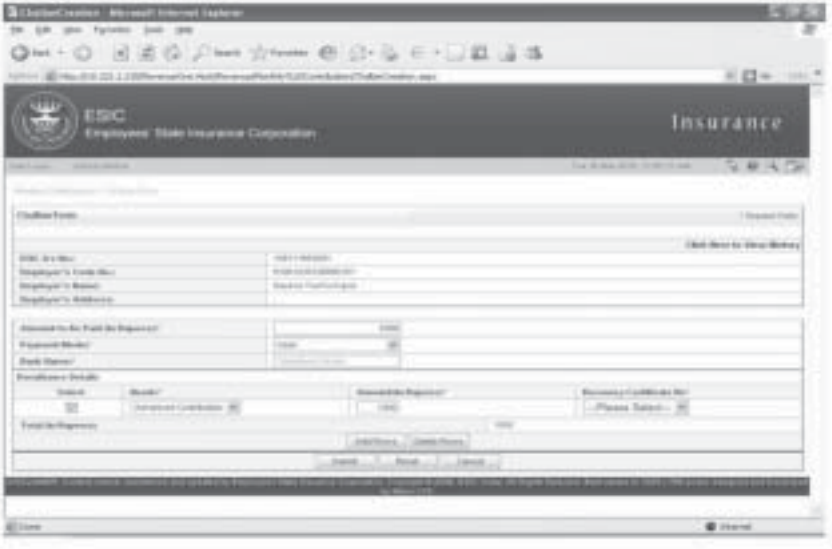
On Clicking 'Submit':

•If Employer selects "Online" the employer will be connected to Payment Gateway for payment using Credit/Debit Card.

•If Employer selects "Offline" the employer will be redirected to Challan page

•On Clicking 'Cancel': The page will get redirected to Revenue Main page.

CHALLAN.



CHALLAN CONTD.

- Employer will select the "Payment Mode". The following options will be available to the user:
  1. Cash
  2. Cheque
  3. Demand Draft
- If Employer selects "Cash" automatically State Bank of India will be displayed which states that Employer need to deposit cash at State bank of India.
- If Employer selects 'Cheque', the Employer will be required to furnish Cheque details like cheque number, drawn on bank, cheque date.
- If Employer selects "Demand Draft', the employer will be required to furnish Demand draft details.
- Heads – This will auto-populate as per selection made by the Employer in payment page. For Monthly Contribution, Heads will be 'Contribution'.

CHALLAN CONTD.

- Fill all the required fields.
- Select the amount payment mode (Cash/Cheque/DD).
- On Clicking 'Submit': The Challan will be created and employer can take printout of the Challan and submit at the Bank or ESIC. For cash deposit the Employer must deposit at SBI bank.
- On Clicking 'Reset': All the entered fields will get cleared.
- On Clicking 'Cancel': The page will get redirected to Revenue Main page.

- As per Reg. 32 (1) of the ESI Act each Employer is required to maintain Form 6 in respect of his factory/establishment and as per Sec 32 (1A) each Immediate Employer is required to maintain a register in Form 6 in respect of each employee engaged by him and submit the same to the Principal Employer before settlement of his payments. The Form 32 have columns for the Name, Insurance No., Name of the Dispensary to which attached, Occupation, Dept and Shift, if any, Date of appointment, date of leaving service, No. of days for which wages paid/payable, Total amount of wages paid/payable and Employees' share of Contribution. The Employer's Share of Contribution is also paid on the gross wages of the employees. In fact Form 6 under Reg. 32 is a procedure for determining of the contribution payable by the Employer in respect of his employer for a particular month. The payment challan is prepared by the Employer on the basis of this Form only.

REGISTRATION OF EMPLOYEES.

- The procedure for registration of employees of a covered factory/establishment, allotment of Insurance Numbers and issue of Identity Cards have been dealt in Reg 11, 12 , 14 and 15 of ESI (Gen) Regulation, 1950. As per the laid down procedure the particulars of the employees are to be obtained by the employer before or on the appointed day or before taking into employment. The particulars so obtained are to be entered in the Declaration Forms and sent to the appropriate Branch Office of the Corporation. The designated Branch Offices allots the Insurance Nos. and issues Temporary Identity Card to be used till Permanent Identity Card is issued to the Insured Person.

- The Employers are required to pay the contribution due in a particular month by 21st of the following month. The payment is made across the counter in the authorised Branch of the designated Bank through Cash, Draft/Cheque along with prescribed challans in four copies, two of which are retained by the Bank and two are returned to the employer on clearance of cheque/draft. The challans are filled up by the employers giving the Name, Code no. and the details of month for which paid, No. of Employees, Total Wages, Employees' Contribution and Employer's Contribution.

- The contribution payable under ESI Act can now only be paid through computer generated challans.
- The employers will be required to fill up the number of days worked and the wage particulars in respect of each employee, still in service and whose wages are due, in Form 6 maintained online.
- The details can be filled up online.
- The employers can also download Excel Sheet/ X Form which can be updated and uploaded.
- The Employees' and Employer's contribution will be automatically calculated and the Employer will have the option to either pay directly online through the payment Gateway provided or generate a challan for payment in any Branch of State Bank of India or any other designated Bank through Cheque/Draft/Cash.
- Hence forth only system generated challans will be accepted by our Bankers.
- In view of the monthly submission of details of contribution through entries in Form 6 maintained online, the submission of Returns of Contribution at the end of contribution period ending September and March will not be required in future.
- However, the employers will be required to submit a short Return of Contribution for the period for which the Form 6 was maintained manually by the employer for pre-computrised period and for which information will not be available in the system.

L 8.9 Consequences of delay in payment of contribution payable :

i) Section 39(5) (a) : If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be prescribed in the regulations till the date of its actual payment :

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

ii) Section 39(5) (b) : Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45-C to section 45-I of this Act.

N.B. : The detailed procedure for claiming of interest on delayed payment of contribution has been dealt in the relevant chapter.

iii) Regulation 31-C of ESI (General) Regulations 1950 : If an employer fails to pay contribution within the period specified under Regulation 31, or any other amount payable under the Act, the Corporation may recover damages u/s 85-B of this Act not exceeding the rates mentioned below, by way of penalty

Period of delay	Maximum rate of damages in % per annum of the amount due
(i) Less than 2 months	5%
(ii) 2 months and above but less than 4 months	10%
(iii) 4 months and above but less than 6 months	15%
(iv) 6 months and above	25%

Provided that the Corporation, in relation to a factory or establishment which is declared as sick industrial company and in respect of which a rehabilitation scheme has been sanctioned by the Board for Industrial and Financial Reconstruction, may—

(a) in case of change of management including transfer of undertaking(s) to workers' co-operative(s) or in case of merger or amalgamation of sick industrial company with a healthy company, completely waive the damages levied or leviable;

(b) in other cases, depending on its merits, waive up to 60 per cent damages levied or leviable;

(c) in exceptional hard cases, waive either totally or partially the damages levied or leviable.

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard. Besides, the damages should not exceed the amount of arrears as may be specified in the Regulation.

N.B.: The detailed procedure is explained in chapter XVIII .

L 8.10 Determination of Contribution in certain cases :

i) Section 45-A(1) : Where in respect of a factory or establishment no retuns, particulars, registers or records are submitted, furnished or maintained in accordance with provisions of section 44 or any Social Security Officer or any other official of the Corporation referred to in sub-section (2) of section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/s 45 , the Corporation, may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of employees of that factory or establishment.

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the Contribution shall become payable (w.e.f. 1.6.2010).

ii) Section 45-A(2) : An order made by the Corporation under sub-section (1) above shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45-B or the recovery u/s 45C to section 45-I of the Act.

N.B : The detailed procedure is explained in the relevant chapter

L 8.11 Maintenance of Register of employees :

i) Regulation 32 (1) of ESI (General) Regulations 1950 : Every employer shall maintain a register in Form-6 in respect of every employee of his factory or establishment .

ii) Regulation 32 (1) (a) of ESI (General) Regulations 1950 : Every immediate employer shall maintain a register in (Form-6) in respect of every employee engaged by him and submit the same to the principal employer before the settlement of any amount payable under sub-section(1) of section 41 of the Act.

iii) Regulation 32(2) of ESI (General) Regulations 1950 : Every employer shall preserve every register maintained under this regulation after it is filled, for a period of five years from the date of last entry therein.

iv) Regulation 32(3) of ESI (General) Regulations 1950 : The employer shall give a reasonable opportunity to any of his employees, if he so desires to see entries in respect of such employee in this register once a month.

L 8.12 What is Contribution and Benefit periods and why the same is required :

i) Rule 2 (1-C) of ESI (Central) Rules, 1950 - "Benefit period" means the period not exceeding six consecutive months corresponding to the contribution period, as may be specified in the regulations.

ii) Rule 2(2-A) of ESI (Central) Rules, 1950 – "Contribution period" means the period not exceeding six consecutive months, as may be specified in the regulations.

iii) Regulation 4 of ESI (General) Regulations 1950 : Contribution periods and the corresponding Benefit periods shall be as under :-

Contribution period	Corresponding benefit period
1st April to 30th September	1st January of the year following to 30th September
1st October to 31st March of the year following	1st July to 31st December

Provided that in the case of a person who becomes an employee within the meaning of the Act for the first time, the first contribution period shall commence from the date of such employment in the contribution period current on that day and the corresponding benefit period for him shall commence on the expiry of the period of 9 months from the date of such employment.

iv) "Medical Benefit" in kind and "Sickness and Maternity benefit" which are payable in cash to an insured person depend on the contributory conditions relating to contribution periods as detailed in the respective chapters in the Branch Office Manual .

L 8.13 Returns to be filed by employer in respect of contributions paid:

i) Regulation 26(1) of ESI (General) Regulations, 1950 : Every employer shall send a return of contributions in quadruplicate in (Form 5) along with receipted copies of challans for the amounts deposited in the bank, to the appropriate office by registered post or messenger, in respect of all employees for whom contributions are payable in a contribution period, so as to reach that office –

a) within 42 days of the termination of contribution period to which it relates;

b) within 21 days of the date of permanent closure of the factory or establishment, as the case may be ;

c) within 7 days of the date of receipt of requisition in that behalf from the appropriate office.

ii) Regulation 26(1-A) of ESI (General) Regulations, 1950 : Every employer shall be required to submit details in Form 5 (Return of Contribution) with regard to employees engaged through Principal and Immediate Employers and their coverage, submission of Declaration Forms, distribution of Temporary Identification Certificates/Permanent Identity Cards and wages considered for payment of contribution and wages excluded for such purpose.

N.B: Self Certification of Employers in Return of Contributions – To streamline and simplify the process of Revenue enforcement and with a view to lay focus on coverage and registration of all coverable employees to enable them to avail the benefits without hassle, the Corporation in its meeting held on 16.12.2007 resolved to amend Regulation 26 and Form 5 of the ESI (General) Regulation 1950. A notification to this effect has been issued on 11.3.2008 (Copy enclosed as Annexure 10). Accordingly, Regulation Form 5 (Return of Contribution) has been modified . The salient features of amendment made in the Return of Contribution are as under :

1. Self Declaration by employers regarding maintenance of records and registers, submission of Declaration Forms, distribution of Temporary Identification Certificates/Permanent Identity Cards, employees engaged directly or through immediate employers and wages paid to the workers.

2. All the employers employing 40 and more employees shall have to append a certificate duly certified by a Chartered Accountant in the revised format of Return of Contribution.

3. Employers employing less than 40 employees will have to provide self-certification without any certification from the Chartered Accountant in Return of Contribution.

The employer's submitting the RCs in the revised format without self-certification / certification by the Chartered Accountant , may also be accepted by the Branch Office for the purpose of generation of live lists and deciding eligibility of the employee to the cash and medical benefit. Such RCs should be stamped 'SELF CERTIFICATE NOT APPENDED" in red ink and are to be transmitted to the Revenue Branches at RO/SRO by the concerned Branch Officers for taking action on Defaulters as well as for Inspection purpose. These instructions will come into force w.e.f 01.04.2008 (Hqrs instructions No.S-11/12/2/2007-Rev-II dated 14.03.2008)

iii) Regulation 26(2) of ESI (General) Regulations, 1950 : For the purpose of Section 77 of the Act, the due date by which the evidence of contributions having been paid must reach the Corporation shall be the last of the days respectively specified in clauses (a), (b) and (c) of regulation 26(1) above.

iv) Regulation 27 of ESI (General) Regulations, 1950 : An employer shall, on demand from the appropriate office , issue certificate of contribution paid or payable (CCP) in respect of an insured person in such form as may be specified by the Director General.

N.B : However, with the ongoing " IT roll out in ESIC", and the System Generated Challans due to online payments by the employers , the requirement of filing RCs may need further amendments.

L 8.14 Scheme of joint employers :

i) Regulation 38 of ESI (General) Regulations 1950 : Where an employee is ordinarily employed by two or more employers in a wage period, the employers of such an employee may, if they think fit, submit to the Corporation a scheme for the payment of the contributions in respect of such employee and the Corporation may, if it is satisfied that the scheme is such as will secure the due payment of the contributions, approve such a scheme subject to such terms and condition as it may think necessary :

Provided that if no such scheme is submitted to or approved by the Corporation, the Corporation may specify that any one of such employers shall be treated as the employer for the purposes of the provisions of the Act and the regulation relating to contributions, and in such a case the contribution for any wage period shall fall due on the last day of the wage period on which an employee was employed by the employer so specified

L 8.15 Refund of Contribution erroneously paid :

i) Regulation 40(1) of ESI (General) Regulations 1950 : Any contribution paid by a person under the erroneous belief that the contributions were payable by that person under that Act may be refunded without interest by the Corporation to that person, if application to that effect is made in writing before the commencement of the benefit period corresponding to the contribution period in which such contribution was paid.

(ii) Regulation 40(2) of ESI (General) Regulations 1950 : Where any contribution has been paid by a person at a rate higher than that at which it was payable, the excess of the amount so paid over the amount payable may be refunded without interest by the Corporation to that person, if application to that effect is made before the commencement of the benefit period corresponding to the contribution period in which such contribution was paid.

(iii) Regulation 40(3) of ESI (General) Regulations 1950: In calculating the amount of any refund to be made under this regulation, there may be deducted the amount, if any, paid to any person by way of benefit on the basis of the contribution erroneously paid and for the refund of which the application is made.

(iv) Regulation 40(4) of ESI (General) Regulations 1950: Where the whole or part of the amount of any contribution referred to in sub-regulations (1) and (2), was recovered from an immediate employer or deducted from the wages of an employee by the principal employer, he shall, on getting the refund of the amount due from the Corporation, be liable to pay back the amount so recovered or deducted to the person from whom the amount was so recovered or deducted.

(v) Regulation 40(5) of ESI (General) Regulations 1950: Applications for refund under this regulation shall be made in such form and in such manner and shall be supported by such documents as the Director-General may, from time to time, determine.

L 8.16 Punishment for failure to pay contributions, etc

i) Section 85 : If any person :

a) fails to pay any contribution which under this Act he is liable to pay, or

b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution,or

c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or

d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punished an employee, or

e) fails to refuses to submit any return required by the regulations or makes a false return, or

f) obstructs any Inspector or other official of the corporation in the discharge of his duties or

g) in guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided,

he shall be punishable –

i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but –

a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees:

b) which shall not be less than six months , in any other case and shall also be liable to fine of five thousand rupees :

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment , impose a sentence of imprisonment for a lesser term

ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees or with both.

Any sum deducted by the Principal employer from the wages of an employee under the ESI Act shall be deemed to have been entrusted to him by the said employee for the purpose of paying the contribution in respect of which it was deducted. (Sec. 40(4). Breaking this 'trust' i.e. Non-payment of the Employees' contribution deducted from the wages of the employee, amounts to 'Criminal Breach of trust' under Section 405 of IPC and is punishable under Section 406 of IPC or under Sec. 85 (a) of the ESI Act.

All the offences under the ESI Act are 'non-cognizable' offences and therefore, a complaint is to be filed in a Court of Metropolitan Magistrate or Judicial Magistrate of the First Class to try any offence under this Act. The police therefore cannot take any action without an order from a competent Court. However, non-payment of Employees' contribution deducted from the wages of an employee is a 'cognizable' offence' under section 405 of the IPC. Therefore, for such an offence, a complaint can be lodged with the police in the concerned police station.

The provisions of Section 405 and 406 of IPC are given below.

Section 405. Criminal breach of trust :

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "Criminal Breach of Trust".

[1][Explanation [2][1]. -A person, being an employer [3][of an establishment whether exempted under section 17 of the Employees' Provident funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a directionof lawas aforesaid.]

[4][Explanation 2. -A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

1. Inserted. by Act 40 of 1973, sec.9 (w.e.f.1-11-1973).
2. Explanation renumbered as Explanation 1 by Act 38 of 1975, sec.9 (w.e.f. 1-9-1975).
3. Inserted. by Act 33 of 1988, sec.27 (w.e.f.1-8-1988).
4. Inserted. by Act 38 of 1975, sec.9 (w.e.f. 1-9-1975).

Section 406. Punishment for criminal breach of trust :

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

It may be seen that the explanation 2 below Section 405 of IPC has been added only from 1-9-1975, treating the non-payment of Employees' contribution deducted from the wages payable to the employee for credit to the ESI Fund under the ESI Act as "Criminal Breach of Trust". As such, for cases arising on or after 1-9-1975, the defaulting employers have to answer the charge under Section 406 IPC.

The Supreme Court observed that in the absence of any express provision in the Indian Penal Code incorporating the definition of "Principal employer" in Explanation to Section 405, this definition cannot be held to apply to the term "employer" in Explanation2. The term "employer" in explanation 2 must be understood as in ordinary parlance. In ordinary parlance, it is the Company which is the employer and not its directors either singly or collectively. *(ESIC v. S.K. Aggarwal and others – 1998 LLR.806)*

Head quarters instructions in this regard contained in letter No.

T- 11/14/41/84 - Ins. IV Dated: 9/03/2000 are as follows:

"A copy of the judgment of the *Hon'ble Supreme Court of India in the Criminal Appeal No. 222 of 1990 - Employees' State Insurance Corporation V/s S.K. Aggarwal* and others is enclosed herewith wherein the Hon'ble Supreme Court has held that even if the definition of "Principal Employer" under section 2(17) of the ESI Act is read in explanation - 2 of Section 405 of IPC, - the Directors of the company would not be covered by the definition of the term "Principal employer" when the company itself owns the factory and is also employer of the employees. The Supreme Court further observed that in the absence of any express provision in the IPC incorporating the definition of "Principal Employer" in explanation -2 to section 405, the definition of principal employer under Section 2(17) of the ESI Act can not be held to apply to the term employer in explanation 2, hence the term employer in explanation -2 must be understood as in ordinary parlance and in ordinary parlance it is the company which is the employer and not its directors either singly or collectively.

The matter was referred to our Legal adviser and it has been decided in consultation with him that prosecution cases under section 406/409 of IPC would not be filed against the directors of a company henceforth. Instead. Section 86-A of the ESI Act can be effectively utilised against the defaulting companies' by filing complaints in cases where the employees' contribution has been deducted by the company but not deposited with the ESI Account. In such cases, the prosecution can be initiated under Section 86-A of the ESI Act against the persons, who at the time the offence was committed, were Incharge of the company for the conduct of the business. However, while filing prosecution under section 86-A of the ESI Act against the above mentioned persons, the provisions of Section 86-A of the Act should be very strictly adhered to and no prosecution under Section 86-A should be filed by the Regional Directors against the

Director(s) of a company as a matter of routine without verifying as to whether he was actually responsible for the conduct of the business of the company at the time the offence was committed".

The provisions of Section 86-A are as follows:

"86A. OFFENCES BY COMPANIES. - (1) If the person committing an offence under this Act is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly : Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section, - (i) "company" means any body corporate and includes a firm and other associations of individuals; and (ii) "director" in relation to - (a) a company, other than a firm, means the Managing Director or a whole-time Director;

(b) a firm means a partner in the firm".

L 8.17 Enhanced punishment in certain cases after previous conviction :

i) Section 85-A : Whoever, having been convicted by a Court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to (two – years and with fine of five thousand rupees)

Provided that where such subsequent offence is for failure by the employer to pay any contribution which under this Act, he is liable to pay, he shall , for every such subsequent offence, be punishable with imprisonment for a term which may extend to (five years but which shall not be less than two years and shall also be liable to fine of twenty-five thousand rupees)

L 8.18 Legal action for non-payment or delayed payment:

The Corporation may also initiate prosecution action for non-payment or delayed payment of contribution under Section 85 (a) of the Act, by filing a complaint against the defaulting employer in a criminal or Economic offence Court of Metropolitan Magistrate or Judicial Magistrate of First Class. The detailed procedure is explained in the relevant chapter.

Thus, non-payment of Contributions results in payment of Penal Interest, Damages and also invites Criminal Action Simultaneously

L 8.19 Contributions on wages paid for back periods (arrears of wages):

The question of payment of wages for back period arises in any one of the following contingencies:-

1. Sanction and payment of increment from a previous period;

2. Any increase in wages/remuneration is declared from a retrospective date as a result of wage revision under mutual agreement with the employees' association/union and the management;

3. Periodical increases in Dearness Allowance from a back date;

4. An award of a tribunal or a judgment of any Court; and

5. A unilateral decision by the Management effecting increase in pay.

In all the above contingencies, the liability towards payment of contribution accrues only from the month in which the increment is sanctioned, agreement is entered in to, increase is announced, judgment is pronounced, or decision is taken as the case may be. There is no need to pay any contribution on the arrears pertaining to the period prior to the month of declaration/announcement/agreement as the case may be.

L 8.20 No refund of contribution as a result of wage revision from a retrospective date resulting in an employee crossing the wage limit:

The increase in wages from a retrospective date on coverage of an employee shall be only from the beginning of the next contribution period after its announcement as per proviso to Section 2(9) of the Act. Hence no refund is admissible if an employee crosses the wage ceiling from a back date as a result of wage revision from a retrospective date.

Case law:

(1) *The Bombay High Court in the case of R.D., ESIC Bombay v. Century Spinning and Weaving Co. (1991 II CLR)* observed that the employee as defined under Section 2(9) for the purpose of the scheme is a status enjoyed whereby they secure the benefits admissible under the scheme. There could be prospective but not retrospective change in that status as a result of retrospective wage revision. Hence the employer is not entitled to claim any refund of the contributions paid for the back period.

(2) *The Karnataka High Court in the case of ESIC Bangalore v. The Mysore Lamp Works, Ltd., Bangalore (2001 (9) FLR 511;2001(3) LLN.1089; 2001(2) LLJ.965)* held that a person who was an employee at the commencement of the contribution period continues to be an 'employee' till the end of the contribution period irrespective of any increase in wages in between; the actual determinative factor to get the benefits

under the Act would be the wages at the commencement of the contribution period; and the revision of wages with retrospective effect would never come in the way of the employees who were covered otherwise at the beginning of the contribution period.

3. A similar view was held by the Kerala High court in the case of *Cyriac Mathew, Kottayam v. Commissioner of Workmen's Compensation, Kottayam and others (2004 (3) LLJ. 1000; 2005(104) FLR.(Sum)6.)*

L 8.21 Refund of contributions paid under mistake:

An employer applied for registration of his establishment under an impression that the Act is applicable to the area in which the establishment is located. The Corporation allotted the code number and called for compliance. The employer was continuously complying. When the scheme was extended to that area at a later date, the Corporation found that the Coverage of the establishment for the period prior to the date of implementation was irregular. The claim of the employer for refund of the contributions for the earlier period was however, rejected by the Corporation on the ground that the employees have availed the benefits during that period. The Rajasthan High Court in the case of M/s Anil Textile Industry observed that the Corporation applied the Act to the petitioner's establishment and collected the contributions all along without any authority of law. Section 72 of the Contract Act provides that a person to whom money has been paid or any thing delivered by mistake or under coercion must return or repay it. The benefits received by the employees have nothing to do with employer's liabilities to make contribution. No equitable construction can be imported when Sec. 72 of the Contract Act is clear and unambiguous. The petitioner's contribution includes the amount of employees' contribution deducted from their wages. The petitioner is entitled to refund of 2/3rd of the amount of contribution paid by him. If the employees also make applications for refund of contributions, they shall be entitled for the same. (1992 (64) FLR 856 (Rajasthan High Court)

L 8.22 Contribution on the wages paid to a terminated employee on his reinstating as a result of a Court Order :

No contribution should be deduct from the wages paid to the reinstated employee for the past period, and the contribution should be payable only from the month in which the Court Order was pronounced.

8.29 Contributions on wages paid for the period of lock-out/strike: Payments made for the period of lay-off, lock-out/strike which is not illegal, amount to wages as per second part of the definition wages under Section 2(22) of the Act. Therefore, the employer is liable to pay the contributions on such wages, and entitled to deduct the employees' contribution from the payments made to the employees.

L 8.23 Contribution could be made only after registration of the establishment under the Act:

In an appeal filed by the *Rayalaseema Concrete Sleepers (Pvt.) Ltd., against the decision of the EI Court, the Andhra Pradesh High Court* observed that it is only on registration of the unit under the Act, further steps in the form of contribution etc. have to be taken by the employer and for that purpose, almost a desperate attempt was made by the appellant to get his unit registered. The respondents have categorically informed the appellant that it is not covered under the Act. These decisions were not revoked by the superior authorities.

The High Court directed the respondent for refund of the amount recovered from the appellant for the period prior to registration, as the demand made against the appellant cannot be sustained under law.(2008 LLR.316; 2008 (116) FLR.738; 2008 (1) LLN.737; 2008 (2) LLJ.234)

L 8.24 Contribution neither tax nor fees:

The payment of contribution by an employer towards premium of an employee's compulsory insurance under the Act falls directly within entries 23 and 24 of List III of the Seventh Schedule of the Constitution of India and it is wholly unnecessary to seek justification for it by recourse to entry 97 of List I or entry 47 of List III in any circumlocutous fashion. The Supreme Court held that these contributions or payment made to the benefit of workers, are neither tax nor fees. *(Gasket Radiators Private Limited v.ESIC-1985 (2) SCC.68; 1985 (1) LLJ.506; 1985 (1) LIC. 62)*

CHAPTER IX

PRINCIPAL / IMMEDIATE EMPLOYER

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CHAPTER IX

PRINCIPAL / IMMEDIATE EMPLOYER

Introduction : The responsibility for payment of contributions under the Act is cast on the Principal employer. In the matter of civil or criminal liabilities, the ultimate responsibility goes to the principal employer. Any order under Section 45-A of the Act is passed against the principal employer. It is therefore, necessary to have a detailed understanding of the expression which will help to identify the principal employer in any firm, company, factory or any business establishment.

L.9.1 The expression 'principal employer' has been defined under section 2(17) of the Act as follows:

Principal Employer means:

i) in a factory the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person been named as the Manager of the Factory under the Factories Act 1948 (63 of 1948), the person so named;

ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is appointed, the head of the Department;

iii) In any other establishment, any person responsible for the supervision and control of the establishment.

N.B : The term "owner" has not been defined in the Act although u/s 85 B and 85C of the Act, the term "employer" is used. But in general terms, "owner' means the person who owns the property or a particular asset. Here, it can be described as the 'owner' of a 'Factory' who is owning the 'factory',and causes it to run either by himself or by any person of his choice for employing persons and managing the day to day affairs of the factory and is ultimately responsible for conduct of the business of the factory.

L.9.2 The term "occupier" of the factory shall have the meaning assigned to it in the Factories Act, 1948 as per Section 2(15) of the Act.

Section 2(n) of the Factories Act 1948 defined the "Occupier" as "the person who has ultimate control over the affairs of the factory".

L.9.3 The term" managing agent" has been defined under section 2(14A) of the Act as "any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer".

N.B : The term Manager has not been defined in the Act. But, it can be taken as the "Manager" appointed under the 'Factories Act 1948, who is responsible for conduct of the business of the factory and thereby ultimate control over the affairs of the factory.

L.9.4 Interpretation of the statute - "owner " or "occupier" "and" includes the managing agent used under the definition of "principal employer" u/s2(17)(i) of the Act.

It is difficult to appreciate how there can be two principal employers in respect of the same employee. It is not contemplated by any of the provisions of the Act that there can be two principal employers at the same time. Undoubtedly, there is a concept of "immediate employer" and the "principal employer" contemplated by the Act but, when the definition of "principal employer" refers to the owner or occupier of a factory; it is obvious that the principal employer can either be the owner or the occupier depending upon the facts of each case. It is not difficult to contemplate a case where the owner of a factory may be a person different from the one who is actually running the factory. For example, a factory in a running condition or merely the factory itself may be let out by the owner, in which case the owner will have nothing to do with the employment of the employees, because the person empowered to appoint the employees and the actual person who is running the factory will then be the person who will be the principal employer. The definition "principal employer", therefore, is obviously intended to provide for all contingencies and any possible contingency will be covered by designating the owner as the principal employer where the owner himself is running the factory or in the case

Where the owner himself is not running the factory, the person who runs the factory in whatever capacity, becomes the principal employer by virtue of being the occupier of the factory. The word "or" between the 'owner' and the occupier' must, therefore, be read disjunctively and cannot be read as "and" because reading of the word "or" as "and" is bound to introduce an uncertainty in fastening the obligation to deduct the employees' contribution and to pay the employer's contribution as well as the employees' contribution. *(Judgment of the Division Bench of the Bombay High court in the case between Suresh Tulasidas v. Collector of Bombay- 1984 (64)FJR. 399; 1984 (1) LLN. 312; 1984 LIC.1614)*

Case Laws – "Principal Employer"

i) Company itself is the Principal Employer : *The Supreme Court in Criminal Appeal No 222 of 1990 – ESIC v/s S.K. Aggarwal* and Others held that in a Limited Company, the Directors would not be covered by the definition of the term "Principal Employer" when the company itself owns the factory and is also employer of the employees. (Hqr's Office instructions No.T-11/14/41/84-Ins-IV dated 9/3/2010)

ii) A person having full control : The Bombay High Court held that the respondent is the "principal employer" within the meaning of section 2(17) of the Act ,as the persons employed in the store were executing the work under his control and supervision within the premises of the respondent. *(Dy. Regional Director, SRO v/s Virgilio Velho – 2000(1) LLN.980)*

iii) Directors and Managing Directors : The work of a limited company is carried under the supervision and control of the Directors and the Managing Directors (excluding nominated Directors) and , therefore, they would come within the definition of "principal employer'. The same has been upheld by different courts as under :

a) Calcutta High judgement in the case of Bidyut Kumar Seti & Others v/s Satyesh Chandra Bagchi & Others – 1979(1) LLN.78;1978 LIC.1332 ;

b) M/s. J.K. Industries Ltd v/s Chief Inspector of Factories and Boilers and others (1996 (2) LLN 937);

c) Kanoria Jute and Industries Ltd; and others v/s ESIC and others – 2002 (95) FLR 804; 2003 (1) LLJ 364) ;

d) Bombay Metal works Pvt Ltd. Ludhiana v ESIX Chandigarh and another – 1985 LIC 1318) ;

e) Punjab and Haryana High Court in LPA No 24 of 1972 dated 3rd April 1974, yet ,

like the judgement pronounced by the Supreme Court cited under (i) above, there are contra-decisions that directors and managing directors do not come under the definition of "principal employer" as under:

a) Patna High Court's decision in S.L. Saraf and others v/s State of Bihar and others – 2008 (116) FLR 828; 2008 LLR 373; 2008 (2) LLJ.353);

b) Bombay High court's decision in Shiv Prakash Sheth v. State of Maharasthra and others. – 2007 (113) FLR.1075; 2007(3) LLN.552; 2007 LLR.643; 2007 3) LLJ.197; 2007 (3) LIC.107 2007(3) AIR. Bombay. R.361)

c) ESI Corporation, Chandigarh v/s Gurdial Singh and others- 1991(24) Labour and Industrial case 52, and subsequent appeal in the Supreme Court -1991 LLJ 425)

d) Madhya Pradesh decision in ESIC, Indore v/s Kailashchandra and others [1989 (22) Labour and Industrial Case 160]

N.B : In view of the dissenting judgments pronounced as detailed above, it shall be prudent to treat both the 'company' as well as 'Director / Managing Director' (excluding nominated directors)/ Executive Director as principal employers for the purpose of section 40 and 86-A of the Act. In fact, Hqr's office vide instructions no. T-11/14/41/84-Ins IV dated 9/3/2000 have specifically mentioned that prosecution cases under 406/409 of IPC would not be filed against the directors of the company henceforth. Instead , section 86-A of the ESI Act can be effectively utilized against the defaulting companies by filing a complaint in cases where the employees contribution has been deducted by the company but not deposited with the ESI account. In such cases, the prosecution can be initiated u/s 86-A of the ESI Act against the persons, who at the time the offence was committed , where in charge of the company for the conduct of the business. However, while filing prosecution u/s 86-A of the ESI Act against the above mentioned persons, the provisions of section 86-A of the Act should be strictly adhered to and no prosecution u/s 86-A should be filed against the directors of the company as a matter of routine without verifying as to whether actually responsible for the conduct of the business of the company at the time offence was committed.

iv) Owner or Occupier of the factory and includes the managing agent or any other person responsible for supervision and control of the establishment satisfies the definition of principal employer. (Bombay Metal Works Pvt Ltd; Ludhiana v ESI Corporation , Chandigarh and another 1985 LIC 1318).

v) A principal employer need not necessarily be the occupier but even an officer or the manager of the factory or the person responsible for the control of the establishment can satisfy the term principal employer.(Regional Director, ESI Corporation v/s FACT Engineering Works and others – 2003 (97) FLR 308 : 2003 (2) LLN 669: 2003 (1) CLR. 578 : 2003 (1) LLJ 27 : 2003 LLR (SN) 619 : 2002 (4) LIC 3909)

vi) Since there is no specific definition given for the term "Occupier" in the ESI Act 1948, the definition of the principal employer under Sec. 2(17) includes a person who termed as "Occupier" under the Factories Act, 1948. It is termed as "a person who has ultimate control over the affairs of the factory". (Madras High Court between ESIC v. Balasundaram and another- 1998 (4) LLN.308)

L.9.5 Manager is the principal employer:

1. A principal employer need not necessarily be the occupier but even an Officer or the Manager of the factory or the person responsible for the control of the establishment can satisfy the term 'principal employer'. (RD, ESIC v. FACT Engineering Works and others- 2003 (97) FLR.308; 2003 (LLR (SN) 619; 2002(4) LIC: 3909

2. Where a manager is appointed for carrying out the provisions of the act, a director of the company will be excluded from the definition clause. (C.K.Gupta and another v. ESIC and others – 1999 (2) LLN.163

L.9.6 Partners are principal employers:

In the absence of any declaration regarding occupier, all the partners of a firm running a factory can be prosecuted for failure to take licence under the Factories Act. (Allahabad High court – 1956 (1) LLJ. 10

L.9.7 Principal employer in other establishments:

The Calcutta High court observed that clause (iii) of section 2(17) defines the 'principal employer' in relation to any other establishment as a "person responsible for supervision and control of the said establishment" The plain and simple interpretation of this clause is that in relation to such an establishment, any person responsible for supervision and control thereof may, in consideration of the above facts, be treated as "Principal employer". (Benoy Roy v. ESIC -1984 (64) FJR 288).

N.B : Thus, depending on the nature of the Management of a unit, the Proprietor, the Manager, Partners of a unit, the Directors other than the Nominated Directors are considered as "Principal Employers". All the Documentary evidences required are to be carefully collected at the time of Inspection/Survey to establish the Principal Employer in the Courts.

L.9.8 Filing complaints against the Principal employer under section 85 of the Act :

It is for the complainant to prove that the accused is the "principal employer".

1. Managing director prosecuted under section 85-C was acquitted on the ground that it was found that another man was the manager and the manager had submitted the return after the due date. In an appeal filed by the Corporation against the acquittal, a division bench of the Karnataka High Court has held that it is necessary for the complainant to allege and prove that who exactly was in ultimate control of the affairs of the factory if at all one is sought to be made liable as occupier. Since proper evidence was not available, the appeal was dismissed. (ESIC v. B.S.Narayana Rao, 1993(66) FLR.416

2. When a complaint under section 85 is filed against a person in the capacity of a principal employer, it is for the Corporation to prove that the person against whom the charge is made is in fact the principal employer. (Calcutta High court Judgment in criminal revision case No. 1308 of 1979, dated 18-12-1980 between smt. Ashalata, widow of late G.N.Das v. ESIC, Calcutta)

L.9.9 Employer v. Principal employer:

The term 'Employer' has not been defined under the Act. However according to the definition assigned to it under Regulation 2(g) of ESI (General) regulations 1950, "employer means the principal employer as defined in the Act". But, the Supreme Court in the Criminal Appeal No. 222 of 1990 - Employees' State Insurance Corporation V/s S.K. Aggarwal and others held that even if the definition of "Principal Employer" under section 2(17) of the ESI Act is read in explanation - 2 of Section 405 of IPC, - the Directors of the company would not be covered by the definition of the term "Principal employer" when the company itself owns the factory and is also employer of the employees. The Supreme Court further observed that in the absence of any express provision in the IPC incorporating the definition of "Principal Employer" in explanation -2 to section 405, the definition of principal employer under Section 2(17) of the ESI Act can not be held to apply to the term employer in explanation 2, hence the term employer in explanation - 2 of section 405 IPC must be understood as in ordinary parlance and in ordinary parlance it is the company which is the employer and not its directors either singly or collectively.

In view of the above ruling by the Supreme Court, Hqrs. Office vide letter number T- 11/14/41/84 - Ins. IV Dated: 9/03/2000 advised that prosecution cases under section 406/409 of IPC would not be filed against the directors of a company henceforth. Instead, Section 86-A of the ESI Act can be effectively utilised against the defaulting companies' by filing complaints in cases where the employees' contribution has been deducted by the company but not deposited with the ESI Account. In such cases, the prosecution can be initiated under Section 86-A of the ESI Act against the persons, who at the time the offence was committed, were In-charge of the company for the conduct of the business. However, while filing prosecution under section 86-A of the ESI Act against the above mentioned persons, the provisions of Section 86-A of the Act should be very strictly adhered to and no prosecution under Section 86-A should

be filed by the Regional Directors against the Director(s) of a company as a matter of routine without verifying as to whether he was actually responsible for the conduct of the business of the company at the time the offence was committed.

L.9.10 The provisions of section 86-A are re-produced below:

86A. Offences by companies:

(1) If the person committing an offence under this Act is a company, every person, who at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,

(i) "company" means any body corporate and includes a firm and other associations of individuals; and

(ii) "director" in relation to-

(a) a company, other than a firm, means the managing director or a whole-time director;

(b) a firm means a partner in the firm.

IMMEDIATE EMPLOYER

L.9.11 The term immediate employer has been defined under section 2(13) of the Act as follows:

"Immediate employer" in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory, or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are

temporarily lent or let on hire to the principal employer and includes a contractor".

RIGHTS AND DUTIES OF PRINCIPAL / IMMEDIATE EMPLOYERS.

A) Duties :

L.9.12 : Register online his / her factory / establishment for coverage under the ESI Act, within 15 days after the Act becomes applicable to the said Factory/Establishment.(section 2A read with Regulation 10B)

L.9.13 : Submit Declaration Forms in respect of all coverable employees online within 10 days of the date on which the particulars for the Declaration Forms were furnished by the employees .(Regulation 10C).

N.B : Please check if your new joining employee was earlier working and issued with any ESI Card / No. If so insert his IP details (old) in your portal. Such employees can avail benefit on old card or given counterfoil by you.

L.9.14 : Issue TIC(Temporary Identity Card) online to the employees to ensure availability of medical benefits to them with immediate effect. Do not accumulate TIC work.

L.9.15 : Advise your new employees to visit ESIC Pehchan camp for giving biometrics for new permanent smart card within 15 days as TIC has short validity of 90 days only.

L.9.16 : Update mobile / telephone/ email /family details etc. particulars of your employee in the portal to enable ESI Corporation to approach them to deliver services quickly.

L.9.17 : Deposit both employees and employers contribution as per specified rates within 21 days of the following month by generating challans online. Ensure that contributions paid in respect of all coverable employees (regular / badly / contract / casual etc drawing wages upto Rs.15000/- a month.

L.9.18 : Maintain an accident book and submit accident reports to the branch office involving IPs on the job , within 24 hour of an accident.

L.9.19: Furnish returns and maintain registers in certain cases :

(a) Section 44(1) : Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(b) Section 44(2) : Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars

as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

(c) Section 44(3) : Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.

L.9.20 Furnish information / produce records before the Social Security Officer or any other Official of the Corporation authorized u/s 45 of the Act :

i) Section 45(2) : The Social Security Officer appointed by the Corporation under sub section (1) of section 45 A or any other Official of the Corporation authorized in this behalf by it may, for the purpose of enquiring in to the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions of the Act have been complied with,

a) require the principal or immediate employer to furnish him such information as he may consider necessary for the purpose of this Act; or

b) at any reasonable time enter any office, establishment or factory or other premises occupied by the principal employer or immediate employer and require any person found in charge thereof to produce to such SSO or other official and allow him to examine such accounts , books and other documents relating to the employment of persons and payment of wages and furnish to him such information as he may consider necessary;

c) or examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said Inspector or other official has reasonable cause to believe to be or to have been an employee;

d) make copies of , or take extracts from any register , accounts book or other document maintained in such factory , establishment, office or other premises ;

e) exercise such other powers as prescribed.

ii) Section 45(2) : Any Officer of the Corporation authorized in this behalf by it may, carry out re-inspection or test inspection of the records and returns submitted u/s 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer .

L.9.21 : Submit half yearly Return of Contributions (RC) by 12th May / 11th Nov every year duly certified by self / Chartered Accountant every year (Regulation 26)

L.9.22 : Do not make any false declaration or misinterpretation of facts, concerning the applicability of the Act or admissibility of benefits to employees regular / hired / contractual.

L.9.23 : Promptly report the date of closure of a factory/establishment to the ESIC Branch Office/Regional Office, preferably within seven days of such closure and clear ESI liabilities.

L.9.24 : Promptly report any change in business activity, address, ownership or the management to ESIC authorities forthwith.

L.9.25 : Ascertain the liability towards ESI dues, while taking over the ownership of a factory/establishment through purchase, gift, lease, licence or otherwise as the new owner is liable to discharge past liabilities.

B) Rights :

L.9.26 No Liability under Workmen's Compensation Act, 1923 in respect of employees covered under the scheme.

L.9.27 No Liability under Maternity Benefit Act, 1961 in respect of insured women.

L.9.28 Right to recover employees share of contribution on the spot from the wages of insured persons.

L.9.29 Right to appeal to Employees' Insurance Court in case of any disputes.

L.9.30 Right to seek exemption from the applicability of the Scheme in case benefits provided by the management are similar or superior to those available under the ESI Scheme.

L.9.31 Right of access to all essential information concerning the applicability of the Act, benefits, contribution, inspections and other procedures.

L.9.32 Certain provisions relating to payment of wages to the labour employed by the contractor and maintenance of the records both by the contractor and the principal employer under the "Contract Labour (Regulation & Abolition) Act 1970 and the Rules 1971" is given as under :

a) Contractor : The term "Contractor has been defined in Section 2(c) of Contract Labour (Regulation & Abolition) Act, 1970 as "a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor"

b) RESPONSIBILITY FOR PAYMENT OF WAGES (Section 21) –

(i) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed in the rules.

(ii) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(iii) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(iv) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

c) REGISTERS AND OTHER RECORDS TO BE MAINTAINED (Section 29):

(i) Every principal employer and every contractor shall maintain such registers and records giving particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

(ii) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

d) The Rules relating to "Wages" and 'maintenance of Registers' under the Contract Labour Rules 1971 framed under section 35 of the contract Labour (R&A) Act 1970 are as follows.

i) Rule 63 : The contractor shall fix wage periods in respect of which wages shall be payable.

ii) Rule 64 : No wage period shall exceed one month.

iii) Rule 72 : The principal employer shall ensure the presence of his authorized representative at the place and time of disbursement of wages by the contractor to workman and it shall be the duty of the contractor to ensure the disbursement wages in the presence of such authorized representative.

iv) Rule 73. The authorized representative of the principal employer shall record under his signature a certificate at the end of the entries in the register of wages or the Register of Wages-cum-Muster Roll as the case may be in following form:

"Certified that the amount shown in column No_____ has been paid to the workmen concerned in my presence on ———— ————at————————————

Registers and Records and Collection of Statistics to be maintained as per rules:

v) Rule 74. Register of contractors:-Every principal employer shall maintain in respect of each registered establishment a register of contractors in Form XII.

vi) Rule 75. Register of persons employed.-Every contractor shall maintain in respect of such registered establishment where he employs contract labour a register in Form XIII.

vii) Rule 76. Employment card.-(I) Every contractor shall issue an employment card in Form XIV to each worker within three days of the employment of the worker. The card shall be maintained up to date and any change in the particulars shall be entered therein.

viii) Rule 77. Service certificate.-On termination of employment for any reason whatsoever the contractor shall issue to the workman whose services have been terminated a Service Certificate in Form XV.

ix) Rule 78. Muster roll, wages registers, deduction register and overtime register:

(1) (a) Every contractor shall in respect of each work on which he engages contract labour -

(i) maintain a muster roll and a register of wages in Form XVI and Form XVII, respectively:

Provided that combined Register of Wage-cum Muster Roll in Form XVIII

shall be maintained by the contractor where the wage period is a fortnight or less;

(ii) maintain a Register of Deductions for damage or loss, Register of Fines and Register of Advances in Form XX, Form XXI and Form XXII, respectively;

(iii) maintain a Register of Overtime in Form XXIII recording therein the number of hours of, and wages, paid for, overtime work, if any.

(b) Every contractor shall, where the wage period is one week or more issue wage slips in Form XIX, to the workmen at least a day prior to the disbursement of wages.

(c) Every contractor shall obtain the signature or thumb-impression of the worker concerned against the entries relating to him on the Register of Wages or Muster Roll-cum-Wages Register, as the case may be, and the entries shall be authenticated by the initials of the contractor or his authorized representative and shall also be duly certified by the authorized representative of the principal employer in the manner provided in rule 73.

(d) In respect of establishments which are governed by the Payment of Wages Act, 1936 (4 of 1936), and the rules made there under, or Minimum Wages Act, 1948 (11 of 1948), or the rules made there under, the following registers and records required to be maintained by a contractor as employer under those Acts and the rules made there under shall be deemed to be register and records to be maintained by the contractor under these rules, namely:

(a) Muster roll;

(b) register of wages;

(c) register of deductions;

(d) register of overtime;

(e) register of fines;

(f) register of advances;

(g) Wage slip.

Notwithstanding anything contained in these rules, where a combined or alternative form is sought to be used by the contractor to avoid duplication of work for compliance with the provisions of any other Act or the rules framed there under or any other laws or regulation where mechanized pay rolls are introduced for better administration, alternative suitable form or forms in lieu of any of the forms prescribed under these rules, may be used with the previous approval of the Chief Labour Commissioner (Central).

NOTE : The SSOs and other inspecting officers of the Corporation at the time of verification of records of the principal or immediate employer may keep the above provisions in view and insist for production of these records for cross verification of the correctness of the information furnished.

CHAPTER X

REVENUE BRANCHES AND RECORD KEEPING

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CHAPTER X

REVENUE BRANCHES AND RECORD KEEPING

Introduction : The paramount objective of the Scheme is to ensure that every area in the state that has reasonable potential for introduction of the scheme is brought under the ESI Act at once and all the units to which the Act is applicable are invariably identified and covered in time and every eligible employee is duly covered to make him eligible for the benefits under the Act. Besides, Revenues built by the contributions payable under the Act constitute the solitary source of financing all the activities and projects of the Corporation . As such a very strong Revenue Machinery is put in place in every Region to follow time-tested, fool proof system to eliminate all delays and omissions.

L 10.1 The Revenue Division in each Region is structured in such a way that the two major functions involved are effectively pursued :

a) Implementation of the Scheme in new areas in the State, detection of all the coverable units in the implemented areas and getting all such units to which the Act applies covered by allotment of code numbers and getting them periodically inspected as per the policy of the Corporation, deploying SSOs as per priorities, arranging the test inspections by senior officers ,

b) Dealing with each and every employers file by processing the Inspection Reports and reviewing them periodically and raising the claims that become due and pursue them to their logical conclusions. Effectively monitor and watch the compliance with the provisions of the Act by each and every employer and identifying the defaulting employers to take prompt follow up thereon.

c) The work of challan & RC posting.

The Revenue Branches are created on the basis of a Yard-Stick scientifically laid down by HQrs. Quite a number of Registers, returns are prescribed. The Registers are expected to be maintained scrupulously and promptly, updated and regularly reviewed by the Branches duly attested by all concerned including BOs.

(Generally the activities mentioned in Para (a) above are handled by a Branch known as “Inspection Control”. In some Regions the implementation work is carried out by a Branch known as “Co-ordination”. The activities in Para (b) & (c) above are handled by Revenue Branches & C-6 Branch in the Regions.)

The following registers and files are required to be maintained and returns to be submitted.

L 10.2 Registers :

a) C-1 register : for recording area-wise, the units requiring survey as explained in para P.4.4. The proforma of the register is at Annexure-7. All units employing 7 or more employees are to be entered in this register and C-2 letters issued to the employers with an endorsement to the SSO, as explained in Para P4.4. The proforma of C-2 letter is at Annexure-8. Monthly summary showing the total cases requiring survey, no. of units surveyed, no. of units covered based on the survey/submission of form-01, number of units out of the units surveyed require periodical survey, and the number of cases pending for survey at the end of the month with serial number assigned to each of them. This summary is to be drawn accurately by the Dealing Assistant, verified by the Superintendent as to its correctness, and put up to the Branch Officer for his verification and signature every month. Action to liquidate the pending cases may be taken by reminding the employers for submission of the Form-01 and reminding the SSO for completing the survey on priority basis. The register may also be put up to the Regional Director at regular intervals for his perusal and advice.

b) Code number allotment register : for entering the details of code number allotted to each covered factory/establishment as explained in Paras P.5.6. and P.5.7. At the end of each month, a summary may be drawn showing the number of cases in which the code number has been allotted, and cases pending with reasons thereof. If the pendency is for want of any information either from the employer or SSO, the same may be called for and reminders issued wherever necessary. Any delay on the part of the Regional Office in allotting the code number leads to delayed registration of the employees resulting in denial of timely medical benefit to them and their family members. It may also lead to accumulation of arrears of contributions necessitating recovery action.

c) SC-15 Register (Watch over of Inspection/Inspection Control Register): The SSO after conducting the inspection/survey submits his reports once in a fortnight to the Inspection Control Branch as per the new Inspection Policy 2008 effective from 1.7.2008. After verification, the fortnightly diaries are processed in the individual files of the SSOs, the survey reports are sent to the coverage branch for entry in the C-1 register and all the inspection reports are entered in the SC-15 register (watch over of inspections register) before they are sent to the concerned branches of RO / SRO. This register (SC-15) may be opened inspection division-wise and all existing and newly covered factories/ establishments may be entered in this register code-number wise and entries as and when inspection report is received may be made against the relevant code number. Columns are provided in this register for code number, name and address of the employer and date of coverage. For recording the result of inspections year-wise, three columns are provided for each year to enter the number of employees on the day of inspection, period of inspection, and the result of inspection (number of un-covered employees, amount of left-out wages detected etc.). This register is sufficient to record the

entries for five inspections in respect of each unit. Any remarks relating to the closure, shifting to another inspection area may be entered in red ink with cross reference to the Sl. No. in the Inspection register of other area where the unit has been shifted. The inspection reports, after entering in this register may be passed on to the respective revenue branches for scrutiny and follow-up action, through the branch dispatch register.

A similar SC-15 Register is maintained in the Inspectorate office for entry by the SSO on the inspections conducted by him /her in the inspection division before the inspection report is sent to RO / SRO.

d) Periodical Survey Register: Boarder line cases of C-1 units surveyed (factories employing more than 7 employees / persons and establishments employing more than 15 employees / persons) may require survey once in two years to watch their coverage. For easy identification of all such units and monitoring their survey, all such units may be transferred from C-1 register to a register called the "Periodical Survey Register", by giving cross reference to the Serial number in the C-1 survey register.

e) Register of Provisional Coverage (To be renamed as Register of Coverage as per Hqrs instructions doing away with the concept of FDC) : A number of units might have been covered 'Provisionally' for want of production of complete records by the employer at the time of survey or might have been covered based on Form-01 received directly from the employer. All such units are entered in the "Provisional coverage Register". Their final coverage is required to be decided within 3 months. Constant review of this register and persuasion of the SSOs for submitting their reports for deciding the final date of coverage in all these cases is necessary.

f) Test Inspections/Test Survey Register: A random check of the units surveyed/inspected by the SSOs is necessary as per the yardstick prescribed by Hqrs. Office to check the quality of survey/inspection conducted by them, and to improve upon their performance. Provision has been made in the ESI Act vide sub-section 4 of Section 45 inserted with effect from 1st June, 2010 for re-inspection or test inspection of the inspection already conducted by the SSO wherever required. The percentage of routine test inspections has been fixed by Hqrs. Office at 5% vide letter no. S-/11/15/1/98-Ins. IV Dated: 16/11/99, with effect from 1st January, 2000. In addition, the Regional Directors may, according to their discretion, mark any other specific cases looking to the facts and peculiarities of such cases over and above the 5% for Test Inspection to the Branch Officers of Regional Office. The Regional Directors should ensure completion of the Test Inspections during the quarter in which the Test Inspections are marked.

Test inspections to the Dy. Director (Audit): The Dy. Director (Audit) may not be entrusted with the

work of Test Inspection as he is a touring officer and head of the Audit Party. (Hqrs. Letter No.Pt- S-11/15/1/98-INS.IV Dated: 11-06-1999).

Test inspections to the Joint Director: The designation of the Dy. Insurance Commissioner who has been conferred with the power to conduct inspections as per Regulation 102 of the ESI (General) Regulation, 1950, has been revised as Joint Director vide Memo. No. G-12/11/1/95-EI(A) dated 17/01/96 and duly notified in the Gazette of India Part-Ill Section IV dated 22.07.95 and the same designation has also been notified for the Joint Regional Directors. Hence the Test Inspections can be entrusted to the Joint Directors also without any separate delegation by the Director General. Whenever the Test Inspection is marked to Joint Directors, the personal hearing if necessary, on the test Inspection report, shout be conducted by the Regional Director. (Hqrs. Letter No.Pt.S-11/15/1/98-INS.III Dated 30-3-1999 (Instn. No.1/99) Now Regulation 102 has been amended accordingly with effect from 1st January 2011.

Five (05) percent of the cases of new coverage may be marked for Test Inspection and monthly return in this regard may be submitted by the RO/SRO/DO to Hqr's office. (Hqr's instructions no.S-11/13/1/1/2009-Rev-II dtd 30/9/2010).

The list showing the code numbers of the units inspected and C-1 numbers of the units surveyed by each SSO with period of inspection, without mentioning their name and addresses may be prepared each month and the file submitted to the Regional Director for marking the test inspections/survey at random and allotting the cases among the Officers of the Regional Office and the Grade I Managers. The B.O. Inspection Control Branch may submit any specific cases of survey needing test check for the orders of the Regional Director. Specific cases of inspection reports needing test check if any will be put up by the Revenue Branch Officers directly to the Regional Director after processing the relevant inspection reports and the code numbers intimated to the Inspection Control Branch after R.D.'s approval. All cases marked for test inspection/survey mat be entered in this register in chronological order and intimation sent to the concerned officers with a request for completing the inspection on priority basis. The register requires monthly summary and constant watch to ensure that case are not kept pending over a long period, as with the passage of time it may be difficult for the employers to produce the records and the purpose of correcting the erring SSOs is not served. A monthly statement showing cases allotted, completed and pending officer-wise is required to be submitted to the Hqrs. Office.

g) Register to watch the receipt of tour programmes, weekly diaries and for assessment of the day value of the Social Security Officers assigned with the inspection work in the divisions: A register for recording the receipt of Tour Programmes, weekly diaries, of the SSOs, and for assessment of their day value earned, may be maintained division-wise /SSO wise. Receipt of the tour programmes and

weekly diaries may be entered in the folio allotted to each SSO and they may be reminded in case of non-receipt. The day value for each inspection/survey done may be assigned to them in the weekly diary itself after checking the receipt of respective reports, and the weekly total of day value earned may be posted in the register. The SSO may be advised to make good the shortage if any and cases where the SSO is lagging behind may be brought to the notice of the B.O./Regional Director for necessary action against them.

h) Performance Register for SSOs.: A register for recording the shortcomings, irregularities and lapses on the part of the SSO and also their good performance, may be maintained SSO-wise which will help in assessing their annual assessment and for preparation of their confidential reports. This record helps in improving the performance of the SSO by providing necessary guidance, training, and motivates them in the right direction. At the same time, good work done by the SSO needs to be recognized, appreciated and taken on record.

While it is necessary to think in terms of taking appropriate action against those inspectors for their indulgence resulting in non-coverage of coverable units, it is also equally necessary to reward those for their commendable performance in locating good number of new coverable units, additional coverable employees, detection of large amount of left out wages etc. It is therefore requested that the performance of the inspectors may be reviewed at the end of every financial year for the above purpose and cases of excellence in performance may be referred to Hqrs. Office by 30th April with details so that such performances may be acknowledged in an appropriate manner. (Hqrs. Letter No. Z-17 /11 / 52 / 11/MPR (DG) / 97-lns.IV Dated: 12.12.2002)

i) Register of Exemptions: Exemption application received from the employers for grant or renewal of exemption under Section 87 or 90 of the Act may be entered in this register, processed, placed before the exemption committee along with the recommendations of the Corporation, and submitted to the appropriate Government for issue of the notification. Reference to the grant or renewal of exemption with period of exemption may be entered against the respective entries. There may be cases, where the exemption might have been rejected for various reasons. Such rejection may also be entered against the respective entries in red ink. This register needs periodical review, to avoid delays in processing the exemption applications, as now a time limit has been prescribed under proviso to Section 87 for processing these applications, and all exemptions have been made prospective in the Amendment Act, 2010. It is desirable to maintain a consolidated register in Inspection Control Branch instead of maintaining a separate register in each revenue branch.

j) Installment facility provided to the employers: All cases where installment facility has been allowed for payment of arrears may be entered in this register with full details to watch the payments. In case

any employer fails to pay the installment, they may be reminded and in case of continuous default, the one month bank guarantee given by the employer may be adjusted and recovery action initiated for the balance. For this purpose regular review of this register is required.

k) Cases registered under BIFR: A register showing the cases registered under BIFR, the arrears position, scheme provided by the BIFR, and the employer's compliance thereof is to be watched. The date/s of meeting of BIFR is to be recorded for deputing an officer from the Regional Office for attending the meeting.

l) Register for watch over of submission of periodical returns & reports: Monthly, quarterly, half-yearly and annual returns are required to be submitted to the Hqrs. For watching the timely submission of these returns, this register may be maintained.

m) File Review Register : The register shows the number of files to be reviewed at the beginning of the year and the no of files reviewed during each month of the year to determine the percentage of review and pendency .

n) C-6 Register : Every covered factory / establishment is required to pay the monthly

contribution on all items of wages paid to their employers within 21 days of expiry of the calendar month and to submit a six monthly return (RC) as on 31st March and 30th September every year within 42 days of the end of the half year called as contribution period. The C-6 register / ledger is designed to record the employer wise receipt of monthly contributions and half yearly returns. The said register normally consists of 250 pages and each page serves to record the entries for a period of 24 months (4 contribution period).

o) C-18/C-19 Register and D-18/D-19 Register : These registers are the Demand Collection book of the Corporation and should be an accurate reflection of the Revenue receivable under the Act. The said registers are maintained in the prescribed format and monthly summary is drawn at the end of the month showing the pendency of notices for assessment order and assessment order for recovery requisition. The summary is to be countersigned by the Joint Director / Regional Director periodically for chasing of old cases and where necessary fixing of responsibility for delays, inaccuracy .

p) Arrear Ledger (Contribution) and Arrear Ledger (Damages) : Each employer is allotted a separate page (folio) wherein details of C-19 / D-19 issued , recoveries made and balance outstanding is shown for computation of Annual Statement on arrears of contribution and damages respectively.

q) File / Part File opening register : The register shows the details of new files and part files opened in the branches.

L.10.3 Certificate at the time of opening: At the time of opening of all these registers, the pages may be numbered serially from 1, and a certificate containing the number of pages, date of opening etc. may be written in the prescribed format, and obtain the signature of the Branch Officer. A fly leaf for recording the periodical reviews may be pasted at the beginning of the register.

In addition to the above, the branch may open and maintain any other registers according to their convenience for better monitoring of the work. This list does not include the registers to be maintained according to the Office procedure of the Corporation such as Attendance, leave account, receipts and dispatch.

L 10.4 Files to be maintained:

(a) Instructions files:

1. Implementation-Policy, planning, targets-implementation u/s. 1(3) and 1(5).
2. Coverage & registration of factories, establishments and Principal & immediate employers including case laws and court judgments.
3. Coverage of employees, including case laws and court judgments.
4. Wages (Interpretation, and case laws including court judgments.)
5. Contributions-(Payment, Default, determination & recovery including case laws, court judgments, instructions on 45-A issue, C-19, re-opening, cancellation, withdrawal, Appeals and their disposal)
6. Surveys, inspections & test inspections-inspection policy etc.
7. Interest & damages.
8. Prosecutions
9. Sick mills-BIFR-Installment facility-bank guarantee- recovery action against sick mills.
10. Exemptions.
11. Employers' files-maintenance & periodical review.
12. Action in respect of closed units- including waiver of irrecoverable dues-Applicability of Section 93-A.
13. Reports, returns, Statements.
14. Assessment of number of employees, Exit/re-entry.
15. Misc. instructions.

N.B : (i) Instructions on different subjects as mentioned above may also be pasted and maintained in Guard File for easy reference.

(ii) In all the above files, an index may be prepared by pasting white papers at the beginning for recording : Sl. No., Instruction / Letter number, date, subject of instruction and the page number at which it is available for easy reference.

L 10.5 Correspondence Files:

1. Correspondence with the SSOs/State Government/Hqrs. Office on pre-implementation survey, arrangements for implementation, issue of notifications etc. as explained in Chapter I

2. Correspondence with other Government Departments for getting the particulars of units registered under the other laws. ie. Factories Act, Estt. Act, SSI/PF etc.

3. Correspondence with employers/SSOBM on calling Form-01/survey

4. Correspondence with employers on deficiencies in Form-01 etc.

5. Correspondence with other branches calling for reports, returns and other information for preparing consolidated reports/returns for submission to Hqrs. Office.

6. Correspondence on sick mills/BIFR

7. Processing of exemption applications

8. Grant of installment facility

9. Tour programmes and weekly diaries of SSO (Separate file for each SSO)

10. Test inspections

11. Processing of casual leave & EL applications of staff & SSOs.

12. Correspondence with Estt. Branch- Forwarding of leave applications and other misc. matters.

13. Circulars/instructions

14. Submission of reports/returns to Hqrs. Office

15. Assessment of number of employees

16. Replying to parliament questions

17. Misc. subjects.

L 10.6 Returns/Statements:

(i). Monthly D.O. to D.G with copy to I.C furnishing statistical details on Revenue, Recovery, Benefits and IT Rollout in the prescribed proforma.

(ii) Monthly D.O. to I.C giving the statistical brief in the format prescribed in the booklet 'MIS for ESIC Hqrs to be submitted by the 15th of the following month.

(iii) Returns to be sent to Ins. Br-IV , (Re-designated Revenue Branch-II) Hqr's Office :

S.No.	Name of the Return	Periodicity of Return	Due Date of Submission
1.	Return on progress in inspection and survey	Monthly	10th of the following month
2	Return on cases pending for deciding coverage / Allotment of Code No. /	Monthly	10th of the following month
3.	Return on Test Inspections conducted by the officers	Quarterly	15th of the month following the quarter
4.	Return on Court cases (E.I. Court / High Court)	Quarterly	15th of the month following the quarter
5.	Return on position of prosecution cases filed under different Sections	Quarterly	15th of the month following the quarter
6.	Return on costs paid in excess of Rs.100/- in compliance with the orders of criminal/ E.I. Courts	Quarterly	15th of the month following the quarter
7.	Return on cases decided against ESIC by criminal / E.I. Courts	Quarterly	15th of the month following the quarter

[Reference: - Booklet on Management Information System for ESIC Hqrs.]

iv) Returns to be sent to Ins. Br-III , (Re-designated as Revenue Branch-I) Hqr's Office

S.No.	Name of the Return	Periodicity of Return	Due Date of Submission
1.	Return on Performance of Revenue Branch Officers	Monthly	10th of the following month
2.	Return on review of Employers' Files	Quarterly	15th of the month following the quarter
3	History Sheet in respect of defaulters of Rs. 25 lakhs & above/10 lakhs and above-	Quarterly	15th of the month following the quarter
4	Return on Recovery Certificates issued and Recovery made	Monthly (sent to Revenue Recovery Cell, Hqr's Office)	10th of the following month
5	Return on cases in which irrecoverable dues have been waived off	Quarterly	15th of the month following the quarter
6	Return on cases in which refund has been made by the Regional Office	Quarterly	30th of the month following the quarter
7	Return on review of Arrears of Contributions (including interest) where C-19 has been issued	Yearly	30th April
8	Return on review of Damages where D-19 has been issued	Yearly	30th April

[Reference: - Booklet on Management Information System for ESIC Hqrs.]

iv) Returns to be sent to Revenue Branch -II , Hqr's Office

S.No.	Name of the Return	Periodicity of Return	Due Date of Submission
1.	Return on re-opening of cases, where contribution has been determined u/s 45-A of the Act	Monthly	10th of the following month
2	Return on T.I. by officers on New Coverage (5%)	Monthly	10th of the following month

[Reference: - Hqrs. letter No.T-11/13/3/2008-Rev-II dated 31st December 2008]

[Reference: - Hqrs. letter No.S-11/13/1/1/2009-Rev-II dated 30th September, 2010]

CHAPTER XI

CHALLAN PROCESSING AND DEFAULTER LIST

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CHAPTER XI

CHALLAN PROCESSING AND DEFAULTERS LIST

Introduction : Every covered factory / establishment is required to pay the monthly contribution on all items of wages paid to their employers within 21 days of expiry of the calendar month and to submit a six monthly return (RC) as on 31st March and 30th September every year within 42 days of the end of the half year called as contribution period. The C-6 register / ledger is designed to record the employer wise receipt of monthly contributions and half yearly returns. The said register normally consists of 250 pages and each page serves to record the entries for a period of 24 months (4 contribution period).

P 11.1 The Inspection Control Branch, on receipt of Employer's Registration Form (Form-01) or Preliminary Inspection (Survey) Report from the Social Security Officer, make entries in the C-1 register maintained as per Para P.4.4 and 10.1.(a).While allotting the Code number to the employer, entries are made in the Code number allotment register, coverage intimation letter (C-11) to the employer with 7 copies are prepared and the Employer's file along with the code number allotment register submitted to the Branch Officer for his approval as explained in Paras P.5.6, 5.7, and 5.13. After his approval, the C-11 letter is despatched to the employer, copies to the SSO, Branch Manager, C-6 Branch, and EDP Centre. Thereafter, entries are also made in the Watch over of Inspections or Inspection control register to watch and regulate the inspection of those covered units as explained in Para10.1.(c). After completing all these actions, the entire employer's file containing the noting portion, Employer's registration form (Form-01) and or PIR, along with other correspondence if any together with the office copy of the C-11, is sent to the concerned Insurance Branch through the Branch internal Dispatch Register for further action.

P 11.2. ACTION IN INSURANCE BRANCH: On receipt of the Employer's file, the receptionist (LDC/ UDC) enters its code number in the branch coded register and sends it to the concerned Dealing Assistant. The D.A. will make entry in his Code register, 45-B(Arrears Register), 45-C (Defaulter's) Register. Then he has to put up a standard letter to the employer calling for the compliance in the prescribed form which has been either printed or cyclostyled and supplied to all the Dealing Assistants. After completing this action, the file is sent to the Record Sorter for keeping in the regular run of files. It is in this Code file, every paper connected with this employer, all the correspondence including IRs of the unit is dealt with and , Review of the file is carried out and the file is expected to provide complete history of all the developments/happenings of the unit right from its coverage.

P 11.3 ACTION IN C-6 BRANCH: The Branch maintaining the C-6 Ledgers is called the C-6 branch. C-6 ledger is designed to record the employer-wise receipt of monthly contributions and return of contributions for each contribution period. The register normally consists of 250 folios and each folio will

have two pages one on the left hand side for recording the monthly receipt of challans for regular contributions and receipt of return of contributions. The right side folio is for recording the payments other than the regular contribution such as interest, damages, and arrears on misc. payments. Each folio serves to record the receipt of contributions for a period of 24 months and Return of contributions for 4 contribution periods. A separate folio may be allotted to each employer and also to each immediate employer/branch having separate sub-code number. If an employer is making more than one payment in a month due to employment of immediate employers/contractors or due to existence of branches, providing separate/sufficient folios in C-6 ledger depending on the number of challans per month/number of immediate employers/contractors without separate code number may be considered. Allotting sub-code number in all such cases to the immediate employers and branches may be considered and done by the Insurance Branch. The employer's details such as name, address, code number, date of coverage, number of employees, authorized bank for depositing the contributions, branch office allotted for submission of returns etc., are to be filled in on receipt of C-11 copy from the Inspection Control Branch/sub-code number allotment letter from the Insurance Branch, in the folio allotted to that employer. Additional information such as closure of the factory, doubtful coverage, court stay etc. as and when received from the concerned insurance branch may be recorded in red-ink. The Register is maintained code number-wise. An index showing the code number, name of the employer and the folio number is to be maintained at the beginning of the Ledger. A fly leaf is also kept in the front page of the Ledger for its periodical review. Each folio is to be numbered and a certificate of opening of the ledger in the prescribed form is to be recorded at the beginning showing the number of folios serially numbered from 1 to …., and the date from which the Ledger has been brought in to use.

P 11.4. Receipt of paid challans in the conventional method of payment of contributions, in C-6 branch: Monthly payment of contributions made by the employers in the link branch of the bank allotted to them, is credited by the main branch of the bank to ESI Fund Account No.1, and the quadruplicate copy of each challan is sent to the Finance & Accounts branch twice a week, along with a computerized abstract in duplicate showing the details of challans enclosed and the amount credited to ESI Account. After checking the receipt of all challans shown in the abstract, and reconciling the totals, the Finance & Accounts Branch enters them in their Account No.1 cash book and assigns a serial number to each challan. Thereafter the challans along with a copy of the abstract are sent to the C-6 branch for posting the credit in the ledger folios of the respective employers. This procedure is followed when the conventional method of remitting the contribution through challans in selected branches of the bank is made by the employers. However, wherever, the procedure for payment of contributions "on line" is introduced, the physical receipt of challans, its posting in the Account No.1 cash book, and posting in the ledger folio of the respective employers in the C-6 Ledger stands dispensed. The procedure to be adopted in case of 'on line payment' is explained in the relevant chapter.

P 11.5 Action on challans received in C-6 branch:

1. A register showing the date of receipt of challans and the number of challans from serial no——— to——— may be maintained and entries made in it as and when challans are received from the F&A Branch.

2. The Record Sorter serializes the challans code number-wise and inserts them in the C-6 Ledger at the respective employer folio.

3. The Dealing Assistant to whom the Ledgers are allotted has to make posting of the challans in the respective folio by entering the challan serial number, date of remittance, and the amount against the respective month for which the contribution has been made and puts his dated initials. He should cross check the code number and name of the employer on the challan with the folio in which he is making entries to ensure the correctness of the folio and the month for which he is making the posting. In case the challan represents the payment towards interest, damages or arrears payment, the entries are to be made on the right side page of the folio in the relevant columns. All challans received must be posted in the C-6 ledger within five working days of their receipt positively. In case no folio is found opened for any challan, a fresh page may be opened and posting completed. The name, code number and folio number may also be entered in the index sheet. The employers' account of all payments remitted to the Corporation and returns submitted is reflected in the C-6 Ledger in their respective folios. The Ledger folio is, therefore, like a pass book of the employer. Hence, care must be taken to ensure that wrong postings are not made by the Dealing Assistant. After completion of the posting by the D.A., the Ledger may be passed on to the checker for hundred percent checking the correctness of the entries made. The Dealing Assistant and the checker are responsible for correctness of the entries made in the Ledger.

P 11.6 Challans with wrong code number or without code number: There may be cases, where the code number or name is not tallying with the code number or name with the Ledger folio and some challans may not contain the code number of the employer. All such challans may be taken out and kept separately for their identification of correct code number with reference to their name. Till such time their correct code number is identified and credit given to the respective employer's account by posting in the Ledger, all those challans may be entered in a separate register called "Missing Credits register" and the challans may be kept in a separate bundle.

P 11.7 Action by the checker: Tally the code number and name of the employer on the challan with the name and code number given in the folio, check the entries made by the D.A. with the details in the challan i.e. date of remittance, amount and the month for which it is credited. Hundred percent of the entries made by the D.A. is to be checked by the checker and put his dated initials against each entry checked by him in red ink.

P 11.8 Action by the Superintendent: The Superintendent has to do 5% random checking of the challans posted in the Ledger after completion of checking by the checker to ensure their correctness.

P 11.9 Checking by the Branch Officer: The Branch Officer has to do 2% of the challans posted to ensure that the postings made are in order.

P 11.10. Random checking by RD/JD: 1% of the entries made may be checked at random by the Regional Director/Joint Director.

P 11.11 Action at the end of each contribution period: At the end of each contribution period i.e from April to September and October to March, total of the amount remitted for all the six months may be struck with pencil. If for any month, the challan side is found blank without any entries, it indicates either the employer has not remitted the contribution for that month or there may be a missing credit for that month. Receipt of challans for such months may be verified with the "Missing credits register". In case a challan is found with improper code number or without code number, but the name and address of the employer is tallying, the challan may be taken out from the 'missing credit challans' bundle, enter the correct code number with red ink, and posting completed. In all the cases, where the credit of payment has not been received, it is necessary to inform the concerned insurance branch for initiating recovery action against the defaulting employer. For this purpose, a defaulters' statement is to be prepared for each contribution period.

P 11.12 Defaulters' in payment of contributions Statement: A statement showing the list of defaulters in payment of contributions for the complete contribution period or for one or more months thereof is to be prepared at the end of each contribution period by the end of June and December for the contribution periods ended 31st March and 30th September respectively. The period of default must be specified in the statement against each employer. It must be ensured that all the challans received in the branch up to 10th June and 10th December for the respective contribution periods are posted in the Ledger and checking completed before starting the preparation of the defaulters' statement. Other-wise, it may not reflect the correct position of default, and cases where contributions already paid, but posting not completed may also get included in the statement resulting in unavoidable recovery action and harassment of employers. The defaulters' statements are to be sent to the respective insurance branches latest by 1st July and 1st January for the contribution periods ending on 31st March and 30th September respectively, to enable those branches to initiate recovery action from then onwards. Action on defaulter statement by the insurance branches is explained in the subsequent paras.

P 11.13 Even after preparation of the defaulters' statement, the late received challans for the expired contribution periods and return of contributions must be posted first in the C-6 ledger on priority basis, so

that before issue of C-18 (adhoc)/45-A order by the Insurance branches, they are in a position to verify the compliance if any for the relevant period from the C-6 ledger. (Hqrs. D.O. letter No. Q-11-20/3/2003-Ins. III dated 24-01-2003)

P 11.14 COURT STAY/DOUBTFUL COVERAGE AND CLOSED CASES: Wherever intimation has been received from the Insurance Branch regarding "Stay granted by the EI Court/High Court, Doubtful coverage, permanent closure of the unit, or non-existence of coverable employees", an entry may be made in 'RED INK' in the respective folio of the employer in the Ledger, and such cases should not be included in the defaulters' statement.

P 11.15 Return of Contributions: The employer submits the return of contributions in quadruplicate for the contribution periods ending on 31st March and 30th September to the concerned Branch Office of the Corporation within 42 days of expiry of the relevant contribution period i. e. by 12th May and 11th November respectively. The Branch Manager returns the quadruplicate copy of the RC. to the employer duly acknowledging its receipt, make entries in the receipt diary, watch over of RC register, verify the paid challans, RC totals, and retain two copies of RC for their office use. The third copy is sent to the EDP centre at Regional Office for generating the list of insurance numbers in respect of insured persons eligible for the medical benefit and dispatched to all the Dispensaries/Director of ESI Medical Services. The EDP centre after generating and dispatch of the list of insured persons eligible for medical benefit, transmit the return of contributions to the C-6 branch for verification of the credit of contributions shown in the RC and making entries in the C-6 ledger and their reconciliation with the challan entries in the C-6 Ledger.

P 11.16 Action on Return of contributions by C-6 branch:

1. Action by Record-sorter: Serializes all the RCs code number-wise and inserts at the respective folios in the C-6 ledgers and pass on the Ledgers to the dealing assistant for posting in the Ledger.

2. Action by the Dealing assistant: Tallies the name and code number on RC with that of ledger folio, and make entries in such a way that each payment shown in the RC is shown against the respective month in the column provided in the ledger. The date of receipt of RC in the branch office and the total of RC may also be entered in the columns provided for this purpose. If there is more than one payment for any month, all the payments shown in the RC may be posted in that six monthly contribution period. All the return of contributions received in the branch including the late receipt of RCs for the earlier contribution periods should be posted in the C-6 Ledger at least with in 30 days from their receipt in the branch.

3. Points to be taken care of while posting of RC in C-6 Ledger: While posting RC in the Ledger, the date of payment, and the amount for each payment shown in the RC is to be checked and tallied with the payment particulars already posted in the Ledger and ticked by the DA in red ink. If there is any change in date of payment or difference in the amount shown in RC, the correct date of payment and amount as appearing on challan payment side in the ledger may be written on RC in Red ink, so that insurance branch may take action to call for the short payment if any and take the actual date of remittance of contribution while working out the interest/damages. If credit is not received in C-6 for any of the payment shown in the RC, make a remark on RC in red ink "CNR" against that payment or all such payments. Affix a rubber stamp "Posted in C-6-Vol___ Page____, credit verified" and put the dated initials of the DA. For any such discrepancies in RC when compared to the payments position shown in the Ledger, a standard letter ticking the irregularities, may be sent to the employer with a copy to the concerned insurance branch for watching the employer's reply and initiating recovery action to recover the non-payment/short payment if any.

After completing this action, the Ledger may be sent to the checker for his checking. The checker will put his dated initials on RC after his checking.

4 Reconciliation: The total of 6 months' challans payment for the contribution period should normally tally with the total of the RC. Variation if any should be reconciled.

5 Variation: The variation in the total of six months challans payment and the total of the RC may be of two types ; viz :

a) RC. total is more than the challan total,

The reason for variation may be due to :

(i) Credit for payment of contribution for one or more months or all the months have not been received and thereby there was no entry on payment side for that month/s. Hence the total of the challans on payment side is less than the RC total.

(ii) Employer submitted RC without making payment either for all the six months or for certain months, in which case, there may be no payments on challan side either for all the six months or for a few months.

b) Challan total is more than the RC total

i) There may be more than one payment for each month or certain months on challan side due to wrong posting of interest/damages payments under regular contributions or due to payment of contributions in respect of casual labour/contribution on misc. wages such as repairs and maintenance, payment made to labour contractors/immediate employers etc. But their names were not included in the RC for want of details such as name or insurance number. Hence the payment side total is more than the RC total.

Posting of RCs. made by the DA may be checked by the checker and random check made by the superintendent.

P 11.17 Action on missing challans/credits: If for any month or months, the challan side is found blank, but the payment details for that month/s are available in the RC, then, the DA should make efforts to trace out the missing challan. The name of the bank and the branch where the employer is remitting the contribution is known from then information available in the folio. The DA may, verify the receipt of challan from the computerized bank abstract copy received from the finance & accounts branch for the relevant period. If the entry is found in it, and the challan traced out, entry may be made in the column provided for the relevant month/s. Some time if the period or nature of payment is not specified, the entry /posting might have been made on the other side of the folio where the entries relating to payment of interest, damages and other arrears payments are made. This aspect may also be checked and any such entries may be reversed. If there is no entry even in the computerized bank abstract, a note to the respective insurance branch may be sent in the standard printed/cyclostyled form, which reads as follows. Action to be taken on such U.O. notes is explained in the subsequent paragraphs.

C-6 BRANCH: REGIONAL OFFICE_____.

Sub: Missing Credit: M/s_____Code No_____.

Credit towards contribution for the month/s of _____has not been received in C-6 Ledger. But, as per RC, payment of Rs._____has been made for the relevant month/s. Action may be taken to call for the original bank challan from the employer and to get the corresponding credit from the bank through the Finance & Accounts Branch.

BRANCH OFFICER

To

The Insurance ____ Branch, RO_____.

U.O. Note No_____ Dated _____.

P 11.18 Posting of challans relating to interest, damages and arrears payment: While regular contributions are posted on the left side page of the folio, provision has been made for posting of all other payments like interest, damages, arrears, and misc. payments on the other page of the folio on right side. Care should be taken to post all such payments under the appropriate columns on right side page..

P 11.19 Tampering of challans by immediate employers/contractors/consultants: Possibility of enclosing fabricated/forged challans to the Return of contributions without actual payment of contribution by the immediate employers/contractors/consultants can not be ruled out, in which case the payments on challan side is found blank in the ledger while on RC side entry of payments for all the months is found. Posting of all the RCs received in the Ledger and its reconciliation with the entries made on payment side reveal such type of fraudulent/forged challans. In order to avoid occurrence of tampering of challans,vis-à-vis enclosing fabricated/false challans, the following remedial steps may be taken :

i) Undertake verification of C-6 Ledger on random basis for each contribution period in the month of November and May of respective years and report should be sent to FC/IC and Director (Vigilance) by 30th Nov and 31st May respectively.

ii) Keep sufficient pages in C-6 ledger for the contractors engaged by the employer employing 250 employees or more.

iii) Compliance position by the contractors to whom separate code numbers have been allotted may be ascertained / confirmed by the Branch Managers / SSOs for detecting any short payment / under payment or interpolation in the challan figures.

iv) Print colored challans , as prescribed, in sufficient quantity for the use of employers

v) Ensure timely posting of challans received directly through the link branch in the accounts branch and also timely posting of the challans received alongwith the RCs from the employers. In case any

difference is observed such cases should be taken up promptly with the concerned employer as well as with the Bank Branches of the SBI.

vi) Scrutiny of challans to the extent of 5% received in C-6 branch for entry in C-6 ledger both in respect of challans received from link branch of the bank alongwith scrolls and those received from the employers alongwith RCs for the purpose of reconciliation. This will be in addition to the 5% checking by the Branch Officer.

vii) Verification to the extent of 2% by the Jt.Dir (F)/DD(F)/AD(F) of the Region in substitution of 1% verification by the Regional Director without disturbing the quarterly tour programme of audit parties(Hqr's instructions no T-11/13/C-6/Ledger/2004/Ins-III dtd.5.5.05)

NOTE: Correct posting of Challans, and RCs, Reconciliation of both the figures, timely preparation of Defaulters' statement and proper maintenance of the Ledgers is the responsibility of the Dealing Assistant and the checker. The superintendent should watch their performance and check to avoid accumulation of posting of challans and RCs and to prevent delays and misuse of the Ledger. In case any Dealing Assistant or the checker is on long leave, the Superintendent should distribute their work to the other D.As so that the work is not held up leading to delay in the preparation of the Defaulters' statement.

P 11.20 Action by Record sorter after posting and checking of challans and RCs in the C-6 Ledger : The Record-sorter after completion of posting work and checking of challans, take out all the challans from the Ledgers, and stitch them challan serial number-wise and date wise and keep the bundles under safe custody.

The Return of contributions after completion of posting and checking are taken out from the Ledgers and sent to the respective insurance branches periodically by entering them in movement of RC register. Action on those RCs in insurance branch is discussed in the relevant paragraphs.

P 11.21 Review of register : The challans received from the Finance & Accounts branch are entered in a register showing the date of receipt and number of challans received. Number of challans posted and pending is also shown in the register. Similar is the case with the RCs received, posted and pending. These two registers along with the C-6 Ledgers are to be reviewed by the branch and put up to the branch officer every month.

P 11.22 Vigilance: An entry in the C-6 Ledger for recording the contributions, interest, damages etc., must be duly supported by a paid challan received from the Finance & Accounts Branch with an assigned

challan number and date. No unauthorized posting should be allowed in this Ledger. To prevent such unauthorized entries in the Ledger, and accessibility of the Ledger to unauthorized persons, the ledgers are to be kept in safe custody under lock and key when not in use. Persons not connected with these Ledgers should not be allowed to handle them. Such instances if any should be brought to the notice of the Superintendent and/or Branch Officer.

P 11.23 Statement of defaulters in submission of Return of contributions to the branch office: The Branch Managers who are authorized to receive the Return of contributions directly from the employers shall after expiry of the due dates for submission of RCs by the employers for each contribution period review the "Watch over register for receipt of RCs" maintained by them and submit a statement showing the list of employers who defaulted in submission of the return of contributions on or before the due date to the concerned insurance branches at Regional Office for taking action against them. The employers who defaulted in sending the RCs in time may submit the same late after the due date. A list showing all such late submissions may also be reported to the insurance branches once in 15 days, so that the action if any proposed against the defaulters based on the defaulters' statement can be dropped.

P 11.24 Submission of RCs by the employers without attaching paid challans: Some employers may submit the return of contributions to the Branch Office even without making payment of contributions. Normally, the branch managers are not expected to receive the returns without the paid challans enclosed. But some employers may send the returns by post, in which case, the Manager may accept the same, write remarks in the receipt diary and watch over register "RC without challans-RC total Rs._____". The employer may be addressed to pay the contributions and submit the paid challans immediately to avoid recovery and prosecution actions against them. A copy of this letter may be endorsed to the concerned insurance branch duly indicating the total amount of contributions as per RC total, so that the insurance branch may issue C-18 (actual) to the employer for that amount followed by issue of C-19 if not paid.

ACTION ON RECEIPTS IN INSURANCE BRANCHES

P 11.25 Action on RCs. (return of contributions) received from the C-6 branch as explained in Para 11.20: If the payment of contribution has been made in time and return also submitted in time, there is no action on such return of contributions. They may be filed. If the payments are made in time, but submission of the return is delayed, a formal letter in the prescribed form may be issued to the employer inviting attention to the provisions of Regulation 26 of the ESI (General) Regulations and adhering to the time limit prescribed there in to avoid prosecution action under section 85 (g) of the Act. If the payment of contributions is delayed then there is need to calculate and claim the interest as provided under Regulation 31-A. It is also necessary to work out the damages as provided under Regulation 31-B and issue notice to the employer to provide an opportunity of personal hearing and determine the amount of damages, as it is a penal

provision. The complete procedure on claiming interest and determining damages is explained in the relevant chapter.

P 11.26 Action on Missing credits and Short Payments:

(i) On Missing Credit : On receipt of U.O. note received from C-6 branch regarding missing credits as explained in para 11.17.the concerned employer may be addressed to submit the original bank challan in support of the payment made. After the challan is received from the employer, the same may be sent to the Finance & Accounts branch with a U.O.Note for taking up the matter with the bank for getting the corresponding credit. If no reply is received from the employer within a period of 15 days, a C-18 notice for actual amount of missing credit may be issued by registered post ack. due, providing a reasonable opportunity to the employer of being heard either to submit the paid challan or to pay the amount now. In case of non-response / failure by the employer, a well reasoned speaking order u/s 45-A of the Act may be issued giving the employer 60 days time to file an appeal against the order before Recovery Certificate in Form C-19 is issued. (Hqr's instructions no.P-11/14/57/Misc/03-Rev-II dtd 7.3.06 regarding claim on actual basis – grant of personal hearing bearing read with Hqrs instructions no P-12/11/11/38/2010-Rev II dtd 10.1.10 regarding issue of C-19 vide)

(ii) On Short payments noticed in return of contributions: If there is no reply on the letters addressed to the employers by the C-6 branch for the short payments if any noticed while checking the RCs. as explained in Para 11.16 (3 and copies endorsed to the insurance branch. since the actual amount of short payment is known, a C-18 notice for actual amount of missing credit may be issued by registered post ack. due, providing a reasonable opportunity to the employer of being heard either to submit the paid challan or to pay the amount now. In case of non-response / failure by the employer, a well reasoned speaking order u/s 45-A of the Act may be issued giving the employer 60 days time to file an appeal against the order before Recovery Certificate in Form C-19 is issued. (Hqr's instructions no.P-11/14/57/Misc/03-Rev-II dtd 7.3.06 regarding claim on actual basis – grant of personal hearing bearing read with Hqrs instructions no P-12/11/11/38/2010-Rev II dtd 10.1.10 regarding issue of C-19 vide). Likewise, a similar exercise is required to be taken on the endorsements received from the branch managers for any short payments noticed by them during the scrutiny of RCs. as explained in para 11.23. However, care may be taken to ensure that there is no double claim for the same amount if both the letters contain a similar short payment for the same period. Issue of C-18, C-19, and payment by the employer should be entered in the C-18/19 register.

P 11.27 Major employers: In case of big employers employing 250 or more employees, the monthly contribution is substantial. Therefore, recovery action is to be initiated on month to month basis. For this purpose, the Branch Manager or the area SSO, who has been entrusted with the work of monthly Challan

verification, has to submit a monthly compliance report (Short Inspection Report) in respect of each big (major) employer in their jurisdiction indicating the number of employees, amount of contribution, if paid, the date of remittance, to enable the Regional Office to initiate recovery action against the defaulting employers on actual basis. On receipt of these short inspection reports either from the Branch Manager or SSO, the Insurance Branch dealing with big employers' files may initiate recovery action by issue of C-18 notice followed by C-19 and simultaneously initiate penal action u/s 85 of the Act.

P 11.28 Identification of defaulting employers:

(1) The C-6 branch identifies the employers who defaulted in payment of contributions , and the list of such defaulters is made available in insurance branches by 1st July for the contribution period ending on 31st March and by 1st January for the contribution period ending on 30th September as explained in Para 11.12.

(2) The branch managers also identifies the employers who have submitted the return of contributions without enclosing the paid challans, issued letters to the employers and endorsed copies or submitted a list of all such employers to the insurance branches for initiating recovery action as explained in Para 11.24. The cases of default appearing in the list at (2) may also be figuring in the defaulter' list at (1) as both relate to non-payment of contributions for the same period. The difference is in the first case at (1), the amount of contribution payable is not known, while in the second case at (2), the total amount of contribution for the whole contribution period is available from the RC submitted and intimated by the branch manager.

In both the above cases (excluding major employer for whom the procedure has already been explained under para P 11.27) recovery action may be initiated by issue of C-18 notice against defaulters as detailed in para P.11.25 and P 11.26 and simultaneously initiate penal action u/s 85 of the Act.

CHAPTER XII

DETERMINATION OF CONTRIBUTION IN CERTAIN CASES

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CHAPTER XII

DETERMINATION OF CONTRIBUTION IN CERTAIN CASES

INTRODUCTION : The principal employer of every covered factory/establishment is required to pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution within 21 days of expiry of each calendar month and maintain a "Register of Employees" showing the month wise Employees' share of contributions ,wages paid or payable and the number of days for which such wages are payable in respect of all the employees. The employer is also required to submit a half-yearly return known as 'Return of contributions ,in quadruplicate for each contribution period ending on 31st March and 30th September in quadruplicate within 42 days to the Branch Office concerned and to produce the relevant records for inspection by the Social Security Officer or any other officer of the Corporation.

However, there are instances where, the employer defaults in maintenance of Registers, payment of contributions, submission of returns and production of records for inspection. Under these circumstances, the Corporation is not in a position to ascertain the correct amount of contribution payable by the employer to initiate recovery action in the normal course. The Act provides for determination of contributions in such situations under sub-section 1 of section 45-A.

L.12.1 Provisions of Section 45-A(1): Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Social Security Officer or other official of the Corporation referred to in sub-section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.

PROVIDED that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.

L.12.2 Circumstances and Conditions under which the determination u/s 45-A is to be made:

(A) Circumstances:

(a) When the factory/establishment has not submitted returns, furnished the required particulars, or maintained records in accordance with the provisions of Section 44 of the Act; or

(b) the SSO or the other official of the Corporation referred to in sub-section (2) of section 45 was prevented in any manner by the principal or immediate employer in exercising his functions or discharging his duties under section 45 of the Act;

(B) Conditions:

(a) Reasonable opportunity of being heard is to be given to the Principal or immediate employer;

(b) Determination must be based on the information available to the Corporation;

(c) Determination must be made by a 'Speaking order';

(d) No determination shall be made in respect of the period beyond 5 years from the date on which the contribution shall become payable (came in to effect from 1st June, 2010).

Examples on (A) above :

(i) It was held by the Delhi High Court in the case of M/s Masco (P) Ltd., v. ESIC New Delhi (1975(1) LLJ.29) that resort to Section 45-A would be made only if none of the three sources for normal determination of contributions are available because in such a case, the Corporation would have no option but to determine the contribution on the material available to it. If, however, one of the three sources, namely, returns, particulars, registers or records is available, it would not necessarily make the determination impracticable or difficult on the normal method. The difficulty arises only when there is a total absence of data.

(ii) Likewise, there are quite a number of instances, where, some employees who are casually or sporadically employed on occasional work like construction work, Building Repairs, Machinery Maintanence and the like are not covered and their wages are booked under the Heads of Building Repairs, construction Account. Machinery Maintanence Account. These payments are booked (in Ledgers through Vouchers) along with the cost of materials ,transportation charges , freight charges, profit margins of the contractors etc . At the time of Inspection of records the details of persons who worked, wages paid to them and the period of employment etc., are not available and the employer also does not have any documents to show these details.

(iii) Another category of cases is that the employers may make certain types of wages which attract Contributions but may not pay the contributions on such wages. Say for example, production incentives, Attendance Bonus etc paid but Contributions have not been paid on these wages.

All these categories of cases render themselves for determination under this section . In these cases Determination under this Act becomes necessary when the employer is unable to show the quantum of wages on which contributions are payable and the Corporation has no other valid basis to ascertain the amount of contribution precisely .

(iv) Further, the word "obstructed" used was replaced with the words "Prevented in any manner" in the 1989 amendment to the Act, which indicates that non-production of records before the SSO or other official of the Corporation without any valid reason also tantamount to prevention in exercising his functions or discharging his duties.

L 12.3 Salient features of determination under section 45-A :

Section 45-A was merely intended to devise a procedure to fix the quantum of contributions not paid, in the absence of any of the employers' records, returns or documents which normally help assessing the actual amount of unpaid contributions. There being no valid records to ascertain the actual contributions due , the alternative provided is to determine the quantum on the basis of information available to the Corporation on the basis of best judgement principles.

The determination under Section 45-A of the Act must, according to the terms of the sub-section be made by an "Speaking order". The order must also set out the basis of determination because the section envisages that such a determination would be "on the basis of information available to it" and that being so, an order under this Section is in the nature of a quasi-judicial order and this necessarily involves proper application of mind by the Determining Authority and his personal satisfaction of the correctness of facts on the basis on which the determination is made.

Thus, the most essential pre-requisite for the validity of the determination is that the determination must, in terms of sub-section (1) of section 45-A of the Act, be made "on the basis of information available" to the Corporation, such as:-

1. the basis of the information from the records of the employer,

2. the particulars and information supplied by the employer from time to time

3. the findings of the inspection of records of the employer by the Officials of the Corporation,

4. the statements of the employer, his employee or the employees concerned either before the Corporation or before any other Statutory Authority.

L.12.4 Action against defaulting employers:

(A) In case of Big employers employing 250 employees and above, a separate procedure to closely monitor the compliance of such Big Employers has been laid down. For this purpose, the Branch Manager or the area SSO, who has been entrusted with the work of monthly Challan Verification, has to submit a monthly compliance report (Short Inspection Report) in respect of each big (major) employer in their jurisdiction indicating the number of employees, amount of contribution, if paid the date of remittance. In case the contributions due have not been paid even after the due date the details of amount of wages on which contributions were deducted, along with total contributions deducted but not paid should be indicated in the proforma prescribed for the purpose of incorporating full details of page numbers etc., of the wage registers in which wages were paid and contribution deducted but not paid alongwith the signature of the employer (his authorised representative) should be submitted to enable the Regional Office to initiate prompt Recovery Action etc., against the defaulting employers on actual basis. This statement alongwith the signature of the employer would form the basis for prosecution of the employer u/s. 85. Further, Section -45A should not be resorted to in such cases.

(B) Other employers: The default position is watched in all other cases contribution period-wise. The following time schedule has been prescribed both for determination of Contribution, recovery and legal action:

Description	Half-yearly period ending March	Half-yearly period ending September
1. Preparation of defaulters' list By C-6 Branch	1st July	1st January
2. Inspection by SSO of defaulting units	30th September	31st March
3. Complete Action of issuing C-18/45-A/C-19 & SCN u/s 85	31st December	30th June

1. The Defaulter List must be prepared as specified above.

2. Concerned SSO of the division shall hand over the defaulter list who shall visit each of defaulter unit & submit a report regarding status of the unit whether running or closed etc.

3. The SSO will ensure to forward the proof of compliance if the employer reports having made the compliance for period under default.

4. SSO need not conduct detailed inspection at this moment. However a short inspection of employes wages records including that of immediate employer shall be seen by SSO for assessing the contribution required to be paid by the Principal Employer. He shall intimate the employer in the visit note to be given by SSO on the spot.

5. SSO must complete the visit of the defaulting unit under his jurisdiction and should submit the reports complete in all respects within the time frame specified for the purpose.

6. Reginal Office/Sub. Regional Office/Divisional Office must complete the action of issue of C-18/45-A/C-19 within time specified above.

7. In no case, C-18 Adhoc shall be issued without confirming the unit is functioning.

8. In case, the unit is found closed during the visit by SSO, the matter should be referred to Regional Office, with details of full present address of the Employer. SSO should follow the drill for carrying out the inspection for confirming the closure.

The instruction will have no bearing on priority of inspection as mentioned in the Inspection Policy.

(Head Quarters' instruction No.T-11/13/BIFR/2011-Rev.I Dated 12/01/2011)

NOTE : It is decided by Head Quarters in the wake of IT Roll out that where an employer does not make payment of contribution for the 1st month, a letter reminding the principal employer to make the payment of contribution has to be issued. Similarily, if the non payment is noticed continuously for 2nd month, another letter to the principal employer need be sent by registered post with AD. If the contributions are not paid for 3rd consecutive month also, follow up coercive action has to be initiated for enforcing recovery of the contribution involved. A copy of "Defaulter's Action" under IT roll out is annexed as Annexure -11.

L.12.5 Contribution on wages on which contribution is due but not paid: As and when the wages on which contribution has not been paid although legally due are detected by the SSO during inspection or test inspection of records of the employer, he may issue an observation slip indicating the details of such omitted wages noticed by him, with an advice to the employer for immediate compliance. Copy of the spot observation slip duly acknowledged by the employer is to be enclosed to the inspection report. If the amounts of such omitted wages furnished are the actual and absolute amounts on which contributions are payable, a notice in form C-18 (actual) may be issued to the employer under registered post acknowledgement due. If the amount reported by the SSO/TIO includes any other non-wage components together with the wages like material costs freight charges etc, the employer may be given an opportunity for segregating the wages for payment of contributions. For this purpose, a show-cause notice in Form C-18 (adhoc) providing an opportunity for a personal hearing (by fixing a date) and to produce the required documents to establish his stand and also to file a detailed statement of contributions due is to be issued. While determining the contribution on adhoc/actual basis, a well reasoned speaking order u/s 45-A of the Act, preceded by a mandatory requirement of affording the employer a reasonable opportunity of being heard, should be issued as per Hqrs. Instructions P-11/14/57/Misc./03-Rev.II dated 7-3-2006.

L.12.6 Officers "authorised " to determine the contribution under Sec 45 -A:

(a) Gazette Notification No. T-11/13/3/90-INS.III dated 28th June,1991:—

The Employee's State Insurance Corporation at its meeting held on 06-03-91 adopted the following Resolution, which is published for information of all concerned:-

RESOLUTION

" In supersession of earlier Resolution dated 14-12-1990, it is resolved that the powers of the Corporation under Section 45-A to determine by order the amount of contributions payable shall be exercised :-

i) by the Director General , Insurance Commissioner and a Joint Insurance Commissioner in respect of a factory/establishment situated anywhere in India;

ii) by a Regional Director in respect of a factory/establishment situated within his Region;

iii) by a Director/Joint Regional Director/Joint Regional Director In-Charge/Deputy Regional Director and Assistant Regional Director in respect of a factory/establishment situated within the area in his charge/in his Region/Sub-Region;"

NOTE:—The Designations of JRD,DRD and ARD have been changed to JD,DD and AD. Accordingly the designations in the Resolution need be reworded as JD,DD and AD . Further , the post of Additional Commissioner has been created for the Regions also for which the Resolution may include their designation also.

Thus, in the Regional Office/Sub-Regional Office/Divisional Office, the Additional Commissioner, Regional Director , Joint Regional Director , Joint Regional Director (I/C) , Deputy Directors and Assistant Directors dealing with the Revenue Branches are authorized to issue notice to the employers and determine the contribution u/s 45A in respect of the employers' files under their charge.

L.12.7 Steps involved in determination of contribution under Section 45A :

(i) Issue of a notice (C-18) to the Principal Employer by Registered Post with AD.

(ii) Giving adequate opportunities to the employer to explain and establish his stand by asking him to file statement of contributions due, produce connected documents, records .

(iii) Apply his mind to all the facts of the case and submission made in writing and during hearing and

(iv) Pass a well reasoned 'speaking order' by traversing all the points and clearly indicating the reasons for arriving at the final decision and the quantum of contributions determined in the process and

(v) Directing the employer to make the payment of the determined amount within the time-frame fixed for the purpose.

The most essential ingredient in this exercise is strict observance of Principles of Natural Justice, judicious application of mind and a logical conclusion on the basis of all the facts placed before the Authority and the orders passed should demonstrate all these features even at a glance. as such orders should stand the scrutiny of various courts during litigations.

Explanation :

i) Notice to be issued to the principal employer: Section 40 casts the liability for payment of contributions on the principal employer both in respect of directly employed employees and employees employed through or by the immediate employers. However, Section 44 provides for submission of returns, furnishing of particulars and maintenance of registers/records by the immediate employers also. Therefore, a show cause notice in the standard form C-18 (adhoc) may be issued to the principal employer(s), to their available residential Addresses. A copy of the notice may also be sent to the factory/establishment and to the area SSO.

ii) Concept of "ASSUMED NOTIONAL MONTHLY WAGES" taken for determination of contribution where the employer has defaulted in payment of the contribution, submission of prescribed return and where inspection of records for the period invovled has not been conducted due to non production

of records. In the absence of any information about the amount of wages on which contributions are payable from the available records, and only the number of employees, is known, the contribution is determined on assumed notional monthly wages. The assumed notional monthly wages is 55% (fifty five percent) of the wage ceiling for coverage of an employee prescribed by the Central Government, and the Corporation has authorised the Director General to approve the assumed wages from time to time. Accordingly, the assumed notional monthly wages approved by the Director General when the wage ceiling was raised to 10,000 a month from 1-10-2006 was Rupees 5,500/- (Hqrs' Memorandum No. T-11/13/3/2006- Rev. I dated 19-4-2007 . The same is revised to 8250/- when the wage ceiling was revised to 15,000/- from 1st May, 2010.(Hqrs. Memorandum number T-II/13/1/2010-Rev.-1 Dated: 16.08.2010.)

iii Contents of the show cause notice in form C-18 (adhoc): In brief, the statutory position on the following points are to be indicated :

a) The obligations and liability of the Principal employer to register all the employees, pay the contributions at the rate prescribed by the Central Government in accordance with the provisions of section 39, 40 of the Act, and rule 51 of the ESI (Central) rules 1950, in the manner and time limits prescribed under regulation 29, 31, and 33 of the ESI (General) regulations 1950.

b) Submission of return of contributions for each contribution period in the manner and time limit specified under regulation 26 thereof.

c) Provisions in the Act for levy and recovery of interest in case of failure to pay the contributions in time.

d) Details of default in payment of contribution with period, non-maintenance of registers/records, non-submission of returns, and non-production of records before the SSO /Other Officials of the Corporation with period involved may be furnished in the next Para. If the notice is for non-compliance on certain items of wages or on wage element in the total expenditure involved, based on the report of the SSO/ TIO, those details may be given. The description may read as "wages booked under the Head of account …'

e) The provisions of Section 45-A specifying the circumstances under which the Corporation is empowered to determine the contribution.

f) The amount of contribution proposed to be determined for the period of default and the basis of calculation for the same. This includes the nature of default, period, and amount of contribution with basis of calculation.

L.12.8 Deficiencies observed in issue of C-18 notice and remedial steps to be followed :

(D.O No : T-11/13/3/2002-lns. Ill dated 16.1.2002 from Addl Commissioner (Rev) Hqrs)

Section 45A contemplates a quasi-judicial proceedings. Proviso to Section 45-A states that no order u/s 45-A should be passed unless Principal / Immediate Employer or the person in charge of the factory or establishment is given a reasonable opportunity of being heard. A reasonable opportunity contemplates information regarding the basis of calculation proposed to be adopted while invoking section 45-A. Therefore, the basis of calculation including the period and the nature of the dues should be absolutely clear to the recipient of the notice.

Some of the illustrations of improper / wrong information given in the calculation portion of C-18(adhoc) as received through employer's representations, are given below :

Calculation

S.No	Nature of dues	Period From to	Amount of Contribution	Basis of calculation
Illustration 1	Building construction General Repair Machinery Repair Apprentices			
Illustration 2		4/2k - 12/2k 2/99 – 12/99		
Illustration 3				a) 25x6x880x7.25% 25x6x1650x5.5% 25x6x3575x6.5% Or b) Adhoc or c) Assumed

From the above it may seen that anyone not conversant with the revenue related work of ESIC will find it very difficult to comprehend the above basis of calculation and hence will be unable to make a proper reply or objection to it.

As far as the 1st illustration is concerned , ESI contribution is not due on construction of building, repair of building or maintenance of machineries. The contribution is due only in respect of non-covered employees employed for the purpose of construction of building , repair and maintenance of building etc. and in respect of wages paid to such employees. Similarly, all apprentices are not coverable u/s 2(9). Therefore, as against illustration 1, the correct information should have been "contribution in respect of non-registered employees / casual employees or employees employed through immediate employer engaged for construction of building etc. and in respect of wages (omitted) paid to them.

The 2nd illustration above is improper and unacceptable and the correct method should be to write clearly and legibly such as "1.4.2000 to 31.12.2000" etc. so that there is no ambiguity

The 3rd illustration given under column 5 of calculation is totally vague and can only confuse the recipient. What the different figures represent, is absolutely not known to the employer. The correct procedure should have been to write the basis of calculation in column 5 in the matter illustrated below :

No of employees x No of months x Assumed Notional Monthly Wages x percent rate of contribution during the relevant period namely :-

" 25 (No of employees) x 6(no of months) x 1650 (Assumed Notional Monthly Wages) x 5.5% (percent rate of contribution during the relevant period)

Under " Basis of calculation " merely writing adhoc is also insufficient. It is absolutely necessary to clearly state the basis of calculation as shown above .

If the employer challenges a 45- A order issued following C-18(adhoc) with such insufficient or vague information , the 45 A order will have to be re-called and the employer may have to be given a fresh and proper opportunity inspite of the fact that the C-18 (adhoc) may have been duly received by him ahead of the date of personal hearing. If the employer seeks clarification with regard to basis of calculation during the personal hearing, the Corporation bound to give him the clarification and some additional time to enable him to come up with a proper reply. The 45-A order issued consequent upon such inadequate or insufficient show cause notice will not stand the scrutiny of law in the court.

The officers who are signing the C-18(adhoc) in future should be held personally responsible for issuing the unsatisfactory or inadequate C-19(adhoc).

L.12.9 Guide-lines for Ad-hoc assessment of contribution u/s 45-A:

(i) Issue of order u/s 45 –A of the Act and C-19.(Hqrs instructions no. T.11/13/3/95-Ins III dtd 28.11.2000).

It has been observed that in many cases the employers have been representing to this office that recovery orders have been received by them without having been served with any demand notice before the issue of recovery order. The matter was examined at Hrs. Office and it has been decided that the authorised officers will not issue any C-19 unless there is adequate proof that C-I8 (Actual) issued by the Regional Office has been received by the employer. Invariably, the C-l8(Actual) should be issued in registered post as there are complaints that though C-18s are issued by the Regional Office they are not actually dispatched. Similarly before issue of order under Section 45-A of the ESI Act, it may be ensured that a registered demand letter i.e. C-I8 (Adhoc) is issued to the employer intimating the date of personal hearing and the same is received by the employer. In case the employer desires to be heard on a subsequent date due to his personal problem, the employer may be given another date of personal hearing to give him reasonable opportunity of being heard, Before issuing the order under Section 45-A against C-18 (Adhoc) and C-19 against the C-18 (Actual), inquiries may be made from the Branch/Receipt & Dispatch Section to find out whether any representation from the employer is pending. If so, the same may be considered Considering all the aspects as well as the postal delay occurring now-a-days, it has been decided that a period of 30 days should be given while issuing the registered C-18(Adhoc) and C-18(Actual) to enable the employer to present himself for the personal hearing or to represent his case as the case may be.

Only after giving reasonable opportunity to the employer, the Speaking Order followed by recovery certificate may be issued by the officer assessing the contribution.

(ii) Disposal of show-cause notice issued in C-18 (adhoc) in case of compliance, by the employer. (Hqrs instructions no.V-36/1 5/2000-lns III Dated: 26. 7.2002)

"During the Regional Directors' Meeting on 23 and 24th March, 2001, certain clarification was sought with regard to determination of contribution under Sec.45-A of the ESI Act and disposal of C-18 (adhoc) in certain situations. The issue has been examined at Hqrs. and the clarification is given as under:

In case of following circumstances, the C-18 (adhoc) issued on the basis of the assumed wage may be

cancelled and withdrawn with intimation to the employer and an appropriate entry in the C-18 ' register duly authenticated by the DA and Superintendent, as explained in Instruction No. T-l 1/13/3/2001 INS. III dated 13.8.2001

1) Where it is found that the employer has paid contribution and submitted RC in time but, there was delay in posting of challans / R.C. or the defaulter's list was generated wrongly.

2) Where the employer has paid regular contribution with some delay but submitted the Return of contributions in time.

3) Where the employer has paid contribution with some delay and submitted Returns also; with some delay but before the issue of C-18. In such cases, regular inspection will be conducted as per the Inspection Policy since the defaulters list was correctly generated.

4. Where the employer has complied by payment and submission of Returns belatedly and after issue of C-18 but before the first date of personal hearing, in such cases also, regular inspection will be done for the period as defaulters' list was correctly generated.

5. If the employer is a defaulter but appears on the 1st date of personal hearing with the statement of contribution due as per his records for the relevant months involved in the C-18 and the average number of employees and amount of contribution per month, reflected in the statement is at par with immediate preceding months for which compliance was received or inspection report was received. If the employer is only seeking time for, payment with such statement on account of financial or other difficulties, the statement may be received on record and the C -18 (actual) may be issued with only 15 days time to make the payment followed with prompt C-19 and simultaneous inspection may also be arranged so that the statements submitted can be reconciled and further omission if any can be reported for which a separate C-18 (adhoc) can be issued.

In all other cases where C-18 (adhoc) has been issued and acknowledgement card has been received indicating receipt of the C-18 before the date of personal hearing but there is no reply against C-18 nor there is appearance by the employer for personal hearing, 45-A Order may be issued after ensuring that no reply has been received whether it is filed or not. In the absence of A.D.card, proof of dispatch of C-18 (adhoc) with reference to Dispatch Register, may be noted in the file by the respective D.A. and if there is a gap of at least 15 days between the date of dispatch and date of personal hearing, the 45-A order could be issued.

Where the employer has complied immediately after the 1st date of personal hearing fixed in C-18 and difference in number of employees reflected of amount of contribution paid for the relevant period in the C-18 is not more than 10% of the immediate preceding months for which compliance or inspection report has been received, a decision to close and withdraw the C-18 (adhoc) subject to inspection, can be taken, if justified, with the approval of JD/RD.

6) In case of C-18 (adhoc) on omitted wages based on report of the inspector / test inspecting officer/ Vigilance Officer etc., a proper personal hearing should be conducted and 45-A order issued in accordance with the existing procedure and instructions. Personal hearing will also include verification of records produced by the employer and this may not be delegated to the Inspector as far as possible.

7) The Branch Officer should not give unnecessary and long adjournment which leads to doubt on bonafide. Normally, the 1st adjournment should not be for more than 30 days and next adjournment should not be for more than 15 days. Whereas third or more adjournment if felt necessary, may be given with the approval of Joint Director / RD.

8) Wherever C-18 is treated as cancelled and closed as per above instruction, immediate intimation should be given to the employer under certificate of posting with copy to inspector, besides entry and authentication in C-18 Register.

Non compliance with the above instructions and keeping the C-l 8 pending for personal hearing etc., even in cases where the C-18 should be closed and cancelled as stated above, could lead to adverse inference of malafide".

L 12.10 Claiming of contribution for the back period in respect of additional employees detected during physical verification by SSO/TIO/Vigilance : In some cases, recommendations is made for claiming contribution (by issue of C 18 notice)from the date of last inspection or from the date of start of the unit. In such cases, where the number of Additional employees is reported, the SSO/TIO/vigilance have been physically counted the number of employees available in the premises of the factory/establishment without giving the details of the employees such as name, fathers name and date of appointment. Wherever possible the signature or thumb impression of the employee should be obtained. In the absence of all these information or without verifications of records of the relevant periods it would not be possible to substantiate the employment of additional employees from a back period. It is therefore, decided that figures of additional employees found on the date of inspection may not be taken for claiming contributions from the back period in the absence of relevant evidence as mentioned above or without inspection of records of the relevant back period. (Hqrs. Instructions No. S-11/12/1/2000-Ins. IV dated 1.5.2000)

L 12.11 Approval for issue of notice in form C-18 by the Regional Director/Joint Director I/c.:

According to Hqrs. Instructions No. T-11/13/3/95-INS.III: Dated: 21-06-1999 (Instruction No. 4/99) wherever, the amount of wages/omitted wages exceeds Rupees ten lakhs, before issue of the show-cause notice in C-18 (adhoc) to the employer, the approval of the Regional Director/Jt. Director I/c. as the case may be, will be obtained in the note file of the employer.

L 12.12 Signing and despatch of the show-cause notice: The notice may be signed by the Branch Officer authorized with date and affix the seal containing his name and designation. The notice is to be sent by registered post with Acknowledgement due or by speed post both to the Principal employer(s) to the residential address and the factory/establishment, and the record of its despatch and the Signed postal Acknowledgement should be properly maintained. Copy of the notice may be marked to the Social Security Officer of the area concerned, so that in all such cases, wherever, C-18 (adhoc) is issued, no inspection shall be carried out by SSO/TIO for the period covered in the notice on or after the date of personal hearing fixed without instructions from the Regional Office.

L 12.13 Keeping track of the files where C-18 (adhoc) notice is issued. While signing the C-18 notice, the Branch Officer may enter the date and time of personal hearing offered to the employer in his diary against the concerned date so that the file and the notice thereof may not escape his attention. He must personally monitor the progress of the case meticulously till the final orders are passed.

L.12.14 Action by the Branch: It is suggested that all such files where the C-18 (adhoc) notice is issued may be kept in a separate run by the Branch so that the postal acknowledgement and the reply if any received from the defaulting employer can be linked up and submitted to the Branch Officer on the date fixed for personal hearing with necessary noting in the note portion of the file for further action by the Branch Officer.

L.12.15 Register of C-18/19: All the C18 both actual and adhoc issued may be entered before dispatch in a register called C18/19, the proforma of which is given in the Annexure l9 .The serial number of this Register should be indicated in the office copy of the C-18 for easy reference. All subsequent events like payment of contribution either in full or part, issue of speaking order under section 45-A with period, date and amount, payment details thereof, issue of C-19, recovery particulars etc. The entries may be duly attested by the DA,Superintendent, BO invariably in the concerned cols. A monthly summary of this register may be drawn by the dealing assistant, checked by the Superintendent, signed by the Branch Officer is to be put up to the Regional director/Joint director in-charge for his perusal. All pending cases must be attended on priority for their disposal.

L 12.16 Non delivery of notices – Follow up Action thereon : In the case of determination of contribution u/s 45 A and damages u/s 85 B, the important thing is issue of notice in form C-18 / D-18 by Regd. Post with AD. The speaking orders in these cases are issued only after ensuring that respective notices have been delivered to the defaulter. The main problem could be that of non delivery of notices by Regd. Post. The following clarification will help solving the problem :

i) Section 27 of the General Clauses Act reads as :- Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by Post, whether the expression "serve" or either of the expression "give" or "sent" or any expression is used , then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by Registered Post, a letter containing the document and unless the contrary is proved, to have been effected at time at which the letter would be delivered in the ordinary courses of post.

ii) When a letter is posted it is presumed that it has reached its destination and has been delivered to the assessee. If letter is sent by registered post, that presumption is still stronger (Commissioner of Hazari Bagh Muncipality vs Fulchand Agarwal, AIR 1966)

iii) In a case where a notices were sent by Registered Post to the proper address, it was held that their non-receipt by the assessee (addressee) will not invalidate the assessment (Bhopal Trading Co Vs CIT UP, 28 ITR, 478)

iv) If a properly addressed registered letter is received back in endorsement "Refused" made by the post man it may be presumed (as a rebuttable presumption) that the letter was refused by the assesse, even without examination of the postman or other evidence regarding tender and refusal (Balbahadur Malkuthalia vs CIT, 31 AIR 930)

v) In the case of factory or establishment being closed , the Regional Director / Joint Director I/c can arrange the deliver of notice through SSO / Branch Manager by way of affixing the notice at prominent place of the premises of the said defaulter. This process may be witnessed by someone and report of service sent to Regional Office / Sub-Regional Office.

(Hqrs instructions No. T-11/22/Policy/MPR/2005-Ins III dtd 23/3/2005)

CHAPTER XIII

PERSONAL HEARING, DETERMINATION OF CONTRIBUTION

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CHAPTER XIII

PERSONAL HEARING, DETERMINATION OF CONTRIBUTION, PASSING OF SPEAKING ORDER UNDER SECTION 45-A OF THE ESI ACT AND RECOVERY OF CONTRIBUTION THEREON.

L 13.1 For determining the contributions under Section 45-A, the following conditions are to be observed:

(a) Reasonable opportunity of being heard is to be given to the Principal or Immediate employer;

(b) The determination must be based on the information available to the Corporation;

(c) The determination must be made by a 'Speaking order'; and

(d) No determination shall be made in respect of the period beyond 5 years from the date on which the contribution shall become payable.(came in to effect from 1st June, 2010)

Explanation:

(a) Reasonable opportunity of being heard: In procedural terms, a decision maker should not only act in good faith and without bias but also should grant hearing to the person whose interests will be affected by that decision before the decision is made. This is one of the two principles of natural justice "audi alteram partem" (HEARING THE OTHER SIDE) i.e. a person whose interests will be affected by the decision should be given a hearing before the decision is made. The other principle is "Nemo debet esse judex in propria sua causa" (no one shall be judge in his own case) i.e. the decision maker must be unbiased. If a person has preconceived opinions, a vested interest or personal involvement in a matter, he should not attempt to settle that matter. This principle is also called the procedural fairness.

Procedural fairness is associated with the procedures to be used by a decision-maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision. A decision-maker who follows a fair procedure is more likely to reach a fair and correct decision.

The rules of procedural fairness require:

- a hearing appropriate to the circumstances
- lack of bias

- evidence to support a decision
- inquiry into matters in dispute.

A critical part of procedural fairness is 'the hearing rule'. Fairness demands that the person affected should be told the case to be met and given the chance to reply before taking a decision that could negatively affect that person. Put simply, hearing the other side of the story is critical to good decision-making.

In line with procedural fairness, the person going to be affected has a right:

- to an opportunity to reply in a way that is appropriate for the circumstances
- to receive all relevant information before preparing his/her reply. The case to be met must include a description of the possible decision, the criteria for making that decision and information on which any such decision would be based.
- to a reasonable chance for examining the facts made available and prepare a response. However, what is reasonable can vary according to the complexity of the issue, whether an urgent decision is essential or any other relevant matter, and
- to genuine consideration of any submission. The decision maker needs to be fully aware of everything written or said by the affected person and give proper and genuine consideration to his/her case.

(b) Based on the information available to the Corporation: In response to the C-18A notice, the employer may submit a statement, return or furnish the particulars of actual contribution due for the period of default. The employer may by himself or through an authorised representative appear for the personal hearing and furnish the material facts relating to the contribution due from him. In the absence of these details, the Corporation may determine the contribution based on the information available on its record such as number of employees as per Form-01/PIR, Contribution paid for earlier period, return of contributions submitted for the preceding contribution periods, inspection report containing the details of wages paid and contribution payable/paid for earlier period etc. The assessment though on notional wages, it must be on more realistic basis.

(c) Quasi-judicial speaking order: The action taken and discretion exercised by public administrative agencies or bodies that are obliged to investigate or ascertain facts and draw conclusions from them as the foundation for official actions is called quasi-judicial. Quasi-judicial activity is limited to the issues that concern the particular administrative agency. For example, the ESI Corporation may resolve disputes on

concern the particular administrative agency. For example, the ESI Corporation may resolve disputes on issues concerning Coverage, contributions and benefits, but it may not decide any other un-related issues. An administrative agency must hold a formal hearing only when required by statute. A formal hearing is a complete hearing with the presentation of testimony, evidence, and arguments. Quasi-judicial action by an administrative agency may be appealed to a court of law. Speaking order necessary in quasi judicial proceedings. One important facet of functioning of judicial and quasi-judicial authorities is that besides giving a fair hearing to the parties before them, they should pass a well-reasoned speaking order.

(d) Five years limitation: Earlier to insertion of this proviso to Section 45-A (1) vide Amendment Act 2010 effective from 1st June, 2010, there was no limitation of time for determining the contributions under this section. However, a new proviso has been inserted under Section 45-A (1) as follows:

"Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable".

In view of this new proviso, the time limit of five years is strictly to be followed in determining the contributions and issue of speaking orders. Therefore all old pending cases should be reviewed and cleared before they become time barred.

L 13.2 : Deficiencies observed with regard to issue of Speaking Orders u/s 45 A of the Act :

A number of deficiencies are being observed in the process of issuing orders u/s 45 A for determining contribution in respect of cases where the employer is not paying the regular contribution and / or contribution on left out (omitted) wages and also not attending the personal hearing in response to the C-18 notice issued by the Regional Office. General guideline with a view to meeting the legal requirements are being given in the following paragraphs :

1) Speaking order under Section 45-A is issued ex-parte in cases where the employer does not attend the personal hearing. While issuing this order it should be ensured that the notices had been dispatched under Registered Post or served to the employer under proper acknowledgement and the postal acknowledgement and the fact should be mentioned in the speaking order.

2) While issuing the order, proper and detailed reasons for determining the contribution should be given. In many cases it is normally mentioned in the order that since the employer did not attend the personal hearing it is presumed that he has nothing to say and , therefore, contribution as calculated in the C-18 (adhoc) is leviable / payable . Such type of orders are faulty and do not stand the test of law.

Therefore, a well reasoned order giving the details as to why the officer has decided that the amount of contribution determined by him is legally leviable and payable by the employer , should be recorded.

3) Similarly speaking order is issued ex-parte in the cases relating to omitted wages where the employer does not appear for the personal hearing. The grounds such as, the employer not responding to the C-18 (adhoc) or not appearing for personal hearing should not be cited with the conclusion that the employer has nothing to say. Such type of orders are faulty and well-reasoned orders providing justifiable reasons for determining the contribution on the exact amount of each item of omitted wages should be mentioned in the order.

4) On receipt of the report regarding additional number of employees found during surprise inspection, the Regional Office normally issues C-18 (adhoc) giving the date of personal hearing before issue of order under section 45-A determining the contribution in respect of the additional employees. The employer invariably contests the case and insists for details about additional persons found by the Social Security Officer. If the employer goes to the court, it is difficult, nay impossible to prove the employment of additional employees in the absence of proper inspection report containing all details of the employment of additional employees. Therefore, it is necessary to collect complete details of the additional employees, to determine the contributions under Section 45-A.

5). It is observed that sometimes Branch Officers are calling for certain records/documents citing the provisions of Section 45(2) of the ESI Act, from some employers even though contribution has been paid by them for the relevant period before issue of C-18 (adhoc) or after issue of C-18 (adhoc) but before the date of personal hearing on the ground that the contribution paid by them is quite small compared to the contribution paid for the previous periods or information available with the office regarding the number of employees. If the Branch Officer suspects any malpractice on the part of the employer so far as the quantum of contribution is concerned, instead of calling for voluminous records/ irrelevant documents he should ensure inspection of the records of the employer on priority.

6.) It is also observed that where inspection has already taken place and employer has paid the contribution as per the inspection report of the SSO, Balance Sheet/Income Tax Return and such other records are being called for by the Branch Officers suspecting malpractice/suppression of facts on the part of the employer. In such cases, if found necessary test inspection of the records of the employer may be considered(Hqrs. Letter No. T-11/13/3/95-Ins.III dated 16-2-2001)

L 13.3 Guide-lines for Ad-hoc assessment of contribution u/s 45-A:

i) Hqrs instructions no.T-11/13/3/2008-Rev-I Dated: 1.5.2008 – Hearing under section 45-A giving adequate opportunity of hearing – regarding .

It is observed that Speaking orders u/s 45-A are being issued in a mechanical manner . In a few cases it has come o the notice that speaking order have been issued after giving a single opportunity of personal hearing. Although , in occasions , a single opportunity of personal hearing may suffice to satisfy the legal requirement u/s 45 A , but in all fairness , issuing speaking order after giving a single opportunity of personal hearing may not always stand the test of reasonableness on the part of ESI Corporation. It has also come to the notice that in a few cases action for issuing speaking order u/s 45-A has been taken after a long time and of non-action without following the prescribed drills in respect of defaulting employers including inspection of the unit, after giving a single opportunity of personal hearing defeats the purpose. Some cases have also come to the notice where without ensuring servicing of the Show Cause Notice in C-18, the officer issuing the Speaking Order has proceeded with action u/s 45 A. This action has not only put the Corporation in uncomfortable situations, it has become very difficult sometimes to explain the Corporation's action at various forums and in the Court.

Keeping the above broadly in view , it has been desired that adequate care should be taken to ensure that the following action has been completed before issuing speaking order u/s 45-A:

i) to ensure proper service of the notice (C-18) to the employer.

ii) when the employer attends the Personal Hearing , the attendance of the employer as well as the proceedings of hearing should be recorded in the file and signature of the employer be obtained in token of employer having attended hearing and submissions made.

iii) the officer should clearly record in hearing the records produced by the employer with his submissions

iv) Before passing an ex-parte order for determination of contribution over Rs. 1 lakhs, a press release in local vernacular paper may be issued atleast one week in advance.

v) when in becomes imperative to issue order ex-parte, adequate care should be taken in the speaking order to explain / dwell on the position as available on record (In this connection the detailed procedure laid down in Hqrs letter no T-11/13/3/95 – Ins III dtd 16.2.2001 and T-11/13/3/2002-Ins-III dtd 27/11/2002 dealt in the next chapter may be referred)

ii) Hqrs instructions S-11/12/2/2007-Rev II dtd 5/7/2008 – Passing of Speaking Order under section 45A – Clarification regarding

It has been observed Officers Speaking orders u/s 45 A of the ESI Act are not observing proper procedure as per Hqrs instructions issued from time to time. The matter was discussed in the recently held Regional Director's Conference at Shimla on 9th & 10th April 2008. It is once again reiterated that officers passing Speaking Orders u/s 45A of the ESI Act shall: -

i) Ensure issuance of proper notices to the employers by Registered AD or by Speed Post before assessing their claims and confirm that proper acknowledgements are received back.

ii) When the employers appear for the personal hearing the proceedings of the personal hearing should be recorded in the note portion of the files simultaneously and signatures of the employers be obtained , in token of having seen and understood the proceedings of the personal hearing.

iii) If some more documents/records are required from the employer to support their contention, those documents should specifically be mentioned in the P.H. Proceedings and the next date of PH allowed for production of those documents, so that the employer can turn up with those documents on the next date of hearing. The speaking order should specifically mention about the documents or records which were called from the employers, which they have submitted or not submitted. A vague statement that the employer has not shown all the documents required, leaves ambiguity in the speaking Orders.

iv) In case the employers do not turn up for personal hearing, a public notice be published in the local vernacular paper giving 15 days time to such employers to be present before the officer conducting the hearing for passing the speaking orders.

v) If the employer has not turned up for hearing , then the Speaking order must indicate the details of opportunities given to him and the fact that despite several opportunities given he has not turned up and hence ex-parte proceedings.

vi) As per Hqrs instructions No p-12/11/11/38/2010- Rev II dtd 10/11/2010, adjournments may be restricted to maximum of 2 personal hearings by Revenue Branch Officers.

L.13.4 Determination of contributions on amount paid to the contractors/ immediate employers which include Labour and Material charges (Hqrs. Instruction No. 9/82 vide letter No. P.11/14/41/79-Ins.IV dated 26-6-1982, Instruction No. 5/85 vide letter No.P.11/14/5/85-Ins.IV dated 17-7-85: In many cases where the immediate employers/contractors engaged by the principal employers for capital construction,

repairs and maintenance of building of factory/establishment including erection or repairs to machinery, furniture repairs, packing charges etc. on a lump sum payment which include material as well as labour costs. If those immediate employers/contractors are covered independently and having a code number, the compliance will be made by themselves, and the principal employer need not comply in such cases. However, at the time of inspection, the Social Security Officer will verify the records of the Principal Employer in respect of Contractors/Immediate Employers required to be maintained by the Principal Employers, according to the provisions of Section 41(1 A) and Regulation 32 (1) (a) and bring the facts in his report. (The BO (Revenue) shall forward the report of the SSO to the concerned Revenue Branch Officer under whom the Code Number of the immediate employer is dealt with for cross examination of compliance against the executed value / work order for which inspection was conducted.) But in cases, where they are not covered independently, and leaves after finishing the work without keeping any record of persons employed for such work and the payment wages made to them, it is difficult for the principal employer to segregate the material and labour costs, to make payment of contribution on the wage element. In all such cases, where the employer expresses difficulty in segregating the wage element out of the total expenditure, and if the Regional Director is satisfied about the inclusion of cost of materials, contribution may be determined on 25% of the total amount as an exceptional case and one-time measure and not as a matter of routine and should not be extended to the same employer a second time routinely.

L.13.5 Determination of contribution in cases where the amount paid to the immediate employers/ contractors is exclusively labour charges. (Instructions in letter No. S-11/12/2/2000-Col. 1-Ins.IV dated 9-8-2002): Where the principal employers fails to produce the relevant records, to clearly indicate the quantum of labour component involved in the amounts paid to immediate employers, 60% of the total amount booked may be taken as wage element to determine the contribution. This concession will not apply for a second and subsequent occasion.

L.13.6 In both the cases covered under Paras L.13.4 and L.13.5, though we are collecting the contributions, due to non-registration of those employees, they are deprived of the benefits provided under the Act .It is clarified by Hqrs. Office in letter No. P-11/13/97-Ins.IV dated 26-5-2003, that the statutory requirement under section 38 of the ESI Act read with Section 41(1A) thereof and Regulation 32(1-a) of ESI (General) Regulations 1950 will have to be followed wherever the employees are engaged through the immediate employers/contractors for any of the work, preliminary, connected, incidental or ancillary to the work of the factory or establishment inside the premises, or with the supervision of the principal employer or his agent if such work done is done outside the premises. These provisions are similar to those provisions in the Contract Labour (Regulation & Abolition) Act, which also requires maintenance of the record of persons employed through the contractors and the wages paid to them, by the principal employer and retention of those records.

The method of determination therefore followed in both the situations is the only feasible alternative in which the following circumstances exist:

- When the employer during the personal hearing proceedings under Section 45-A of the Act expresses inability to make segregation of labour component or fails to produce valid documents showing the actual labour component to the satisfaction of the authority, and the Corporation is also not able to make the segregation.

- The authority exercising power under section 45-A is satisfied about the bonafide and also satisfied that no other payment of wage is included in this head and these are strictly payment made to the contractors including cost of material, as well as other expenses(copies of contract deed, tenders, quotations, and other relevant documents should be verified to confirm the pleadings of the employer.

In cases, where determination under section 45-A is made using the above formula, the 45-A order should also state that this formula is resorted to as a special case and concession provided and employer will have to comply in future with statutory provisions contained in Section 38 read with section 40, 41(1-A) of the ESI Act and Regulation 32(1-A) of the ESI (General) regulations 190 and that this facility will not be extended for a second occasion. In addition to stating this in the 45-A order, the employer should also be separately addressed on these lines with a copy to the area SSO concerned.

However, the Regional Directors etc. may use their discretion to adopt this procedure of adhoc assessment on a second or subsequent occasion in only special circumstances where they are satisfied regarding the genuineness of the case. Whenever this procedure is adopted for the second or subsequent occasions, the reasons for the same should be recorded on the file and got approved by the Regional Director.

(The instructions in the letters referred to in Paras L.13.4 and L.13.5 stand modified to the above extent.)

L 13.7 Branch Officer authorized to issue 45-A orders <u>should not</u> visit the factory/establishment after issue of C-18 (adhoc)

(Hqrs. Instructions contained in letters dated 17-9-1997, 14-5-2002 and No.P-13 (11)- 11 / 34 / 2000-lns IV Date : 3.7.2002)

(i) Instructions dated 17-9-1997: When C-18 (adhoc) for omitted wages is issued to the employer

and the employer requests for Inspection of records by the officer acting under Section 45(A, in the factory-premises on the grounds that the required records are bulky, in such cases the Branch Officer concerned is not allowed to visit the factory-premises and involve, himself in verification of records, but he should depute an Insurance Inspector for inspection of records after obtaining the approval of Regional Director. In fact, merely because an employer makes such a request it should not be a routine practice of deputing inspector, instead such a decision should be based on merits. If the Regional Director is satisfied that the employer has made a bona-fide request or that the quality of the inspection report was very poor and the employer has in the meanwhile paid contribution as calculated, by him and submitted comprehensive statement segregating wage and non-wage amount, RD may consider deputing an inspector, keeping the C-18(adhoc) adjourned.

(ii) Instructions given in the letter dated 14.5.2002: If an order already issued under Section 45(A), is re-opened, the Branch Officer concerned is required to verify the records himself at Regional Office, instead of routinely referring inspection of records to the field inspectors. The intention of both the instructions was that the Branch Officer should not involve himself in the inspection of records in the factory.

If, however, quality of an inspection report and ledger verification is completely unsatisfactory and the inspector has merely given total amount found in the ledger against different heads of accounts and there is no observation of failure to produce complete documents, bills, vouchers etc C-18(adhoc) should not be issued in such cases proposing highly Inflated claim. Such unsatisfactory inspection reports should be brought to the notice of JD/RD and appropriate action taken against the Inspector concerned and a time bound re-Inspection arranged so that there is no grievance from the employer regarding Inflated claim and harassment. The question of issue of C-18 (adhoc) based on such total amount should arise only where the employer is totally non-cooperative and there is prima-facie possibility of omitted wages.

(iii) Instructions given in the letter dated 3.7.2002: The said letter clarifies the intention of Hqrs. Instructions dated 17.9.1997 and 14.5.2002 as mentioned above for guidance of the Branch Officers acting under section 45 A.

Note : What is to be borne in mind is that once 45-A is invoked, the power to determine the contribution under this section is only with the Branch Officer or JD / RD and it is improper to delegate this power to an SSO/Supdt. All the records, statements, documents produced at the time of hearing or required to be produced at the time of hearing should be verified by the concerned officer himself without any back reference to the SSO for verification. However, if there is any need for assistance at the time of verification, the assistance of an SSO/Suptd. may be taken. Such an assistance could be taken with the approval of the

Joint Director / Regional Director , but the responsibility of issuing a final order will always be on the officer concerned. At the same time, the quasi-judicial officer should not visit the factory and carry out routine inspection.

L 13.8 DRAFT SPEAKING ORDER: (After hearing the employer)

No: _____ Date_____

ORDER UNDER SECTION 45-A OF THE ESI ACT, 1948

M/s_____situated at _____ a factory/establishment covered and registered under the ESI Act 1948 with Code No._____is required to pay the contribution and submit return of contributions under Section 40 and 44 of the Act read with Regulations 26, 29 and 31 of the ESI (General) Regulations 1950. As the principal employer of the said factory/establishment failed to pay the contributions and submit the returns for the period from _____ to _____, a Show cause notice of even number dated _____ was issued in Form C-18 to show cause within 30 days as to why the contributions for the said period of default be not determined as proposed in Para 4 of the said notice and recovered from him. In case of any objections to the proposed determination, in the said notice an opportunity of personal hearing to represent his case with relevant records in person or through an authorized representative has been offered to him on _____. He was also requested to furnish full particulars/statement/ return of actual contributions payable by him for the said period of default.

The show-cause notice sent to him and to his factory/establishment by registered post acknowledgment due was duly received by him/his factory/establishment as per the postal acknowledgement received.

In response to the said notice, the employer vides his letter no._____dated_____requested further time to furnish the details of contributions due and to appear for the personal hearing. I have considered his request and fixed the next date of personal hearing on_____.

The principal employer Sri _____, Managing Director/…./…./…. appeared before me on _____, and pleaded as follows against the proposed assessment/sought

further time for submission of his records and furnishing the details of contributions. I have considered his request and as a special case, allowed him the final opportunity of personal hearing on _____.

or

In response to the said notice, the principal employer replied vide his letter bearing number _____ dated _____ furnishing the details of contributions due for this period/stating that _____

_____

or

No reply/details of contribution due have been received from the employer in response to the said notice.

or

The principal employer did not appear for the personal hearing on _____. However, the employer has been provided with another opportunity of personal hearing on _____ and communicated to him vide letter of even number dated_____ duly received by him as per the acknowledgment on record. But the employer did not avail this opportunity also. In order to provide a final opportunity to him before determining the contributions as proposed in the C-18 notice, a public notice in the Local/English daily news paper "_____" dated _____ advising the principal employer to appear before the undersigned on_____ for objection if any against the proposed assessment with records. The principal employer failed to avail this opportunity also.

or

Sri_____, _____, with a due authorization from the principal employer appeared before me and pleaded as follows against the proposed assessment.

(Furnish brief details of the personal hearing proceedings.)

He also raised the following issues/objections against the proposed assessment. He submitted the following records during the course of personal hearing in support of his contention.

_____

I have applied my mind to all the above facts and the facts furnished by the employer both in their letters and during the course of personal hearings, and records made available to me for verification, and my findings are as follows.

_____.

"For the above reasons, I _____,Asistant. Director / Deputy Director, in exercise of the powers delegated to me by the ESI Corporation think it fit and accordingly order that contributions totalling Rs. _____(Rupees_____only) for the period from _____to _____are finally determined and you as one of the principal employers are hereby ordered to pay the above amount within a period of 60 days from the date of this order, failing which this shall be caused to be recovered under Section 45-C to 45-I of the ESI Act."

Signature with date

Name & Designation

NOTE: In case the employer is dissatisfied with the determination of contribution, he/she is entitled to make an appeal to the RO/SRO (Appellate authority) against the above order in accordance with the provisions of Section 45AA of the Act, which are re-produced below.

"If an employer is not satisfied with the Order referred to in section 45A (1), he may prefer an appeal to the appellate Authority as may be provided by regulation within sixty days of the date of such order after depositing twenty-five percent of the contribution so ordered or the contribution as per his own calculation which ever is higher, with the Corporation."

To

Sri_____, Principal Employer with complete postal address.

Copy to M/s_____ (Name and full postal address of the factory/establishment) for necessary action.

Copy to the SSO _____.

L 13.9 Determination of contribution in cases where the left out (omitted) wages were detected by an Officer during the course of his test inspection: (Instructions contained in Hqrs. Office letter No.T-11/13/3/95-lns.lll dated 5th May, 1999 are as follows)

Sub: - Desirability of allowing the same Test Inspection Officer to

Conduct personal hearing for passing 45-A Orders - Reg.

In continuation of this office letter of even No. dated 6.1.99 regarding the subject cited above, I am directed to inform you that the matter has been examined further and looking into the quantum of work involved and increase in work load with Joint Director / Regional Director it has been decided that

(i) in case Test Inspection is conducted by an Officer, personal hearing for issue of order Under section 45-A should be done by another Officer,

(ii) where a case for issuing 45-A Order comes up before a particular Branch Officer and he happens to be the Test Inspecting Officer in that particular case, he should bring it to the notice of Joint Director / Regional Director for suggesting alternative officer for passing the 45-A order and

(iii) where there is only one Branch Officer, the Regional Director / Joint Director may conduct the Personal Hearing and issue order Under Section 45-A.

Your kind attention is invited to instruction No. 1/99 issued vide this office letter of even no. dated 19.3.99, regarding determination of contribution and affording the chance of personal hearing by the Joint Director / Regional Director where wage component exceeds Rs. 1,00,000/- which may be adhered to while applying the above instruction.(The instruction dated 19-3-199 has been modified vide instruction no. 4/99 dated 21-6-199 as shown in Para 10.6 supra)

L 13.10 Determination of contribution where the cases for exemption are under consideration of appropriate Government: Hqrs. Office instructions contained in letter No. Q-11/23/1/2003- Ins. III dated 24-4-2003 is as follows:-

“During the course of examination of history sheets in respect of defaulting employers submitted by regional Offices/Sub-regional Offices, it has been observed that some of the regions are not taking appropriate and timely action for determination and recovery of ESI dues in respect of factories/establishments which have applied to the appropriate government for exemption from the purview of the

ESI Act and thus delaying the matter unnecessarily. In some cases, the matter is kept pending by the government for years together for final decision either way. The ESI Corporation in such cases cannot wait for indefinite period for recovery of its dues. It is requested that all such cases may be reviewed at Regional Office/Sub-regional Office level and if action for determination/assessment of contribution is found pending, the same may be completed immediately and efforts may be made to recover the dues in respect of such factories/establishments without waiting for the decision on exemption."

L 13.11 Determination of contribution in the case of a company declared as sick industry under Section 3(1)m (o) of the Sick Industrial Companies (Special Provision) Act 1985: The Karnataka High Court held that capacity to pay the contribution had nothing to do with an order passed by the Corporation under Section 45-A of the Act when the purpose of the enactment of the ESI Act was kept in mind and allowed the appeals filed by the Corporation vide its judgement dated 26-5-2003 in MFA No. 2248/22001 combined with MFA No. 2250/2001 by setting aside the orders passed by the EI Court in the case of M/s APS Star Industries Limited Dharwad (Code No. 53-7556-67). The details of the case communicated vide Regional Office Karnataka letter No. KAR.Legal.MFA.2248/2001 dated 7-7-2003 are as follows:

The Company M/s APS Star Industries Ltd., Dharwad has been declared as a sick industry under Section 3(1) (o) of the Sick Industrial Companies (Special Provision) Act 1985 and the case was pending before the BIFR for rehabilitation of the company and no resources to pay wages to its employees from April'98 onwards. The employer disputed the 45-A orders issued by the Corporation for the periods from April'98 to March 99 and April 99 to September'99 in the EI Court Hubli vide EI No. 17/2000 and 19/2000. The EI Court held that the employer is liable to pay the ESI Contribution only when the wages are actually paid to the employees. Since the wages have not been paid, the employer is not liable to pay any contribution to ESIC. The EI Court allowed both the applications of the employer and set aside the order under Section 45-A, and the recovery notice. The appeal made by the Corporation against these orders was allowed by the Karnataka High Court.

L 13.12 - Re-opening of cases where contribution has been determined Under section 45-A after issuing C-18: There is no provision in the Act for reopening or revoking of the orders issued under section 45 A of the act. The employer can only dispute the claim under Section 75 of the act in the EI Court. However, to avoid hardships to the employers, administrative instructions were issued by Hqrs. Office from time to time for reopening of the orders issued under Section 45 A and the latest instruction of Head Quarters' office was issued vide letter No. T/11/13/3/2008- Rev.II dated 31/12/2008 which was made effective from 01/01/2009 and as per which :- "(these instructions are applicable only for the orders issued prior to 01.6.2010)"

1. In the cases where dues have been assessed under Section 45-A of the Act either ex-parte or after affording personal hearing and if the employer comes forward with a request to re-open the case

for assessment on actual basis and deposits at least 50% of the amount assessed under Section 45- A or the contribution due as per his own calculation, which ever is higher, the case may be re-opened after recording the reason. The dues payable or refundable after re-assessment may be realized or refunded as per the existing instructions.

2. Re-assessment in the cases re-opened must be completed by the Branch Officer authorized after affording personal hearing within two months of such re-opening under his personal supervision. Under no circumstances, the period of two months will be relaxed.

3. Past cases where the recovery action is already complete, shall not be re-opened. However, where there is part recovery but actual recovery has not been affected, the cases can be re-opened as per the aforementioned guidelines.

4. A report of all such cases be sent to Hqrs. Office on month to month basis, as per the existing instructions on the subject.

5. Vigilance should step-in for scrutiny of such action only where there is some prima-facie evidence of colourable exercise of power and after prior approval of the Director General. In such case, at first, a clarification of concerned officer shall be called for and the same shall be examined and put up before the Director General for taking a view in the case. If it is found that there is prima-facie evidence of colourable exercise of power, only then further action can be initiated after approval of the Director General.

   Re-opening of genuine cases as per above guidelines is no irregularity. What must be ensured is that the case is positively finalized within two months of the date of reopening. Any delay beyond two months in finalization will be viewed seriously.

L. 13.13 Appeal against the order of the Corporation made under Section 45-A: If an employer is not satisfied with the order referred to in Section 45 A, he may prefer an appeal to the Appellate Authority as may be provided by regulation within 60 days of the date of such order after depositing 25% of the contribution so ordered or the contribution as per his own calculation whichever is higher, with the corporation.

Provided that if the employer finally succeeds in his appeal, the Corporation shall refund such deposits to the employer with such interest as may be specified in the regulation.

NOTE. : Details regarding Appellate Authority is given in the Chapter XIV

L. 13.14 Allowing 60 days time for initiating recovery action after issue of 45 A order: As per existing practice, 30 days time is given to the employer to comply with orders with stipulation that no appeal lies against the order passed under Section 45 A. However, in view of creation of Appellate Authority, where 60 days time is given to the employer to file an appeal against the order, it is essential that authorized officer should give 60 days time before issuing Recovery Certificate in form C-19 to the Recovery Officer for Recovery of Arrears. The above alongwith the Appellate provisions should be mentioned/incorporated in the speaking order. (Hqrs. Instructions P-12/11/11/38/2010-Rev II dated 10/11/2010).

L. 13.15 Section 45 – B. Recovery of Contributions : Any contributions payable under this Act may be recovered as an arrear of land revenue.

L. 13.16 Section 45 –C. Issue of Certificate to the Recovery Officer - (1) : Where any amount is in arrear under this Act, the authorized officer may issue, to the Recovery Officer a certificate under his signature specifying the amount of arrears and the Recovery Officers on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below: -

a) attachment and sale of the moveable or immoveable property of the factory or establishment or, as the case may be, the principal or immediate employer;

b) arrest of the employer and his detention in prison;

c) appointing a receiver for the management of the moveable or immovable properties of the factory or establishment, or, as the case may be the employer;

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the factory or establishment and where such attachments and sale is insufficient for recovering the whole of the amount of the arrears specified in the certificate, the recovery officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2): The authorized officer may issue a certificate under sub section (1) not withstanding that proceedings for recovery of the arrears by any other mode have been taken.

NOTE:. The detailed procedure on the different modes of recovery mentioned above has been given in the “Revenue Recovery Manual”.

L. 13.17 Section 45 - D Recovery officer to whom certificate is to be forwarded.

(1) : The authorized officer may forward the certificate referred to in section 45 – C to the recovery officer within whose jurisdiction the employer –

a) carries on his business or profession or within whose jurisdiction the principal place of his factory or establishment is situated; or

b) resides or any moveable or immovable property of the factory or establishment or the principal or immediate employer is situated

(2) Where a factory or establishment or the principal or immediate employer has property within the jurisdiction of more than one recovery officer and the recovery officer to whom a certificate is sent –

a) is not able to recover the entire amount by the sale of the property, moveable or immovable within his jurisdiction; or

b) is of the opinion that, for the purpose of expediting or secuiring the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the manner prescribed by the Central Government and specifying the amount to be recovered to the recovery officer within whose jurisdiction the factory or establishment or the principal or immediate employer has property or the employer resides, and thereupon that recovery officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorized officer.

L. 13.18 Section 45E. Validity of certificate and amendment thereof.-

(1) When the authorised officer issues a certificate to a Recovery Officer under section 45C, it shall not be open to the factory or establishment or the principal or immediate employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorised officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The authorised officer shall intimate to the Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub- section (2) or any amendment made under sub-section (4) of section 45F.

L.13.19 Section 45 F Stay of proceedings under certificate and amendment or withdrawal thereof.-

(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceedings under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject- matter of a further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorised officer shall, when the order which was the subject- matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

L.13.20 Section 45G. Other modes of recovery.-

(1) Notwithstanding the issue of a certificate to the Recovery Officer under section 45C, the Director General or any other officer authorised by the Corporation may recover the amount by any one or more of the modes provided in this section.

(2) If any amount is due from any person to any factory or establishment or, as the case may be, the principal or immediate employer who is in arrears, the Director General or any other officer authorised by the Corporation in this behalf may required such person to deduct from the said amount the arrears due from such factory or establishment or, as the case may be, the principal or immediate employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the

credit of the Corporation: Provided that nothing in this sub- section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

(3) (i) The Director General or any other officer authorised by the Corporation in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the factory or establishment or, as the case may be, the principal or immediate employer or any person who holds or may subsequently hold money for or on account of the factory or establishment or, as the case may be, the principal or immediate employer, to pay to the Director General either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the factory or establishment or, as the case may be, the principal or immediate employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub- section may be issued to any person who holds or may subsequently hold any money for or on account of the principal or immediate employer jointly with any other person and for the purposes of this sub- section, the shares of the joint- holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the principal or immediate employer at his last address known to the Director General or, as the case may be, the officer so authorised and in the case of a joint account to all the joint- holders at their last addresses known to the Director General or the officer so authorised.

(iv) Save as otherwise provided in this sub- section, every person to whom a notice is issued under this sub- section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub- section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub- section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the principal or immediate employer or that he does not hold any money for or on account of the principal or immediate employer, then, nothing contained

in this sub- section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer on the date of the notice, or to the extent of the principal or immediate employer' s liability for any sum due under this Act, whichever is less.

(vii) The Director General or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub- section or extend the time for making any payment in pursuance of such notice.

(viii) The Director General or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub- section and the person so paying shall be fully discharged from his liability to the principal or immediate employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the principal or immediate employer after the receipt of a notice under this sub- section shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer so discharged or to the extent of the principal or immediate employer' s liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub- section is sent fails to make payment in pursuance thereof to the Director General or the officer so authorised, he shall be deemed to be a principal or immediate employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him in the manner provided in sections 45C to 45F and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 45C.

(4) The Director General or the officer authorised by the Corporation in this behalf may apply to the court in whose custody there is money belonging to the principal or immediate employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Director General or any officer of the Corporation may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from a factory or an establishment or, as the case may be, from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income- tax Act, 1961 (43 of 1961).

L. 13.21 Section 45H. Application of certain provisions of the Income- tax Act.- The provisions of the Second and Third Schedules to the Income- tax Act, 1961 (43 of 1961) and the Income- tax (Certificate Proceedings) Rules, 1962 , as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount of contributions, interests or damages under this Act instead of to the income- tax: Provided that any reference in the said provisions and the rules to the" assesses" shall be construed as a reference to a factory or an establishment or the principal or immediate employer under this Act.

L. 13.22 Section 45 - I Definitions – For the purpose of sections 45-C to 45-H :

(a) "Authorised officer" means the Director General, Insurance Commissioner, Joint Insurance Commissioner, Regional Director or such other officer as may be authorized by the Central Government by notification by the Official Gazette;

(b) "Recovery officer" means any officer of the Central Government, State Government or the Corporation, who may be authorized by the Central Government, by notification in the official gazette, to exercise the powers of a recovery officer under this act.

L. 13.23 Recovery action against units registered under BIFR: The Bombay High Court in its judgement in Ralliwolf Ltd., vs. RPFC reported in 2002 Lab. IC 280 held that Section 22 of SICA 1985 will not protect EPF dues, and the relief towards damages given in Section 14-B of the EPF Act for sick units registered under BIFR by an amendment Act on 1-9-1991 thereof cannot be extended to the other dues of EPF. Section 14-B of the EPF Act corresponds to the 2nd proviso to Section 85(B) under the ESI Act inserted with effect from 1-1-1992. The Court also noted the observation in various judgments wherein it was interalia held that "Section 22 of SICA would not operate in the field of payment of wages, gratuity and other statutory benefits payable to the workman…… The basic minimum which the workman is entitled to get is the wages, gratuity and other statutory benefits". The Court also, referring to the Supreme Court Judgement, enunciated the principle that the "PF and other dues payable under EPF Act 1952, are part of the legitimate benefits to the workers, employer is obliged to pay the contributions of the employees as well as his own contribution to the fund… these contribution belong to the employees…. they constitute an important measure of social security…… these are dues which are payable whether or not the undertaking is sick".

Head quarters Office while communicating the details of the above judgment vide D.O. letter No.T-11/13/1/2002-Ins.III dated 17th January 2002, referred to the minutes recorded by BIFR in several cases that no protection for ESI/EPF dues is available to the sick companies in view of the above referred judgments

and suggested to review all pending cases registered under BIFR for taking vigorous recovery action.

L. 13.24 Recovery Action as well as penal action to be taken against the defaulting CPSUs which deducted employees' share of contribution and failed to deposit the same with the ESIC; Headquarters vide letter no;Q-11/18/1/2000-Ins.III dated;20 10 2000 requested all Regional Directors that inspection of records of CPSUs may be conducted immediately to find out if any diversion of employees contribution deducted from the wages of the employees have been made and if so, recovery action as well as prosecution action should be taken immediately against the defaulting CPSUs. It is also advised that for recovery of small amounts outstanding against the CPSUs, the Regional Directors should take up the matter with the senior management of the CPSUs at their personal level. Generally payment not exceeding Rupees 1,00,000/- (one lakh only) from any CPSUs can be considered in this category.

CHAPTER XIV

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CHAPTER XIV

APPEAL AGAINST THE SPEAKING ORDER ISSUED UNDER Section 45-A

(LAW & PROCEDURE)

Introduction : A new Section 45AA has been inserted in the ESI Act 1948 vide ESI (Amendment) Act 2010 with effect from 1st June, 2010 enabling the employers to make an appeal against the 45-A order if they are not satisfied with the determination made therein. Prior to 1st June, 2010, there was no provision in the Act to appeal against the orders issued under Section 45-A. The only remedy available to the employers under Section 45-A(2)was to file an application against an order issued under 45-A only in the Employees' Insurance Court under Section 75 of the Act which was found to be time consuming and expensive for the employers. The new provision under Section 45AA relieves the employers from those hardships.

L.14.1 Provisions of Section 45AA: Appeal against the Order of the Corporation made under Section 45A:

" If an employer is not satisfied with the Order referred to in section 45A (1), he may prefer an appeal to the appellate authority as may be provided by regulation within sixty days of the date of such order after depositing twenty-five percent of the contribution so ordered or the contribution as per his own calculation which ever is higher, with the Corporation.

Provided that if the employer finally succeeds in his appeal, the Corporation shall refund such deposit to the employer with such interest as may be specified in the Regulation. "

L.14.2 Appellate Authority under Regulation 31-D: In accordance with the provisions of Section 45AA, a new Regulation 31-D of the ESI (General) Regulations 1950 has been incorporated specifying the Joint Director, Regional Director and Addl. Commissioner of the RO/SRO under whose jurisdiction the factory/ establishment is situated and the Insurance Commissioner as the Appellate Authority for the purpose of 45-AA of the Act.

L. 14.3 Authorised officer and the Appellate Authority: As per the existing instruction, "Authorised Officer"(defined under section 45-I of the act), who is normally the Asst. Director/Deputy Director of the region is determining the contribution under Section 45A of the ESI Act. Hence, the Appellate Authority should be higher in rank to the "Authorized Officer" and notified for the office concerned by the Corporation from time to time.

The Appellate Authority for the purpose of Section 45 AA of the Act is as under:-

Sl. No.	Authorised Officer	Appellate Authority
1	Assistant Director/Deputy Director	Joint Director
2	Joint Director	Not below the rank of Director
3	Joint Director I/c	Regional Director Grade-I and if not posted, then IC.
4	Director	AC cum RD. If not posted, then IC.
5	Director I/c	Not below the rank of AC cum RD and if not posted then IC
6	Regional Director Grade-I	Insurance Commissioner
7	AC cum Regional Director	Insurance Commissioner

L.14.4. Duties and responsibilities of the Appellate Authority:

Any employer, aggrieved by the order of Authorized Officer passed under Section 45 A, may prefer an appeal to the "Appellate Authority" as per the rules and procedure given as under:

a) The Appellate Authority shall hear the appeal against the order of the Authorized Officer passed under Section 45 A of the Act.

b) The Appellate Authority may confirm, reduce, enhance or annul the assessment made by the Authorized Officer. He may, further pass such order in the appeal as he thinks fit in relation to a particular case: However, the Appellate Authority shall not enhance the amount of assessment unless the appellant has been given a reasonable opportunity of showing cause against such enhancement.

c) The Appellate Authority may stay the Recovery proceedings till the appeal is decided.

d) The Appellate Authority shall decide the case within 60 days from the date of filing of appeal.

L.14.5 Appeal against the order of the appellate authority:

a) In cases where the Appellate Authority is not the Regional Director, every appeal so decided shall be examined and if it is found that involves a substantial question of law or the decision of Appellate Authority is prejudice to the interest of ESIC, the Regional Director, may prefer an appeal u/s 75 of ESI Act 1948 before EI Court or any other court/tribunal to safe guard the interest of ESIC.

b) In cases where the Appellate Authority is the Regional Director, the power and process as enumerated in Para (a) shall be exercised by the ESIC Hqrs. Office.

P.14.1 PROCEDURE

a. Every appeal under the provisions of Section 45 AA shall be in written form where in the applicant shall submit the grounds of appeal along with all relevant documents concerning the appeal.

b. The appeal shall be preferred within 60 days of the date of order under Section 45- A and after depositing the amount of contribution as prescribed under Section 45-AA. However, as a one time measure, all the orders passed u/s 45-A on or after 01/06/2010, where no recovery has been made, can be appealed against before 30th Nov 2010.

c. The Appellate Authority shall fix time day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the authorized officer against whose order the appeal is preferred.

d. The appellate authority shall have the power to adjourn the hearing of the appeal from time to time but not more than three adjournments shall be allowed.

e. The appellate authority may, before disposing of any appeal make such further enquiry as he thinks fit or may direct the authorized officer to make further enquiry and report the result of the same to him.

f. The appellate authority may, at the hearing of an appeal allow the appellant to go into any other ground of appeal not specified in the grounds of appeal, if the appellate authority is satisfied that the omission of the ground from the form of appeal was not willful or unreasonable. At the time of hearing of appeal the parties to appeal may be present either in person or through their authorized representative. In case the concerned authorized officer is not present, the authorized officer in his place shall be deemed to be the authorized officer for the purpose of appeal.

g. The appellant may not be permitted to file additional evidence. However, the Appellate Authority may at his discretion permit or disallow such additional evidences submitted by the appellant, for the reason recorded in writing.

h. The orders of the Appellate authority disposing of the appeal shall be in writing and it shall be a reasoned order.

i. In every appeal, the Appellate Authority, shall hear and decide such appeal within a period of 60 days from the date of filing the appeal before the Appellate Authority.

j. On the disposal of the case, the Appellate Authority shall communicate the order passed by him to the Appellant and to the concerned Regional Office/SRO and office of the Recovery Officer in such cases where the recovery proceeding commenced before the filing of the appeal.

(Reference: Hqrs. letter No. P-12/11/11/38/2010-Rev. II dated 4th Nov.,2010)

CHAPTER XV

INSPECTIONS (LAW & PROCEDURE)

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CHAPTER XV

INSPECTIONS (LAW AND PROCEDURE)

Introduction: By the operation of the provisions of the Act all the employers of the coverable Units are required to register their units and also the coverable employees of their units within the prescribed time-limits. They are also required to remit the Contributions regularly and submit the returns strictly in accordance with the Rules and Regulations under the Act. The Corporation also monitors these aspects especially, prompt coverage of all the coverable units and timely registration of every coverable employee in those units through a well established machinery known as inspections . The Act has categorically designated specific authorities who only can undertake this task for the Corporation and they are known as Inspectors. The job of inspections does not merely involve in enforcing coverage of units, employees and payment of contributions but also includes guiding the employers and employees wherever required and also familiarize them about the rights, responsibilities and benefits under the Scheme. It is imperative to assist them in getting their bio-metric cards, medical and cash benefits. For this purpose, the Corporation appoints Social Security Officers, formerly known as Insurance Inspectors as provided under Section 45 of the Act. Needless to emphasis that Inspections are the most important limbs of the Revenue Machinery of the Corporation and the SSOs are the most essential cogs inasmuch as they are the field officers of the Corporation who form the link between the Corporation and the Employers.

L 15.1 Provisions of Section 45: SOCIAL SECURITY OFFICERS, THEIR FUNCTIONS AND DUTIES. –

(1) The Corporation may appoint such persons as Social Security Officers, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

(2) Any Social Security Officer appointed by the Corporation under sub-section (1) (hereinafter referred to as SSO), or other official of the Corporation authorized in this behalf by it may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with –

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act; or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such SSO or other official and allow him to examine such accounts, books and

other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said SSO or other official has reasonable cause to believe to be or to have been an employee;

(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or, other premises;

(e) exercise such other powers as may be prescribed.

(3) An SSO shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations.

4) Any officer of the Corporation authorized in this behalf by it may, carry re-inspection or test inspection of the records and returns submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer.

L 15.2 Officers authorized to perform the functions of SSO under section 45(2):

In Regulation 102 of the ESI (General) Regulations 1950, the Corporation has authorized the following officers to have the powers of inspection :-

"The Director General, the Insurance Commissioner, an Additional Commissioner, a Regional Director, a Joint Director, a Deputy Director, an Assistant Director and a Branch Manager shall have the powers of inspection. In addition to the above Officers, the Director-General may by a written order, confer upon any employee of the Corporation or any Government Officer, the powers of a Social Security Officer for such period or periods as he may think fit".

Thus, the SSO's enjoy abundant powers in the matter of enforcement of production of records and gathering all the requisite information . Basically, the Corporation officers including the SSO's are public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860) under Section 93 of the Act. The SSO can enter the premises of any unit or other premises occupied by principal or immediate employer at any "reasonable time" for carrying out enquiries related to inspection. Thus, for a Movie Theatre, Bar or

a pub, evening or night time could be reasonable time for ascertaining the coverage of the unit or its employees, whereas, for coverage of milk dairies, Newspaper distribution shops and the like reasonable time could be morning hours. Thus, reasonableness of time and place for visits depends on the nature of activities and peak-business timings of the units which could be guiding factors.

Further, the SSO is empowered to examine any person including the principal or immediate employer found in the premises and ascertain facts on any matter relevant to the purpose of his inspections and can record their statements.

The SSO can also demand any person found incharge of the unit at the time of his visit to produce all the relevant records to enable him to examine Account books and any other documents relating to the employment of persons or payment of wages . He can obtain any other information or document related to the purposes of the Act. Besides, he can take extracts from any register account book or any other document that serves the purpose of his inspection. If the books of Accounts and the connected records like vouchers etc are maintained or kept in any other premises the SSO can visit such premises at any reasonable time. No one can interfere, obstruct or otherwise prevent him from carrying out all these legitimate work for any reason lest it should constitute a criminal offence. However, he has no powers to call the records to his Office or any other place, unless the employer himself opts to do so. Similarly he has no powers to seize the records or documents.

Section 85(f) amplifies that if any person obstructs any SSO or other empowered official of the Corporation in the discharge of his duties he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees or with both. Section 85(A) lays down that where this offence is repeated after an earlier conviction for the same offence then the person committing this repeat crime shall be punishable with imprisonment for a term which may extend to 2 years AND with fine of five thousand rupees. Thus ,the SSO has well defined duties and also enjoys all the required statutory safe-guards.

L 15.3 DUTIES OF SSO's FURTHER EXPLAINED : After re-designating the Insurance Inspector as "Social Security Officer" vide ESI (Amendment) Act 2010 with effect from 1st June, 2010, his/her job profile has been re-defined as follows:

- He /She shall work as a Facilitator of Employers and IPs.

- He/She shall ensure that all coverable employers and employees within his jurisdiction are registered with the ESI Corporation.

- He/She shall provide necessary assistance to all the beneficiaries under the ESI Act in getting the benefits for which they are eligible.

- He/ She shall assist the employers in getting them and their employees registered, preparation of monthly contribution records/ challan and in payment of contribution.

- He/ She will also publicise the various benefits available under the ESI Act 1948 among the employees and their families.

- He/ She will conduct inspections in order of priorities, laid down in the Inspection Policy, in force from time to time.

- While conducting the inspection, he / She shall ensure that all the employees working in the premises have been issued with the biometric cards. If he/ she finds any employee who is not having biometric cards, he / she shall ascertain the reasons thereof and take necessary steps for capturing their biometric data, preparation of biometric cards and delivery of cards to I.P through Branch Manager.

- He / She shall also discuss with the employees working in the premises, at the time of inspection, about availability of benefits and shall make a report about their grievances, if any, on any type of deficiencies in Benefit Delivery System.

- The observation of Social Security Officer pertaining to the deficiency in services to the insured persons may be conveyed to branch manager with endorse to Branch Officer, Benefit Branch.

- He/ she shall carry with him/ her leaflets / publicity materials on the scheme to the extent possible.

(Headquarter's instructions No. S-11/13/1/1/2009-Rev-II dtd. Sept. 2010 – Revenue Instructin No. 6.)

L 15.4 NUMBER OF INSPECTION DAYS IN A YEAR :

The total number of Inspection days in a financial year for each inspection division is worked out to 217, taking 5 working days in a week.

(The policy of inspections is framed by the Corporation from time to time and communicated to all for strict implementation. The present policy of inspections as communicated vide Hqrs. letter No.S.11/12/2/ 2008-Revenue II dated 16th June, 2008 is detailed below under L.15.6).

L 15.5 DAY VALUE FOR INSPECTION/SURVEY WORK :

SSOs being field officers, are not required to sign the attendance Registers regularly. However, their attendance and performance is watched by their Fortnightly Diaries wherein date wise work done is explained and his/her work is assessed by the quantum and nature of work done vis.a.vis the yard-stick prescribed by H.qrs The SSO is expected to earn day value for the work done equivalent to the number of days he has worked during the fortnight. Any shortage in day value shows that he/she has underperformed during that fortnight. The regulation of shortage of mandays of SSO's has been detailed/explained vide headquarter's instructions no. S-11/13/2/04-Ins.IV dtd. 11/2/2005 as follows :-

1. The Regional Director/Joint Director I/c shall ensure that Inspectors posted in the field are given sufficient work so that they may not have excuse tht they could not give the required output because of insufficient work. Surplus manpower, if any, may have to be deployed wherever required. For such diversion ex-post-facto approval of I.C. be obtained giving proper justification.

2. Assessment of mandays of Inspectors may continue to be done on receipt of weekly diaries from Inspectors as per Hqrs. Office instructions.

3. Consolidated assessment of man days of Inspectors may be done on monthly/ quarterly basis and Inspectors who are found deficient in giving required output in terms of mandays may be informed of the result of monthly /quarterly assessment so that they may be able to make good the shortfall of mandays in the forthcoming months/quarters. It may be made clear to them while conveying assessment of mandays that failure to make good the shortfall, earned leave, equivalent to the shortage of mandays can be debited or departmental action can be taken whichever is deemed fit in the facts and circumstances of each case.

4. The accumulation of shortage of mandays can be carried forward upto three quarters beginning from the respective financial year.

5. At the end of the fourth quarter, final consolidated shortage of mandays may be worked out by the Deputy Director (Co-ord./Inspection.).

6. The Regional Director/JD (I/C) shall call upon the inspector to explain within the time as may be specified therein as to why debiting EL equivalent to shortage of mandays or disciplinary action or both as considered fit and necessary should not be taken against him/her for reasons of shortage of mandays which he / she failed to make good inspite of directions in the past. Thereupon the Regional Director/ JD(I/C) shall proceed with the issue on its merits and decide the issue either to debit EL equivalent to shortage of mandays or disciplinary action or both – only once or twice in extreme cases. In the event of deciding to debit EL equivalent to shortage of mandays the issue can be disposed off by administrative order and disciplinary action- minor or major as per procedure in the matter.

7. Thereafter for ever subsequent shortage of mandays action should be taken under major penalty procedure and the issue decided as per procedure in the matter. Inspite of action taken, no improvement is observed in his/her performance, RD / JD(I/C) may consider the desirability of shifting of the individual from inspection. However, RD / JD(I/C) may condone the shortage of mandays once a year in the event of shortage of mandays which is less than 5 days as on 31st March of that year with suitable warning and necessary entries be made in service book.

8. The shortage of mandays may not be allowed to carry forward beyond 31st March of every year unless he or she has put in a minimum service of 3 months in inspection at the material time.

9. On completion of review of consolidated shortage in mandays, the same may be intimated to concerned Deputy Director (Admin) with relevant details for further action.

10. There shall be no condonation of shortage in mandays, other than the one mentioned above nor shall the inspector be allowed to do inspection six months before superannuation.

11. Any other residual issues which are not specifically mentioned shall be addressed to headquarters for clarification/ approval of the competent authority in the matter.

12. These instructions come into force forthwith.

N.B : AWARDING DAY VALUE FOR INSPECTION WORK BASED ON THE NUMBER OF EMPLOYEES AND THE PERIOD OF INSPECTION WITH LEDGER VERIFICATION HAS BEEN REPLACED UNDER THE "NEW INSPECTION POLICY 2008" EFFECTIVE FROM 1/7/2008, WHEREIN, THE SSO SHOULD CONDUCT ATLEAST ONE SURVEY AND ONE INSPECTION

EACH WORKING DAY IN SUCH A WAY THAT A TARGET OF 20 INSPECTIONS INCLUDING LEDGER VERIFICATION AND 20 SURVEYS IN A MONTH IS ACHIEVED. THE PERFORMANCE OF THE SSO's SHOULD BE MONITERED ON MONTH TO MONTH BASIS AND THE SSO's WOULD BE ACCOUNTABLE FOR NON-PERFORMANCE / LOWER PERFORMANCE. (Hqrs. Instr. No. S-11/12/2/2008-Rev.II dated 16th June, 2008).

L 15.6 Inspection Divisions/Area

The concept of fixing of geographical area with for each Social Security Officer was reintroduced from 1st November, 2007 vide Hqrs. letter No. S-11/12/2/2001-Rev.II dated October 30, 2007 so as to make the concerned Social Security Officer of the area accountable for coverage of every coverable unit/employee falling in that area. Accordingly, the responsibility of custody and maintenance of Employers' files kept in the Branch Offices/Inspectorate Office shall be vested with the Social Security Officer of the concerned Area. Now, the rotation of Social Security Officers from one area to the other is being done after a period of two years normally.

L 15.7 Maintenance of Inspection Office of the SSO :

The following instructions / guidelines may be noted for strict compliance:-

i) In some cases , the records are taken away by the concerned SSO to his residence instead of maintaining the same at Inspection office. Removal of office records and keeping the same at the residence without prior permission is highly irregular. In this connection attention is invited to Hqrs instructions no S-11/12/2/87-Ins-IV dtd 3/2/89 given below.

ii) All the SSO should maintain their records including employer's files at the Inspection office only. The RDs / JD I/c should also immediately ascertain the cases where office files are kept at the residences of SSO and initiate disciplinary action wherever such practice is in existence without any authorization from Regional Director. They should ensure almirahs are provided to the SSO for the safe custody of records and see that no files are kept in the residence.

iii) The SSO do not sign the records of the employers seen by them during the course of inspection. Complaints have been voice in various employers' for a regarding this matter.

iv) Proper record of inward and outward dak should be maintained at the Inspection office.

v) Inspection should be conducted as per the approved tour programme. (presently as per programme submitted by SSO as per new Inspection policy 2008). If deviations become unavoidable , they should be properly explained at the time of submitting tour diaries .

vi) Each SSO should carry his identity card while visiting the employers either for the purpose of inspection or any other official work.

vii) After seeing the records of the employer , SSO should append his signature on the relevant record and give a remark to this effect in the Inspection report as well as inspection books of the employer giving details of the name of the register and page no on which he has appended his signature.

viii) While handing over / taking over the charge of the inspection office , list of employers file and pending dak alongwith note on important matters needing immediate attention should be prepared and handed over to the new SSO and copy of such list should be sent to the Regional Office (Inspection Control Branch) alongwith chargesheet. (Hqrs instruction no C-12/15/7/2/98-Vig dtd 8/2/99)

L 15.8 Maintenance of Inspection Office records :

It has been reported that some Insurance Inspectors are keeping employers' files (of inspection office) and other connected records at their residences. This practice is highly improper and objectionable. Records are to be maintained / kept in the respective inspection office itself. All the Regional Directors are , therefore, requested to issue suitable instructions to the Social Security Officers (Insurance Inspectors) advising them to maintain employers' files containing office copies of inspection reports, communication received from the Regional Office and other connected records and registers etc. at their respective offices. All the SSO's should normally have been provided with steel almirah for the safe custody of records. In case any of the Insurance Inspectors has not been provided a separate room for inspection office but is only sharing the room of a Branch Office Manager, the inspection office records may be kept in the safe custody of the Branch office manager.It has also been observed that in the event of change in the incumbency caused by the transfer etc; proper handing over taking over of the inspection office records by the concerned Insurance Inspectors is not being ensured. The Insurance Commissioner therefore desires that all the Regional Directors should make it imperative for the Insurance Inspectors to send proper charge report to the Regional Office in the event of their transfer etc and the said charge report should contain the details such as number of employers files handed over / taken over, registers, files containing instructions issued by Regional Office from time to time on various subject, particulars of pending communications on which actions are required to be taken by his successor etc. To start with, all the Insurance Inspectors may be advised to send a list (as per enclosed performa) of employers' files records/registers available as on 1.1.89 at their office, to the Regional Office immediately. At the end of every year up-dated list with

necessary addition and deletion should be submitted by the Insurance Inspector. In the event of transfer from the Inspection Division, charge report should accompany the list of files etc. handed over/taken over. This aspect may be verified by the Inspecting officers of Regional Office at the time of routine inspection of Inspection Offices. If need be, surprise inspection may also be resorted to, to verify whether all the files and records are properly kept in the Inspection Offices.(Hqrs instruction no S-11/12/2/87-Ins IV dtd 3/2/89)

L 15.9 CURRENT INSPECTION POLICY :

(A) In the "New Inspection Policy 2008" communicated vide Hqrs. letter No. S-11-12-2-2008-Rev.II, dated 16-6-2008, the units to be inspected by the Social Security Officer are selected by the Regional Office/Sub-Regional Office on the basis of the following priorities and lists communicated to the Social Security Officer concerned well in advance so that they can plan the inspection/survey work in his/her division.

The Social Security Officer shall be free to move within his jurisdiction to complete the surveys and inspections in this list. His tour programme in his area of operation does not require prior approval.

(B) SELECTION PROCESS: Units to be inspected are selected as per the priorities fixed by H.Qrs in the following manner:

1. INSPECTION OF NEWLY COVERED FACTORIES / ESTABLISHMENTS :

First priority will be given to inspection of newly covered factories/establishments within three months from the date of communication of coverage. The SSO visiting the unit for the first time after coverage, has to properly guide the Employer and Employees under the scheme and about proper up-keep of records and filing of returns. This will help the Employers to acquaint themselves with various provisions of ESI Act and further help them to ensure proper compliance under the Act. The SSO must also interact with the employees and provide them the information about medical and cash benefits available under the scheme. As regards cases pending for deciding Final Date of Coverage, the same may be decided on available papers / documents by RDs / JD I/cs within three months from 1/10/2010 as per Hqrs. Instr. No. S-11/13/1/1/2009-Rev. II dated 30/9/2010.

2. CLOSED UNITS :

Second priority shall be given to inspections of those closed factories / establishments who have filed closure report under Regulation 26(1)(b) of ESI (General) Regulations, 1950. The inspection of such

to avoid unnecessary disputes, which arise only on account of delay.

3 LIVE DEFAULTING UNITS :

Next priority will be given to the Inspection of factories/ establishments which are live but defaulting as per the "Defaulter Lists" for the Contribution periods ending March and September. ESIC Headquarters has now given instructions to prepare monthly defaulters list. Analysis of monthly defaulters list should be done regularly and if it is found that some employer is defaulting continuously for three months than his inspection should be immediately done.

4. CONTRIBUTION PAID BUT RETURN NOT SUBMITTED :

The next priority will be given to the inspection of those live employers who have paid the contribution but have not filed "Returns of Contribution with Self Certification" in time. During inspection the employer must be advised to use the self certification scheme and file the Return of Contribution regularly. The main objective of such inspections should be to guide the employer and to emphasize to him that he must comply with law and that he should pay contribution regularly in time and should also file Returns in time. (Factories / establishments employing less than 40 employees are required to submit Return of Contribution with self certification in Form 5 and Factories/establishments employing 40 and above employees, are required to submit the return of contributions in the revised Form-5 duly certified by a Chartered Accountant under the self certification system introduced from the contribution period beginning from 1-4-2008 vide Hqrs. Instr. No. S-11/12/2/2007-Rev. II dated 14/3/2008.) The return of contributions is required to be submitted to the concerned Branch office in quadruplicate within 42 days from the expiry of each contribution period.

5. EMPLOYERS PAYING CONTRIBUTION REGULARLY AND

FILING RETURNS WITH SELF CERTIFICATION IN TIME :

Those employers who are submitting Return of Contribution in Form 5 as per Hqrs. Instr. No. S-11/12/2/2007-Rev.II dtd. 14/3/2008 as mentioned above would be subjected to inspections on random basis once in 3 to 5 years. The RD/JD I/c shall select the units randomly in such a way that theInspections of all the employers are completed in a cycle of 3 to 5 years. The work of generating the random list will be done by the RD / JD I/c and will be given to the SSOs for random checking.

6. EMPLOYERS WHO ARE NEITHER COMPLYING NOR SUBMITTING RETURN OF CONTRIBUTION :

The employers who are not complying with law and have neither paid the cntribution nor submitted Return of Contribution with Self Certification shouldbe inspected as soon as the matter comes to the notice and should be dealt with severely under law and quick action for recovery of contribution, interest, damages as well as filing of prosecution against them must be taken as per existing instructions.

7. SURVEYS OF UNCOVERED FACTORIES/ESTABLISHMENTS :

This is a continuous exercise. However intensive surveys should be conducted at least three times in a year. Once in April-May, again in September-October and finally in December-January .Regular survey is to be conducted based on the list of C-1 surveys communicated to the SSO and endorsements on C-2 letters addressed to the employers. Any new and uncovered units found functioning in his area should also be surveyed by the SSO. It is evident that the SSOs are responsible for detection of all the coverable units in time and any qualifying unit lying uncovered for a long time would make him accountable. Help of State government and Trade Unions should be taken in this exercise.

8. COMPLAINTS- INVESTIGATION/INSPECTION:

The complaints received from various sources would first be examined in Regional/sub-regional office and its authenticity confirmed. If the complaint is found genuine:

a) In the first instance the employer should be called for ascertaining the facts of the complaint.

b) There after, if the contents of the complaint are found correct, then the Employer should be asked to take corrective steps in a given time frame.

c) If the employer has not taken corrective steps within the specified time frame, then detailed investigation/inspection should be carried out and appropriate action under law should be taken.

(C) OTHER ASPECTS IN THE NEW INSPECTION POLICY 2008 :

(i) The main objectives of the SSO is to see that all the coverable employees are covered under the Act and to ascertain that all the components of wages are taken into account for payment of contribution. For this purpose, besides verification of statutory documents like wage register, accident register, challans, R.Cs etc., verification of books of accounts and knowledge of accounting procedure adopted by a particular

unit is of great importance. Depending upon the situation prevailing in the unit being inspected, the SSO has to examine the relevant Books of accounts to dig out the deliberately omitted wages. For this purpose, they may examine Cash Book including Petty Cash Book, Journal, Ledger, Profit & Loss Account, Balance Sheet, Income-Tax & Sales-Tax Returns, etc. To ascertain the number of employees actually working in a factory/ establishment the Time Office Record and / or Attendance Register must be inspected. In case of Security Agencies/ Labour Contractors etc. checking the fund inflow / outflow is essential as per Hqrs. Instr. No. P-12(11)-11/16/2002-Ins. IV dtd. 31/5/2002. In case of inspection of employers outsourcing the work and engaging contract workers, information in the proforma circulated vide Hqrs. Instr. No. P-12(11)-11/83/05-Rev. II dated 25/10/2007 shall be collected invariably.

(ii) The SSO while visiting the units for survey / inspection will make it a point to meet the Occupier / Chief Executive of the factory / establishment and hand over "observation slip" to him / her under proper acknowledgement. If occupier / Chief Executive refuses to accept the observation slip, this fact should be mentioned in the Inspection Report and the said observation slip should be sent to him / her by Registered post with A.D. Even if there is no observation, this should be mentioned in the report before obtaining the signature of the Occupier / Chief Executive of the factory / establishment. If it is found that any contribution is payable on a particular amount which should have been included in wages then it should be decided on the spot during inspection after going through the documents. Tendency to record observation that "further observation if any, will follow from Regional Office after further examination of Records" must be avoided. Wherever an inspection is made it should be complete and final observation must be recorded properly.

(iii) Number of new units / employees covered, number of Indentity Cards / Biometric Pehchan Cards got prepared and distributed to beneficiaries, omitted wages detected, level of compliance by factories / establishments , level of timely deposit of contribution and Returns by factories / establishments., verification of ledgers would form the important "performance parameters" to decide the performance of each SSO. THE INSPECTION REPORT OF SSO WILL BE TREATED AS COMPLETE WHERE LEDGER VERIFICATION IS CONDUCTED. THE SSOs AFTER CHECKING THE BOOKS OF ACCOUNTS AS PER THE EXISTIING INSTRUCTIONS ON THE SUBJECT WILL INCORPORATE ALL THE DETAILS IN THE INSPECTION REPORT. The SSOs have to submit Tour Diary along with Inspection Reports every fortnight to RD / JD I/c. A D.O. letter as per format enclosed to the New Inspection Policy 2008 will also be addressed to RD / JD I/c every month (by the 7th of the next month) by the SSO giving the details of the activity undertaken during the month under reference. The SSO has to append a note in a monthly D.O. indicating the steps he has taken for covering coverable units and coverable employees and issue of TIC / PIC and at the end of the financial year SSO will give a certificate that "NO COVERABLE UNIT IS LEFT UNCOVERED AND NO COVERABLE EMPLOYEE IS LEFT UNCOVERED IN A COVERABLE UNIT AND ALL HAVE BEEN ISSUED ESIC CARDS". An SSO

should conduct atleast one survey and one inspection each working day in such a way that a target of 20 inspections and 20 surveys in a month is achieved.

(iv) In case of non-submission of records, on the first occasion the SSO will fix the next date of inspection in consultation with the employer and issue him a notice on the spot on which the signature of the employer shall be obtained. If it is found that the employer is deliberately not showing records then strict action should be taken against him and prosecution action be recommended to R.O. / S.R.O. The officer sanctioning prosecution shall also keep in mind that prosecution is not filed as a matter of routine but only against chronic and willfull defaulters.

(v) While visiting the employers premises, the SSO should take round of the premises and interact with the employees with regard to their coverage / issue of Biometric Card / satisfaction level etc. Where the SSO finds that the workers were not covered he will immediately get the DFs filled and hand-over it to the Branch Manager concerned and TICs issued on the same day or the next day.

(vi) The main object of the New Inspection Policy is to create a sense of co-operation and mutual trust amongst the stake holders i.e. employers, beneficiaries and the corporation. Our focus should be to ensure that the coverable employees are covered and they get the benefits of the ESI Scheme, and that the willfull defaulting employers are dealt with severely under law and employers complying with law and filing their Returns regularly as per the Self Certification Scheme are not subjected to un-necessary inspection. Besides, the Hqrs. Instr. No. 2/98 by letter No. S-11/12/1/74-Ins. IV dated 6/11/98 regarding segregation of wage component, maintaining transparency and accountability of the SSOs and No. S-11/12/2/2000-Ins.IV dtd. 5/12/02 regarding non-inspection of complying units as a matter of routine still hold good.

L 15.10 Regarding segregation of wage component, maintaining transparency and accountability of the SSOs (Hqrs. Instr. No. 2/98 by letter No. S-11/12/1/74-Ins.IV dated 6/11/1998):

The following guidelines are issued with a view to putting the principles of inspection in proper prospective :

(i) The inspection by the SSO should be quiet transparent which can be ensured only by having open interaction with the employer on all issues. The tendency to include in the report items of doubtful nature which could have been settled by discussions with the employer should be totally avoided.

(ii) As provided in the Regulation 102-A(ii) a note of all irregularities and illegalities discovered at the time of inspection indicating therein the action, if any, proposed to be taken against the principal employer together with the orders for their remedy or removal passed by an SSO shall be sent to the Principle

employer who is required to enter the notes and orders in the Inspection Book. Since the employers by and large are not making the necessary entry in the Inspection Book as stipulated in the Regulation 102-A(ii), the SSO must ensure that the shortcomings, irregularities, etc., are communicated to the employer on the spot and the same entered in the Inspection Book by the employer in the presence of the SSO.

(iii) When all the records are produced by the employer the SSO must conduct the inspection in a very comprehensive manner and all the details of his observations should be clearly mentioned in the observation note which it should be ensured that they are recorded in the Inspection Book by the employer.

(iv) When wages on which contribuitins are likely to be payable (omitted wages) are reported, the existing instructions should be followed strictly (as mentioned under Chapter XII & Chapter XIII). Accordingly, the SSO in so far as possible segregate the wage element and report the same to the regional office. Whenever he is sure of the fact that contributions are recoverable he should issue a "Spot Letter" to the employer demanding contributions. In some cases it has been noticed that the total ledger balances are reported to the regional office without making any effort to segregate the actual wages paid. Such practice besides being a source of harassment to the employer throws avoidable load on the Regional Office which has to do the work of segregation based upon the records produced by the employer. At the time of inspection the employer also may be requested to segregate the wage quantum which can be checked by the SSO with the help of vouchers to the extent possible before reporting the same to the regional office or issuing a demand letter to the employer on the spot. Generally, the question of incorporating certain amounts culled out from the ledger should arise only when any item identified as wages is disputed by the employer or the SSO is not sure about the nature of a particular payment when large number of such items are noticed during inspection it is advisable for the SSO to request the employer to keep ready the segregated figures which can be verified by making a repeat visit. Responsibility should be fixed and appropriate action taken against such inspectors who make it a practice to quote the ledger balances without making any effort to ascertain the wage quantum.

(v) The SSO should submit the inspection report within the stipulated time i.e., within three days of closure of fortnight to the R.O./ S.R.O as the case may be.

(vi) On receipt of the Inspection Report from the SSO, the R.O/ S.R.O should immediately deal with the same and send the descripancy letter or notice in form C-18 as the case may be within 30 days.

L 15.11 Regarding inspection of factories / establishments as per New Inspection Policy (Hqrs. Instr. No. S-11/12/2/2000-Ins.IV dated 5/12/2002) :

The following measures may be taken to ensure that no complying small factories /establishments are

inspected except when selected for inspection by RD / JD(I/c) for specific reasons :

(i) The SSO may be advised to clearly mention in their fortnightly diary that the units inspected by them are included in the list of inspectable units supplied by the R.O/SRO

ii) The SSOs may also be advised to mention on top of each inspection report the Sl.No. of the list of inspectable units supplied by the RO/SRO in compliance with which the inspection has been conducted.

iii) The Inspection Control Branch should furnish the list of Inspectable units which are supplied to the SSOs to the Revenue Branches also so that the concerned Revenue branches should be able to verify whether inspection conducted was strictly as per list supplied to them .

iv) The Inspection Control Branch should also verify the fortnightly diary and inspection reports received from the SSOs carefully to make sure that no inspection has been conducted by the SSOs which are not included in the list of inspectable units supplied to them.

L 15.12 Continuance of coverage of an unit under the ESI Act which has changed its ownership by splitting different sections of the unit claiming each such section to be an independent unit. (Hqrs instructions P-11/14/12/22/2001-Ins IV dtd 7.10.02) :

Some cases have come to the notice of this office that partnership firms engaged in hotel and restaurant business anc covered under ESI Act report closure from a particular date and from the following day different sections are leased out to different individuals who were formerly partners of the same firm. This change of ownership pattern overnight even if genuine, will not change the coverage since the establishment continued to function without any closure.

The term 'closure' would indicate physical closure and cessation of business alongwith proper termination of employees after paying them the statutory dues such as Gratuity, PF etc; surrender of license under the Muncipal Act as well as Catering Establishment Act, surrender of commercial power connection etc.

For coverage under ESI Act singularity of ownership is not a legal requirement. Separation of books of account is also not a relevant factor. As long as the establishment continued to function with the same name and goodwill, it should continue to be covered by virtue of section 1(6) of ESI Act.

The inspecting officers and all concerned officers should be apprised of the above so that decision on continuance of coverage of such units is correctly taken.

PROCEDURE

P 15.1 Action in Inspection Control Branch :

Based on the above guide lines, the INSPECTION CONTROL BRANCH collects the "Defaulter's List" (in payment of contributions) from the C-6 branch, defaulters list in submission of returns from the Branch Managers, the list of newly covered units from coverage branch, list of closed factories from Insurance branches, list of complying units selected at random by RD / JD I/c for inspection and the list of units against whom complaints have been received and after prioritizing the same prepares the list of units requiring inspection in each Inspection Division. The said list is communicated to the Social Security Officers once in a quarter for conducting inspection. In case of any additional verification/enquiry/inspection of units is required to be taken up as per orders of RD /JD (I/c), the same shall be communicated to the SSO separately. List of uncovered units figuring in the C-1 Register in the coverage branch may be given to the SSOs for survey. In addition, the SSO may be advised to conduct survey of the units figuring in the" periodical survey register" (for conducting survey once in two years) maintained in the Inspection Division/ Inspection Office and information collected from other sources like EPFO, CIF etc.

P 15.2 Action on the part of the Social Security Officer on receipt of lists from Regional/Sub-regional office:

The Social Security Officer may, on receipt of the list for inspections from Regional Office/sub-regional Office and list of surveys, cases requiring first inspection already received from the Regional Office/sub-Regional Office; plan his work, submit his tour programme to the Regional/Sub-Regional Office and send advance intimation to the employers from the Branch Office to which his inspection office is attached(wherever necessary, and carry out the survey/inspections without waiting for approval of his tour programme. The Social Security Officer has to give justification for any deviation from his tentative tour programme.

The Social Security Officer may keep the following points in view during the course of inspection/ survey.

1. First inspection:

As already pointed out, the Social Security Office has to properly guide the Employer(s) and the Employees about the scheme, Medical and cash benefits admissible to the employees including the facilities available and relief available to the employer, maintenance of records, registration of all coverable employees and obtaining Biometric cards for them, timely payment of contributions, and filing of returns.

Penal provisions for non-compliance/delayed compliance including liability of interest and damages are brought to the notice of the employer. This will help the employers to acquaint themselves with various provisions of the Act and further make them to ensure proper and timely compliance under the Act. The Social Security Officer must also interact with the employees, assist them in getting their Biometric cards and provide them the information about the medical and cash benefits admissible to them and their family members under the scheme.

2. Final Date of coverage:

The concept of provisional date of coverage has been done away with effect from 1st October, 2010. All the units are to be covered finally based on the records verified by the SSO at the time of survey. In case if a unit is coverable from an earlier period based on either test survey or otherwise, the coverage would be proponed to a back date. Thus the SSOs need to take all precautions to verify all the necessary records to firmly ascertain the exact date of coverage and also the quantum of contributions payable upto the date of his visit.

However, there may be cases of provisional coverage prior to 1st October 2010 pending for deciding final date. In all such cases, FDC may be decided on available papers / documents by RDs / JD I/cs within three months effective from the date issue of Hqrs instructions S-11/13/1/1/2009 Rev-II dtd 30.9.2010.

3. Closed units:

In case the unit is found closed, the address, Telephone Numbers, Bank Account particulars of the principal employer/immediate employer may be ascertained for inspection of records. It is necessary to examine the compliance till the date of closure to claim the pending dues if any. If the closure is temporary, reasons there for, and its duration need to be known. If any residuary staff is employed during the temporary closure, compliance in respect of them must be called for. If the closure is permanent, reasons for it, how the factory, machinery and other fixed assets were dealt with/disposed of, whether intimation to the Registrar of Companies/Registrar of firms/Inspector of Factories/Labour commissioner was sent for cancellation of the license, power was disconnected or not to be verified. Was it a closure or splitting up of units in to different establishments to avoid coverage, etc. is to be taken care of and all facts reported. The permanent postal address of the principal employer may be obtained and reported to claim the dues if any and to make further correspondence. In case a new unit is found functioning in its place, its coverage under old code number continuously, and the liability of the new employer for any old dues under section 93-A of the Act may be examined and reported. If the coverage of the new unit is to be examined afresh, the same may be done and survey report submitted.

4. Defaulting units: (Non-payment/not filing of returns)

The purpose of inspection of a defaulting unit is to ensure that coverable employees are covered and they get benefits of the ESI Scheme, and that willful defaulting employers are dealt with severely under law. In addition, claim the contribution payable but not paid on the basis of verification of records, besides guiding the employer for proper compliance in the interest of their employees in getting timely benefits, and avoiding prosecution action/payment of interest and damages. The Social Security Officer should emphasize to the employer, the need to register all coverable employees, pay contributions and file returns with self certification in time.

5. Complaints investigation/inspection. :

Depending on the nature of complaint, a detailed verification of records, eliciting information from the persons involved, circumstantial evidence etc. need to be gathered and the facts reported along with the opinion of the Investigating Officer(s) (Social Security Officer / Branch Officer).

6. Survey:

Intensive survey based on the list prepared from the C-1 register and supplied by the Regional/Sub-Regional Office and uncovered units noticed by the SSO may be carried out in the months of April-May, September-October and December-January as per the New Inspection Policy, 2008. This is in addition to the surveys done during normal course. The Social Security Officer should ensure at the end of the financial year that no coverable unit in his area of jurisdiction was left out as per Hqrs instructions No P-12/11/11/38/2010- Rev II dtd 10/11/2010, survey may be restricted to maximum of 2 visits by the SSO.

(NOTE: See chapter V- P 5.5 – Survey/Intensive survey Guidlines).

P 15.3. Inspections: General guidelines:-

a) While visiting the employer's premises, the Social Security Office should take a round of the premises, and interact with the employees with regard to their coverage/issue of Bio-metric Pehchan card/satisfaction level/difficulties, if any, in getting medical and cash benefits etc. Special care should be taken to ensure that the fringe workers doing miscellaneous items of work, like persons engaged on the work of dish-washing, table cleaning in Hotels, pumping of water, watering the plants in gardens maintained by the factories, cycle stand boys etc., are all properly covered.

b) Where the Social Security Officer finds that the workers were not covered, he will immediately get the Declaration forms filled in and hand over to the Branch Manager for issue of TIC to the employees

concerned directly. In areas where the 'online' system is introduced, the employer may be pursued to submit the declaration form of those employees on line and to get the insurance numbers/TICs. The SSO may assist the employer/employees in this process and getting the bio-metric Pehchan Card for all the employees. Such cases need to be meticulously pursued till the process is completed.

c) The purpose of the inspection is to ensure that all coverable employees are covered under the Act, and all the components of wages are taken into account for payment of contribution. Keeping this in view, the Social Security Officer should verify all relevant records including the Books of Accounts to find out the omitted wages, if any. For this purpose, he may examine the cash book, petty cash book, Journals, Ledger, Profit & Loss Account, Balance sheet, Income Tax return/ Sales Tax return etc,. besides the other basic records like attendance and wage/ salary register. To ascertain the number of employees actually working in the factory/establishment, the time office records and attendance register must be inspected.

d) In case of inspection of security Agencies/Labour contractors etc., it is extremely vital to ascertain that there is/was a proper contract for a specific item of work and all the details are spelt out in the contract deed and the amounts paid to them during the period of contract are accounted for in their books of Accounts of the contractors and the wages amounts booked are in proper proportion to the amounts received . Any steep difference or variation between the amounts received by the contractors and the wages accounted for payment of contributions need to be carefully identified and anlaysed. Doubtful and prima-facie cases of under payment of contributions are to be brought to the notice of Regional Office with full particulars of the records and page numbers of the Account Books from which the details are extracted. They are to be signed at respective places/pages. The evasion by the security and labour contractors particularly with reference to the guards and employees provided to non covered units in implemented areas is possible. It is also possible that wages paid to coverable but not covered employees are camouflaged and shown separately in the Books of Accounts from wages paid to covered employees. To check all these evasions, verification of funds received by such security agencies/labour contractors with list of their clients from whom such fund is received as consideration for service rendered, and its reconciliation with reference to the compliance made irrespective of the nature of their principal, must be made by the Social Security Officer, and a certificate to that effect made in his inspection report.

While looking at the funds flow, it should also be ensured, that wherever the employers claim fund outflow as payment of ESI/EPF contribution, or other statutory payments like service tax/income tax/ rent, rates & taxes, the proof of such actual payment by way of challans/receipts and its proper accounting in the Book of Accounts need to be verified. The Income-Tax return, Profit & Loss Account and the Balance sheet will also reflect the total fund flow of receipts and payments. The Social Security Officer is, therefore, required to verify and report all these aspects in his inspection report. Any amount of receipt

which could not be reconciled should be reported, so that, if necessary, Section 45-A can be invoked by the Regional Office. (Hqrs. instructions in letter No. P-12(11) -11/16/2002-Ins.IV dated 31-5-2002).

f) Job works through contractors/immediate employers: The guide lines given by Hqrs. Office in letter No.P- 12(11) -11/83/05-Rev.II dated 25-10-2007 and explained in para L.6.14 of this Manual may be followed.

g) Employees engaged for construction/repairs and maintenance: Guideline given in Hqrs Office Memorandum No. P-12(11)-11/27/99-Ins. IV dated 31/03/2000 and explained in para L.6.15 of this Manual may be followed. If it is found that any contribution is payable on a particular amount in any head, then it should be decided on the spot after going through the relevant records, instead of reporting total ledger balances in the accounts containing labour charges. The Social Security Officer should make every effort to call for the vouchers and other linked records to verify and segregate the actual labour component on which contribution is payable.

h) After completing the inspection, the Social Security Officer shall issue a Spot Observation Slip in the proforma prescribed under Hqrs. Inst. No. S-11/12/1/2002 Ins. IV dated 17-01-2005, showing the list of records produced and verified with page numbers, records not produced, all irregularities, omissions, and contribution payable on omitted wages giving details of Heads of Accounts, total amount booked under the said head and the segregated wage components. He should without fail sign all the pages/sheets of Ledgers, Account Books he has seen in detail and should also sign the Observation Slip issued which should invariably indicate the page number and the amount on which any demand is made. The Social Security Officer should meet the Occupier/Chief Executive/Principal Employer, discuss with him the shortcomings noticed and handover the Observation Slip to him/her under proper acknowledgement, and this fact should be mentioned in the Inspection Report and copy of the Observation Note enclosed to the Report. The SSO may enter all these details in the "Inspection Book" maintained under Regulation 102-A including details of name of the register / records alongwith page number on which he/she has appended his/her signature If the principal employer refuses to sign / accept the Observation Note, it may be sent to him by Registered post with acknowledgement due under intimation to the Regional Office/Sub-Regional Office on the same day or latest by the following day. The fact of the employer not receiving the Observation slip on the spot may also be mentioned in the covering letter addressed to the employer

Note : In the Observation Slip a foot note should be invariably added / printed to the effect that in case the employer does not agree with any of the observations indicated in the Observation Slip, he should write to the Regional Office within 15 days along with full details for his disagreement).

i) Tendency to record observation that "further observations, if any, will follow from Regional Office after further examination of records" must be avoided. The inspection must be completed in all respects and final observation both in the Spot Observation Note and Inspection Report must be recorded properly.

j) In case of non production of records in the first occasion, the Social Security Officer will fix the next date for inspection not exceeding 15 days in consultation with the employer and issue him a notice on the spot on which the signature of the employer shall be obtained. If it is found that the employer is deliberately avoiding production of records on the said date then the SSO should recommend for initiating prosecution action to Regional/Sub-Regional Office.

k) As per Hqrs instructions No P-12/11/11/38/2010- Rev II dtd 10/11/2010, Inspection may be restricted to maximum of 2 visits by the SSO.

P 15.4 Writing of Inspection Reports:

The Inspection Reports of the SSOs and the documents enclosed thereto are the only source of information that are relied by the RO in taking decisions of coverage of the unit and making claims of contributions. They are the principal documents that are examined in-depth by the Courts to adjudicate disputes. Even the higher courts also arrive at the conclusions on the evidentiary values of these reports taken on record. Thus, the Inspection Reports are extremely crucial as, any infirmity or ambiguities in these reports would completely defeat the cause of the Corporation resulting in dire consequences. The reports are to be prepared with utmost caution and diligence. All ambiguities, inaccurate and incomplete information should be totally avoided. Full details of documents examined, sources from which a particular information is collected, statements obtained from employees/ employers, copies of contract deeds, Bills in question should be properly analysed and enclosed to the Report. Since, SSOs are required to depose only on the basis of these Reports and no new information can be added during examination in the courts all the relevant information should be furnished to make it a very comprehensive and dependable document.

P 15.5 Submission of Inspection Reports alongwith documents to RO/SRO:

The Social Security Officer has to submit the Inspection Reports along with his tour diary every fortnight to the Regional Director/Joint Director I/c. A D.O. letter will also be addressed to the RD/JD I/c. of Region / Sub-Region every month (by the 7th of the next month) by the Social Security Officer giving the details of the activities undertaken by him in the proforma prescribed. Details of huge omissions and arrears detected should be highlighted in the letter so that the RD and the BO focus special attention on the timely follow up action. The Social Security Officer will have to append a note in the monthly D.O. indicating the steps taken by him for covering all coverable units and coverable employees and issue of TIC/ Biometric cards, assistance/guidance provided to the employers/employees and at the end of the financial year, he should give a certificate that "No coverable unit is left uncovered and no coverable employee is left uncovered in a covered unit and all have been issued ESIC Cards." Number of new units covered/employees covered, no. of biometric Pehchan Cards got prepared and distributed to the beneficiaries, omitted wages detected, level of compliance by factories/establishments, level of regular and timely deposit of contributions and returns by the factories/establishments with self certification, verification of ledgers etc. would form the important performance parameters to decide the performance of each Social Security Officer.

P 15.6 Action in Inspection Control Branch on receipt of fortnightly diaries with inspection/survey reports from the SSO:

1. Verify the enclosures with the details in the diary to ensure that all the reports listed in the diary are duly received and that the inspections have been conducted strictly in accordance with the list provided by the RO/ SRO.

2. Make entries in the "fortnightly diary as to the date of receipt of the diary, and number of inspections/ surveys conducted during that fortnight.

3. Pass on the survey reports to the assistant entrusted with the work of allotment of code numbers, and the Inspection Reports to the assistant maintaining the watch over of inspections (SC-15 Register), for making entries in the relevant register.

4. Details of omitted wages detected etc. may be entered in the performance register of each SSO.

5. The Inspection Reports may be sent to the concerned Revenue Branches through the movement register of the Inspection Control Branch and the I.R. handed over against proper acknowledgement.

6. Action on the Survey Reports may be taken as explained in the Chapter-V.

7. At the end of the month, the inspection/survey work done by the SSO during the month based on the two fortnightly reports, may be checked, and shortcomings if any may be brought to the notice of the BO/RD and the SSO may be advised to make good the shortage, if any, in the coming months.

Presently, the Hqrs. have also finalized the system of preparing and submitting the Inspection Reports on line to eliminate any delays in transmission etc, the text of which may be obtained by logging to www.esic.in and click on "Online Inspection". However, the details of which are furnished as per Annexure-12.

P. 15.7 Action on the Inspection Report in the Revenue Branches:

1. The Reports are segregated Dealing Assistant wise after entering in the receipt diary, and distributed to them.

2. The Dealing Assistant enters the receipt of the Reports in his diary, call for the employer's file and scrutinise the Report on the following aspects and indicate the findings on the file.

a) Continuity of Inspection: To indicate that the period of inspection is continuous from the period of last inspection without any break; and that the Ledger verification has also been carried out without leaving any period in between and he has verified the vouchers and Account Books in the prescribed manner (D.A. should ensure that no inspection has been conducted in respect of periods for which 45-A order has been issued).

b) Whether all the pending references made to the SSOs for clarification and confirmation have been fully and properly attended to so that a final decision can be taken on the pending issues without leaving them for another inspection.

c) Indicate whether the SSO has verified all the important aspects like correctness of payment of contributions for the employees of immediate employer and the report does not suffer from any short comings and all the columns of the Inspection Reports have been properly filled.

(The SSOs are expected to ascertain if the immediate employers have accounted reasonable and acceptable proportion of the contract amounts received as wages for purposes of payment of contributions and that there is no evasion or under accounting of wages, as already pointed out. All the relevant details involved like the cost of materials incurred, profit margin and the wages booked are to be fairly booked and show them to the SSO. In cases, where the employers plead that the amounts booked contain the components of material cost etc but do not produce all the relevant and connected documents should be given about a week or 10 days' time to segregate all the details on the basis of the documents connected and prepare a statement showing voucher-wise details of all the expenditure involved therein .If even after this opportunity employer fails to furnish these particulars to establish the correctness of contribution paid, the inability of the employer should be clearly highlighted in the Observation Slip and the next step of the matter being referred to RO for appropriate action may be indicated in the slip and handed over to the employer. The D.A should examine if this exercise has been properly followed and indicate the findings thereon.)

d) Changes if any in the name and address of the factory, principal employers, and bank account are to be properly incorporated in all the relevant documents for future guidance and operations;

e) Details of immediate employers, nature of job, number of employees etc., are furnished and compliance position reported;

f) List of branch/sales offices etc is furnished and their compliance furnished. If complied separately from the respective branches, that information is furnished;

g) Irregularity, if any, in maintenance of Form 6 (Employees' Register), Accident Register and Inspection Book;h) Verify the details of receipt of monthly contributions, any additional payments made against RO/SRO demand letters and return of contributions submitted details furnished in the report with the details in the C-6 Ledger to ensure all the payments/returns have been duly received and to take action on missing credits or variation in payments if any;

i) To claim contributions on omitted wages, if any, found from the file, interest and damages on delayed payments either on receipt of return of contributions through the C-6 branch or based on the Inspection Report or at the time of review of the employer's file;

j) Non-submission, delayed submission of Declaration forms/non-receipt of Pehchan cards for any of the employees;

k) Non-production of Books of Accounts or any other record; In case of non production of records, whether the SSO has followed the drill prescribed by Hqrs. have been followed and whether a case has been made out for prosecution of the Employer.

j) Details of omitted wages reported; A letter indicating the discrepancy observed along with contribution payable and a notice in Form C-18 proposing contribution on such omitted wages pointed out by the SSO may be issued to the employer giving him a reasonable opportunity to produce all the relevant records / comply. Both the above letter and notice may be sent by Registered post acknoweldgement due and necessary entries may be made in the C-18/ 19 Register and take follow up action as explained in the Chapter- XII & XIII.

k) It should be ensured that the contribution paid by the employer for the month of inspection / test inspection is not for lesser number of coverable employees than that pointed out in the Inspection Report / TIR.

l) Complaints, if any, from the employer/employees regarding inadequate medical facilities to the employees/their families should be received and forwarded to the SSMC / Regional Office for taking up the matter with the Director of Insurance Medical Services/State Government for remedial measures;m) Any other matter requiring attention and action at RO/SRO;

n) Short comings/irregularities noticed on the part of the SSO should be pointed out and his explanation called for wherever necessary, to suggest measures to improve his performance; clarification wherever necessary on pending issues may be obtained from the SSO.

o) Outstanding work done by the SSO, if any, for making entries in the performance register maintained in the Inspection Control Branch on receipt of UO note from the Revenue Branches.

After scrutiny of the report, C18 Actuals / C-18 Adhoc, Show Cause Notice for action under Section-85 as the case may be put up. If the employer is a defaulter in payment of contributions/ submission of returns, action for recovery/prosecution may be initiated without waiting for defaulter lists from C-6 Branch/Branch Manager. If the employee's contribution is deducted from wages and not paid, SCN for taking action under Section 406, 409 IPC may also be put up. The C-18 adhoc and SCN is to be issued to the Principal employer at his residential address by Registered Post ack. due and also to the factory/establishment separately. Where there is more than one employer, the SCN is to be issued to all of them. The details of default including contribution due on omitted wages may be entered in the 45-B (Arrears) register for follow-up action and also in C-18 Register as and when issued .

In case of any important omission or improper reporting, the BO/RD / JD I/c may order for Test Inspection of the unit and the SSO may be called to explain for his lapses followed by warning / caution / disciplinary action as deemed fit. In case the SSO repeats under performance despite admonitions, the same should be reflected in the Annual Performance appraisal.

P 15.8 Disposal of Inspection Reports / receipts received from SSO / employers :

As per instructions, each dealing assistant dealing with employers files is required to maintain a "Assistant Diary " and put up the detailed position of I/Rs and other receipts received , date on which dealt, files no and final date of disposal. The D.A. is required to draw a summary of incoming and disposed receipts along with details of pendency with break-up : less than 1 month, less than 3 months and less than 6 months along with reasons for pendency every fortnight to the B.O. through Superintendent for effective monitoring.

P15.9 Techniques of ledger verification and note on verification of books of accounts.(Illustrative):

The main object of periodical inspection of factories/estts. by the SSO may be described as under:-1.

That all the coverable employees of the unit have been duly covered and contributions in respect of them were duly paid.2. Components of wages were taken into account for payment of contributions.

In the process of inspection, verification of Books of Accounts is necessary as it provides a real insight into the nature and quantum of wages that has not been taken into account for the purpose of payment of contribution and guide the employer about the accounting procedures relating to ESIC matters.

Definitions :

Accounting

Accounting is a systematic recording, classifying and summarizing of the business transactions and events in terms of money.

Business transactions

Any exchange of money or money's worth between two parties is called business transaction.

Two fold aspect of a transaction

Every business transaction has a two fold aspect. One is receiving and the other is giving. Bringing this two fold aspect of any business transaction into books of account is called 'Double Entry Book Keeping'.

Book Keeping

Book keeping is recording of financial transactions of business in a methodical manner so that the information at any point of time in relation to them may be quickly obtained.

Accounting Year

Accounts are adopted for a financial year beginning from April and ending in March of next year. This timely interval is called accounting period.

Types of Accounts

Accounts are three types

(1) Personal (2) Impersonal or real and (3) Nominal

Personal Accounts :

They are related to natural or artificial persons and representative persons.

Impersonal Accounts (Real Accounts)

They are related to the assets and properties.

Nominal Accounts

Nominal accounts deal with all expenses, losses and income.

Debtor

Debtor is a person who gives some thing to the business.

Creditor

Creditor is a person who receives something from the business.

Rules of double entry

(a) Personal Accounts : Debit the receiver and credit the giver.

(b) Impersonal/Real Accounts : Debit what comes in and credit what goes out

(c) Nominal Accounts : Debit expenses or losses, credit income or gain.

Trial Balance :

Every credit will thus have a corresponding debit and vice versa. On any given date, the total of all credit entries must tally with all the debit entries. Periodical balancing of these entries is called the "Trial Balance".

Voucher :

Any written statement in support of a business transaction is called a voucher. Any entry in the boos of accounts must be supported by a voucher.

Journal :

Journal is a book of original entry. Every transaction in the business is first written in the journal in a chronological order. At periodical intervals or whenever, it is convenient, depending on the volume of transactions, these entries are posted in the general ledger.Subsidiary Books : In a large business organization the transactions being huge, it is difficult to post them in one journal and then transfer them

to the general ledger. Therefore, transactions of similar nature are recorded in separate journals. This sub-division of journals into various books and recording transactions of similar nature therein is called "subsidiary books".

Kinds of Subsidiary Books:

(a) Cash Book to record all cash receipts and payments.

(b) Bank cash-book to record all cheque receipts and cheque payments.

(c) Purchase or Bought Book or Invoice Book for recording credit purchase of goods.

(d) Sales book or Day book for recording all goods sold on credit.

(e) Purchase Return or Returns Outward Book for recording all purchases returned to creditors.

(f) Sales Return Book or Return Inward Book for recording all sales returned by customers.

(g) Bills Receivable Book to keep a record of bills received from the customers and

(h) Journal proper to keep record or those transactions for which there is no separate book.

Cash Book

(a) A simple Cash Book to record all receipts and payments of cash

(b) Cash Book with cash, bank and discount columns to record both cash and cheque transactions of receipts and payments.

(c) Petty cash Book :

It is undesirable to burden the main cash book with numerous small payments on account of petty expenses. Therefore, an advance in the form of imprest is provided to make such payments. All these expenses are entered in the petty cash book or columnar cash book. Periodical totals of each column in the petty cash book is directly posted to the ledger.

Purchase book and sales book

There is possibility of showing the incidental expenses such as freight, loading, unloading in these books.

Journal proper:

(1) Opening entries (2) Transfer entries (transfer from one account to other) 3. Adjustment entries (4) closing entries (5) entires relating to rectification of errors (6) entries relating to dishonor of bills or promissory notes (7) withdrawal of goods for personal use or loss of goods by theft, fire etc. (8) credit purchase or sale of assets and (9) bad-debts are recorded in this book.

Ledger

A ledger is a summary statement of all the transactions relating to a person, asset, expenses or income which have taken place during a given period of time and shows their net effect.

Every entry recorded in the journal/subsidiary books must be posted into the ledger. Ledger consists of a number of pages and pages allotted for recording each account. Ledger is a book of analytical record. Transactions relating to a particular account appear at one place.

An index of various accounts opened in the ledger is given at the beginning of the ledger for the purpose of easy reference. Ledger is called the principal book of accounts.

Capital and Revenue Expenditure

Capital expenditure consists of expenses, the benefit of which is not fully consumed in one accounting period but spread over several accounting periods. It includes assets like building plant and machinery acquired for the purpose of earning and not for resale. Improving and extending the fixed assets, purchase of new plant, additions to the buildings, cost of removing the business to more spacious and better suited premises, brokerage and commission paid for procuring long term loans are few examples of capital expenditure.

Revenue :

It consists of expenses incurred in one period of account, the full benefit of which is consumed in that period. Purchasing assets required for resale at a profit, maintaining the fixed asset in good working order, cost of goods, raw material and stores, replacement, renewals, repairs, depreciation of fixed assets, rent, rates and taxes, wages and salaries, carriage, insurance and other trade expenses are few examples of such expenditure. Capital expenditure appears in the balance-sheet, while the revenue expenditure appears in trading, profit and loss account.

Final Accounts

I) Trading and Profit & Loss Account

II) Balance-sheet

(a) Trading AccountsThis account is prepared to know the trading results or gross margin on trading of the business (Direct Expenses)

(b) Profit and Loss AccountsThis account is prepared to calculate the net profit of the business (indirect expenses). The excess of income or receipts over the expenditure or payments indicates the gross profit.

(c) Manufacturing A/C or manufacturing-cum-trading accountTo know the cost of finished goods produced and constituent items thereof such as cost of material consumed, productive wages, direct and indirect expenses are included in it.

II. Balance Sheet

It is a statement of assets and liabilities prepared with a view to measure the financial position of a business on a certain fixed date. Excess of assets over liabilities represents the capital and is indicative of the financial soundness of the company. A balance sheet is described as a statement showing the sources and application of capital.

Verification of Books of Accounts

Now having understood the system of accounting and maintenance of books of accounts of a business unit, the SSO can take up the verification of books of accounts in the following manner :

(1) Reconciliation of wages register total with ledger figures :

Once the wages salaries register are verified by the SSO, the monthly total of these registers may be tallied with. If the ledger figure is more, please seek clarification from the employer as it may contain voucher payments made to Directors or other employees whose wages exceed the celing limit for coverage. The other payments include over-time payment, attendance bonus, incentive etc. not included in the wages register. The SSO may make sure that all these wages under over-time etc are taken into account by the employer. There may be some voucher payments on which ESI contribution has been duly deducted and paid. This can be cross verified from FORM-6 (Register of Employees' under Regulation-32) and employees' contribution deducted A/C in the ledger. The difference, if any after reconciliation may be taken as omitted wages and noted down.

The Cash Book being book of original entry, will have more clarity of each transaction. Similarly, in the Bank Cash Book the SS0 can find out more clarity of each transaction made by cheque. The SS0 may select a month in which the business was at its peak and verify the Cash Book and Bank Book for all entries. It gives him an idea of the business, nature of transactions and the possible heads under which the wage element is involved/concealed. The SS0 can request the employer to supply the vouchers for the selected month, and the SSO have to refer to the vouchers wherever necessary.

Against each entry in the Cash/Bank Book, the ledger folio number is indicated. The SSO may note down the possible Heads of Accounts with Ledger folio number in which the wage element is involved/ concealed to go for a detailed check of the ledger.From the general ledger index, the SS0 may make out a list of heads to be seen by him in addition to those already noted down by him from cash/bank book with page numbers.

The following subsidiary books also may be verified, if maintained separately for the purpose shown against each.

(1) Purchase and Sales Register :

To find out the unloading and loading charges, if any booked in these books and totals posted to ledger.

(2) Creditors / Personal Ledgers :

Ledgers are maintained for each contractor or creditor separately and periodical totals posted to ledger. Verification of personal/creditor's ledgers gives an insight into the engagement of contractors whose payments are not reflected elsewhere as only periodical totals are posted in the ledger

(3) Petty Cash Book:

For expenditure under different heads, the periodical totals are posted in the ledger under the respective heads.

(4) Journal Proper :

For adjustment and transfer entries from one head to the other, the employer may post wages in an improper head and transfer them to the proper head at the end of the accounting period.

Now from the heads of accounts noted by him, the SSO may verify each head of account quickly for the wage element if any. Please note down the full details so that at the end of the inspection, it can be discussed with the employer or his representative for including them as "omitted wages"

(5) Segregation of labour cost :

Where the expenditure includes material and labour costs, if there is no narration in the ledger, the SS0 may call for a statement segregating the voucher-wise labour component and cost of materials and arrive at the exact amount of wages involved on which the contribution is payable. The correctness of the statement so produced should be checked and irregularities, inaccuracies may be properly pointed out. If the work is done through a Contractor, the SS0 can call for the work estimates, agreement etc., to find out the percentage or quantum of labour cost out of the total cost.

(6) Job work through contractor / Immediate Employers:

The position for enforcement of compliance has been fully detailed / discussed in Chapter-VI Para L.6.14.

Part- time Employees :

There is every possibility that a few employees might have been termed as part- time by the employer for evasion of their coverage. In fact, all such part time employees including casual, contract, badli, piece rated, time rated are coverable under the Act. The SS0 should make an assessment of their nature of job, timings and conditions of employment, supervision, remuneration etc; before deciding it as contract of service. The payment of bonus, deduction of Income-Tax, professional tax, coverage under provident fund etc. are also relevant factors in this regard.

Possible Heads of Accounts to be checked by the SSO :

While it depends upon the nature of industry/establishment and the method of accounting by the employer, to give a brief idea to the SSO, the possible heads under which labour component could be booked as indicated below:-

Heads of Accounts like carriage inwards / outwards, transporation charges, maintenance charges, general expenses, service charges paid, staff welfare expenses, miscellaneous expenses etc.

The SS0 can identify the heads involving labour component / wages by verifying the subsidiary books, vouchers, manufacturing and trading A/c, Profit and Loss A/C and Income Tax Returns. These sources provide an insight into the various heads of account and probable heads under which wage element is possibly involved.

CHAPTER XVI

TEST INSPECTIONS (LAW & PROCEDURE)

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CHAPTER XVI

TEST INSPECTIONS (LAW & PROCEDURE)

Introduction: A random check of the units surveyed/inspected by the SSOs is necessary as per the yardstick prescribed by Hqrs. Office to check the quality of survey/inspection conducted by them, and to improve upon their performance.

L16.1 Provisions in the Act:

There was no specific provision in the Act for test inspection or re-inspection of a factory or establishment already inspected by the SSO prior to 1st June, 2010. However, in the ESI (Amendment) Act, 2010, while re-designating the SSO as "Social Security Officer", a specific provision has been made for test inspection/ re-inspection by any officer authorized in this behalf by inserting a new sub-section 45 (4) with effect from 1st June, 2010, which reads as follows:"

45 (4): Any officer of the Corporation authorized in this behalf by it may, carry re-inspection or test inspection of the records and returns submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer."

L16.2 Officers authorized for conducting Test Inspection :

Under Regulation-102 of the ESI (General) Regulations 1950, the Regional Director, Joint Director, Deputy Director, and Assistant Director in the Regional/Sub-Regional Office, and the Branch Manager in the Branch Office have been vested with the powers of the SSO specified under Sub-Section 2 of Section 45 of the Act.

PROCEDURE

P 16.1 Percentage of test inspections:

The percentage of test inspections/surveys is decided by the Hqrs. office from time to time. At present, the percentage of routine test inspections has been fixed by Hqrs. Office at 5% vide letter No. S-/11/15/ 1/98-lns. IV dated: 16/11/99, with effect from 1st January, 2000. Besides this 5 percent, the Regional Directors may, according to their discretion, mark any other specific cases looking to the facts and peculiarities of such cases over and above the 5% for Test Inspection to the Branch Officers of Regional Office. In addition, 5 percent of the cases of new coverage may be marked for Test Inspection and monthly return in this regard may be submitted by the RO/SRO/DO to Hqrs. office. (Hqrs. instructions no.S-11/ 13/1/1/2009-Rev-II dated 30/9/2010).

P 16.2 Marking of test inspections:

The list showing the code numbers of the units inspected and C-1 numbers from the Survey register that were surveyed by each SSO with period of inspection, without mentioning their name and addresses

may be prepared each month and the file submitted to the Regional Director for marking the test inspections/ survey at random and allotting the cases among the Officers of the Regional Office and the Grade-I Managers. Further, the list of code numbers allotted for newly covered units during the month may also be submitted for marking 5 percent of test inspections at random. In addition, the B.O. Inspection Control Branch may submit any specific cases of survey needing test survey for the orders of the Regional Director. Specific cases of inspection reports needing test inspection, if any, may also be put up by the Revenue Branch Officers directly to the Regional Director at the time of processing the relevant inspection reports and the code numbers intimated to the Inspection Control Branch after R.D.'s approval.

P 16.3 Test Inspection Register:

All cases marked for test inspection/survey may be entered in this register in chronological order and intimation sent to the concerned officers with a request for completing the inspection on priority basis. The register requires monthly summary and constant watch to ensure that case are not kept pending over a long period, as with the passage of time it may be difficult for the employers to produce the records and the purpose of correcting the erring SSOs is not served. The Regional Directors should ensure completion of the Test Inspections during the quarter in which the Test Inspections are marked.

P 16.4 A monthly statement showing cases allotted, completed and pending officer-wise is required to be submitted to the Hqrs. Office.

P16.5 Planning of test inspection by the Officers:

On receipt of list of test inspections allotted to them, the Officers of Regional Office/Grade-I Manager may plan their programme for test inspection of those units, and send an official intimation to the employer fixing the date and time, and furnishing the details of records required to be produced for his test check.

P16.6 Going through the employer's file:

The test inspecting officer may after sending intimation to the employer, go through the employer's file and the relevant inspection report available at RO / SRO to know the location of the unit and to get himself acquainted with the general aspects about the nature of industry, employment of immediate employers, branches, and the compliance of the employer.

P16.7 Visit to the Unit:

The objective of such test inspection is to ascertain the quality and correctness off the inspection done and also to ascertain and solve the problems faced by Employees and Employers. After reaching the unit, he may meet the principal employer or any other responsible officer authorized, introduce himself, explain the purpose of his visit, and initiate talk with him on the general aspects of the scheme, recent changes, benefits to the employer and employees, etc. to create a friendly atmosphere. He may then call for the records. By the time the records are made available, he may with the assistance of the employer or his

representative, go round the factory to have a cursory look, to know the nature of manufacturing process/ business, machinery, number of persons employed on each machine, employment of contract labour etc. He may initiate dialogue with some of the workers to find out the number of shifts, deployment on over time work, their registration under the scheme, receipt of Biometric cards, difficulties in getting medical and cash benefits etc.

P16.8 Inspection:

For filling the columns in front page of his report, ascertain the changes if any in the name of the factory/ establishment, changes in the principal employer, manufacturing process/business, from the date of inspection by the SSO and note down the same if any. The person contacted for the purpose of inspection and his designation should also be entered. The details of immediate employers, job entrusted to them, number persons employed by them, details of branches, place of their compliance, may be ascertained and noted. The number of employees on the date of inspection as verified from the Muster rolls/vouchers etc., be noted. If any wages or other allowances such as O.T., HRA, conveyance allowance, incentives, production bonus etc. were paid through vouchers, whether the employer had complied on such wages and if not whether those omitted wages had figured in the SSO's report need to be verified and reported. The SSO had checked all the payment vouchers for a selected month during his inspection. The TIO may select any one quarter for cheking the correctness of contribution paid as reported by SSO and must invariablly check these vouchers with the help of cash book, bank book, journals etc and the General Ledger to find out whether any un-complied wage element was concealed under any other heads and not reported by the SSO. While doing the inspection the SSO would have selected a particular month for 100% thorough verification of the vouchers etc. Involved in that month. It has to be seen whether the compliance where ever due on these vouchers have been accurately made by the employer and all the irregularities, short comings, evasions etc. If any have been properly identified and correctly reported by the SSO. Any irregularity, incompletness perfunctory should be clearly pointed out with full facts. While reporting any evasion in respect of any job works, payments made to the contractors etc., the TIO would be required to furnish the actual wage component involved on which contributions are due. In case of any evasion under the capital accounts like buildings etc. only the expenditure incurred on Labour wages out of the total expenditure incurred on construction/additions/repairs etc. should be reported alongwith the total amount booked under the Head of Account. Possibility of any loading or unloading charges, fixin/ errection charges etc. under the Machinery A/c. should not be overlooked. The wages paid to employees drawing more than the ceiling limit as taken out from the salaries register, plus, the wages accounted for payment of contributions may be tallied with the ledger totals under the salaries and wages account, and the employer may be asked to explained for the difference, if any. If his explanation is not convincing or not satisfactory, the difference may be reported with details. Non-registration or delayed registration of employees, issue and delivery of Pehchan cards may be checked and discrepancies reported. The need for timely registration of employees, obtaining bio-metric Pehchan Cards, regular payment of contributions

and submission of returns, and maintenance of registers may be explained to the employer and all guidance in this regard provided .After completing the inspection, omissions and irregularities if any noticed during his test check may be brought to the notice of the principal employer or any other responsible officer, a spot Observation Slip issued like the SSO and copy containing the employer's acknowledgment enclosed to the TIR. His visit, details and period for which records checked may be entered in the Inspection book. The TIO may also be based on his findings, objectively report whether there was any negligence or deliberate omission on the part of the SSO warranting action against the SSO. The report of the TIO should be comprehensive and complete in all respects to claim the additional dues if any. The report may be submitted to the Regional Director/Joint Director In-charge without any delay.

P16.9 Processing of the report at Regional/Sub-Regional Office:

Receipt of the report may be entered in the Test Inspections Register in the Inspection Control Branch, and the report sent to the concerned Revenue Branch, for further action through the branch movement register. If the TIO himself is the concerned branch Officer, he should not process his own report either for claiming the dues or determination under Section 45-A. The Regional Director/Joint Director I/c. may allot such reports to another officer for processing. Branch may while claiming the dues, issuing C-18 Actual/Adhoc and further recover action, in case of any grave mistakes or deliberate omissions on the part of the SSO, his explanation may be called for and his reply put up to the Regional Direcot/Joint Director for his perusal and further action, if any.

CHAPTER XVII

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CHAPTER XVII

INTEREST AND DAMAGES (LAW & PROCEDURES)

(A) INTEREST (LAW)

Introduction: Section 40(1) of the Act read with Section 43 of the Act mandates the employers to make the payment of the contributions due and submit the related returns within the clear time-limits prescribed under the Act and the relevant Regulations. These deadlines are inviolable and are to be strictly adhered to. Law does not allow the employers to delay these time bound actions for any reason however justifiable they are. Reasons like Financial stringencies faced by the units etc. do not permit any delay. Law has provided that any such delay in remitting the Contributions should necessarily be visited by the provisions of Interest. Various Courts have uniformly held its validity and have categorically spelt out that interest at the rate prescribed under Regulation-31-A is payable. The provision for payment of interest on contribution due but not paid in time by the employers has been made in the Act vide ESI (Amendment) Act 1966 by inserting a Sub-Section 39 (5) under Chapter-IV. The Corporation was also empowered to make regulations in this behalf by inserting a Sub-Section (iiia) under Section 97 (2) of the Act. Accordingly, a new Regulation 31-A has been added in the ESI (General) Regulations 1950. These provisions have come in to effect from 28-1-1968. Thus, the provision for claim, recovery and payment of interest has come in to effect only from 28th day of January, 1968.

L.17.1 Provision for interest and its recovery in the Act:

Section 39 (5) (a); If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:

Provided that higher interest specified in the Regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under Section 45C to Section 45-I.

L17.2 Provision to make Regulation by the Corporation in the Act:

Section 97 (2) (iiia): the rate of interest higher than twelve per cent on delayed payment of contribution.

L17.3 Regulation relating to Interest on contribution due, but not paid in time and its recovery:

Regulation 31-A: An employer who fails to pay contribution within the periods specified in Regulation-31, shall be liable to pay simple interest at the rate of 12 per cent per annum in respect of each day of default or delay in payment of contribution.

Regulation 31-B: Recovery of interest.

Any interest payable under Regulation 31A may be recovered as an arrear of land revenue or under Section 45C to Section 45-I of the Act.

L17.4 Rate of interest from time to time:

The following is the rate of interest from time to time;

28-01-1968 to 19-10-1989: 6% p.a.

20-10-1989 to 31-8-1994 : 12% p.a.

01-9-1994 to 30-9-2005 : 15% p.a.

1-10-2005 onwards : 12% p.a.

Thus, if the contributions that fell due on, say, 30th June, 1989 is remitted on 11th November 2005 , even if the delay is because of a Court Case , Interest is payable at 6% p.a. from 1/7/1989 to 19/10/1989, at 12% p.a for the period from 20/10/1989 to 31/8/94, at 15% p.a. for the period from 1/9/1994 to 30/9/ 3005 and at the rate of 12% p.a. from 1/10/2005 to 11/11/2005

L17.5 Interest is not a penalty but a statutory liability:

Interest is a statutory liability. Since the employer has not paid the contribution on the date due for its payment, the amount is deemed to have been utilized for his business. He is, therefore, liable to pay the interest at the rate prescribed by the Corporation. Therefore, no notice for reasonable opportunity of being heard is to be given before claiming the interest.

Case law: It was held by the Supreme Court that the payment of interest on delayed payment of contribution is statutory and therefore the question of waiver, settlement or compromise, does not arise. *(M/s Goetez(India) Ltd., v. ESIC 2008(118)FLR 654; 2008LLR,897; 2008(3)LLN 649; 2008(3)LLJ 356; and 2008(4)LIC 4415.)*

L17.6 Financial constraints / incurring loss in business not a ground to escape from statutory liability:

The Rajasthan High Court observed that the mere fact, a factory or concern has incurred loss on account of various reasons is not enough to deprive the contribution to the Employees' State Insurance Fund. *(ESIC v. Jaipur Spinning and Weaving Mills Ltd- 1987(72) FJR 57)*

A similar view has been expressed by the *Andhra Pradesh High Court in the case of ESIC v. Chirala Co-operative Spinning Mills Ltd., Chirala in CMA No. 2905/2001 dated 9th November, 2004. (2005(1) LLJ1016; 2005(2) LLN584; 2005(100) FLR703; 2005LLR591)*

The Division Bench of Kerala High Court held that if at all a unit is declared as a sick unit, only damages could be waived but not the interest. *(Mosaic Industries private Ltd., Mangalore v. ESIC Bangalore and others-2008(3) LLJ 436; 2008(118) FLR 182; 2008 (2) LIC 2067; 2008 (4) LLN 425)*

L17.7 Time for payment of contribution:

Regulation 31: An employer who is liable to pay contributions in respect of any employee shall pay those contributions within 21 days of the last day of the calendar month in which the contributions fall due:

Provided that where a factory/establishment is permanently closed, the employer shall pay contribution on the last day of its closure.

L17.8 Interest to be paid from the date on which it fell due:

Contribution is to be paid within the time limit prescribed under Regulation 31 as at para L18.7. The liability to pay interest accrues from the due date i.e. from the 21[1st] day of expiry of each calendar month in which the contribution fall due.

L17.9 Interest on regular contribution:

Interest on regular contribution is to be calculated wage period (calendar month) wise. This is applicable even for units covered from a retrospective date. (Hqrs. letter No. T-11/11/10/86-Ins.III, dated 27-3-1986, Instruction No. 2/86)

Case law: It was held by the Division Bench of the Karnataka High Court that once the coverage of the Act is established, the law is well settled that it would date back to the date on which the establishment was covered under the Act. The employer is liable to pay interest for the entire wage periods till the date of payment. *ESIC v. Karnataka State Small Industries Development Corporation Ltd. - 2007(1) LLN 512; 2006(111) FLR 1170; 2007 (1) LLJ 830)*

L17.10 Interest on left-out wages/omitted wages reported by the SSO/TIO:

Interest on left-out wages noticed and reported by the Social Security Officer or Test Inspecting Officer where the number of employees, employee-wise details of wages paid and period of engagement of such employees was not available, is to be claimed after allowing a grace period of 21 days from the date of demand letter/C-18 notice from the Regional/Sub-Regional Office.

L17.11 Interest when payment of contribution is made by cheque:

Where the employer has deposited the contribution by cheque in authorized Bank, but the clearance of the cheque and credit to ESI Fund Account is delayed, the date of deposit of cheque by the employer in the bank is to be taken as the date of deposit of contribution provided the cheque is not dis-honoured by the Bank. (Hqrs. Memorandum No. T-11/13/8/2007-Rev.I dated 13[th] October, 2008)

L17.12 Interest when instalment facility is granted by the Corporation or by a Court;.

When the Corporation has granted instalment facility to pay the principal amount of contribution to any employer, the employer is liable to pay interest as per Law for the delay beyond due date for each wage period (calendar month). A clause to that effect is to be incorporated in the sanction letter

communicated to the employer. This is applicable even to the instalment facility granted to the employer by the Courts. Thus, merely because the Corporation has obliged the employer's request for instalment facility the employer cannot have any immunity from the provisions of Regulation 31A.

Case law: The Division Bench of the Kerala High Court held that the liability of the employer to pay the statutory interest is mandatory. Merely because the Insurance Court has granted instalment facility to pay off the principal amount of the contributions, it cannot be stated that the statutory interest is waived. *(ESIC, Thrissur v. M/s Bagsvig, Vyttila, Cochin- 2005 LIC 3319; 2005 LLR 983; 2005 (107) FLR 395)*

L17.13 Interest in cases where an Interim stay granted by Courts at the request of the employer against the collection of contribution by the Corporation:

When an employer disputes the payment of contributions and obtains interim stay from a Court of Law and the decision goes against the employer, the employer is liable to pay the contribution along with interest from the due date for each calendar month. No concession is allowed for the period of interim stay granted by the Courts.

Case Law: The Kerala High Court held that a party who has got the benefit of obtaining a stay cannot take advantage of the situation and contend that he is not liable to pay interest on the defaulted contribution amount as realization was stayed by an interim order of the Court, is not an answer for absolving the liability of the employer to pay interest. *(Bharat Cafe House v. Regional Director, ESIC Chennai- 2007 (2) LLJ 995)*

L17.14 Interest is to be paid from the date on which it fell due and not from the date of Court judgment.

In cases, where the judgment has come in favour of the Corporation for payment of contributions disputed by an employer, the liability for payment of interest accrues from the date on which the interest falls due and not from the date of court judgment.

Case law: 1. The Division Bench of Kerala High Court held that the Corporation is entitled to claim interest from the date on which it fell due and the date of judgment of the court is of no relevance in claiming interest. The bona-fide impression of the employer that the establishment was not covered under the Act, does not absolve the employer from the liability of paying the interest on the delayed payment of contributions under Section 39(5) read with Regulation 31-A. *(ESIC v. Hotel Methanath (Kedaram)- 2007 (3) LLJ 505; 2007 (2) LIC 1849)*

2. Similar decision was taken by the Division Bench of Kerala High Court in another case between Cannanore Drug Lines and ESIC stating that merely a party, failing to pay the contribution because it was under the impression that it was not covered by the Act, is not a ground to escape the liability to pay the due interest for the delayed payment. (2007(2) LLJ 661; 2007(1) LIC 497)

3. In an appeal filed by ESIC against the order of the EI Court in the case of 4 Aces Restaurant, the Division Bench of Kerala, referred to its judgment in Cannanore Drug Lines cited at 2 above, and

observed that the instant case is also covered by the above judgment. It was held that the EI Court is not justified in holding that the demand of interest could be made only from the date of judgment. The statute has specifically provided that for non-payment of contribution in time, interest is payable from the date on which the contribution is payable. (2007(1) LIC 1030; 2007 (3) LLN 378; 2007 (115) FLR 566; 2007 (2) LLJ 903)

L17.15: Interest to be paid till the date of actual payment:

It was held by the Calcutta High Court that the Order passed by the Insurance Court directing payment of contribution with interest till certain date is not sustainable as the interest has to be paid till date of actual payment. *(ESIC, Calcutta v. Steelco Products, Proprietor Empee Enterprises)Private) Ltd., Calcutta- 2004 (2) LLJ 180; 2004 (100) FLR 1263; 2004 (1) LL 766)*

L17.16: No Limitation – No bar for claiming interest:

The Act or Regulations does not prescribe any time limit for claiming the interest on delayed payment. The time limit prescribed in the second proviso to Section 45-A (1) of the Act is applicable only for the determination of contribution and not for interest.

The period of 5 years limitation prescribed under proviso 2(b) to the Explanation below Section 77 (1A) of the Act is only for filing an application in the Employees' Insurance Court and not for claiming for interest. However,inordinate delay in claiming interest is to be avoided.

L17.17 Reduction /Waiver of interest:

There is no provision in the Act or Regulations to reduce or waive the interest once claimed. However, for administrative convenience, to reduce the work in processing the cases where the amount of interest leviable is very meagre, it has been decided that the cases where interest leviable, in accordance with the provision under Regulation 31A works out to less than Rs.100/- at a time on a single demand comprising the back periods for late or delayed coverage or late payment of contribution for any contribution period (taken as a whole) may not be charged. This instruction is effective from 9th September, 2003. (Hqrs Memorandum No. T-11/113/8/2001-Ins.III dated 4-9-2003).

L.17.18: Recovery of interest:

Recovery of interest may be made either as arrears of land revenue under Section 45-B or by the Recovery Officer under the provisions of Section 45-C to 45-I.

L 17.19 Delegation of powers:

The Branch Officers dealing with the Revenue Branches are fully empowered to claim interest in respect of employers in their jurisdiction irrespective of the amount involved.

L17.20 Matters relating to interest:

All matters and issues relating to "interest" like policy, correspondence, clarifications, representations from employers etc. is dealt with by Hqrs. Office.

(B) DAMAGES (LAW)

Introduction: Chapter-VII of the Act deals with "penalties" for false statements & failure to pay the contributions in time as per Regulations. As a deterrent measure to ensure payment of contributions in time by the employers, a new penal provision has been introduced in the Act as "Damages" with effect from 1st September, 1975 vide ESI (Amendment) Act 1975 by inserting a new section 85-B. The objective of the Legislature was to punish the recalcitrant employers who violate Regulation 31 with exemplary Damages that serve as deterrent to eliminate any recurrence of delays.

L 17.21 Provisions of Section 85-B:

85-B: - POWER TO RECOVER DAMAGES. - (1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer by way of penalty such damages not exceeding the amount of arrears *as may be specified in the regulations :

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard:

** Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a Sick Industrial Company in respect of which a scheme for Rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in Regulations.

(2) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue or under section 45C to section 45-I.

Note: 1. * The words "as specified in the regulations" were substituted in the Amendment Act 29 of 1989 with effect from 1-1-1992 for the words "as it may think fit to impose". After this amendment, Regulation 31-C was framed effective from 1-1-1992 introducing slab rates based on the extent of delay. Prior to 1-1-1992, the rate of damages was fixed by an Administrative order.

2.** The second proviso was inserted vide Amendment Act 29 of 1989 with effect from 1-1-1992.

L17.22 Constitutional validity of Section 85-B:

Section 85-B is not ultravires of Article 14 of the Constitution and does not suffer from the vice of

arbitrariness or unbridled carte blanche. *ESIC V. Sundaram Motors [1979 I LLN 260(A P DB)]; National Textile Corporation V. ESIC [1998 (III) LLJ 975)*

L 17.23 Regulations prescribing the rate of damages (inserted from 1-1-1992)

Reg. 31C: Damages on contributions or any other amount due, but not paid in time: If an employer who fails to pay contribution within the periods specified under regulation 31, or any other amount payable under the Act, the Corporation may recover damages at the following rates by way of penalty, not exceeding the amount of arrears.

	Period of delay	Maximum rate of damages in % per annum of the amount due
(i)	Less than 2 months	5%
(ii)	2 months and above but less than 4 months	10%
(iii)	4 months and above but less than 6 month	15%
(iv)	6 months and above	25%

*** PROVIDED that the Corporation, in relation to a factory or establishment which is declared as sick industrial company and in respect of which a rehabilitation scheme has been sanctioned by the Board for Industrial and Financial Reconstruction, may—

(a) in case of change of management including transfer of undertaking(s) to workers' co-operative(s) or in case of merger or amalgamation of sick industrial company with a healthy company, completely waive the damages levied or leviable;

(b) in other cases, depending on its merits, waive up to 60 per cent damages levied or leviable;

(c) in exceptional hard cases, waive either totally or partially the damages levied or leviable.

*** The proviso has been added vide notification dated 27-3-2003 published in Gazette of India (Part-III Sec. 4) bearing No. 16, dated 19-4-2003, and is effective from 19-4-2003.

L.17.24 Rate of damages from 1-9-1975 to 31-12-1991 decided by Administrative Orders:

Before amendment to the Section 85-B, and framing of Regulation 31-C, the rate of damages was decided by an Administrative Order from time to time as follows.

1-9-1975 to 19-10-1989 at a flat rate of 19% p.a. irrespective of the extent of delay and from 20-10-1989 to 31-12-1991 at a flat rate of 13% p.a.

While fixing the above rates of damages, it was ensured that the rate of damages and interest put together does not exceed 25% p.a

From 1-1-1992 onwards, the damages is determined at the slab rates prescribed under Regulation 31-C depending upon the extent of delay.

NOTE:- Initially, from 1/9/1975 to 30th April, 83, the Damages were calculated with reference to the delays in submission of the Return of Contributions on slab basis depending on the number of defaults etc. From 1st May 1983 onwards, damages were proposed to be imposed with reference to the delay in payment of monthly contributions. Necessary powers to impose Damages have been delegated to the level of Assistant Directors and above by a resolution of the Corporation. This system was fully upheld as valid by various courts.

TIME SCHEDULE OF LEVY OF DAMAGES ACTION The defaulter list of those employers who delayed payment of the contribution due in time has to be prepared within stipulated date so that follow up action of passing orders levying the damages and issue of D-19 for initiating the recovery action is undertaken keeping in view timeline set by the Hqrs. in this regard. The deadlines for various activities for determination of damages and interest to be taken care of are as under as per Hqrs Instruction No. 5/87 issued vide Memo No. T-11/19/1/87-Ins.III dated 12/6/87

S.N.	ACTION/ STEPS	DATE OF COMPLETION
1	Preparation of List of defaulting employers in code no wise order who paid contribution after due date by Branch receiving the Return of Contributions. The List is to be prepared separately Branchwise.	By 30 June/ 31 Dec.
2.	Issue of Show Cause Notice for recovery to be issued for levy of damages after verification of credits in C-6 (Employer Ledger)	By 20 July/ 20 Jan.
3.	Completion of personal hearings	By 10 Aug./ 10 Feb.
4.	Issue of recovery certificate in form of D-19	By 30 sept./ 31 March

L17.25 Characteristics of Section 85-B:

The following principles were highlighted from the Apex Court's judgment in *E.S.I.Corporation v. H.M.T Ltd. and another (2008 (116) F.543; 2008(1) LLN 491; 2008(1) LLJ 814; 2008 (3) SCC 35)*

a) A subordinate legislation must conform to the provisions of the Legislative Act. The subordinate legislation cannot override the principal legislative provisions;

b) Sec. 85-B of the Act provides for an enabling provision. It does not envisage mandatory levy of damages. It does not contemplate computation of quantum of damages in the manner prescribed under the Regulations.

c) Regulation 31-C must be construed keeping in view the language used in the legislative Act and not de hors the same.

d) Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that penalty must be levied in all situations.

e) Provison to Section 85-B incorporates the principles of natural justice.

f) Existence of mens rea (wilful intention) to contravene a statutory provision is a necessary ingredient for levy of damages and/or the quantum thereof. The Court referred to *Dilip N. Shroff V. Joint Commissioner of Income-tax, Mumbai and another (2007(6) SCC.329)* in this regard.

L 17.26: Interpretation of the provisions in Section 85-B

(A). Fails to pay: Connotes wider meaning to include delayed payment also. Failed to pay may be taken as failed to pay within the time limits prescribed by the Corporation. Therefore, any delay beyond the due date for payment attracts damages.

Case law: 1.The expression "fails to pay" in Section 85-B had to be given a wide and purposeful meaning and it includes cases of delayed payment. *(Nipha Exports (P) Ltd., v. ESIC Faridabad-2003 (3) LLJ 789; 2003 (3) LLN 387; 2003 LIC 2231.*

2. The Division Bench of Calcutta High Court held that it is not correct statement of law that delayed payment does not amount to failure of payment. *(ESIC v. Braithwaite and Co. Ltd.,- 2004(2) LLN. 618; 2004(2) CLR. 514; 2004(101) FLR.1218; 2004(4) LLJ.(supp.) 675)*

3. Delayed payment of contributions is also failure to pay within time. *(Prestolite of India Ltd., v. Regional Director, ESIC- AIR 1994 SC.521; 11994 Supp.3 SCC. 690; 1995 (2) LLJ. 622 and Sovrin Knit Works, v. ESIC (AIR 1997 S.C. 758; 1997 (2) LLJ. 671)*

4. *In an appeal filed by ESIC Kanpur, the Allahabad High Court, taking in to consideration of the earlier Apex Court Judgments in Presolite of India Ltd., and Sovrin Knit Works*, while setting aside the order of the insurance Court, held that delayed payment amounts to failure to pay the contributions.

B) By way of penalty:

Case law: 1. *The Division Bench of Kerala High Court in the appeal filed by ESIC against the judgment of the Insurance Court in the case of Meecos Ltd., (1980 KLT.179)* observed that "The damages contemplated in sec. 85-B is not compensation for loss on account of the default of a party, but is in the nature of penalty that could be imposed for non-compliance with the statute to the extent indicated".

2. *The Kerala High Court in the case of ESIC and another v. K.N. Premanandam and another (2007 (3) LLN.339; 2007 (1) LIC. 1050; 2007 (114) FLR.128; 2008(2) LLJ 539)* held that imposition of damages under section 85-B is purely penal in character and as such, the compensatory part has been taken care of b y stipulating payment of interest for delayed payment. Therefore, the principles to be applied while computing the damages payable would be as applicable for imposition of penalties as elucidated by the Supreme Court in *Hindustan Steel Limited v. The State of Orissa (AIR 1970 SC.253)* Case.

3. Damages is in the nature of penalty. Therefore, the Corporation need not establish any loss to it due to delayed payment of contributions by the employer to levy the damages. *(Bombay High Court's decision in ESIC v. Sri Ganesh Foundry(P) Ltd., 1995(I) LLJ 189)*

Before imposing any penalty, the decision making authority has to give a reasonable opportunity of being heard to the principal employer. Therefore in accordance with the first proviso to this section, before determining the damages, a show-cause notice to the principal employer as to why damages for delayed payment of contributions for the period mentioned therein should not be imposed is to be issued and an opportunity of personal hearing is to be offered to him for tendering his problems/difficulties and mitigating circumstances. Therefore, even in cases where the establishment is not a sick industrial company, the principal of natural justice by affording a reasonable opportunity of defence is mandatory.

(C) Speaking order: Levy of damages u/s 85-B of the Act which is penal in nature should be dealt with in an objective manner and the order must disclose that there was in fact an application of mind on the part of authority to the relevant facts and circumstances of the case. The failure on the part of the employer to offer his explanation to the show cause notice shall not absolve the authority from this obligation. *(Beema Manufacturers (P) Ltd., v. ESIC, 1991(2) LLJ. 29)*

It was held by the Karnataka High Court that before levying any damages by way of punishment, the Corporation shall give a reasonable opportunity to the employer of being heard. The proceeding is a quasi-judicial one and the Corporation should follow the principles of natural justice in imposing the penalty. The Corporation must consider the gravity of the situation in each case and shall levy the damages as found proper and fit on the facts of the case. The authorized officer of the Corporation shall pass a speaking order giving reasons for the levy of damages and for accepting or not accepting the explanation offered by the employer. *(ESIC Bangalore v. Tungabhadra steel products Ltd., -57 FJR.76)*

Speaking order not to be mechanical: Simply because the appellant did not appear in person and produce material in support of the objections, the employer's case could not be discarded in limini. On the contrary, the objections ought to have been considered on merits. *[Presolite (India) Ltd. V. RD ESIC [1995 II-LLJ 622(SC)]*

(i) SPEAKING ORDER ON MERITS OF THE CASE: Since Sec. 85-B is quasi penal in nature, passing a speaking order is a necessary corollary. It is axiomatic that in exercise of quasi judicial function, when opportunity has to be given to the parties, it is necessary to pass a reasoned order. It is incumbent upon the authority not only to consider the explanation of the employer, if duly rendered but also to pass a peaking order. *[Dhanda Engineerrs (P) Ltd. V. ESIC RD Punjab 1981 Lab IC 658]*

(ii) OMISSION SHOULD BE DELIBERATE: Unless party acted either deliberately or in defiance of law or guilty of dishonest or contumacious misconduct or acted in conscious disregard of his obligation, the authority is duty bound to act in a judicious manner to determine the question after assessment of all relevant factors and not in cursory manner.*[RD ESIC V. Sakti Tiles1988(KLT)280]* The volume and contention of the speaking order must depend on nature of a particular case. The reasons expected to be considered in a speaking order must depend on the nature and circumstances raised in reply to Show Cause Notice.

NOTE: For a detailed explanation on (B) & (C) above, refer to para.2 and 4 under the chapter 'Personal hearing, determination and issue of speaking order under Section 45-A".(However, while issuing the orders one does not have to establish and mention that there was a deliberate delay was caused by the employer. Suffice if the delays are indicated and there was no legally valid and just grounds for the delays caused)

(D). Not exceeding the amount of contribution: The maximum limit of damages has been prescribed which shall not exceed the amount of contribution. Prior to the amendment of Section85-B with effect from 1-1-1992, the discretion to the rate and quantum of damages was left to the discretion of the Corporation, subject to the maximum ceiling prescribed. But after its amendment and inserting the Regulation 31-C from 1-1-1992, the rate of damages per annum has been prescribed depending upon the extent of delay, subject to the overall ceiling not exceeding the amount of contribution.

Case law: 1. *The Madras High Court in Madras Hotel Ashoka (Pvt.) Ltd. v. ESIC- 1994 (I) LLJ. 495)* held that the determination of quantum of damages is not to be a subjective determination. There must be an objective approach taking in to account all matters which are relevant therein. The quantum of damages must necessarily be related to the gravity of the penal element in the default on the part of the party. That in turn must depend upon the validity of the explanation the party may give for default.

2. Damages could be levied only up to the ceiling limit and any recovery in excess is Illegal. *(Supreme Court's decision in ESIC v. Narniat Pharmaceuticals and Chemicals Pvt. Ltd. - 1998 (79) FLR 793; 1998 SCC. (L&S) 229; 1998 (2) LLJ.43; 1998 (3) LLN. 575.)*

(E). May recover:

Case laws: 1. *The Division Bench of Kerala in the case of ESIC v. Bhaskaran (1997, LIC. 1115)*, held that failure to carry out the statutory obligation should be adjudicated by a quasi-judicial enquiry and the levy of damages is quasi penal in character and hence such damages cannot be ordinarily imposed unless the party acted either deliberately or in defiance of law or was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation. Statute states that damages could be demanded only by way of penalty.

2. Referring to the above judgment, the *Division Bench of Kerala High Court in the case of ESIC v. Hotel Mehanath (Kedaram- 2007(3)LLJ.505; 2007(2)LIC.1849)* observed that Sec. 85-B confers discretion on the Corporation either to recover the damages or not by way of penalty. The expression "may recover" denotes that it is discriminatory. Hence failure to pay contributions would not automatically attract penalty by way of damages. There cannot be any straight forward formula to claim damages in all cases by way of penalty from an employer who fails to pay the contribution in time. It depends upon the facts and circumstances of the case.

A provision to impose penalty does not necessarily convey the same in all cases. It is trite law that a penalty provision as distinguished from a provision creating an offence does not attract the rule of principle of 'mens rea'(willful intention) and it is generally sufficient to prove that a default in complying with the provisions of the Act for which the penalty is provided has occurred.

3. The Division Bench of Kerala High Court held that once the contribution payable from a particular date is delayed, and such delay was due to bonafide reasons, damages can be waived on the facts of each case as imposition of damages is penal in nature and 'mens rea, is necessary unlike statutory obligation to pay interest for delayed payment of contribution. *(ESIC, Thrissur v. 2008LLR. 1001; 2008(3)LIC. 3095, 2008(118) FLR 936; 2008(4) LLN. 445; 2009(I)LLJ.340)*

4. The Division Bench of the Kerala High Court observed that the word used in Section 85-B of the Act is that the Corporation "may" recover damages and not "shall" recover damages. Hence it is not mandatory that in all cases, damages shall be recovered as per regulations. If in all cases, delayed payment,

the damages are recovered at the flat rate prescribed by the regulations, there is no purpose for issuance of a show cause notice and grant of personal hearing. The language used in Section 85-B itself is clear and what is provided in the regulation is only the maximum amount of damages that can be imposed. It also provides that if the establishment is a sick industrial company and is under rehabilitation scheme provided by the Board for Industrial and Financial Reconstruction, no damages be imposed. *(RD, ESIC and another v. Managing Director, M/s QETCOS Ltd. - 2008(118) FLR.715; 2008(3)LIC.3191; 2008(4)LLN.460; 2009(1)LLJ.56)*

5. The Supreme Court observed that Section 85—B of the Act uses the words "may recover" levy of damages there under by way of penalty. The legislature limited the jurisdiction of the authority to levy the penalty not exceeding the amount of contributions. Regulation 31-C of the ESI Regulations, therefore must be construed keeping in view the language used in the legislative Act and not 'de hors' the same. *(ESIC v. HMT Ltd.- 2008(I) LLN.491)*

(F) Corporation may delegate powers to levy damages : Power has been given to the Corporation to recover the damages. In view of the provisions of Section 94-A of the Act, the Corporation may delegate this power to the Director General or any other officer or officers authorized by it.

Case law: 1. *The Division Bench of the Punjab and Haryana High Court in the case of ESIC v. M/s. Dhanda Engineers Private Ltd., (1981(59) FJR.259)* held that the office order of the Director General of the Corporation delegating powers to levy the damages under sec. 85-B to the other Officers, issued in pursuance of the resolution of the Corporation, does not suffer from any infirmity.

2. A delegation need not be one officer alone. It mat as well be in favour all officers. "Any officer" of the Corporation may as well mean every officer of the Corporation. (1987 (70) FJR. 312)

L.17.27 Delegation of powers to levy the damages:

(a) Gazette Notification No. N-4/13/2/82-INS III dated 29th April,1983:—

"Resolved that the power to levy and recover damages from the employer (s) under section 85-B of the ESI Act 1948, as amended up-to-date , may be exercised by the Director General, all Regional Directors , Joint Regional Directors, Deputy Regional Directors, Assistant Regional Directors, Director Sub-Regional Office, Pune and Deputy Regional Director In-Charge Sub-Regional Office ,Nagpur"

(b) Gazette Notification No.T-11/19/1/90-INS III dated 28th June,1991:—

It is notified for general information that ESI Corporation at its meeting held on 06-03-91 has decided to further delegate powers to levy and recover damages from the employers under Section 85-B of the ESI Act to other Officers of the corporation in addition to the officers in the Corporation Resolution dated 29-04-83 as under:—

"Further resolved that the powers to levy and recover damages from the employer(s) under Section 85-B of the ESI Act , 1948 as amended may also be exercised by the Joint Regional Director In-Charge of Sub-Regional Office in addition to the officers as authorised in the Corporation 's Resolution dated 19-02-83".

(c) Further vide Hqrs letter No. T-11/19/1/90-INS.III dated 31-03-92; Hqrs letter No T-11/19/1/93-INS .III dated 13-07-93 and T-11/19/1/2004-Rev. I dated 7-9-97, the monetary limits to levy and recover damages under Section 85-B to the delegated officers have been revised from time to time and the latest monetary limits are as under :

(i) Assistant Director & Deputy Director: All cases involving damages up to and including rupees 50,000/-

(ii) Joint Director/Regional Director: All cases involving damages exceeding Rupees 50,000/-

NOTE:- The Designations of JRD,DRD and ARD have been changed to JD,DD and AD. Accordingly the designations in the Resolution need be reworded as JD,DD and AD . Further , the post of Additional Commissioner has been created for the Regions also for which the Resolution may include their designation also.

Thus, in the Regional Office/Sub-Regional Office/Divisional Office, the Additional Commissioner , Regional Director , Joint Regional Director , Joint Regional Director (I/C) , Deputy Directors and Assistant Directors dealing with the Revenue Branches are authorized to issue notice to the employers and determine the damages u/s 85-B in respect of the employers' files under their charge.

L17.28 Counting the delay:

a) When payment of contribution is made by cheque:

Where the employer has deposited the contribution by cheque in authorized bank, but the clearance of the cheque and credit to ESI Fund Account is delayed, the date of deposit of cheque by the employer in the bank is to be taken as the date of deposit of contribution provided the cheque is not dis-honoured by the Bank. (Hqrs. Memorandum No. T-11/13/8/2007-Rev.I dated 13th October, 2008)

b) When the delay is due to strike/lock-out (whether legal or illegal):

In case the employer could not make payment of contribution on due date due to strike or lock-out whether legal or illegal, the period covered by the strike/lockout may be ignored for the purpose of determining the damages. (Hqrs. letter No. T-11/19/1/90-Ins.III Inst. No. 11/91 dated 31-12-1991)

c) Damages on regular contribution:

Damages on regular contribution is to be calculated wage period (calendar month) wise from the due date. (Hqrs. letter No. T-11/11/10/86-Ins.III, dated 27-3-1986, Instruction No. 2/86)

d) Damages when the coverage was from a retrospective date:

In case of retrospective coverage, the calculation of delay for regular contributions for the back period is to be done after allowing a grace period of 21 days from the date of issue of coverage intimation letter to the employer. (Hqrs. letter No. T-11/19/1/90-Ins.III (instruction No. 11/91 dated 31-12-91)

e) Damages on omitted wages reported by the SSO/TIO:

Damages on omitted wages noticed and reported by the Social Security Officer or Test Inspecting Officer where the number of employees and employee-wise details of wages paid was not available is to be claimed after allowing a grace period of 21 days from the date of demand letter/C-18 notice from the Regional/Sub-Regional Office. (Hqrs. Inst. T-11/11/-10/06-Ins.III Dated 27-03-1986)

f) When instalment facility is granted by the Corporation or by a Court.

When the Corporation has granted instalment facility to pay the principal amount of contribution to any employer, the employer is liable to pay damages as per law for the delay beyond due date for each wage period (calendar month). A clause to that effect is to be incorporated in the sanction letter communicated to the employer. This is applicable even to the instalment facility granted to the employer by the Courts.

g) When the delay was due to Curfew/Bank strike/Natural calamities etc.:

If the delay in payment of contribution was due to Curfew, Bank strike or Natural calamities like floods, earth-quakes etc. preventing the employer to make payment on due date, the period of disruption of normal functioning duly supported by documentary evidence from the Bank Authorities or from the District Collector may be ignored for the purpose of determining the damages.(Instruction No.11/91 dated 31-12-1991)

h) When an employer disputes claim of contribution in a Court of law.

When an employer disputes the claim for payment of contributions in a Court of Law, and the decision goes against the employer, the peiod during which the case is pending in a court is to be ignored for the purpose of calculation of Damages. The due date for payment of contribution in such cases shall be 21 days from the date of decision of the Court.

L.17.29 No Limitation – No bar for determining Damages:

The Act or Regulations does not prescribe any time limit for claiming the damages on delayed payment. The time limit prescribed in the second proviso to Section 45-A (1) of the Act is applicable only for the determination of contribution and not for damages.

The period of 5 years limitation prescribed under proviso 2(b) to the Explanation below Section 77 (1A) of the Act is only for filing an application in the Employees' Insurance Court and not for claiming for damages.

However, inordinate delay in claiming damages is to be avoided.

L.17.30 Damages not to be claimed:

Damages may not be charged on a single demand comprising the back periods for late or delayed coverage or late payment of contribution for any contribution period (taken as a whole) does not exceed Rupees 100/- (Rupees one hundred)

L17.31 Reduction/waiver of damages:

Reduction or waiver of damages is permissible only in case of a Company which is declared as Sick and in respect of which a Rehabilitation scheme has been sanctioned by the Board for Industrial and Financial Reconstruction, as provided in the second proviso to Section 85-B read with proviso to Regulation 31-C.

The delegation of powers for reduction/waiver in case of Company declared sick by the BIFR and in respect of which a Rehabilitation Scheme is sanctioned has been detailed under Chapter-XXI - Miscllaneous under Sub-Head ' BIFR'.

There is no such provision for reduction/waiver in other cases; Financial constraints, dispute between partners, delay in getting the code number, or sickness of a company other than those registered under BIFR in respect of which a Rehabilitation Scheme is sanctioned, do not qualify for reduction or waiver of damages.

L17.32 No damages shall be levied/payable in the following cases :(Hqrs. letter No. P-11/4/32/2009-Revenue-II dated 02-3-2010)

When the employer applies under the "New Amnesty Scheme-2010" for Settlement of cases filed up to 28-02-2010 under Section 75 of ESI Act, no damages shall be levied subject to fulfillment of the following conditions:.

(A) *Section 75 Cases (filed up to 28-2-2010):*

(i) Petitioner employer withdraws the case with the leave of the Court;

(ii) Pays both the contributions (employees' share and employer's share) as per his records and produces the records before the assessing authority for verifying its correctness; and

(iii) Pays the interest in full.

(B). Section 85 and 85-A cases (filed up to 28-2-2010):

(i) The employer shall pay both the Employees and Employer's share of contribution in full as per his records, which he shall produce before the assessing officers if the contribution has been assessed on assumed wages.

(ii) The employer pays the interest due for the period of prosecution in full and

(iii) The employer shall also furnish an undertaking to the Corporation to the effect that he/she shall be regular in compliance in accordance with the provisions of ESI Act in future or else he/she shall forfeit the right to avail of such Amnesty Scheme.

L17.33 Claiming Interest and damages in respect of Branch offices/Sales offices functioning in other Regions:

Action to enforce the recovery of contribution/interest/damages not paid on demand by the employer in respect of a branch office/sales office/head office etc.should be taken by the Regional Office in which the main factory/establishment having main code number is situated, on the basis of information furnished by the Regional Office of the Region in which such branch, sales office, head office etc. is situated. (Hqrs. letter No. N-4/13/2/83-Ins.III Col.I dated 23-10-1983)

L17.34 Other points to be remembered:

i) Leviable damages should never exceed the total amount of contribution, even when the calculation exceeds the total amount it should be restricted to the total amount.

ii) While working out the delay, the due date may be included and the date of payment may be excluded.

iii) If the leviable damages does not exceed rupees hundred at a time, the same may not be claimed.

iv) If the leviable damages exceed rupees 50,000/- the file is to be sent to the Regional Director/ Joint Director in-charge for issue of the notice (D-18), personal hearing and speaking order.

v) The show-cause notice proposing levy of damages and offering personal hearing is to be sent to the principal employer by registered post under acknowledgment at his residential address and factory address.

L17.35 Recovery of damages:Recovery of damages may be made either as arrears of land revenue under Section 45-B or by the Recovery Officer under the provisions of Sec. 45-C to 45-I.

INTEREST AND DAMAGES

(PROCEDURE)

P17.1 The interest and damages are to be worked out and claimed at time of received of return of contributions from the C-6 branch as explained under time schedule of levy of damages action under para L.17.24. However in case this was not done for any specific reason like non receipt of RC's, it should be invariably completed at the time of annual review. There are instances where the contributions are paid for the past period belatedly. In such cases interst & Damages should be calculated at the time of receipt of challans in the branch. As per the present inspection policy, the inspection of units is not regular and continuity may not be there. Therefore working out the interest and damages only at the time of receipt of inspection report should not be followed.

P.17.2 'On receipt of the defaulters list (delayed payment) when the interest and damages action is initiated on the defaulters' list showing the details of delayed payment prepared on the basis of RC's the dates of payments would have been already checked and corrections in date of payment wherever required were already carried out by the C-6 branch. Hence those dates of payments for the contribution period may be taken as final to work out the extent of delay if any. There is no need to verify the dates of payment again from C-6 ledger. It may be ensured that the R.C. for earlier periods has been duly received and interest/damages for delay if any has already been worked out and claimed to ensure continuity and that all the preceding contribution Periods have been duly checked. In case the R.C. for the previous periods has not been received or interest/damages not claimed on those RCs, to ensure continuity, with the help of C-6 ledger, the delay for each calendar month for the pervious period if any left out, may also be verified and the interest /damages worked out for the whole period.

P.17.3 At the time of review: If the interest and damages is worked out at the time of annual review of employer's file, make sure that the interest and damages has been worked out and claimed till the date of last review. If this was not done during earlier review/s, it must be done now by verifying the delays if any, for the period subsequent to the last claim. For this purpose, the payments position is to be verified from C-6 Ledger.

P.17.4 Counting the delay: Payment of contribution is to be made for each calendar month within 21 days of the last day of the calendar month in which the contribution falls due. Hence the due date for each month is 21st of next month. The delay is therefore to be calculated for the days the contributions due have not been paid . i.e from 21st to the date upto which it was not paid i.e including 21st and excludiing the actual date of payment.

P.17.5 In respect of retrospective coverage:

(i) Interest; the delay is to be counted on par with regular contributions ie. from the 22nd day of the following month for the entire period including the back period,

(ii) Damages; the delay may be counted after allowing a grace period of 21days from the date of issue of coverage intimation letter to the employer for the back period.

P 17.6 Rate of interest/damages: The rate of interest is uniform irrespective of the delay, without any ceiling limit. But for damages, the rate varies depending upon the extent of delay as explained in Para L17.23 and Regulation 31-C, and it should not exceed the amount of contribution.

P 17.7 Calculation: The calculation sheet for the total period may be prepared in the following proforma and total amount of interest and damages may be arrived at the end. If the total amount so worked out is not more than rupees 100 either for interest and damages, there is no need to make any claim. In case there was any letter from the employer either at the time of making payment or after the claim that the delay for any period was due to curfew/bank strike/natural calamities etc. the period covered by such occurrences may be ignored in case of damages only at the time of passing the orders after verifying the necessary documents to substantiate curfew, lock out, bank strike, natural calamities etc at the time of hearing.

Name of the employer:_____Code Number:_____

CALCULATION SHEET FOR INTEREST/DAMAGES

S.No.	Month	Due date	Paid on	Delay	Amount	Interest	Damages	Remarks

P 17.8 Claiming interest: The interest may be claimed in the form C-18(Interest) duly enclosing the calculation sheet.

P17.9 Issue of C-19(Interest): If there is no response to the C-18 (interest), after 30 days, Recovery Certificate in C-19(I) may be issued to the Recovery Officer for recovering the interest amount as per procedure. Entry may be made in the C-18/19 register at the time of issue of C-19(I). In case of direct compliance from the employer after issue of C-19(I), the same may be cancelled and the Recovery Officer informed about the payment. If the payment is fully recovered by the Recovery Officer, the C-19 stands settled. The branch officer is authorized to claim the interest amount without any monetary limit.

P 17.10 Entries in C-18/19 register and 45-B Register (Arrear Register): Issue of C-18(I), C-19(I), and receipt of payment must be entered in the C-18/19 register.

P 17.11 Guidelines for issue of show cause notice (D-18):

Since damages is a penalty, before determining it, a show-cause notice in standard form D-18 may be issued proposing the levy of damages, duly enclosing the calculation sheet. The employer is also to be provided a reasonable opportunity of being heard. The following guidelines need be followed for issue of show cause notice in form D-18:

1. Uniform proforma for Show Cause Notice (D-18) and Speaking Order should be used.

2. Damages should not exceed the amount of contribution [section 85B(1)] and the calculation should be based on the percentage specified in Regulation 31-C.

3. In case of retrospective coverage, the calculation of delay for regular contribution for the back period is to be done after allowing a grace period of 21 days from the date of issue of coverage intimation letter to the employer.

4. In case of omitted wages, the calculation of delay shall be made after allowing grace period of 21 days from the date of demand letter.

P 17.12 Action to be taken by the Dealing Assistants, Superintendents, B.O's , JD's and RD on levy of damages:

1. **Dealing Assistants**:

a. Calculate damages in respect of units who paid contributions after the due date based on the Inspection Reports and the six monthly defaulter list for damages received regarding delayed payments based on RC's and at the time of review of employer's file done once in a year.

b. To put up Show Cause Notice (D-18) against these units. Entry in D-18 /D-19 Register may be made, showing Sl.No. of entry so made in the office copy of the Show cause Notice after obtaining the signature and date of PH in the D-18 Notice of the Branch Officer/JD/RD.

c. On the date of hearing, submit the file along with Acknowledgment received back from the postal authorities, any representation/reply reeived from the employer, information about payment if made by the employer to the BO through OS for issuing orders u/s 85-B wherever necessary.

d. After expiry of 30 days of issue of order u/s 85-B, the file may be moved to OS/BO along with Acknowledgment received back from the postal authorities duly received back for issue of D-19 in case no compliance has been received. After signature of the BO on the D-19, necessary entry may be made in the relevant column of D-18/D-19 register and thereafter issue the same through dispatch section.

2. **Office Superintendent**:

a. To check calculation of damages.

b. To ensure that representation/reply of the Employer to Show cause Notice if received is put up and order is passed within stipulated time.

3. **Branch Officer**:

a. Speaking Order may be passed/ issued immediately after date of personal hearing but not later than 7 days thereof. In cases, where reply is received within this time, the case is to be examined on merits and reasoned order to be passed levying appropriate slab of % age of damages corresponding to period of delay in the table .

b. Speaking Order should be well reasoned detailing factual position, pleas submitted by or on behalf of the employer at the time of personal hearing or in the representation. Ex-parte order is to be passed if employer does not turn up.

c. Speaking Order should be passed with due application of mind by the Branch Officer.

d. If for genuine reasons it becomes unavoidable to postpone the hearing for finalizing the case, the same should be recorded in writing with reasons therefor and it should not be postponed on flimsy grounds contended by the employer. In no circumstances, more than two postponements should be allowed, for any further such request, the case should be put up to Regional Director.

e. If the payment is not received within 30 days of the issue of speaking order, D-19 may be issued.

f. The Branch Officer shall maintain a PH register giving details of cases to be heard on each day and to ensure that orders are passed immediately after the expiry of the date of hearing.

g. The Register of damages should be reviewed by the Branch Officer with a view to systematic monitoring of all the pending cases.

4. **Joint Director**:

a. To determine/impose damages in cases where leviable damages exceeds Rs. 50,000.00

b. To review and monitor the D-18/D-19 Register.

5. **Regional Director/Joint Director I/C** :

a. To consider granting of third opportunity of personal hearing forwarded by the BO.

b. Recommend the case of waiver/reduction of damages in case of Sick Industrial Companies for whom rehabilitation scheme has been sanctioned by BIFR to Hqrs office.

c. To determine/impose damages in cases where leviable damages exceeds Rs. 50,000.00 and Joint Director is not in position.

d. Review and monitoring D-18/D-19 Register

P.17.13 Submission of the file to BO/RD on the day of PH further explained: The branch may submit the employer's file along with the postal acknowledgment and letters if any received against the D-18 notice to the B.O or the RD as the case may be on the day of personal hearing.

P.17.14 Personal Hearing further explained : On the day of personal hearing, the principal employer or his authorized representative appears for the personal hearing, the BO/RD as the case may be, hear the employer and record the employer's version in the note portion of the employer's file and obtain the dated signature of the person appeared for P.H. If he submits any letter explaining the reasons, the same may also be taken on record of the P.H. proceedings.

P.17.15 Non-appearance for personal Hearing further explained: In case the principal employer or his authorized representative does not turn up for personal hearing on the date fixed for P.H., whether the postal acknowledgment in token of receipt of notice by the employer, has been received, and if there was any reply from the employer to the notice has to be checked up.

P.17.16 Speaking order further explained: A well reasoned speaking order taking in to consideration, the reasons explained and traversing all the submissions and pleadings made by the employer for delayed payment of contributions, and the quantum of damages determined under Section 85-B is to be issued. If it is an ex-parte order, the opportunity provided to the employer, and employer's failure to utilize the opportunity may be stated in the speaking order. The order should not be a mechanical one and consist of (take on record) the contentions of the employer, the application of mind to those facts by the authorized officer should find place in the speaking order. This order is subject to scrutiny by the Courts when contested by the employer. Many a times, the employer contends that because there is a table fixing the per centage of Damages to be imposed, the Determining Authority does not have any discretionary power to apply his mind and to judge the percentage of damages it actually merits which is an infirmity in the eyes of Law. This argument can be effectively negated by the fact that the Authority can completely waive the damages altogether if the case so merits and also reduce it in mitigating circumstances. Therefore, all care must be taken while drafting the order. A period of 30 days may be allowed to the principal employer for making payment of the damages determined in the order. The order must be addressed to the principal employer with a copy to the factory/establishment.

P.17.17 Despatch of speaking order further explained: The speaking order duly signed by the authorized officer with date may be despatched by registered post with ack. due. The order for the principal employer and for the factory should not be sent together. They may be despatched separately.

P.17.18 Issue of D-19 further explained: If there is no compliance for the Speaking order within 30 days from the date of dispatch, D-19 may be issued to the Recovery officer for recovering the amount under section 45-C to 45-I of the Act.

P17.19 Entries in D18/19 Register further explained: Issue of D-18 notice, issue of Speaking order, and D-19 and receipt of payment may be entered in the D18/19 Register and also in 45-B register (Arrear Register).

P 17.20 TRANSFORMATION OF MANUAL ASSESSMENT PROCESS INTO COMPUTERIZED PROCESS IN ONLINE APPLICATION THROUGH EMPLOYER'S WEB PORTAL

1	Automatic Executeion of the Batch process to identify defaulters as per contributions filed. (Done once in 6 months)
2	Automatic Indentification of Defaulter(Interest and Damages) using Batch Process (Done Once in Six months)
3	Issue C-18(i)/D-18
4	Conduct Personal Hearing in Application(D-18)
5	Create Order u/s 85-B from Application
6	Challan creation from Application for D-18 and Order u/s 85-B
7	Create Recovery Certificates
8	Challan creation from Application for Recovery Certificates
9	Recovery Process
10	CP-1 Process (Transfer of Recovery Certificates)
11	Recovery Proceedings
12	Closure of Recovery Certificates
13	Irrecoverable and Write-off

P.17.21 Benefits of the web Application in IT Roll Out

1. Automatic identification of Defaulters.
2. Defaulters can be identified every month and action can be taken instantly.
3. Interest and Damages will be calculated automatically.
4. Easy to track defaulters and their payments.
5. Automatically Employers will be dropped from Defaulter's list once payment is realized.

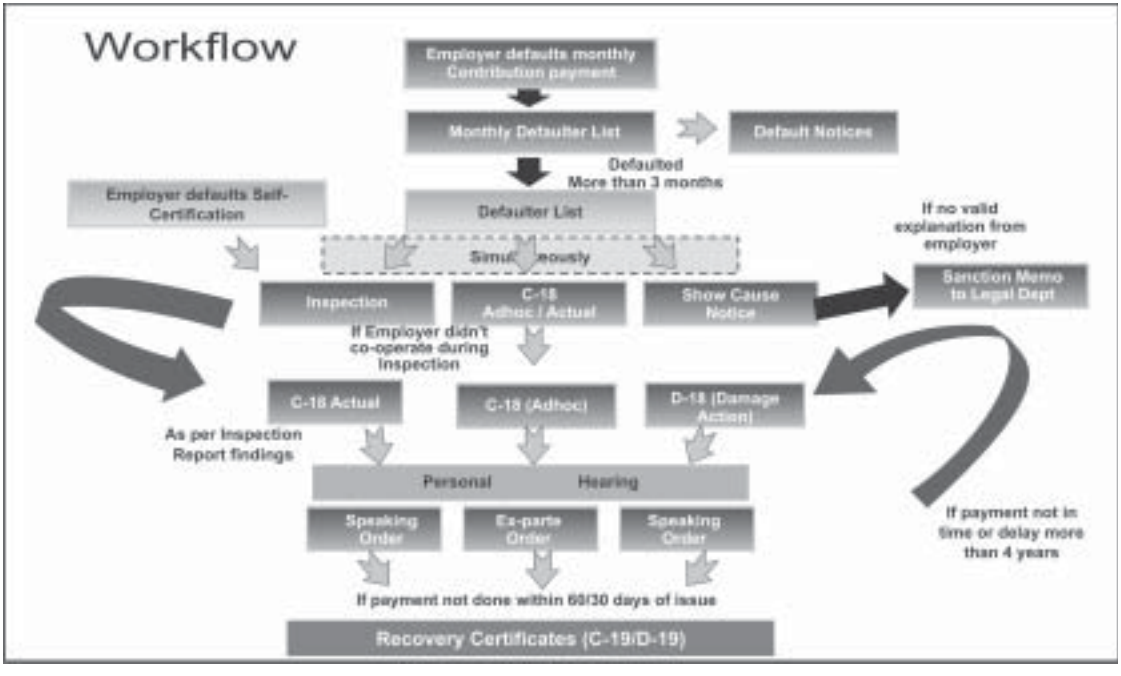
6. Automatic creation of Recovery certificates and same will be automatically assigned to Recovery Officer of the region instantaneously.
7. Instant updates to Recovery Certificate status in case of Revoking the certificate, certificate on hold by Authorized Officer.
8. Mail reminders to ESIC users.

P.17.22 Functioning of the Insurance Module

Application will follow the same hierarchy DA ->Superintendant -> Branch Officer (AD/DD) -> JD -> RD.

1. DA will issue Default Notices (D1/D2/D3) to monthly defaulters.
2. DA will initiate issue of C-18 Adhoc/C-18Actual/C-18(i)/Order u/s 45-A /SCN/Sanction Order/D-18.
3. Superintendant will review the same and forward to Branch Officer.
4. Branch Officer will approve/reject. On approval Defaulter letters are generated.
5. Recovery Certificates will be automatically generated on approval of Branch Officer

Identification of Defaulters; Interest and damages action.



CHAPTER XVIII

ADJUDICATION OF CIVIL DISPUTE AND CLAIMS

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CHAPTER XVIII

ADJUDICATION OF CIVIL DISPUTES AND CLAIMS

Introduction: It is our common experience that due to procedural and technical difficulties, litigation in ordinary Civil Courts becomes very dilatory and costly and the insured persons cannot afford it. Therefore, for adjudicating the civil disputes arising out of the applicability of the Act, the legislature felt the necessity of establishing specialized courts. For the purpose of deciding any matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, the E.S.I.Act provides for the establishment of Employees' State Insurance Courts (E.I. Courts). Such Courts have been established by the respective State Governments under Section 74 of the Act all over the Country in areas where the benefit provisions of the Act are in force. Wherever there is no justification for establishment of a full time Employees' Insurance Court, the State Governments are empowered to appoint the presiding officers of civil or criminal courts or industrial tribunals to function as Employees' Insurance Courts in addition to their normal duties. Under sub-section (3) of Section 75, the jurisdiction of the Civil Court has been barred to decide the above disputes. This chapter deals with the procedure relating to the settlement of civil disputes, powers and functions of the E.I.Courts, awarding decrees, Appeals against the judgment of EI Courts etc.

L18.1 Section 74. CONSTITUTION OF EMPLOYEES' INSURANCE COURT:

(1) The State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a judicial officer or is a legal practitioner of five years standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(5) Where more than one Court has been appointed for the same local area, the State Government may by general or special order, regulate the distribution of business between them.

Case Law: Powers of State Government could not be restricted:

It was held by the Madhya Pradesh High Court that there is nothing found in the provisions of Section 74

of the Act which could restrict the powers of the State Government to appoint persons, other than the presiding officers of civil or criminal courts to function as Employees' Insurance Courts in addition to their regular duties. *(Jiyajirao Cotton Mills Ltd. v. ESI Corporation- 1962 (5) FLR.475)*

L18.2 Matters to be decided by Employees' Insurance Court (E.I.Court):

Section 75 (1), (2), and (2A) lays down the matters to be decided by the E.I.Court as follows.

75(1): If any question or dispute arises as to - (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under section 55A on a review of any payment of dependants' benefits, or

(f) Omitted

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute subject to the provision of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

75(2): Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely :- (a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

(c) Omitted

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

75(2A): If in any proceedings before the Employees' Insurance Court, a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court, under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

Though the above provisions do not envisage as to who has to approach the EI Court, by necessary implication when the employer denies the liability or applicability of the provisions of the Act or the quantum of contributions to be deposited by the employer, It is for him to approach the EI Court and seek adjudication. It is not for the Corporation in each case whenever there is a dispute, to go the EI Court and have the dispute adjudicated. Otherwise, the Act would become unworkable and defeat the object and purpose of the Act. *(Supreme Court in the case of ESIC v. F. Fibre Bangalore (P) Ltd., -1997(1) CLR 403 and ESIC, Thrissur v. Hotel Amma -1998 LIC 2442)*

It is for the defaulting employer to approach the Court and seek adjudication and not the Corporation. *(Supreme Court in ESIC v. C.C.Santhakumar- 2007(I) LLN1; 2007(2) LLJ3; 2007(i) LIC 597; 2007(112) FLR 636; 2007(54) AIC. (SOC.22) at p. 13)*

Section 75(2) does not compel the Corporation to move the Court whenever there is a claim which they have to enforce. (1988(1) LLJ.80)

L18.3 CIVIL COURTS HAVE NO JURISDICTION:

75(3); No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

Case Laws: 1. Civil courts debarred for matters to be settled by insurance court: Section 75(3) completely debars jurisdiction of the Civil Court in a matter which can be decided by the Court under the Act. *(Baidyanath Ayurveda Bhavan (P) Ltd., v. ESIC- 1975 (2) LLJ. 128)*

2. Section 75 of the Act has enumerated exhaustively the matters to be decided by the E.I.Court. The respondents filing a civil suit after collector issuing notice under Revenue Recovery Act, is not warranted. It was held by the High Court of Bombay that the suit is not maintainable as the civil court had no jurisdiction to entertain the said suit. *(ESIC v. Sidram Narayan Mathur and others.- 2000 (1) LLN.945)*

3. No Civil Court shall have jurisdiction to deal with any dispute falling within section 75 or to adjudicate on any liability which by this Act is to be decided by the Insurance Court. *(K.C.S.Dhanushkodi Nadar & Sons v. ESIC Madras- 1964 (1) LLJ.213)*

4. Civil court has no jurisdiction to grant a declaration that a factory or establishment is not covered under the provisions of the Act or that, that factory or establishment cannot be proceeded against under the provisions of the Act as otherwise it will be paralyzing the whole working of the Act and the scheme framed there under. *(Shriram Prasad v. ESIC-1988 (2) LLN.513)*

5. Industrial Tribunal has no jurisdiction to direct the Corporation not to demand the contribution— The Andhra Pradesh High court held that the proceedings for coverage of the establishment under the Act must be taken under the Act and not under any other Act. Once the special remedy is provided under the Act constituting thr Insurance Court to resolve the said dispute, the jurisdiction of the civil courts and tribunals is impliedly barred. (ESIC Hyderabad-Industrial Tribunal-cum-Labour Court, Visakhapatnam and others. 2007(3) LLJ.900)

6. Writ petition not maintainable, when special court established for the purpose: When a special court has been established under the provisions of the statute, it will not be appropriate to decide the said dispute, by way of writ petition under extra ordinary jurisdiction of the High Court under Article 226 of the constitution. *(K.P.Mishra v. State of Rajasthan-1993 (2) LLJ.1123)*

7. Writ petition dismissed as alternate remedy under Section 75 of the Act exists. *(Ramesh Enterprises Ltd. Virudhnagar v. ESIC Madhurai-2003(3) LLJ.68; 2004(1) LLN.87)(Madras High court in Pulicar Mills Ltd., represented by Managing Director v. ESIC represented by Director General, New Delhi-2005(3) LLJ.388)*

L18.4 POWERS OF E.I.COURT:

Under Section78 (1), the Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of section 195 and Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

According to Section 78(2) of the Act, the Employees' Insurance Court shall follow such procedure as may be prescribed under rules made by the Government of the State in which such Court is constituted.

An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court under Section 78 (4).

L.18.5 Commencement of proceedings.

As per Section 77 (1) of the Act, the proceedings before an Employees' Insurance Court shall be commenced by an application. The employer who wishes to file an application to resolve the dispute will have to file the application before the jurisdictional E.I. Court and in no other Court.

L18.6 Transfer of cases to other courts under Section 76:

76(2) If the Court is satisfied that any matter arising out of any proceeding pending before it can be more conveniently dealt with by any other Employees' Insurance Court in the same State, it may, subject to any rules made by the State Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other Court the records connected with that matter.

76 (3) The State Government may transfer any matter pending before any Employees' Insurance Court in the State to any such Court in another State with the consent of the State Government of that State.

76(4) The Court to which any matter is transferred under sub-section (2) or sub-section (3) shall continue the proceedings as if they had been originally instituted in it.

L18.7 FILING OF APPLICATION: Every proceeding under Section 75 shall be commenced by presentation of an application to the Court. Section 77 (2): Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation. Every such application shall be verified in the same manner as a pleading in Civil Court and shall be accompanied by 2 copies thereof (one for Court and one for the opposite party. If the opponents are more than one, the copies of application should be as many as there are opponents). The form of application has been prescribed in E.I.Court Rules which may slightly differ from State to State. Every application shall contain the following particulars:

i) The name of the Court in which the application is brought;

ii) the full name including father's name, description including age, occupation and place of residence of applicant;

iii) the full name including father's name, description including age, occupation, and place of residence of the opposite party so far as they can be ascertained;

iv) the facts constituting the cause of action and the date when it arose;

v) the facts that the Court has jurisdiction;

vi) particulars giving the address within the jurisdiction of the Court at which notice or summons may be served on the applicant ; and

vii) the relief which the applicant claims.

L18.8 Affixing Court fee stamps: Every application must be affixed with appropriate Court fee stamps as applicable to the specific EI Court rules of the State.

L18.9 Stay Petition: Where the applicant prays for stay of operation or execution of any order issued by the opposite party, a separate application for grant of stay may be filed.

L18.10 APPEARANCE BY LEGAL PRACTITIONERS, ETC. - Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of his examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or with the permission of the Court, by any other person so authorized. (Section 79 of the Act)

L18.11 DEPOSITING OF FIFTY PERCENT OF THE DISPUTED AMOUNT: According to Section 75(2B) of the Act, any dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall not be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation.

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

Case Law: Section 75(2B) is constitutionally valid: Questioning the constitutional validity of Section 75(2B) of the Act, the petitioner contended that the pre-deposit as a condition before entertaining the dispute makes the provision illusory as the court is the court of first instance for the purpose of adjudication in as much as there is no mechanism for prior adjudication under any of the provisions of the Act. There is an inherent right of every person to bring a suit of civil nature and unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice.

The Madhya Pradesh High Court held that the provisions of Section 40,45, 45-A and 45-B of the ESI Act shows the obligation cast on the principal employer and the process of computation. The Apex Court in the case of F.Fibre, Bangalore (P) Ltd., (1997(1) CLR 403) has expressed the opinion that the Corporation is empowered to best judgment assessment under Section 45-A and call upon the employer to deposit the amount with the Corporation. Their Lordships have opined that it is not for the Corporation to go in each case to the EI Court and have the dispute adjudicated. When there is a best assessment judgment upon hearing, the employer cannot approach the court and obtain an interim order as the said forum has power to grant stay. There is adjudication under Section 45-A of the Act and the principles of natural justice are expressly provided therein. The adjudication has its own character and contour. Therefore it is not correct to say that there was no provision in the Act for prior adjudication before approaching the EI Court. It is true that the Principal Employer can dispute the claim put forth by the Corporation but the deposit as stipulated in Sec. 75(2B) cannot be said to be harsh, unreasonable and arbitrary or it cannot be said that it is the adjudication at the first instance as if it is a suit.

The Parliament in its wisdom has provided many measures to curb and control the principal employer and to make them comply with the provisions of the Act. The determination under Section 45-A is not made at the whims and fancies of the Corporation. The Regional Director is authorized to adjudicate, determine and compute before the same is called in question before the EI Court.

The contention of the petitioner that access to justice is a human right and the same is totally curbed by incorporation of such a pre-deposit, is neither sound nor correct as there is no denial of access to justice but is hedged with a condition and the condition is a reasonable one. Therefore, the provisions of Section 75(2B) does not offend Article 14 of the constitution. The pre-deposit cannot be held to be unreasonable and arbitrary. (Harshlal Paper and Board Mills Ltd. v. Union of India and others-2009(120) FLR.77; 2009LLR.(SN.25) at p.325)

Deposit amount can be waived or reduced by the Court specifying reasons in writing: There is no absolute ban on the employer contending the claim or any other dues made by the Corporation to avail of the remedy provided under the Act. The Division Bench of the Rajasthan High Court held that there is a mitigating power under the provision itself which enables the court in appropriate cases for reasons to be recorded in writing to waive or reduce the amount to be deposited under the section like many other discretion which vests in any court. *(Hindustan Zinc Ltd., v. Union of India-2004(4) LIC 3816; 2005(104) FLR315)*

The Insurance Court has discretionary power to reduce the deposit amount: Where the impugned order of the EI Court as to the reduction of amount to be deposited was to the extent of 30%, it

has exercised its discretionary power under the proviso to Sec. 75(2B) of the Act and was within its jurisdiction. Hence the Rajasthan High Court observed that the same did not require interference under Art. 226 of the Constitution. *(Chetak Stones Pvt. Ltd., v. Deputy Director ESIC and others.- 2006(2) LLJ.1050*

Stay order to be set aside if the deposit amount not paid: Where the employer disputing the demand has neither deposited the 50% of the amount nor shown any reason for doing so, the Insurance Court has no jurisdiction to stay the recovery proceedings by the Corporation. Hence it was held by the Karnataka High Court that the stay order is to be set aside. *(ESIC Bangalore v. Catholic Club, Bangalore and another- 2000(2) LLN.258)*

Reasons to be recorded when the deposit amount waived off or reduced: The Division Bench of Allahabad High Court observed that the order of rejection of waiver or reduction is a discretionary power and the court is compelled to provide with reasons only for waiver or reduction. There is no provision that reasons are also to be given when such prayer is rejected. First part of sub-section 2B of Section 75 of the Act itself is qualifying section for rejection. *(Sathyam Glass Works Industries and another v. ESIC Kaanpur-2007(113) FLR.786; 2007LLR 750; 2007(3) LLJ. 75)*

Waiving order to be a speaking one: Unless the court exempts or waives or reduces the 50% of the amount that is to be deposited for reasons to be recorded in writing, automatically, Section 75(2B) of the Act prevails upon the employer from out of which there is no escape. *(Connemara Hotel, Spencer International Hotels Ltd., Madras v. EI Court Madras and others- 2000(3)LLN.1018*

Waiving of the deposit amount has to be done by the insurance court before numbering the case: The Andhra Pradesh High Court observed that whenever applications are moved along with the original petitions of the E.I.Cases, as the case may be, in the light of the proviso to Section 75(2B) of the Act, the concerned court is duty bound to decide whether such depositing is to be dispensed with or to be waived or such relief to be negated, even before numbering the original petition or the EI case, as the case may be, so that an opportunity to make such deposit scan be given to the concerned party and to further proceed with the matter in accordance with the Law. *(Royal Food Products, Rajahmundry v. ESIC, Hyderabad and another-2007(3)LLJ.695)*

L18.12 PRODUCTION OF DOCUMENTS: When any reliance is made on certain documents in the application, it is necessary that original (or true copies thereof) may be filed in the Court along with the application. Copies of these documents must also be enclosed to the copy of the application intended to the opposite party.

L18.13 LIMITATION: Section 77(1A), every such application shall be made within a period of three years from the date on which the cause of action arose.

L18.14 CAUSE OF ACTION: a) The cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time :

(b) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid due to be received by the Corporation under the regulation.

L18.15 REGISRATION AND NUMBERING OF THE CASE: If the application is by the principal employer against the Corporation disputing any claim for contribution the court may order for depositing the 50% of the disputed amount. In case the court orders for reduction or waiver of the deposit under the proviso to Section 75(2B), it should pass an order specifying the reasons for such reduction or waiver of the deposit. This should be done before numbering the case and granting any interim stay.

ROLE OF SSO: The Social Security Officer of the Corporation, who is attending the Insurance Court daily for watching the proceedings and reporting the progress to the Regional/sub regional office, may raise objection for grant of stay without ordering for payment of deposit or for reducing or waiving the deposit. This is for the reason that before passing an order under Section 45-A by the Authorized Officer of the Corporation, the employer was given an opportunity of being heard and the determination was based on the facts furnished by him. Thus adjudication has already taken place before the determination. Hence there is no reason for considering the employer's case for reduction or waiver of the mandatory deposit prescribed under Section 75(2B) of the Act. The Court, if any, such objection raised by the SSO on behalf of the Corporation should also take in to consideration, and the order should have a reference to such objection and it's over ruling, if any. The order should specify a time frame within which the petitioner employer has to remit the deposit amount. In case the employer fails to remit the amount of deposit ordered by the Court within the time limit, the interim stay, if any, granted by the Court does not operate any longer, and the Corporation can proceed with the recovery of the disputed amount after informing the court.

L18.16 ISSUE OF SUMMONS: After registration of the case, the Court shall issue summons to the opposite party (Respondent) to appear either in person or by an authorized agent or advocate duly instructed and able to answer all material questions relating to the case, or who shall be accompanied by some person able to answer all such questions. The date and time for appearance are specified in the summons. If the respondent fails to appear in the Court at the stipulated date and time, the Court may decide the matter in his absence i.e. ex-parte. The summons also require the respondent to file a written statement offering para-wise replies to the points raised in the application in duplicate prior to that date.

L18.17 SERVICE OF SUMMONS: A summon or notice may be served either by Registered post or hand delivery or in such other manner as the court thinks fit.

The Social Security Officer of the Corporation present in the court or attending the court daily may collect copy of the petition with enclosures if any, stay order granted by the Court, and summons for appearance and filing written statement. He may submit the same to the Regional/Sub-regional office for further action.

L18.18 WRIITEN STATEMENT: Where the opposite party (respondent) is the Corporation, on receipt of copy of the petition, stay order if any and the summons through the SSO (Legal) or otherwise, the legal branch at Regional/Sub-Regional office may open a separate file for the said EI case, call for the employer's file from the revenue branch, and prepare para-wise comments commonly called "written statement". If it is considered necessary to engage a counsel to plead the case, the file is put up to the Regional Director/ Joint Director In-charge for naming an advocate out of the approved panel. In case the written statement is prepared by the Corporation, a reduction of 10% in the fee to be paid to the Advocate is to be made.

The written statement usually contains replies Para by Para to the allegations made in the application (petition) and is verified for truth of the statements made in the statement filed. In the written statement, it is to be stated specifically whether the Corporation admits or demise the truth of the various allegations or averments made in the application. It is very important to note that under the law of pleading if any statement, allegation or averment made in the application is not specifically denied, the same will be considered as an admission on the part of the respondent and he may be stopped from rebutting those statements subsequently. The written statement also contains all matters which could show that the application is not maintainable at law and must include all other defences which if not raised, would likely to take the applicant by surprise or would raise issues of facts not arising out of the application e.g. fraud, undue influence or coercion, release, performance or facts showing illegality of the transaction. It may also be noted that issues pertaining to law points have to shown first in the written statement and issues relating to facts have to be stated thereafter. In case of any court judgments are available in support of our contention, they must be cited. It may be added that the respondent has strict proof for the above submission and for these reasons, and the other points to be submitted at the time of arguments; the application is to be set aside. If any specific relief is sought, that must also figure in the written statement.

In case any additional time is required for preparation and filing of the written statement, an application to that effect may be made to the court, in which case the court may grant additional time. If the written statement is not filed on the date fixed for it, and there is no prayer for grant of additional time, the court may pronounce the judgment against the respondent or make such order in relation to the proceedings as it thinks fit.

After filing the written statement, the regular hearing commences:

L18.19 FILING AND DISCOVERY OF DOCUMENTS: This is called "document stage". Both the parties have to file documents on which reliance is placed and or file application for discovery of documents in possession of the respondents or other parties. Interrogations wherever necessary, have also to be made.

Where the establishment of a fact depends upon the production of a particular document to counter the allegations, the same should be filed in support of our contention. If the coverage is disputed, the report of the SSO, Form-01, statement of the employer, coverage under EPF, or any other documentary evidence to prove the manufacturing or business activity and employment of required persons is to be submitted.

L18.20 FRAMING ISSUES: The next stage of proceedings is the "framing of the issues". The court sorts out the allegations and averments and counter allegations made in the application and the written statement and after examination of the parties, and of the documents that my appear necessary, the Court ascertains the exact points in dispute and there upon frames and records the issues upon which the right issues of facts and issues upon which concern points of law. The issues are so framed as to indicate clearly as to which of the parties has to discharge the burden or prove that particular point. As a general rule, burden of proof regarding any point of fact is on the party, who alleges it.

The court has to give a decision on each issue framed, unless the matter is decided on preliminary issue of law-point or finding upon any one issue or more of the issues are sufficient for the decision of the entire case. The raising and recording of the issues is a mandatory provision of law.

L18.21 Appearance of parties on the date of hearing: Attendance in the court on the day of hearing in person or by the legal practitioner is absolutely necessary. Regional Office/SRO must ensure that the SSO and the counsel engaged in the case appear on the day of hearing and present our case in proper manner. If further time is required an adjournment can be sought.

L18.22 Evidence: After the issues are framed, the partiers are called upon to lead the evidence. The right of the applicant is to lead the evidence first. After the applicant and his witnesses have been examined, the respondent is called upon to produce his witnesses for examination, cross examination, re-examination etc. in the same manner. Our advocate should effectively cross examine the applicant's witnesses, and examination of Corporation witnesses. If considered necessary, he may not hesitate to re-examine our witnesses after their cross-examination by the opposite party by way of clarification or elucidation. No new matter can be introduced in re-examination except with the permission of the court. The court has a right to put at any stage any question in any form to the witness to ascertain the truth. This unlimited power is vested in the court as both the applicant and respondent may try to conceal or suppress facts from the court.

Regional office/Sub-Regional Office may list out the witnesses to be produced in the case. The person or persons who prepared the documents and who have personal knowledge of the fact should be summoned to give evidence. Thus, where a claim depends upon the findings of an inspection, it is necessary to introduce the inspection report as an exhibit and the SSO concerned should be called upon to prove that report, by testifying to the court that he had conducted the inspection and the report before the court is the one prepared by him on the basis of the records produced by the employer at the time of inspection and verified by him. It is important to bear in mind that it is the quality and not the quantity of evidence which weighs with the court and every care should be exercised that all material of evidentiary value is brought on the record of the court.

For this purpose, send intimation to the officials cited as witnesses in the case well in advance, and if they have to come from an outstation, they may be allowed to arrive one day in advance so that they can go through the file to get acquainted with the facts, and to take proper briefing from the advocate, so that the burden of proving the facts as alleged by the Corporation in the written statement is properly discharged.

L18.23 BURDEN OF PROOF: The burden of proof rests with the party who substantially asserts the affirmative of the issue and not upon the party who denies it. Parties, on whom the onus of proof lies must in order to succeed, establish at least a prima facie case. He cannot on failure to prove so, take advantage of the weakness of his opponent's case.

L18.24 ARGUMENTS: After the evidence is completed, both sides are allowed an opportunity to argue their case. In the course of arguments, it is necessary to follow the issues originally framed and try to establish that the evidence on record proves the points alleged by the Corporation. In the arguments, a prayer for awarding costs may also be made, as this social security organization aimed at providing benefits to the employees and their families, cannot spend those funds on unnecessary litigation.

L18.25 COSTS: The provisions of Section 78(3) relating to costs are as follows:

78(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.

The court shall have full powers to determine by whom or out of propriety and to what extent such costs are to be paid. Where the court directs that any costs shall not follow the event, the court shall state the reasons in writing. Costs are soothing balm of litigation and the costs are awarded to a successful party whether it be plaintiff or defendant or applicant or respondent. But if the court in any particular case does not follow this principle in any particular case, than it is incumbent upon the court to state the reasons thereof in writing. A prayer for awarding costs and a certificate of costs may be filed before the judgment is pronounced.

L18.26 JUDGEMENT: The judgment is towards relief. The court may pronounce the judgment immediately after conclusion of the proceedings, or it may defer it to a later date. A formal decree is later is issued which specifies the number of application, the names of the parties, the particulars of the claim and the relief claimed. It may also state the amount of costs of the proceedings and by whom it is to be borne, or may state that the costs should be borne by the respective parties, in which case it amounts to no costs.

L18.27 APPLICATION FOR COPY OF JUDGEMENT: After the judgment is pronounced, an application for supply of the judgment copy is to be made in writing duly affixing the required court fee. The time limit for appeal if any starts from the date of judgment. Therefore, early action should be taken in this regard.

L18.28 EXECUTION OF DECREE: An application for execution of the decree has to be made in writing within one year before the court which passed the order. The EI Court cannot execute its own orders. Instead, on an application for execution being made, the court sends the same together with the necessary records to a Civil Court for execution and such Court has the power of executing it as if the decree has been passed by the Civil Court itself. The provisions of Section 78(4) in this regard are as follows.

"78(4): An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court".

L18.29 APPEAL: The provisions of Section 82 relating to 'Appeal' are as follows:

82. APPEAL. - (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the Limitation Act, 1963 (36 of 1963) shall apply to appeals under this section.

Substantial question of Law: 1. It need not be a question of general importance. It is sufficient if it arises between the parties. This however does not mean that every question of law between the parties is a substantial question of law.

involved, it would certainly raise a substantial question of law which would require final adjudication by the higher Court.

3. Where the part set of facts can lead to alternative findings in law then a substantial question of law would be involved.

4. When the judgment of the insurance court is contrary to the evidence on record, it can be treated as a substantial question of law.

5. When a point of law is practically covered by a decision of the Highest Court say the Supreme court of India, then it would not be a substantial question of law.

6. If the EI Court orders for payment of any sum to the other party and the Corporation is dissatisfied with the order, the Corporation may prefer an appeal against the said order. The EI Court may with hold that order on the directions of the High Court.

L18.30 Obtaining legal opinion for going on appeal: On receipt of the judgment, if it is against the Corporation, the Regional/Sub-regional Office may study the whole judgment in detail, note down the points worth consideration for an appeal, and seek the opinion of the standing counsel for preferring an appeal. The Regional Office/sub-regional office may on receipt of the opinion from the standing counsel, if considered necessary refer it to the Hqrs. for a final decision on appeal. The time limit of 60 days from the date of judgment should be noted and appeal filed within that time. Under exceptional circumstances, if there is any delay, a petition for condonation of delay may also be filed along with the appeal.

NOTE: Mainly the following are the stages one comes across in the proceedings of the Court:-

- Objections filed would be taken on record and the applicant also would be receiving copies of objections alongwith the list of witnesses etc.
- The Court, on the basis of the rival contentions raised in the application and replied to in the objections would frame the issues in the case.
- The applicant would also be furnishing his list of witnesses and start examining his witnesses.
- These witnesses are cross examined by the Corporation and in this exercise, the real facts of the case, not really brought out in the application will be elicited in the court. Cross Examination is an art and involves great court-craft and the counsels will be using every opening available to get all the information that would establish the full facts.

- The Corporation would be leading its evidence by summoning its witness and the depositions made by the witnesses would be recorded by the Court. The Counsel would be giving a brief to our witnesses in advance (a day prior to the case) and guides him how to make his averments in the court. In fact, all the depositions should be based on the reports filed in the Court and no material departure from the facts furnished should be resorted to as this would go against the Corporation.
- The witnesses would also be cross examined by the applicant and he would also make every effort to call the bluff and try to elicit facts which could favour his case. Therefore, extreme precaution is necessary while answering the questions and the SSO should adhere to his findings without yielding to the pressure tactics of the lawyer for applicants.
- All the depositions extracted and the facts elicited during the cross examination are intended to address the issues framed by the Court. If any point is to be re-clarified, there is a chance for re-examination during which a fact already brought out on the record would be properly clarified. However, during re-examination, no fresh points would be allowed to be raised.
- After all the witnesses statement are completed, normally no fresh witnesses would be allowed unless the Court takes a view that by allowing any new witness the real facts of the case would be established. Thereafter, the applicant and the counsel for the Corporation would address their arguments.
- The arguments should be pointed and all out efforts should be made to convince the Court about the convictions of the Corporation and establish the correctness of the action taken by the Corporation. All the citations of various Courts, reported cases including the decisions of Supreme Court etc. would be cited to buttress the stand of the Corporation.
- The court, after hearing the complete arguments would come to a balanced judgement and issues necessary orders.
- As soon as the orders are pronounced, theSSO and the counsel would be filing application for a copy of the judgement. No time should be wasted in filing the application for a certified copy of the judgement and it is preferable to file the application on the very same day.
- In case the judgement is adverse to the Corporation, the opinion of the Counsel should be taken about the appeal-worthiness of the case and based on his guidance and opinion, an appeal can be filed in the High Court.
- A period of 60 days is available for filing the appeal and this time limit will have to be strictly adhered to, as the High Court would not entertain the time- barred appeals normally. This time limit of 60 days would be extended by the number of days taken by the E.I. Court in rendering the certified copy of the judgement. In other words, if the time taken by the Court to prepare the certified copy of the judgement is 15 days from the date of the application made by the Corporation, the time limit of 60 days would be extended by these 15 days.

L.18.31 Long pendency of cases involving statutory dues/revenue-Necessity to get expeditious disposal : (Aide-memoire) Vide Hqrs. Inst. S-11/13/1/1/2001/Ins.-IV Dated 27-11-2001.

Aide-memoire

1) A special court in the nature of a Tribunal is set up under Sec.74 of the ESI Act. As per Section 75(3) of the Act, no Civil Court shall have jurisdiction to decide or deal with any question of dispute or to adjudicate on any liability which by or under this Act is to be decided by the E.I. Court. Hence jurisdiction of all Civil Courts is barred as far a ESI Act is concerned. The State Government also enacted a separate and simple procedure for E.I. Court called E.I.Court Rules under Sec.78(2), while giving certain powers of Civil Courts to E.I.Court. Appeal to High Court under Section 82(2) of ESI Act can only be raised in case of substantial question of law and that too within 60 days.

2) The object and purpose of the above set up is to ensure expeditious disposal of disputes under the ESI Act and to avoid the normal delay of litigation in the Civil Courts and to avoid appeal on question of fact.

3) Keeping in view the above object, if the cases filed in EI Court are allowed to remain pending for unusually long periods, the very purpose of having a separate EI Court with special powers, limited appeal etc. is totally defeated. This aspect needs to be emphasized whenever necessary before the courts.

4) While in some States, there are exclusive EI Courts, in some other states the powers of EI Court are given to a Labour Court Judge or Industrial Tribunal and in few places, the powers of E.I.Court are given to the regular Civil Judge/ Session Judge of each district. Even where Regular courts are vested with powers of E.I.Court, such courts will function in accordance with E.I.Court rules only, and not as regular courts under Cr.P.C/C.P.C. State Government issues appropriate notification constituting EI Courts for local areas in consultation with the High Court. State Government may set up an exclusive Court or may give the powers to an existing Court of appropriate status. The inputs and initiative towards a decision to set up exclusive E.I. Court or to entrust E.I. Court function to court with less work load shall come from RDs depending upon the existing system, in their Region, the workload of a court, the delay and existence of other courts with same status as in Section 74 with lesser workload. The situation may be different in each state but ideally an exclusive judge of EI court would be helpful and if this is not possible the existing Industrial Tribunal or Labour Courts could be given the powers of E.I. Court by the State Government. The system of giving the powers of E.I. Court to the regular district judge/session judge who is dealing with all kind of cases including criminal cases and

other similar tribunal may not be very satisfactory. RD may accordingly evaluate the existing system, look out for other options available and thereafter initiate proposal with the concerned department of the State Government and also follow it up through the Registrar of the High Court for change wherever necessary.

5) Ideally, an E.I. Court case should be disposed of in about a year but in any case, the situations of an E.I. Court case pending beyond three years are not desirable. If pendency is beyond three years, the Regional Director should examine and analyse the reasons for the pendency by discussing with our advocates, and if necessary by discussing with the learned judge of the E.I.Court. If there is difficulty ins serving summons or in any other court procedure, the matter could be discussed with the learned judge of E.I.Court or his officers and RD can extend all possible help including issue of summons through our own mechanism. While embarking on such a discussion with learned judge E.I.Court, care should be taken not to discuss merit of any individual case .

Once the case is filed against ESIC, it can not be listed unless a counter is filed. The responsibility is on the RD to ensure that counter is filed without any delay and within about 30 days of first notice. He should fix responsibility on the officer and inspectors concerned and ensure that under no circumstances filing of counter is delayed beyond 30 days.

6) There are occasions when our advocate seeks adjournments. There are also occasions when adjournments are sought by our advocate in connivance with our own witnesses coming from outstations. This not only entails unnecessary delay but also expenditure by TA/DA. This tendency is found in case of officials who, for one reason or other, wish to visit the places occasionally where E.I.Court is situated. A system should be developed so that under no circumstances our advocate seeks adjournment and if an adjournment is sought by our advocate, either for his own reason or on the suggestion of our official, a report is submitted to the RD who will be required to take a decision as to the bonafide of the adjournment and take appropriate action for any unnecessary adjournement.

7) There are occasions when adjournments are sought deliberately by advocate of the opposite party when our witnesses from outstations are made available with heavy cost for rendering evidence. Our advocate should resist request for adjournment from the petitioner/ opposite parties and in case the petitioner seeking such adjournment, written I.A.petition should be filed on the spot objecting to the adjournment and seeking cost to the Corporation. Standard IA petition should always be ready for such eventuality where the ESIC witness is available in the Court.

8) Our witness should be armed with a working sheet relating to TA/DA, Conveyance, and his average daily salary that is lost to the Corporation due to any adjournment. If an adjournment

is sought by the petitioner/opposite party in a case where our witness is available, an IA petition for awarding cost should invariably be filed on the spot and for this purpose the standard IA petition should always be available with the Advocate/Inspector. Failure to file this petition needs to be examined by RD and responsibility fixed.

9) The Inspector representing ESIC in any Court should invariably give written Report in respect of each case indicating presence of our advocate, development of the day in each case, action taken to file IA petition opposing adjournment, asking for cost in case of adjournment by the petitioner etc. In addition to individual case report, he should also submit a weekly diary as in the case of regular field I.I. giving date-wise cases that have come in each court and confirmation of submitting individual report. Failure to submit case report and weekly diary by the Inspector appearing in the court should result in a presumption that he was not present in the court.

10) Witnesses requiring to appear in the Court who are employees including ex-employees of the ESIC should also give independent report indicating the development, the brief summary of the deposition if given, confirmation of giving the cost statement to the advocate etc. The settlement of TA/DA bill of these officials should be subject to such reports.

11) If the advocates are having too many cases with them, the RD should engage additional advocates on the panel so that there is no difficulty. While engaging advocates, expertise and experience in labour law with particular reference to ESIC, standing in the Bar etc., should invariably be taken into account. While engaging an advocate, the RD should keep in mind that the Regional Director is entirely responsible for the successful conduct of cases.

12) Sub- Section 2(B) of Section 75 was specifically added by an amendment in 1989 to discourage unnecessary litigation by the employer and as a special measure to speed up the cases. This sub-section mandates that no dispute can be raised in respect of a contribution or any other due unless 50% of the amount due is deposited with the Court. While the main rule mandates 50% deposit, the proviso to this sub-section is only an exception to the main rule. The Proviso requires reason for waiving or reducing the mandatory deposit to be given in writing. As these are statutory requirements, the learned judge can not ignore them.

13) The above means that normally 50% should be deposited at the stage of admission of the case itself and any reduction or waiver should be an exception. Since the reason for such reduction/ waiver has to be recorded in writing, normally the learned judge should give an opportunity to the respondent Corporation to show causes why such a reduction or waiver can not be granted. If the disputed amount is substantial and if it is felt that even if the Corporation succeeds in the case, the actual recovery after lapse of time would be difficult and for such other reasons, Corporation should oppose any reduction.

14) It is however found that routinely Courts, without giving in writing , reduce or waive this requirement. Many RDs have reported that sub section 2(B) of Section 75 is more often ignored.

15) If the above clause is ignored or routinely the deposit is waived or reduced, the RD should first discuss the matter with the learned judge(without however referring to any individual case) and the difficulties encountered by ESIC towards recovery in the event of petition being dismissed after lapse of time should be explained.

16) In appropriate cases, we should invariably file IA petition against the reduction or total waiver of the requirement of 50% deposit, so that in case the IA petition is rejected and in appropriate cases, Corporation can consider going to the High Court for further direction.

17) Notwithstanding the appeal power under section 82 Corporation can also examine filing writ under Article 227 seeking a direction against E.C.Court, where the mandatory requirement of 50% deposit is routinely waived or reduced.

18) There are Supreme Curt judgments criticizing the tendency on the part of the lower courts in granting liberal stay in fiscal matters. The Supreme Court case reported in Asst. Collector of Central Excise- Chander Nagar West Bengal vs. Dunlop India AIR 1985 SC 330, is an example on this issue. Wherever the stay is pending beyond a reasonable time involving substantial amount, we should consider filing IA petition to vacate the stay or modify it requiring partial deposit quoting the above judgment and also any other judgment which our learned advocate can locate.

19) Where the pendency is too many, the Regional Director can discuss with the learned judge for block listing of old cases, for which special assistance, if any, in terms of ministerial help, additional advocate etc. can be provided by Regional Director. Further the Regional Director should take up the matter with the Registrar of High Court and request him to issue necessary directions to the E.I.Courts for early disposal of pending cases. In this regard Hqrs. letter No.V-12/14/1/98-Ins.III dated 12.2.1999 may be referred to.

20) Cases before High Court could be either as a writ filed by employers, IPs Union etc. or by an appeal under Section 82 of the ESI Act. There could also be few cases under Company law. There is tendency on the part of many of the employers or in some cases on the part of individual employees or their unions to move High Court directly under Article 226 of the Indian Constitution. While the dispute can be raised before E.I.Court, moving High Court under Art.226, may often be to circumvent sub-clause 2(B) of Sec.75, viz the requirement of 50% deposit in the court. Writ under Article 226 is allowed only when there is no alternative and efficacious remedy. This is not so in the case of ESIC since there is an exclusive and special court called E.I.Court

set up under Section 74 which has powers to entertain all kinds of disputes and issues and can also issue stay orders. Therefore, whenever writ under Article 226 is filed, our Advocate should oppose and get this dismissed in-limine on the ground of availability of alternative efficacious remedy, and where necessary by filing an I.A.Petition.

21) Where Standing Counsel is appointed, he may be requested to liaise with the concerned Registrar of the High Court to get notices issued to him directly in the court and get this noted in the cause list issued. Most of the High Courts have computerized system of registration of writs and other case, and the name of Standing Counsel of various government departments, are on the High Court Computers to enable automatic notices. Our Standing counsel can also take steps to similarly get his name in the High Court Computers for this purpose.

22) Where there are no Standing Counsels but only Panel Advocates, all Panel Advocates could be advised to get notices served to any one of them and oppose admission of any writ on the ground as stated above. They may also be requested that even in the absence of a formal notice or appearance of their name in the court list, if they are available in the court hall at the time of mention of such a writ, or where they are aware of a proposed motion in the Court for stay, they could always take the notice in the open court and oppose the writ on the above ground. In such an eventuality, they may report this to the ESIC and it is not mandatory that the very same advocate has to be appointed in that particular case, though normally, this should be done. In fact in most High Courts, writs and admission of appeals are by designated Bench only; and on designated day; and hence we can always arrange presence of one of our advocates before such benches on the days when writs or appeals come up for admission, to either oppose the same on the ground of availability of alternative and efficacious remedy (in case of Writs) or lack of any substantial question of law (in case of Appeals) and where necessary insist for time to file counter within 2-3 days to avoid any stay. As far as E.I.Courts are concerned, our legal I.I. and at least one of the panel advocates in E.I. court should invariably be available at the admission stage of new cases, so as to oppose ex-parte stay and deviation from the requirement of sub-Section 2(B) of Section 75 and also take notice for submitting formal objection in writing in case there is a plea from the petitioner to waive/reduce the stipulated 50% deposit.

23) The idea is that as far as possible we should avoid ex-parte stay by getting notices served to the Standing Counsel or panel advocate, get their name on the computer of the Registrar concerned and also keep an alert watch in the open court itself.

24) Inspite of the above, if an ex-parte stay is issued in the case of a writ under Article 226, the Regional Director should examine the possibility of filing an I.A. immediately with a prayer to dismiss the writ on the ground mentioned above and vacate the stay or alternatively to seek a direction for deposit of part of the disputed amount with sufficient grounds.

25) Every effort should be made to avoid delay in filing appeal wherever necessary. It should be remembered that the time given for appeal is only 60 days under Section 82. This time starts running from the day he judgment is pronounced and only the period actually taken by the court in supplying the certified copies of judgment is reduced. Wherever the delay is at our end, normally condonation for delay is not granted. Where an adverse judgment is appeal worthy but lost only on the ground of delay in filing appeal, personal responsibility will have to be fixed and reported to Hqrs.

26) All officials dealing with the cases should ensure that the certified copy of judgment which has gone partially or fully against the Corporation is handled hand to hand, till a decision is taken to file appeal or otherwise and in the case of a positive decision till the appeal is filed. This question should be examined alongwith written opinion of the advocate who is bound to provide a written opinion wherever the decision fully or partially is against the ESIC, without any delay and settlement of his fee is subject to such opinion. Where appeal is to be filed in Supreme court, all original documents, namely writ petition, counter, memo of appeal , affidavit-in-reply, judgments of Single and Division bench, opinion of advocate etc. should be sent without any delay whatsoever, by name cover addressed to JD(R)/AC(R); by speed post.

27) As stated above a counter to any writ petition or appeal filed in the High Court should also be filed within 30 days of getting the notice. Counter should be filed irrespective of the I.A. Petition mentioned under item 22 above. Para-wise comments for preparing a counter should invariably be furnished to the Advocate and the Regional Director should invariably approve draft counter prepared by the advocate. Where a case requiring a major policy decision or where the prayer is for a direction which is entirely within the powers of the Director General, ESIC or Standing Committee, the draft counter should also be sent to the concerned division of Hqrs. for approval and in appropriate cases para-wise comments should also be sought from the appropriate branch of the Hqrs. where the factual matrix of the case or the policy formulation is entirely within the Hqrs. Office or the Ministry.

28) Normally the cases in the High Court are disposed of within two or three years, through in certain High Courts longer pendency occurs whereas in some of the High Courts the disposal is faster. The Regional Director concerned should find out from our own advocate as to the normal pendency of writs, appeals etc. in High Court so that our own cases are not delayed beyond the normal time taken by the particular court. In such situation where some of our cases are pending beyond the normal time taken by a particular High Court for different kind of cases, it is possible that the case records are misplaced. In such a situation we should always file an expeditious petition to get the matter listed for priority hearing and/or petition before the concerned Registrar for getting the matter listed so that appropriate directions are issued by the Court and/ or Registrar of the Court where the delay is more than normal delay.

29) Regional Director should make out a list of all High Court cases pending beyond the normal period taken by the High Court in his Region, and discuss the matter with the concerned Registrar to get a block listing of such unduly pending cases. To this end, appropriate assistance should also be given.

30) Some of the Regional Directors have been able to get such block listing of unduly pending High Court cases. Some of the Regional Directors have also got directions issued by the High Court to the E.I.Court for speedy disposal of long pending cases. The Advocate concerned will guide the RDs for getting such block listing or direction. In appropriate cases even a direction can be sought from the Hon'ble Chief Justice of the High Court.

LEGAL ACTION AGAINST THE DEFAULTING EMPLOYERS

Introduction: In order to enforce discipline among the employers to make regular compliance with the provisions of the Act and the regulations made there under, and to adhere to the time limits prescribed, certain penal provisions are prescribed in Section 85 and 85-A under Chapter VII of the Act. These provisions and the procedure for prosecuting the defaulting employers are explained in this chapter.

L18.32 Provisions of Section 85:

85. PUNISHMENT FOR FAILURE TO PAY CONTRIBUTIONS, ETC. - If any person

(a) fails to pay any contribution which under this Act he is liable to pay, or

(b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or

(c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or

(d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or

(e) fails or refuses to submit any return required by the regulations or makes a false return, or

(f) obstructs any Social Security Officer or other official of the Corporation in the discharge of his duties, or

(g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided,

he shall be punishable –

(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but –

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees :

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence or imprisonment for a lesser term;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.

L18.33 Enhanced punishment for repeated offences:

85A. ENHANCED PUNISHMENT IN CERTAIN CASES AFTER PREVIOUS CONVICTION. - Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to two years and with fine of five thousand rupees:

Provided that where such subsequent offence is for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to five years but which shall not be less than two years and shall also be liable to fine of twenty-five thousand rupees.

L18.34 Provisions in the Act for prosecuting the defaulting employers:

THE REQUIREMENTS LAID DOWN UNDER SECTION 86 OF THE ACT FOR FILING A COMPLAINT IS AS UNDER:

(i) 86 (1) : - No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner or of such other officer of the Corporation as may be authorised in this behalf by the Director General of the Corporation.

The Director General had authorised the Regional Directors of all the regions and Joint Director In-charge of Sub-Regional Offices to sanction the prosecutions under I/3 of the "Delegation of Powers". In the absence of the Regional Director, the Joint Director is empowered to sanction the prosecutions under Section 84 and 85 of the Act.

(ii) 86(2): No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under this Act.

These are the classes of criminal courts under section 6 of Cr.P.C. The complaint should be filed in metropolitan Magistrate Court or in First Class Magistrate Court having jurisdiction over the place of offence.

NOTE: (a) The Employees' Insurance Court set up by the State Government under Section 74 of the Act is for deciding any matters under Section 75 and therefore it is a civil court. This Court is not empowered to try the Criminal Offences under Section 84 and 85 of the ESI Act. However, under Section 11 of the Cr.P.C. the State Government may in consultation with the High Court, confer the powers of the criminal court, on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court. While appointing a first class Magistrate as Judge of the E.I.Court, if the State Govt. confers the powers on him to try Criminal offences also, basing on the said notification, the complaints under Section 84 and 85 can also be tried by the special first class Magistrate of the Employees' State Insurance Court. Now, in view of creation of an Appellate body in the Corporation itself for appealing against the orders issued under Section 45-A, the number of cases in EI Courts under this category may come down. Therefore, the idle capacity of EI Courts can be utilized for trying the criminal cases under Section 85. For this purpose, the Regional Director of the Region may request the State Government to issue necessary notification empowering the Judge, E.I.Court to try the offences under Section 84 and 85 also. This procedure is followed in certain States like Andhra Pradesh.

(b) The State Governments in their respective states may constitute special courts to try the Economic Offences in which case, the Corporation can file complaints under Sections 84 and 85 in such Courts.

(c) In all other cases, the complaint is required to be filed either in a Metropolitan Magistrate Court or in I Class Judicial Magistrate Courts having jurisdiction over the place of offence.

(iii). 86(3): No Court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof. Thus, a complaint is to be made to the Court in writing.

NOTE: (**A) Period of limitation**: The time limit of six months prescribed under Sub-Section(3) of Section 86 was deleted in the Amendment Act 29 of 1989. Hence the period of limitation prescribed

under Section 468(2) and (3) of the code of Criminal Procedure 1973 (Act 2 of 1974) (Cr.P.C.) which reads as follows shall apply:

Section 468(2) of Cr.P.C.:- The period of limitation shall be:-

(a) Six months, if the offence is punishable with fine only;

(b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

Section 468(3) of Cr.P.C;- For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

(B) Commencement of the period of limitation: According to Section 469(1) of the said Act the period of limitation commences on the date of offence or where the commission of offence was not known, the first day on which such offence comes to the knowledge of the aggrieved, whichever is earlier.

(C) According to the above provisions, the time limit for filing a 'Complaint' is:-

(a). Three years from the day on which the cause of action arose in case of non-payment of contributions under Section 85(a) of the E.S.I. Act.

(b). For all other offences from (b) to (g) under Section 85 the time limit for filing complaint is one year from the day on which the cause of, action arose.

(If the complaint is for non-payment of contributions and non-submission of returns, the limitation of three years for non payment of contributions shall apply to both in view of the provisions of Section 468(3) of Criminal Procedure Code, 1973.)

(D) Place of offence: For non-payment of contributions, the place of offence would be the place where the factory/establishment is situated as well as the place where the Regional/Sub-Regional Office is located, since the payment is made to the A/c No.1 of R.O. /SRO. Therefore, the complaint is to be filed in the Court in either of these places. The complaint is to be filed under Section 85(a) in this case.

For non-submission of the return of contributions and non-submission of Declaration Forms, the place in whose jurisdiction the Branch Office to which the return of contributions are to be sent as well as the Court having jurisdiction over the place where the factory/establishment is situated, will have the

jurisdiction to try the offence. Complaint to be filed under Section 85(a) and 85(e).

For non-production of records to the SSO for inspection, the place of offence is the place where the factory/establishment is located. The complaint is to be filed in the Court having jurisdiction over that place. Complaint to be filed under Section 85(g).

L18.35 Continuing offence: Non-payment of contributions is a continuous offence. According to Section 472 of the Criminal Procedure code 1973, in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

L18.36 NON-COGNIZABLE OFFENCE:

The Criminal Procedure Code provides offence in two classes. One class is of COGNIZABLE OFFENCES' and the other is of 'NON-COGNIZABLE offences'. A cognizable offence is an offence for which the Police can arrest an offender without a warrant form a Court and investigate the offence and prosecute the offender. A non- cognizable offence is one in which the Police cannot take any action without a WARRANT from a competent court. All offences under the Employees' State Insurance Act are non-cognizable. The Police cannot, therefore, take any action in such offence. A complaint is therefore, to be filed by an officer of the Corporation before a Competent Court for this offence.

Non-payment of Employees' Share of contribution deducted from the wages of employees amounts to breach of trust under Section 40(4) of the Act and under Section 405 I.P.C. which is a cognizable offence under Section 406 I.P.C. An offence under Section 420 IPC for cheating the Corporation and for obtaining money from the Corporation on false declaration is a cognizable offence. The Police can, therefore, be moved to take action against the offenders in such cases.

L18.37: Identifying the defaulting employers:

The defaulting employers are identified from the following source:

a) On receipt of defaulters' statement from the C-6 Branch for each contribution period, showing the list of defaulters in payment of contributions by the end of June and December for the contribution periods ending on 31st March and 30th September respectively;

b) Report from the SSO regarding non-payment of contribution including employees' contribution deducted from their wages but not remitted to the Corporation;

c) On receipt of defaulter' statement from the Branch Managers showing the list of employers who defaulted in submission of return of contributions for each contribution period after 42 days of expiry of each contribution period;

d) Report from the SSO regarding non-production of records for inspection despite repeated visits;

e) Report from the SSO or Branch Manager regarding non-submission of Declaration forms/ Accident Report for any of the employees; and

f) Report from the Branch Manager regarding non-furnishing of or wrong furnishing of information called for in ESIC-71 (Calling contributory particulars of an employee under Regulation27) and Form-10(Abstention Verification under Regulation 52-A).

L18.38 Issue of show-cause notice by Regional Office for non-payment of contributions and non-submission of return of contributions:

On receipt of defaulters' list from C-6 Branch, the Revenue Branch may, while issuing C-18 actual/ adhoc, simultaneously issue a show-cause notice with the approval of the Regional Director/Joint Director in-charge to the principal employer by name and also the factory/establishment proposing prosecution action under Section 85(a) and (e) by Registered Post acknowledgement due. There is no difficulty in cases where the amount of contribution payable is known for filing the complaint. But if the amount is not known, the Court may object for not quantifying the amount of default, in which case, the show-cause notice cannot be issued until the contribution is determined under section 45-A and waited for 60 days to watch for appeal, if any, by the employer against the said order. If the employer complies in response to the show-cause notice, further action may be dropped and the show-cause notice cancelled. In case of no response, the case may be processed further for prosecution.

L18.39 Action on the part of SSO in case of non-production of records:

In order to create the evidence for prosecution, the following steps may be followed:

a) For regular inspection of records, the SSO is required to send advance intimation to the employer under certificate of posting, fixing the date and time, period and records required for inspection in the standard form C-20 at least 15 days in advance, visit the unit on the date and time fixed and call for records.

b) In the event of failure to produce the records for inspection on the schedule day of visit, if it is for valid reasons and the employer requires an adjournment and if the SSO is satisfied, he may give a short adjournment of seven to 15 days and fix the next date of inspection in consultation with the top executive, issue the standard letter by hand showing the next date of visit under proper acknowledgment. The office copy of the letter and acknowledgement may be preserved for evidence.

c) In case the unit is found closed on the date of first visit, the standard letter fixing the next date for inspection with necessary modifications may be sent to the principal employer and the factory/establishment by Registered Post with acknowledgment due. The postal receipt, postal acknowledgment or undelivered cover, may be preserved as record.

d) The SSO may visit the unit again on the next day fixed in the letter positively. No adjournment may be allowed over phone, orally or otherwise and he should invariably visit the unit on the date specified in the letter.

e) In rare cases, where the SSO is satisfied that for the reasons really beyond the control of the Management of the unit, the full records could not be produced even at the time of second visit, the SSO may on merit, decide to give yet another adjournment and such adjournment may be given to a date not later than 7 days from the date of second visit and a fresh letter in the standard format may be given to the chief executive of the unit and his acknowledgement obtained. The office copy and acknowledgment must be retained as evidence.

f) In case of unavoidable leave etc. of the SSO on the date fixed, he may inform the employer in writing and fix another date for Inspection not later than 15 days from the date of previous visit and the standard letter may be issued either by hand delivery or by Registered Post with acknowledgment due.

g) If the employer fails to produce the records even after the above drill, on the third visit also, the matter may be referred to the Regional Office /Sub-Regional Office (concerned Revenue Branch) along with all the material evidence for initiating prosecution action. Action on all these steps may be completed within a maximum period of 2 months from the date of first visit.

h) The SSO shall record appropriate remarks in the Inspection Book of the employer on each day of his visit and keep carbon copy of the same duly acknowledged by the employer for his record, which shall also be forwarded to RO along with other material evidence.

L18.40 Action on the part of the Branch Manager in the event of non-submission of Declaration forms etc.:

A letter calling for submission of the declaration forms on receipt of the coverage intimation copy by the Branch Manager by hand-delivery or under certificate of posting, followed by a standard letter by Registered Post acknowledgment due may be issued. If there is no reply or response to this notice, a second notice in the standard format may be issued by Registered Post acknowledgment. due. In the event of failure to submit the Declaration forms even after issue of the second notice, the case may be referred to RO/SRO along with all the material evidence for initiating prosecution action.

L18.41 Issue of show-cause notice to the employer by Regional Office for non-production of records/ non-submission of Declaration forms:

On receipt of report from the SSO/Branch Manager, the Revenue Branch will immediately issue show-cause notice to the principal employer by name as well as to the factory/establishment with the approval

of the Regional Director/Joint Director in-charge as to why prosecution action should not be taken against him under Section 85(g) for non-production of records and under Section 85(e) for non-submission of Declaration forms. In case no response is received from the employer, or the response is found not satisfactory, the case should be processed further.

Even after recommendation for prosecution, the SSO can continue his efforts to complete the inspection if the employer comes forward and produce the records, in which case, he will inform the Revenue Branch regarding completion of his inspection, and dropping for further action in the matter. His inspection report follows along with the fortnightly diary.

Similarly, if the employer submits the Declaration forms to the Branch Office in response to the RO/SRO show-cause notice, the Branch Manager may process them under intimation to the Revenue Branch for dropping further action.

L18.42 Cancellation of show-cause notice:

In the event of compliance by the employer after issue of show-cause notice, the file is to be submitted to the Regional Director/Joint Director in-charge for cancellation of the show-cause notice and dropping prosecution action.

L18.43 Maintenance of the show-cause notices register: Each revenue branch shall maintain a record of show-cause notices issued under Section 85 and 85-A in a register. For this purpose, at the time of dispatch of the notice, an entry is to be made in this register. Disposal of these show-cause notices by way of cancellation in case of compliance with the approval of the RD/JD i/c. and initiating prosecution action in case of non-compliance should also reflect in this register against each entry. A monthly summary showing the number of notices pending at the beginning, issued during the month, disposal and pending at the close of the month should be drawn and put up to the Branch Office, who in turn submit to the RD/JD i/c for his perusal.

L18.44 STEPS TO BE TAKEN BEFORE SANCTION OF PROSECUTION:

i) To ensure that prosecution is sanctioned against definitely covered and defaulting employers;

ii) To ensure that the delinquent is given sufficient opportunity to explain for which a show cause notice may be sent to him under registered cover. Reply, if any received, may be duly considered.

iii) Make sure that the show-cause notice has been duly received by the principal employer/factory as per the postal acknowledgement on record;

iv) There is no compliance from the employer against the default for which the show-cause notice is issued till the date of sanction of the prosecution.

v) Desirability of sanctioning prosecution against the Chairman of the Board of Directors, the Managing Director, Manager in case of a Limited Company, the Proprietor or the Managing Agent, in case of sole proprietary concern, all working Partners in the partnership concern and any other authority or person responsible for the supervision and control of the factory or establishment, as the case may be, may be considered in which case, a show-cause notice is to be served on them. In case any one of them can successfully show that he is not a Principal Employer within the meaning of Section 2(17]) he may be left out.

vi) Offence by a Company (Sec.86A) where the person committing the offence is a Company, every person who at the time of offence committed, was incharge of and was responsible to the Company, as well as the Company shall be deemed to be guilty to the offence and shall be liable to be proceeded against and punished for this purpose, Company means a body Corporate and includes a firm and other associations of individuals and Director, in relation to a Company means the Managing Director or a whole time Director and a firm means a partner of the firm.

vii) It may be ensured that sufficient evidence is available to prove the commission of the offence by the delinquent(s) .

L18.45. FORM OF SANCTION:

In regard to the sanction, we have to be very careful. It is not necessary that the sanction should be in a particular form but it must be properly prepared. A sanction which simply names the persons to be prosecuted and specifies the number of the section of the Act contravened is not a sufficient and proper sanction. It must he proved that sanction was given in respect of the facts constituting the offence charged. It is, therefore, necessary that the facts should be referred to on the face of the sanction. It is desirable that the sanction should mention the documents which were perused by the sanctioning authority before giving the sanction. The sanction should contain main facts constituting the offence. If the sanction contains this material, it can be said that the sanctioning authority has applied its mind before granting the sanction for prosecution. If however, the sanction is defective in this respect, the defeat can be overcome by leading the evidence that the facts constituting the offence were laid before the sanctioning authority and after applying his mind to those facts, that the authority gave the sanction.

The Regional Director/Joint Director In-charge is duly authorized by the Director General to sanction the prosecution, and a copy of such authorization be enclosed to the sanction order.

In case if it is a second or subsequent offence after the first conviction, the case falls under Section 85-A warranting enhanced punishment including compulsory imprisonment. Therefore, reference to the details of previous conviction such as case number, date of judgment, findings of the court and the punishment awarded, should be furnished in the sanction order.

It is also advisable that the sanctioning authority should specify the person authorized to file the complaint. Non-mention of the name the complainant in the sanction may not be fatal to the prosecution but it must be mentioned in the sanction by way of abundant caution rather than a legal necessity. It, however, makes no difference whether the complaint is filed by a person named in the sanction or by any other officer. Normally, whoever files the complaint has to attend the Court but in view of the provision contained in the proviso to Section 247 of the Criminal procedure Code, the Court may not require his personal attendance at the time of hearing of the case. In filing the complaints, the provisions of Section 86 of the E.S.I Act should be taken into consideration.

L18.46 Number of offences which can be included in one complaint:

(I) Section 219 of the Criminal procedure Code lays down that three offences of the same kind committed within the period of one year can be tried together. Therefore, three offences of each category committed within the period of one year can be included in one complaint. Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any Special Law-e.g:E.S.I.Act.

(2) Section 220 of the Criminal Procedure Code lays down that all offences committed in the course of the same transaction irrespective of the number thereof can be tried together.

(3) Since non-payment of contributions is held to be a continuous offence, irrespective of the period involved, it may be treated as one offence for the purpose of Section 219.

L18.47 Drafting the Complaint:

(1). The name of the Court in which the complaint is going to be filed is to be written on top of the complaint as " BEFORE THE FIRST CLASS JUDICIAL MAGISTRATE, V METROPOLITAN MAGISTRATE COURT, MUMBAI"

(2) Below that the case no. and year is to be written as "Prosecution summons case No: _____ of _____ (After the case is registered, the case no. and the year will be entered by the court staff in the blanks)

(3). The name of the complainant is to be written as "EMPLOYEES' STATE INSURANCE CORPORATION, REGIONAL OFFICE,————————(place), represented by Sri_____, Social Security Officer_____ COMPLAINANT

(4.) The name or names of the accused with father's name, age, designation, residential/official address is to be written. If there is more than one accused, they are to be numbered as 1, 2 and so on.

(5.) Subscription as "Complaint under Section 85(a) and (e) of the Employees' State Insurance Act 1948".

(6). Contents of the complaint:

a) The addresses of the accused no. 1 and 2 for issue of summons if it differs from the above;

b) Coverage of the factory, its code number and the principal employer;

c) The requirement of the principal employer of contributions/submission of records under the provisions of the Act, rules and regulations;

d) Default position;

e) Details of notices issued and evidence thereof;

f) Response if any of the employer to the notices;

g) Previous conviction if any for filing the case now under Section 85-A;

h) Place of offence and jurisdiction of the court;

i) Within the time limits for filing the case;

j) Sanction of the competent Authority for filing the case;

k) Praying for direction of the court to the accused for payment of contribution and submission of returns;

l) Prayer for awarding the costs, and pass on the share in fine imposed;

m) Enclosures if any in support of the complaint as evidence including the sanction for prosecution;

n) Verification;

o) Signature of the complainant with date and place.

Normally, the prosecution cases are dealt with by the Social Security Officer in the Criminal Courts. But if a counsel is engaged, along with the complaint, the counsel has to file his Vakalatnama.

L18.48 Filing the complaint in the Court: The complaint is to be filed in the Court after affixing the required Court fee stamps. Additional copies of the complaints depending on the number of accused are to be enclosed for supply to the accused. The SSO may retain one copy of the complaint for his record. If a Counsel is engaged, one copy is to be given to him for his use.

L18.49 Registration and numbering of the complaint: The Court after registering the complaint, assign a case number to it, which shall be entered on all copies of the complaint and intimated to RO/SRO. In all future references, and correspondence, the case is to be referred with that number.

L18.50 Role of the Social Security Officer attending the Court cases: He should visit the Criminal Court daily, observe the proceedings, and intimate the progress, next date of adjournments etc. to the RO/SRO. Where no Counsel is engaged, the SSO himself has to conduct the case on behalf of the Corporation. He should therefore study each case, and familiar with the facts of each case.

L18.51 Trial of offences:

The trial of offences is regulated by the Criminal Procedure Code. We are mainly concerned with two modes of trials namely, trial by summons and trial by warrant. Summons case is a case in which offence charged is punishable with imprisonment of one year or less. Warrant case is a case in which the offence charged is punishable with imprisonment exceeding one year. For non payment of contributions, the warrant procedure is applicable while for other offences, the Summon procedure is suffice.

L18.52 Procedure to be followed in the trial of the cases:

(1) Summons case:

The trail of the summons case is conducted in the following manner:

When the case is taken up for trial, the plea of the accused is taken first. If he pleads guilty, and if the Court accepts the plea of guilty, the accused is convicted and sentenced. No evidence is recorded. If the accused pleads not guilty, then the evidence for the prosecution is first led. Thereafter the statement of the accused is taken. Then the accused leads his evidence in support of his defence. Thereafter, there are addresses for the prosecution and the defence. Then the Court delivers the judgment convicting or acquitting the accused. If the accused leads no evidence, the prosecution has to address first. If defence evidence is led, the defence has to argue first and the prosecution replies.

(2) Warrant Procedure:

In warrant procedure, prosecution has to lead evidence first and establish a prima-facie cases against the accused. Witnesses are examined by the prosecution and cross examined by the accused. The accused

then makes a statement. If a prima facie case is not made out against the accused he will be discharged. If the prima facie case is made out, the Court frames an appropriate charge and takes the plea of the accused. If the accused pleads guilty, and if the Court accepts the plea of guilty, the accused is convicted and sentenced, if the accused pleads not guilty, the witnesses examined before the framing of the charge are again cross-examined by the accused. Thereafter the prosecution can examine additional witnesses and they can be cross-examined by the accused. Then the statement of the accused will be taken and his evidence will be led. Thereafter there would be addresses and then judgment. The prosecution will address first if there is no defence evidence. If there is defence evidence, the defence addresses first and then the prosecution replies.

(3) Power of Court to convert summons-cases into warrant cases. Under Section 259 of the Cr. P.C., When in the course of the trial of summon-case relating to an offence it appears to the magistrate punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of Justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to rehear the case in the manner provided by, this Code for the trial of warrant-cases and may recall any witness who may have been examined.

L18.53 Magistrate may dispense with personal attendance of accused.

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of' the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of' the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

L18.54 NON APPEARANCE OF THE COMPLAINANT:

(i). If on the date of the hearing of the case, the complainant in a case trial by summons case procedure, is absent, the accused will be acquitted unless the Magistrate for some reasons thinks proper to adjourn the case. Once the accused is acquitted, he cannot be again prosecuted for the same offence. It is, therefore, necessary that Social Security Officers should attend the Court on the date of the bearing at the appointed time. In case the Social Security Officer is unable to do so, he should make arrangement for another person to attend the court and inform the Magistrate the reason for his absence

(ii.) In a warrant procedure case, if the complainant is absent and no arrangement is made for the conduct of the case in his absence, the accused will be discharged if the charge has not been framed against the accused. In such a case, the accused can be prosecuted again for the same offence if proper reasons are shown for the absence of the complainant on the date of the hearing of the case. In a case in

which charge is framed against the accused and if the complainant is absent and no arrangement is made for the conducts of the case, the accused will be acquitted. The case cannot be revived

(iii) In either of above cases of acquittal, the case can be revived by preferring an appeal of to the high court for setting aside the order of the acquittal. The High Court will, however, not order retrial unless there are cogent reasons for doing so.

L18.55 APPEAL AGAINST ACQUITAL OF THE ACCUSED:

When the accused person is acquitted, an appeal will lie to the High Court both on question of fact and on question of law under Section 82(2) of the Act. The appeal against acquittal is to be filed by Corporation within the prescribed time limit in appropriate cases. When an accused person is acquitted the SSO shall make an application to the trial Court for a certified copy of the proceedings and judgment on the same day along with the opinion of our Counsel on the appeal worthiness of the case and forward the papers to the Regional Office for appropriate action.

L18.56 AWARDING COMPENSATION OR COSTS:

(a) Under Section 357 of the Criminal procedure code, the court may while passing Judgment, order the whole or any part of the fine to be recovered as compensation in defraying the expenses properly incurred in the prosecution.

(b) Under Section 359 of the Criminal Procedure code, the Court while convicting the accused, may in addition to the penalty, order him to pay to the complainant in whole or in part the cost incurred by him in the prosecution.

It is, therefore, necessary to include a prayer in the complaint for payment of compensation/costs to meet the cost of prosecution.

In Criminal Cases, where the fine is imposed on the accused a request should invariably be made to the Magistrate for sharing of the fine.

L18.57 Power of the Court to make Orders:

85C. POWER OF COURT TO MAKE ORDERS. –

(1) Where an employer is convicted of an offence for failure to pay any contribution payable under this Act, the Court may, in addition to awarding any punishment, by order, in writing, require him within a period specified in the order (which the Court may if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution in respect of which the offence was committed and to furnish the return relating to such contributions.

(2) Where an order is made under Sub-Section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the Court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punishable with imprisonment in respect thereof under Section 85 and shall also be liable to pay fine which may extend to one thousand rupees for every day after such expiry on which the order has not been complied with.

In view of these specific provisions the complaint should necessarily contain a prayer seeking the directions of the Court to indicate the time by which the contribution in question are to be paid by the accused in the case. Once the Court fixes the deadline in such cases it should be ensured that the amount is paid before that date and in the event of the failure to make the payment case should be further processed for criminal proceedings.

L18.58 Legal action against BIFR cases:

There is no bar for prosecuting the employers registered under BIFR and Rehabilitation Scheme sanctioned, as Section 22 of SICIA does not give any protection to such companies in criminal cases. Therefore, action may be taken against them in the following situations under section 85 of the Act/406 IPC/138 of NI Act:.

a) Contribution deducted from the employees' wages, but not paid to the Corporation.

b) After sanction of the rehabilitation scheme, the employer defaulted in payment of current contributions.

L18.59 Offences under the Indian Penal Code:

Under section 85(a) for non-payment of Employees' contribution deducted from the wages of the employee, it amounts to breaching of trust, as the employees has made the principal employer as a trustee to the sum deducted from his wages for payment to the corporation under Sub Section (4) of Section 40 of the Act. Non payment of such amount amounts to Criminal Breach of Trust under Section 405 of the Indian Penal Code and under Explanation 2 thereunder, which is punishable under Section 406 thereof. Hence, under such offences, the case can be filed under IPC also in the concerned police station. However, according to the explanation below 405, the term " employer" does not include the principal employer as per the judgment of the Supreme Court in the case of S.K.Agarwal and others in C.A. No. 222 of 1990 (1998 LLR.806) dated 31st July 1998. Therefore, Hqrs. Office have advised in letter No. T- 11/14/41/84 - Ins. IV Dated: 9/03/2000, to file the cases in such cases against the company under Section 86-A of the Act.

L18.60 Prosecution against Govt./Semi-Govt. Officials:

Prosecution against State or Central Govt. Officials may be sanctioned only after obtaining prior approval of Headquarters.

L18.61 Withdrawal of prosecution:

No case of prosecution launched under Section 85 of the Act may be withdrawn without the prior approval of the Headquarters Office, except when an Amnesty scheme has been introduced, and the employer fulfils the conditions of the Scheme.

L18.62 Revenue Recovery Action: Since a Criminal case has been launched, Civil or Recovery action need not be deferred.

NEGOTIABLE INSTRUMENTS ACT: (Section 138)

L18.63 DISHONOUR OF CHEQUE FOR INSUFFICIENT FUNDS:

Where an employer makes payment of contribution or any other payment due to the Corporation by a cheque and such cheque sent for clearance was dishonoured by the Bank, it amounts to a criminal offence. A notice to the principal employer under Section 138 of the Negotiable Instruments Act is to be issued within 15 days of receiving intimation of dishonour by Registered Post Acknowledgement due. If the Principal Employer fails to pay the amount of dishonoured cheque within 15 days of the receipt of notice, a Criminal case can be field in an appropriate Criminal Court within one month from the date of issue of such notice

L18.64 Withdrawal of the case in case of payment full amount by the employer:

The Regional Director/Joint Director in-charge is permitted to withdraw a case filed under Section 138 after obtaining the concurrence of the Finance & Accounts Branch, if the employer, during the trial of the case, makes full payment involved in the bounced cheque along with a compounding fee of Rs. 5000/- or the actual fee we are required to pay to our Advocate whichever is higher only for the first offence. (Hqrs. letter No. T-11/14/Misc/2/2009-Rev-II Dated: 22/11/10)

L18.65 Prosecution for non production of records and obstruction of SSO & other officials- question of inspection of records subsequently.(Hqrs. Instruction No.T-11/14/32/4/2002-Ins.IV Dated;03/05/2002)

Recently a doubt was raised by one of the RDs as to whether the inspection of records can be taken up even after the employer was prosecuted and convicted for non production of the record in the past, for a given period under Section 85(g).

It is clarified that notwithstanding a proposed prosecution under Sub Section (g) or (f) of Section 85 or actual prosecution and pendency criminal cases, or even conviction and sentence of an employer for the offence of failure/refusal to produce record or obstruction of an inspector or other official on a particular day, the ESIC can insist on production of the very same record on any subsequent day as contemplated under Section 45 of the ESI Act. Therefore, inspection of records for a given period should not be avoided only on account of prosecution of an employer for non production of the said records on a particular day or for obstruction of the inspector/official on a given day for the same period.

It is clarified that a prosecution under Section 85(g) & (f) or Section 186 of IPC relate to an offence commited on a particular day. This does not prevent seeking inspection as contemplated under Section 45 or Section 44(2) etc., since the inspection can be taken up at any reasonable time.The law of double jeopardy is also not attracted since non-production and failure to produce records or obstruction of an official etc. related to a particular date and time and with reference to a particular public servant who was prevented on that day. Commission of very same offence on a different date and time, constitutes a separate offence and not the same offence.

Therefore, notwithstanding proposal, pendency or even conclusion of a criminal prosecution for the above offences committed by the employer on a particular day with reference to the records pertaining to any given period,the regular inspection should continue to be taken up on subsequent dates and the fact tthat whether prosecution was launched earlier for failure or non-production/obstruction on particular day,will not prevent inspection of the very same records.This will also apply where prosecution was launched under Section 186 of IPC (Obstruction to Public Servant in discharge of public function)

CHAPTER XIX

ACTION IN CASE OF CLOSED UNITS

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CHAPTER XIX

ACTION IN CASE OF CLOSED UNITS

Introduction: Opening of new factories/establishments and closing of certain factories/establishments is a common phenomenon and general feature in the industrial environment. Inspection of records, determination and recovery of ESI dues in respect of closed units has been posing serious problem. One of the reasons for the increasing trend of ESI arrears year after the year is non-realisation of the dues from closed units. In this chapter, procedure relating to detection of closed units, determination, and recovery of dues in all such cases and inspection of records, waiver of inspections and waiver of irrecoverable ESI dues in respect of closed units is explained.

P. 19.1 Reasons for increase in arrears in respect of closed units: The amount under this category has increased due to

i) Not detecting /identifying the closed units in time.

ii) Not initiating timely action for inspection of records.

iii) Not initiating timely recovery action.

iv) Not taking timely action for waiver of irrecoverable dues.

P.19.2 Detection/identification of closed units:

a) The employer himself may intimate about the closure of the unit from a particular date.

b) The area inspector may notice the closure of a Unit during his regular visits for inspection in his area and inform R.O.

c) While drawing the defaulters list on the basis of C-6 Ledger, from the trend of payments, the C-6 branch can assume the closure of any Unit.

d) R.O may ascertain the information of closed Units from other sources like Chief Inspector/ inspector of Factories, Reporting authorities under the Shops & Establishments Act, District industries centre relating to units registered under SST, EPF Organization, Registrar of firms/ Companies etc., jurisdictional P.O., Banks etc.

e) Paper advertisements issued by the banks, financial institutions, official liquidator etc., may reveal the closure of particular Unit.

P.19.3. Timely action for inspection of records:

a) Under the revised method of selecting the Units for inspection, R.O would communicate the list of units to be inspected for each quarter to the Social Security Officer (SSO), on the basis of defaulters lists drawn from C-6 ledger, and other priorities. In this process, inspection of closed units is likely to be delayed. Therefore, immediately on receipt of closure intimation from any source, Inspection Control Branch should make arrangements for inspection of such Units by deputing an SSO from Regional Office/Sub-Regional Office itself duly furnishing the residential addresses of all the principal employers to explore the possibilities of inspecting the records, assessing the dues if any and confirming the date of closure. A copy of the letter addressed to the SSO by Inspection Control Branch may also be endorsed to concerned revenue branch for follow up action. The Branch officer concerned should keep a note of all such cases in his diary for proper monitoring and persuasion. The Inspection Control Branch should maintain a register showing all closed cases requiring inspection and follow up action taken for getting the inspection completed in each case. It is the responsibility of the inspection control branch to ensure completion of inspection in respect of all closed units, and units in default for more than one contribution period.

b) The area SSO while inspecting the records of any unit, notices the closure of any other Unit in that area, he may immediately send the full details to R.O. and simultaneously conduct inspection of records of the closed unit by contacting the Principal employers at their residential address. The moment a factory/establishment is closed, the Principal employers may move away from their present residential addresses and thereafter it is very difficult to trace them. While conducting inspection of a closed unit the SSO should be directed to furnish the movable. immovable assets and bank account details of the Unit with the hypothecation/mortgage details of any Unit and also the latest addresses/permanent addresses of all the Principal employers. The SSO should contact the neighboring factories/residences, security, the area post office, or the bank branch in which the employer is maintaining the account to find out the present residential address of the principal employer. The Security Guard/Watchman may be able to furnish the phone number of the employers, the date on which the manufacturing/trading activity has been stopped, whether the principal employers are visiting the unit on and off etc. The neighboring units may also throw some light on the approximate date/period from which the unit is closed. The SSO can also refer to telephone directory to find out the telephone number of the employer. The information ascertained and furnished by the SSO would help Regional Office to take a decision on closure in the absence of any other evidence. How the premises of the closed unit is being utilized is of paramount importance. Whether the premises i.e. land & buildings, was owned by the Factory or taken on lease. If owned whether sold out? If taken on lease, vacated and handed over the

possession to the owners. Whether the fixtures/equipments have been dismantled and disposed and if so how it was disposed. Whether any other Unit is functioning in the said premises in place of the closed one, if so how the transfer has taken place, i.e ,by sale, lease or other wise, to examine the applicability of Sec.93- A of the Act to recover the dues if any from the successor Unit. If the factory or establishment is artificially closed to avoid coverage under ESI and re-opened with different names or split up in to different unit may also be examined in which case, the coverage is to be treated as continuous. All inspection reports in respect of closed Units may be superscribed with the words 'Closed Unit' on the top of front page with red ink to draw the attention of the relevant branches at R.O. The concerned Revenue branch at regional office may process such reports on priority basis.

P.19.4. Timely recovery action:

a) Review of Employer's file: Immediately on receipt of closure intimation in the revenue branches, the employer's file should be reviewed in all respects irrespective of the duration from the date of last review. Compliance position is to be checked and actions taken for determination of dues if any till the date of closure including interest and damages.

b) Determination of dues: Though the Inspection Control Branch might have initiated steps for arranging immediate inspection of the closed unit, without waiting for the inspection report, the revenue branch may issue C-18 actual/adhoc as the case may be for determination and recovery of contribution. C-18 (interest) for recovery of interest due if any and D-18 notice proposing levy of damages for delayed payments may also be initiated. Even though, the factory/ establishment is closed, the employer might have made some arrangement to receive the dak. Hence all the letters, notices etc. may be sent to the factory/establishment address and also to the residential addresses of the principal employers. The progress of inspection may also be ascertained from the Inspection Control Branch. Watch for the postal acknowledgement, receipt of undelivered letters/notices, reply from the employer or compliance if any against the said notices and proceed with the determination of contribution/damages by issue of 45-A/85-B orders followed by issue of C-19, C-19 (interest), D-19 addressed to the Recovery Officer duly indicating on the top in red ink as "CLOSED UNIT-TOP PRIORITY IN RECOVERY', to draw the attention of the recovery officer. If the amount to be recovered is considerable, the help of the police/ detective agencies may also be sought to locate the whereabouts of the principal employers to recover the dues.

P.19.5. Processing of inspection report:

a) Inspection reports of closed units be separated at Dak stage itself by the Inspection Control

Branch, complete the formalities of making entries in the relevant registers, and forward the reports to the concerned revenue branch without any loss of time.

b) The office Superintendent of revenue branch should note down the details of such reports in his diary and monitor the processing of those reports on priority basis in the branch. The revenue branch should maintain a register of closed units, review the action taken every month and give a report to the Regional Director. The position is to be reviewed in the O& M meeting every month and initiate appropriate measures to complete the pending actions in each case.

c) As contribution has been determined without waiting for the inspection report, there is every possibility that inspection of records might have taken place before issue of 45-A orders by the Regional Office, but inspection report received after issue of 45-A order. In all such cases where the determination has been made subsequent to the date of inspection, the 45-A orders may be revoked under the orders of the Regional Director/Joint Director I/c. and claim restricted to actual dues reflected in the inspection report. In all such cases, there is need to inform the recovery officer for keeping the recovery proceedings relating to that C-19 in abeyance. Fresh C-18 (actual) is to be issued, followed by fresh C-19 (actual), duly cancelling the C-19 (adhoc) issued earlier. The entire action of revenue branch is to be completed within a period of one month from the date of receipt of the inspection report.

d) In case the closed unit is taken over by another unit with assets, action to recover the dues from the present employer under the provisions of Section 93-A may be examined and initiated.

e) If the closure is artificial, and the existing units have been split up in- to two or more units with different names, either under the same ownership or not, the coverage irrespective of the number of persons in each unit may be treated as continuous and the compliance insisted.

P.19.6. Closure decision:

Where the employer/SSO had intimated the date of permanent closure of a unit, a closure decision may be taken by the Regional Director/Joint director In-charge and communicated to all concerned. i.e Branch Office/SSO, Inspection Control Branch, C-6 Branch, EDP centre, and Recovery Officer, for making entries in the Register of Employers, Employer's Arrears register in the revenue branch, Inspection Control Register(SC-15) and Master Register of employers, watch over register of RCs in branch office, and C-6 ledger in the C-6 branch.

In cases where the decision of closure is likely to be delayed for want of inspection report etc., the fact of closure of the unit without specifying the date of closure may be intimated to all concerned immediately.

P.19.7. Action in respect of units going in to liquidation:

Employer's file may be reviewed immediately on receipt of intimation about liquidation, action taken for determination of dues if any, and a claim filed with the official liquidator for arranging payment out of the money realized by sale/auction of moveable/immoveable assets of the unit. While filing the claim, attention of the "Official liquidator" may be drawn to the provisions of Section 94 of the ESI Act which inter-alia provides that the Corporation's dues will have priority over the unsecured debts of wound up company, in distribution of the proceeds of the assets of the insolvent company.

All claims filed with the official liquidator may be entered in a separate register either in the Inspection Control Branch or legal branch and to be constantly pursued for realisation of the dues by ascertaining the progress of realisation of the value of assets.

P.19.8. Write off/waiver of irrecoverable dues:

There is a provision under Rule 53 of ESI (Central Rules) 1950 to write off of losses. Despite all timely efforts to recover the dues, there may be cases, where the recovery may not be possible. Where the Corporation is of the opinion that the amount of contribution, interest and damages due to the Corporation has become irrecoverable, the Corporation may sanction the write off the said amount in its books subject to the following conditions.

a) Factory or establishment has been closed for more than five years and the whereabouts of the principal employers can not be ascertained, despite all possible efforts;

b) Decrees obtained by the Corporation could not be executed successfully for want of sufficient assets of the defaulting employer;

c) Claim for contribution and other dues is not fully met by ;

i. the official liquidator in the event of factories/establishments having gone in to liquidation, or

ii. the Commissioner of Payments in the event of the units nationalized or taken over by the Government.

P.19.9. Delegation of powers to Regional Director/Director General:

Rule 53 of ESI (Central) Rules has been amended delegating powers to the other Officers of the Corporation w.e.f. 11.02.1991. In accordance with these amended provisions, the Corporation has delegated powers to Regional Director/Director General as per the decision taken in the meeting held on 7/8th Oct, 1991 and

further liberalisation given from Feb,1999 . The financial limits have been revised from time to time by the Corporation. The latest delegation of powers under item I-6 may be referred to in this regard and action taken accordingly. For powers to the Regional Director to write off the irrecoverable dues, he may do so in consultation with the Finance & Accounts subject to reporting to Head quarter's office. Where the amount involved is beyond the powers of the Regional Director, all such cases are to be referred to Head quarter's Office in the prescribed proforma duly vetted by the Finance & accounts along with the recommendations of the Regional Director, for write off by the Director General/Corporation.

Waiver does not preclude Corporation from reviving the old claim, if at a later date, we get the information about the availability of the Principal Employer or opening of the unit in the same name or different name at the same place or at different place by the said principal employers.

P 19.10. Waiver of Inspections:- Inspection of records of a factory/establishment may not be possible in the following cases:

1. Records were burnt/lost in a fire accident taken place in the Factory/Establishment.

2. Factory went into liquidation and the records were seized by the Official Liquidator.

3. Factory was closed, premises vacated and whereabouts of the employer are not known.

4. Records were lying with the official receiver/income tax authorities/other Government authorities.

In all such cases there is no alternative except to waive the inspection of records.

If contributions were paid on the basis of records before they were burnt/lost /Factory closed etc., the Regional Director may exercise the power of waiving the inspection of records in consultation with the Finance & Accounts. However, where the records were burnt/lost, factory closed etc. before the contributions have been paid, the Regional office has to determine the contribution under Sec.45A on the basis of available information. Where the contribution has been determined and claimed under Section, 45-A, the question of inspection of records for the relevant period does not arise. Therefore, in all such cases, waiver of inspection for the period covered by 45-A Order is not applicable.

P.19.11 Guidelines for verification of closure notice submitted by factory/establishment:

When a closure notice is submitted by any factory/establishment or reported by SSO, it must be ensured that the following points are taken care of :

1. The unit has submitted the fact of closure to the Chief Inspector of Factories/ EPFO/Sales Tax Dept/ Local Police Station/ State Labour Commissioner/Department of Small Scale Industries/ Pollution Control Board/Local Municipal Corporation

2. The unit has submitted proof of Sale of Machinery, Full and Final Settlement to the workers including evidence of acquaintance of all the discharged employees in token of having received the payment towards full & final Settlement, Surrender of Electricity Connection filling of Income Tax return up to date of closure, filing of sales tax return up to date of closure, surrender of telephone connection, closing down of bank account, dissolution of partnership deed in case of partner ship firm and intimation sent to registar of companies, surrender of trading license and dissolution of rent deeds

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CHAPTER XX

INSPECTION OF REVENUE BRANCHES IN REGIONAL / SUB REGIONAL OFFICE

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CHAPTER XX

INSPECTION OF REVENUE BRANCHES IN REGIONAL OFFICE/SUB REGIONAL OFFICE

Introduction: For effective function of the branches including Revenue branches RO/SRO/DO and to ensure quick and timely action in branches, it is necessary to check the performance of each individual working in different branches of Regional Office at prescribed intervals and take remedial measures wherever required to strengthen their performance and improve their efficiency. For this purpose inspection of the branches in Regional Office twice in a calendar year has been introduced.

P 20.1 Inspection of branches of Regional Office/Sub-Regional Office/Divisional Office and Branch Office is to be conducted once in six months i.e. twice in a calendar year in the months of June and December.

P 20.2 Authority to inspect the records: The first inspection in the month of June should be done by the Branch Officer himself. The second inspection in the month of December is to be conducted by an officer nominated by the Regional Director/Joint director in-charge.

P.20.3 Manner of conducting the inspection: The work done by each dealing assistant in the branch during the half year may be checked and the report should contain the following particulars.

a) Name of the official and designation

b) Length of service in that particular seat (work)

c) Nature of work

d) Pending receipts at the beginning of the half-year

e) Receipts during the half-year

f) Disposal during the half-year

g) Pending at the end

h) Review of files/other work done in addition to disposal of receipts.

i) Abnormal delays in any disposal of receipts.

j) quality of work, knowledge of rules and their interpretation

k) long spells of leave if any availed

l) The overall performance of the official

P 20.4 The Inspecting Officer has to particularly verify the following aspects meticulously while conducting the inspection of Revenue branches, as they are the most essential factors that would help ascertain the health the Revenue machinery of the region:

- Whether all the prescribed Registers are properly maintained, entries are promptly made with due attestations of all the authorities soon after
- Whether summaries are drawn up in the prescribed format containing all the particulars every month and they are duly checked and seen by the BO, JD/ RD.
- Whether the observations of the Reviewing Authority were promptly attended to
- Whether the implementation of the provisions of the Act in new Areas, New Sectors of employment were promptly initiated and followed up by sending DO reminders, personal contacts etc., periodically and the events recorded in the Registers
- Whether the pre implementatiom surveys, Intensive Survey Drives, subsequent Surveys were promptly carried out and followed up by the Branches concerned
- Whether the reference to the State Governments for making medical arrangements and to the Head Quarters were made promptly and the matter were vigourously pursued for issue of implementation Notification
- Whether the Pre-implementation Surveys, Intensive Survey Drives and periodical Survey were promptly carried out from time to time
- Whether the receipt of Survey Reports, Form-01 were promptly entered in all the relevant Registers and processed and followed up speedily and code numbers were allotted at once and the pendency, if any, were duly recorded in the Summaries along with reasons for such delays and the directions of the BO and RD were duly followed up
- Whether the Surveys, Inspections, Test Inspections were selected as per priority and policies of the Corporation and they were fully followed up without any remiss
- Whether the Programme of Inspections, the Diaries of Inspectoras and Day value credited were strictly in accordance with Hqrs. Instructions and any irregularities were promptly addressed
- Whether the records and registers for receipt and transmission of the Reports were systematically

maintained and entries made without any laxity

- Whether the Revenue Branches have maintained the Registers for entering the dates of receipts of the IRs and taken them into account and processing them have been in accordance with the time limits

- Whether the Inspection, Test Inspection Reports and other Reports were processed correctly, claims raised properly and entries made in all the important Registers like C-18, Arrears Registers etc under proper attestations and whether C-19s are sent in time

- Whether court cases are indicated and decided cases are followed up promptly

- Whether the review of files are effectively done in accordance with the Yard-stick prescribed and followed up

- Whether important and crucial Registers like C-18. Arrears Registers are promptly maintained and all the entries are promptly attested by DA/SUPT./BO

- Whether summaries are promptly drawn up in the pro forma prescribed by the due date and they are carefully checked by the BO/JD/RD

- Whether all the periodical Returns including strategically vital returns like Arrears Statement, performance appraisal etc are carefully drawn up and transmitted to Hd. Qrs before the Due Dates.

- Whether all the Audit Reports, Inspecting Officers' Observations, Head Quarter's Inspections are promptly attented to and taken to their logical conclusion

- Comments on Over-all functioning of the Branches along with his remarks for any improvement required, if any

P. 20.5. Other important aspects like weeding out of records, maintenance of Receipt Diaries etc are to be checked to get a overall performance of the Branch.

P. 20.6 Submission of report: The inspection report containing the performance of all the officials and the overall performance of the branch may be submitted to the Regional Director/Joint Director In-charge. Any specific arrears of deficiencies or short comings and the suggestions for improvement may also be specified.

P. 20.7 Review of inspection report: Regional Director/Joint Director in-charge should review the inspection report and in case of any serious deficiencies or short comings in the functioning of the branch reported by the inspecting officer, the Regional Director/Joint Director I/C should issue necessary orders for remedial action.

P.20.8 Report to Hqrs: A consolidated report on the functioning of the region is to be submitted to the Hqrs. office.

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CHAPTER XXI

MISCELLANEOUS

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CHAPTER -XXI

MISCELLANEOUS

XXI. a : REVIEW OF EMPLOYER'S FILE

Employer's file is the only basic record which serves to provide the complete history of employers' performance profile and contains all the correspondence with the employer and various Inspection Reports received and the follow up steps taken, court cases involved and further monitoring action regarding recovery of Revenue (arrears) from a defaulting employer. It is therefore imperative that the review of files get the attention they deserve and this work does not get perfunctory. Greater emphasis is needed for an in-depth review so that all the pending issues are constructively pursued and taken to its logical conclusion. No pending issue should be allowed to linger on and any such pending issue should be marked for vigorous persuasion. It is also observed that there is not only some confusion with regard to the total number of effective files to be reviewed at the beginning of the year and the number of files to be reviewed each month , but also with regard to the manner in which they are to be reviewed.

21.1 REVIEW OF FILES : Hqrs instructions issued vide Memorandum No Z-15/15/1/78-Ins III dtd 21/9/78 –

With a view to making the review of files more effective quantitatively as well as qualitatively, the following guidelines are laid down for compliance :

i) The work of review of files should be decentralized wherever it has not been done so far and individual dealing assistants dealing with the employers' files should also be made responsible for the review of files allotted to them.

ii) The review of files by the dealing assistants should be a regular feature and $1/10^{th}$ of the files should be reviewed every month . For this purpose, it would be better if the Regional Director divides the work in such a manner that normally all files ending with digit (1) of the employer code number are reviewed in January, digit (2) in February and digit (3) in March and so on. The last two months of the year may be utilized for making up any shortfall that has come about during the preceding 10 months.

iii) After the first initial review, files pertaining to closed factories/uncovered factories where no arrears are detected and where full compliance has been made upto the date of closure /coverage should be kept separately in a separate run and these files need not be reviewed every year. However, as and when a factory again comes under coverage, the file be placed in the run of live files and reviewed as per instructions.

iv) At the time of each review, a review sheet in the proforma enclosed as Annexure… should be prepared in duplicate and the results of the review noted thereon. One copy of the same should thereafter, be put up on the file as a fresh receipt and submitted to the Branch Officer through the Head Clerk for former's orders, if any. The duplicate copy of the review sheet should be passed on to the Headclerk of the

branch who should file the same in code number-wise order in a separate folder.

v) A proper record of the files reviewed and arrears detected should be maintained in a separate register from which information required to be included in the quarterly review of files statement to be submitted to the headquarters office could be done.

vi) The quarterly statement being submitted to the headquarter office should reflect the work required to be done and actually done during the 3 months falling in the quarter as also whatever is pending together with outcome of the review vis-à-vis detection of arrears etc.

vii) Column No 1 of the quarterly statement prescribed vide hqrs memo no. Z-15/15/1/7/Ins-III Collection III dtd 13.1.78 should reflect the total no of effective code numbers at the beginning of the year and should not include figures in respect of closed / uncovered factories already reviewed and where compliance were found up to date.

viii) The quarterly report for the last quarter of the year should give information with regard to the normal review for the month of October as also of the outstanding work attended during the month of November and December. It should also indicate reasons for any shortfall in the review work during the whole of the year.

21.2 SEGREGATION OF CLOSED FILES : (i) Hqrs instructions issued vide letter no Q-11/17/1/96-Ins III dtd 1/4/99: –

The Insurance Commissioner during his visit to Regional Office Indore on 3.2.99 reviewed the progress of review of employers file and observed that there was an artificial inflation in the figures of no of files to be reviewed as some of the files on which no action is pending are kept in the current run whereas these should have been segregated and kept separately. The factories and establishments which have been closed mainly fall under following three categories :

(1) where no dues are outstanding against the closed units and inspection have also been completed

(2) where dues are outstanding and inspections have been completed and

(3) where no dues are outstanding but inspections have not been completed.

As far as category (1) is concerned , the files should be taken out of current run and sent to record room for destruction in due course.

As far as category (2) is concerned the files have to be kept in the current run and action taken to realize the dues .

As far as category (3) is concerned the files should also be taken out of the current run , but periodical efforts should be made to inspect the records.

Therefore, in the case of closed units only cases falling eunder category (2) are required to be kept in live files. All concerned were advised to conduct a review of employers files of all closed factories

and segregate the same into the categories as listed above so that the pendency on account of review of employers file does not get unnecessarily inflated .

It must be noted that the review sheet clearly contain full details of pending claims,C-18s, C-19s unsettled issues, pending Ledger verification or follow up action on the Inspection Reports, court cases. In other words, the review sheet should serve as an exhaustive summary of all pending and actionable matters related to the employer, action thus far taken and also the future steps envisaged. It is desirable also to check if there is any variation in the range of contributions in the preceding 2-3 years and also to check up if there is any substantial variation in the number of employees in the RCs in the preceding 3-4 Contribution Periods.

The office Superintendent and the Branch Officer should also give careful attention to ensure that the review has been thoroughly made and record directions on every pending matter in the review. It should also be periodically monitored that the quota prescribed are always maintained and there is no back-log and this drill is all the more indispensable given the fact that all the units are not inspected frequently. Entries should be made in all the connected Registers under proper attestation. Accurate information of the progress of review made should be sent to Hqrs.

The Review sheet has to be prepared in duplicate and one copy of them containing the directions and orders of the BO/RD should be retained by the Superintendent of the Branch to monitor the follow-up action on the directions given by BO/RD and they should be carefully preserved in a separate file folder.

(ii) However, Headquarters vide letter No. G.13/14/102-MSU,dated 10.06.2003. have modified the above instructions the contents of which are as under :

"With a view to have a uniform policy in filing the Review Sheets in all the Offices of the Corporation, it has been decided that the Review Sheet may be treated as a part of noting portion, numbered serially and placed in the noting portion of the Employer's file"

(iii) Opening of new volume of Employer's file in the Revenue Branches- Proforma to be pasted in the new volume. (Head quarter's letter No. G-13/14/02-MSU dated 12th November, 2003.

It has been observed that in most of the Regional Offices, while opening new volume of Employer's file in the revenue Branches, proper system is not being followed to carry forward the important information available in the old volume.

For this purpose, a proforma has been devised by this Branch wherein the important information available in the old volume can be filled in the proforma and pasted in the internal portion of the file cover of the new volume so that this will help the Branch Officer and the concerned Dealing Assistants to know the status of pending matters in the old volume.

A copy of the proforma is enclosed with the request to take necessary action while opening the new Volume of an employer file in revenue Branches.

OPENING OF NEW VOLUME OF EMPLOYER'S FILE

Code Number: _____ Name & address of the Factory/Estt._____

Inspection Division: _____ Name of the Banker & Account No: _____

Date of provisional coverage: _____Date of final coverage_____

A. Position of Inspection Report/Plain Paper Report:

Details of last inspection: Date of inspection: _____

Period of inspection_____

No. of employees_____ (coverable_____, Not coverable_____, total_____)

Period of Ledger verification: _____

Name of the SSO_____

Particulars of pending contributions and ledger verification in Vol.____.

B Position of Legal Cases:

Section	Period	Date of decision/present position
Under Section 75		
Under section 82		
Under Section 85 & 85-A		
IPC 406/409		
Section 138 of N.I.Act		

C Position of Review of Employer's file

Date of last review	Year of current review	20_____	20_____	20_____	20____
	Date of review				

D Details of return of contributions received:

Details of last RC received	year	20____	20____	20___	20___	20___	20___	20___	20____
	C.P. ending	March	Sept.	March	Sept.	March	Sept.	March	Sept.
	Date of receipt								

E Recovery position of pending contribution/interest/damages:

Sl.No.	Description of C18/D-18 Sl. No. in the register and period	Amount Rs.	Date of issue of C-19/D-19	Recovery position

F Details of Exemption cases:

Notification no. & date	Section under which exempted	Exemption granted to Factory/estt.	Exemption granted to persons

G. Details of B.I.F.R. Cases

BIFR case No. & date	Present status	Rehabilitation scheme or not. if yes, terms of payments	Remarks

H. Details of un-claimed contributions, interest, danages:

Contribution: period_____, amount _____ (refernce to IR/C-6 br. UO Note/others)

Interest_____ (Cpe_____ or period_____

Damages_____(cpe_____or period_____

I. Any other pending issues: Signature of the DA_____Supdt._____ B.O._____

XXI. b : EXEMPTIONS

The "Appropriate Government" grants exemptions to factories and establishments from coverage under the ESI Act 1948 u/s 87, 88 , 90 or 91 as the case may be.

21.3 According to Section 2 (1) "Appropriate Government " means in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oil field , the Central Government , and in all other cases , the State Government.

The different sections under which exemptions is granted are detailed below :

21.4 Section 87 – Exemption of a factory or establishment or class of factories or establishments :

The appropriate government may, by notification in the official gazette and subject to such conditions as may be specified in the notification , exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding 1 year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time.

Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate governments within two months of receipt of such application.

(The provisos have been inserted by ESI (amendment) Act, 2010 w.e.f. 1.6.2010.)

Courts' opinion

The Appropriate Government while taking decision upon the question of exemption of a factory has to conclude whether the benefits which the employer provides are substantially similar or superior to the benefits which the Act provides. It would be reasonable to give a hearing so as to satisfy the mind of the government in this regard – Orissa Industries Ltd v/s Union of India , 1992(1) LLJ 182.

21.5 Section 88 – Exemption of persons or class of persons:

The appropriate government may, by notification in the Official Gazette and subject to such conditions as it may deem fit to impose, exempt any person or class of person s employed in any factory or establishment, or class of factories or establishments to which this Act applies from the operation of the Act.

In this category the State Governments exempt certain category of employees like persons who are on tour for more than 7 months in a year(i.e like travelling sales represntatives etc) and the exemption would be reviewed every year subject to certain routine conditions specified in the orders.

Courts' Opinion

The appropriate government while taking decision upon the question of exemption of persons or class of persons has to take into account the consent of the employees who are required to apply in a prescribed format designed by the Corporation and available in Co-ordination branch of RO / SRO. The applications so received are forwarded by the employer to the appropriate government giving details of benefits provided by them. The appropriate government shall grant exemption only after concluding that the benefits provided by the employer are substantially similar or superior to the benefits which the Act provides. (Lark Laboratories (India) Ltd v/s Government of N.C.T. of Delhi and another – 2007 (1) LLJ 72 : 2006LLR 1093::2006 (111) FLR 86

21.6 Corporation to make representation : Section 89:–

No exemption shall be granted or renewed under section 87 or section 88, unless a reasonable opportunity has been given to the Corporation to make any representation it may wish to make in regard to the proposal and such representation has been considered by the appropriate government.

An application in the prescribed format for exemption is made to the Appropriate Government which in turn forwards the same to the Corporation for its comments / representation. The application should be accompanied by documents indicating the details of various benefits provided by the employer to his employees.On receipt of the exemption application, the RO/ SRO examines the benefits provided by the employer to its employees with that provided under the Act and thereafter sends its justification for the same.

In practice, the following format** is suggested for the purpose:

The Regional Office should carefully analyze each and every type of Benefit provided by the employer and compare the same with the corresponding Benefits provided under the ESI Scheme. In fact, the benefits that are not provided by the employer, but, available only under the ESI Scheme like: Medical benefits provided to superannuated employees, vocational Rehabilitation Scheme, Unemployment Relief provided under the Act, long term Benefits like PDB,DB. need to be clearly brought to focus in the comments furnished to the Government. The whole range of Benefits need to be comprehensively compared and the inevitable inference should be logically arrived at and clearly indicated. Importantly, whether the employer's Scheme of Benefits covers all sections of employees like permanent, casual, Temporary employees and whether the Scheme of Benefits is of a permanent Nature are to be carefully analyzed and the supremacy of ESI Benefits over employers' Scheme of Benefits are to be indicated. All other relevant

points need to be weighed and indicated The details of coverage already effected and the Benefits to which they would have already become eligible during the period of Exemption also needs to be checked. However, the present amendment to the Act specifies that Exemption can be granted only for prospective periods..

** Sub: Comparative statement of benefits provided by the employer and under the ESI Act

S.No.	Nature of benefits	Benefits provided by the employer	Benefits provided under the Act by ESIC	Remarks(whether bfts provided by employer are substantially similar or superior to that provided under the Act.

It should be ensured that the RD, JD or BO dealing with the employers file wherein exemption application has been received attends the hearing on the date and time fixed by the quasi judicial authority under the Union Ministry of Labour / State Labour Ministry as the case may be to present the case on behalf of the Corporation. In the absence of the BO, responsible officer need be sent to attend the hearing with all relevant documents.

21.7 Section 90 – Exemption of factories or establishments belonging to government or any local authority.

The appropriate government may, after consultation with the Corporation by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment belonging to any local authority, from the operation of the Act, if the employees in any such factory or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

21.8 Section 91 – Exemption from one or more provisions of the Act :

The appropriate government may, with the consent of the Corporation, by notification in the Official Gazette, exempt any employees or class of employees in any factory or establishment or class of factories or establishment from one ore more of the provisions relating to the benefits provided under this Act

21.9 Section 91A- Exemption to be either prospective or retrospective :

Any notification granting exemption u/s 87 , u/s 88, u/s90 or u/s91 may be issued so as to take effect prospectively (w.e.f. 1.6.2010) on such date as may be specified therein.

N.B. : As exemption can only be granted prospectively w.e.f 1.6.2010, Hqrs instructions conveyed vide D.O P-13/11/1/93(P) – Ins I dtd 28.5.96 from Director (B) on retrospective exemption and modus operandi to be adopted while furnishing comment to the appropriate government stands superceded.

21.10 Section 91AA – Central Government to be appropriate Government :

Notwithstanding anything contained in this Act, in respect of establishments located in the states where medical benefit is provided by the Corporation, the Central Government shall be the appropriate government.

21.11 POLICY OF EXEMPTION : In the early 80s sub-committees were set up to study and recommend the policies to be uniformly followed in granting exemptions to the Factories. After an in-depth study and due deliberations they recommended that exemptions should not be granted at all routinely to all the factories and extreme restraint is to exercised keeping in view of the fact that the benefits under this Social Security legislations should be made available to all such employees and even recommended even that in the event it is granted a special cess/contributions should be imposed on the employers. These recommendations were accepted in toto by the Corportion in which the State Governments were also party to the decision. Thus, even now Corporation does not readily approve of the grant of Exemption and always emphasise the supremacy of the benefits under the Scheme and insists on coverage under the Scheme. to the factories / establishments under the ESI Act :

EXEMPTED UNITS NOT EXCLUDED FROM REGULAR INSPECTION : Head quarters Instructions no.P-13/11/1/93-Ins I dated 12.1.96 amplify further as under:

The appropriate government grants exemptions to factories and establishments from coverage under the ESI Act u/s 87, 88, 90 or 91 as the case may be. It has been observed that once exemption order is received, the relevant files is not further attended to irrespective of the nature of exemption.

At times exemptions are granted only to regular employees, which means that non-regular employees such as temporary, casual, badli or contract employees are not exempted and their compliance need to be enforced. Similarly the exemptions are normally granted for a specific period and on completion of the specific period no further exemption is granted, but, often the relevant file is not reviewed properly and the compliance for the past period not exempted is not enforced.

As the order of the exemption given by the appropriate government will itself show, regular inspection is not barred in case of exempted units and it is very necessary

to ensure that non exempted category of employees are duly registered and covered and also that after the expiry of the exemption period or for periods not exempted or for prior period so exempted, the compliance is strictly enforced. To ensure this, the files of the exempted factories /establishments needs also to be regularly reviewed and regular inspections should also be conducted in such cases keeping in view the terms and conditions of exemption order so that there should be no slip up in enforcing compliance in respect of non regular category of employees for the period for which exemption is not granted. Similarly it is entirely for the employer to approach the appropriate government for getting exemption well in advance and if exemption is granted for a specific period , the burden is on the employer alone to take steps to seek exemption if eligible well ahead of the expiry of the current exemption order. In other words it is not the responsibility of the Corporation to remind either the employer or the appropriate government to grant further exemption and we are not required to stay our hand from enforcing compliance merely because the factory or establishment obtained exemption order for certain past period. In this connection the instruction issued vide this office letter no. V-37/12/2/93-Ins III dtd 18.4.95 may also be referred to for strict compliance.

In order to ensure the above and to also ensure that regular inspection of the exempted units are also carried out with a view to enforce compliance for the non exempted category of employees or non-exempted periods, the Regional Directors should ensure that the exact nature of the order of the exemption is indicated in the SC-15 Register(Inspection Register) / Exemption register maintained in the Regional Office as well as SC-15 Register (Inspection Register) maintained in the Inspection office of the SSO indicating the period of exemption, the nature of exemption and the category of employees who are exempted. Such files should not be put away unless there is a permanent exemption covering the entire employees of the factory / establishment u/s 90. Wherever exemptions are granted only for a category of employees or for a specific period the file should be reviewed every year and inspection report obtained. Similarly, where the entire factory / establishment is exempted u/s 90 without specifying any period , periodical inspection atleast once in two or three year should still be carried out to ensure whether there is any change in service condition resulting reduction of benefits earlier available to the employees including the regular employees so that if necessary the appropriate government should be approached to review the decision and cancel the exemption order. If after the expiry of the exempted period, the exemption is not renewed, RO should commence enforcement action without waiting for or asking the employer to apply for renewal of exemption as it is the employer's responsibility to get the renewal orders well in time.

XXI.3 c : BOARD OF INDUSTRIAL & FINANCIAL RECONSTRUCTION (BIFR) AND ITS FUNCTIONING

Introduction: In the wake of sickness in the country's industrial climate prevailing in the eighties, the Government of India set up in 1981, a Committee of Experts under the Chairmanship of Shri T.Tiwari to examine the matter and recommend suitable remedies therefore. Based on the recommendations of the Committee, the Government of India enacted a special legislation namely, the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of1986) commonly known as the SICA.

The main objective of SICA is to determine sickness and expedite the revival of potentially viable units or closure of unviable units (unit here in refers to a Sick Industrial Company). It was expected that by revival, idle investments in sick units will become productive and by closure, the locked up investments in unviable units would get released for productive use elsewhere.

The Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter called the Act) was enacted with a view to securing the timely detection of sick and potential sick companies owning industrial undertakings, the speedy determination by a body of experts of the preventive, ameliorative, remedial and other measure which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.

The Board of experts named the Board for Industrial and Financial Reconstruction (BIFR) was set up in January, 1987 and functional with effect from 15th May 1987. The Appellate Authority for Industrial and Financial Reconstruction (AAIRFR) was constituted in April 1987. Government companies were brought under the purview of SICA in 1991 when extensive changes were made in the Act including, inter-alia, changes in the criteria for determining industrial sickness.

SICA applies to companies both in public and private sectors owning industrial undertakings:-

(a) Pertaining to industries specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, (IDR Act) except the industries relating to ships and other vessels drawn by power and;

(b) Not being "small scale industrial undertakings or ancillary industrial undertakings" as defined in Section 3(j) of the IDR Act.

(c) The criteria to determine sickness in an industrial company are (i) the accumulated losses of the company to be equal to or more than its net worth i.e. its paid up capital plus its free reserves (ii) the company should have completed five years after incorporation under the Companies Act, 1956 (iii) it should have 50 or more workers on any day of the 12 months preceding the end of the financial year with reference to which sickness is claimed. (iv) it should have a factory license.

OBJECTIVES OF SICA

The objectives of this Act (SICA) as incorporated in its preamble, emphasises the following points:

- ✡ The SICA had been enacted in the public interest to deal with the problems of industrial sickness with regard to the crucial sectors where public money is locked up.
- ✡ It contains special provisions for timely detection of sick and potentially sick industrial companies, speedy determination and enforcement of preventive, remedial and other measures with respect to such companies.
- ✡ Those measures are to be taken by a body of experts.
- ✡ The measures are mainly

(a) Legal

(b) Financial restructuring

(c) Managerial

GENISIS OF SICA, 1985

- ✡ Industrial sickness had started right from the pre-Independence days.
- ✡ Government had earlier tried to counter the sickness with some ad-hoc measures.
- ✡ Nationalisation of Banks and certain other measures provided some temporary relief.
- ✡ RBI monitored the industrial sickness.
- ✡ A study group, came to be known as Tandon Committee was appointed by RBI in 1975.

- ✡ In 1976, H.N. Ray committee was appointed.
- ✡ In 1981, Tiwari Committee was appointed to suggest a comprehensive special legislation designed to deal with the problem of sickness laying down its basic objectives and parameters, remedies necessary for revival of sick Units.
- ✡ The committee submitted its report to the Govt. in September 1983 and suggested the following:
- ✡ Need for a special legislation
- ✡ Need for setting up of exclusive quasi-judicial body.
- ✡ Thus the SICA came into existence in 1985 and BIFR started functioning from 1987.

IMPORTANT PROVISIONS OF SICA

- *Constitution of two quasi-judicial bodies – BIFR and AAIFR and their Benches.*
- *Procedure of the Board and the Appellate Authority.*
- *Filing of references u/s 15 and criteria of sickness.*
- *Provision of enquiry u/s 16.*
- *Appointment of Special Directors and OAs u/s 16(4) and 17(3).*
- *Preparation of sanctioned scheme under section 17(2), 17(3) & 18(4).*
- *Provision for monitoring of schemes u/s 18(12)*
- *Rehabilitation by giving financial assistance u/s 19.*
- *Winding up of sick industrial companies u/s 20.*
- *Protection to safeguard the interests of the sick companies u/s 22(1), 22(2), 22(3).*
- *Provisions for dealing with potential sickness u/s 23, 23(a), 23(b).*
- *Provision in case of misfeasance u/s 24.*
- *Provision for seeking information and giving information – Central Govt., RBI, FIs State institutions and sick companies and in case of amalgamation, other companies.*
- *Power to seek assistance of MMs & DMs u/s 29.*

- *SICA has overriding provisions u/s 32 over other laws except the provisions of FERA, 1973 and the ULCRA,1976.*

- *Penalty u/s 33 for violation of the Act.*

21.12 Procedure to be followed in BIFR cases [Hqrs letter no. T-11/31/BIFR/2001 dated 31.5.2001]

All activities concerning BIFR cases in respect of the regions will be handled by R.D. Delhi (BIFR Cell) instead of Hrs office.

As far as ESIC is concerned the first task before us on receipt of application under SICA through BIFR is to find out whether ESI Act is applicable and whether the factories or establishments, run by the appellant company , is registered and if so, the code number and the region where it is registered. If there are more than one factory or establishment under the company concerned, each of the code number and the region where it is located including Branch offices, Sales Office, Administrative Office etc. situated in the same region or other region had to be located. This is the first task before us so that the RD concerned could be informed of the filing of a case before BIFR at the earliest and the RD concerned can immediately gather the total arrears position updating the interest and also finalize the determination of contribution or damages for period in default.

To enable the above, a proforma has been devised . The BIFR cell at RO, Delhi immediately on receipt of a fresh application under SICA, will take out information from the application, to the extent possible to complete the proforma and send the same to the RO, Delhi who will then locate the code number and furnish additional information such as arrears due and other factories or establishments including branches situated outside the region. Thereafter one copy of this proforma should be sent to Hqrs (BIFR cell) immediately. In case the factory/establishment is situated in non implemented area or is not a coverable factory/establishment , this should be intimated to RO, Delhi by a FAX within 3 days.

As soon as it is ascertained that the factory / establishment is coverable/ covered and is in implemented area and the code numbers are ascertained, RD should /immediately set in motion finalization of pending determination of dues under 45A/85B calculated upto date interest and damages and complete the C-19 action which 30 days of receipt of the first intimation from RO, Delhi. The arrears' position as available as per the proforma, should be sent to RO Delhi (BIFR Cell) by speed post and within a month thereafter the action for issue of C-19/D-19 or intimating up-to-date interest to the defaulter should also be completed and intimated subsequently by a revised letter to RO Delhi so that the arrears statement is updated in all respects.

In case the RD finds that the company also have same factory/establishment or branch in some other region in respect of whom the arrears position is not available., RD should immediately address the

RD concerned demi-officially giving the BIFR case number, instruction from Hqrs and advise the RD to complete determination of arrears/damages and interest and intimate the same directly to the RO Delhi (BIFR cell) with intimation to you so that we have up-to-date arrears' position before filing the same before BIFR.

It may also be remembered that SICA applied only to schedule industries other than those relating to shipping. These are industries referred to in first schedule of the Industries Development and Regulation Act., 1951 and include only those factories where manufacturing process is carried out or is ordinarily carried on with aid of powers employing 50 or more workers on any day preceding the 12 month as well as factories where manufacturing processs is being carried on without the aid of power where in 100 or more wokers were/are working on any day of the preceding 12 months. Therefore, any company applying for declaration and rehabilitation under SICA before BIFR should be conforming this position. If our records show that they have in fact not employed the requisite number of employees as per the returns submitted to us including the information given in the I.R. (which includes employees drawing 6500/- per month or above, we should immediately oppose their application before BIFR. The R.D. should invariable ensure this. However, the number of employees mentioned above is the total employees if there are more than one factory or establishment and will include the employees drawing wage more than Rs.6500/- also.

If the R.D. points out that the information furnished by the employer through Form-01 or through RC as well as the information available through I.R. taking into account covered and non-covered employees shows employment of less number of employees to qualifying for BIFR intervention under SICA, this should immediately be intimated to the RO Delhi so that he may look into the original application wherein the employer conforms the number of employees employed by him for a particular period and will advise RD to issue C-18 (adhoc) to such employers reducing the number of employees in respect of whom compliance have been made as well as those who have been confirmed to be drawing more than Rs.6500/- in the I.R. This will be independent and simultaneous to our submission to BIFR that the information given by the application is wrong according to our record.

The Regional Director should, therefore, ensure that the reference from Hqrs/RD Delhi (BIFR Cell) on BIFR application is handled very promptly, code nos. are immediately located, arrears statement (contribution, interest and damages) is furnished within 7 days and determination of further arrears, interest and damages is completed within 30 days. Any false information with reference to eligibility under SICA is immediately reported to RO Delhi. for moving BIFR. Similarly C-18 (adhoc) on assumed wage basis shall be issued, assuming the information on no. of employees given by employer to BIFR to be covered. At all stages of reference, the matter should be handled speedily, so that we will have no difficulty in handling cases before BIFR.

21.13 Launching of criminal prosecution against companies which are under the consideration of BIFR [Hqrs instruction no T-11/13/52/21/98-Ins III dtd 5/7/0]:

It has been observed on occasions that wherever a company is registered with BIFR and declared as sick under Sick Industrial Companies (Special Provisions) Act, 1985, the employer continues to be a defaulter in payment of contribution or submission of returns etc. Often the employers deduct employees share and fail to pay even the employees' share, attracting prosecution action u/s 405/406 of IPC besides the ESI Act . When a show cause notice is issued proposing criminal prosecution under ESI Act or under IPC, the employers seek exemption from prosecution under section 22 of SICA. In some case where prosecution was launched , the employers have taken this stand in the criminal court or in higher courts, creating some amount of confusion on the question whether section 22 of SICA prohibits criminal prosecution.

It is made clear that section 22 of SICA prohibits only proceedings for winding up of the company for execution , distress or the like against any of the properties of the industrial company, or for the appointment of a receiver in respect of such properties as also civil suit for recovery of money or for enforcement of any security against the companies, including guarantee in respect of loans and advances. A plain reading of section 22 will clarify that criminal prosecution for offences committed by the company or the principal employer of that company under the ESI Act or any other act is not covered by section 22. This has been clarified by the High Courts and Supreme Court in a number of cases. Where necessary the ESI advocates will be able to locate these cases from the law reports or the commentary on the Sick Industrial Companies (Special Provisions) Act, 1985.

In a recent case M/s Sarvaraya Textile Ltd, Hyderabad (BIFR Case No 203/98), the employer moved BIFR seeking a direction against ESIC and EPF authorities against launching criminal prosecution against them. The BIFR vide order dated 5.12.2000 clarified that section 22 of SICA provides protection to the companies only in matters of civil proceedings and not for criminal proceedings. A copy of the said order is enclosed for making use at appropriate stages. If employers raise any such question before a Court against criminal prosecution launched or proposed to be launched, the said decision as also reported judgments of High Courts and Supreme Court available with the Advocate may be made use of .

Since there is no legal bar in launching criminal prosecution against employers including companies registered with BIFR, the Regional Directors may examine and file criminal prosecution under ESI Act or sec. 405/406 of IPC or under Negotiable Instruments Act. as the case may be, against defaulters in accordance with the existing procedure and practice In respect of factories which are actually functioning even after the declaration of the company as 'sick' and during the consideration of rehabilitation scheme by BIFR and where the employer is chronic defaulter or employees' share is being deducted and not deposited with ESIC , prosecution may invariably be launched.

The Hqrs instruction No. 5/99 issued vide letter No. T-11/13/1/96-Ins. III dated 6.8.00 in this regard stands modified.

21.14 Delegated power to waive or reduced damages levied/leviable in relation to a Factory/ Establishment in respect of which rehabilitation Scheme has been sanctioned by the BIFR [Hqrs instructions No.T-11/19/1/2007 Rev I dt.07/01/2008].

Reference to this office Memo No. T-11/19/1/2001-Ins. III dated 15/05/2002 on the subject cited above. The matter regarding enhancing delegation of powers for waiver/reduction of damages levied/ leviable in respect of factories/establishment which have been declared sick and rehabilitation scheme has been sanctioned by BIFR was placed before the Standing Committee & ESI Corporation in its meeting held on 12.10.2007 and 18.12.2007 respectively. The Standing Committee and ESI Corporation have accorded approval to the revised delegation of powers to waive damages levied/leviable as under:-

Description of Power	Authority / Officers exercising the powers	Existing Powers	Enhanced Delegation of Powers
To waive damages levied/leviable in each case as per Regulation 31-C of ESI (General) Regulations , 1950 in relation to a factory/establishment declared sick and in respect of which a rehabilitation scheme has been sanctioned by the Board for Industrial & Financial Reconstruction	1. Chairman , ESI Corporation	Above Rs. 10 lacs in each case	Above Rs. 50 lacs but upto Rs. 1 crore in each case
	2. Chairman, Standing Committee of ESI Corporation	Above Rs.5 lacs upto Rs. 10 lacs in each case	Above Rs. 25 lacs but upto Rs. 50 lacs in each case
	3. Director General	Upto Rs. 5 lacs in each case	Above Rs. 15 lacs and upto Rs. 25 lacs in each case
	4. Insurance Commissioner	Upto Rs. 2 lacs in each case	Above Rs. 10 lacs and upto Rs. 15 lacs in each case
	5. Additional Commissioner / Director (Rev)	Upto Rs. 1 lacs in each case	Above Rs.5 lacs and upto Rs. 10 lacs in each case
	6. Regional Directors / Director (Pune)	Upto Rs. 50,000/- in each case	Above Rs. 3lacs and upto Rs. 5 lacs in each case
	7. Joint Directors I/c of SROs	Upto Rs.20,000/- in each case	Upto Rs 3 lacs in each case

Detailed instructions issued vide Memo No. T-11/19/1/2001-Ins. III dated 15/05/2002 regarding submission of quarterly statement indicating the details of damages waived and submission of document s* including copy of order of BIFR declaring the factory/establishment sick, copy of Sanctioned Rehabilitation Scheme and copy of order under Section 85-B in respect of cases referred to Hqrs. shall, however, remain unchanged.

(* the documents as mentioned above are required in respect of cases where the amount of damages proposed to be waived under Regulation 31-C, exceeds the powers of Regional Director/Joint Director I/c so that a decision could be taken on waiver by Hqrs office)

21.15 Revenue Recovery action against the Sick Industrial Companies which fail to comply with the provisions of the Rehabilitation Scheme sanctioned by BIFR [Hqrs instructions no. Q-11/23/23/1/2001 Ins III dtd 18.10.2002] :

The question as to whether the recovery of outstanding ESI dues can be made not withstanding section 22(1) of SICA in case a sick industrial company fails to comply with the provisions of Rehabilitation Scheme sanctioned by BIFR was examined in consultation with Assistant Legal Advisor, ESIC (Hqrs) in view of judgement of Kolkata High Court in the case of M/s Universal Paper Mills & Others v/s Regional Provident Fund Commissioner & Others (2001 vol 106 company cases 518). The Assistant Legal Advisor has opined that in case the company fails to comply with the provisions made in the Rehabilitation Scheme sanctioned by BIFR no protection would be available to the company under section 22 of SICA and outstanding ESI dues could be recovered by enforcing action against the company.

21.16 Follow up action required to be taken in respect of BIFR/liquidation cases [Hqrs instructions V-37/12/5/98-Ins III dtd 28/8/98] and Grant of installment facility to pay the arrears in installments (Hqrs instruction issued vide memo no T-11/13/12(1)/89-ins-III dated 21.6.90 & No. T-11/13/1/93-Ins-II dated 13.09.93)

i) In case where BIFR has declared a company as "Sick" and Sanctioned Rehabilitation Scheme for its revival , close watch may be kept to see that the provisions made in the sanctioned scheme are in accordance with our guidelines circulated vide Hqrs Office No T-11/13/12(1)/89-Ins III (Instruction No 2) dated 21.6.90 and upto date dues which the company owes to the Corporation have been properly incorporated. After the receipt of Sanctioned Rehabilitation Scheme, it is the primary responsibility of Regional Office to watch that compliance is made strictly in accordance with the provisions of the Sanctioned Scheme. If at any stage non-compliance is noticed, the same should be brought immediately to the notice of Operating Agency/BIFR/Hqrs office besides Regional Office, Delhi for taking suitable steps in this regard. Close watch should be kept on release of the money to such companies so as to ensure that our of money released, suitable share is set apart for clearing the ESI dues.

ii) In case of companies which had gone into liquidation , we should stake out claim immediately, as ESI dues have first priority. Close watch may also be kept on advertisements of the company gone into liquidation and about distribution of money out of sale proceeds of their assets. SSO,s may also be directed to be diligent in bringing such cases to the notice of Regional Office so that recovery of ESI dues may be promptly effected. Periodical liaison with the official liquidator and other concerned officials may also be kept so that the steps that are being taken by them are within our knowledge enabling us to approach them at the right time.

iii). Installment facility[Hqrs instruction issued vide memo no T-11/13/12(1)/89-Ins III dtd 22/6/90 and letter no T-11/13/1/93-Ins III dtd 13/9/93]. The Standing Committee and ESI Corporation has delegated the power to the Director General to accept the arrears of ESI dues in installments spread over a period

beyond 8 years in the case of establishments declared sick by the BIFR and in respect of which Rehablitation Scheme has been approved by it subject to following conditions:-

1. Down payment of 20% (lumpsum) of the arrears.
2. Revolving Bank guarantee for payment of 12 installments.
3. Payment of current dues regularly'
4. Withdrawal of all court cases'
5. 12% p.a. interest or such higher rates as may be specified in the Regulations.

iv. Hqrs Ins. No. T-11/13/BIFR/2011-Rev.I dt. 12-01-2011 reiterating the earlier instruction No. T-11/13/1/2003/1/2003 Ins.III dt 17-01-2003 has been issued to take coercive action against companies whose reference with BIFR is admitted as Sick unit

21.17 Guidelines for recovery of ESI dues covered by BIFR:- Hqrs vide D.O No T-11/13/1/2002-Ins III dtd 17/1/2003, advised to review the arrears classified under "BIFR-non recoverable" for appropriate action in light of following legal position :-

(1) The employees' share of contribution forming part of the total arrears may be recovered notwithstanding pendency of any BIFR case using all coercive powers including prosecution. The Regional Director may summon the principal employer and direct him to pay the same within a given short period and thereafter proceed with full force of law.

(2) Where a rehabilitation scheme has already been sanctioned and the employer is strictly paying as per the scheme, namely the first lump sum and subsequent monthly due, we may not disturb the scheme and may only recover / receive the initial payment / monthly instalment as per the scheme. Such cases may be removed from the category of "non recoverable due to BIFR", and added in the recoverable category and included in the list of cases where instalments are given with remarks that instalment is given by BIFR. A register for monitoring instalment cases is required to be maintained where instalment is given as per the Resolution of the Corporation by the Regional Director or by the Court or by the BIFR through the sanctioned rehabilitation scheme. However, the instalment arrangement will be restricted to claims reflected in the scheme upto the cut off date only and not to any subsequent due including damages for period after cut off date.

(3) Where rehabilitation scheme has been sanctioned but the employer has not paid as per the scheme either the first lump sum payment or any/some of the instalment, it may be treated as "non BIFR cases" for all purposes and coercive recovery action including prosecution may be launched with special effort to recover without any delay and they may be removed from the category of "not currently recoverable due to BIFR".

(4) Whether the cases are reportedly pending before BIFR, the current status should be got checked from the BIFR Cell / Delhi Region by addressing the concerned officer demi-officially to know the present status. In such cases, no relief or protection should be given for the employee's share and if the case is pending beyond three years, the employer may be summoned by the Regional Director and advised

about the above judgement and direction of the BIFR and after giving a short period, the employer share and interest may also be recovered. The Regional Director can consider granting suitable instalment for such employers' share and interest if there is a written proposal as per instruction already issued and such instalment arrangements should be minuted with the signature of the Principal employer and the Regional Director in such a way that if a single instalment fails, the arrangement will stand cancelled automatically with coercive, recovery and prosecution action.

(5) In all cases where the BIFR case is currently pending with reference to the employer share, individual reference may be made to BIFR Cell so that where there is no direction against protection under Section 22 of SICA, such specific clarification can be sought on the line of the above judgements. However, where the BIFR has already clarified that such protection will not be available in individual cases and communicated to you, we may go ahead and recover the dues using coercive power and prosecution.

CASE LAW:

I. The Bombay High Court in Ralliwolf Ltd v/s RPFC [(2001)1 BomLR 235, 2002LIC 280, 2001(1)LLJ 774] traversed the case law including several of the Apex Court judgments in the context of PF dues under EPF Act 1952, both the employee share and employer's share , and held that the recovery of PF and other dues under EPF Act 1952 does not fall within the scope of purview of section 22 (1) of SICA 1985, and only limited protection confined to waiver of damages u/s 14-B of the EPF Act was given in the case of Sick industries.

Section 14 B of the EPF Act referred above, corresponds to the 2nd provisio to section 85(B) under the ESI Act, inserted by amendment Act 29 of 1989 w.e.f.1.1.92. The Bombay High Court while holding that section 22 of SICA will not protect EPF dues, took note of the fact that the amendment in EPF Act to provide relief with regard to damages in respect of Sick Industries before BIFR was made subsequent to the enactment of SICA in 1985 and while doing so the Parliament was conscious of the existence of SICA 1985 and therefore, held that "the extent of the immunity conferred upon such (sick) undertakings with reference to provident fund dues may be confined to whatever have been legislated by Parliament and the extent of the immunity or exemption can not be extended beyond what was amended by an amendment act notified on 01-09-1991 in EPF Act , 1952 (regarding of waiver of damages).

The Court also noted the observation in various judgments wherein it was inter alia held that "Section 22 would not operate in the field of payment of wages, gratuity and other statutory benefits payable to the workman… The basic minimum which the workman is entitled to get is the wages and gratuity and other statutory benefits". The Court also, referring to Supreme Court judgment, enunciated the principle that " the PF and other dues payable under EPF Act, 1952, are part of the legitimate benefits to the workers, employer is obliged to pay the contribution of the employees as well as his own contribution to the fund These contribution belong to the employees they constitute an important measure of social security, these are dues which are payable whether or not the undertaking is sick"

2. Gowri Spinning Mills (P)Ltd. Vs Asst. Provident Fund Commissioner [2007 LIC 84] The Madras High Court (FB) The appellant Co. had committed default in remitting the amounts to EPF Scheme to the tune of Rs. 10,96,676.00 during the period from Sep. 2000 to Dec. 2000. Therefore, notice dated 10-11-2005 was issued by the RPFC (C&R) Madurai calling upon the appellant to remit the amount, failing which action under Section 8B to 8G of the EPF Act, 1952 will be taken to recover the dues. In the meanwhile, the appellant made a reference to BIFR u/s 15 (1) of the SICA. The said application was rejected on 01-05-2002 against which appeal was preferred to AAIFR vide order dated 07-11-2005 which was allowed and the matter remitted back to the BIFR and consequently the matter is now with BIFR. The sole basis of challenge was that having regard to provisions of section 22 (1) of the SICA, the recovery proceeding without the consent of BIFR is not maintainable. The H'nble court held that provident Funds dues under the EPF Act are not covered by section 22(1) of SICA and provident dues can not be placed on the same footing as taxes of the Government or dues of the commercial venture or the dues to the Corporate like others.

3. Magnum Polymers (India) Ltd. Vs. RD, ESIC-W.P. No. 19342/2004 Dt. 14-08-2009. The High court of Madras dismissed the writ petition praying for restraining the respondent ESIC from recovery of ESI contribution till disposal of the matter before BIFR.

4. Arihant Threads Ltd Vs. ESIC. CWP No. 9521/2008 Dt. 14-07-2009. The Punjab & Haryana High Court while upholding the judgment in case of Ralliwolf Ltd v/s RPFC and its applicability to ESI has held that the statutory interdict contained under Section 22 of SICA does not operate against notice of recovery of arrears of Rs. 31,25,604.00 as payable by writ petitioner company under section 39(5) of the ESI Act on the pain of arrest and imprisionment.

5. S. B. Packaging Ltd. Vs. Provident Commissioner. CWP No. 12561/2006 dt. 08-09-2008. The High Court of Pujab & Haryana held that it is a fact SICA Act came into operation in 1985, and EPF and Misc. Provisions Act, 1952, was amended by Act 33 of 1988. Such amendment specially notices the position of the SICA Act of 1985 and therefore can not be said that the said Act must prevail over EPF and Misc. Provisions Act, 1952.

XXI. d : DELEGATION OF POWERS RELATING TO INSURANCE

(Reference combined booklet of Delegation of Powers 2005, published by ESIC)

Sr.No.	Description of Powers	Extent of Powers Delegated to RDs/JD In-Charge/JD-II of Hqrs	Extent of Powers Delegated to JDs	Extent of Powers Delegated to DDs/Ads
I . INSURANCE				
I/1	To sanction refund and adjustment of Contribution under ESIC(G) Regulation and Return of Contribution.	Full powers in consultation with the Fin.& A/C subject to quarterly reporting to Hqrs. Of Cases where the amounts exceeds Rs.10000/- per employer at a time.	Upto Rs.2,000/- per employer at a time consultation with Fin.& A/Cs.	
I/2	To Write off of benefits(cash and medical) availed in excess of the contributions paid by the erroneously covered employees.	Full powers subject to the condition that case in which the amount so written off exceeds Rs.5000/- are reported quarterly to the Hqrs.	Upto Rs.2000/-	
I/3	To sanction prosecution of cases under Section 84 & 85 of the ESI Act.	Full powers subject to the instructions issued from time to time.	Full powers in the absence of R.D.	
I/4	To sanction enhanced sickness benefit beyond 7 days incase of vasectomy and beyond 21 days in case of tubectomy.	Full powers in consultation with SSMC/SMCs/Full Time Medical Referee.	Full powers in consultation with SSMC/SMCs/Full Time Medical Referee.	
I/5	To approve inter-regional tour programme of the Corporation employees who accompany the insured person as an escort to the artificial limb Cnetre Poona for the supply of artificial limbs	Full powers	Full powers	

I/6	Write off recovey of contributions, interest and damages under Rule 53.			
	a) In respect of establishment or factory closed for more than 5 years and whereabouts not known despite all efforts.	Upto Rs.30,000/- at a time in each case in consultation with Fin. & A/Cs in each case and report to Hqrs.		
	b) In respect of establishment or factory against whom decree obtained by the Corporation could not be executed successfully for want of sufficient assets of the defaulting employer.	Full powers in consultation with Fin. & A/Cs in each case.		
	c) Claim for contribution is not fully made by			
	i) The official liquidator in the event of factories/ Establishments having gone into liquidation; or	Full powers		
	ii)The Commissioner of payment in the event of unit being nationalized or taken over by the Government	Full powers		
I/7	To file appeal against decision of medical board medical appellate tribunal in cases relating to permanent disability.	Full powers subject to report to Hqrs. Office in respect of appeals to the High Court.	Full powers except of High Court in accordance with guidelines form Hqrs.	

I/8	To sanction calculation of benefit rates in the absence of contribution in cases of permanent disability, commutation and death.	Full powers subject to verification of wages from employer's records.	Full powers subject to verification of wages form employer's records.	Full powers subject to verification of wages form employer's records.
I/9	To waive recovery of excess payment.	Upto Rs.1,000/- in each case in consultation with Fin. & A/Cs and in accordance with guidelines from Hqrs. Office.	Upto Rs.500/- in each case in consultation with Fin.& A/Cs and in accordance with guidelines from Regional Office	
I/10	To relax the prescribed period of 12 months from cessation of temporary disability benefit for reference to medical board for claiming permanent disability benefit.	Full powers	Upto a further period of 36 months in consultation with Medical Referee.	
I/11	To relax Regulation 88(ii) regarding production of certificate of confinement with 30 days for claiming maternity benefit.	Full powers	Full powers.	
I/12	To condone irregularity in cases where payment docket had been lost or acquaintance of insured person was not taken.	Full powers subject to verification of facts by an Officer of the rank of Dy. Director and above in consultation with finance & A/Cs.		
I/13	To sanction time-bared claims of insured employees.	Upto 6 years old claims.	Upto 3 years old claims.	
I/14	To accept medical certificates relating to a back period.	Upto 14 days.	Up to 7 days	

I/15	Prosecutions under Section 86 of the ESI Act.	Full powers, subject to instructions issued from Hqrs.	Full powers in the absence of R.D.	
I/16	To accept time-bared funeral expenses claims.	Full powers	To accept claims submitted late up to 2 years.	
I/17	Creation of Inspection Zones on sanction of additional posts of I.Is or re-arranging the existing Inspection Zones.	Full powers subject to a submission of quarterly report to Regional Office of creation/re-arranging of existing Inspection Zones.		
I/18	To file appeal against decision of E.I Court in cases relating to permanent disability.	Full powers subject to local legal and medical opinion and guidelines, which may be issued by the Hqrs. Office.		
I/19	To sanction conveyance charges to insured persons for their transportation.	Full powers	Full powers	Full powers subject to maximum of Rs.100/- in each case.
I/20	To incur expenditure for obtaining police report in employment injury cases.	Full powers without any monetary ceiling .	Full powers without any monetary ceiling.	Full powers without any monetary limit.
I/21	To sanction payment of arrears in installments.	Full powers to grant the installment facility for both Employers Contribution/Employees Contribution and also for the payment of interest and damages on the following guidelines:- i) The amount and number of installment may be decided on merit of		

I/21	To sanction payment of arrears in installments.	each case but the total number of monthly installments should not exceed 36 in any case. The employer should be required to furnish Bank guarantee for the timely payment of monthly installment. ii) The employer should undertake to pay the current dues of the Corporation within the prescribed time limits. iii) The installment facility should be treated as automatically cancelled, if the employer fails to pay monthly installment of arrears within the agreed time limit and current monthly contribution within the prescribed time limit.		
I/22	To waive damages levied or leviable in each case as per Regulation 31-C of ESI(General) Regulations, 1950 in relation to a factory /establishment declared sick and in respect of which a Rehabilitation Scheme has been sanctioned by the Board for industrial and Financial Reconstruction.	i) RDs/Director, Pune-above Rs.3 Lacs and upto Rs.5 Lacs in each case. ii) JD.I/C of SROs- Upto Rs.3 Lacs in each case.		

NOTE: Powers delegated to D.Ds/A.Ds would be exercised by the concerned B.Os

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XXI. e : GRANT OF INSTALLMENT FACILITY TO THE EMPLOYER

Arrears defined : Where the authorized officer issues a certificate to the Recovery Officer in form C-19 (contribution), C-19(Interest) and D-19(Damages) under his signature specifying the amount to be recovered from the defaulting employer , the same is called "arrears".

21.19 Payment of arrears in installments : As per the combined booklet of delegation of powers 2005, Serial No I/21 , RD's / JD in charge have been delegated powers to sanction payment of arrears in installments subject to the following guidelines :

i) The amount and number of installment may be decided on merit of each case but the total number of monthly installments should not exceed 36 in any case. The employer should be required to furnish Bank Guarantee for the timely payment of monthly installment.

ii) Employer should undertake to pay the current dues of the Corporation within the prescribed time limits

iii) The Installment facility should be treated as automatically cancelled , if the employer fails to pay monthly installment of arrears within the agreed time limit or current monthly contribution within the prescribed time limit.

21.20 Hqrs instructions no T-11/13/3/2000-Ins III dtd 3/11/2000 – Grant of installment facility to the employer :

It is being observed that normally at the time of granting installment facility to the employers for payment of contribution in installments, they are not informed that notwithstanding the grant of installment facilities, the employers are liable to pay interest and damages as per the provisions of the Act.

All the Regional Director / Director/Joint Director I/c of ROs/SROs are therefore, requested that while allowing the employers to pay the ESI dues in installments, they should specifically mention that interest as per the provision of Section 39(5)(a) read with Regulation 31-A and Damages as per Section 85B read with Regulation 31 –C are also payable due to the delayed payment of contribution in installments and they may also obtain an undertaking from the employer that he will pay the interest and damages for the delay that would occur due to payment of contribution in installments.

XXI. f : WEEDING OUT OF RECORDS

Records form an integral part of any office. Proper attention is, therefore, essential to ensure that the records that are necessary are retained and duly cared for and those that have outlived their utility are promptly destroyed rendering location of the retained records easier and relieving unnecessary pressure on storage pace.

21.21 Record Retention Schedule (Source : Reference Book published by ESIC on the subject)

S.No	Memo No & Date	Nature of Records	Retention Period	Remarks
1	Ins III/Misc/66 dtd 29.6.68	C-6 Ledger	10 years from the date of last entry in case there are no arrears and /or any dispute for the period covered by that ledger	
2	do	Employers' file	Five years from the date of last entry provided there are no arrears or dispute fro that period	
3	do	Register of issue of C-18 and C-19	5 years*	*May be preserved for the period shown against each or for 2 years after the last case on the register has been disposed off whichever is later provided that if at the end of five years live cases are very few, this will be transferred under authentication to the new register (current) and the old register weeded out two years after such transfer of entries
4	Do	Periodical Survey Register	5 years*	
5	Do	Refund of contribution register	5 years *	
6	Do	Inspection Register	5 years	
7	Do	Show Cause Notice Register	5 years	
8	Do	Payment of Legal Charges Register	5 years	

9	No.11-D/35/1/92-Gen dtd28/4/95 (RO Delhi)	Execution decrees Register	12 years	Since decrees are valid till 12 years life of register is minimum 12 years. After 12 years a decree is to be renewed through court, otherwise the decree lapses
10	Ins III/ Misc /66 dtd 29.6.68	Action under section 75 Register	5 years*	
11	Do	Action under Section 85 Register	5 years*	
12	D0	Legal Expenditure Register	5 years	
13	Ins III/Misc/66 dtd 29.6.98	Direct payment of contribution through Collector (u/s 45B)	5 years	
14	Ins III Misc/66 dtd 29.6.68	Records of I.Os i) Register of inspection ii) Files containing reports reg. Inspection/Survey & other correspondence in respect of each employer iii) Files containing tour programme fortnightly reports & monthly reports	5 years 5 years from the date of last entry provided there is no arrears etc. 2 years	
15	Do	Files containing audit reports (Internal & External)	5 years from the date of last reply provided all points have been settled.	

16	Do	Monthly statement of C-18/C-19	3 years	
17	Do	Correspondence with state government regarding various matter	10 years from the date of last correspondence	
18	Do	Register for levy of damages u/s 85 B	5 years from the date of last entry.	
19	Do	Defaulters Register	5 years from the date of last entry.	
20	R-13/11/89-Ins dtd26.5.92	Ins No allotment Register	Permanent	
21	G-15/13/1/86-MSU dt 8.2.89	E.I. Application files u/s75	5 years from the date of final decision	
22	Do	High Court files u/s80 (which has been repealed by Act 44 of 1966	Permanent	
23	Ins11(9)14/62(22/63) dtd 29.6.63	Statement of waiver of recovery	3 years provided there are no audit objections and no case is pending in court of law	
24	Do	E.I. Register	5 years from the date of last entry.	

XXI. g : LIABILITY IN CASE OF TRANSFER OF ESTABLISHMENT

21.22 Section 93A : Liability in case of transfer of establishment

Where an employer , in relation to a factory or establishment transfers that factory or establishment in whole or in part, by sale , gift , lease or license or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods upto the date of such transfer.

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

21.23 Hqrs instructions no P-11/21-1/2/2000- Rev-II dtd 1.5.2008 – Regarding in case of transfer of establishment u/s 93-A of ESI Act :

The opinion received from Sri C S Rajan, Senior Advocate regarding transfer of liability in the case of transfer of establishment is given below for regulating /claiming the dues of the Corporation among the transferee / transferor establishments and financial agencies. The broad facts of reference as forwarded by RD , Indore are as follows :-

In a number of cases , where the defaulter employer did not pay the contribution and due to the statutory liability of the employer , the establishment has been ceased by financial agencies like M.P. State Financial Corporation, etc., the assets of the establishment was put on auction / sale to the third party.

The third party declined to pay the contribution and other dues in respect of the period prior to taking over of the unit by them on the ground that the unit has been taken over by the new employers from the financial agency which had, in turn, taken over the earlier unit in view of failure to settle the financial liabilities to the agencies.

According to the opinion of the Sr. Advocate such cases are to be covered by the expression in the provision of Section 93-A “or any other manner”, apart from the cases where the transfer of the factory establishment takes place either whole or in part by sale, gift, lease or license. Shri Rajan has also opined that the financial agency which took over the Management of the factory or establishment is also a principal employers. Thus, the erstwhile employer, the financial agency and the present employer, who is the auction purchaser, are jointly and severally liable to pay the contribution.

LEGAL OPINION

Sub: - Opinion regarding the liability of transferring under Section 93-A of ESI Act,1948.

1. In these cases the transferee employer refuses to pay the contribution due in respect of the period earlier than the period of taking over of the units by the new employer. These units have been taken over by the new employers from the Financial Agencies which had taken over the earlier units in view of the failure on the part of the past employer to pay the financial liabilities to the agencies. According to the transferees the units are taken over by the present employer after the same has been bought over in auction from the agency. Section 93-A of the ESI Act reads as follows :-

" Where an employer, in relation to a factory or establishment transfers that factory or establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer.

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer".

2. According to the above section where an employer transfers the factory or establishment by sale, gift, lease or license or in any other manner whatsoever, the employer as well as the person to whom the factory or establishment is transferred shall jointly and severally be liable to pay the contribution in respect of the period up to the date of such transfer.

3. According to your views as put forward in the letter, the auction by a financial agency does not fit into any category of transfer of establishment, as mentioned in Section 93-A of ESI Act. <u>According to me the above view is not correct</u>. The transfer can be by sale, gift, lease or license or in any other manner whatsoever. Therefore, apart from sale, gift, lease or license the transfer can be effected in any other manner whatsoever. The expression in any other manner whatsoever embraces any other kind of transfer apart from sale, gift, lease or license. Therefore, the auction conducted by the financial agency and by which the present transferee has acquired the right of the past employer also come within the expression in any other manner whatsoever.

It cannot be contended that the expression "or in any other manner whatsoever" does not have any other meaning other than by sale, gift, lease or license, and according to me those are situations which are only illustrative, and not exhaustive. Moreover, the financial agency who took over the management of the factory or the establishment is also a principal employer. Thus, the past employer the financial agency an the present employer who is the auction purchaser are jointly and severally liable to pay the contribution. Section 93-A envisages any transfer by sale, gift,

lease or license. It also covers any other transfer which includes a transfer by auction. Therefore, the auction purchaser who is the present employer cannot contend that his transaction is not covered by Section 93-A of the ESI Act. The transfer can be in any other manner whatsoever other than sale, gift, lease or license. The words "or in any other manner whatsoever" also occurs in clause (f) of Article 266(29A) of the Constitution of India wherein the question is tax on the supply of goods. For ready reference clause(f) of Article 366(29A) is reproduced below :-

"a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment, or other valuable consideration."

Clause(f) also came up for consideration before the Supreme Court in the case of K. Damodaraswamy Naidu & Brs. Vs. State of Tamil Nadu reported in 2000(1)SCC 521. A Constitution Bench of the Supreme Court analyzed the said clause and was pleased to hold as under :-

" The provisions of sub clause (f) of clause (29A) of Article 366 need to be analyzed. Sub Clause(f) permits the States to impose tax on the supply of food and drink. The supply can be by way of service or as part of a service or it can be in any other manner whatsoever. The supply or service can be for cash or deferred payment or other valuable consideration. The words of sub clause(f) have found place in the Sales Tax Act of most States and, as we have seen, they have been used in the said Tamil Nadu Act. The tax, therefore, is on the supply of food or drink and it is not of relevance that the supply is by way of a service or as part of a service. In our view, therefore, the price that the customer pays for the supply of food in a restaurant cannot be split up as suggested by learned counsel. The supply of food by the restaurant owner to the customer though it may be a part of service that he renders by providing good furnitures, furnishing & fixtures, linen, crockery and cutlery, music, a dance floor and a floor show, is what is t he subject of the levy. The patron of a fancy restaurant who order a plate of cheese sandwiches whose price is shown to be Rs. 50/- on the bill of fare knows very well that the innate cost of the bread, butter, mustard and cheese in the plate is very much less, but he orders it all the same. He pays Rs. 50 for its supply and it is on Rs.50 that the Restaurant owner must be taxed. Therefore , my considered opinion is that the transferee referred to in your letter is also liable to pay the contribution under Section 93-A of the ESI Act.

Sd/-

(C.S. Rajan)

XXI. h : CONTRIBUTION, ETC, DUE TO CORPORATION TO HAVE PRIORITY OVER OTHER DEBTS

21.24 PRIORITY TO CORPORATION DUES : Section 94- Contribution, etc, due to Corporation to have priority over other debts – there shall be deemed to be included among the debts which, under section 49 of the Presidency- towns Insolvency Act, 1909(III of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (V of 1920), or under any law relating to insolvency in force in the territories which, immediately before the 1st November, 1956, were comprised in a Part B State or under Section 530 of the Indian Companies Act, 1956 (1 of 1956), are in the distribution of the property of the insolvent or in the distribution of the assets of the company being wound up, to be paid in priority to all other debts, the amount due in respect of any contribution or any other amount payable under this Act the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date if(sic) the winding up, as the case may be.

21.25 Hqrs. Letter No. T-11/11/12/1/2004 Rev.I dated 21.06.2006- Section 94 of the ESI Act 1948 giving priority to Corporation dues over other debts- regarding rejection of Corporation's claims by Official Liquidator.

A copy of the legal opinion of Shri C.S.Rajan, Senior Advocate, Supreme Court is given below to make use of the same to safeguard the interest of ESI Corporation in Official Liquidator case:

LEGAL OPINION

Sub :- Clarification regarding Section 94 of the ESI Act giving priority to Corporation's dues over other debts.

The debts mentioned in Section 94 include debts under Section 49 of the Presidency Towns Insolvency Act, under Section 61 of the Provincial Insolvency Act or under any law relating to insolvency in force in the territories which immediately before the First November 1956 were comprised in a part B state, or under Section 530 of the Companies Act. The reference to part B States relates only to any law relating to insolvency in force in the territories which immediately before the first November 1956 comprised in a part B state. Obviously it does not relate to Section 530 of the Companies Act. According to me, the legal advice given by the Learned Counsel of the Corporation has really misread the provision contained in Section 94 of the ESI Act. For making a claim under Section 94 of the ESI Act read with Section 530 of the

Companies Act it is not necessary for the Corporation to prove that the Mill was comprised in part B state. In this connection it is also pertinent to refer to Section 530(1)(d) of the companies act which stipulates priority for the debts/dues to the Corporation. But at the same time the Corporation has to produce documents to prove its dues which are claimed against Companies in liquidation before the Official Liquidator. The officers of the Corporation have to produce the relevant assessment orders or notices of demand served on the company before its liquidation in order to claim priority of debts before the Official Liquidator as requested by him.

Sd/-

C.S. Rajan

XXI.i : AMNESTY SCHEME

21.26 The Corporation from time to time has launched "AMNESTY SCHEMES" for the Employers and the Insured Persons in its endeavor to provide an opportunity for an amicable settlement out of Court. The present Amnesty Scheme viz : "NEW AMNESTY SCHEME 2010" affords an opportunity for out of court settlement in the following cases :

1. Cases filed against IP's u/s 84 of the ESI Act

2. Cases filed against Employer- u/s 85 & 85-A of the ESI Act.

3. Cases filed by the Employer in which he has disputed the determination or recovery of contribution in the E.I. Court u/s 75 of the ESI Act.

Under the scheme, not only contribution will be accepted on actual basis, as an incentive for out of court settlement, Corporation is willing to waive damages to the extent of 100%.

The scheme is already in force from 1st March, 2010 and would be up to 28th Feb,2011. Details of the Scheme may be seen in the official website of the Corporation www.esic.nic.in

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XXI. j : LAUNCHING OF PROSECUTION UNDER THE "NEGOTIABLE INSTRUMENT ACT"

21.27 Launching of prosecution under the Negotiable Instrument Act in the cases where cheques issued by the employers are dishonored/bounced. (Hqrs. instructions No. T.11/14/1/ 96 Ins. IV dated 9.2.96):-

It has come to the notice of this office that in order to avoid attachment of their factory/ establishment property/seizure of bank account by the Recovery Officers of the Corporation towards recovery of our dues, a good number of employers issued cheques to some of the Recovery Officers. These cheques on being presented to the banks were dishonored by the banks on whom they were drawn for want of requisite fund in the account of the employer(s). Although, some of the Regional Directors have taken criminal action under the Negotiable Instrument Act it may just be possible that in some Regions this steps might not have been taken. Since, filing of criminal cases under Negotiable instruments act after proper compliance of the requirement of the Act, is an effective measure to check this mal-practice by the employer(s) it has been decided that in all cases where cheques issued by the employers are bounced/dishonoured, criminal case should invariably be filed.

21.28 Withdrawal of cases under section 138 of N.I. Act – delegation of Powers to RDs/JD I/c. for withdrawal of cases. (Hqrs. instructions No. T-11/14/32/4/2002-Ins. IV dated 6th March 2002):-

To bring down the pendency of criminal cases and reduce the administrative expenditure and loss of day value of the inspectors in prosecuting such cases, the Director General has delegated powers to RD's and JD I/c.'s to withdraw criminal cases filed against Employers, only for the first offence provided they pay the total amount involved in the bounced cheques alongwith an additional liquidated compounding fee of Rs. 2000/- revised to Rs.5000/- (w.e.f 22/11/2010) or the actual fee that we are required to pay to our advocate whichever is higher. The compounding fee will be flat rate as stated above with no additional expenses to be calculated for filing of case etc. After filing the case in the Court, this facility should be made aware to the Court through our advocate and also by a Regd. AD letter to the accused employer so that there is full knowledge of this facility.

Only on one occasion a criminal case under Section 138 of N.I. Act can be withdrawn against one employer/accused. In case of any second occasion where a case has to be filed against the same person the complaint should also highlight the above facts of withdrawing case earlier and make a prayer for awarding deterrent punishment including imprisonment and suitable fine not below the amount involved in the bounced cheque with a prayer to the Court to apportion fine amount to the extent of the amount involved in the bounced cheque and additional amount of a minimum of Rs. 2000/- revised to Rs. 5000/- (w.e.f 22/11/2010) to cover the cost of litigation as the ESI Scheme is meant for low paid industrial workers and fully funded by their contribution. In case of any second offence justifying withdrawal for sufficient reasons, a reference has to be made to the I.C. (Hqrs.)

———————————————————————-

XXI. k : PROPER MAINTENANCE OF C-18/C-19 REGISTER AND D-18/D-19 REGISTER

21.29 PROPER MAINTENANCE OF C-18/C19 & D-18/D-19 REGISTER : Emphasising the need to maintain the C 18/C 19 Registers systematically and meticulously, Hqrs., vide its D.O. No. Part File-T-11/ 13/3/2001 Ins-III dated 13.08.2001, elaborated the procedure thereof to be followed scrupulously as under:

"In the sphere of revenue management in the Regional Office, the most important register is the C-18/C-19 Register followed with D-18/D-19 and the arrears registers. In fact they are the Demand Collection Book of the Corporation and should be an accurate reflection of the revenue receivable under the Act."

"A recent view of these registers in some regions reveals that its maintenance is casual, negligent and even inaccurate resulting in absolute non-reliability of the information for a proper reportage of the revenue status. The situation may be so in most Regions. The poor quality of maintenance of this vital document, results in non reconcilability of the revenue figures between Recovery Officer and Revenue Branches, inflated arrears position and serious vigilance angle."

"The C-18 /C-19 and the D-18/D-19 registers, are designed in such a way so as to show stage by stage progression of pre-assessment notice till recovery. A proper maintenance of the entry, duly attested in case of settlement or authorized deductions of claim, would mean that there will hardly be any need to refer to the file in case of an individual claim. Similarly a proper summary in the end of month should show the pendency of C-18 for assessment order under section 45A and cases pending for issue of Recovery Certificate (C-19). Presentation of the summary to the Jt. Director or Regional Director periodically should trigger chasing of older cases and where necessary fixing of responsibility for delays, inaccuracy etc. But this is not happening now because, regrettably, the importance of this register has been neglected."

"Some of the major errors and omissions noticed in maintenance of these registers are :-

(a) No appropriate entry with remarks and authentication in columns when the claims are settled by way of recovery, reduction or court judgment.

(b) The remarks are written across the prescribed column in a casual manner not conforming to the printed columns

(c) When the employer pays part of the amount against 45-A/85-B order or C-19/D-19 with request to accept "actual" or even without such a formal request, the entries are rounded off with remarks across the columns that paid on actuals or sometimes only as "Paid", though what is paid is not what is claimed.

(d) Where authentication is there in the columns, it is not possible to know who has authenticated it, as the full signature is not available and the records do not have an attested specimen signature.

(e) When payment is received from Recovery Offcer in full or part it is not reflected against appropriate column with relevant entry.

(f) When action is taken at some stage such as issue of 45-A order, C-19 etc., the relevant remarks are not promptly written or when written, they are simply scrolled across the column without entering in the prescribed column with prescribed details making the properly devised register meaningless.

(g) Summaries are not made periodically , or where made those do not reflect the entries in the column with particular reference to old but action pending entries.

(h) Where summaries are made, they are not submitted to Jt. Director or Regional Director periodically, and if submitted a casual signature is put without triggering remarks and direction on old pendency or improper entry etc.

(i) The deficiencies in maintenance of this register are not made a subject matter of periodical meetings by Regional Director, branch inspection and even Vigilance or audit inspection. There is lack of appreciation of the importance of this register vis-à-vis, revenue audit and vigilance scrutiny."

"The above are only illustrative. Your critical scrutiny may reveal more short comings Region-specific."

"Accurate maintenance of the above Registers therfore, is warranted.. I may suggest a brainstorming session with all the staff exclusively for this purpose. The existing register may need review and total recasting, keeping in view the above observations. Responsibility needs to be fixed on all concerned. Summary should not only be made accurately but submitted to Joint Director once a month and to Regional Director once a quarter. The Joint Director and Regional Director are expected to critically go through the register, give their remarks and directions, and where necessary with separate notes to the officers concerned., for rectifying the shortcomings and to confirm action within a given time frame. The maintenance of this register, shortcomings noted by the JD/RD etc. should be a subject of periodical meetings."

"Please also keep a record of full signature duly attested by Branch Officers with his name of the superintendent of the branches who are authorized to authenticate the entries in columns meant for such authentication. A certificate of number of pages , date of opening and closing should also be available in the opening page duly countersigned by JD or RD."

"Joint Director (F)/ DD(F) and Zonal Vigilance Officers may be advised to include the above registers in the context of this instruction as a regular feature of their internal audit and vigilance inspections."

XXI. l : PREPARATION AND SUBMISSION OF ANNUAL ARREARS STATEMENT

(A) Contribution incuding Interest where C-19 has been issued:

21.30 GUIDELINES FOR PREPARATION OF AREARS STATEMENT (CONTRIBUTION)

(i) Reference Hqrs Office instructions no Q-11/18/99-Ins III dtd 2.5.2002 – Submission of arrears statement – Revised Procedure.

Attention is invited to this office instructions no 7/01 issued vide letter no Q-11/18/99-Ins III dated 2.8.2001 on the subject cited above as per which the half yearly arrear statements were delinked from the contribution period and the Regional Directors were requested to submit half yearly arrears statement from A day upto 31st March , and 30th September, every year and to submit a monthly arrear statement every month without furnishing the details with annexures as is required in respect of half yearly statement.

Now that the half yearly arrears statements have been delinked from the contribution period , the matter regarding submission of half yearly statements and the monthly statements was reexamined at Hqrs office and it has been to discontinue the submission of half yearly statements to reduce the work load at RO/SRO. Instead, it has been decided that annual statement of arrears showing the arrears from A day upto 31st March, every year is to be furnished by the RO/SRO henceforth starting from 31st March, 2003.

This annual statement may be submitted in the existing proforma (since revised vide Hqrs. letter No. Z-14/17/2006-Rev.I Col.III dated 3/4/2006)for half yearly arrear statement by making necessary corrections in the proforma to suit the requirements of the annual statements. The annual statements may be submitted alongwith annexures indicating the details of arrears from A- day in respect of factories / establishments under liquidation, registered under BIFR, declared Sick by BIFR, factory is closed and whereabouts of the employer not known, Central / State Public Sector Undertakings in arrears of ESI dues etc. The concurrence of Finance and Accounts branch should also be obtained before submitting the statement to Hqrs office. The monthly arrears statement may be sent every month as advised in instruction no 7/2001 dated 2/8/2001. However, the bifurcation of arrears of factories and establishments belonging to private and public section undertaking may be shown separately in the monthly statement as per format given below :-

Monthly statement of Arrears of Contribution including interest from A-day to the end of the month of _____

SR. No.	PARTICULARS	NO. OF UNITS			AMOUNT (Rs. In Lakh)		
		Pvt. Sector	Public Sector	Total	Pvt. Sector	Public Sector	Total
1	Amount of arrears in respect of damages as per last monthly statement						
2	Arrears added during the period from1.12.10 to 31.12.10 by issuance of C-19 and C-19 (Interest)						
3	Total						
4	Amount recovered or adjusted during the period 1.12.10 to 31.12.10						
5	Balance						
6	Net Increase / Decrease						

Date :

Sd/-

Asst Director/
Dy. Director

(ii) Classification of recoverable and non-recoverable arrears (DO No Z-14/17/2003-Ins III dated 6.3.2003):-

Discontinuing the earlier procedure of submitting half yearly statement, the annual arrear statement with the classification of recoverable and non –recoverable for the year ending 31st March, is due to be received at Hqrs by 30th April . As this is the most important revenue related information to be submitted to the ministry and reflected in the annual report etc; the RDs are required to ensure complete accuracy and timely submission of the same.

Also refer to ICs DO letter no Q.11/18/2002-Ins III dated 17/7/2002, requiring complete review of arrear statement with particular reference to arrears classified as currently not recoverable. This review has been going on in the Region. This review needs to be completed well before preparation of annual arrear statement so that the data is upto date.

Some of the important items on which the statement needs revision as per Hqrs instructions issued in the recent past are appended below for your personal attention and compliance :

1. As per instructions circulated vide DO letter No T-11/13/1/2002 Ins III dated 17.1.2003 the Sick Companies registered with BIFR do not enjoy special protection under the provision of Sick Industrial Companies (Special Provisions) Act, 1985. Thus dues relating to such units shall not be classified as " Not recoverable for the present" and shall be shown as recoverable and pending with Recovery Officer.

2. (i) Under the head " Not recoverable for the present" and against sub-head "other reasons" the amount stayed by Regional Directors for re-opening of C-19 are being reflected. This stay is generally for a very short period. Hence such arrears may not be shown under this head in the statement. These arrears are to be shown as recoverable and pending with Recovery Officer.

(ii) In some cases where the employer has gone to the Court for declaration as insolvent. Such arrears are being booked under this subhead whereas such arrears should form a part of " Amount disputed in Court".

(iii) Some of the regions are giving one reason or the other for showing arrears under the sub-head "Other reasons" which on close examination are found to be recoverable arrears or arrears not recoverable for the present pertaining to other heads.

In view of position discussed at point No (1) and (2) above it has been decided to delete the sub head (f)(i) to (iii) relating to arrears of BIFR units and sub head (g) "other reasons" under the main head "not recoverable for the present" from the statement. However the list of units in respect of which rehabilitation schemes have been sanctioned by BIFR may be furnished with the return. A revised proforma for the Annual Statement of Arrears is enclosed.(Annexure 13.)

3. As intimated earlier vide D.O. letter no V-11/14/1/2000 Ins III dated 21.10.2002 arrears relating to 'closed factories' should not be shown under the head "factory closed and whereabouts of the employer not known". Under this sub-head arrears relating to only those factories/est. should be booked where the factory/est. is closed as well as whereabouts of the employer are not known. If the factory / establishment is closed but whereabouts of defaulter is know such dues are o be listed under Recoverable category only.

(iii) Reference Hqrs instructions no Z-14/17/2008-Rev I dated 18.2.2010-Preparation and submission of Annual Arrears Statement for the year 2009-2010 :

INSTRUCTIONS ON PREPERATION OF STATEMENT

The following points may be kept in view while preparation of the said statement:

1. Annual Arrears Statement is submitted in the revised proforma circulated last year vide this office letter No.Z-14/17/2006-Rev.I Col.III dated 3.4.2006.(Annexure 21)

2. The data of annual arrears statement compiled conforms to records maintained by Revenue Branches and Recovery Officer's branch.

3. Large variations in the arrears should be explained suitably giving the reasons for such increase/ decrease in the forwarding letter.

4. A separate list of individual defaulter employers where dues are more than Rs.10 lacs, 25 lacs and 50 lacs and 1 crore are submitted separately.

5. Year-wise break up of arrears should be properly reconciled and submitted to Hqrs. Office as it is to be placed before External Auditors. It is seen in some of the returns that the amount of arrears shown in a particular year was subsequently increased in the next year's return. The audit has taken an observation in this regard. Explanatory remarks are essential in such cases.

6. Proper and correct classification of CPSU/SPSU's units under respective ministries/controlling departments should be provided in order to make the monitoring by the Ministry of Labour and Employment, Govt. of India with those ministries.

7. In has been noticed in previous years that some Regional Directors have shown the arrears in respect of factories/establishments where exemptions have been granted by the State/Central Government. The arrears of relevant period of exemption may not be shown in the statement.

8. It should be ensured that arrears should be deleted from the records where employers have made the payments.

9. Old liquidation cases are not being reviewed and the same status is reported every year without checking the facts of each case.

10. Correct number of defaulters are not reported in the statement.

11. Defaulter's cases especially whereabouts are not known, cases may be examined and processed for waiver.

12. Some of the Regional Directors have reported the arrears in the column of decree for last so many years without knowing the current status of the case and not examining for writing off the dues as per the extant provisions when there is no chance of recover.

13. Old Court cases are being reported in repetitive manner without knowing the current status from the record. Where Court cases are actually pending, the status of stay vis-à-vis the amount of arrears held up due to litigation as on date should be reconfirmed and if cases are pending beyond reasonable period action as proposed vide Hqrs. Letter no. S-11/13/1/1/2001-Ins.IV dated 27/11/2001 should be initiated in consultation with advocate.

14. Due to creation of new Sub Region Offices, the arrear figures may be sent after consultation with the parent regions so that no repetition of figure occurs either in the parent region or sub regions.

15. All figures may be given in lacs only with fractions thereof upto two digits after decimal.

16. Suitable analysis be made in the forwarding letter with additional details to be recorded under appropriate columns of the Annual Arrears Statement.

17. A list of C-19/ D-19 in respect of recoverable arrears may also be sent separately.

(B) Annual Arears Statements (Damages) where D-19 has been issued :

The Guidelines given above for preparation and submission of Annual Arrears Statement for Contribution including Interest where C-19 has been issued holds good for the preparation and submission of Annual Arrears Statement for Damages where D-19 has been issued which need be sent in the proforma enclosed as Annexure-14.

XXI. m : MISSING OF EMPLOYERS FILE – NEED TO TAKE PREVENTIVE MEASURES

21.31 STOCK TAKING OF REVENUE FILES : The following instructions are issued on the subject for strict compliance : (Hqrs instructions no C-11/11/20/95-Vig dated 27/2/97)

i) There should be proper handing over /taking over of charge by each official / officer handling employers files. Each such employee should prepare a list of employers file and other documents / papers and hand over the same to the new incumbent under acknowledgement.

ii) In the month of April every year, each Dealing Assistant in Revenue Branches should undertake stock taking of employers file and report the result (through his immediate superior) to the Branch officer concerned.

iii) As already instructed in Hqrs letter dated 22.3.1995, the stock taking of employers files in the entire region should be undertaken once in three years and the result thereof should be intimated to the Vigilance and Insurance Branches of the headquarters.

21.32 New RO & SROs – proper stock taking of revenue files, records, registers, etc. (Head Quarters instructions no. N-21/13/2003 Ins III dated 6th May, 2003)

In view of opening of new RO & SROs covering State of Jharkhan, Uttaranchal, Chhattisgarh, J&K, Himachal Pradesh, and new SROs covering certain districts of Andhra Pradesh in Vijayavada, it is necessary to ensure proper and accurate stock taking of revenue files, records, registers and files relating to court cases, etc. So that there is no scope for any vigilance and audit ramification due to non-accounting of revenue files and records relating to newly set-up offices. If the files and records required to be transferred to the new RO & SROs are not fully accounted for and transferred, it is possible to loose sight of follow-up action to enforce the Act including finalisation of assessment of contribution, FDC, etc..

1) The complete list of code numbers allotted, in respect of factories/ establishments, whether closed or decovered, shall be prepared, which belongs to the areas falling under new RO & SROs at the first instance in ascending order with the current status of functioning of these units as available from the records. This list should be furnished to the RD / JD of the new RO / SROunder proper authentication.

2) If the files of the closed / decovered factories/ establishments has already been weeded out with no outstanding arrears, the RD of the parent region may certify this in the list mentioned above so that RD/JD in charge of new RO / SRO need not collect those files and they may only record this fact in the new file index for their RO/SRO.

3) All the files , alongwith the note sheets including old volumes of the remaining files , irrespective of the status of the factory / establishment and irrespective of the fact that whether outstanding dues are there or not or pending inspection C-18/D-18 etc. is there or not, should be handed over by the parent RD and duly received by the RD/JD of new RO & SROs against proper

acknowledgement. If some files are not available at the first instance, a proper record of files not received must be maintained and should be procured within a reasonable time of setting-up of the new RO & SROs and the list of files still not received should be sent to the headquarters.

4) Copies of all policy instructions issued in the past should be obtained and new policy instruction file should be created in all subjects concerning revenue including legal aspect, issue of code number, assessment, reopening, damages, etc..

5) A new C-1 register may be created to which all pending items of the C-1 register of the parent region which relates to the geographical area coming under the new RO & SROs may be carried forward.

6) All the registers such inspection control register, survey register, FDC register, etc. belonging to inspection control branch should also be similarly reconstructed including the code numbers in the newly set-up offices and properly received.

7) Similarly, C-18/C-19 register and arrears register as also other registers such as damage register, review register, etc. of the revenue branch should also be reconstructed fully wherever there is pending enteries or pending arrears so that all the code numbers belonging to new RO & SROs is entered in the new registers. Arrear statement with classification of year ending 3/2003, will be sent by the parent Regional Director, with a copy to new RO & SROs.

8) Similar exercise should also be carried out in respect of legal branch register, meant for high court cases, E.I Court, MAT and criminal court cases irrespective of the fact that the cases may continues to be handeled by the advocates in the parent region for sometime in repsct of High Court, E.I Court cases so that new RO & SROs should have an accurate register of pending cases belonging to their area. However, cases filed in criminal court and E.I Court falling in jurisdiction will be handled by the new RO & SROs.

9) With the preparation of the registers and records as mentioned above, the appropriate enteries transferred to the registers of the new new RO & SROs should be closed with authentication for which a standard rubber seal could be prepared.

10) The RD/JDs of the new RO & SROs and DD/AD (F) should immediately take steps to open A/C No1 & A/C no.2 for the new RO & SROs identifying the link branch and the base branches for collection of ESI Fund falling within the newly demarcated area, so that challans and statements from this area come only to the new link branch instead of the link branch of the parent region. The RDs of the parent region may coordinate this using the good offices of the local Head Office of the SBI, the link branch of the parent region and link branch of the new RO & SROs. SBI authorities may be requested to arrange a meeting to explain the procedure, to the Base Branch/ Link branch if necessary. As far as possible the original base branch may be retained with arrangements that they should now send the fund to the new link branch nearer to the new RO & SROs. This, needs to be ensured in coordination with the F&A Division at Hqrs.

11) No separate Recovery Officer may be posted for some time , in respect of new RO & SROs. Therefore, the present recovery officer of the parent Region may continue to function as Recovery officer for the new RO & SROs. However, the CP-2 register and other recovery register need to be separated in similar fashion as mentioned above with new CP.2 register and appropraitew entry in the original register and recoveries made should be deposited with the link brach of the new RO & SROs and in case of instruments (Cheque, DDs etc.) they should be sent to the RD/JD of the new RO & SROs. Separate returns of recovery made in respect of the new RO & SROs should be sent to Hqrs with a copy to the RD including RD/JD of the new RO & SROs. In other words, the recovery records, reports and returns should be separated in all respect.

12) Sufficient stock of various forms and returns may be collected and where any form or return already printed contains the name of the parent region, initially rubber stamp can be used to superscribe the name of the new RO/SRO. As soon as the new RO/SRO establishes, forms and returns may be printed afresh with the name of the new RO/SRO.

13) PCs are being sanctioned seperatly. As soon as they are available modem may be procured so that e.mail account is opened at the earliest.Till such time, the RD/JD may open e.mail account using the nearby internet cafe or their own private PC, if available.The e.mail ID created should be such as to indicate the location as clearly as possible and should not be frequently changed.

    The purpose of the instruction is to ensure that the revenue record on file are identified and obtained accurately and if any file is not made available this could be procured later or reconstructed where neccessary. As an unsatisfactory accounting and receipt of revenue record nd files could result in loss of revenue with consequencial audit and vigilance ramification, RDs/ JDs of the new RO/SRO should ensure this exercise accurately and RDs of the parent region should give full support for this purpose.

XXI. n : SETTLEMENT OF REVENUE AUDIT PARAS

A) Internal Audit :-

21.33 The Revenue Audit paras pointed out by the Internal Audit are to be settled by the DA with the approval of BO/JD during:

i) Immediatly after receipt of Audit para

ii) During review of files.

21.34 The settled audit paras may be entered in the Register maintained in the branch and shown to the Internal Audit for settlement.

B) External Audit :-

21.34 The Revenue audit paras pointed out by the External Audit are to be settled by the concerned revenue branches at RO/SRO with the concurrence of Regional Finance & Accounts and after obtaining the approval of Head Quarters' office thereon.

XXI. o : VISION FOR MODERNISATION OF REVENUE MANAGEMENT IN THE WAKE OF I.T. ROLL OUT.

In the wake of changing global scenario and IT enablement in the business processes in the offices of the Corporation, it is desirable to bring about substantial changes in the Revenue Division of the Corporation to meet the future needs. The ESI Corporation will become a knowledge hub where all the required information would be available in the data base with IT tools which would serve it in better revenue management and that would become a model for other similar Organisations.

- ***To open Business Development Divisions (BDD) both at Head Quarters as well as in the Regions which will be entrusted with the task of continuously analyzing all the data relating to coverage of Factory/Estt., fluctuation in employment pattern, payment of contribution, etc. and make the feedback available on any substantial and significant fluctuations.***
- ***To verify every possible source of information like GPS, Google and other search engines, other websites of industries department, chambers of commerce, Employers and Employees Associations to locate any new upcoming industrial units or any other coverable units to ensure their coverage without any loss of time.***
- ***To create a proper website where any interested trade unions, employers associations and any other individual can furnish information anonymously about evasion of coverage, under reporting the number of employees, etc. to enlarge the coverage potential under the Act.***
- ***We should develop a system of automatic detection of those employers who are not paying the contribution or where there is a substantial variation in the contribution should be immediately flashed. Where contributions have not been paid for the first month an email drawing the attention of the employer would be automatically generated and sent. Where such failure is repeated continuously for three months, a printed reminder highlighting the statutory obligations and resultant consequences that would follow addressed to the principal employer would be generated and sent.***
- ***Where there is a steep variation in quantum of contribution and the number of employees, information would be instantly made available of the dash board for a proper analysis and follow up action.***
- ***Bring about a provision in the Regulations requiring the employer to enter the data containing names of persons employed during the month, wages paid/payable to them at the end of each month in Regulation 32 register even if the contribution is not paid and make this information available to the Corporation every month.***
- ***A cell consisting of senior officers is constituted in each Region to analyse each judgement and upload suitable judgements on the websites so that access is readily available.***
- ***In order to facilitate quick search for the instructions in revenue manual/Head Quarters' instructions proper keyword search should be provided.***
- ***Legal branch should properly maintain records to identify the cases in which ESIC counsels have taken frequent adjournments, or do not appear in the court for conducting the cases and propose appropriate action to arrest such trends.***
- ***Strengthening the Zonal Training Divisions by designing the contents and course material for training that would hone the skills of all the functionaries in handling the Revenue matters to the fullest satisfaction of all the stake-holders of the Corporation.***

APPENDIX XXII.1

Annexure 1-14

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PROFORMA RELATING TO COMPLETION OF MEDICAL ARRANGEMENTS TO BE FURNISHED BY THE STATE GOVERNMENT FOR IMPLEMENTATION OF THE ESI SCHEME.

1	Areas where The scheme is to be implemented.	
2	Number of Employees to be covered.	
3	Type of medical care to be provided.	
4	System to be adopted for outdoor care (1) Panel (2) Service	
	Outdoor Care	
5	Whether sanctioned number of ESI Dispensaries set up / IMPs selected.	
6	Whether sanctioned number of IMOs, Para Medical and Other Staff posted in dispensaries/IMP appointed.	
7	Whether forms viz. prescription forms: Certificates Books etc. supplied to dispensaries/IMPs.	
8	Whether dispensaries equipped with the furniture, drugs and medicines, dressing appliances, equipments etc.	
9	Whether dispensaries equipped with chemists for dispensing medicines appointed (for Panel Area only)	
10	Whether arrangements made for maternity services.	
11	Whether any of the ESI Dispensary in the area will function during night hours? If so, whether additional staff for this has been sanctioned and posted?	
	SPECIALIST SERVICES AND INVESTIGATION FACILITIES	

12	Whether arrangement made for	
	(a) Specialist services, if so in what specialties.	
	(b) Supply of special medicines	
	(c) Pathological facilities and laboratory investigations	
	(d) X-ray and radiological investigations	
HOSPITALISATION		
13	Whether Hospitalization arrangement made, if so, where and number of beds reserved/provided	
14	Whether arrangement made for Emergency Services.	
15	Whether arrangements made for Ambulance Services	
16	Date from which the Scheme is to be brought into force	

Dated:-

Signatures of Authorized Officer & Office Stamp

State Government of _____

Form No._____.

Speed Post

REGIONAL OFFICE

EMPLOYEES' STATE INSURANCE CORPORATION

No. Dated:-

To

The Director General,
(Planning & Development Section),
Employees' State Insurance Corporation,
Hqrs. Office, CIG Road, New Delhi.

Subject: Implementation of ESI scheme in new geographical areas of _____.

Sir,

It is informed that for implementation of scheme in new geographical areas as above, the proposal has been received from the State Government of _____. The copy of letter of the State Government no._____dated_____alongwith prescribed form duly completed relating to completion of medical arrangements is enclosed herewith.

(2) However, the other particulars requiring implementation of scheme in above area are mentioned as follows:-

1	Numbers of Employees.	
2	Numbers of Employers.	
3	Details of arrangements for cash disbursement and registration of employees.	
4	Details of Banking arrangements.	
5	Details of outdoor and indoor medical arrangements made by the State Government.	

(3) The draft notification in English as well as in Hindi in respect of above area is enclosed herewith.

(4) It is recommended that the ESI Scheme in above area may kindly be implemented and for this purpose the matter may kindly be taken up with the Central Government for issue of notification under section 1(3) of the Act.

Encl: (1) Copy of letter of State Government
along with form of completition of medical arrangements.
(2) Draft notification in English and Hindi.

Yours faithfully,

Regional Director

To be published in Gazette of India, Part-II, Section - 3, Sub-Sec.(ii)

GOVERNMENT OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT

New Delhi: Dated:

NOTIFICATION

S.O._____: In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the _____, as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of _____ namely: -

Sl. No.	Name of the Village/Area*	Had Bast No./Hobli*	Tehsil/Taluk*	District

(No. S-38013/ /_____-SS.I)

UNDER SECRETARY

To,

The Manager,
Government of India Press,
Mayapuri, Ring Road,
New Delhi.

भारत के राजपत्र भाग–2, खण्ड–3 के उप खण्ड (पप) में प्रकाशनार्थ

भारत सरकार
श्रम एवं रोजगार मंत्रालय
नई दिल्ली, दिनांक:.....

अ धि स ू च ना

का.आ. कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा–(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा ———— को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध ———— राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

क्र. सं.	राजस्व ग्राम का नाम/क्षेत्र*	हदवस्त संख्या/होबली*	तहसील/तालुक*	जिला

(स0 एस -38013/ /_____/एस0 एस0 1)

अवर सचिव

सेवा में,
प्रबन्धक,
भारत सरकार प्रेस,
मायापुरी, रिंग रोड,
नई दिल्ली

*जो लागू न हों उन्हें कृपया काट दें ।

To be published in the State Gazette

Government of _____

Dated: _____

S.O. : In exercise of the powers conferred by Sub-Section (5) of Section 1 of the Employees' State Insurance Act, 1948, the Government of _____in consultation with the Employees' State Insurance Corporation hereby gives notice of its intention to extend the provisions of the Act to the classes of establishments specified in the schedule annexed thereto, on or after one month from the date of publication in the Official Gazette.

1. Any objection or suggestion, which may be received from any person in respect of the said notification within the period specified above, will be considered by the State Government.

2. The objections and suggestions may be addressed to_____.

SCHEDULE

Description of establishments	Areas in which the establishments are situated
(1)	(2)
The following establishments whereon ten or more persons are employed, or were employed on any day of the preceding twelve months, namely- i) Shops; ii) Hotels; iii) Restaurants; iv) Road Motor Transport establishments; v) Cinemas including preview theatres; vi) Newspaper establishments as defined in	All areas where the provisions of the ESI Act, 1948 have already been brought into force under Section 1(3) of the Act.

Section 2(d) of the Working Journalists and other NewspaperEmployees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955); vii) Educational Institutions (including public, private, aided or partially aided) run by individuals, trustees, societies or other organizations; viii) Medical Institutions (including corporate, joint sector, trust, charitable and private ownership hospitals, nursing homes, diagnostic centres, pathological labls.	

(No. _____)

To be published in the State Government Gazette

Government of _____
Name of Ministry/Department _____

NOTIFICATION

_____the _____, 2010.

No._____Whereas by a notification of the Government of _____ number_____dated_____, the State Government, in consultation with the Employees' State Insurance Corporation and with the approval of Central Government, gave notice of its intention to extend the provisions of the Employees' State Insurance Act, 1948 (34 of 1948) to certain classes of establishments specified in the Schedule to the said notification after one month from the date of that notification.

And whereas the copies of said notification were made available to the public on _____.

And whereas, no objections and suggestions have been received within the said period of one month in respect of said notification. /And whereas, objections and suggestions received from the persons likely to be affected thereby have been considered by the Government. *(Delete whichever is not applicable).*

Now, therefore in exercise of the powers conferred by sub-section (5) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the State Government of _____,in consultation with the Employees' State Insurance Corporation and with the approval of Central Government, hereby extends the provisions of the said Act to the classes of establishments specified in Column (1) and situated within the areas

specified in column (2) of the Schedule in the State of _____ namely:-

SCHEDULE

Description of establishments	Areas in which the establishments are situated
(1)	(2)
The following establishments whereon ten or more persons are employed, or were employed on any day of the preceding twelve months, namely- i) Shops; ii) Hotels; iii) Restaurants; iv) Road Motor Transport establishments; v) Cinemas including preview theatres; vi) Newspaper establishments as defined in Section 2(d) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955); vii) Educational Institutions (including public, private, aided or partially aided) run by individuals, trustees, societies or other organizations; viii) Medical Institutions (including corporate, joint sector, trust, charitable and private ownership hospitals, nursing homes, diagnostic centres, pathological labs.	All areas where the provisions of the ESI Act, 1948 have already been brought into force under Section 1(3) of the Act.

Secretary to the
Government of _____

EMPLOYERS' REGISTRATION FORM

FORM-01

(Regulation 10-B)

*** Employer's Code No** | | | | | | | | | | | |

1. Name of the Factory/Establishment .....
2. Complete Postal Address .....
   of the Factory/Establishment ..... PIN .....
3. (a) Telephone No., if any .....
   (b) Fax No., if any .....
   (c) E-mail address, if any .....
4. Location of Factory/Establishment
   (a) State ..... (b) District .....
   (c) Municipality/Ward .....
   (d) Name of Town/Revenue Village .....
   (Taluka/Tahsil) .....
   (e) Police Station .....
   (f) Revenue Demarcation/Hudbast No. .....
5. (a) Whether the building/premises of factory/Estt. is owned or hired.
   .....
   (b) If hired or there is a change in the name of Unit/ownership, please indicate :-
   .....
   (i) ESI Code No., if covered earlier .....
   (ii) Date from which earlier factory/estt. closed down .....
   (iii) Terms and conditions under which property acquired/taken on lease (enclose copy of agreement/relevant deed).
6. Details of Bank A/c — (b) Name of Bank and Branch
   (a) Account No. ..... (1) .....
   (b) Account No. ..... (2) .....
   (c) Account No. ..... (3) .....
7. (a) Income Tax PAN/GIR No. .....
   (b) Income Tax Ward/Circle/Area .....
8. Exact nature of work/business carried on .....
9. Date of commencement of factory/Estt. .....
10. (a) Whether registered under Factories/Shop & Estt. Other Act (Please specify) .....

		Licence No.	Date	Licensing Authority
(b)	Factory licence No./Trade Licence No./Catering Estt. Licence No./ shop, Estt. Registration No./ Licence No. under Cinematography Act etc.			

		No.	Date	Issuing Authority
(c)	Please give whichever is applicable			
	(i) Commercial Tax No.	(i)		
	(ii) State Sales Tax No.	(ii)		

(iii) Central Sales Tax No. (iii)

(iv) Any other Tax No. (iv)

(d) Maximum No. of persons that can be employed on any one day, as per Licence .....

11. (a) Whether power is used for manufacturing process as per section 2(k) of the Factories Act, if so, since when

(b) In case of factory whether Licence issued unde section 2(m)(i) or 2(m)(ii) of the Factories Act, 1948 .....

(c) Power connection — No. — Sanctioned Power load — Issuing Authority

12. (a) Whether it is Public or Private Ltd. Company/Partnership/Proprietorship/ Co-operative Society/Ownership (attach copy of Memorandum & Articles of Association/ Partnership Deed/Resolution

(b) Give name, present and permanent residential address of present Proprietor/Managing Director, Directors/Managing Partner, Partners/Secretary of the Co-operative Society — (i) Name — Designation — Address; (ii); (iii); (iv); (v); (vi); (vii)

13. Address(es) of the Registered Office/ Head Office/Branch Office/Sales Office/Administrative Office/other offices if any, with no. of employees attached with each such office and person responsible for the office — Address | No. of employees | Tel. No./ Fax No. | Function | Person responsible for day to day functioning of the office

14. (a) Whether any work/business carried out through contractor/ immediate employer — (give details on a separate sheet, if required)

(b) If yes, give nature of such work/business .....

15. (a) EPF Code No. (If covered under EPF Act) — Issuing Authority

16. Total number of employees employed for wages directly and through immediate employers on the date of application, (whether manual/clerical/supervision, connected with the administration or purchase of raw materials or distribution or sale of product/service, whether permanent or temporary)

As on date	*Total No. of Employees*			*No. of employees drawing wages Rs. 10,000/- or less*		
	Male	Female	Total	Male	Female	Total
Employed directly by the Principal employer						
Through Immediate employer/contractor						
Total						

17. * Total wages paid in the preceeding month

	Total Wages	*Wages paid to employees drawing wages Rs. 10,000/- or less*
To employees employed directly by the Principal Employer		
To employees employed through Immediate Employer/Contractor		

18. Give first date since when 10/20** or more coverable employees under ESI Act, were employed for wages .....

I hereby declare that the statement given above is correct to the best of my knowledge and belief. I also undertake to intimate changes, if any, promptly to the Regional Office/Sub-Regional Office, ESI Corporation as soon as such changes take place.

Date : Name and Signature .....

Place : Designation with seal .....

(should be signed by principal employer U/S 2(17) of ESI Act)

* Please mention the Employer's Code No., if previously allotted in case the factory/establishment was covered under the ESI Act.

* Score out whichever is not applicable. In case of factory/an establishment using power in the manufacturing process the number applicable is 10 persons or more. In the case of a factory not using power or an establishment engaged in manufacturing process without using power or any other establishment, the number applicable is 20 or more persons.

INSTRUCTIONS

Note 1 : Please enclose photocopy of the following deeds/agreements/documents/certificate :

(a) Registration Certificate/Licence issued under Shops and Establishment Act or Factories Act.

(b) Latest Rent Bill of the premises you are occupying indicating the capacity in which the premises is occupied, if applicable.

(c) Latest building Tax/Property Tax receipt (Zerox).

(d) Memorandum and Articles of Association/Partnership Deed/Trust Deed.

(e) Zerox copy of certificate of commencement of production and/or Registration No. of CST/ST.

Note 2 : 'Power' shall have the meaning assigned to it in the Factories Act, 1948 which is as under :-

'Power' means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

Note 3 : Manufacturing process as defined in section 2(k) in Factories Act is as under :-

'manufacturing process' means any process for :-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;

(ii) pumping oil, water, sewage or any other substance;

(iii) generating, transforming or transmitting power;

(iv) composing types for printing, printing by letter press, lithography photogravure or other similar process or book binding;

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

(vi) preserving or storing any article in cold storage.

Note 4 : "Immediate Employee" in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of the factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

Note 5 : "Principal Employer" means —

(a) In a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;

(b) In any establishment under the control of any department of any Government, in India the authority appointed, by such Government in this behalf or where no authority is so appointed, the head of the Departments;

(c) In any other establishment, any person responsible for the supervision and control of the establishment.

Note 6 : "Occupier" of a factory/establishment means the person who has ultimate control over the affairs of the factory/ establishment and when the said affairs are entrusted to a managing agent shall be the Occupier of the factory/ establishment.

Note 7 : "Employees" means any person employed for wages in or in connection with the work of a factory or an establishment to which this Act applies and —

(i) who is directly employed by the principal employer for any work incidental or preliminary to or connected with the work of the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent or work which is ordinarily part of the work of the factory or establishment or which is preliminary to be carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

(iv) and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department, or branch thereof with the purchase of raw materials for, or the distribution or sale of the products of, the factory or esablishment; (or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment; but does not include) —

(a) Any member of the Indian Naval, Military or Air Force; or

(b) Any person so employed whose wages excluding remuneration for overtime work exceeds such wages as may be prescribed by the Central Government, a month;

PROVIDED that an employee whose wages excluding remuneration for over time work exceeds such wages as may be prescribed by the Central Government, a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of that period.

Note 8 : "Wages" means all remuneration paid or payable in cash to an employee, if the terms of the contact of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or lay off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include :-

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge.

घोषणा पत्र DECLARATION FORM

फार्म-1/Form-1

घोषणा पत्र कर्मचारी द्वारा भरा जाएगा। फार्म के साथ पोस्टकार्ड आकार के दो फोटोग्राफ भी लगाए जाने चाहिए। फार्म भरने से पहले पीठ पृष्ठ पर दी गई हिदायतों को भली-भांति पढ़ लेना चाहिए। यह फार्म निःशुल्क है।

To be filled by employee after reading instruction overleaf. Two Postcard Size phtographs to be attached with the form. This form is free of cost.

(क) बीमाकृत व्यक्ति के विवरण
(A) INSURED PERSON'S PARTICULARS

1. बीमा संख्या/Insurance No.					
2. नाम (स्पष्ट अक्षरों में) Name in block letters					
3. पिता/पति का नाम Father's/Husband's Name					
4. जन्म की तिथि Date of Birth	दिन Day	महीना Month	वर्ष Year	5. वैवाहिक प्रास्थिति Marital Status	विवाहित/अविवाहित विधवा M/U/W
				6.लिंग/Sex	पु./म./M.F

7. वर्तमान पता/Present Address	8. स्थायी पता/Permanent Address
पिन कोड Pin Code	पिन कोड Pin Code
टेलीफोन नम्बर/ई-मेल पता/	टेलीफोन नम्बर/ई-मेल पता/
शाखा कार्यालय Brach Office	औषधालय Dispensary

(ख) नियोजक के विवरण
(B) EMPLOYER'S PARTICULARS

9. नियोजक की कूट संख्या Employer's Code No.			
10. नियुक्ति की तारीख Date of Appointment	दिन Day	महीना Month	वर्ष Year
11. नियोजक का नाम और पता/Name & Address of the Employer			
12. यदि पहले नियोजन में रहे हैं तो कृपया निम्नलिखित ब्यौरे दीजिए In case of any previous employment please fill up the details as under.			
(क) पिछली बीमा संख्या (a) Previous Ins. No.			
(ख) नियोजक कूट संख्या (b) Employer's Code No.			
(ग) नियोजक का नाम व पता (c) Name & Address of the Employer			
टेलीफोन नम्बर/ई-मेल पता/e-mail address			

(ग) मृत्यु की स्थिति में नकद हितलाभ के भुगतान के लिए क.रा.बी. अधिनियम, 1948 की धारा 71/क.रा.बी. (केन्द्रीय) नियम, 1950 के नियम 56(2) के अंतर्गत नामित के ब्यौरे।
(c) Details of Nominee u/s 71 of ESI Act 1948/Rule-56(2) of ESI (Central) Rules, 1950 for payment of cash benefit in the event of death.

नाम/Name	नातेदारी/Relationship	पता/Address

मैं एतद्द्वारा घोषणा करता/करती हूं कि मेरे द्वारा प्रस्तुत किए गए विवरण मेरी जानकारी और विश्वास के अनुसार सही है। मैं अपने परिवार के सदस्यों में हुए परिवर्तन की सूचना 15 दिन के भीतर प्रस्तुत करने का वचन भी देता हूं/देती हूं।

I hereby decalare that the particulars given by me are correct to the best of my knowledge and belief. I undertake to intimate the corporation any changes in the membership of my family within 15 days of such change.

नियोजक के प्रतिहस्ताक्षर
Counter signature by the employer

बीमाकृत व्यक्ति के हस्ताक्षर/अंगूठा निशान
Signature /T.I.of IP.

सील सहित हस्ताक्षर
Signature with seal

(घ) बीमाकृत व्यक्ति के परिजनों का विवरण
(D) Family Particulars of Insured person

क्र.सं. Sl. No.	नाम Name	फार्म भरने की तारीख को आयु/जन्म-तारीख Date of Birth/Age as on date of filling form	कर्मचारी के साथ नातेदारी Relationship with the Employee	क्या उनके साथ रह रहे हैं? बताएं Whether residing with him/her.		यदि नहीं तो आवास का स्थान दर्शाएं If' No' state Place of Residence	
				हां/Yes	नहीं/No	कस्बा/Town	राज्य/State

क.रा.बी. निगम अस्थायी पहचान पत्र
ESI Corporation Temporary Identity Card

(नियुक्ति की तारीख से 3 महीने तक वैध)
(Valid for 3 month from the date of appointment)

नाम/Name		
बीमा संख्या/Ins. No.		नियुक्ति की तारीख/Date of appointment
शाखा कार्यालय Branch Office		औषधालय Dispensary
नियोजक की कूट संख्या व पता Employer's Code No. & Address		

फोटो के लिए स्थान
(Space for photograph)

वैधता
Validity
तारीख
Dated

बीमाकृत व्यक्ति के हस्ताक्षर/अंगूठे का निशान
Signature/T.I. of I.P.

सील सहित शाखा प्रबंधक के हस्ताक्षर
Signature of B.M. with seal

अनुदेश
INSTRUCTIONS

1. फार्म-1 का प्रेषण क.रा.बी. (साधारण) विनियम, 1950 के विनियम 11 व 12 के अंतर्गत विनियमित किया जाता है।
Submission of Form-I is governed by regulation 11 & 12 of ESI (General) Regulations, 1950

2. "कुटुम्ब" से किसी बीमाकृत व्यक्ति के निम्नलिखित सभी अथवा कोई नातेदार अभिप्रेत है:-
अर्थात्:- (1) विवाहिती (2) बीमाकृत व्यक्ति पर आश्रित कोई धर्मज या दत्तक अवयस्क आश्रित बालक, (3) कोई बालक जो बीमाकृत व्यक्ति के उपार्जनों पर पूर्णतः आश्रित है तथा जो (क) शिक्षा प्राप्त कर रहा है, उनके 21 वर्ष की आयु प्राप्त कर लेने तक (ख) कोई अविवाहित पुत्री, (4) कोई बालक जो किसी शारीरिक अथवा मानसिक अपसामान्यता या चोट के कारण शिथिलांग है तथा शिथिलांगता रहने तक बीमाकृत व्यक्ति के उपार्जनों पर पूर्णतः आश्रित है, (5) आश्रित माता-पिता, (ब्यौरे हेतु क.रा.बी. अधिनियम, 1948 की धारा 2 के खंड 11 को देखें)।

"Family" means all or any of the following relatives of an Insured Person namely:-

(i) a spouse (ii) a minor legitimate or adopted child dependant upon the I.P.; (iii) a child who is wholly dependant on the earnings of the I.P. and who is (a) receiving education, till he or she attains the age of 21 years (b) an unmarried daughter; (iv) a child who is infirm by reason of any physcial or mental abnormality or injury and is wholly dependant on the earnings of the I.P. so long as the infirmity continues; (v) dependant parents (Please see Section 2 clause 11 of the ESI Act 1948 for details.

3. पहचान-पत्र अहस्तान्तरणीय है।
Identity Card is Non-Transferable.

4. पहचान-पत्र के गुम होने की स्थिति में नियोजक/शाखा प्रबंधक को तत्काल सूचित किया जाए।
Loss of Identity Card be reported to Employer/Branch Manager immediately.

5. किसी प्रकार की गलत सूचना देने की स्थिति में क.रा.बी. अधिनियम, 1948 की धारा-84 के तहत कानूनी कार्यवाही की जा सकती है।
Submission of false information attracts penal action Under Section 84 of ESI Act. 1948.

6. नई नियुक्ति की स्थिति में भली-भांति भरा हुआ यह फार्म नियुक्ति के दस दिन के भीतर संबंधित शाखा कार्यालय में अवश्य ही प्रस्तुत किया जाना चाहिए। विलम्ब की स्थिति में नियोजक के विरुद्ध धारा-85 के तहत कानूनी कार्यवाही की जा सकती है।
This form duly filled in must reach the concerned Branch Office within 10 days of appointment of an Employee. Delay attracts penal action under Section 85 of the Act, against employer.

7. बीमाकृत व्यक्ति होने के नाते आप व आपके परिवार के आश्रितजन चिकित्सा हितलाभ प्राप्त कर सकेंगे। अन्य नकद हितलाभ हैं, (1) बीमारी हितलाभ (2) अस्थायी अपंगता हितलाभ (3) स्थायी अपंगता हितलाभ (4) आश्रितजन हितलाभ (5) प्रसूति हितलाभ (महिला कर्मचारी के लिए)। As an insured person you and your dependant family membes are entitled to full medical care. The other benefits in cash include (1) Sickness Benefit (2) Temporary Disablement benefit (3) Permanent disablement Benefit (4) Dependants benefit and (5) Maternity Benefit (in case of woman employees) subject of fulfillment of contributory cnditions.

8. अधिक जानकारी के लिये कृपया निगम के वेबसाइट को देखें या शाखा कार्यालय या क्षेत्रीय कार्यालय से संपर्क करें।
For more details please contact website of ESIC at www. esic.org. in. or contact Regional Office or Branch Office.

केवल शाखा कार्यालय में प्रयोग हेतु
For Branch Office Use only

1. बीमा संख्या आवंटन की तारीख :
Date of allotment of Ins. No. :_____

2. अस्थायी पहचान पत्र जारी करने की तारीख :
Date of Issue of T.I.C. :_____

3. औषधालय का नाम/संख्या :
Name /No. of Dispensary : _____

4. क्या अन्योन्य चिकित्सा व्यवस्था उपलब्ध है? यदि हां, तो उल्लेख करें :
Whether reciprocal Medical arrangements involved. if yes, please indicate :

शाखा प्रबन्धक के हस्ताक्षर
Signature of Branch Manager

क्र.सं. Sl. No.	नाम Name	फार्म भरने की तारीख को आयु/जन्म-तारीख Date of Birth/Age as on date of filling form	कर्मचारी के साथ नातेदारी Relationship with the Employee	क्या उनके साथ रह रहे हैं: यथा: Whether residing with him/her,		यदि नहीं, तो आवास का स्थान दर्शाएं If No, state Place of Residence	
				हां Yes	नहीं No	कस्बा Town	राज्य State

LIST OF INDUSTRIAL ACTIVITY CODE NOS.

Code No. of employer in 17 digits format: xx - xx - xxx xxx - xxx – xxxx

Code	All industry code in four digit	
00	**FOOD BEVERAGES AND TOBACCO**	
	0001	SLAUGHTERING PREPARATION AND PRESERVATION OF MEAT
	0002	MANUFACTURING OF DAIRY PRODUCTS
	0003	CANNING AND PRESERVATION OF FRUITS AND VEGETABLES
	0004	FLOUR MILLS
	0005	RICE MILLS
	0006	OIL MILLS
	0007	ICE FACTORIES
	0008	BEVERAGES
	0009	MISCELLANEOUS FOOD INDUSTRIES
	0010	TOBACCO
	0011	BAKERY & CONFECTIONERY
	0012	DISTILLERY & BREWERIES
	0099	OTHERS
01	**TEXTILES**	
	0101	COTTON SPINNING AND WEAVING MILLS
	0102	JUTE MILLS
	0103	SILK MILLS
	0104	WOLLEN MILLS
	0105	OTHER SPINNING WEAVING MILLS
	0106	KNITTING MILLS
	0107	GINNING AND PROCESSING
	0108	MANUFACTURE AND REPAIR OF MADE UP TEXTILE GOODS/TEXTILE INDUSTRIES
	0199	OTHERS
02	**LEATHER AND RUBBER**	
	0201	TANNERIES AND LEATHER FINISHING
	0202	MANUFACTURE AND REPAIR OF BOOT AND SHOES
	0203	MANUFACTURE OF LEATHER PRODUCTS EXCEPT FOOTWEAR
	0204	MANUFACTURE OF RUBBER AND RUBBER PRODUCTS
	0205	MANUFACTURE OF PLASTIC/PVC RPODUCTS
	0299	OTHERS

	CHEMICAL AND CHEMICAL PRODUCTS	
	0301	CHEMICALS INCLUDING FERTILIZERS
	0302	OILS
	0303	MATCHES
	0304	OTHERS CHEMICALS
	0305	DRUGS & PHARMACEUTICALS/COSMETICS
	0306	DYES, PAINTS & PIGMENTS
	0399	OTHERS
04	**NON METALLIC MINERALS**	
	0401	PETROLEUM REFINERIES
	0402	OTHER PRODUCTS OF PETROLEUM AND COAL
	0403	BRICKS AND STONES
	0404	MANUFACTURE OF GLASS AND GLASS PRODUCTS
	0405	POTTERIES AND CHINA EARTHWARE
	0406	CEMENT
	0407	MICA
	0408	ASBESTOS
	0499	OTHERS
05	**METALLIC MINERALS**	
	0501	METAL EXTRACTING AND REFINING
	0502	METAL CONVERSION
	0503	METAL ROLLING
	0504	FOUNDRIES
	0505	GALVANISING, TINNING, PLATING & ENAMELING
	0506	LIGHT METAL INDUSTRIES
	0599	OTHERS
06	**ENGINEERING**	
	0601	TEXTILE MACHINERY AND ACCESSORIES
	0602	ELECTRIC MACHINERY
	0603	TELEGRAPH WORKSHOP
	0604	ELECTRIC LAMPS, FANS AND OTHER ACCESSORIES
	0605	AGRICULTURAL IMPLEMENTS AND MACHINE TOOLS
	0606	GENERAL AND JOB ENGINEERING
	0607	MANUFACTURING OF ELECTRIC CELLS, BATTERIES ETC.
	0699	OTHERS

7	**TRANSPORT**	
	0701	SHIP BUILDING
	0702	RAILWAY WORKSHOPS
	0703	TRAMWAY WORKSHOPS
	0704	MOTOR VEHICLES
	0705	BICYCLES
	0706	AIRCRAFT
	0707	COACH BUILDING
	0799	OTHERS
08	**PAPER AND PRINTING**	
	0801	PULP, PAPER & PAPER BOARD MILLS
	0802	MANUFACTURER OF ARTICLES OF PULP, PAPER, PAPER BOARD
	0803	PRINTING & BOOK BINDING
	0899	OTHERS
09	**MISCELLANEOUS**	
	0901	WOOD & COOK EXCEPT FURNITURE
	0902	FURNITURE & FIXTURES
	0903	MINTS
	0904	ORDINANCE FACTORIES
	0905	ELECTRIC LIGHTS AND POWER
	0906	GAS MANUFACTURE AND DISTRIBUTION
	0907	WATER SUPPLY
	0908	SANITARY SERVICES
	0909	LAUNDRIES, J0B DYING, DRY CLEANING ETC.
	0910	JEWELLERY MAKING/DIAMOND CUTTING, POLISHING ETC.
	0911	SOFTWARE DEVELOPMENT
	0912	PETROL / DIESEL PUMPS
	0913	CNG / LPG STATIONS
	0999	OTHERS
10	**COMMERCIAL ESTABLISHMENTS**	
	1001	EXECLUSIVE LABOUR CONTRACTOR/MAN POWER SUPPLIERS
	1002	WHOLESALE / RETAIL SHOPS
	1003	INSURANCE ESTABLISHEMENTS
	1004	BANKING ESTABLISHMENTS
	1005	NEWSPAPER ESTABLISHMENTS
	1006	ROAD MOTOR TRANSPORT ESTABLISHMENTS
	1007	DEVELOPMENT OF WEB-SITES, C-DAC/CAM/CAE/GIS PRODUCT LIFE CYCLE MANAGEMENT, REMOTE & PHOTOGRAMMATERY, IMAGE PROCESSING, ENGINEERING SERVICES

	1008	CALL CENTRES/ I.T.ENABLED SERVICE PROVIDERS/ BACKOFFICE OPERATIONS/ MEDICAL, LEGAL ENCRYPTIONS/ TRANSCRIPTION SERVICES, DOT CO.IN COMPANIES PROVIDING e-SERVICES/ ONLINE SHOPPING
	1009	CONSTRUCTION AGENCIES, REAL ESTATE DEVELOPERS
	1010	TELE SERVICES/MOBILE PHONE SERVICES
	1011	PRIVATE T.V. CHENNELS/CABLE T.V. OPERATORS
	1012	AMUSEMENT PARKS / RESORTS
	1013	COMPUTER TRAINING CENTRES
	1014	FLIGHT CATERING SERVICE PROVIDERS
	1015	EVENT MANAGEMENT/SUPPORTING SERVICES FOR HOLDING EVENTS
	1016	MARKET SURVEY ORGANISATIONS
	1017	ACCOUNTING & AUDIT FIRMS, NATIONAL/INTERNATIONAL LAW FIRMS, CONSULTANCY FIRMS, ARCHITECT FIRMS
	1018	SECURITY AGENCIES (DEPLOYMENT OF SECURITY GAURDS)
	1019	CONTRACTORS SUPPLYING LABOUR TO GOVT. AGENCIES/ MUNICIPALITIES, MUNICIPAL CORPORATIONS
	1020	WAREHOUSING
	1021	LPG GAS AGENCIES
	1022	AIRLINES
	1099	OTHERS
11	**HOTELS & RESTAURANTS**	
	1101	HOTELS
	1102	RESTAURANTS INCLUDING CANTEENS
12	**CINEMAS AND THEATRES**	
	1201	CINEMAS
	1202	THEATRES INCLUDING OPEN AIR THEATRES
13	**EDUCATIONAL INSTITUTIONS**	
	1301	PRIMARY EDUCATIONAL INSTITUTION
	1302	SECONDARY EDUCATIONAL INSTITUTION
	1303	HIGHER EDUCATIONAL INSTITUTION
	1304	TECHNICAL EDUCATIONAL INSTITUTION (ENGINEERING & TECHNOLOGICAL EDUCATION), INDUSTRIAL TRAINING INSTITUTIONS
	1305	MEDICAL EDUCATION INCLUDING DENTAL COLLEGES, NURSING SCHOOLS & ALLIED INSTITUTIONS
	1399	OTHERS
14	**HOSPITALS, NURSING HOMES ETC.**	
	1401	HOSPITALS
	1402	NURSING HOMES
	1403	PATHOLOGICAL & DIAGNOSTIC CENTRES
	1404	BLOOD BANKS
	1499	OTHERS

INFORMATION REGARDING THE JOBWORK DONE THROUGH CONTRACTORS/IMMEDIATE EMPLOYERS INSIDE AND OUTSIDE THE FACTORY PREMISES/ ESTABLISHMENTS.

Name of the Employer

Address

Code No.

Year for which information is being provided

A. Details of the Jobwork done inside the Factory/establishment premises through Contractors/ Immediate Employers having independent Code Nos.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made	Contribution payable in respect of the employees engaged

B. Details of Jobwork done inside the factory premises through Contractors/Immediate Employers not having independent Code Nos.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made	Contribution paid

C. Details of Jobwork done outside the factory/establishment premises through factories/establishments which are having independent Code No.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made

D. Details of Jobwork done outside the factory/establishment premises through factories/establishments which are not having independent Code No. but supervision being exercised by the Principal Employer.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made	Contribution payable in respect of employees engaged

E. Details of Jobwork done outside the factory premises through units engaging less than 10/20 employees but working exclusively for the principal employer.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made

F. Details of Jobwork done outside the factory/establishment premises through factory/establishment which are not having independent Code Nos and where no supervision was exercised.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made

G. Details of Jobwork done outside the factory premises through Contractors/Immediate Employers who performed the work through home workers.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made	Contribution paid/payable in respect of employees engaged

Certified that the above information is true and correct and agrees with the books of accounts, ledger, Balance Sheet / P & L A/c maintained by us.

Place :

Date :

Name and Address of the Principal Employer

(Employers are requested to keep ready the documentary addresses like Code No. allotment letters issued by Employees' State Insurance Corporation, copies of work orders, Bills, Returnable Gate Passes, Inward/Outward Challans, Income Tax, Pan Cards and other documentary evidence, in support of the correctness of the statement which can be verified by the Insurance Inspector)

Date for submission:- http://esic.nic.in/Forms/FORM5.htm

* Due Date for submission:- REG. FORM- 5
12th May/ 11th November*

Name of Branch Office _____ Employer's Code No. _____

RETURN OF CONTRIBUTIONS

EMPLOYEES' STATE INSURANCE CORPORATON
(Regulation – 26)

Name & Address of the factory or establishment :
_____

Particulars of the Principal employer(s)

a) Name : _____
b) Designation : _____
c) Residential Address : _____

Contribution Period from _____ to
_____

I furnish below the details of the Employer's and Employee's share of contributions in respect of the under mentioned insured persons. I hereby declare that the return includes each & every employee, employed directly or through an immediate employer or in connection with the work of the factory/ establishment or any work connected with the administration of the factory/ establishment or purchase of raw materials, sale or distribution of finished products etc. to whom the ESI Act, 1948 applies, in the contribution period to which this return relates and that the contributions in respect of employer's and employee's share have been correctly paid in accordance with the provisions of the Act and Regulations.

Employees' Share _____
Employer's Share _____
Total Contribution _____

Details of Challans: -

Sl. No.	Month	Date of Challan	Amount	Name of the Bank and Branch
1.				
2.				
3.				
4.				
5.				
6.				

Total amount paid: Rs. _____

* Due Date for submission:- http://esic.nic.in/Forms/FORM5.htm

I declare that

(a) All the Records and Registers have been maintained as per provisions contained in ESI Act, Rules & Regulations framed therein.
(b) During the period of return _____ No. of Declaration forms have been submitted.
(c) During the above period _____ No. of TICs have been received.
(d) During the above period _____ No. of PICs have been received.
(e) During the above period _____ No. of PICs have been distributed amongst the eligible IPs.
(f) During the above period _____ accidents have been reported to the concerned Branch Office.
(g) During the period _____ No. of employees directly employed by us have been covered and a total wages of Rs._____ have been paid to such employees.
(h) During the period _____ No. of employees directly employed by us have not been covered and a total wages of Rs._____ have been paid to such employees.
(i) During the period _____ No. of employees employed through immediate employer have been covered and a total wages of Rs._____ have been paid to such employees.
(j) During the period _____ No. of employees employed through immediate employer have not been covered and a total wages of Rs._____ have been paid to such employees.
(k) Following components of wages have been taken into consideration for the purpose of payment of contribution –
1.
2.
3.
4.
5.

(j) Following components of wages have not been taken into consideration for the purpose of payment of contribution –
1.
2.
3.
4.
5.

The above mentioned information is based on records and any information if found incorrect will render me liable for prosecutions under provisions of ESI Act and action for recovery of contribution due along-with interest and damages as per provisions of the ESI Act.

Place _____
Date _____

Signature & Designation of the Employer
(with Rubber Stamp)

CERTIFICATE BY CHARTERED ACCOUNTANT
(To be submitted in case of employers employing 40 or more employees)

Certified that I have verified the above return from the Records & Registers of M/s._____ and found it to be correct.

Date for submission:- http://esic.nic.in/Forms/FORM5.htm

Signature & Seal
Of the Chartered Accountant with
Membership No

Important Instructions: Information to be given in "Remarks Column (No.9)"

i) If any I.P. is appointed for the first time and / or leaves during the contribution period indicate "A _____ (date)" and/ or "L _____ (date)".
ii) Please indicate Insurance Nos. in ascending order.
iii) Figures in Column 4, 5 & 6 shall be in respect of wage periods ended during the contribution period.
iv) Invariably strike totals of Column 4, 5 & 6 of the Return.
v) No overwriting shall be made. Any corrections, if made, should be signed by the employer.
vi) Every page of this Return should bear full signature and rubber stamp of the employer.
vii) Daily wages in Column 7 of the return shall be calculated by dividing figures in Column 5 by figures in Column 4 to two decimal places.

For * CP ending 31st March, due date is 12th May
For CP ending 30th September, due date is 11th November

EMPLOYEES' STATE INSURANCE CORPORATION

Employer's Name and Address _____

Employer's Code No._____ Period from _____ to _____

Sl. No.	Insurance Number	Name of Insured Person	No. of days for which wages paid	Total amount of wages paid (Rs.)	Employee's contribution deducted (Rs.)	Average Daily Wages (Rs.)	Whether still continues working	Remarks *
1.	2.	3.	4.	5.	6.	7.	8.	9.
		TOTAL						

*Date of appointment and leaving the job may be given in remarks column. **Signature of the Employer**

(FOR OFFICIAL USE)

1. Entitlement position marked.
2. Total of Col. 5 of Return checked and found correct/correct amount is indicated.
3. Checked the amount of Employer's / Employee's contribution paid which is in order/ observation memo. enclosed.

Countersigned

SRS
Action on Defaulters

System Requirement Specification

for

Action on Defaulters

Version 1.0

Submitted to

by

Date: 29th July 2009

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SRS
Action on Defaulters

Project Code:	ESIC-FPP-DELHI-HCIT
Project Name:	Insurance (part of Pragati)
Account:	ESIC
Vertical:	Healthcare IT
Location:	Wipro Infotech, Madhapur, Hyderabad
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Veenaa/Satya 09-06-09	Veenaa Iyer 27-07-09	
Prepared by/Date	**Reviewed by/Date**	**Approved by/Date**

REVISION HISTORY

Version By (x.yy)	Date of Revision	Description of Change	Affected Sections	Date of Review	Approved
0.1	09-06-09	Base lined version of the document	NA	11-06-09	Veenaa Iyer
0.2	16-06-09	Update all sections of the document	All	17-06-09	Veenaa Iyer
0.3	17-06-09	Document Review by Veenaa Iyer	NA	19-06-09	Veenaa Iyer
0.3	25-06-09	Document Review by Prasanna Kumar	NA	26-06-09	Veenaa Iyer
0.4	27-06-09	Incorporate review comments from Prasanna Kumar	All	29-06-09	Veenaa Iyer
0.5	15-07-09	Incorporate review comments from Client	All	17-06-09	Veenaa Iyer
0.6	18-07-09	Incorporate review comments from PMO	All	19-06-09	Veenaa Iyer
1.0	27-07-09	Base line for Customer	NA	NA	

SRS
Action on Defaulters

Affected Groups

Revenue Branch Office
Employer
Insurance Inspectors
Recovery

List of Reference Documents

1. ESI (Central) Rules 1950
2. ESI (General) Regulations 1950
3. ESI Act, 1948 as amended up to date



SRS
Action on Defaulters



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SRS
Action on Defaulters

1 Introduction

ACTION ON DEFAULTERS:

Defaulters can be identified under following categories

Defaulters due to non-submission of Monthly Contribution (MC) – After registration an employer is required to pay monthly contributions on or before the 21 of following month. An employer who fails to pay the contribution amount within the stipulated period is identified as defaulter.

Defaulters due to partial payment of MC – After roll-out ESIC will provide flexibility to the employers to make payment in instalments. In case partial payment is made, the employer will be treated as defaulter similar to non-submission of MC.

Employers, who don't submit self certification, along with RC once in 6 months, are also identified as a separate category of defaulters who will be marked for Inspection only after IT roll-out.

Defaulters due to non-submission of Return of Contribution (RC) - Employees defaulting in submission of RC within 42 days of the end of the contribution period are also treated as defaulters currently. However, *after IT implementation RC need not be submitted by Employer and hence this process will be dropped*

However, those employers whose units are CLOSED or are EXEMPTED are not considered as defaulters

Scope and Overview:

I. To identify various categories of defaulters

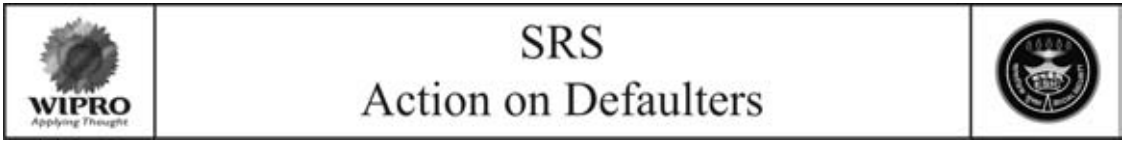
II. To determine the action to be taken against the defaulter.

III. To initiate the action against the defaulter.

Please refer SRS RC_MC_LL for more details on contribution period, monthly contribution payment rules.

The following requirements mentioned are covered in the SRS Document.

Sub-Requirement ID	Requirement Description
INS_A8	Ability to track defaulters & take action against defaulters
INS_A11	Ability to track submission & non-submission of Return of Contribution
INS_E31	Tracking of Defaulters
INS_E35	Tracking of non-submission of Return of Contribution
INS_A9	Ability to take action for late payment of contribution
INS_A10	Ability to issue show-cause notice for prosecution
INS_E33	Action against defaulters
INS_E34	Issue of show cause notice for prosecution
INS_E32	Action for late payment of Contribution



INS_A14	Ability to manage database of C-18 Actual, C-18 Adhoc, SO u/s 45 A, C-19 etc
INS_A15	Ability to manage database related to damage action
INS_A16	Ability to manage database related to show case notice for prosecution
INS_E39	Managing the Data base of C-18 Actual, C-18 Adhoc, SO u/s 45 A, C-19 etc.
INS_E40	Managing the data base related to Damage action
INS_E41	Managing the data base related to Show cause Notice for prosecution

2 Existing Process

Identifying Defaulter

1. After 25th of every month DA will identify the employers who have made payment and those who have defaulted payment.
2. During the monthly check DA will come across employers who have defaulted on monthly contribution as follows

Condition	**Action**
Defaulted for 1 month	1st notice is sent
Defaulted for 2 months	2nd notice is sent
Defaulted for 3 months	3rd notice is sent

DA will divide these employers into 3 categories as per the condition above and corresponding action is undertaken. They are not included in the defaulters list yet.

3. Every six months defaulter's list is generated.

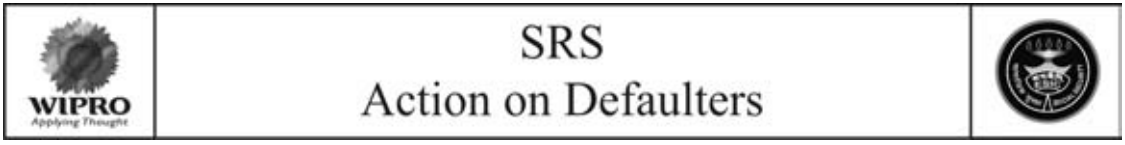
Contribution period	**Date on which defaulter list generated**
April to September	31st December
October to March	30th June

Employers in following category will be included in defaulter's list

a. Employer who has defaulted payment for more than 3 months.
b. Employer who has defaulted RC and self-certification.

Employers who have delayed payments but are not in defaulter list as mentioned above are also identified for calculation of Interest and Damages applicable. This includes all those Employers who have delayed paying the Monthly Contribution, but have now PAID and those who have delayed and still NOT PAID.

4. Action against Defaulters (Step a, b and c are carried simultaneously)
   a. DA generates C-18 Adhoc against the employers in defaulter's list. C-18 Adhoc is issued to the Head/ Chairman of Establishment, a copy is sent to Factory/Establishment address and one copy is sent to Inspector. (*'C-18 Adhoc'/'C-18 Actual' are notice which are sent to defaulting employers with respect to pending payment. C-18 Adhoc is issued in case defaulting amount is not known and approximate*



value is calculated and informed to employer. C-18 Actual is issued when defaulting amount is known) Please refer section 'Calculation of C-18 Adhoc' for C-18 Adhoc amount)

i. C-18 Adhoc will contain all the relevant details (which justifies employer as defaulter).
ii. C-18 Adhoc will be signed by Deputy Director/Assistant Director at RO.
iii. C-18 Adhoc will be sent to Defaulter by post to the Principal Employer.

b. In parallel the employers are marked for Inspection. The list of defaulting employers is forwarded to inspectors belonging to region where employer is registered.
c. Show cause notice against the employer is also sent to RD/JD (I/c) for approval

5. Case – 'C-18 Adhoc is issued'.
   a. The employer is directed to appear for Personal Hearing with statement (*Statement contains contribution details and payment due from the employer for the defaulted period)*
   b. If the employer appears for personal hearing.
      i. An employer submits statement during Personal Hearing and requests for time to clear the dues.
      ii. Revenue Branch Officer (BO) is satisfied with the statement OR Revenue Branch Officer and Employer reach consensus on defaulted amount
         1. BO cancels C-18 Adhoc and issues C-18 Actual.(C-18 Actual is issued to the Head/Chairman of Establishment, a copy is sent to Factory/Establishment address)
         2. After issue of C-18 Actual, if the dues are not cleared within 15 days time period of issue of C-18 Actual then initiate C-19(Recovery). (*If payment is due even after 15 days of issuing C-18 Actual, then C-19(Recovery Certificate) is issued against the employer. Authorised officer in Revenue Branch will issue the certificate and forwards these recovery certificate to Recovery officer under whose jurisdiction the employer is registered). Please refer SRS Recovery for details in Recovery procedures.*
      iii. If Revenue BO not satisfied with the statement.
         1. Revenue BO will verify all the records of the employer.
         2. Speaking Order u/s 45 A (ESI, Act 1948), is passed and communicated to the employer. Cancel the C-18 Adhoc.
         3. If dues not cleared within 15 days period of passing speaking order then initiate C-19(Recovery).
   c. If Employer doesn't appear for Personal Hearing.
      i. If RO Revenue Branch has received letter from the employer to adjourn date of hearing.
         1. Revenue BO can adjourn the date of hearing and communicate to the employer. *(Adjournment of hearing date is allowed twice)*
         2. OR Revenue Branch Officer can pass the speaking order and inform the employer. C-18 Adhoc is cancelled.
      ii. If No letter received at RO Revenue Branch from the employer
         1. Revenue BO decides to adjourn the date of hearing and informs the employer.
         2. Else Revenue BO issues notice in newspaper giving last opportunity to employer for hearing (only when defaulting contribution is more than 1,00,000)
         3. Employer still doesn't appear then Ex-parte Order is issued against the employer. C-18 Adhoc is cancelled.
6. Inspection report is received before the personal hearing. *(This step is simultaneous to Step 5)*



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a. Cancel C-18 Adhoc.
b. C-18 Actual/Adhoc is issued as per Inspection report received. (Please refer to SRS for Inspection Module)

7. Show cause notice is sent to RD/JD(I/c) for approval. *(This step is simultaneous to Step 5, Step 6)*
   a. JD(I/c)/RD approves
      i. Show Cause Notice u/s 85-a-e is issued to the employer.
      ii. If no response is received within 15 days, then prosecution is sanctioned and the same is sent for approval to JD(I/c) or RD.
      iii. Once the prosecution is sanctioned by JD(I/c)/RD then a sanction memo is issued and sent to the legal department to initiate legal proceedings.
      iv. Steps i, ii, iii are also followed when a non-acceptable response is received from the employer.
      v. If the response from the employer is accepted or the payment/RC is received to satisfaction (as per RO records), the Notice is dropped against the defaulter.
8. During this process in between at any time if the employer makes the payment then C-18 Actual/Adhoc is dropped as well as Show Cause Notice is dropped.

3 Functional Requirements

Employer Defaulting in Monthly Return of Contribution

1.1.1 *Process Users*

RO/ SRO Branch Officers, Superintendant, DA, Insurance Inspector

1.1.2 *Process Trigger*

Defaulting Employers in monthly contribution, Employers defaulting in Self Certification

1.1.3 *Pre-requisites/Pre-conditions/Predecessor Processes*

The employer is registered, and is not closed, exempted or identified as under BIFR. The Employer should have submitted the declaration forms of all coverable Employees and updated Form-6 online.

1.1.4 *Process Description*

(Please refer *SRS_RC_MC_LL for monthly contribution, self certification details.)*
In nutshell: Principal employer is required to pay monthly contribution which includes both employer's contribution and employee contribution. Before making payment for the month, the employer is directed to provide Monthly Contribution Details (i.e. employees' details, wages, employee contribution and employer contribution share). Contribution details are pre-requisite to monthly contribution payment. Employers are also given facility to make payment in instalments.
After the roll-out the employers will be considered as defaulters in following categories:
a. Not providing contribution details and hence defaulting in payment.
b. Providing contribution details and not making payment.
c. Providing contribution details and making partial payment.
In all the cases the employer will be identified as defaulter and will come under the scope of Action on Defaulter.

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Identification of incorrect Contribution Details (Omitted Wages) is not within the scope of Action of Defaulters. Such employers are identified during Inspection. For such defaulters on the basis of Inspection report C-18 Adhoc/Actual is issued. Once C-18 Adhoc/Actual is issued, it will be tracked under Action on Defaulters.

After IT roll-out ESIC will not require Employers to fill RC. But every six months i.e. for each contribution period (April-September, October-March) employer is directed to submit self certification, failing which the employer will be marked for inspection). This is also explained in SRS_RC_MC_LL)

On 25th of every month, system will run a batch process to identify defaulting employers (Note: Exempted employers and employers of closed unit should be skipped)

Why	Defaulter List	Subsequent Action
Monthly contribution is not paid (For February month, monthly contribution is not paid by 21st of March)	Initial	D_1 Letter to Monthly Defaulter/ C-18 Adhoc/Actual if needed
Monthly contribution is not paid for 2 months	Initial	D_2_letter to defaulter_2nd default/C-18 Adhoc/Actual if needed
Monthly contribution is not paid for 3 months	Initial	D_3_letter to defaulter_3rd default/C-18 Adhoc/Actual if needed

On May 31 and November 30, another batch process will identify Interest and Damage charges against employers who have delayed the payment. (Please refer Identification of Defaulters)

This batch process will also identify those employers who haven't given self certification for the last Contribution period.

Why	Defaulter's List	Subsequent Action
Interest and Damages	Interest & Damages list	C-18(i) and D-18
Self certification defaulted	Inspection list	Marked for inspection

Employers defaulting in Monthly Return of Contribution (Payment can be made only after Contribution details are submitted – Refer SRS RC_MC_LL)

1.1.4.1 Identification of Defaulters

1. Identification of employers defaulting in Monthly Contribution (Generation of Initial Defaulter List) Monthly batch process on 25th will identify the defaulting employers. All the employers who have failed to submit monthly contribution in complete are identified as defaulter and moved to 'Initial Defaulter' list. 'Initial Defaulter' list will contain all the employees who have defaulted in past. Every month the batch process will identify either a new defaulter (i.e. the



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employer was not present in defaulter list) or a defaulter who has repeated the default. In case of a new defaulter, employer record is created in defaulter list. In case of existing employer then current month default details are added to its default history.

a. Employer who had defaulted for 1 month. Display the employer in 'Initial Defaulter List'. Display 'defaulted period', 'Amount Due' (in case monthly contribution details is filled, else display MC Details pending), 'defaulted amount' (in case monthly contribution details is filled, else display MC Details pending), amount paid.

b. Employer who had defaulted for 2 months. Update the employer details in 'Defaulter List'. Update 'defaulted period', 'Amount Due' (in case monthly contribution details is filled, else display MC Details pending), 'defaulted amount' (in case monthly contribution details is filled, else display MC Details pending), amount paid(if any for partial payment)

c. Employer who had defaulted for 3 months. Update the employer record in 'Defaulter List'. Display 'defaulted period', 'Amount Due' (in case monthly contribution details is filled, else display MC Details pending), 'defaulted amount' (in case monthly contribution details is filled, else display MC Details pending), amount paid(if any for partial payment)

d. Employer who had defaulted for 4 months. Update the employer record in 'Defaulter List'. Display 'defaulted period', 'Amount Due' (in case monthly contribution details is filled, else display MC Details pending), 'defaulted amount' (in case monthly contribution details is filled, else display MC Details pending), amount paid(if any for partial payment)

2. Identification of Defaulters(Delayed payments) for Interest and Damages, on May 31 and November 30, batch process will identify
   a. Against all the defaulters who have delayed payments, Interest and Damages will be levied. All the employers who have delayed monthly payment, Interest will be accumulated for last Contribution Period and the sum will be displayed against the employer. (User will have option to issue C-18(i) & D(18) against the employer OR if value of interest is less than Rs 100.00 then Interest can be waived off). *(Refer Section calculation of Interest and Calculation of Damages mentioned in the document below).Similarly Damages charges will also be calculated. Give user the option to Waive Damages as well if required. (Waiver of Damages – Refer SRS_Delegation of Powers. Refer F&A Interface document for waiver)*
   (Note: This batch process should not capture period for which Employer is already issued C-18 Adhoc/Actual. The reason, this will avoid duplication of Interest/damages charges against the Employer. Because once payment against C-18-Adhoc/Actual is realised, the employer is automatically marked for Interest & Damages Charges for defaulted period)
   If within 15 days of issue of C-18(i) and D(18), payment is not made by the defaulter, the user can issue C-19(i) and D(19) Recovery certificate.

3. Batch process on May 31 and November 30 will identify employers who have defaulted Inspection, ,
   a. Identify those employers who haven't submitted self-certification. Such employers will be marked for inspection for the last contribution period. Send Inspection module employer details, defaulted period, and reason for inspection.

1.1.4.2 Action on Defaulters

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(Note: Allow the user to do the following

1. *User (Revenue Branch at RO) (Refer: SRS_Job Card for roles & responsibilities of each personal at BO/RO/HQ) should be able to view list of Initial Defaulters and Main defaulters. User should be able to take action (Issue of Notices, Issue of C-18 Adhoc, and issue of C-18 Actual) as per need. User will make decision on 'notice' to be generated against the employer. On user input, system will generate necessary notice/letter in editable format. The notice/letter will be in pre-defined format but can be edited by the user and user should be able to save the updated letter and take printout of the same, to send the letter post. Also give user flexibility to send the letter via e-mail if Principal employers' email id is available.*
2. *If contribution details are missing, user should be able to issue C-18 Adhoc against the defaulter (Initial Defaulter list and Main Defaulter List) AND user should be able to issue show cause notice which is sent for approval to JD(I/c)/RD.*
3. *User should be able to issue C-18 Actual against the defaulter if contribution details are submitted by the defaulter. (User should make decision while generating C-18 Actual/Adhoc) AND user should be able to issue show cause notice which is sent for approval to JD(I/c)/RD)*

Issue of Default Notices (1st Default Letter, 2nd Default Letter, 3rd Default Letter, Default action for more than 3 months default)

1. 1st Default Letter - DD/AD working for Revenue Branch at RO (*Refer: SRS_Job Card for roles & responsibilities of each personal at BO/RO/HQ)* will issue notice in 'D_1 Letter to Monthly Defaulter'. System should be able generate notice against the principal owner/Head of factory/establishment for the defaulted period. The notice should be available in editable format for user to make necessary changes. The DA will take the printout of the notice and will send it via post. (This decision of generating notice against the defaulter will be taken by Deputy Director. System will not generate letter automatically)

   Once 1st Letter to defaulter is issued, then that should be displayed against the employer record. User will update the status.

   For E.g.

Employer Code	Employer Name	Defaulting Period	Amount Due	Defaulting Amount	Amount Paid	Status
10009123	Bharat Contractor	April, 2009	Rs. 4000	Rs. 4000	0	1st Default Notice

   If required, DD/AD can issue C-18 Adhoc/C-18 Actual against the employer. Once C-18 Adhoc/Actual is issued against the employer, then employer is moved from 'Initial Defaulter' list to 'Main Defaulter' list. *(This decision will be taken by DD/AD)*

2. 2nd Default Letter - DD/AD working for Revenue Branch at RO will issue notice in 'D_2 Letter to Defaulter 2nd default'. System should be able to generate notice against the principal owner/Head of factory/establishment for the defaulted period. The notice should be available in editable format for user to make necessary changes. The DA will take the printout of the notice and will send it via post. (This decision of generating notice against the defaulter will be taken by Deputy Director. System will not generate letter automatically)

   Once 2nd Letter to defaulter is issued, then that should be displayed against the employer record. User will update the status.

If required, DD/AD can issue C-18 Adhoc/C-18 Actual against the employer. Once C-18 Adhoc/Actual is issued against the employer, then employer is moved from 'Initial Defaulter' list to 'Main Defaulter' list. *(This decision will be taken by DD/AD)*

3. 3rd Default Letter - DD/AD working for Revenue Branch at RO will issue notice in 'Letter to Defaulter 3rd default'. System should be able generate notice against the principal owner/Head of factory/establishment for the defaulted period. The notice should be available in editable format for user to make necessary changes. The DA will take the printout of the notice and will send it via post.
(This decision of generating notice against the defaulter will be taken by Deputy Director. System will not generate letter automatically)

   Once 3rd Letter to defaulter is issued, then the status should be displayed against the employer record. User will update the status manually.

   If required, DD/AD can issue C-18 Adhoc/C-18 Actual against the employer. Once C-18 Adhoc/Actual is issued against the employer, then employer is moved from 'Initial Defaulter' list to 'Main Defaulter' list. *(This decision will be taken by DD/AD)*

4. Default more than 3 months - DD/AD working for Revenue Branch at RO will issue C-18 Adhoc/Actual against the employer. Employer is moved from "Initial Defaulter' list to 'Main Defaulter' list.
(This decision of generating notice against the defaulter will be taken by Deputy Director. System will not generate notice automatically)

   &

   Employer will be marked for Inspection. Send employer details (Employer Name, Defaulting Time Period, Defaulting amount, Personal Hearing Date) to inspection module. *(Refer Inspection Module for more details)*

   &

   Issue of Show cause notice against the employer will be sent for approval to RD/JD(I/c).

1.1.4.3 Issue of C-18 Adhoc

(Note: Whenever C-18 Adhoc is issued, original C-18 Adhoc is sent to Head/Chairman of the Factory/Establishment address. A copy of C-18 Adhoc is also sent to Factory/Establishment address. The system should be able to store both the copies of C-18 Adhoc. C-18 Adhoc should also be visible to Inspection team. Inspection team should also be access C-18 Adhoc issued by the system)

Case – 'C-18 Adhoc is issued' against the defaulter. User should be able to enter personal hearing date in the system.

1. Employer is directed to appear for personal hearing with statement. (*Statement contains contribution amount for the defaulting period)*
2. System should give reminder to the Branch Officer 2 days before Personal Hearing date.
3. If Employer Appears for Personal Hearing (System should be able to allow the user to enter Summary of Personal Hearing)
   a. An employer submits statement during Personal Hearing and requests for time to clear the dues.

b. Revenue BO satisfied with the statement.
1. System should allow BO to cancel C-18 Adhoc and issue C-18 Actual on the basis of statements. (Refer Issue C-18 Actual)

c. If Revenue BO not satisfied with the statement
1. Verify the records of the employer.
2. Speaking Order is passed and communicated to the employer. Cancel the C-18 Adhoc. (*If the employer is not satisfied with the Speaking Order, then employer may appeal to Branch Manager) Refer 'Appeal' Section of the document*.
3. If dues not cleared within 15 days time period of issuing Speaking Order then initiate C-19(Recovery). System should have an option to the user to generate recovery certificates. (*Employer can appeal to Branch Manager at this stage as well. Refer 'Appeal' section of the document*)

4. If Employer doesn't appear for Personal Hearing
a. If RO Revenue Branch has received letter from the employer to adjourn date of hearing.
1. Revenue BO can adjourn the date of hearing and communicate to the employer. System should give user to enter new date of Personal Hearing. (Revenue BO can adjourn date of hearing only twice. Number of adjournment, is not within the scope of system. Number of times hearing date can be adjourned is as per user discretion.) But system should capture all the Hearing Dates.
2. OR Revenue BO can pass the Speaking Order and inform the employer.
i. C-18 Adhoc is cancelled. (*Refer 'Appeal' Section of the document)*
ii. If dues not cleared within 15 days time period of issuing Speaking Order then initiate C-19(Recovery). System should have an option to the user to generate recovery certificates. (*Employer can appeal to Branch Manager at this stage as well. Refer 'Appeal' section of the document*)

b. If No letter received at RO Revenue Branch from the employer
1. Revenue BO decides to adjourn the date of hearing and informs the employer.
2. Else Revenue BO issues notice in newspaper giving last opportunity to employer for hearing. (This is required only in case defaulting amount exceeds Rs. 1,00,000)
3. Employer still doesn't appear then Ex-parte Order is issued against the employer. C-18 Adhoc against the employer is cancelled. *Refer 'Appeal' Section of the document*
4. If dues not cleared within 15 days time period of issuing Ex-parte Order then initiate C-19(Recovery). System should have an option to the user to generate recovery certificates. (*Employer can appeal to Branch Manager at this stage as well. Refer 'Appeal' section of the document*)

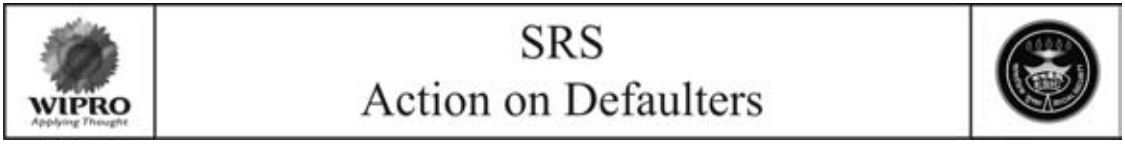
1.1.4.4 Issue of C-18 Actual

(Note: Whenever C-18 Actual is issued, original C-18 Actual is sent to Head/Chairman of the Factory/Establishment address. A copy of C-18 Actual is also sent to Factory/Establishment address. The system should be able to store both the copies of C-18 Actual.)

C-18 Actual is issued.
If dues are not cleared within 15 days time period from issue of c-18 Actual, then initiate C-19(recovery). Give an option to Revenue Branch Officer, to generate Recovery certificates.

1.1.4.5 Inspection (Inputs to Inspection Module and Inputs from Inspection Module)

If Inspection report is received before the personal hearing



1. Cancel current C-18 Adhoc
2. Action taken as per Inspection report. (Refer SRS for Inspection Module). C-18 Adhoc/Actual against the employer created by Inspection module is displayed to the user of 'Action on defaulters'

1.1.4.6 Show Cause Notice

1. Show cause notice is sent to RD/JD(I/c) for approval
   a. JD(I/c)/RD approves
      i. Show cause notice u/s 85-a-e is issued
      ii. If no response is received within 15 days of issuing show cause notice, then prosecution is sanctioned and the same is sent for approval to JD(I/c) or RD.
      iii. Once the prosecution is sanctioned by JD(I/c)/RD then a sanction memo is issued and sent to the legal department to initiate legal proceedings.
      iv. Steps i, ii, iii are also followed when a non-acceptable response is received from the employer.
      v. If the response from the employer is accepted or the payment/RC is received to satisfaction, the Notice is dropped against the defaulter.
   b. Else Notice is dropped against the defaulter.

1.1.4.7 Payment & Removing Employer from Defaulter's List

(Please refer F&A Interface Requirements Document)

1. During this process in between at any time if the employer makes the payment then C-18 Actual/Adhoc is dropped and C-18(i) for interest and D-18 for damages are created for interest accumulated for the time period. If Interest accumulated is below Rs. 100.00 then user can waive off the interests.
   a. Payment is made by defaulter after getting 1st default notice
      i. If the employer makes payment of defaulted amount in complete then the employer record should be removed from the defaulter list. (Interest and Damages calculation will happen during the half-yearly batch process)
   b. Payment is made by defaulter after getting 2nd default notice
      i. If the employer makes payment of defaulted amount for both the months then the employer record should be removed from the defaulter list. (Interest and Damages calculation will happen during the half-yearly batch process)

For E.g.

Employer Code	Employer Name	Defaulting Period	Amount Due	Defaulting Amount	Amount Paid	Status
10009123	Bharat Contractor	April, 2009	Rs. 4000	Rs. 4000	0	2nd default Notice
		May, 2009	MC Details Pending	MC Details Pending	0	

ii. Employer makes payment for one month (April 2009) then, record for that specific month will be deleted. (Orange colour record will be deleted) User should be able to change status if required for the case

Employer Code	Employer Name	Defaulting Period	Amount Due	Defaulting Amount	Amount Paid	Status

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10009123	Bharat Contractor	April, 2009	Rs. 4000	Rs. 4000	4000	2nd default Notice
		May, 2009	MC Details Pending	MC Details Pending	0	

In case, employer pays partial amount for only 1 month, then only the amount paid will be updated.

Employer Code	Employer Name	Defaulting Period	Amount Due	Defaulting Amount	Amount Paid	Status
10009123	Bharat Contractor	April, 2009	Rs. 4000	Rs. 4000	2000	2nd Default notice
		May, 2009	MC Details Pending	MC Details Pending	0	

c. Payment is made by defaulter after getting 3rd default notice
If the employer makes payment of defaulted amount for all the months then the employer record should be removed from the defaulter list. (Interest and Damages calculation will happen during the half-yearly batch process)

In case, employer pays partial amount for only 1 month, then only the amount paid will be updated.

Employer Code	Employer Name	Defaulting Period	Amount Due	Defaulting Amount	Amount Paid	Status
10009123	Bharat Contractor	April, 2009	Rs. 4000	Rs. 4000	0	3rd default notice
		May, 2009	MC Details Pending	MC Details Pending	0	
		June, 2009	Rs. 5000	Rs. 3000	Rs. 2000	

In case, employer pays complete amount for only 1 month, then the record will be removed.

Employer Code	Employer Name	Defaulting Period	Amount Due	Defaulting Amount	Amount Paid	Status
10009123	Bharat Contractor	April, 2009	Rs. 4000	Rs. 4000	0	3rd default notice
		May, 2009	MC Details Pending	MC Details Pending	0	
		June, 2009	Rs. 5000	Rs. 5000	Rs. 5000	

d. If payment is made at any point of time after C-18 Adhoc/Actual is issued. Employer will be removed from Main Defaulter list only if complete amount due against the employer is

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paid. Refer Interface requirements document for Interface with F&A. For E.g. considering the above example

Before Payment

Employer Code	Employer Name	Defaulting Period	Amount Due	Defaulting Amount	Amount Paid
10009123	Bharat Contractor	April, 2009	Rs. 4000	Rs. 4000	0
		May, 2009	MC Details Pending	MC Details Pending	0
		June, 2009	Rs. 5000	Rs. 3000	Rs. 2000

Employer pays Rs. 3000 for month of June, 2009 then that record will be updated. So it will display as

After payment

Employer Code	Employer Name	Defaulting Period	Amount Due	Defaulting Amount	Amount Paid
10009123	Bharat Contractor	April, 2009	Rs. 4000	Rs. 4000	0
		May, 2009	MC Details Pending	MC Details Pending	0
		June,2009	Rs. 5000	Rs. 5000	0

In case employer clears all his dues i.e.

- Makes payment of Rs. 4000 for April 2009, &
- Submits MC details for May, 2009 and makes payment as per MC details submitted.

Then the employers name should be removed from the list. The employer will be moved to Interest and Damages Screen with Interest and Damages charges for delayed payment for the defaulted period. (Please refer Interest and Damages Section 3.1.4.1 of the document mentioned above)

Partial Payment – Please refer SRS_RC_MC_LL for partial payment details.

1.1.4.8 Appeal by Employer against Speaking Order/C-19

1. After issue of C-19/SO upon request of employer, the Branch Officer may accept (on merit) to provide another personal hearing to the employer. Once this decision is taken then C-19/SO is stayed by Branch officer. The system should provide user the option to put 'Stay' option against the C-19 certificate/SO.
2. After personal hearing, Branch officer can
   a. Revoke stay order from C-19/SO.
   b. Cancel C-19/SO.
   c. Amend C-19/SO.
3. If employer is still not satisfied with Branch Officer Decision, then employer can appeal at external court against the decision.
4. External court will communicate to Legal Department of ESIC.
5. Legal Department will forward the 'Stay Order' on SO/Recovery certificate. (Refer SRS_Recovery for 'Stay' order from court on Recovery Certificate.)
6. Status of SO will be 'Stay' until further communication from Legal Department. (Refer Interface Document with Legal)

1.1.4.9 Calculation of Interest

Interest Calculation – Simple Rate of Interest

Interest	=	(Date of payment – Due date of payment)* Contribution*Rate of Interest

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(Rounded to next higher rupee)		365 (366 in case of leap year)*100

For Ex: Rs 1,00,000 rupees is to be paid by 21st of May 2009. In case the employer pays on 31st May 2009. Interest rate is 12%.

Date of payment – Due date of payment = 10 days
Then the interest charged will be calculated as

(10*1,00,000 * 12)/(100*365) = Rs. 329

1.1.4.10 Calculation of Damages

Damages Calculation – Simple Rate of Interest

Rate of damages

Period	Rate(per annum)
Upto 2 months	5% of Contribution
2-4 months	10% of Contribution
4-6 months	15% of Contribution
Above 6 months	25% of Contribution

Damages (Rounded to next higher rupee)	=	(Date of payment – Due date of payment)* Contribution*Damage Rate / 365 (366 in case of leap year)*100

Note: Damages cannot exceed the contribution value.

For Ex: Rs 1,00,000 rupees is to be paid by 21st of May 2009. In case the employer pays on 31st May 2009. Then the damages will be calculated as

= (31 May 2009 – 21 May 2009) * 1,00,000 * 5)/ (365*100)
= Rs. 137

Contribution amount = Rs. 1,00,000. Payment Due date 21 July 2009			
Payment Made	Defaulted days	Damages Rate	Damages
30 August 2009	40	5	Rs 548
30 September 2009	71	10	Rs. 1946
30 November 2009	132	15	Rs. 5425
30 March 2010	252	25	Rs. 17261
30 August 2010	405	25	Rs. 27740
21 July 2013	4 years	25	1,000,000
21 July 2014	5 years	25	1,000,000 (No increase)

1.1.4.11 Calculation of C-18 Adhoc value

(In case contribution details are not filled by the employer)

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C-18 Adhoc Amount = 6.5% of (Number of IPs * Wages per month per employee*Defaulting Period in months)

Number of Employees can be either

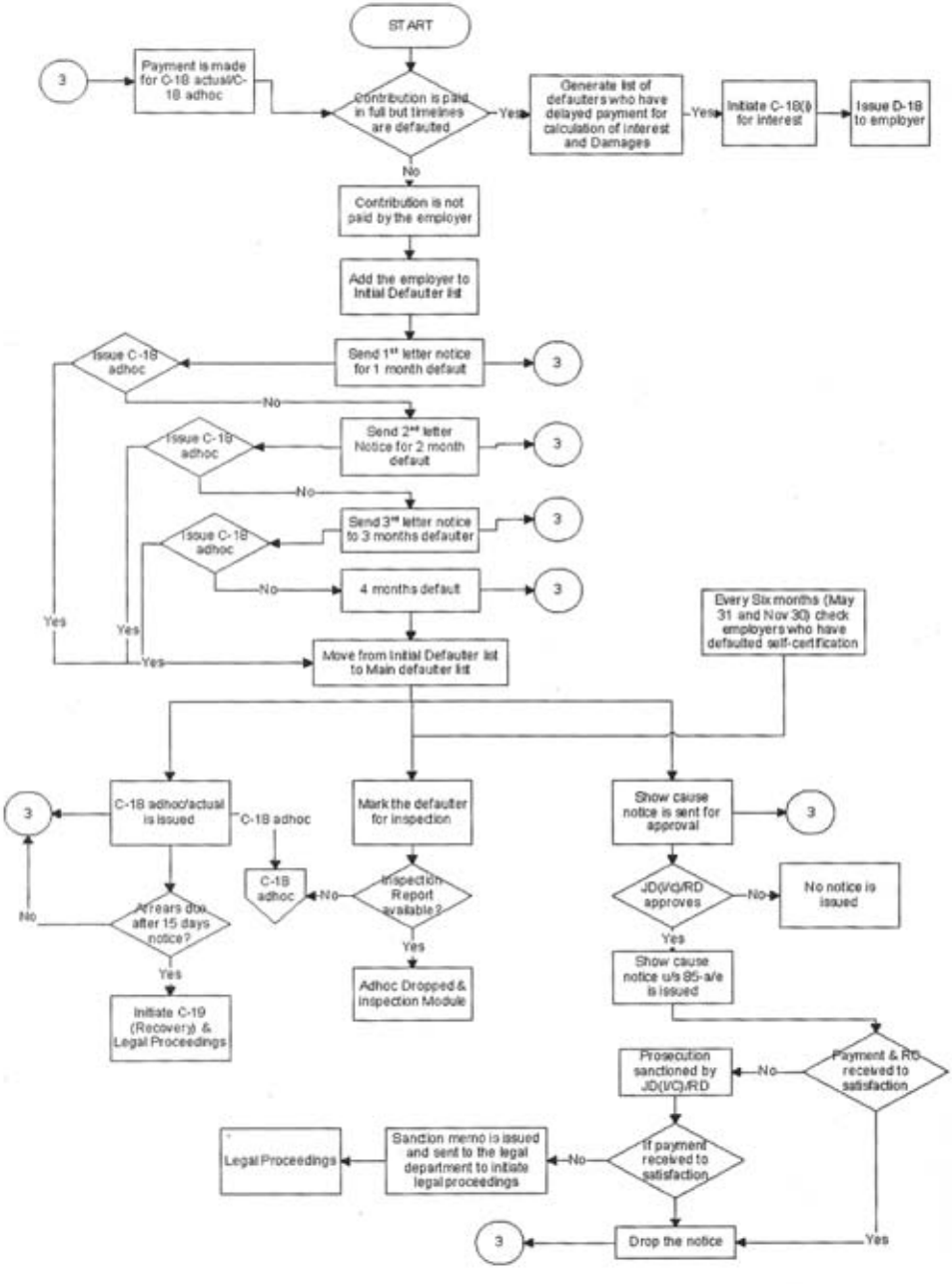
1. As per Form-3
2. As per latest Inspection report
3. As per employees in the last monthly contribution report.
4. Others (User's discretion)

Wages

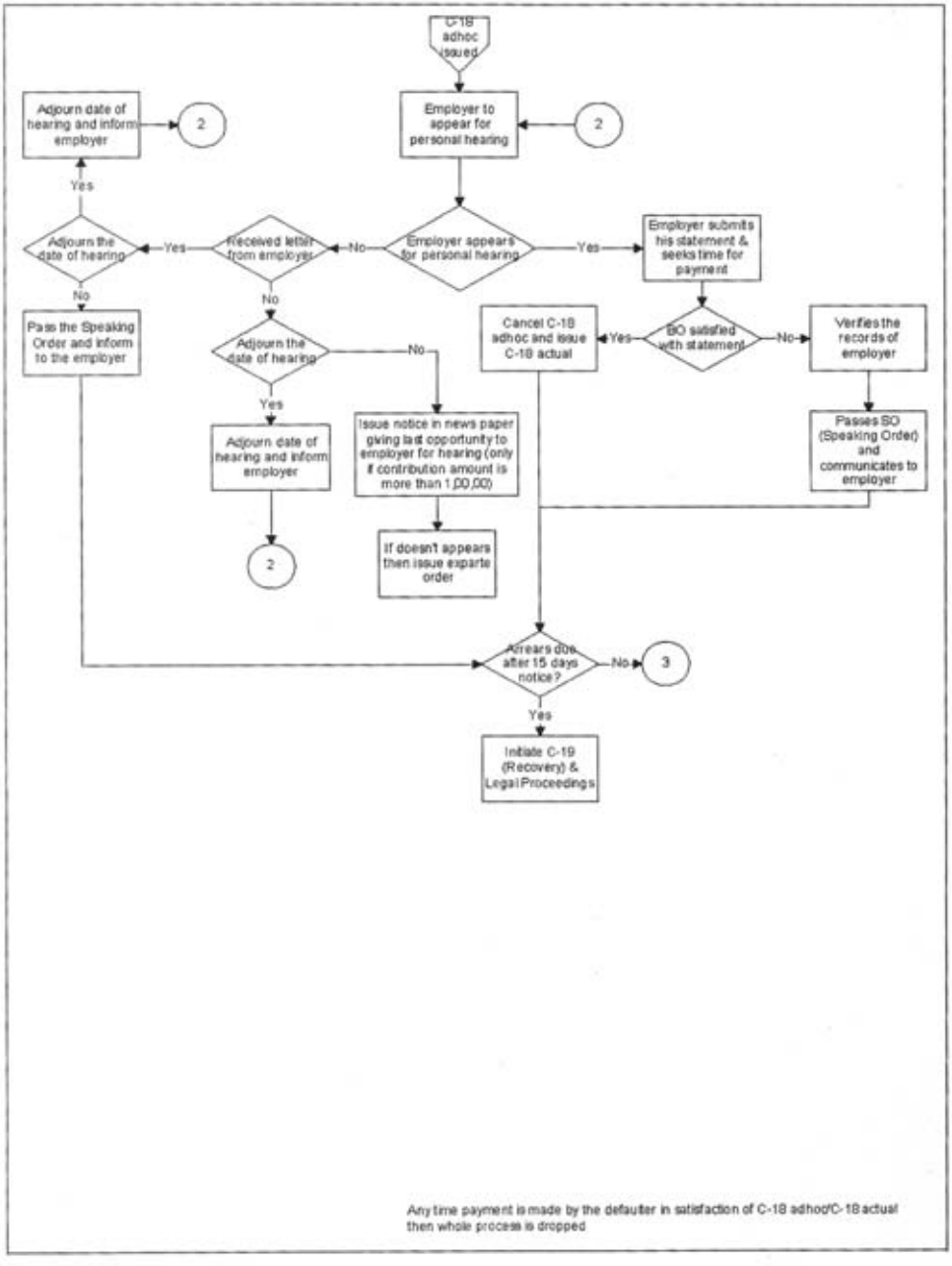
1. Assumed average wages.
2. Average of wages of last 6 months.
3. 110% of Average of wages of last 6 months.
4. Others (User's discretion)

User should be allowed to choose the best condition to reach most appropriate amount. (Choosing the option is upto discretion of Branch Officer.

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Action on Defaulters



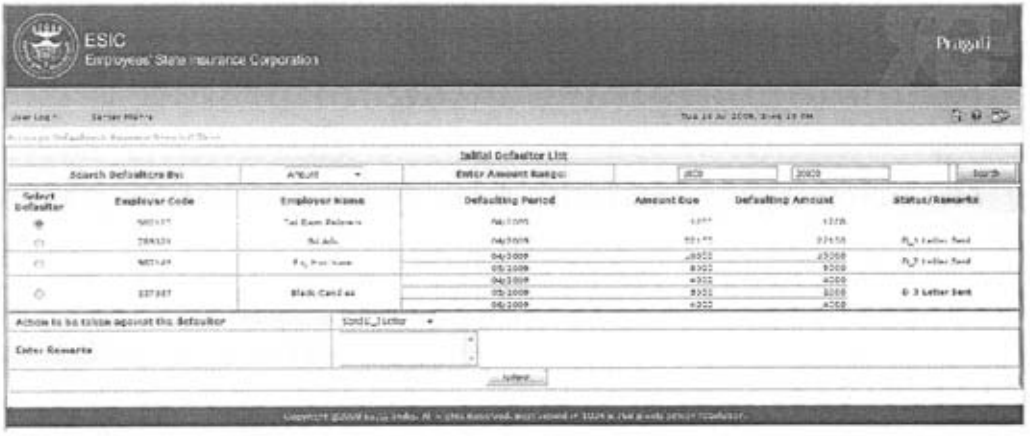
SRS
Action on Defaulters



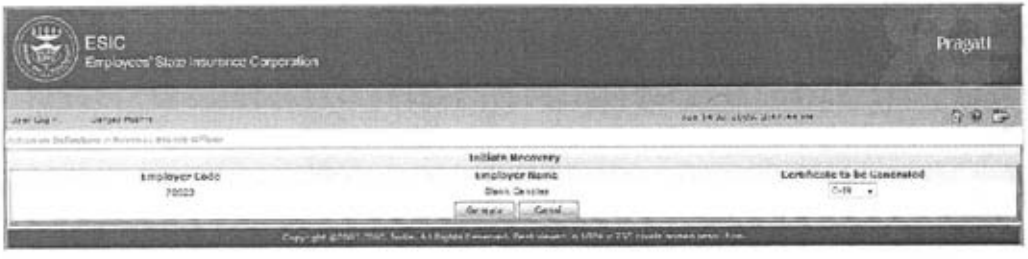
SRS
Action on Defaulters

1.1.5 *Screens*

Action on defaulter – Initial Defaulter's List

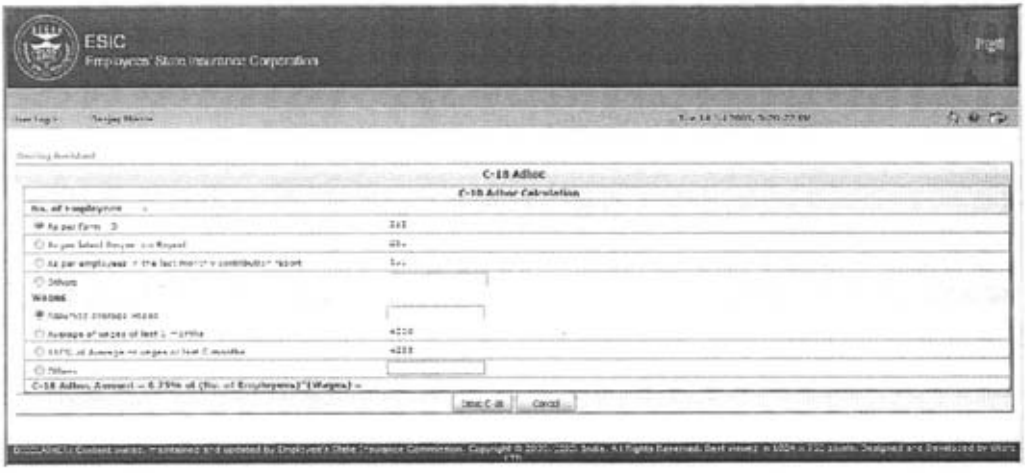


Generation of Recovery certificates

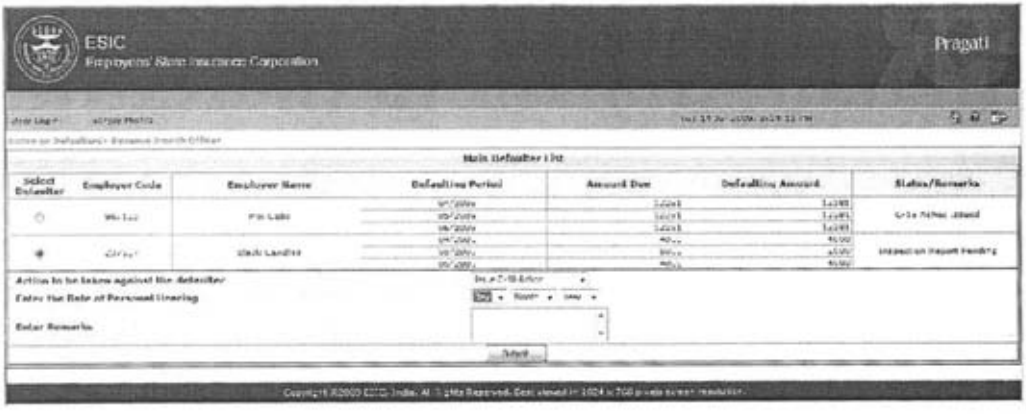


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Calculation of C-18 Adhoc

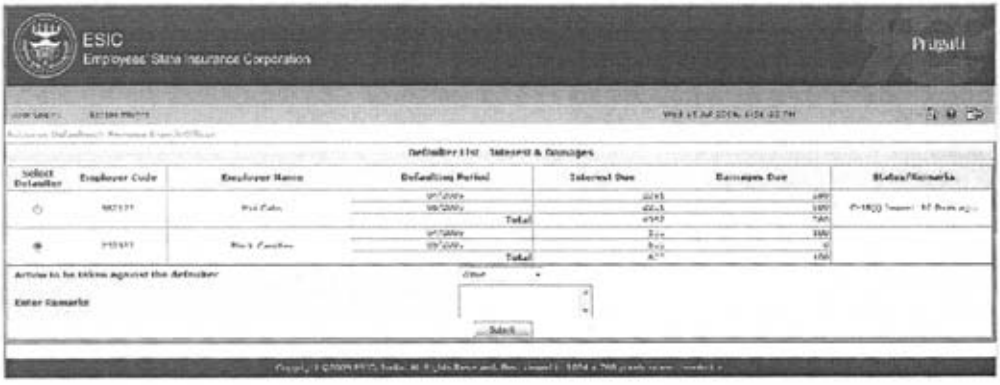


Main Defaulter List

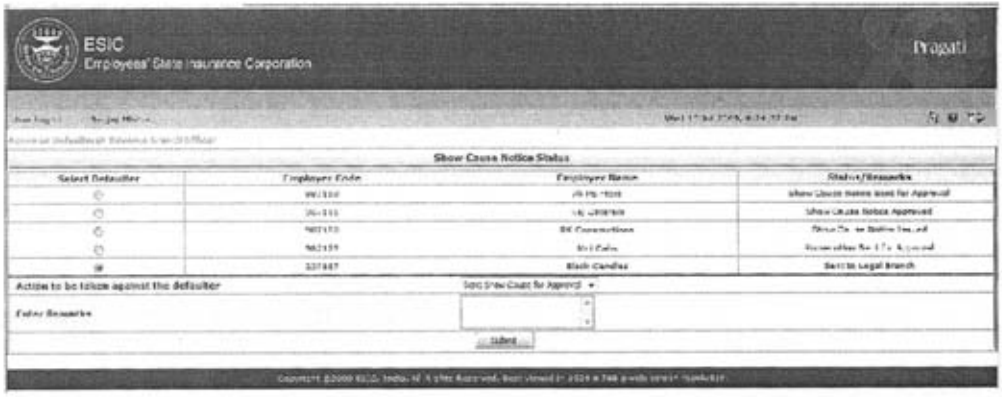


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Action on Defaulters

Interest and Damages



Show-Cause Notice



1.1.6 *Validations*

Initial Defaulter's list

Field Name	Min/ Max Length	Field Type	Mandatory – M, Non-mandatory – NM	Populated By (User –U, Fetched from System DB – FS, Derived –D, System generated- S)	Validation/Desciption

WIPRO Applying Thought

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Action on Defaulters

Search Defaulter By		Listbox	M	U	Based on the value selected by the user, the user is furthered asked to enter search criteria. Ex. If user chooses 'Amount', he is asked to enter the range of amounts. All defaulter with the defaulting amounts that lie in this range are displayed as search result. If the user chooses 'Employer Code', he is asked to enter the Employer Code number.
Enter Amount Range		Textbox	M	U	Has to be a numeric value
Select Defaulter		radio	NA	U	The user can select one employer from the list of defaulters
Employer Code		Display Item	M	FS	Fetched from the database based on search criteria
Employer Name		Display Item	M	FS	Fetched from the database based on search criteria
Defaulting Period		Display Item	M	FS	Fetched from the database based on search criteria
Amount Due		Display Item	M	FS	Fetched from the database based on search criteria
Defaulting Amount		Display Item	M	FS	Fetched from the database based on search criteria
Status		Display Item	M	FS	Fetched from the database based on search criteria
Action to be taken against the defaulter		Listbox	M	U	The action selected by the user from the listbox is initiated against the selected employer
Enter Remarks		Textbox	NM	U	The user can enter remarks against the action on defaulter

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Action on Defaulters

Recovery Certificate Initiation

Field Name	Min/ Max Length	Field Type	Mandatory – M, Non-mandatory – NM	Populated By (User –U, Fetched from System DB – FS, Derived –D, System generated- S)	Validation/ Description
Employer Code		Display Field	M	FS	The details are of the employer who is selected in 'Main_Defaulter_List' page and 'Initiate Recovery' action is chosen
Employer Name		Display Field	M	FS	The details are of the employer who is selected in 'Main_Defaulter_List' page and 'Initiate Recovery' action is chosen
Certificate to be generated		Listbox	M	U	The user chooses which certificate to generate

Main Defaulter's list

Field Name	Min/ Max Length	Field Type	Mandatory – M, Non-mandatory – NM	Populated By (User –U, Fetched from System DB – FS, Derived –D, System generated- S)	Validation/Desciption
Select Defaulter		radio	NA	U	The user can select one employer from the list of defaulters. The records are moved to this page from Initial_Defaulter_List after the the employer has defaulted for more than 3 months.
Employer Code		Display Item	M	FS	Fetched from the database.
Employer Name		Display Item	M	FS	Fetched from the database.

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Action on Defaulters

Defaulting Period		Display Item	M	FS	Fetched from the database.
Amount Due		Display Item	M	FS	Fetched from the database.
Defaulting Amount		Display Item	M	FS	Fetched from the database.
Status		Display Item	M	FS	Fetched from the database.
Action to be taken against the defaulter		Listbox	M	U	The action selected by the user from the listbox is initiated against the selected employer
Enter the Date of Personal Hearing		listbox	NM	U	The user can choose to enter a date for personal hearing
Enter Remarks		Textbox	NM	U	The user can enter remarks against the action on defaulter

C-18 Adhoc Calculation

Field Name	Min/ Max Length	Field Type	Mandatory – M, Non-mandatory – NM	Populated By (User –U, Fetched from System DB – FS, Derived – D, System generated- S)	Validation/Description
No. of Employees		radio/display item	M	U	The user can choose one of the 4 radio buttons. Depending on the option chosen, the no. of employees is fetched from the database or the user can enter in the text box
Wages		radio/display item	M	U	The user can choose one of the 4 radio buttons. Depending on the option chosen, 'wages' is fetched from the database or the user can enter in the text box
C-18 Adhoc Amount = 6.75% of (No. of Employees)*(Wages)		display item	M	U	The value is calculated as per the formula

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Action on Defaulters

=					

Interest & Damages

Field Name	Min/ Max Length	Field Type	Mandatory – M, Non-mandatory – NM	Populated By (User –U, Fetched from System DB – FS, Derived –D, System generated- S)	Validation/Description
Select Defaulter		radio	NA	U	The user can select one employer from the list of defaulters
Employer Code		Display Item	M	FS	Fetched from the database based on the value entered in the Defaulter Level listbox
Employer Name		Display Item	M	FS	Fetched from the database based on the value entered in the Defaulter Level listbox
Defaulting Period		Display Item	M	FS	Fetched from the database based on the value entered in the Defaulter Level listbox
Interest Due		Display Item	M	FS	Fetched from the database based on the value entered in the Defaulter Level listbox
Damages Due		Display Item	M	FS	Fetched from the database based on the value entered in the Defaulter Level listbox
Status		Display Item	M	FS	Fetched from the database based on the value entered in the Defaulter Level listbox



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Action on Defaulters



Total		Display Item	M	FS	The total of interest or damages per employer
Action to be taken against the defaulter		Listbox	M	U	The action selected by the user from the listbox is initiated against the selected employer
Enter Remarks		Textbox	NM	U	The user can enter remarks against the action on defaulter

Show-cause notice

Field Name	Min/ Max Length	Field Type	Mandatory – M, Non-mandatory – NM	Populated By (User –U, Fetched from System DB – FS, Derived –D, System generated- S)	Validation/Desciption
Select Defaulter		radio	NA	U	The user can select one employer from the list of defaulters
Employer Code		Display Item	M	FS	Fetched from Database
Employer Name		Display Item	M	FS	Fetched from Database
Status		Display Item	M	FS	Fetched from Database
Action to be taken against the defaulter		Listbox	M	U	The action selected by the user from the listbox is initiated against the selected employer
Enter Remarks		Textbox	NM	U	The user can enter remarks against the action on defaulter

1.1.7 *Post Conditions/Successor Process*

Condition	Post-Condition
MRC is up to mark and as expected	Remove the employer from defaulter's list
MRC is pending/Payment is pending	Generate C19, D19, C19(i) Recovery certificates



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Action on Defaulters



1.1.8 ***Internal Interfaces***

Finance and Accounting – When the employer makes payment, F & A should update payment received and make necessary updates against which the payment is made.

1.1.9 ***External Interfaces***

NA

1.1.10 ***Issues***

NA

1.1.11 ***Assumptions***

System will track the status of Action on Defaulters taken against the employer. System will not generate any letter/notice automatically.

User's discretion will generate letter from the System. System will generate blank template of notice or letter which will be edited by the issuing officer.

4 Interface Requirements

NA

5 Non functional Requirements

NA

6 Specific Requirements

Target Environment:

Defaulter Letter

D-1_Letter to Monthly Defaulter .doc

D_2_letter to defaulter_3rd default

D_3_Scrutiny Sheet_Compliance_D

D_4_Scrutiny Sheet for Action_Defaulter (

D_5_Scrutiny Sheet for Action_C-18_Actu

SRS
Action on Defaulters

D_6_Scrutiny Sheet
For Action_Review_S

D_7_Scrutiny Sheet
for Action_C-18 Inter

D_8_Scrutiny Sheet
for Action_D-18.docx

D_9_Scrutiny Sheet
for Action_Damages.(

D_10_Scrutiny Sheet
For Action_Review_S

C-18 Adhoc

C-18 Adhoc.pdf

C-18 Actual

C-18 Actual.pdf

C-18 (i)

C-18(i).pdf

D-18

D-18.pdf

Proforma SCN
(Prosecution).docx Show Cause Notice



SRS
Action on Defaulters



Bharatbiscuit.doc

Speaking Order -

Generation of Various Branch Office MIS Reports

D_22_BO
PERFORMANCE_DAM

D_23_BO
PERFORMACE _C18C

D-21_BO
performance_Default

D_20_Format of
Damages Register.do

(The RC part of these letters will not be applicable after IT Roll-Out)

7 Assumptions/Dependencies/Issues

Generation of C-18 Adhoc and C-18 Actual – User has to take decision which certificate has to be generated.

Employer should make month-wise payment for defaulting amount. This way the system can track payment details and suitably update the arrears due with respect to each month.

Interest and Damages will be calculated only after defaulted amount is paid.

8 Others

NA

9 Acronyms and Glossary

MC	Monthly Contribution
RC	Return of Contribution
U/S	Under Section
SO	Speaking Order
BO	Branch Officer
DA	Dealing Assistant
RD	Regional Director
JD	Joint Director
AD	Assistant Director

SRS
Inspection & Survey

System Requirement Specification

for

Inspection & Survey

Version 1.0

Submitted to

by

Date: 29th July 2009

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Inspection & Survey

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Parvathi Omandhu 10-06-2009	Veenaa Iyer 27-07-2009	
Prepared by/Date	**Reviewed by/Date**	**Approved by/Date**

Revision History

Version (x.yy)	Date of Revision	Description of Change	Affected Sections	Date of Review	Approved By
0.1	10-06-2009	Initial Draft	All	22-06-2009	Veenaa
0.2	26-06-2009	Updates based on internal review Comments and updates from Customer	All	30-06-2009	Veenaa
0.3	10-07-2009	Updates from client	All	27-07-2009	Veenaa
1.0	27-07-2009	Baseline for Client Submission	NA	NA	

	SRS Inspection & Survey	

Affected Group

Employees
Insurance Inspectors, Inspection Division
Branch Office,
Revenue Branch, Regional Office

List of Reference Documents

1.	Employers' Guide published by Director General, ESIC
2.	LO Manual
3.	Regulation & ESIC Forms provided by SPOC
4.	ESI Act, 1948 as amended up to date
5.	ESI (General) Rules 1952
6.	ESI (General) Regulations 1952
7.	Instructions issued by the Head Quarters



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Inspection & Survey



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SRS
Inspection & Survey

1 Introduction

Inspection ensures proper compliance of the provisions given in the Employee's State Insurance Act, 1948. The inspection of factories and establishments is one of the most important responsibilities of the ESI Corporation and is carried out by inspecting authorities, that is, Insurance Inspectors.

Scope and Overview:

I. To capture the work flow in the process of Survey
II. To capture the work flow in the process of Inspection of Units & Sub-Units
III. To capture the work flow in the process of Test Inspection

Requirement ID	Requirement Description
A4	Ability to record units which are reported to be coverable but not covered during survey
A13	Ability to track inspection progress & reports
C8	Ability to record policy matters related to test inspection , inspection & surveys of factories / establishments
C9	Ability to record issues related to coverage of factories / establishments
E5	Insurance Inspector Performance Process – As Is
E14	Policy matters relating to test inspection, inspection and survey of factories / establishments
E15	Issues related to coverage of factories/ establishments
E37	Progress of Inspection
E38	Processing of the Inspection Reports

2 Existing Process

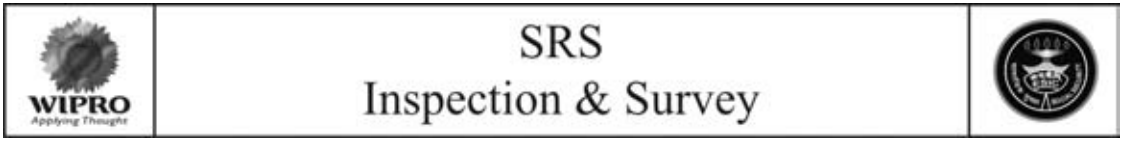
1.1 *Survey Vs Inspection*

When an investigation of a Unit takes place after the successful registration of the Unit under ESIC, it is called Inspection. However, when an investigation is conducted to determine if the Unit is coverable under ESIC, it is termed Survey. This document deals with the process of Inspection and Survey and is distinguished by the reason for Inspection.

1.2 *Survey of Units*

1.2.1 *Process for Survey of Units*

a. Upon a 3rd party reference (available in Survey Source Register) or on his own initiative an Inspector can visit a Factory premise or an Establishment for a survey. In case a 3rd party reference is received, a letter will also be issued to the Employer asking him to register his



factory/establishment under ESI Act by filing Form 01. In case the employer files a Form 01 and registers successfully further survey will not be required. The 3rd party references shall be stored in a register called the Survey Source Register.

Microsoft Word - R_4b_C-2.pdf Microsoft Word - R_4a_Scrutiny Sheet Microsoft Word - R_12_Proposed Surv

Proposed Survey Register – Before allowing the User to make an entry into this register, name and address will be matched with the existing Employer Master to see if he has already been registered. If more than 1 record is matching, we shall allow the User to identify and decide accordingly. A query may be provided to view the list of already Registered Units, and those not registered.

b. If the Inspector finds that the Employer is coverable under the ESI Act, then he may also initiate a registration process for the Employer. The Inspector has to fill his survey details online which will be based on Form C-10(a). Once this survey report is filled, a unique code no. is generated for the Employers.

c. In the below form, the fields marked with an * are mandatory

Microsoft Word - R_5a_C-10-A_PIR.pd

At the same time, an Observation Note is also submitted to the Employer.

Microsoft Word - R_5b_Priliminary Insp

d. The Insurance Inspector will only fill in the particulars and submit for approval. In case the report is approved then the Code No. will be generated. In case any deficiency is found the Insurance Inspector will be asked to clarify. Once the clarifications are accepted, the Employer Code No. is generated. The scrutiny is carried out by a Dealing Assistant in R.O.

Microsoft Word - R_6a_Scrutiny of PreR_6b_Letter to II_stR_6c_Reply of Insura Microsoft Word - Microsoft Word -

e. A Registration Code number will be generated with the status – "Registered without Form 01". C-11 will be generated at this stage which will be sent to the Employer and all concerned. C-11 will contain a remark to register his employees and also to submit Form 01. Form C-2A sent along with C-11.

Microsoft Word - R_7_C_2_A.pdf

f. An entry is made in Watch Over Register for Employer registration.

g. After 15 days, the Watch Over Register is checked again to see the status of registration. If the Employer has not registered within this period of time, he is sent a show-cause notice. A copy of this letter is sent to the Inspector and intimation is sent to the Legal department.

Microsoft Word - R_8a_Scrutiny of For
Microsoft Word - R_8b_SCN_Form01.p

h. However, the Employer may register upon receiving the letter described in step 7. The User would then enter the ESIC website and register himself using the Code No. provided in the letter.
i. The system should check if the information submitted by the Employer is at variance with the information already submitted in the system by the Insurance Inspector.
j. The existing record in C-1 register will be updated with the additional details and the status of the C-1 register is changed from "Registered without Form 01' to 'Registered'.
k. If the registration fails – status will be 'Registration failed" and a message containing the ESIC toll free number and a link to the list of ESIC Offices will be displayed.
l. If however, the Employer does not still register within 15 days of receiving the show-cause notice, the Legal branch takes over and files a case for prosecution against the Employer. Please refer SRS_Legal for more details.

Note: Please refer SRS_Employer Registration for more details on Employer Registration.

1.3 *Inspection of Units*

1.3.1 *Reasons for Inspection*

There can be various reasons for carrying out the inspection of a Unit. The Insurance Inspectors have been advised to prioritize the inspection requests as per the following order in the New Inspection Policy 2008:

Inspection_Policy000 1.pdf

i. Newly covered factories and establishments (C-11 notification)
ii. Closed factories (Status Change)
iii. Defaulters for contribution periods ending March and September (After 3rd reminder)
iv. Live Employers who have not filed Returns of Contribution with Self-Certification in time. (All those not submitting Self-Certificate).
v. Employers not complying and defaulting on contribution and Return of Contribution (c & d together as mentioned above).
vi. Surveys of uncovered factories/establishments (Survey Source Register)
vii. Examination of complaints received – Source Complaints Register, if marked for Inspection, and then it is directed to the Inspection Control Register.
viii. Employers submitting Returns of Contribution

a. Determination of Final Date of Coverage

Please refer point 1 of the New Inspection Policy 2008.

As per this point, the Inspector should give first priority to Inspection of newly covered factories and establishments, which should be undertaken within 3 months of the coverage. During the course of inspection, the final date of coverage should be determined. If not done during the 1st inspection, the FDC should be determined within a period of 3 months from coverage.
Pending cases where FDC has not been determined are also to be inspected on a priority.

This list can be prepared based on the C-11 notifications issued and the entries made in the Inspection Register.

b. Closed factories

Please refer point 2 of the New Inspection Policy 2008.

As per this point, the Inspector should give second priority to Inspection of those closed factories who have filed closure report under Regulation 26 (1)(b) of ESI (General) Regulations, 1950.
When no closure report has been filed, the date on which the closure information was received is taken as the provisional date of closure. The final date of closure is then determined by the Insurance Inspector.

Closed factories are excluded from the defaulter's list. The Inspector will be informed of the defaulting period, the end date of which will be the closure date in cases of closed factories.

When the Status is changed to Closed, this list shall be updated and sent to the Inspectors.

c. Defaulters (non submission of contribution)

The new policy advises the RO, to prepare a defaulter's list every month. If it is found that if an employer defaults continuously for 3 months, then his inspection should be done immediately. This list can be obtained from the List of defaulters. Please refer action on defaulters for more details.

d. Defaulters (non submission of Return of Contribution with Self Certification)

The next priority will be given to the inspection of those live employers who have paid the contribution but have not filed Returns of Contribution with Self-Certification in time. The main objective of such inspections should be to guide the employer and to emphasize that filing Returns is as important as paying contributions. This list is currently being prepared by querying all those Employers who have not submitted Self-Certification. Please refer note below for changes in this process in the future.

e. Defaulters (no contribution, no returns)

The Employers who are not complying with law and have neither paid the contribution nor submitted Returns of Contribution with Self-Certification should be inspected as soon as the matter comes to the notice and should be dealt with severely under law and quick action for recovery of contribution, interest, damages as well as filing of prosecution against them must be taken as per existing instructions. The defaulters under both steps c & d shall figure in this list.

f. Survey of uncovered factories/establishments

Surveys of uncovered factories/establishments for coverage if coverable should be a continuous exercise. However intensive surveys should be conducted at least three times in a year – once in

April-May, secondly in September-October and thirdly in December-January. Help of State Government and Trade Unions should be taken in this exercise. The actual process of Survey and action thereafter has been explained in detail in section 2.2 above. This list is obtained from the Survey Source Register.

g. Complaints

The complaints received from various sources would first be examined in Regional/Sub-Regional Office and its authenticity confirmed. Anonymous complaints are not entertained. If the complaint is found genuine, then in the first instance the employer should be called for ascertaining the facts of the complaint. If thereafter, the contents of the complaint are found correct then Employer should be asked to take corrective steps within a specified time frame. If no corrective steps are taken within the given time frame, then detailed investigation/inspection should be carried out and appropriate action under the law should be taken. This list is obtained from the Survey Source register, identified as complaints and marked for Inspection.

h. Random checks

All abiding employers who contribute and file returns on time should also be inspected once in a period of 3-5 years. Random inspection of those live employers who are submitting Returns of Contribution in Form-5 as per the instructions is also carried out. The Regional Directors/JD (I/C) shall select the units randomly in such a way that the inspections of all the Employers are completed in a cycle of 3 to 5 years. In future, a batch process shall be scheduled to automatically pick up complying Units for random checks. Controlling Branch Officer will also be able to manually select units for random checks.

Notes:

1. Though submission of RC will not be required in the future, Self Certification will continue to be required and needs to be submitted once in 6 months. Else the Employer will appear as a defaulter.

2. If a factory is closed, then the factory is liable to pay contribution only till such time that it was open. The period for payment of contribution should be calculated accordingly. If intimation about closure of the Unit is not received directly from the Employer, the Inspector is assigned the task of Inspecting the Unit and obtaining the correct date of Closure of the factory. (Please refer point (b) under section 2.3.1 for more details.) In the case of a closed factory all correspondences from the Regional Office/Inspection Division to the Employer are sent/ issued to the Employer's residential as well as Factory address.

3. Inspector will be able to see all levels of defaulters after 4th month, or when the defaulters will be marked for Inspection.

4. Please refer SRS on Action on Defaulters to obtain more details on generation of Defaulters List.

1.3.2 *Documents checked during Inspection*

- Documents for determining the date of start of factory/Establishment
  - Incorporation Certificate (In case of companies)
  - Partnership Deed
  - Factories License

- Certificate of District Industrial Centre
- License issued by Inspector of Factories
- For Establishments, registration under shops and establishments Act
- Leased accommodation – Lease deed of the premises

- Documents for determining the date of start of Business
  - First page of the ledger
  - First Balance sheet
  - Document establishing the date of start of Trial/Commercial Production
- Documents for determining the start date of Use of Power in the manufacturing process
  - First Electricity Bill
  - Meter Installation documents
- Documents for determining the number of employees for coverage
  - Attendance Register
  - Wages Register/Muster Roll
  - Voucher Payments
  - Cash Books
  - Ledger
  - Trial Balance sheet
  - Balance sheet
- Documents for determining the Contribution
  - Attendance Register
  - Wages Register/Muster Roll
  - Form -6 Register
  - Bills/Payment Vouchers
  - Cash Books
  - Ledger
  - Trial Balance sheet
  - Balance sheet
  - Profit/Loss accounts

Insurance Inspector checks for Compliances with the help of documents mentioned above. – to be updated Process

1.3.3 *Steps leading to Inspection in case of Defaulters*

Soon after the defaulters list for non submission of contribution is prepared, the respective Regional Office revenue department issues a 1st notice letter. The Employer is given a month's time to revert back. In case, the Employer fails to pay contributions till this time and also does not revert back with any reason for not doing so, a 2nd notice letter is issued. Similarly a 3rd notice letter is sent upon failure of the Employer to do the needful. After a month of issue of the 3rd notice, the defaulter is taken up for Inspection. Simultaneously C-18 ad hoc is issued and a Show cause notice is also sent.

In case Inspection is conducted before the date of personal hearing indicated in C-18 ad hoc, then the personal hearing is cancelled and C-18 ad hoc is dropped. On the basis of the details provided in the Inspection Report, C-18 actual may be issued. In case, sufficient information is not available in the Inspection Report for calculation of C-18 actual, C-18 ad hoc is issued. C-18 issued is sent to the Factory Address, addresses of all Directors and Partners and a copy to the Inspector. Based on the Inspection, both C-18 actual as well as C-18 ad hoc may also be issued.



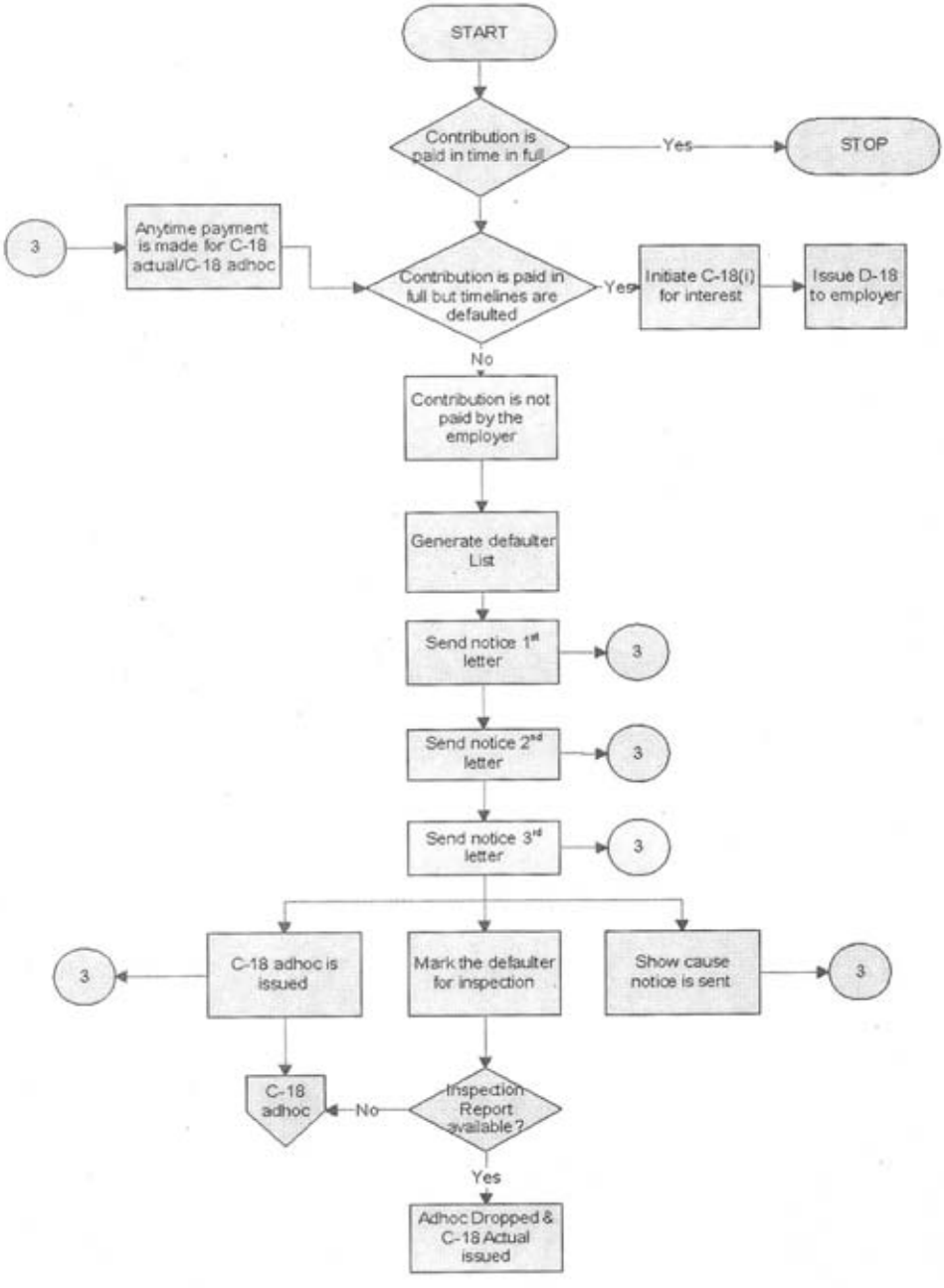
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C-18 actual will be issued for the part of contribution where information is clear, and C-18 ad hoc will be issued for the part of contribution where information is not clear.

On the date of Hearing, any inspections scheduled for the Unit thereafter shall be marked as 'Stopped".

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1.3.4 *Process of Inspection for Units*

1. The Insurance Inspector is kept informed of the defaulters, complaints, new registrations and closure of factories and various other statuses of Employers through periodical reports as well as through notifications.
2. Using this information, the Insurance Inspector prepares a tour inspection program listing the various units to be inspected. The tour is planned as per the instructions given in the Inspection policy. However, before coming up with the final list, he gets the latest updates from the ESIC records. This is done to check if any change has taken place in the intervening period and if the inspection is still required, especially in the case of defaulters. The tour program is usually prepared for a period of one month. As per the new Inspection Policy, the Insurance Inspector is required to conduct 20 inspections and 20 surveys in a month. His plan is to be prepared accordingly. In future C-20 should be automatically generated.
3. As soon as it is finalized, the Employers are notified of the date of Inspection and other details, such as the documents which would be required for verification.
4. If Employer does not produce records for inspection, then Inspector re-schedules the inspection in agreement with the Employer on a mutually agreed date by sending Annexure A.

Annexure A.docx

5. On second occasion if again the records are not produced, we issue a Standard Notice, (Annexure B).

Annexure B.docx

6. On third occasion if again the records are not produced, intimation is sent using Annexure C to Police Station and copy to RO/SRO.

Annexure C.docx

7. On the specified date and time, the Insurance Inspector visits the Unit for inspection. He visits the premises to get first hand information of the business activities going on in the Unit, talks to the Insured Persons/Employees and checks Permanent Identity Card, any concerns regarding the benefits that IPs are availing or if there are any complaints etc.
8. The following documents are to be kept ready for inspection and produced on demand before the inspecting authority.
    a. Attendance Register(s)/Muster Roll(s) (In respect of all employees including those employed through contractors)
    b. Wages Register
    c. Cash Book/Bank Book
    d. Account Books including Ledgers and bills/vouchers, Balance sheet
    e. Form-6 Register
    f. Accident Book
    g. Returns of Contribution
    h. Returns of Declaration Forms
    i. Copies of Challans
    j. Inspection Book

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If an employee not on the rolls of the factory/establishment, is engaged either directly or through contractor for carrying out any work within, the premises or if outside the premises, under the supervision and control of the Principal Employer or his agent the records thereof is also required to be produced before the Inspector as contributions are payable on the wages component. The responsibility for payment of contributions in respect of these employees rests with the Principal Employer.

Please refer attached document for calculation of contribution in such cases.

DIFFERENCE IN SALARY & WAGES.do

9. The Inspector checks the correctness of the above mentioned records and makes a note of any discrepancy found. Based on his observations, he prepares the Inspection Observation and hands it over to the Employer/his duly authorized representative on the spot. Subsequently he fills up the Inspection Report in Form C-10(b)/C-10(c). In case of survey the Inspector fills up Form 10(a).

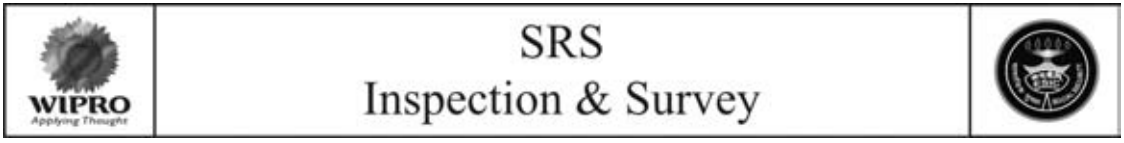
Form C-10c.docx

Also for each reason type, separate annexure may be attached.

ANNEXURE - I_Job Work.doc | Inspection Report_Closure verifi | Inspection Report_FDC.doc

10. It may also happen that the Employer does not co-operate and produce the necessary records for inspection. Please refer steps 4, 5 & 6. In such case, the Inspection Report reflects the same with the remarks that Inspection could not be conducted because of " ".
11. The Inspector then submits his Inspection Report at Regional Office. The Dealing Assistant dealing with the Employer Code number scrutinizes the Inspection Report. The following important aspects are checked:
    a. Continuity of Inspection, such as when the last inspection was done, the time period between the last and current inspection etc
    b. Period for which Books of Accounts are checked
    c. If the Declaration Forms have been submitted, if yes have all Employees been registered?
    d. Has the Employer submitted Returns on time
    e. Have the monthly contributions been paid on time
    f. Has a Visit Note been given by the Inspector
    g. Omitted wages observed if any
    h. Please refer each of the scrutiny document attached below for more information

Scrutiny Sheet for Action_Closure verific | Scrutiny Sheet for Action_Routine_Perio



12. If any information is found missing by the Dealing Assistant, the same is put up to the Branch officer through Superintendent, and if approved, a letter is sent to the Inspector requesting him to submit the necessary details.

Scrutiny Sheet__non receipt_First Inspecti

Scrutiny Sheet_non receipt_FDC report.d

13. Based on his scrutiny the Dealing Assistant determines if the Employer has defaulted and if yes, on which grounds.
14. The Dealing Assistant proposes the action to be initiated, and forwards to Superintendent who in turn submits to the Branch Officer for his approval. Please refer the scrutiny sheets attached in step 11 also for the actions suggested.

Scrutiny Sheet for Action_Inspection_C-

15. The action initiated involves either of the following:
    a. Demand/Discrepancy Letter
    b. C-18 ad hoc
    c. C-18 actual
    d. C-18 interests
    e. D-18 damages
    f. Show Cause Notice under section 85(g) (for non-production of records – where no inspection could be conducted)
    g. Show Cause Notice under section 85(a) (for non-payment of contribution - regular contribution, excluding omitted wages)
    h. Show Cause Notice under section 85(e) (for non-submission of 6 monthly return)

Deman_Discrepancy Letter to Employer_m

Please refer SRS on Action on Defaulters for formats of C-18 ad hoc/actual/interests, D-18 damages, SCN under section 85(a/e/g).

16. Where the action is initiated due to non-submission of documents and does not involve non-payment of contribution, interest or damages, a discrepancy Letter is sent to the Employer. If the documents are still not submitted within a period of 15 days, a show cause notice is issued to the Employer with a copy to the Legal department.

Proforma SCN (pROSECUTION).doc

17. If the Employer has defaulted on monetary grounds, either Demand letter or C-18 ad hoc/actual is issued. The action is decided based on the information gathered at the time of inspection. If the information is enough to correctly calculate the contributions, C-18 actual is issued, else C-18 ad hoc is issued. SCN under section 85(a) & (e) is also issued if regular contribution not paid.
18. If the Inspection Report reflects that the Employer has not co-operated, then SCN under section 85(g) is also issued in addition to the action taken in the above steps.
19. In case Inspection is conducted before the date of personal hearing indicated in C-18 ad hoc, then the personal hearing is cancelled and C-18 ad hoc is dropped. On the basis of the



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details provided in the Inspection Report, C-18 actual is issued. In case, sufficient information is not available in the Inspection Report for calculation of C-18 actual, C-18 ad hoc is issued. It may also happen that C-18 ad hoc as well as C-18 actual is issued.

20. C-18 issued is sent to the Factory Address, addresses of all Directors and Partners and a copy to the Inspector.
21. The Inspector is kept informed of the corrective action being taken on the Employer, by sending him copies of all warning letters and notices.
22. The Inspection Observation and Inspection Report are filed for records.
23. The steps after issue of C-18 ad hoc/actual are captured in a separate document named SRS_Action on Defaulters.
24. It may also happen that the Employer makes a part payment or full payment during this time, in which case the civil and criminal proceedings are dropped.
    The sub-units are also inspected in a similar manner using Form C-10(c).
25. A report is sent monthly to the RO based on the attached format.

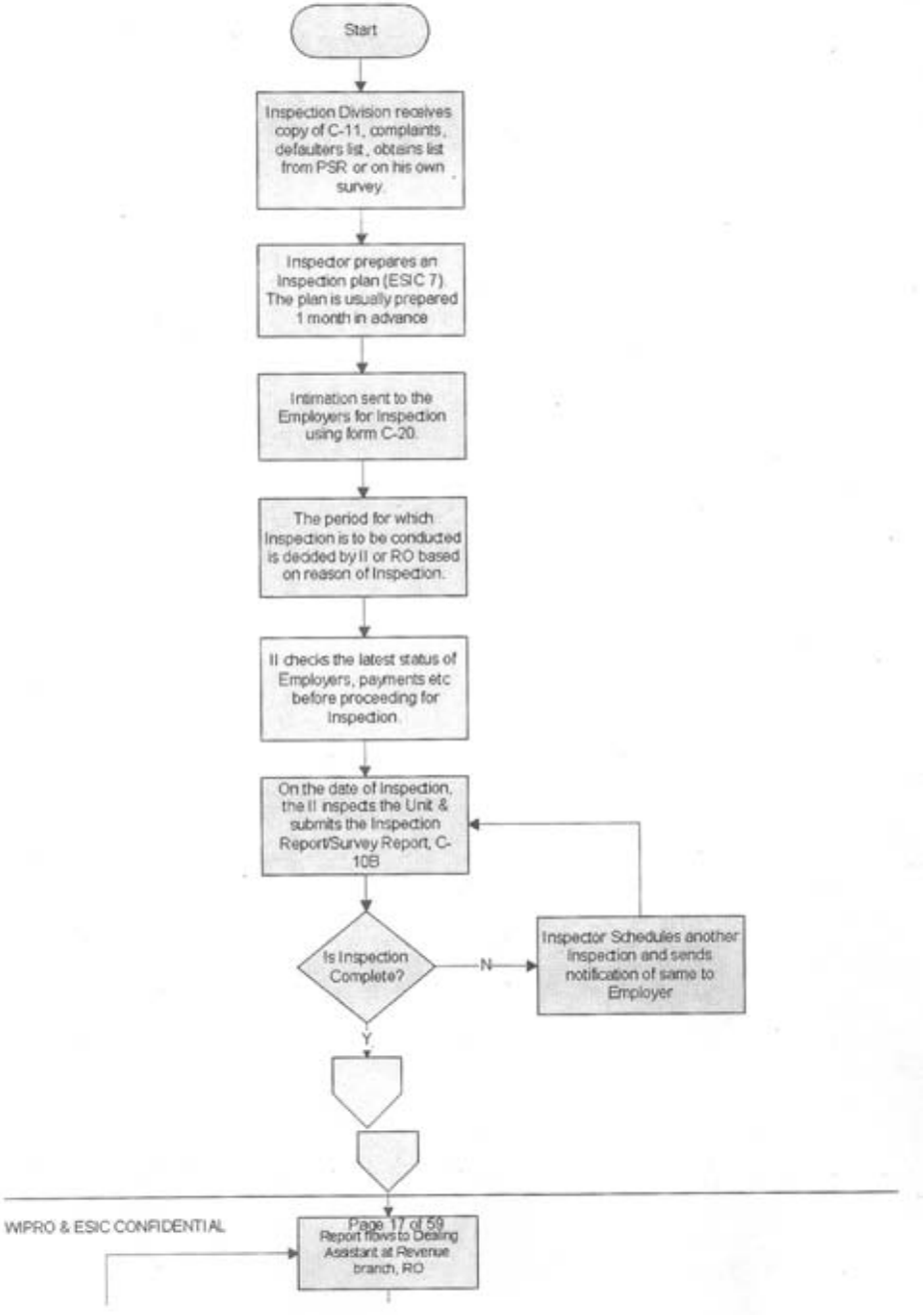
Inspection_Policy_En
closure0001.pdf

NOTE: Refer SRS Job Card & Delegation of Power for Roles & Responsibilities

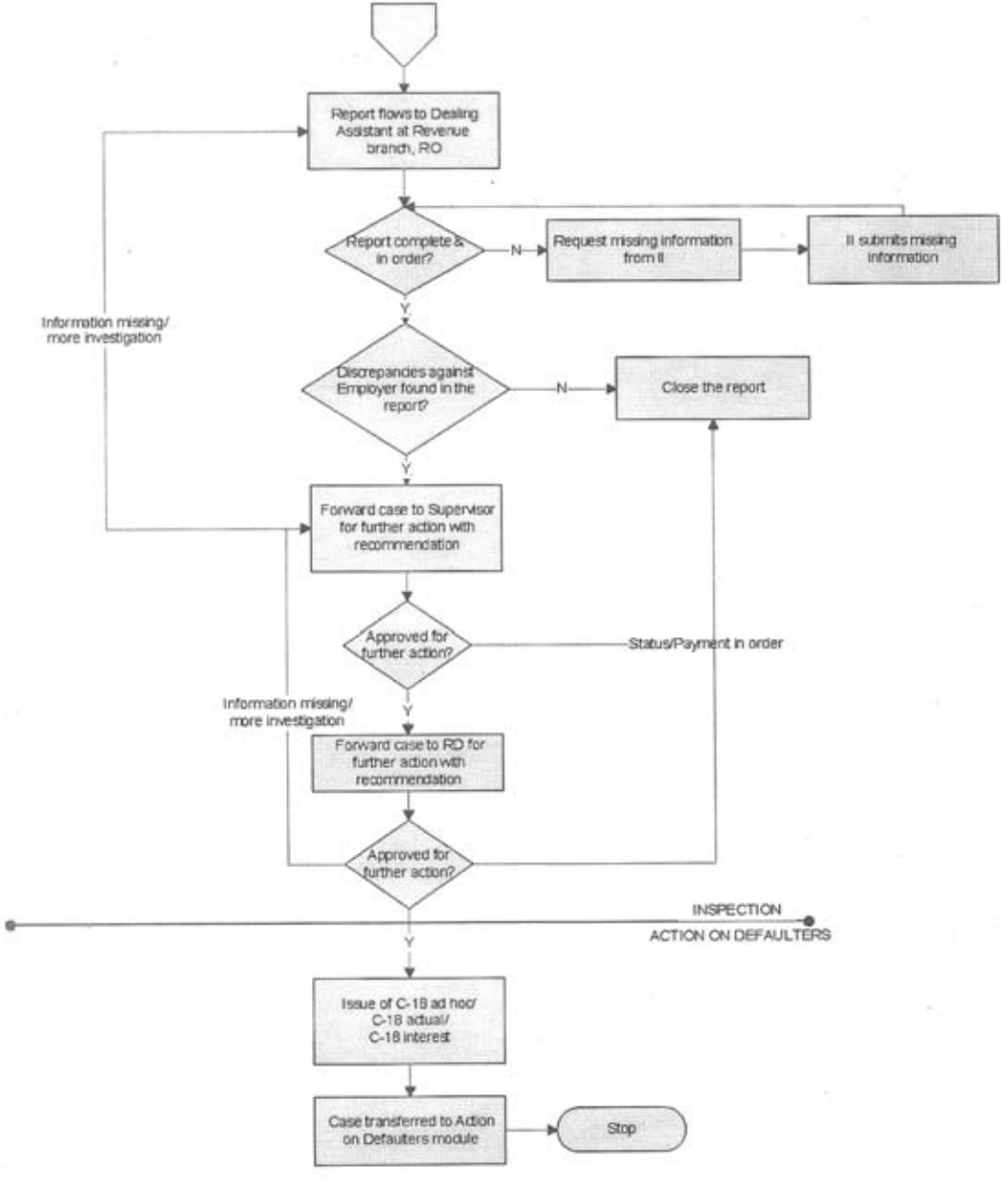
Points to be noted:

1. Action on defaulters is a separate topic by itself and has been captured in a separate SRS document
2. The calculation of C-18 ad hoc, interests and damages are described in the above-mentioned document.

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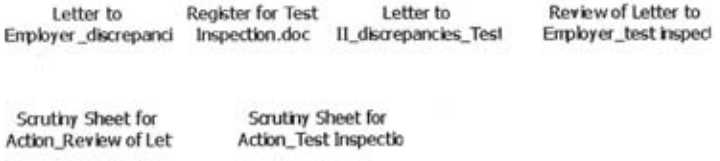
1.4 *Test Inspections*

1.4.1 *Reasons for Test Inspection*

Test inspection is conducted on 5% of the Inspections performed by Insurance Inspectors. This activity is performed to ensure that Inspection is done to have a quality check on Inspections.

1.4.2 *Process of Test Inspection*

1. 5% of the Inspections in each Region are identified for Test Inspection and entered into the Test Inspection Register.
2. These test inspections are then allotted to identified test inspecting officers, by the RD or JD I/C.
3. The Test Inspecting Officers perform the inspection of the Unit already conducted for the same period and record their observations. The spot observation note is prepared and handed over to the Employer on the spot. (Form same as that for regular inspection.)
4. The report is submitted to the Regional Office and is scrutinized by the Dealing Assistant. In case any discrepancy is found, the same is intimated to the Insurance Inspector requesting an explanation. If any contribution is found to be over and above detected by the Inspector, the same shall be communicated to the Employer. In case any serious irregularity is found against the inspector, an explanation shall be called from him and depending on the explanation received from the Inspector, further action shall be decided. If the explanation is found to be satisfactory, no action shall be taken, else the case shall be forwarded to Admin branch of RO. Based on the nature of discrepancy further corrective action is taken by the Regional Office.
5. In addition based on Test Inspection as well, C-18 ad hoc can be issued to the Employer if found necessary. The steps to be followed shall be same as that explained in the main inspection flow.
6. Similarly SCN under section 85(g) may also be issued.



3 Functional Requirements

1.5 *Inspection for Units*

1.5.1 *Process Users*

Insurance Inspectors, Regional Office of the Revenue Branch.

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1.5.2 *Process Trigger*

One of the reasons mentioned in section 2.3.1 can lead to Inspection of a Unit. The list of defaulters shall be generated as explained therein.

1.5.3 *Pre-requisites/Pre-conditions/Predecessor Processes*

In case of defaulters, the Employer should have defaulted and appeared in the main defaulters list. (Please refer SRS on Action on Defaulters for more details).
In other cases – Inspection is conducted randomly in regular intervals. An Employer complying with the Act, is identified in a batch process or by the Branch officer for random inspection.

1.5.4 *Process Description*

1. A register is maintained for each Inspection division, which contains the list of Inspections to be carried out by the Insurance Inspector, namely SC-15. The main inputs to this register are the process for new registrations, Source register, Periodical Survey register, process for generating defaulters list, batch process for generating list of random units for inspection and Units identified by Controlling Branch Officer. A report should also be sent to the Inspector with the list of closed factories if any. These entries will be made based on the reasons mentioned in section 2.3.1.
2. The Insurance Inspector prepares a tour program. This plan should be prepared by the Insurance Inspector based on the entries in SC-15 register a month in advance. As per the new Inspection Policy, the Insurance Inspector is required to conduct 20 inspections and 20 surveys in a month.
3. Using this information, the Insurance Inspector prepares a tour inspection program listing the various units to be inspected. The tour is planned as per the instructions given in the Inspection policy. However, before coming up with the final list, he gets the latest updates from the ESIC records. This is done to check if any change has taken place in the intervening period and if the inspection is still required, especially in the case of defaulters. The tour program is usually prepared for a period of one month. Once this plan is prepared,
4. As soon as it is finalized, the Employers are notified of the date of Inspection and other details, such as the documents which would be required for verification, presence of certain key participants etc using C-20. This letter should be automatically generated and sent to the Employers either by post or by e-mail.
5. If Employer does not produce records for inspection, then the Employer re-schedules the inspection in agreement with the Employer on a mutually agreed date by sending Annexure A.
6. On second occasion if again the records are not produced, we issue a Standard Notice, (Annexure B).
7. On third occasion if again the records are not produced, intimation is sent using Annexure C to Police Station and copy to RO/SRO.
8. On the specified date and time, the Insurance Inspector visits the Unit for inspection and examines 1 or more of the following documents:
    a. Attendance Register(s)/Muster Roll(s) (In respect of all employees including those employed through contractors)
    b. Wages Register
    c. Cash Book/Bank Book
    d. Account Books including Ledgers and vouchers, Balance sheet
    e. Employees' Register
    f. Accident Book
    g. Returns of Contribution

h. Returns of Declaration Forms
i. Copies of Challans
j. Inspection Book

If an employee not on the rolls of the factory/establishment, is engaged either directly or through contractor for carrying out any work within, the premises or if outside the premises, under the supervision and control of the Principal Employer or his agent the records thereof is also required to be produced before the Inspector as contributions are payable on the wages component. The responsibility for payment of contributions in respect of these employees rests with the Principal Employer.

9. The Inspector checks the correctness of the above mentioned records and makes a note of any discrepancy found. Based on his observations, he prepares the Inspection Observation and fills up the Inspection Report in Form C-10(b). The Inspector should be able to download a partially pre-filled Inspection Observation Note and take it to the site of Inspection. The Employer data already available in the database is pre-filled. It is in this Observation Note that the Insurance Inspector shall complete his observations and submit to the Employer.
10. Subsequently the Inspector re-captures the Observation Note online. The application should obtain a declaration from the User that the details filled online is same as that handed over to the Employer in the Inspection Observation Note.
11. Based on the Observation note, the Inspector also fills up the Inspection Report. The Inspection Report shall also appear partially filled using the Employer data stored in the application.
12. It may also happen that the Employer does not co-operate and produce the necessary records for inspection. Please In such case, the Inspection Report reflects the same with the remarks that Inspection could not be conducted because of " ". In this case the Report may be saved, but as the report is still not complete, the User should be able to enter the details of his subsequent visits and then submit the report. The revenue branch should however be able to view both saved as well as submitted reports.
13. Upon submission of the report, the Dealing Assistant dealing with the Employer Code number, scrutinizes the Inspection Report. The following points are checked:
    a. Continuity of Inspection, such as when the last inspection was done, the time period between the last and current inspection etc
    b. Period for which Books of Accounts are checked
    c. If the Declaration Forms have been submitted, if yes have all Employees been registered?
    d. Has the Employer submitted Returns on time
    e. Have the monthly contributions been paid on time
    f. Has a Visit Note been given by the Inspector
    g. Omitted wages observed if any
    h. Please refer each of the scrutiny document attached below for more information

Inspection Report Processing.doc Inspection Report Processing_2.docx

14. If any information is found missing by the Dealing Assistant, the same is put up to the Branch officer through Superintendent, and if approved, a query is sent online to the Inspector requesting him to submit the necessary details.
15. Based on his scrutiny the Dealing Assistant determines if the Employer has defaulted and if yes, on which grounds.



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16. The Dealing Assistant proposes the action to be initiated, and forwards to Superintendent who in turn submits to the Branch Officer for his approval. Please refer the scrutiny sheets attached in step 11 of section 2.3.4.
17. The action initiated involves either of the following:
    a. Demand/Discrepancy Letter
    b. C-18 ad hoc
    c. C-18 actual
    d. C-18 interests
    e. D-18 damages
    f. Show Cause Notice under section 85(g) (for non-production of records – where no inspection could be conducted)
    g. Show Cause Notice under section 85(a) (for non-payment of contribution - regular contribution, excluding omitted wages)
    h. Show Cause Notice under section 85(e) (for non-submission of 6 monthly return)

    Please refer SRS on Action on Defaulters for formats of C-18 ad hoc/actual/interests, D-18 damages, SCN under section 85(a/e/g).
18. Where the action is initiated due to non-submission of documents and does not involve non-payment of contribution, interest or damages, a discrepancy Letter is sent to the Employer. If the documents are still not submitted within a period of 15 days, a show cause notice is issued to the Employer with a copy to the Legal department.
19. If the Employer has defaulted on monetary grounds, either Demand letter or C-18 ad hoc/actual is issued. The action is decided based on the information gathered at the time of inspection. If the information is enough to correctly calculate the contributions, C-18 actual is issued, else C-18 ad hoc is issued. SCN under section 85(a) & (e) is also issued if regular contribution not paid.
20. If the Inspection Report reflects that the Employer has not co-operated, then SCN under section 85(g) is also issued in addition to the action taken in the above steps.
21. In case Inspection is conducted before the date of personal hearing indicated in C-18 ad hoc, then the personal hearing is cancelled and C-18 ad hoc is dropped. On the basis of the details provided in the Inspection Report, C-18 actual is issued. In case, sufficient information is not available in the Inspection Report for calculation of C-18 actual, C-18 ad hoc is issued. It may also happen that C-18 ad hoc as well as C-18 actual is issued.
22. C-18 issued is sent to the Factory Address, addresses of all Directors and Partners and a copy to the Inspector.
23. The Inspector is kept informed of the corrective action being taken on the Employer, by sending him copies of all warning letters and notices.
24. After 15 days of issue of the Demand letter, it is checked if a response has been sent by the Employer. The action taken based on reply received/not received is as per the document below.

Review of
Demand_Discrepancy

25. After Inspection is complete, the Inspection register is updated as 'Inspected'. The Inspection Observation and Inspection Report are then updated as "processed". The action taken after the Inspection is recorded in a separate register – Inspection Report Action Register.
26. A Inspector Performance Register should also be maintained based on ESIC 9 and updated with inspections conducted, inspection reports received, discrepancy letters sent to Inspector, replies received and information if Inspection Report has been dealt or not (i.e.closed).
27. The following reports may also be generated out of this register:
    a. Inspection conducted by II
       Pending at the beginning of the month

Added during the month
Dealt during the month
Pending at the end of the month

b. Inspection reports received & dealt by DA
Pending at the beginning of the month
Added during the month
Dealt during the month
Pending at the end of the month

28. The steps after issue of C-18 ad hoc/actual are captured in a separate document named SRS_Action on Defaulters.
29. It may also happen that the Employer makes a part payment or full payment during this time, in which case the civil and criminal proceedings are dropped. The sub-units are also inspected in a similar manner.
30. Dealing Assistants shall propose to request clarification from the Insurance Inspector for non-action on pending cases and request him to take up inspection of certain units on a higher priority. The proposal shall be routed through the superintendent to the BO and action shall be taken only after approved by the BO.
31. A report is sent monthly to the RO based on the format provided in section 2.

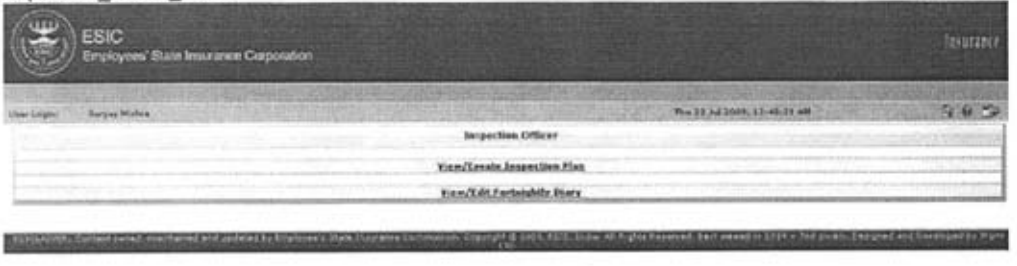
Note:

1. C-18 & C-19 are part of Civil Proceedings
2. Section 85 a to g are part of Criminal Proceedings
3. All the formats provided in section 2 are applicable for section 3 as well

1.5.5 *Screen & Validations*

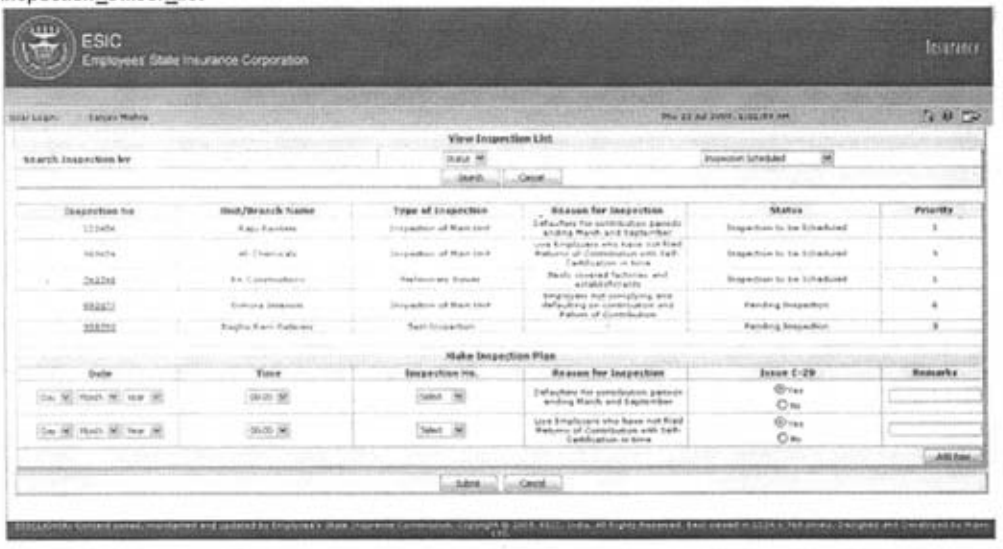
1.5.5.1 Screens

inspection_officer_home

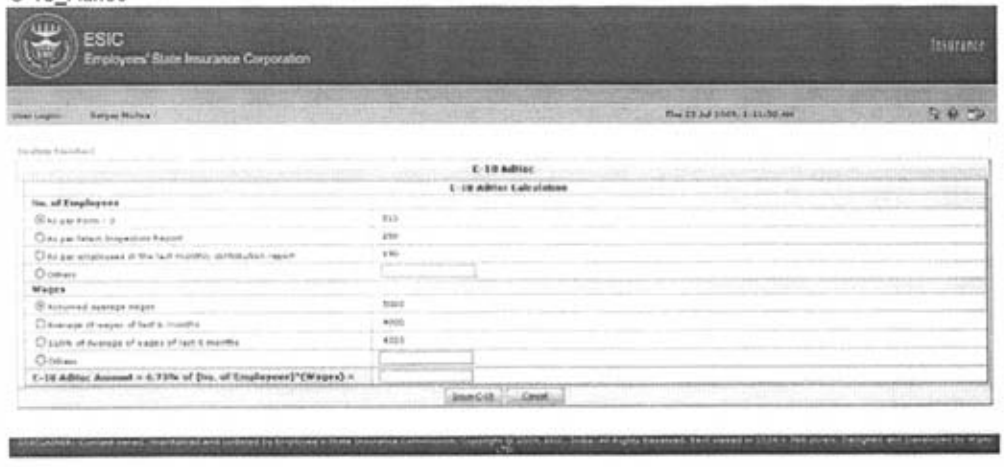


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inspection_officer_list



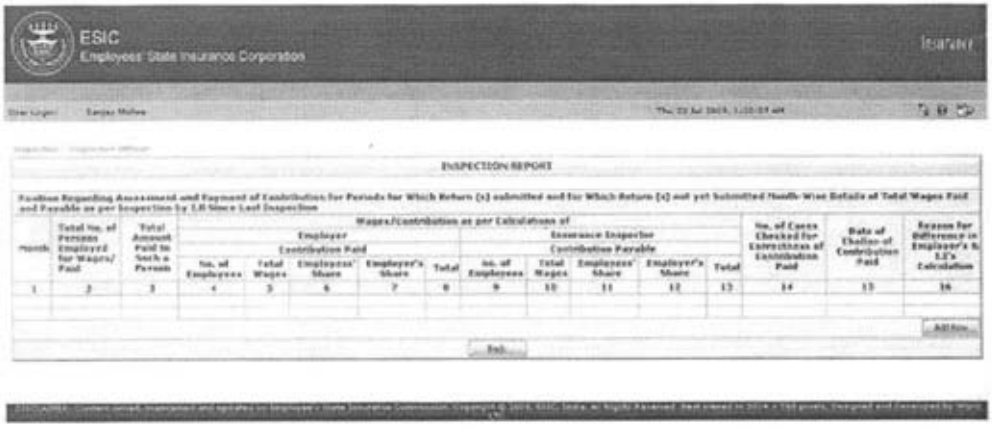
C-18_Adhoc



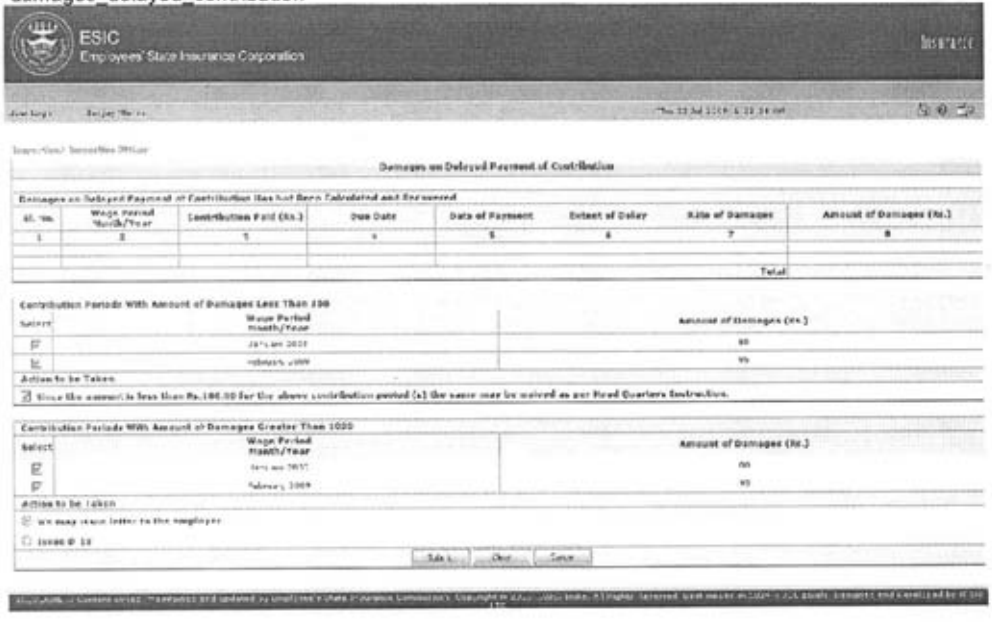
Contribution Table

WIPRO Applying Thought

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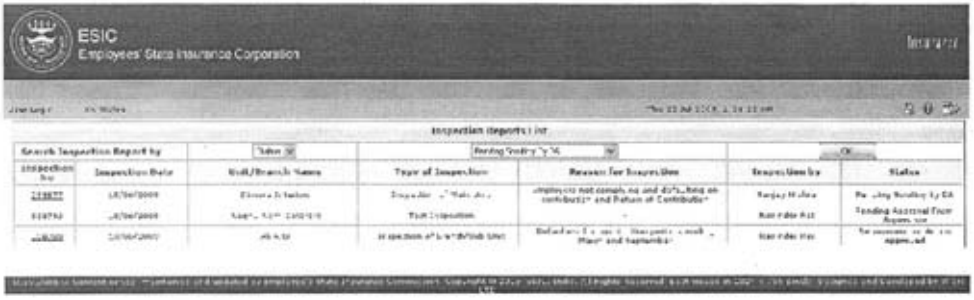


damages_delayed_contribution

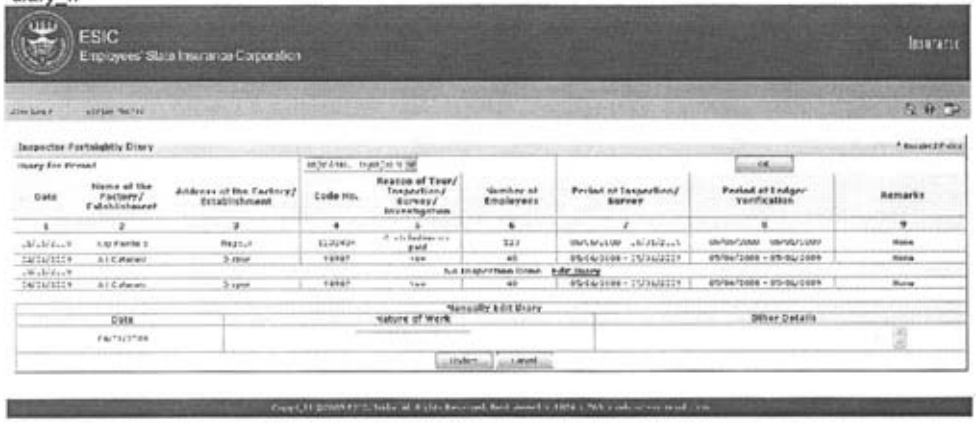


dealing_assistant_home

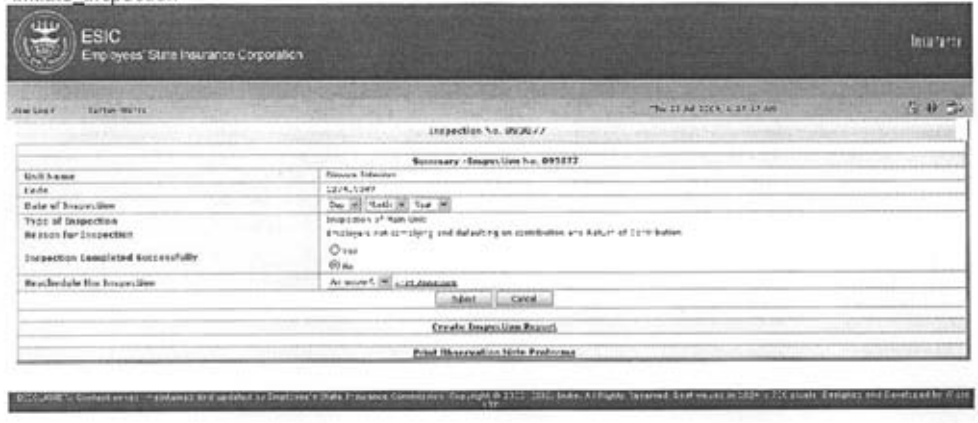
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diary_II

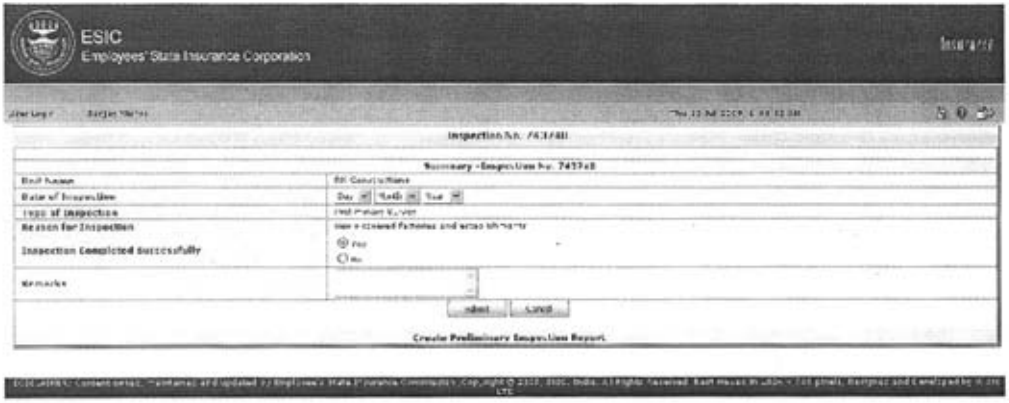


initiate_inspection

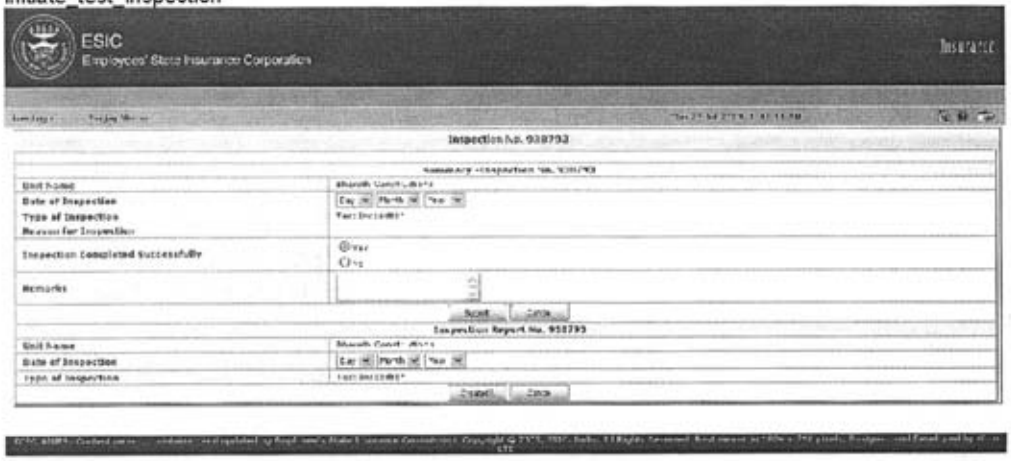


initiate_preliminary_survey

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initiate_test_inspection

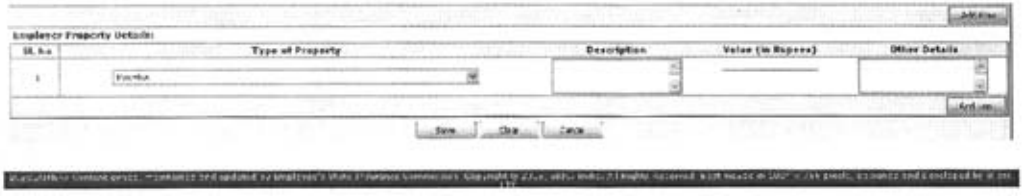


Inspection_Report

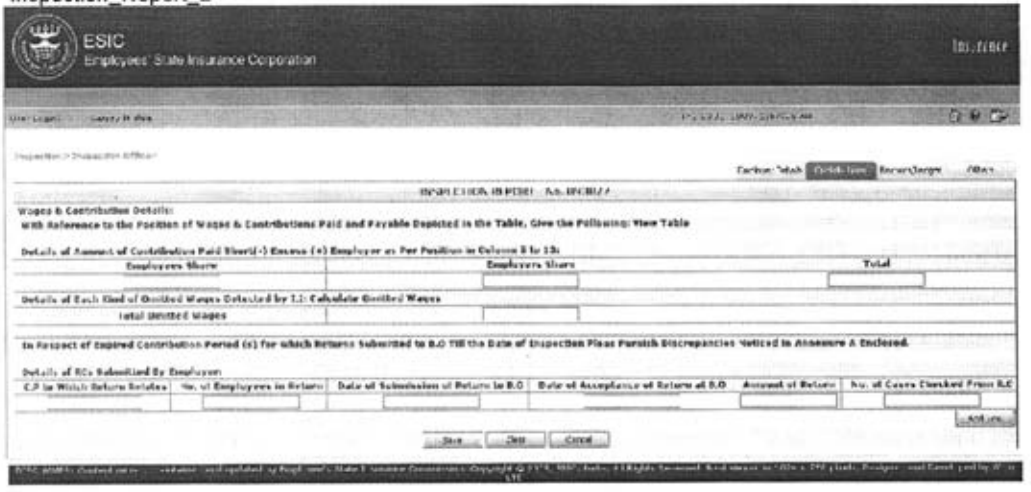
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Inspection & Survey



SRS
Inspection & Survey



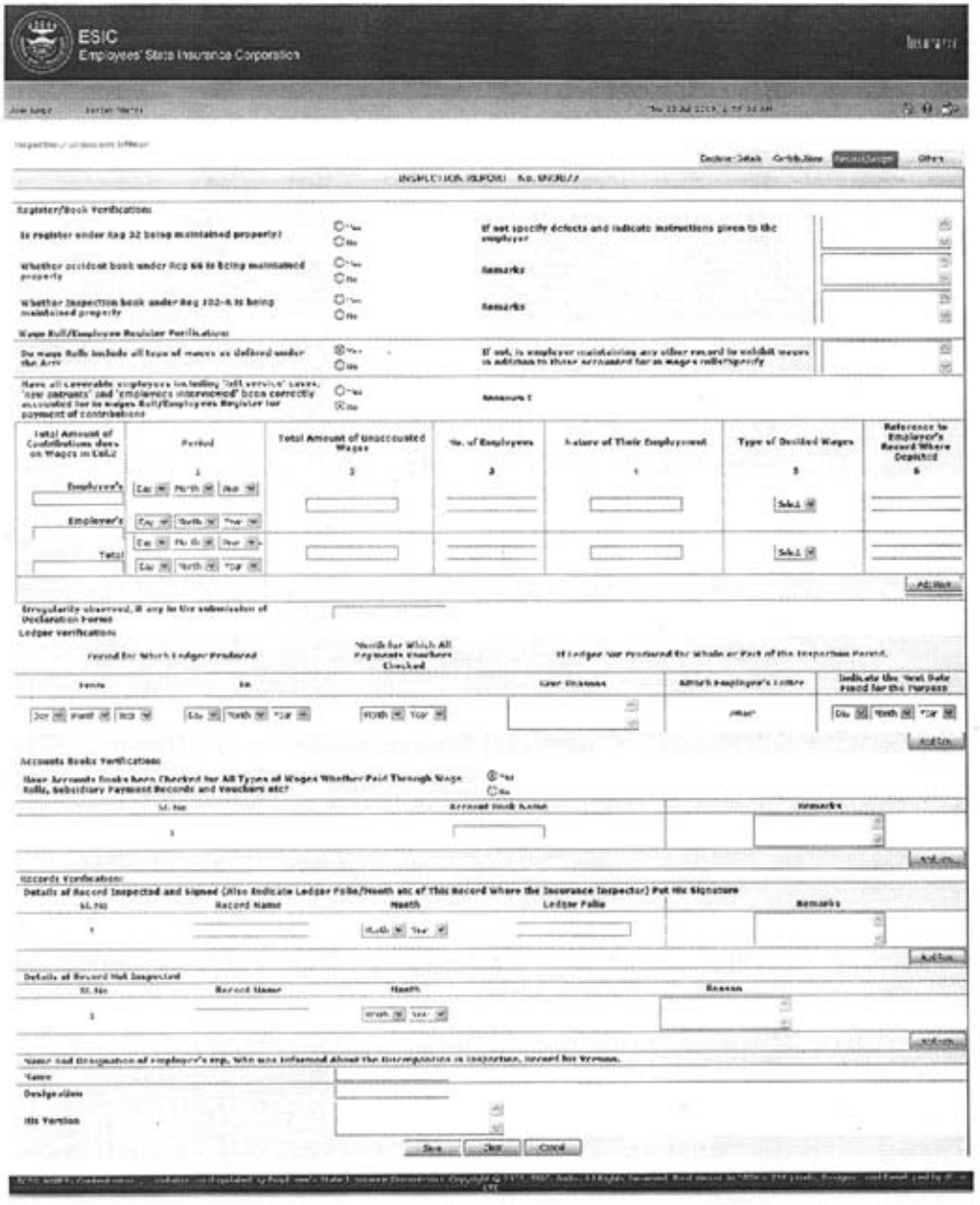
Inspection_Report_2



Inspection_Report_3

WIPRO
Applying Thought

SRS
Inspection & Survey



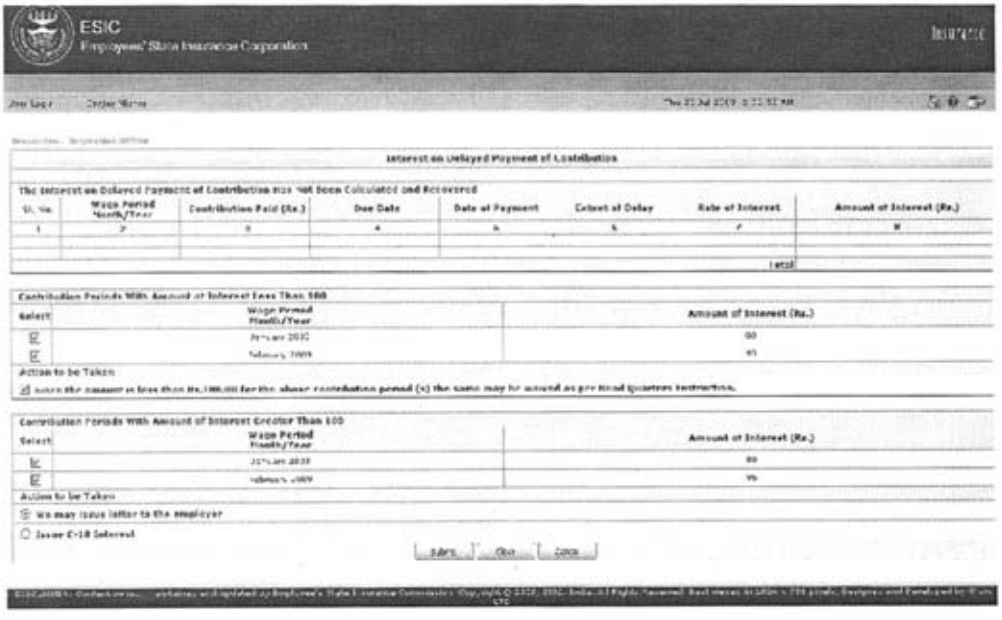
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SRS
Inspection & Survey

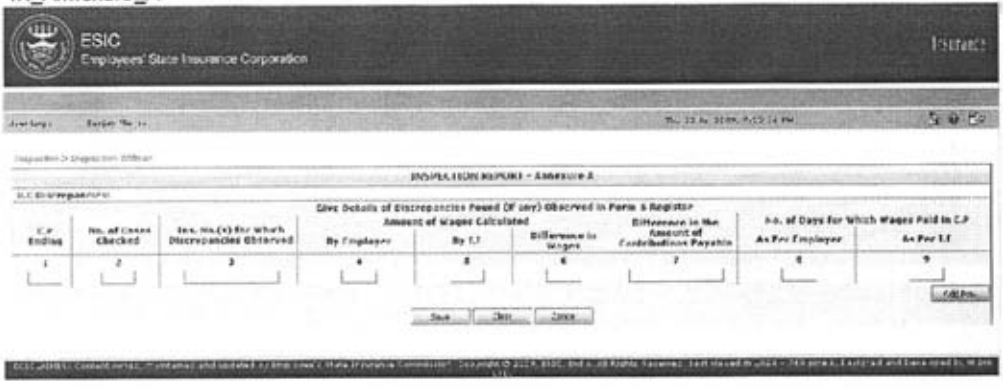


interest_delayed_contribution

SRS
Inspection & Survey

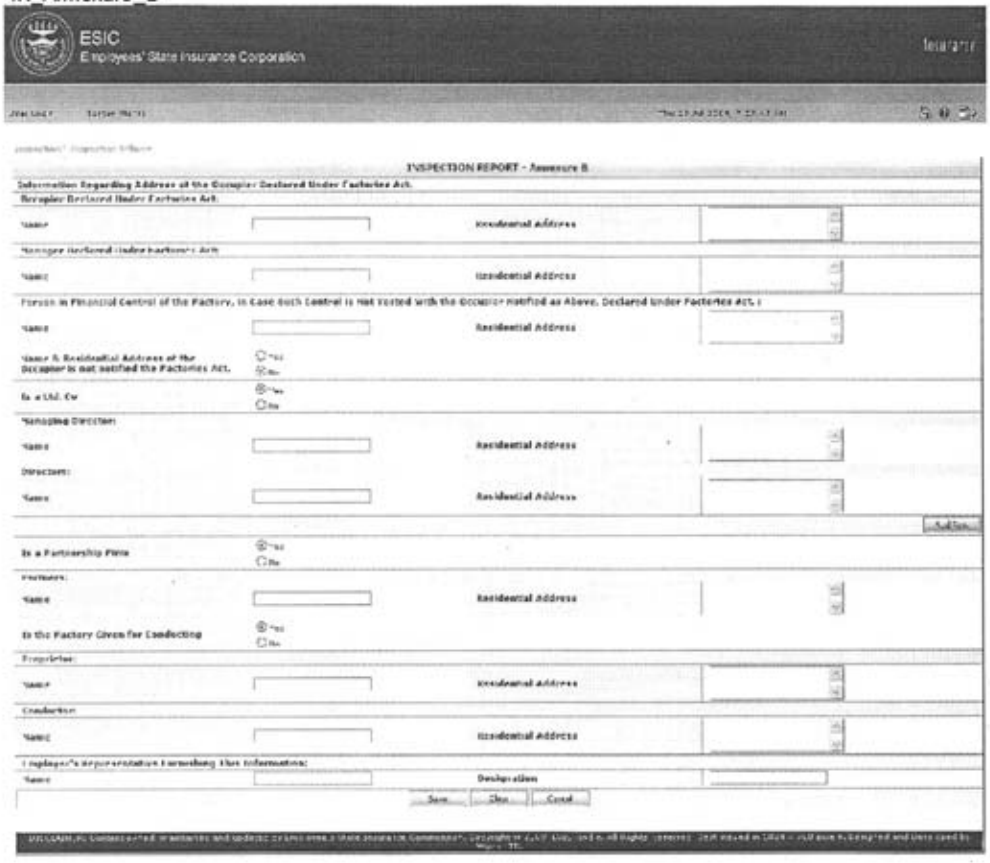


IR_Annexure_A

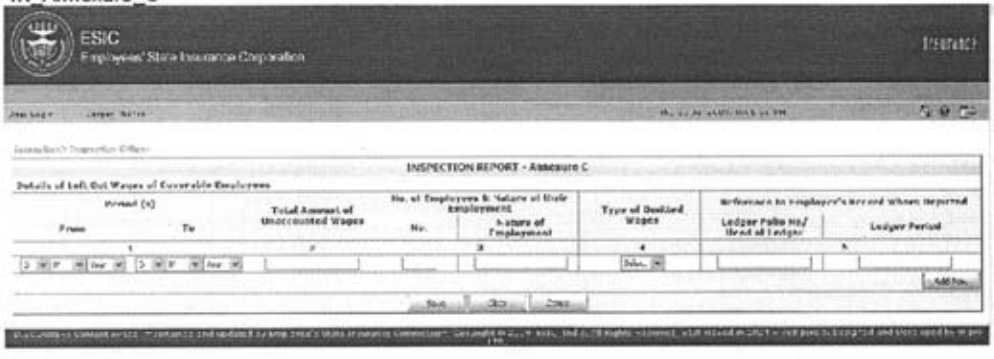


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Inspection & Survey

IR_Annexure_B



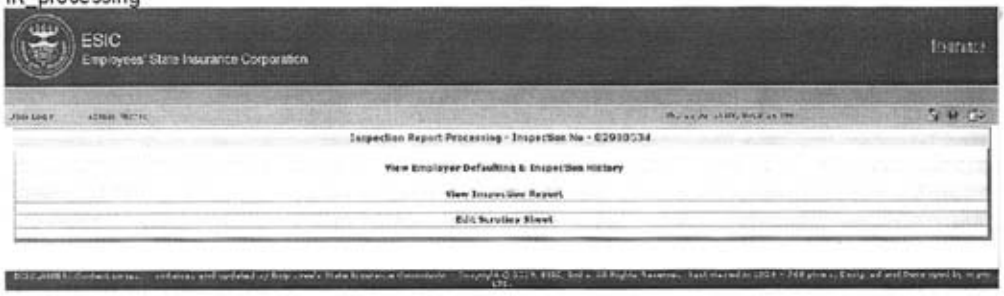
IR_Annexure_C



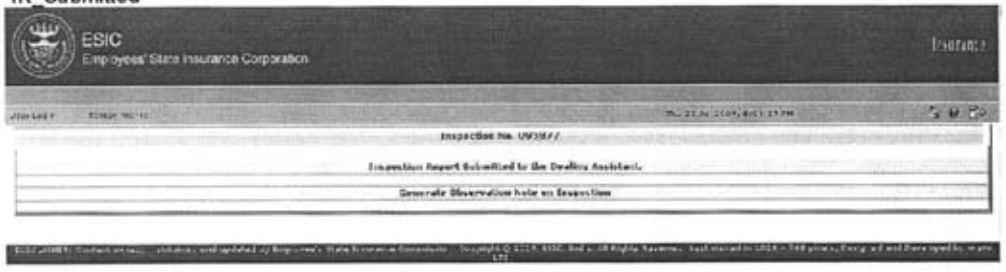
WIPRO
Applying Thought

SRS
Inspection & Survey

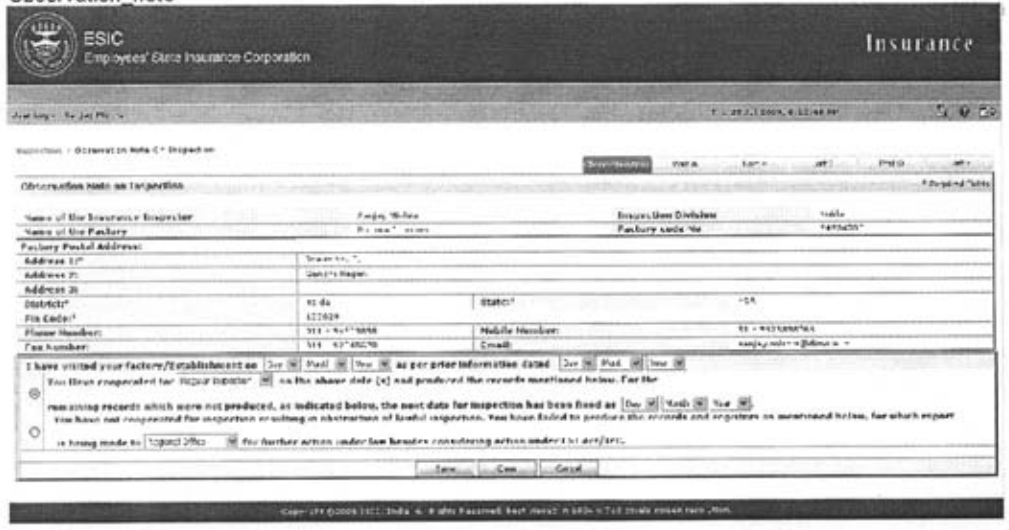
IR_processing



IR_Submitted

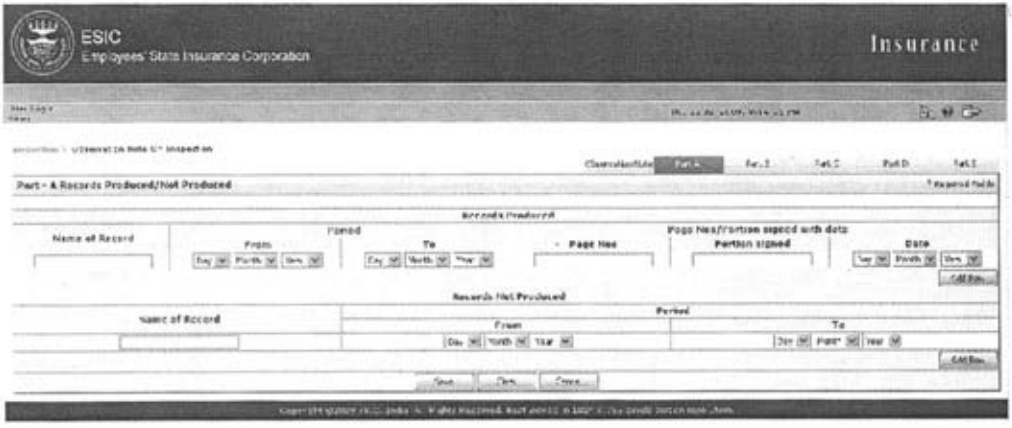


Observation_note



Observation_note_A

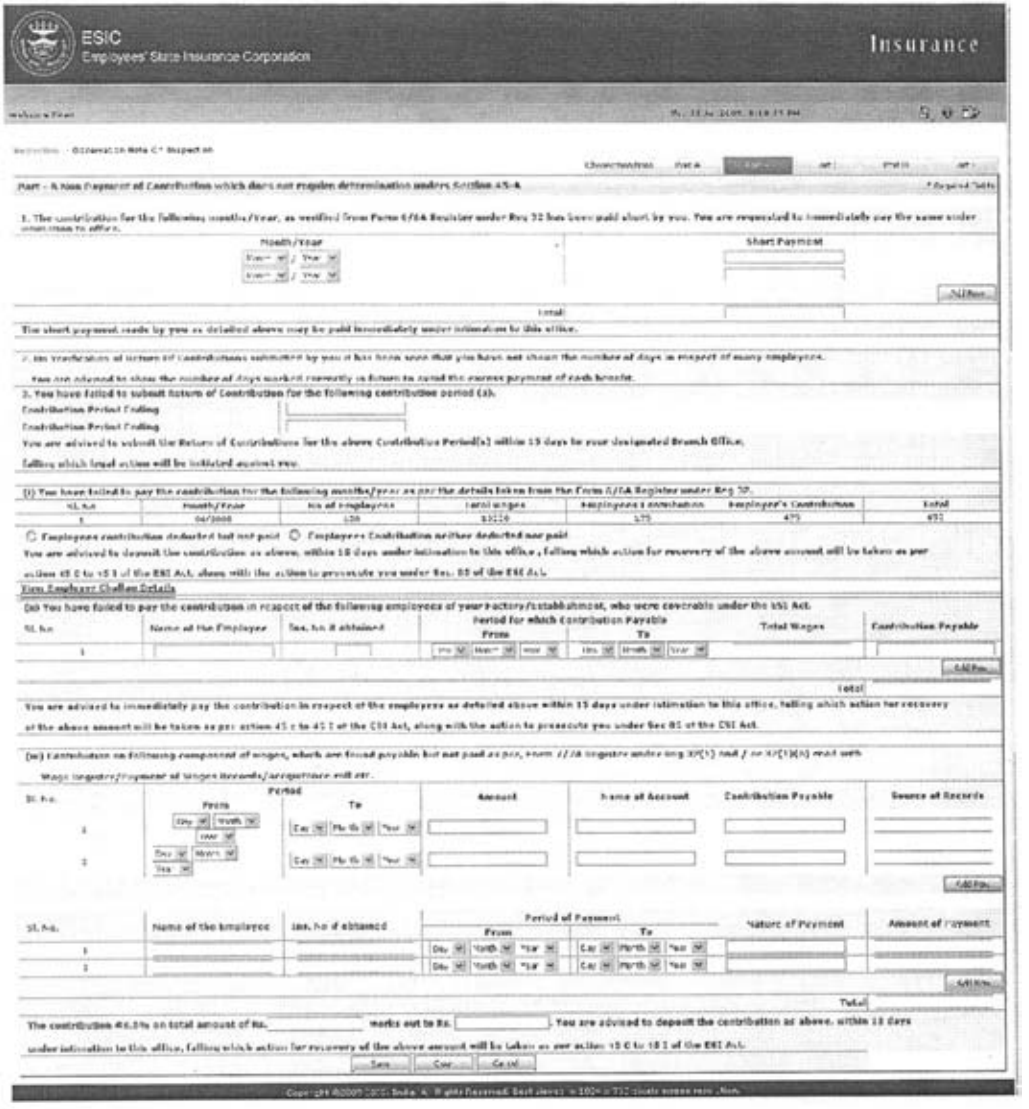
SRS
Inspection & Survey



Observation_note_B

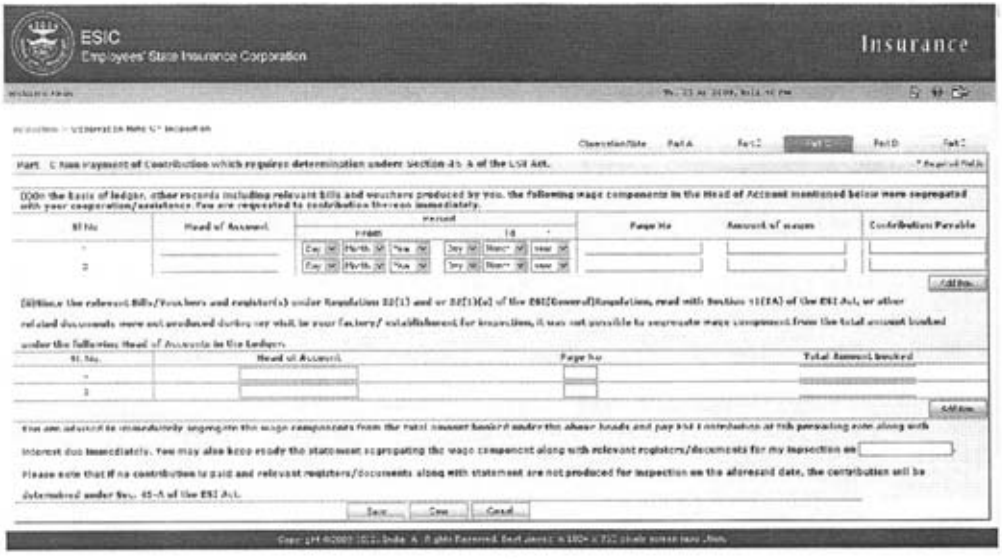
WIPRO
Applying Thought

SRS
Inspection & Survey



Observation_note_part_C

SRS
Inspection & Survey

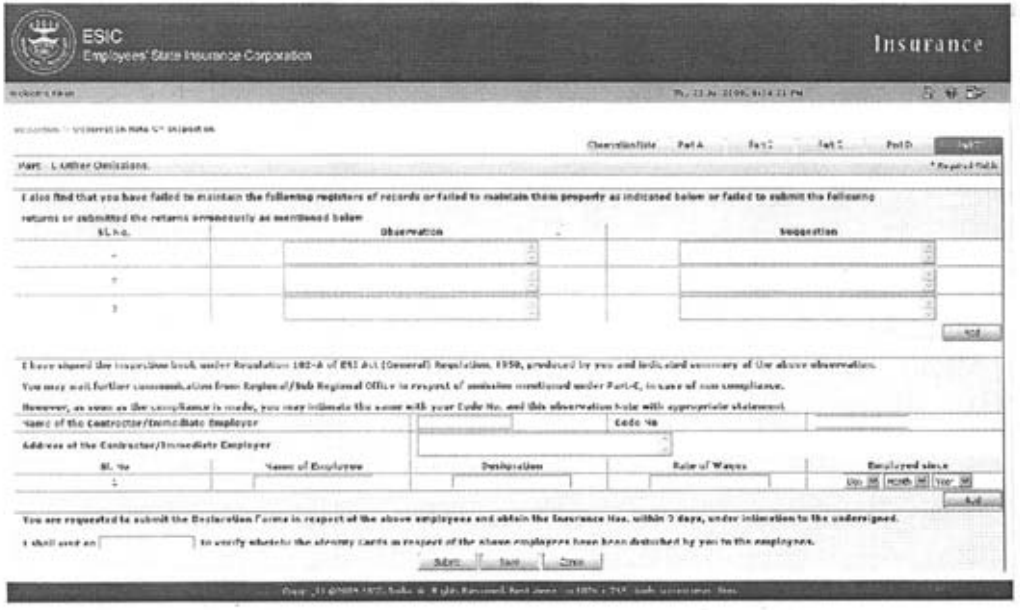


Observation_note_part_D

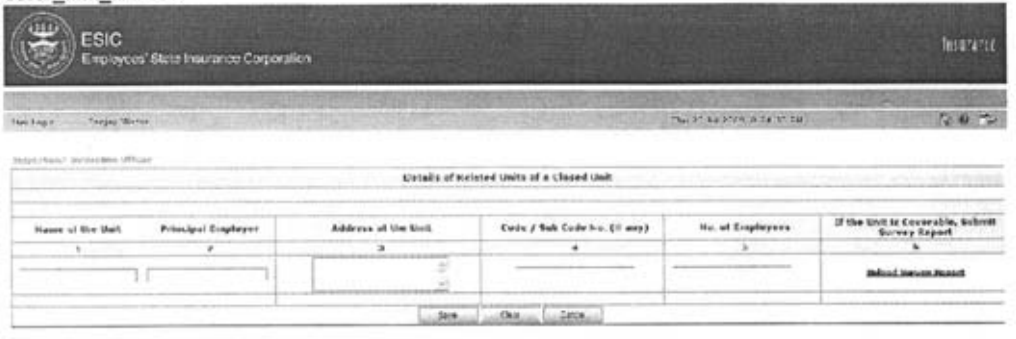


observation_note_part_E

SRS
Inspection & Survey

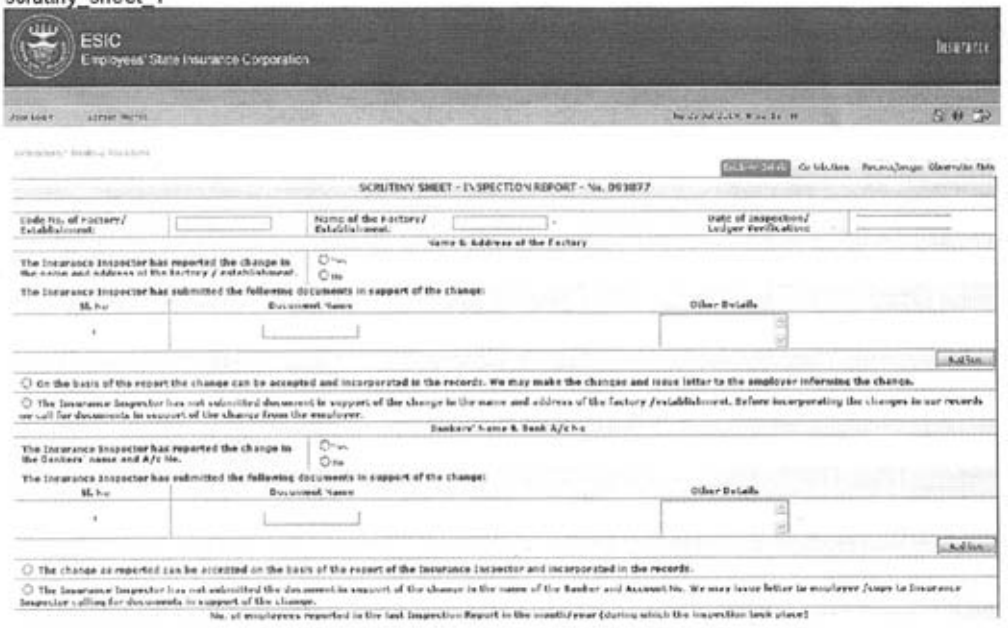


other_unit_details



SRS
Inspection & Survey

scrutiny_sheet_1



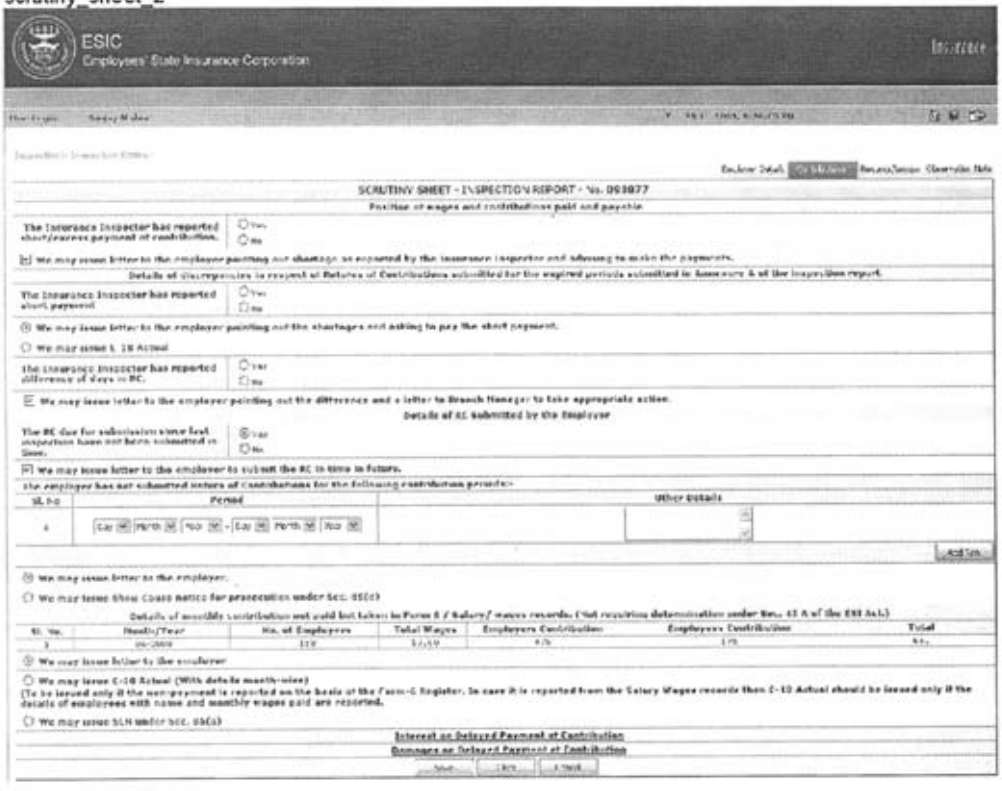
WIPRO
Applying Thought

SRS
Inspection & Survey



SRS
Inspection & Survey

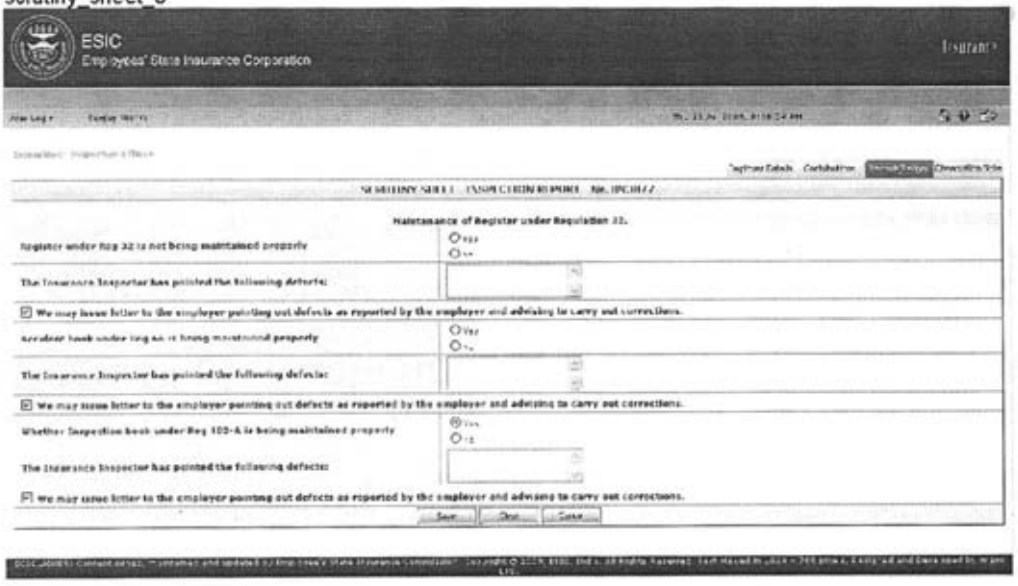
scrutiny_sheet_2



WIPRO
Applying Thought

SRS
Inspection & Survey

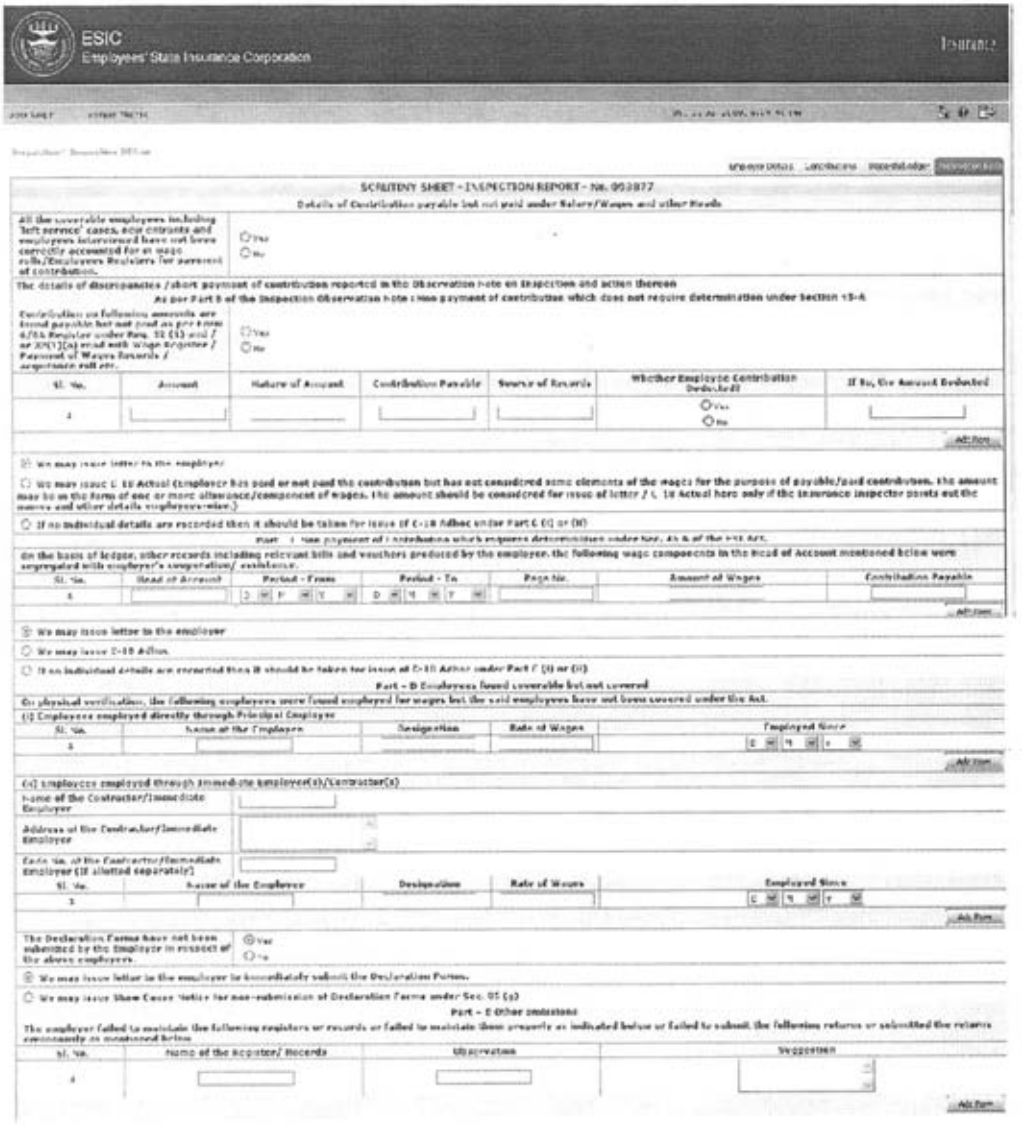
scrutiny_sheet_3



scrutiny_sheet_4

WIPRO
Applying Thought

SRS
Inspection & Survey



ESIC
Employees' State Insurance Corporation

SCRUTINY SHEET - INSPECTION REPORT - No. 993877

Details of Contribution payable but not paid under Salary/Wages and other Heads

All the coverable employees including 'left service' cases, new entrants and employees interviewed have not been correctly accounted for in wage rolls/Employees Registers for payment of contribution.

The details of discrepancies / short payment of contribution reported in the Observation note on inspection and action thereon

As per Part B of the Inspection Observation Note : Nose payment of contribution which does not require determination under Section 45-A

Contribution on following amounts are found payable but not paid as per Form 4/5A Register under Para. 32 (1) and / or 30(1)(a) read with Wage Register / Payment of Wages Records / acquittance roll etc.

Sl. No.	Account	Nature of Account	Contribution Payable	Source of Records	Whether Employee Contribution Deducted?	If Yes, the Amount Deducted
1					Yes / No	

Add Row

We may issue letter to the employer

We may issue U 10 Actual (Employer has paid or not paid the contribution but has not considered some elements of the wages for the purpose of payable/paid contribution. the amount may be in the form of one or more allowance/component of wages. the amount should be considered for issue of letter / U 10 Actual here only if the insurance inspector points out the names and other details employee-wise.)

If no individual details are recorded then it should be taken for issue of C-10 Adhoc under Part C (i) or (ii)

Part - I Non payment of Contribution which requires determination under Sec. 45 A of the ESI Act.

On the basis of ledger, other records including relevant bills and vouchers produced by the employer, the following wage components in the Head of Account mentioned below were segregated with employer's computation/ assistance.

Sl. No.	Head of Account	Period - From	Period - To	Page No.	Amount of Wages	Contribution Payable
1		D M Y	D M Y			

Add Row

We may issue letter to the employer

We may issue C-10 Adhoc

If no individual details are recorded then it should be taken for issue of C-10 Adhoc under Part C (i) or (ii)

Part - B Employees found coverable but not covered

On physical verification, the following employees were found employed for wages but the said employees have not been covered under the Act.

(i) Employees employed directly through Principal Employer

Sl. No.	Name of the Employee	Designation	Rate of Wages	Employed Since
1				D M Y

Add Row

(ii) Employees employed through immediate employer(s)/Contractor(s)

Name of the Contractor/Immediate Employer

Address of the Contractor/Immediate Employer

Code No. of the Contractor/Immediate Employer (If allotted separately)

Sl. No.	Name of the Employee	Designation	Rate of Wages	Employed Since
1				D M Y

Add Row

The Declaration Forms have not been submitted by the Employer in respect of the above employees.

Yes / No

We may issue letter to the employer to immediately submit the Declaration Forms.

We may issue Show Cause Notice for non-submission of Declaration Forms under Sec. 85 (a)

Part - C Other omissions

The employer failed to maintain the following registers or records or failed to maintain them properly as indicated below or failed to submit the following returns or submitted the returns erroneously as mentioned below.

Sl. No.	Name of the Register/ Records	Observation	Suggestion
1			

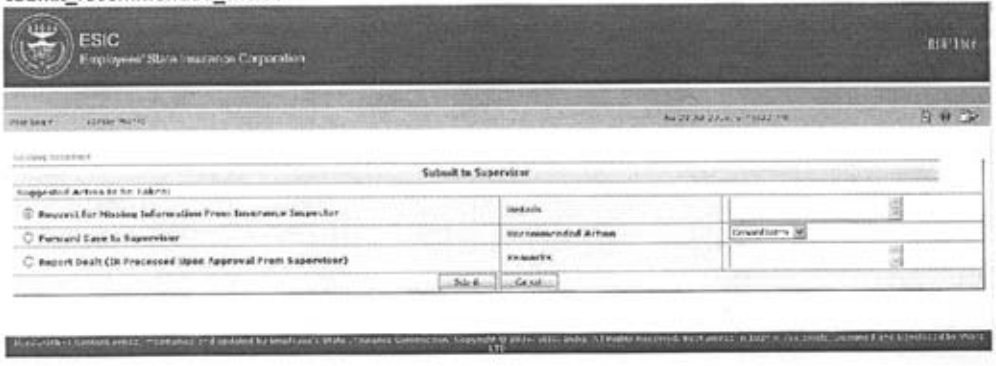
Add Row

WIPRO
Applying Thought

SRS
Inspection & Survey



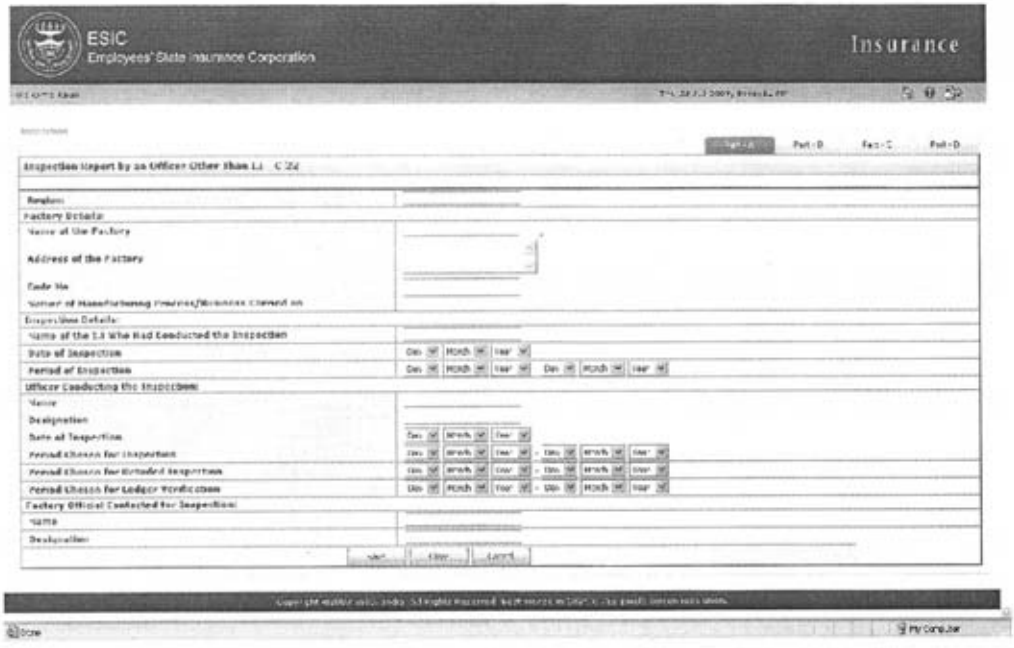
submit_recommended_action



test_inspection_A

WIPRO
Applying Thought

SRS
Inspection & Survey



test_inspection_B

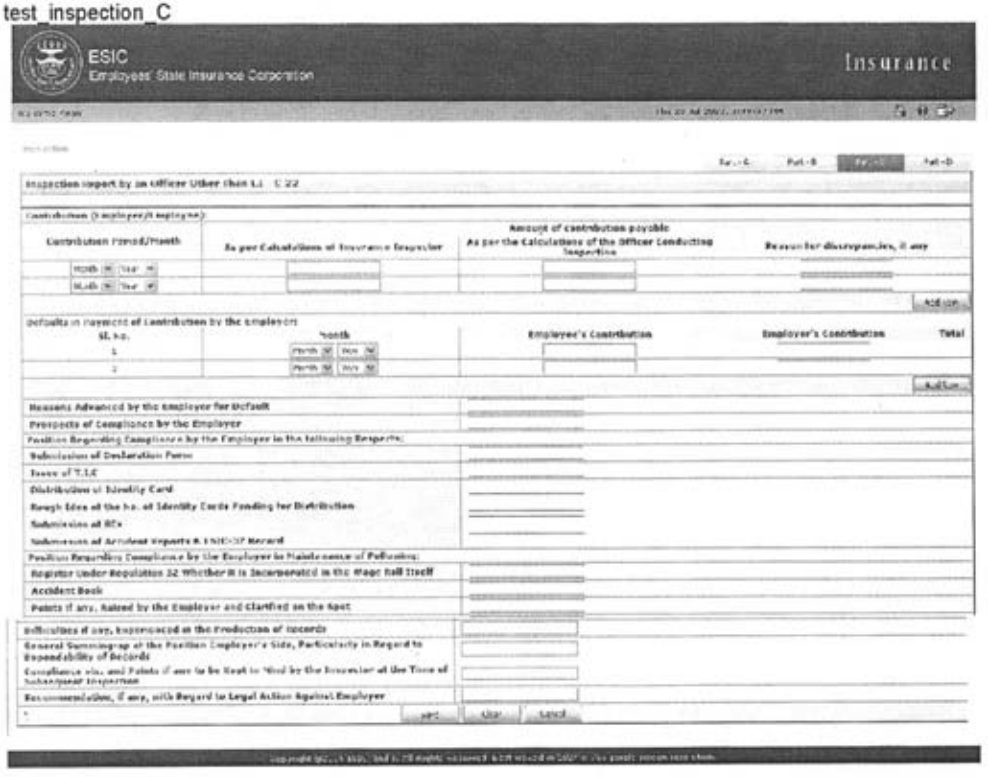
WIPRO
Applying Thought

SRS
Inspection & Survey

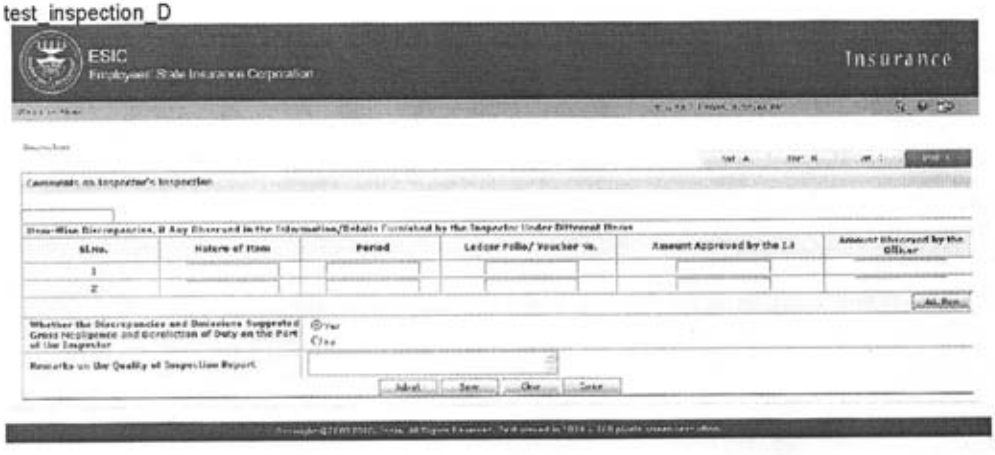


SRS
Inspection & Survey

test_inspection_C

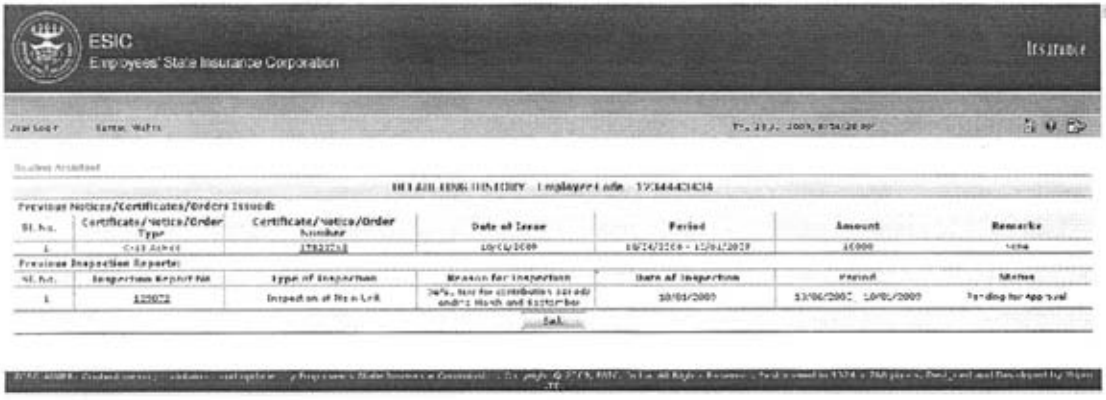


test_inspection_D



view_employer_defaulting_history

SRS
Inspection & Survey

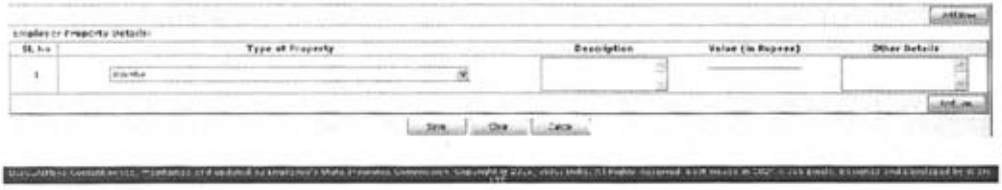


preliminary_survey_report

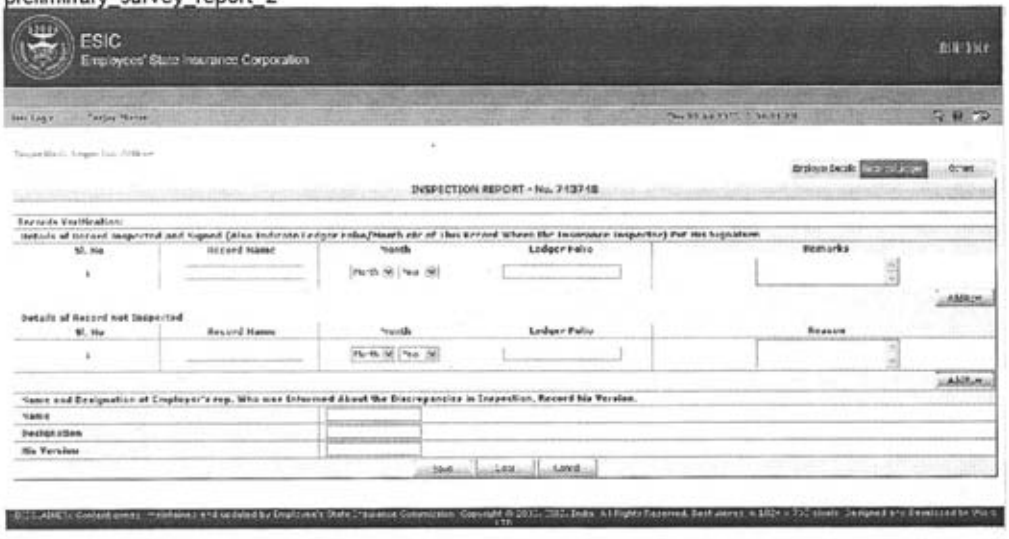
SRS
Inspection & Survey



SRS
Inspection & Survey



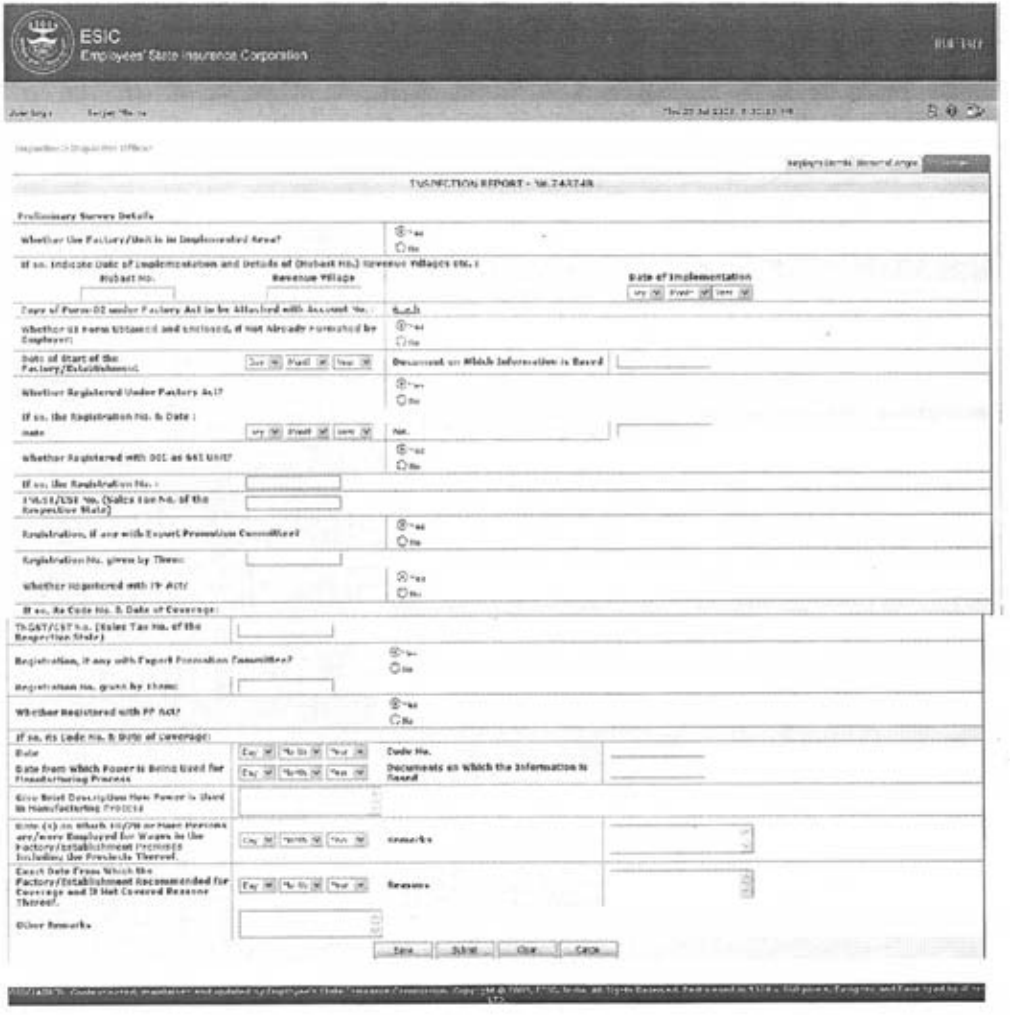
preliminary_survey_report_2



preliminary_survey_report_3

WIPRO
Applying Thought

SRS
Inspection & Survey



1.5.5.2 Validations

Inspection_Validation
s.xlsx



SRS
Inspection & Survey



1.5.6 ***Post Conditions/Successor Process***

Inspection Observation and Inspection Report are submitted online. And the necessary action based on Inspection Report is initiated. The processes as per the SRS Action on Defaulters may succeed this process if found necessary by the Revenue Branch.

1.5.7 ***Internal Interfaces***

Interface to Legal module – please refer section 4 for more details.

1.5.8 ***External Interfaces***

NA

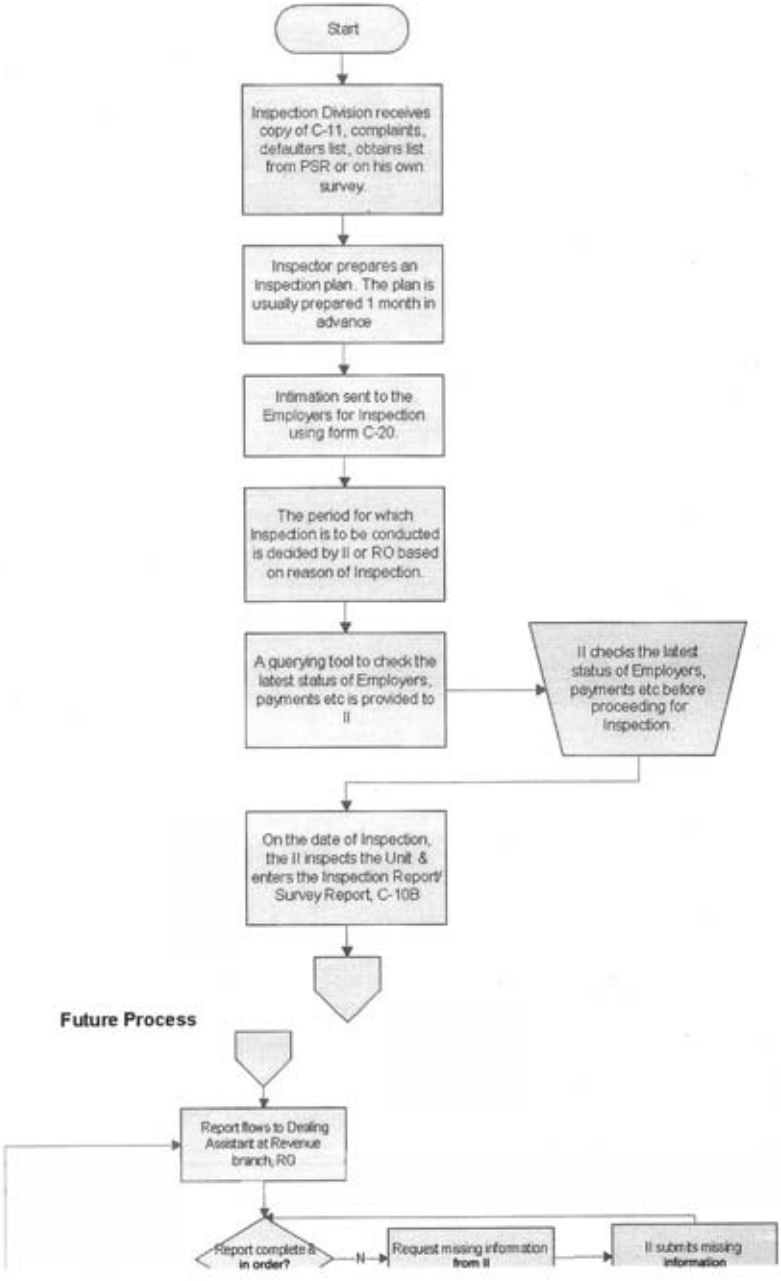
1.5.9 ***Issues***

NA

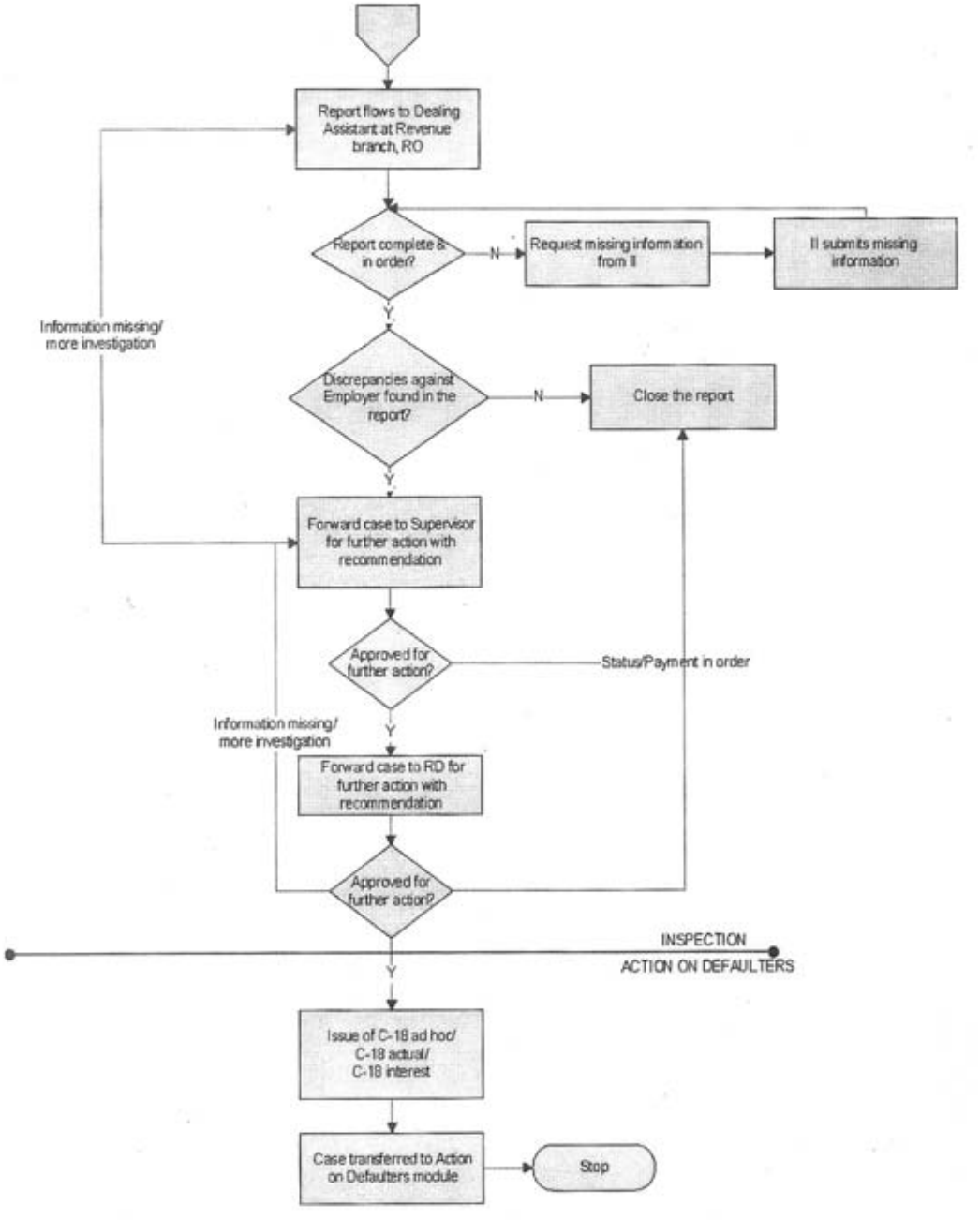
1.5.10 ***Assumptions***

NA

SRS
Inspection & Survey



SRS
Inspection & Survey



1.6 *Test Inspection*

1.6.1 *Process Users*

Inspecting Officers as appointed by Regional Office, Dealing Assistants in revenue branch of RO, Regional Directors/Joint Directors (In-Charge).

1.6.2 *Process Trigger*

Upon decision taken by RO this process is initiated.

1.6.3 *Pre-requisites/Pre-conditions/Predecessor Processes*

Inspection for the identified Unit has been conducted by Insurance Inspector and the Inspection Report has been submitted to the RO.

1.6.4 *Process Description*

1. 5% of the Inspections in each Region are identified for Test Inspection and entered into the Test Inspection Register.
2. These test inspections are then allotted to identified test inspecting officers, by the RD or JD I/C.
3. The Test Inspecting Officers perform the inspection of the Unit already conducted for the same period and record their observations. The spot observation note is prepared and handed over to the Employer on the spot. (Form same as that for regular inspection.)
4. The report is submitted to the Regional Office and is scrutinized by the Dealing Assistant. In case any discrepancy is found, the same is intimated to the Insurance Inspector requesting an explanation. If any contribution is found to be over and above detected by the Inspector, the same shall be communicated to the Employer. In case any serious irregularity is found against the inspector, an explanation shall be called from him and depending on the explanation received from the Inspector, further action shall be decided. If the explanation is found to be satisfactory, no action shall be taken, else the case shall be forwarded to Admin branch of RO. Based on the nature of discrepancy further corrective action is taken by the Regional Office.
5. In addition based on Test Inspection, all the actions that are initiated in regular inspection can be initiated against an Employer if found necessary. The steps to be followed shall be same as that explained in the main inspection flow.

1.6.5 *Screen & Validations*

1.6.5.1 Screens

Please refer section 3.1.5.1.

1.6.5.2 Validations

Please refer section 3.1.5.2.

1.6.6 ***Post Conditions/Successor Process***

Inspection Observation and Inspection Report are submitted online. And the necessary action based on Inspection Report is initiated. The processes as per the SRS Action on Defaulters may succeed this process if found necessary by the Revenue Branch.

1.6.7 ***Internal Interfaces***

Please refer section 4.

1.6.8 ***External Interfaces***

NA

1.6.9 ***Issues***

NA

1.6.10 ***Assumptions***

NA

1.7 ***Operational Concepts and Scenarios***

Inputs for Inspection Register

a. Survey Source Register (This will be used to prepare Inspector's plan however should be maintained separately as these units are not registered yet.)
b. C-1 Register
c. Periodical Survey Register: This will be used to prepare Inspector's plan however should be maintained separately as these units are not registered yet.)

1. Every II should be aware of all new registrations in his area. For this II should have access to a report/query which provides a list of all new registrations in his area after a particular date, which will be the cut-off date. The user should be provided the flexibility to choose the cut-off date for obtaining the list of registrations.
2. The II should also be aware of the list of employers whose FDC is not updated. The user should be able to query this information as well.
3. SC-15 maintained at RO level and Inspection Division level. Upon issue of C-11, an entry will be made against the respective division in the SC-15 register. The Inspections of all Units attached to a particular Inspection Division will automatically be routed to them based on the data captured at the time of Employer Registration.

Inspection Register

Please refer **Register of Inspections.doc**

C-18 Register



SRS
Inspection & Survey



The C-18 Register contains the details of the C-18 ad hoc/actual sent to the Employers. The format and field details are provided in the attachment below.

Please refer **Format of C-18 Register.doc**

SCN Register

Please refer **Show Cause Notice Register.doc**

There is a need for a Register to monitor the number of inspections marked to an Insurance Inspector and no. of inspections carried out. For this a register has been devised which can be merged with the SC-15 Register. At present SC-15 only registers the inspection carried out and not the inspections to be performed.

Allotment of Sub Code Letter to RO/SRO

Please refer **Allotment of Sub Code_Letter to RO_SRO.doc**

Closure Info Letter to Employer

Please refer **Closure Info_Letter to Employer.doc**

Closure letter to Employer

Please refer **Closure_Letter to Employer.doc**

Closure Letter to Insurance Inspector

Please refer **Closure_Letter to II.doc**

ESIC 9

Please refer **esic 9.doc**

FDC Letter to Employer

Please refer **FDC_Letter to Employer.doc**

FDC Letter to Insurance Inspector

Please refer **FDC_Letter to ii.doc**

FDC statement

Please refer **FDC_statement.doc**

Format of Short Inspection Report

Please refer **Format of Short Inspection Report.doc**

Inspection Observation (modified)

Please refer **Inspection Observation_modified.doc**

Letter for change in Employers particulars basis Inspection Report

Please refer **Letter for change in Employers particulars_basis Inspection Report.doc**

Letter to Employer change as per IR

Please refer **Letter to Employer_change as per IR.doc**

Letter to RD job work verification

Please refer **Letter to RD_job work verification.doc**

Letter to the employer II JOBWORK

Please refer **Letter to the employer_II_JOBWORK.doc**

Register for Short Inspection

Please refer **Register for Short Inspection.doc**

C-20

Please refer **C-20.doc**

Sanction Memo/Order

Please refer **Sanction Order.doc**

4 Interface Requirements

Interface to Legal

In case the Employer does not respond to Show Cause Notice sent to him within a period of 15 days, then the proposal is initiated by the DA for sanctioning prosecution of the said employer. The

proposal is routed to the JD/RD through the BO. Once the same is sanctioned by JD/RD, a sanction Memo is prepared by the branch and put up to JD/RD for his/her signature. The signed sanction memo along with supporting documents is sent to the legal branch for filing prosecution. The register containing the details of the show cause notice is updated. The show cause entry is updated with the status – "Prosecution Sanctioned". The register containing the details of the show cause notice is shared with the Legal Department. A link is provided in the User Interface to send this information to Legal as well.

5 Non functional Requirements

NA

Target Environment:
NA

6 Specific Requirements

NA

Target Environment:
NA

7 Assumptions/Dependencies/Open Issue

NA

8 Acronyms and Glossary

RD	Regional Director
JD I/C	Joint Director In-Charge
II	Insurance Inspector

HEAD QUARTERS OFFICE
EMPLOYEES STATE INSURANCE CORPORATION
(ISO 9001-2000 CERTIFIED)
PANCHDEEP BHAWAN:C.I.G. ROAD, NEW DELHI

No. Z-14/17/2008-Rev. I **Dated : 18.02.2010**

To

All Regional Directors / Joint Directors I/c
Regional Office / Sub-Regional Office
ESI Corporation
Mumbai

Sub : Preparation and submission of Annual Arrears statement for the year 2009-2010

Sir,

You are aware that Annual Arrears Statement for the period ending 31.03.2010 is required to be submitted to Hqrs. Office by 15.04.2010 positively. This is one of the important revenue returns which is to be submitted to be External Auditors. Corporation and Ministry of Labour & Employment. govt. of India and also reflected in the Annual Report of the Corporation. It needs to be ensured that the said statement is submitted to Hqrs. Office by stipulated date.

It has been observed from the past experience, that while submitting the arrears statement, adequate care is not taken by the regions which results in revision of the figure at a later stage when the figures have been reported to various authorities. It is necessary to get the statement duly verified by F&A Branch of the Region Offices/Sub-Region Offices on associating the Recovery Officers.

I would request you to please keep the following points in view while preparation of the said statement.

1. Annual Arrears Statement is submitted in the revised proforma circulated last year vide this office letter No. Z-14/17/2006 Rev. I Col III dated 3.4.2006.
2. The date of annual arrears statement compiled conforms to records maintained by Revenue Branches and Recovery Officer's branch.
3. Large variations in the arrears should be explained suitably giving the reasons for such increase / decrease in the forwarding letter.
4. A separate lists of individual defaulter employers where dues are more than Rs. 10 lacs. 25 lacs and 50 lacs and 1 crore are submitted separately.
5. Year-wise break up of arrears should be properly reconciled and submitted to Hqrs. Office as it is to be placed before External Auditors. It is seen in some of the returns that the amount of arrears shown in a particular year was subsequently in the next years return. The Audit has taken and observation in this regard. Explanatory remarks are essential is such cases.

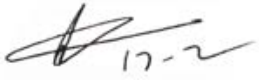
Contd./

6. Proper and correct classification of Central Public Sector Units/State Public Sector Units under respective Ministries/controlling Departments should be provided in order to make the monitoring by the Ministry of Labour & Employment Govt. of India with those Ministries.
7. It has been noticed in previous years that some Regional Directors have shown the arrears to respect of factories / establishments where exemptions have been granted by the State/ Central Govt. The arrears of relevant period of exemption may not be shown in the statement.
8. It should also be ensured that arrears should be deleted from the records where employers have made the payments.
9. Old liquidation cases are not being reviewed and the same stations is reported every year without checking the facts of each case.
10. Correct No.of defaulters are not reported in the statement.
11. Defaulter's cases especially whereabouts are not known, cases may be examined and processor for waiver.
12. Some of the Regional Directors have reported the arrears in the column of decree for the last so many years without knowing the current status of the case and not examining for writing off the dues as per the extant provisions when there is not chance of recovery.
13. Old court cases are being reported in repetitive manner without knowing the current status from the record. Where court cases are actually pending the status of stay vis-a-vis the amount of arrears held up due to litigation as on date should be reconfirmed and if cases are pending beyond a reasonable period action as proposed vide letter No. S-14/13/1/I/2001 Ins. IV dated 27.11.2001 should be initiated in consultation with Advocate.
14. Due to creation of new Sub-Region Offices the arrears figures may be sent after consultation with the parent Regions so that no repetition of figure occurs in either the Parent Region or Sub-Regions.
15. All figures may be given in lakhs only with fractions thereof upto two digits after decimal.
16. Suitable analysis be made in the forwarding letter with additional details to be recorded under appropriate columns of the Annual Arrears Statement.
17. A last of C-19/D-19 in respect of recoverable arrears may also be sent separately.

I would request you to ensure that Arrears Statement be submitted to Hqrs. office by **15th APRIL 2010 POSITIVELY.**

Please acknowledge receipt.

Yours faithfully



(ARUN KUMAR
DIRECTOR (Rev.)

NOMENCLATURE : **RETURN ON REVIEW OF ARREARS OF CONTRIBUTION (INCLUDING INTEREST WHERE C-19 HAS BEEN ISSUED**
PERIODICITY : **ANNUALLY**
DUE DATE OF SUBMISSION :

PROFORMA - A

PROM A-DAY UPTO 31ST MARCH **(Rs. in lakhs)**

DESCRIPTION	PRIVATE						GOVERNMENT						GRAND TOTAL			
	Textile		Jute		Others		Textile		Jute		Others		Private		Govt.	
	No. of Units	Amount	No. of Units	Amount	No. of Units	Amount	No. of Units	Amount	No. of Units	Amount	No. of Units	Amount	No. of Units	Amount	No. of Units	Amount
							CPSU / SPSU	CPSU / SPSU	CPSU / SPSU	CPSU / SPSU	CPSU / SPSU	CPSU / SPSU			CPSU / SPSU	CPSU / SPSU
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
A-Not- recoverable for the present (a) Disputed in Courts. (b) Under Liquidation (Annexure-1) (i) Fully due (ii) Partially due (the claim of contribution not only settled by liquidator). (c) Amount pending with Claims Commissioner in respect of pre-take over period. (i) Fully due (ii) Partiality due because of rejection of balance dues by Commissioner of Payments (d) Closed not whereabouts of employers not known (Annexure-II) (e) Decree obtained but not executed (i) Decree obtained but court not be executed for want of sufficient assets of defaulting employers.																
TOTAL																

B. Dues from Sick Industries (Regd. with BIFR). Amount due from factories/ estts. which have been registered with BIFR but rehabilitation is yet to be sanctioned (Annexure-III) C-Amount due from factories /estt. which have been declared sick and rehabilitation scheme sanctioned by BIFR (Annexure-IV)																
D. Closed units where the particulars of employers are available																
E. Dues from factories/ estts. where exemptions granted by the State/Central Govt. & arrears continues.																
F. Recoverable Dues Pending for recovery with Recovery Officers (C-19)																
Grand Total A+B+C+D+E+F																

It is certified that the above information is correct and upto-date as per relevant files and registers and amount tallied with Revery Officer's record.

Superintendent Co-ord. **Dy. Director Co-ord.** **Recovery Officer** **DD(Fin.)/JD (Fin.)**

RD/JD-I/c

ANNEXURE - I
OF PROFORMA - A

Amount due from Factories/Establishments under Liquidation from A-day upto 31.3. _____

No.	Name & Code No.	Period	Amount (Rs. in lakhs)	Date on which claim filed with Official Liquidator	Current Status	Remarks
1	2	3	4	5	6	7

ANNEXURE - II
OF PROFORMA - A

A respect of Factories/Establishments which have been permanently closed and whereabouts of the employers town from A-day upto 31.3. _____

No.	Name & Code No.	Period	Amount (Rs. in lakhs)	No. of Prosecutions filed	Action taken for walver of dues
1	2	3	4	5	6

ANNEXURE - III
OF PROFORMA - A

Amount in respect of Factories/Establishments registered with BIFR and Rehabilitation Scheme yet to be sanctioned from a day upto 31.03.200_____

Rs. In Lakhs

Sl. No.	Name and Place & Code No.	Period	BIFR Case No. & Date of Registration	Amount of Arrears (Contribution & Interest)	Present Position
1	2	3	4	5	6

ANNEXURE - IV
OF PROFORMA - A

Amount in respect of Factories/Establishments which have declared sick by BIFR and Rehabilitation Schemes by BIFR from a day upto 31.03._____

Rs. In Lakhs

Sl. No.	Name and Place & Code No.	Period	BIFR Case No.	Date of order vide which rehabilitation Scheme has been sanctioned	Total dues reflected in the Scheme	Scheme of Payment out of Total Dues shown in the Scheme				Balcne Dues Contributi-on & Interest (As per Proforma A)	Any other dues amount
						Lumpsum		Installment			
						Paid	net paid	Paid so far	Balance		
1	2	3	4	5	6	7	8	9	10	11	12

PROFORMA - B
Analysis of Arrears

Rs. In Lakhs

Particulars	No. of Units	Amount (Rs. In Lakhs)
Amount of arrears pending as per last annual arreas statement as on 31st March _____		
Arrears added during the period from _____ _____ by Inssuance of C-19		
Total		
Amount recovered or adjusted during the period from _____ to _____		
Balance		
Increase / decrease		

This and reasons for increase in arrears.

Report in respect of Performance of Recovery Machinery.

With reference to target fixed by Hqrs.

Regional Director

PROFORMA - C-I

List of Central Public Sector Undertakings in dafult of ESIC dues from A-day to upto 31st March _____

Rs. In Lakhs

Sl. No.	Name & Place & Code No.	Nature of Industry				Name of Administrativ Department	Period of	Amount of default (Rs. in Lakhs)	No. of Prosecutions filed	Whether under BIFR/Liquidation/ Court cases/otherwise	Remarks
		Textiles	Jute	Others	Total						

PROFORMA - C-II

List of State Public Sector Undertakings in default of ESIC dues from A-day to upto 31st March _____

Rs. In Lakhs

Sl. No.	Name & Place & Code No.	Nature of Industry				Name of Administrativ Department	Period of	Amount of default (Rs. in Lakhs)	No. of Prosecutions filed	Whether under BIFR/Liquidation/ Court cases/otherwise	Remarks
		Textiles	Jute	Others	Total						

Superintendent **Dy. Director** **DD (Fin.) / JD (Fin.)** **Regional Director**

PROFORMA - D

Year-wise break-up of Total arrears from A-day upto 31st March _____

Rs. In Lakhs

Year	Private		CPSUs		SPSUs		Total	
	No. of units	Amount	No. of units	Amount	No. of units	Amount	No. of units	Amount
1	2	3	4	5	6	7	8	9
From A-day to 31-3-1991								
1991-92								
1992-93								
1993-94								
1994-95								
1995-96								
1996-97								
1997-98								
1998-99								
1999-00								
2000-01								
2001-02								
2002-03								
2003-04								
2004-05								
2005-06								
And so on								

SUPERINTENDENT **DY. DIRECTOR** **JD (FIN.) / JD (FIN.)**

Regional Director

PROFORMA - A - E

Year-wise break-up of amount pending with Recovery Officer

Rs. In Lakhs

Year	Private		CPSUs		SPSUs		Total	
	No. of units	Amount	No. of units	Amount	No. of units	Amount	No. of units	Amount
1	2	3	4	5	6	7	8	9
From A-day to 31-3-1991								
1991-92								
1992-93								
1993-94								
1994-95								
1995-96								
1996-97								
1997-98								
1998-99								
1999-00								
2000-01								
2001-02								
2002-03								
2003-04								
2004-05								
2005-06								
And so on								

SUPERINTENDENT **DY. DIRECTOR** **DD (FIN.) / JD (FIN.)**
Recovery Officer

Regional Director

HEADQUARTERS OFFICE
EMPLOYEES STATE INSURANCE CORPORATION
(ISO 9001-2000 CERTIFIED)
PANCHDEEP BHAWAN: C.I.G. ROAD: NEW DELHI

No. Z- 14/17/2008-Rew. I Dated: 18.02.2010

To,

All Regional Directors/ Joint Directors I/c
Regional Office/ Sub-Regional Office
ESI Corporation
Mumbai

Sub: Preparation and submission of Annual Arrears statement for the year 2009-2010.

Sir,

Your are aware that. Annual Arrears Statement for the period ending 31.03.2010 is required to be submitted to Hqrs.' Office by 15-4-2010 positively. This is one of the important revenue returns which is to be submitted to the External Auditors, corporation and Ministry of Labour & Employment, Govt. of India and reflected in the Annual Report of the Corporation. It needs to be ensured that the said statement is submitted to Hqrs. Office by stipulated date.

It has been observed from the past experience, that while submitting the arrears statement, adequate care is not taken by the regions which results in revision of the figure at a later stage when the figures have been reported to various authorities. It is necessary to get the statement duly verified by F&A Branch of the Region Offices/Sub-Region Offices on associating the Recovery Officer.

I would request you to please keep the following points in view while preparation of the said statement.

1. Annual Arrears Statement is submitted in the revised proforma circulated last year vide this office letter NO. Z-14/17/2006 Rev. I Col. III dated 3.4.2006.
2. The data of annual arrears statement compiled conforms to records maintained by Revenue Branches and Recovery Officer's branch.
3. Large variations in the arrears should be explained suitably giving the reasons for such increase/decrease in the forwarding letter.
4. A separate lists of individual defaulter employers where dues are more than Rs. 10 lacs, 25 lacs and 50 lacs and 1 crore are submitted separately.
5. Year-wise break up of arrears should be properly reconciled and submitted to Hqrs. Office as it is to be placed before External Auditors. It is seen in some of the returns that the amount of arrears shown in a particular year was subsequently increased in the next years return. The Audit has taken an observation in this regard. Explanatory remarks are essential is such cases.

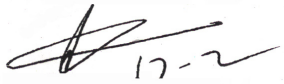
Contd./

6. Proper and correct classification of Central Public Sector Units/State Public Sector Units under respective Ministries/Controlling Departments should be provided in order to make the monitoring by the Ministry of Labour & Employment, Govt. of India with these Ministries.
7. It has been noticed in previous years that some Regional Directors have shown the arrears in respect of factories/establishments where exemptions have been granted by the State/Central Govt. The arrears of relevant period of exemption may not be shown in the statement.
8. It should also the be ensured that arrears should be deleted from the records where employers have made the payments.
9. Old liquidation cases are not being reviewed and the same status is reported every year without checking the facts of each case.
10. Correct No. of defaulters are not reported in the statement.
11. Defaulter's cases especially whereabouts are not known, cases may be examined and processor for waiver.
12. Some of the Regional Directors have reported the arrears in the column of decree for the last so many years without knowing the current status of the case and not examining for writing off the dues as per the extant provisions when there is no chance of recovery.
13. Old court cases are being reported in repetitive manner without knowing the current status from the record. Where court cases are actually pending, the status of stay vis-à-vis the amount of arrears held up due to litigation as on date should be reconfirmed and if cases are pending beyond a reasonable period action as proposed vide letter No. S-11/13/1/1/2001 Ins. IV dated 27.11.2001 should be initiated in consultation with Advocate.
14. Due to creation of new Sub-region officers the arrears figures may be sent after consultation with the parent Regions so that no repetition of figure occurs in either the Parent Region or Sub-Regions.
15. All figures may be given in lakhs only with fractions thereof upto two digits after decimal.
16. Suitable analysis be made in the forwarding letter with additional details to be recorded under appropriate columns of the Annual Arrears Statement.
17. A. List of C-19/ D-19 in respect of recoverable arrears may also be sent separately.

I would request you to ensure that Arrears Statement be submitted to Hqrs. Office by **15th April 2010 POSITIVELY.**

Please acknowledge receipt.

Yours faithfully,



(ARUN KUMAR)
DIRECTOR (Rev.)

NOMENCLATURE : RETURN ON REVIEW OF ARREARS OF DAMAGES WHERE D-19 HAS BEEN ISSUED

PERIODICITY : ANNUALLY

DUE DATE OF SUBMISSION :

PROFORMA – A

FROM A-DAY UPTO 31ST MARCH (Rs. in Lakh)

DESCRIPTION		PRIVATE						GOVERNMENT										GRAND TOTAL					
		TEXTILE		JUTE		OTHERS		TEXTILE				JUTE				OTHERS				PRIVATE		GOVERNMENT			
		NO. OF UNITS	AMOUNT	NO. OF UNITS	AMOUNT	NO. OF UNITS	AMOUNT	NO. OF UNITS		AMOUNT		NO. OF UNITS		AMOUNT		NO. OF UNITS		AMOUNT		NO. OF UNITS	AMOUNT	NO. OF UNITS		AMOUNT	
								CPSU	SPSU	CPSU	SPSU	CPSU	SPSU	CPSU	SPSU	CPSU	SPSU	CPSU	SPSU			CPSU	SPSU	CPSU	SPSU
1		2	3	4	5	6	7	8		9		10		11		12		13		14	15	16		17	
A	Not recoverable For the present																								
a	Disputed in Courts																								
b	Under liquidation (Annexure- I)																								
i	Fully due																								
ii	Partially due the claim of contribution not fully settled by liquidator).																								
c	Amount pending with claims Commissioner in respect of pre take over period																								
i	Fully due																								
ii	Partially due because of rejection of balance dues by commissioner of payments.																								
d	Closed and whereabouts of employers not known annexure																								
e	Decree obtained hut not executed																								
(i)	Decree obtained but could not be executed for want of sufficient assets defaulting employers																								
	Total																								

B	Dues from sick Industries (Regd With BIRF)																						
C	Amount due from industries estts. Have been sick ano rehabilitation scheme sanction BSIFR (Anneure – IV)																						
D	Cased units where pre particulars of employers are available																						
E	Dues from actories/ estts. Exemption granted by the state/ Central continues																						
F	Recoverable dues pending for recovery with Recovery Officers (C-19)																						
	Grand Total A+B+C+D+E+F																						

It is certified that the above information is correct and upto-date as per relevant files and registers and amounts tallied with Recovery Officer's record.

Superintendent Deputy Director Dy. Director / Jt. Director (Fin.) Regional Director

ANNEXURE – II
OF PROFORMA – A

Amount in respect of Factories /Establishments which have been permanently closed and whereabouts of the employers are not known from A-day upto 31.03..... ..... (where D-19 issued)

Sl. No.	Name & Code No.	Period	Amount (Rs. in lakhs)	No. of Prosecutions filed	Action taken for waiver of dues
1	2	3	4	5	6

Amount in respect of Factories/ Establishments which have declared sick by BIFR and Rehabilitation Schemes sanctioned by BIFR from A-day upto 31.03._____(Where D-19 issued)

Rs. in Lakhs

Sl. No.	Name and Place & Code NO.	Period	BIFR Case NO.	Date of order vide which rehabilitation Scheme has been sanctioned	Total dues reflected in the Scheme	Scheme of payment out of total Dues shown in the Scheme				Balance Dues Damages (As per Proforma –A)	Any other dues amount
						Lumpsum		Installment			
						Paid	Not Paid	Paid so far	Balance		
1	2	3	4	5	6	7	8	9	10	11	12

List of central Public Sector Undertakings in defaults of ESIC dues from Sept. 1975 to upto 31st March
(Where D-19 issued)

Rs. in Lakhs

Sl. No.	Name and Place & Code NO.	Nature of Industry				Name of Administrative Department	Period of Default	Amount of default (Rs. in Lakhs)	No. of Prosecutions filed	Whether Under BIFR/ Liquidation/ Court cases/ otherwise	Remarks
		Textiles	Jute	Others	Total						

PROFORMA –D

Year-wise break-up of Total arrears from A-Day upto 31st March, _____
(Where D-19 issued)

(Rs. in Lakhs)

Year	Private		CPSUs		SPSUs		TOTAL	
	No. of Units	Amount	No. of Units	Amount	No. of Units	Amount	No. of Units	Amount
1	2	3	4	5	6	7	8	9
From Sept. 75 upto 31.3.1991								
1991- 92								
1992-93								
1993-94								
1994-95								
1995-96								
1996-97								
1997-98								
1998-99								
1999-00								
2000-01								
2001-02								
2002-03								
2003-04								
2004-05								
2005-06								
And so on								
Total								

Superintendent Dy. Director Dy. Director (Fin.) Regional Director

APPENDIX XXII.2

Periodical Returns

INDEX

Hqrs. Inst. Z-17/11/Misc./1/2001-Ins. IV dated 07-06-2001

S.No.	Subject	Periodicity	Reference to Para No.	Page No.
1.	Return on E.I/High Court / prosecution and appeal not filed cases	Quarterly	L.10.6	561-563
2.	Return on cases deciding coverage / allotment of code and FDC	MONTHLY	L.10.6	564
3.	Return on Test Inspections	Quarterly	L.10.6	565
4.	Return on Inspection and Survey	Quarterly	L.10.6	566-567

Hqrs. Inst. Z-11/12/11/2001 Ins.III dated 08-06-2001

1.	Return on Recovery Certificate issued and Recovery made	Yearly	L.10.6	568
2.	History Sheet in Respect of Factories/Establishment in Default of Payment of Dues of Rs. 25 & above Rs. 10 Lakhs and above	Quarterly	L.10.6	569
3.	Return on Review of Employers Files	Quarterly	L.10.6	570
4.	Return on Performance of Revenue Branch Officers for the Month of	Monthly	L.10.6	571

5	Return on cases in which refund has been made by the Regional office/Sub Regional office	Quarterly	L.10.6	572
6.	Return on Cases in which irrecoverable dues have been waived off by the R.D/J.D (Incharge)/Director	Quarterly	L.10.6	573

NOMENCLATURE OF THE RETURN : RETURN ON COURT CASES (EI COURT & HIGH COURT)
PERIOCIDITY OF RETURN : QUARTERLY
DUE DATE FOR SUBMISSION : 15TH OF THE MONTH FOLLOWING THE QURATER

EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFFICE _____

No. **Dated: _____**

Return on court cases pending in E.I. Court/High Court for the quarter ending _____

Sl. No.	Particulars	E.I. Court			High Court							
					Appeals U/s 82 of ESI Act			Writs			Others (Criminal Revision etc.)	
		Rev.	Bft.	Ors.	Rev.	Bft.	Ors.	Rev.	Bft.	Ors.	Rev.	Bft.
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	No. of cases brought forward form previous quarter											
2.	No. of Cases added during the quarter											
3.	Total (1+2)											
4.	No. of cases added during the quarter. (a) Fully in favour of ESIC (b) Partially in favour of ESIC (c) Against the ESIC (The details of the cases relating of revenue matter where the decision was against the Corporation and the R.D. decided not to file appeal may be furnished in the proforma at Annexure-A)											
5.	Balance No. of cases at the end of quarter (3-4)											
6.	Cases pending upto 1998 Since 1999 Since 2000											

Dy. Director
For Regional Director

NOMENCLATURE OF THE RETURN : RETURN ON POSITION OF PROSECUTION CASES FILED UNDER DIFFERENT SECTIONS

PERIOCIDITY OF RETURN : QUARTERLY

DUE DATE FOR SUBMISSION : 15TH OF THE MONTH FOLLOWING THE QURATER

EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFFICE _____

No. **Dated: _____**

Return on court cases pending in E.I. Court/High Court for the quarter ending _____

Sl. No.	Description	Sec. 84 of ESI Act against			Sec. 85(a) of ESI Act	E.I.	E.I. Court	E.I. Court	E.I. Court	E.I. Court	E.I. Court
		Employer	I.P.	Others							
1.	No. of cases pending at the beginning of the quarter										
2.	No. of cases filed during the quarter										
3.	Total (1+2)										
4.	No. of cases withdrawn during the quarter										
5.	No. of cases decided during the quarter										
	(a) Convicted with imprisonment (with or without fine) (b) Convicted with find only (c) Acquitted (d) Closed/ Dismissed										
6.	Total (4+5)										
7.	No. of cases pending at the end of the quarter										

DEPUTY DIRECTOR
For REGIONAL DIRECTOR

CASED DECIDED BY THE E.I./HIGH COURT AGAINSTTHE ESI Corporation WHERE THE REGIONAL DIRECTOR HAS DECIDED NOT TO FILE APPEAL DURING THE QUARTER ENDING _____

PART – I
E.I. COURT (REVENUE MATTER)

Sl. No.	Case No.	Name of court	Main issue involved in the judgement	Reasons in brief for which R.D. decided not the file appeal	Whether the decision for not filling appeal was as per the opinion of the legal cousel

PART – I
HIGH COURT (REVENUE MATTER)

Sl. No.	Case No.	Name of court	Main issue involved in the judgement	Reasons in brief for which R.D. decided not the file appeal	Whether the decision for not filling appeal was as per the opinion of the legal cousel

Dy. Director
For Regional Director

EMPLOYEES STATE INSURANCE CORPORATION

REGIONAL OFFICE

NO.53.Z.15.14.10.05.FDC/INSPN. DATED:

RETURN ON CASES PENDING FOR DECIDING COVERAGE/ALLOTMENT OF CODE NO.

FINAL DATE OF COVERAGE FOR THE MONTH OF ---------- - 2011

i) Cases Pending for coverage

Total Number of cases pending at the beginning of the month in the C-1 Register	No.of cases added during the month	Total (1+2)	By allotting Code Nos.on Form-01 Survey	Not coverable case (less than 7/15 employees) after survey	Not coverable cases with (No.of employees 7 to 9 or 15 to 19) after survey	Total (4+5+6)	No.of cases pending (3-7)
1	2	3	4	5	6	7	8

ii) Cases pending for allotment of Code Number:

Total No.of definite cases of coverage pending where Form-01 received/survey report received and decision not taken for allotment of Code No.(out of Col.8 (i) above)	No.of cases pending for more than 15 days.	No.of cases pending for more than one month	No.of cases pending for more than three months.(with case-wise clarification about the delay)

iii) Cases pending for deciding Final date of coverage:

Total No.of cases pending at the beginning of the month where coverage had been decided provisionally but pending for FDC	No.of New cases added during the month for FDC	No.of cases decided during the month	Pending at the end of the month	No.of cases pending over three months	No.of cases pending for 1 to 3 years	No.of cases pending over 3 years.
1	2	3	4	5	6	7

Certified that the figures are verified from the relevant registers and the same are found to be correct.

(----------)

Dy. DIRECTOR

For Regional Director

To:

The Director General,
Revenue-II
Headquarters office
E.S.I.Corporation,
NEW DELHI.

NOMENCLATURE OF THE RETURN	RETURN ON THE INSPECTIONS CONDUCTED BY OFFICERS.
PERIODICITY OF RETURN DUE DATE FOR SUBMISSION	15TH OF THE MONTH FOLLOWING THE QUARTER

EMPLOYEES" STATE INSURANCE CORPORATION
REGIONAL OFFICE_____.

Dated

No.

RETURN ON THE INSPECTIONS CONDUCTED BY DURING THE QUARTER ENDING

Total No. of inspections conducted during the last quarter with ledger verification	No. of Test Inspections selected and allotted during the quarter		Old Test Inspections pending	Total Test Inspections conducted	Total Test Inspections pending	Pending beyond one year	No. of Officers to whom Test Inspection allotted	Name of the officers having Test Inspections pending beyond one year		Analysys of Test of Inspection	
	5%	Ors						Name of the Officer	No. of T.I. pending	No. of T.I. with no omission detected	No. of T.I. with omission detected
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12

Certificate :-

(a) It is confirmed that Selection was made out of the cases where ledger verification was done.
(b) It is confirmed that each Inspection Division are kept in mind as per instructions.
(c) It is confirmed that while selecting Test Inspection, all categories of units.
(Different industries & their size etc.) have been taken into account.

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE, ----------

QUARTER ENDING 09/2010

NOMENCLATURE OF THE RETURN : Return on Inspection & Survey
PERIODICITY OF THE RETURN : Quarterly
DUE DATE OF SUBMISSION : 20th of the month following the Quarter

PART-I *SUMMARY ON PROGRESS IN INSPECTION AND SURVEY 9/2010*

A. GENERAL INFORMATION

a) Total No. of factories/Establishments as on 31st March 2010 : ----------
b) Total No. of Br. Offs./Sales Offs./Admn. Offs. as on 31st March : ----------
c) Total (a) + (b) : ----------

Sl. No.	Description	During The qtr	Since April
1	Number of new factories/estt. Covered		
2	Number of factories/estt. finally closed/not functioning	--	--

B. INSPECTIONS

1. Total number of defaulting units for contribution period ending 31.03.2010 4991
2. No. of units identified for inspection as per Headquarters Office letter no. S-11/12/2/2000-Ins.IV dated 14.02.2001 in the quarter under report default units: progress on inspection.

Sr. No.	Description	During the qtr	Since April 01.04.2010
(a)	Identified for inspection figure shown as		
(b)	Inspection conducted		
(c)	Short fall if, any		
(d)	Inspection conducted with ledger		
(e)	Inspection without ledger		
(f)	% of inspection conducted without ledger		
(g)	Reason for low performance of conduct of inspection	----	------
(h)	Action taken by Regional Director to accelerate the pace of conducting inspections.	-----	-------

C. SURVEYS

1. No. of Survey due : 2
2. Progress in survey (PSR) : nil

Sr. No.	Description	During the qtr	Since April
(a)	No. of survey due as per (a)above (PSR)		
(b)	No. of survey conducted out of survey due (PSR)	--	--
(c)	Shortfall, if any		
(d)	No. of additional surveys conducted in implemented areas		
(e)	No. of surveys conducted in non-implemented area	--	--
(f)	Total no. of surveys conducted (ii,iv,v)		

3.	Total no. of surveys shown at (ii & iv) of 2 above *(Out of 3)*	:	-----
1.	No. of cases not recommended for coverage	:	------
2.	No. of cases recommended for coverage	:	-----
3.	Code No. pending for issue beyond 15 days	:	----

D. UTILISATION OF INSPECTORS SANCTIONED / POSTED

a)	No. of posts of I.Is. sanctioned by Hqrs. Office for inspection / survey work only	:	--
b)	No. of I.I.'s in position for inspection / survey work at the end of quarter	:	--
c)	No. of I.I.'s. in position but diverted beyond 5 days for other work during the quarter	:	--
d)	No. of man days available for inspection / survey (excluding Leave)	:	----

PART – II *PERFORMANCE OF INSPECTORS DURING THE QUARTER*

Sl. No.	No. of Inspector available	Total no. of man days Available (I.I.s working days) excluding leave	Total man days utilized for non-inspection work	Total man days utilized for inspection work	Total shortfall in man days	Name of inspectors whose performance is in shortfall of 20% or more of available man days
					--	--

Certified that the figures are verified from the relevant registers and the same are found to be correct.

Position of action taken as per Hqrs.Office instructions No:S-11/13/2/04-Ins.IV.dated 11/2/2005.

NECESSARY ACTION HAS BEEN TAKEN AS PER THE ABOVE INSTRUCTION

SUPERINTENDENT ASSTT./DY. DIRECTOR REGIONAL DIRECTOR

NOMENCLATURE OF THE RETURN : RETURN ON RECOVERY CERTIFICATES ISSUES AND RECOVERY MADE.
PERIODICITY OF RETURN : YEARLY
DUE DATE FOR SUBMISSION : 30TH OF APRIL EVERY YEAR

STATEMENT OF C-19/d-19 FOR THE YEAR

Sl. No.	Description	C-19 (Number)	Amount (Rs. in Lac)	D-19 (Number)	Amount (Rs. in Lac)
1	Number of recovery Certificates pending with Recovery Officers at the begining of the year.				
2	Number of recovery certificates issued during the year.				
3	Total				
4	Number of cases in which recovery was made or adjusted. (i) For full recovery. (ii) For part recovery.				
5	Number of cases pending with recovery officers as on 31st March. (i) For full recovery. (ii) For part recovery.				

1. Certified that the position has been reconciled with Revenue Recovery Cell and found correct.

2. Certified that the C-19s against which part recovery has been effected are kept pending.

SUPERINTENDENT **DEPUTY DIRECTOR**
For REGIONAL DIRECTOR

Remarks / signature of the Regional Director

Note : The information furnished in the statement should be for the financial year (i.e. April to March).

NOMENCLATURE OF THE RETURN	:	HISTORY SHEEET IN RESPECT OF FACTORIES/ESTABLISHMENT IN DEFAULT OF PAYMENT OF DUES OF RS. 25 LAKHS AND ABOVE (For AP, Bihar, Delhi, Gujarat, Karnataka, Kerala, MP, Mumbai, Nagpur, Pune, Orrisa, Punjab, Chennai, Madurai, UP &WB) and Rs. 10 lac & above (for Assam, Hubli, Goa, Coimbatore, Haryana, Rajasthan, Surat, Baroda, Marol & Thane.
PERIODICITY OF THE RETURN	:	QUARTELY
DUE DATE FF SUBMISSION	:	30TH OF THE MONTH FOLLOWING THE QUARTER

EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFICE _____.

No. Dated:

FOR THE QUARTER ENDING_____.

Name & code No. of factory/establishment:_____.

Amount of determined arrears:

A. CONTRIBUTION

Amount of Contribution	Period	Whether regular or contribution on Omitted wages	Date of issue of C-19
1.	2.	3.	4.

Period for which compliance has not yet been made and no action for recovery of contribution has been initiated with issue of C-18.
Period for which inspection of complete records is still pending and action taken for inspection of records.

B. INTEREST

Amount of interest	Period	Date of payment of contribution for the period	Date of issue of c-19 for interest
1.	2.	3.	4.

1. Period for which interest is due but action for claiming interest has not yet been initiated (Date of payment of contribution with amount for the period may be finished).
2. Period for which claim has been made but C-19 not yet issued (Date of payment of contribution with amount for the period and date of claim may be mentioned.

NOMENCLATURE OF THE RETURN : RETURN OF REVIEW OF EMPLOYERS' FILES
PERIODICITY OF RETURN : QUARTERLY
DUE DATE FOR SUBMISSION : 20TH OF THE MONTH FOLLOWING THE QUARTER

EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL/SUB-REFIONAL OFFICE_____

RETURN ON REVIEW OF EMPLOUERS FILES
FOR THE QUARTER ENDING_____

Name of the Branch Officer	Total No. of employers file at the beginning of calendar year.	Total No. of employers files required to be reviewed during the calendar year.	No. of files required to be reviewed since first quarter.	No. of files actually reviewed.			Period – wise break – up of pending Cases.		
				During the Quarter	Since 1st Quarter	Percentage of file reviewed at the end of quarter.	More than One Year	More than Two Year	More than Three Year
1	2	3	4	5	6	7	8	9	10
1									
2									
Total									

Certified that the statement has been prepared as per the

Information received from the concerned Revenue Branches

SUPRETENDENT

Certified that I have verified the figure and found the same to be correct.

DEPUTY DIRECTOR

(Counter Signature)

RIGIONAL DIRECTOR

Note:

1. At least 1/10th of the total files must be reviewing by each Dealing Assistance every month in such a manner that all filesare receiving by Oct. and the last two months of the year are utilized for making up shortfall, if any, during the preceding 10 months.
2. As regards closed units in respect of which no dues are outstanding and Inspections have also been completed, the same may be removed from the current files (Col. No. 3).
3. Cases pending for review for over one year should get preference in the beginning of the year.

NOMENCLATURE OF THE RETURN : RETURN ON PERFORMANCE OF REVENUE BRANCH OFFICERS
PERIODICITY OF RETURN : MONTHLY
DUE DATE FOR SUBMISSION : 10TH OF THE FOLLOWING MONTH

EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFFICE _____

RETURN ON PERFORMANCE OF REVENUE BRANCH OFFICERS
FOR THE MONTH OF

Total No. of covered factories/Estts. as on C.P.E.										
A.	**Action against defaulters**									
S. No.	Name of the Branch officer	No. of defaulters for the Contribution Period Ending____ 31-3____/ 30.9.____	No. of defaulters prior to CPE- 31-3-____ 30.9._____ against whom C-19 had not been issued.	No. of defaulters detected on scrutiny of IR/ short I/R	Total Defaulters (3+4+5)	No. of defaulters against whom C-19 is not required to be issued	Balance (6-7)	No. of C-19 issued during the month	No of C-19 issued upto the month	No. of cases pending
1	2	3	4	5	6	7	8	9	10	11

Notes:

1. No. of defaulters found common in col.3 and Col.4 should be excluded from Col. No.4 and shown I Col. 3 only. (Figures shown against Col.3 & Col.4 should remain constant from Jan. to June / July to Dec).
2. Example of cases where C- 19 is not to be issued are units permanently closed/ declared uncoverable/in r/o which coverage stayed by the court, or Contribution due has been paid after issued of C-18 or 45 A order (Col.-7).
3. C-19 is mentioned to be issued against the defaulters ever if amount is less thant Rs. 500/-.

NAMENCLATURE OF THE RETURN	:	RETURN ON CASES IN WHICH REFUND HAS BEEN MADE BY THE REGIONAL OFFICE/SUB-REGIONAL OFFICE.
PERIODICITY OF RETURN	:	QUARTERLY.
DUE DATE FOR SUBMISSION	:	30TH OF THE MONTH FOLLOWING THE QUARTER

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE/SUB-REGIONAL OFFICE _____

Dated_____

FOR THE QUARTER ENDING _____

Sl. No.	Name and Code No. of the Factory/Estt.	Period for which refund allowed.	Details of amount refunded/adjusted (Contribution/Interest/ Damages).	Reasons of refund.
1	2	3	4	5

1. Certified that refund/adjustment has been concurred by Finance & A/cs.
2. Certified the refund/adjustment has been approved the Regional Director.

DEPUTY DIRECTOR
For REGIONAL DIRECTOR

NOMENCLATURE OF THE RETURN : RETURN ON CAES IN WHICH IRRECOVERABLE DUES HAVE BEEN WAIVED OFF.
PERIODICITY OF RETURN : QUARTERLY
DUE DATE FOR SUBMISSION : 30TH OF THE MONTH FOLLOWING THE QUARTER

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE _____

Dated _____

RETURN ON CASES IN WHICH IRRECOVERABLE DUES HAVE BEEN WAIVED OFF BY THE REGIONAL DIRECTOR/JOINT DIRECTOR(INCHARGE)/DIRECTOR DURING THE QUARTER ENDING_____

Sl. No.	Name of the Factory/Estt.	Period of default and Code No.	Details of the amount waived off i.e. Contributions/Interest/ Damages.	Category under which the amount has been waived off.
1	2	3	4	5

1. Certified that concurrence of Finance & A/cs has been obtained wherever necessary.

2. Certified that C-18/C-19/D-18/D-19/arrears registers have been updated.

DEPUTY DIRECTOR
For REGIONAL DIRECTOR

Note : Specific category, with reference to Delegation of powers, may be indicated under Col. 5 above.

APPENDIX XXII.3

C-6 FORMS IN USE

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"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय
Registered A.D.

सी-ii/C-ii

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक /Dated _____

सेवा में/ To
मैसर्स/M/s. _____
_____
_____
_____

महोदय/Dear Sir,

निदेशानुसार आपका ध्यान कर्मचारी राज्य बीमा अधिनियम,1948 (यथा संशोधित) की धारा 2क के उपबंधों की ओर दिलाया जाता है, जिसके अनुसार कारखाना/स्थापना का पंजीकरण उस समय सीमा के अंदर तथा उसी रीति से किया जाना अपेक्षित है जैसा कि विनियम में विनिर्दिष्ट किया जाए। क.रा.बी. विनियम 1950(साधारण) के विनियम 10ख के अनुसार जिस कारखाना/स्थापना पर अधिनियम लागू होता है उसके नियोजक के लिए यह बाध्यकर है कि वह अधिनियम के लागू होने के 15 दिन के अंदर समुचित क्षेत्रीय कार्यालय को प्रपत्र 01 (प्रतिलिपि संलग्न) में सूचना प्रस्तुत करें।

I am directed to invite your attention to the provisions of the Section 2 A of the Employees' State Insurance Act, 1948 (as amended) under which a Factory/establishment is required to be registered within such time and manner as may be specified in the Regulation. Regulation 10 B of the E.S.I. Regulation 1950 (General) makes it obligatory on the part of the employer of the factory / establishment to which this Act applies to furnish information in Form 01 (copy enclosed) to the appropriate Regional Office not later than 15 days after the Act becomes applicable.

अधिनियम की धारा 44 में इसके अतिरिक्त यह भी उपबंधित है कि इस प्रकार विवरणी प्रस्तुत न किए जाने पर निगम कारखाना/ स्थापना के प्रभारी व्यक्ति से इस प्रयोजन के लिए यथावश्यक विवरण प्रस्तुत करने के लिए कहे ताकि निगम यह निर्णय कर सके कि कारखाना/स्थापना अधिनियम के अधीन व्याप्ति योग्य है या नहीं, चूंकि ऐसा प्रतीत होता है कि आप द्वारा प्रपत्र 01 में दी गई सूचना प्राप्त नहीं हुई है। अनुरोध है कि संलग्न प्रपत्र 01 में पूर्ण एवं सही विवरण भरकर प्रस्तुत किया जाए और इसे इस पत्र की तारीख से 15 दिन के अंदर इस कार्यालय को लौटाया जाए।

Section 44 of the Act, further provides that where the return has not been so submitted, the Corporation may require any persons in-charge of the factory/establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory/establishment is coverable under the Act as the information in Form 01 duly completed by you does not appear to have been received. I have to request you to furnish complete and correct particulars in the enclosed 01 Form and return the same to this office within 15 days from the date of this letter.

भवदीय/Yours faithfully,

अनुलग्नक : प्रपत्र 01
Encl. : Form 01

कृते क्षेत्रीय निदेशक
for Regional Director

प्रतिलिपि:
बीमा निरीक्षक _____को सूचना एवं आवश्यक कार्रवाई हेतु। उन्हें परामर्श दिया जाता है कि कारखाना/स्थापना का प्रारंभिक निरीक्षण करें और विस्तृत रिपोर्ट तत्काल भिजवाएं।
Copy to : The Insurance Inspector _____
for information and necessary action. He is advised to conduct Preliminary Inspection of the Factory/establishment and send a comprehensive report urgently.

कृते क्षेत्रीय निदेशक
for Regional Director

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय
Registered A.D.
सी/C-3

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक /Dated _____

सेवा में/ To

मैसर्स/M/s. _____
_____
_____
_____

वि ाय : कर्मचारी राज्य बीमा अधिनियम के प्रावधानों का अनुपालन/
Subject : Compliance with the Provisions of the Employees' State Insurance Act.

महोदय/Dear Sir,

मुझे आपका ध्यान इस कार्यालय के दिनांक _____ के पत्र संख्या _____ तथा दिनांक _____ के पत्र संख्या _____ की ओर आकर्षित करते हुए खेद के साथ कहना है कि आपने अभी तक संबंधित पत्रों में मांगा गया 01 प्रपत्र प्रस्तुत नहीं किया।

I have to invite your attention to this Office letter No. _____ dated _____ and No. _____ dated _____ and have to state with regret that you have not so far submitted the 01 Form asked therein.

इस संबंध में आपका ध्यान इस बात की ओर आकृष्ट करना चाहता हूँ कि इस कार्यालय द्वारा मांगी गई सूचना न भेजना कर्मचारी राज्य बीमा अधिनियम की धारा 85 के अंतर्गत दण्डनीय है। अतः आपको सलाह दी जाती है कि इस पत्र की प्राप्ति के 15 दिन के अंदर संलग्न 01 प्रपत्र को भरकर इस कार्यालय को भेज दें अन्यथा इस कार्यालय को आपके विरुद्ध कानूनी कार्रवाई करने के लिए बाध्य होना पड़ेगा।

In this connection, I have to bring to your notice that non-submission of information required by this office is punishable under Section 85 of the Employees' State Insurance Act. You are, therefore, advised to fill in the enclosed 01 Form and submit the same to this office within 15 days from the date of this letter, otherwise the Office will be compelled to resort to unpleasant task of legal action against you.

भवदीय/Yours faithfully,

अनुलग्नक: 01 प्रपत्र/Encl. : 01 Form

कृते क्षेत्रीय निदेशक
for Regional Director

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय
Registered A.D.
सी/C-4

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक/ Dated _____

सेवा में/To,

मैसर्स/M/s. _____
_____
_____
_____

विषय:- कर्मचारी राज्य बीमा अधिनियम, 1948 के अधीन कारखाना/स्थापना का पंजीकरण-प्रपत्र 01 में विवरण।
Sub.:- Registration of Factory/Establishment under ESI Act, 1948–Particulars in Form 01.

महोदय/Dear Sirs,

मुझे आपका ध्यान आपके पत्र संख्या_____ दिनांक _____ की ओर आकर्षित करना है जिसके अंतर्गत आपने अपने कारखाने/स्थापना के बारे में प्रपत्र 01 में विवरण प्रस्तुत किए है। कृपया इस पत्र के जारी होने की तारीख के 10 दिन के अंदर निम्नलिखित बिन्दुओं को स्पष्ट करें:-

I have to invite your attention to the particulars submitted by you in Form 01 in respect of your factory/establishment vide your letter No. _____ dated _____. Kindly clarify on the following points within ten days from the date of this letter :-

1- आपके कारखाने/स्थापना के आरंभ होने के माह से प्रत्येक माह में आपके द्वारा नियोजित व्यक्तियों की अधिकतम संख्या का अद्यतन ब्योरा।
Maximum number of persons employed by you in every month from the month of starting of your factory/establishment up to date.

2- आपके कारखाने/स्थापना के प्रारंभ होने की वास्तविक तारीख।
The exact date of starting of your factory/establishment.

3- कारखाना/स्थापना में विनिर्माण प्रक्रिया के लिए शक्ति का प्रयोग करने की वास्तविक तारीख।
The exact date from which power is used for manufacturing process in the factory/establishment.

4- राजस्व ग्राम एवं तालुक का नाम जिसमें कारखाना/स्थापना स्थित है और उसकी राजस्व संख्या।
The name of the Revenue Village and Taluk in which the factory/establishment is situated and its revenue number.

5- कारखाना/स्थापना में किए जाने वाले कार्य की वास्तविक प्रकृति/प्रकार।
The exact nature/type of work done in the factory/establishment.

6- कारखाना/स्थापना में उत्पादन शुरू होने की तारीख।
The date from which production started in the factory/establishment.

7- आपके कारखाने/स्थापना को इस कार्यालय द्वारा पूर्व में आवंटित कूट संख्या, यदि कोई हो।
Code No. if any previously allotted by this office to your factory/establishment.

भवदीय/Yours faithfully,

कृते क्षेत्रीय निदेशक
for Regional Director

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय
Registered A.D.

कर्मचारी राज्य बीमा अधिनियम की
धारा 44(2) के अंतर्गत नोटिस
Notice Under Section 44(2) of the
Employees' State Insurance Act

सी/C-5

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक/ Dated _____

सेवा में/To,

मैसर्स/M/s. _____
_____
_____
_____

वि ाय:- कर्मचारी राज्य बीमा अधिनियम, 1948 के अधीन कारखाने का पंजीकरण ।
Subject:- Registration of factory under the ESI Act, 1948.

महोदय/Dear Sir/ Sirs,

इस कार्यालय में प्राप्त सूचना के अनुसार निगम के पास यह मान होने के कारण है _____में स्थित आपका कारखाना/स्थापना जिसका नाम _____ है, क.रा.बी. अधिनियम के उपबंधों के अधीन आता है और आपसे एक मुख्य नियोजक/प्रबंधक होने के नाते अनुरोध है कि संलग्न प्रपत्र 01 में मांगी गई सूचना प्रस्तुत करें।

As per information received in this office the Corporation has reasons to believe that your factory/establishment named as _____ situated at _____is amenable to the provisions of the ESI Act, 1948 and you as one of the principal employer/manager are requested to furnish the desired information in the performa enclosed (Form 01).

कृपया नोट करें कि यदि इस नोटिस के जारी करने के 15 दिन के अंदर कोई उत्तर प्राप्त नहीं हुआ तो आपका कारखाना क.रा.बी. अधिनियम, 1948 के अधीन दिनांक _____ से अनंतिम रूप से व्याप्त माना जाएगा और इस संबंध में अंशदान बकाया क.रा.बी. अधिनियम, 1948 की धारा 45ग से 45झ के अधीन राजस्व के बकायों के रूप में वसूल किया जाएगा। इसके अलावा मांगी गई सूचना प्रस्तुत न करना अपराध है और इसके लिए क.रा.बी. अधिनियम 1948 की धारा 85 के अंतर्गत आप पर अभियोजन कार्यवाही भी की जा सकती है।

Please note that if no reply is received within a period of 15 days of the issue of this notice, your factory/establishment will be deemed to have been covered under the ESI Act, 1948 with effect from _____ provisionally. Any arrears of contributions in respect of it will be recovered as an arrears of Land Revenue or under Section 45C to 45I of the ESI Act, 1948. Besides, failure to furnish the desired information constitutes an offence and the same will render you liable for prosecution under Section 85 of the ESI Act, 1948.

भवदीय/Yours faithfully,

अनुलग्नक: यथोपरि/Encl. : As above.

कृते क्षेत्रीय निदेशक
for Regional Director

प्रतिलिपि : _____ को
सूचना तथा आवश्यक कार्रवाई हेतु प्रेषित ।
Copy to : M/s. _____
for information and necessary action.

कृते क्षेत्रीय निदेशक
for Regional Director

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय
Registered A.D.

सी/C-7

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या /No._____ दिनांक/Dated _____

सेवा में/To,

श्री/श्रीमती/Sh./Smt. _____
बीमा निरीक्षक/शाखा प्रबंधक I.I./B.M._____
_____

विषय: कारखाना/स्थापना की व्याप्ति।
Subject:- Coverage of Factory/Establishment.

महोदय/Sir,

----------से मालूम हुआ है कि ---------- में स्थापित ----------नामक कारखाना/स्थापना ने कार्य शुरू कर दिया है।

It has been ascertained from _____ that the factory/establishment, namely _____ situated at _____ has started functioning.

अतः आपसे निवेदन है कि आप उपर्युक्त कारखाना/स्थापना का प्रारंभिक निरीक्षण करें और इस पत्र की तारीख से 15 दिन के भीतर प्रपत्र सी 10 (क) में पूर्ण ब्योरे प्रस्तुत करें। यदि रिपोर्ट भेजने में विलंब होता है या किसी सामग्री/ब्योरे के कारण यह अधूरी रहती है तो इसकी सूचना स्पष्ट रूप से दी जाए।

You are, therefore, requested to conduct preliminary inspection of the said Factory/establishment and furnish complete particulars in Form C 10 (A) within 15 days of the date of this letter. In case the report is delayed or is incomplete in respect of any material/particulars, reasons for the same must invariably be intimated.

भवदीय/Yours faithfully,

कृते क्षेत्रीय निदेशक
for Regional Director

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय
Registered A.D.
सी/C-8

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक/ Dated _____

सेवा में/To,

श्री/श्रीमती/Sh./Smt. _____
बीमा निरीक्षक/शाखा प्रबंधक I.I./B.M._____
_____

विषय: मैसर्स ----------कारखाना/स्थापना की व्याप्ति।
Subject:-Coverage of Factory/Establishment._____.

महोदय/Sir,

इस कार्यालय के ज्ञापन संख्या_____दिनांक _____को कृपया देखें, जिसमें आपको उपर्युक्त कारखाना/स्थापना का प्राथमिक निरीक्षण करके उपर्युक्त पत्र की तारीख से 15 दिन के भीतर पूर्ण रिपोर्ट प्रस्तुत करने की सलाह दी गई थी। अपेक्षित रिपोर्ट अभी तक प्राप्त नहीं हुई है। अतः आपको निदेश दिए जाते हैं कि आप इस पत्र की तारीख से 10 दिन के भीतर रिपोर्ट प्रस्तुत न करने के कारण स्पष्ट करें।

You may please refer to this office Memo. No. _____ dated _____ under which you were advised to conduct preliminary inspection of above mentioned Factory/establishment and submit a complete report within 15 days of the date of said letter. Since the report has not been received as required, you are hereby directed to explain within 10 days of this letter, reasons for not submitting the report.

भवदीय/Yours faithfully,

कृते क्षेत्रीय निदेशक
for Regional Director

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय
Registered A.D.
सी/C-9

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक/ Dated _____

सेवा में/To,

मैसर्स/M/s. _____
_____
_____

विषय:- क.रा.बी. अधिनियम लागू होना-कारखाना/स्थापना के निरीक्षण के संबंध में।
Subject:- Applicability of provisions of ESI Act – Inspection of Factory/Establishment.

महोदय/Sir,

आपके कारखाने/स्थापना में क.रा.बी. अधिनियम की धारा 1(5) तथा धारा 2(12) के उपबंधों की प्रयोज्यता की जांच करने के उद्देश्य से मैं कर्मचारी राज्य बीमा अधिनियम 1948 की धारा 45 के अधीन दिनांक_____ को आपके कारखाने/स्थापना का निरीक्षण करूंगा। निरीक्षण के लिए अपने कारखाने/स्थापना के शुरू होने की तारीख से _____ तक के निम्नलिखित रिकार्ड तैयार रखें।

I will be visiting your factory/establishment on _____ under Section 45 of the ESI Act, 1948 in order to examine whether your factory/establishment is amenable to the provision of Section 1(5) & Section 2(12) of the E.S.I. Act. The following records from the date of starting of your factory/establishment till _____ may please be kept readily available for my inspection.

1- हाज़िरी रजिस्टर
Muster roll
2- मज़दूरी रजिस्टर
Wage Register
3- रोकड़ बही तथा लैजर
Cash Book and Ledger
4- समर्थक वाउचर
Supporting Vouchers
5- पंजीकरण के लिए राज्य प्राधिकारियों को आपके प्रारम्भिक आवेदन की प्रतिलिपि के साथ ऐसे प्राधिकारियों द्वारा जारी पंजीकरण फार्म तथा भविष्य निधि व्याप्ति के ब्योरे।
Copy of your initial application to State Authorities for registration along with registration form issued by such authorities including details of PF coverage.
6- कारखाना/स्थापना की शुरू होने की तारीख के बारे में दस्तावेज तथा विनिर्माण प्रक्रिया में शक्ति का प्रयोग कब से किया गया।
Documents indicating the date of start of Factory/Establishment and from which date power used for manufacturing process.
7- नियोजन तथा मज़दूरी भुगतान संबंधी अन्य दस्तावेज़।
Any other documents pertaining employment and payment of wages.

भवदीय
Yours faithfully,

बीमा निरीक्षक
Insurance Inspector

शाखा प्रबंधक
Branch Manager

"निगम हिंदी पखवाड़ा का स्वागत करता है"

सी/C-10

निरीक्षण कार्यालय
INSPECTION OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

प्रारंभिक सर्वेक्षण रिपोर्ट
Preliminary Survey Report

राज्य की रजिस्ट्रेशन संख्या----------
State Regn. No. ----------
निरीक्षण ----------
Inspection Div.
निरीक्षण ----------
Period covered by inspection

प्रथम निरीक्षण की तारीख----------
Date of First Inspection ----------
निरीक्षण की तारीख----------
Date of Inspection
शाखा कार्यालय ----------
Branch Office

1. कारखाना/स्थापना का नाम,पता तथा टेलिफोन नं. ----------
Name, Address & Telephone No. of the Factory/ establishment.

2. क्या कारखाना/एकक कार्यान्वित क्षेत्र में है, यदि हां तो लागू होने की तारीख तथा (हदबस्त संख्या), राजस्व ग्राम आदि का ब्यौरा दें ----------
Whether Factory/Unit is in implemented Area, if so, indicate date of implementation and details of (Hudbast No.) Revenue Village etc.

3. (1) स्वामी/अधिष्ठाता का नाम, पिता का नाम तथा पता ----------
Name, Father's Name & Address of the owner/ occupier.
(2) प्रबंधक (सार्वजनिक उपक्रम के मामले में) जैसा कि कारखाना अधिनियम अथवा दुकान व स्थापना अधिनियम के अधीन घोषित ----------
Manager (in case of Public Undertaking) as declared under Factories Act or Shop and Establishment Act.
(क) कारखाना अधिनियम के अधीन खाता संख्या के साथ फार्म 02 की प्रतिलिपि ----------
Copy of Form-02 under Factory Act to be attached with Account No.
(ख) कारखाना/स्थापना की खाता संख्या के साथ बैंक का नाम तथा पता ----------
Name & Address of Bank with A/C. No. of Factory/establishment.

4. कारखाना/स्थापना के शुरु होने की तारीख (सूचना के आधार संबंधी कागजात का भी उल्लेख करें) ----------
Date of start of the Factory/establishment (also state document on which information is based):-
(1) क्या कारखाना अधिनियम के अधीन रजिस्टर्ड है, यदि हां तो रजिस्ट्रेशन संख्या तथा तारीख ----------
Whether registered under Factory Act, if so, the Registration No. & Date
(2) क्या लघु क्षेत्र के उद्योग एकक के रूप में ही. आई.सी. से पंजीकृत है। यदि हां तो पंजीकरण संख्या ----------
Whether registered with DIC as SSI Unit, if so, Registration No.
(3) टी एन जी एस टी/के.वि. कर संख्या (संबंधित राज्य की बिक्री कर संख्या) ----------
TNGST/CST No. (Sales Tax No. of the respective State.

(4) यदि निर्यात संवर्धन समिति में पंजीकरण किया गया है, तो उनके द्वारा दी गई संख्या ----------
Registration, if any with Export Promotion Committee, Registration No. given by them

(5) क्या भविष्य निधि अधिनियम के अधीन रजिस्टर्ड है, यदि हां तो इसकी कूट संख्या तथा व्याप्ति की तारीख ----------
Whether registered with PF Act, if so, its Code No. and date of coverage.

5. कारखाना/स्थापना में किस प्रकार का कार्य किया जा रहा है (उस दस्तावेज का भी उल्लेख करें जिस पर सूचना आधारित है) ----------
Nature of work carried on in the Factory/Establishment (also state document on which information is based).

6. किस तारीख से विनिर्माण प्रक्रिया के लिए शक्ति का प्रयोग किया जा रहा है तथा यह सूचना किस दस्तावेज पर आधारित है ----------
Date from which power is being used for manufacturing process together with the documents on which information is based.

विनिर्माण प्रक्रिया में शक्ति का प्रयोग किस प्रकार किया जा रहा है, संक्षेप में उल्लेख करें। ----------
Give Brief description how Power is used in Manufacturing Process.

7. (1) यदि नियोजक द्वारा कारखाना/स्थापना के बाहर कोई कार्य किया जा रहा है तो उसका स्वरूप ----------
Nature of work carried on by the employer outside the Factory/establishment if any.

(2) यदि हां तो कार्य का निश्चित स्थान ----------
If so, exact location of the places of work.

(3) क्या किया जा रहा कार्य प्रारम्भिक या आनुषंगिक है या कारखाने की विनिर्माण प्रक्रिया से सम्बद्ध है ----------
Whether such work carried on, is preliminary or incidental to or connected with the manufacturing process of factory.

(4) ऐसे स्थानों पर मजदूरी पर नियोजित व्यक्तियों की संख्या ----------
No. of persons employed with wages at such places.

8. ठेकेदार/आसन्न नियोजक द्वारा कराये गए कार्य का स्वरूप तथा इस प्रकार नियोजित व्यक्तियों की संख्या ----------यदि कोई हो
Nature of work carried on through contractors/immediate employer, if any & No. of persons so employed.

(क) कारखाना/स्थापना में ----------
At factory/establishment

(ख) कारखाना/स्थापना के बाहर ----------
Outside factory/establishment

(ग) यदि बाहर तो निश्चित स्थान
If outside, exact location

(घ) क्या कार्य कारखाना/स्थापना के बाहर प्रधान नियोजक या उसके अभिकर्ता के पर्यवेक्षण में किया जा रहा है। इसका दस्तावेज सहित, यदि कोई हो, पूरा विवरण दें। ----------
Is work outside Factory/establishment being carried on under the supervision of principal Employer or his agent. Give complete details with document relied upon, if any.

9. निरीक्षण अवधि में प्रधान नियोजक व आसन्न नियोजक यदि कोई हो, द्वारा नियोजित व्यक्तियों की माहवार अलग-अलग नियोजन की स्थिति जिसमें कारखाना/स्थापना में और कारखाना/स्थापना के बाहर मजदूरी पर लगाए गए कर्मियों का अलग-अलग ब्यौरा दें। ----------

Month-wise employment position for the period covered by inspection separately in respect of principal Employer and immediate employer, if any, spelling out the persons employed for wages at the Factory/establishment and outside factory/establishment.

10. कारखाना/स्थापना, के अहाते सहित, परिसर में 10/20 या अधिक व्यक्तियों को मजदूरी पर नियोजित करने की तारीख/तारीखें ----------
Date/Dates on which 10/20 or more persons are/were employed for wages in the Factory/ establishment premises including the precincts thereof.

(क) यदि प्रत्यक्ष सत्यापन के आधार पर व्याप्ति की सिफारिश की गई है तो व्याप्ति योग्य कर्मचारियों की संख्या, मजदूरी पर नियोजित व्याप्ति योग्य कर्मचारियों की स्थिति, उसके पिता का नाम, पता, मजदूरी, व्यवसाय, रिकार्ड आदि का ब्यौरा दें ----------
If the coverage is recommended on the basis of physical verification, employment of coverable employees strength, give detailed position of coverable employees engaged, for wages, their Father's Name, Address, Wages, Occupation, Record etc.

11. कारखाना/स्थापना की व्याप्ति के लिए सिफारिश की वास्तविक तारीख और यदि व्याप्ति नहीं हुई है तो इसके कारण ----------
Exact date from which the factory/establishment recommended for coverage and if not coverd reasons thereof.

12. निरीक्षण किये गये व हस्ताक्षरित किये गये रजिस्टरों/दस्तावेजों के ब्यौरे तथा पृष्ठ संख्या दें, जहाँ रिकार्ड में पृ ठ संख्या अंकित न हो वहाँ बीमा निरीक्षक संबद्ध मास का उल्लेख करें जिस पर उन्होंने हस्ताक्षर किये। ----------
Details and page Nos. of records/document(s) inspected and signed. Where page Nos. are not indicated/given in records, the Insurance Inspector to indicate the month in which he has signed.

13. जिन रिकार्डों/रजिस्टरों का निरीक्षण नहीं किया गया उनकी अवधि व कारणों का उल्लेख करें ----------
Records/Registers not inspected with period and reason for the same.

14. जिन कर्मचारियों से पूछताछ की गई उनके नाम और पदनाम ----------
Official(s) interviewed their names and designation.

15. यदि नियोजक द्वारा प्रपत्र 01 पहले प्रस्तुत नहीं किया गया तो क्या अब प्रपत्र 01 प्राप्त कर लिया है और उसे संलग्न किया गया है। ----------
Whether 01 form obtained and enclosed, if not already furnished by employer.

16. बैंक खाते के ब्यौरे ----------
Details of Bank Account

17. अन्य कोई अभ्युक्तियां ----------
Any other remarks

दिनांक/Dated

हस्ताक्षर/Signature

अनुलग्नक/Encl. : 1. रिपोर्ट में उल्लिखित अनुसार
As indicated in the Report.
2. प्रपत्र 2 की एक प्रति खाता संख्या के साथ संलग्न की जानी है।
A copy of Form 2 is to be attached with A/C No.

निरीक्षक/शाखा प्रबंधक का नाम
Name of Inspector/Branch Manager

" निगम हिंदी पत्राचार का स्वागत करता है"।

रजिस्टर्ड एडी डाक
Registered A.D.

सी/C-11

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

सेवा में/To

मैसर्स/M/s. _____

वि षय:- कर्मचारी राज्य बीमा अधिनियम, 1948 का कार्यान्वयन और यथा-संशोधित अधिनियम की धारा 2(12)/1(5) के अधीन कारखानों तथा स्थापनाओं के कर्मचारियों का पंजीकरण।

Subject:- Implementation of the E.S.I. Act, 1948 and Registration of Employees of the Factories and Establishments under Section 2(12)/1(5) of the Act as amended.

महोदय/Dear Sir(s),

1. आपको सूचित किया जाता है कि कर्मचारी राज्य बीमा अधिनियम, 1948 की धारा 1(3) के अधीन केन्द्रीय सरकार ने अधिसूचना संख्या _____ दिनांक _____ द्वारा _____ क्षेत्र में अधिनियम के अंतर्गत व्याप्त सभी कारखानों/स्थापनाओं पर अधिनियम के उपबंध लागू किए हैं।
It is informed that under Section 1(3) of the ESI. Act, 1948 the Central Government has vide notification No. _____ dated _____ made the provisions of the Act applicable to all factories/establishments covered under the Act within the (Area) _____.

2. यह भी सूचित किया जाता है कि समुचित सरकार ने अधिनियम की धारा 1(5) के अधीन अधिसूचना संख्या _____ दिनांक _____ द्वारा दिनांक _____ से अन्य स्थापनाओं पर अधिनियम के उपबंधों/धाराओं का विस्तार कर दिया है।
It is further informed that the appropriate Government has extended the provisions of the Act to other establishments under Section 1(5) of the Act with effect from _____ vide notification No. _____ dated _____.

3. अधिनियम की धारा 2क के अधीन ऐसे कारखाने/स्थापना को अधिनियम के अधीन पंजीकृत करना अनिवार्य है तथा अध्याय 4 के अंतर्गत प्रधान नियोजक की यह जिम्मेदारी हो जाती है कि वह अपने सभी कर्मचारियों को पंजीकृत कराए तथा अधिनियम के अधीन व्याप्त सभी कर्मचारियों के संबंध में अंशदान की अदायगी करे।
Under Section 2 A of the Act such a factory/establishment is required to register itself under the Act and chapter IV thereof casts a responsibility on the principal employer thereof to get his employees registered and pay contributions in respect of these employees covered under the Act.

4. आपके द्वारा भेजे गए आपके कारखाने/स्थापना के विवरण के अनुसार, दिनांक _____ को बीमा निरीक्षक/शाखा कार्यालय प्रबंधक द्वारा किए गए आपके कारखाने/स्थापना के निरीक्षण संबंधी रिपोर्ट के अनुसार आपका कारखाना/स्थापना दिनांक _____ से अधिनियम की धारा 2(12)/1(5) की सीमा में आता है। फिर भी यदि बाद में जाँच करने पर यह बात सामने आती है कि आपका कारखाना/स्थापना उल्लिखित तारीख से पहले व्याप्ति योग्य था तो उस पिछली तारीख से अधिनियम की धाराओं का अनुपालन करना आपकी जिम्मेदारी होगी।
On the basis of the particulars in respect of your factory/establishment submitted by you, the report of the inspection conducted by the Insurance Inspector/Branch Office Manager who inspected your factory/establishment on _____ your factory/establishment falls within the purview of Section 2(12)/1(5) of the Act with effect from _____. In case, however, subsequent facts reveal that your factory/establishment was coverable from a date prior to the date mentioned above, you shall make yourself liable to comply with the provisions of the Act from such earlier date.

5. आपसे अनुरोध है कि आप अधिनियम के अधीन व्याप्ति की तारीख से अपने कारखाने/स्थापना के कर्मचारियों के घोषणा-पत्र भरने तथा उनके पंजीकरण और अंशदान की अदायगी व रिकार्ड के अनुरक्षण संबंधी कार्रवाई तुरन्त करें तथा रिकार्ड आदि का अनुरक्षण करें।
It is requested to take immediate steps for registration of your employees by submitting Declaration forms, payment of contribution, maintenance of records etc. from the date of coverage of your factory/establishment under the Act.

6. आपकी सुविधा के लिए कारखाना/स्थापना को कूट संख्या _____ आवंटित की गई है जिसका इस कार्यालय के साथ पत्राचार करते समय प्रयोग किया जाए तथा उक्त संख्या सभी फार्मों में यथास्थान दर्शाई जाए। _____ में स्थित निगम के शाखा कार्यालय को अनुदेश भेज दिए गए हैं कि वे आपके कर्मचारियों के पंजीकरण से संबंधित प्रक्रिया में आपकी हर संभव सहायता करें। कोई कठिनाई होने पर अथवा योजना से संबंधित किसी अन्य प्रयोजन के लिए आप उपरिलिखित शाखा कार्यालय प्रबंधक से संपर्क करें जो आपकी इस संबंध में हर संभव सहायता करेंगे।
For the sake of convenience your establishment has been allotted code No. _____ which may kindly be used in all communications sent to this office and on all forms at the place indicated for the purpose. The Branch Office of the Corporation situated at _____ has been instructed to render necessary assistance to you in connection with registration of your employees. In case you find any difficulty or for any other purpose which may be necessary in connection with the Scheme you are requested to contact the Manager of the above Branch Office who will render necessary help in the matter.

7. अनुरोध है कि बीमा चिकित्सा व्यवसायियों/कर्मचारी राज्य बीमा औषधालयों की सुविधाओं का अपने कारखाने/स्थापना में भरसक प्रचार करें ताकि आपके कर्मचारी अपने कर्मचारी राज्य बीमा औषधालयों/बीमा चिकित्सा व्यवसायियों का चयन कर सकें। अपेक्षित फार्म आदि उपरिलिखित शाखा कार्यालय से प्राप्त करें जिसके साथ आपके सभी कर्मचारी संबद्ध होंगे।
It is requested that publicity may kindly be given to list of Insurance Medical Practitioners, Employees' State Insurance Dispensaries to enable your employees to choose their E.S.I. Dispensaries/Insurance Medical Practitioner. Required forms etc. may please be collected from the Branch Office mentioned above to which all your employees will also be attached.

8. निगम के कर्मचारी, कर्मचारी राज्य बीमा अधिनियम, 1948 के अधीन आपको अपने कर्तव्यों और दायित्वों के निर्वहन हेतु हर संभव एवं आवश्यक सहायता सहर्ष प्रदान करेंगे। मुझे विश्वास है कि आप कर्मचारी राज्य बीमा अधिनियम तथा विनियमों के उपबंधों का समय से अनुपालन करेंगे।
The Corporation Officials would be pleased to give all necessary and possible guidance to you in discharging your duties and obligations under the ESI Act, 1948 and I am confident of prompt and timely compliance under the provisions of the ESI Act and Regulations on your part.

9. कर्मचारी राज्य बीमा अंशदान स्वीकार करने के लिए प्राधिकृत बैंक शाखाओं की एक सूची संलग्न है। आप अपनी सुविधानुसार इन शाखाओं में से कोई एक शाखा चुनने की कृपया करें और इसकी सूचना इस कार्यालय को तथा भारतीय स्टेट बैंक की संबंधित शाखा को भेज दें तथा केवल उक्त शाखा में ही कर्मचारी राज्य बीमा राशि जमा कराएं। यदि इस पत्र की प्राप्ति के 15 दिन के अंदर आपसे कोई सूचना प्राप्त नहीं होती है तो जिस अधिकृत शाखा विशेष में आपने अंशदान की राशि जमा कराई होगी उसे आपके कारखाने/स्थापना के लिए "नामित शाखा" मान लिया जाएगा।
A list of Bank Branches which are authorized to accept ESI contributions is enclosed. You may choose one of the Branches convenient to you, under intimation to this office and to the concerned branch of the State Bank of India and deposit the ESI dues in that branch only. In case no intimation is received within 15 days of the receipt of this letter, the amount of contribution deposited in one of the specified branch would be considered as "Nominated Branch" for your factory/establishment.

10. योजना के अंतर्गत उपलब्ध हितलाभों तथा नियोजक की उत्तरदायित्वों आदि की विवरणिका/इश्तिहार इसके साथ इस निवेदन के साथ संलग्न है कि योजना के बेहतर कार्य संचालन के लिए इसका व्यापक प्रचार करें।
A brochure/leaflet containing benefits available under the scheme and obligation of the employer etc. is enclosed herewith with the request to give it wide publicity for the smooth functioning of the scheme.

11. कृपया विलंब से बचने के लिए सभी पत्राचार में अपनी कूट संख्या का उल्लेख करें।
Please indicate your Code No. on all correspondences to avoid delay.

भवदीय/Yours faithfully,

अनुलग्नक/Encl. : As state above.

सहा./उप निदेशक/Asstt./Dy. Director

प्रतिलिपि निम्नलिखित को सूचना तथा आवश्यक कार्रवाई हेतु प्रेषित :
Copy for information and necessary action to :

1. प्रबंधक, शाखा कार्यालय _____
The Manager, Branch Office, _____
2. 103क शाखा/
103A Branch
3. बीमा निरीक्षक_____ प्रभाग_____
The Insurance Inspector_____, Division _____,
प्रधान नियोजक का नाम
Name of the Principal Employer.
कर्मचारियों की संख्या
No. of Employees
कारखाना लाइसेंस संख्या, यदि कोई हो
Factory Licence No. if any.
4. सी-6 शाखा
C-6 Branch

उपनिदेशक/DY. DIRECTOR

कृपया यह सुनिश्चित करें: पूर्ण सामाजिक सुरक्षा के लिए सभी कामगारों को क.रा.बी. में बीमांकित कराएं।
ENSURE – TO INSURE ALL ELIGIBLE WORKERS WITH ESI FOR TOTAL SOCIAL SECURITY

"नियम हिंदी पखवाड़ा का स्वागत करता है"

पंजीकृत पावती देय/Registered AD

सी/C-12

क्षेत्रीय कार्यालय,
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

सेवा में/To

मैसर्स/M/s_____
_____

वि षय/Sub: कर्मचारी राज्य बीमा अधिनियम,1948 का कार्यान्वयन-अधिनियम की धारा 1(5) के अधीन कर्मचारियों और स्थापना का पंजीकरण।
Implementation of the ESI Act, 1948- Registration of Employees and Establishment under Section 1 (5) of the Act.

महोदय/Dear Sirs,

मुझे आपको सूचित करना है कि क.रा.बी. अधिनियम की धारा 1(3) के अधीन केन्द्र सरकार ने अधिसूचना संख्या _____ दिनांक _____ के द्वारा _____ के अंदर अधिनियम के अधीन व्याप्त सभी कारखानों/स्थापनाओं पर अधिनियम के उपबंध लागू किए हैं।

I have to inform you that Under Section 1(3) of the ESI Act, the Central Government has vide Notification No._____ dated_____made the provisions of the Act applicable to all factories/establishments covered under the Act within the_____.

2. इसके अतिरिक्त, मुझे यह भी सूचित करना है कि अधिसूचना संख्या_____ दिनांक _____ (प्रतिलिपि संलग्न) के साथ पठित अधिसूचना संख्या_____ दिनांक _____ के तहत समुचित सरकार ने अधिनियम की धारा 1(5) के अधीन अन्य स्थापनाओं पर दिनांक _____ से अधिनियम के उपबंधों को लागू कर दिया है।

I have further to inform you that appropriate Government has extended the provisions of the Act to other establishments Under Section 1(5) of the Act. w.e.f._____vide Notification No._____dated_____read with notification no._____dated_____(copy enclosed.

3. अधिनियम की धारा 2 क के अनुसार ऐसे कारखानों/स्थापनाओं से अपेक्षा की जाती है कि वे अधिनियम के अधीन अपने को पंजीकृत कराएं तथा अध्याय 4 में प्रदान नियोजक का यह उत्तरदायित्व है कि वह अपने कर्मचारियों का पंजीकरण करवाए और अधिनियम के अधीन व्याप्त ऐसे कर्मचारियों के अंशदानों की अदायगी करे।

Under Section 2 A of the Act, such Factories/Establishments are required to register themselves under the Act and Chapter IV casts a responsibility on the Principal Employer thereof to register its employees and to pay contributions in respect of such employees covered under the Act.

4. आप द्वारा प्रपत्र 01 में प्रस्तुत किए गए आपके कारखाने/स्थापना के विषय में दिए गए ब्यौरों के आधार पर ऐसा प्रतीत नहीं होता कि आपका कारखाना/स्थापना अधिनियम की धारा 2(12)/1(5) के अधीन व्याप्त है। तथापि, यदि उत्तरवर्ती तथ्य ये दर्शाएं कि आप द्वारा दी गई सूचना ठीक नहीं थी और आपका कारखाना/स्थापना अधिनियम के उपबंधों के अधीन व्याप्ति योग्य था, तो आप असत्य सूचना प्रस्तुत करने के लिए और अपने कारखाने/स्थापना के अन्यथा व्याप्ति योग्य होने की तारीख से कर्मचारियों के अंशदान की अदायगी करने के लिए उत्तरदायी होंगे।

On the basis of the particulars in respect of your factory/establishment submitted by you in Form-01, your Factory/establishment does not appear to be covered under Section 2 (12)/1(5) of the Act. In case however subsequent facts reveal that information submitted by you was not correct and your Factory/establishment was coverable under the provisions of the Act, you will make yourself liable both for furnishing wrong information as well as for compliance including payment of contributions, in respect of your employees from the date your factory/establishment would be otherwise coverable.

5. कृपया यह भी नोट करें कि इस कार्यालय को अपने कारखाने/स्थापना की व्याप्ति संबंधी सूचना देना और कारखाना/स्थापना व्याप्ति योग्य होने की तारीख से ही अधिनियम के अधीन यथा अपेक्षित आगे की कार्रवाई करना आपकी जिम्मेदारी होगी।

Also please note that it will be your liability/responsibility to intimate this office about the coverage of your factory/establishment and to take further action as required under the Act from the date your factory/establishment stands so covered.

भवदीय/Yours faithfully,

कृते क्षेत्रीय निदेशक/For REGIONAL DIRECTOR

row. Ch-34/07/09/25000 Sets - 6 P

C-10 B

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STAE INSURANCE COPORATION

निरीक्षण रिपोर्ट/INSPECTION REPORT

कूट संख्या Code No	वर्ग Category	क्षेत्र Region	निरीक्षण प्रभाग Inspection Division

नियोजक का नाम, पता तथा दूरभाष संख्या Name & Address of the Employer	निरीक्षक का नाम Name of Insurance Inspector		
	मौजूदा निरीक्षण की तारीख Date of current Inspection	शामिल की गई अवधि Period Covered	सत्यापित की गई खाता बही की अवधि Period for which book of account verified
Telephone No / Mobile E-mail ID	पिछले निरीक्षण की तारीख Date of last Inspection	शामिल की गई अवधि Period Covered	सत्यापित की गई खाता बही की अवधि Period for which book of account verified
विनिर्माण प्रक्रिया/ कार्य/ व्यापार का वास्तविक स्वरूप Exact nature of Manufacturing process work/ business carried on	निरीक्षण के लिए सम्पर्क किए गए व्यक्ति का नाम तथा पदनाम Name & Designation of person contacted for inspection		
किस शाखा कार्यालय से सम्बद्ध है B.O. to which attached			

1. प्रधान नियोजक का नाम, पिता का नाम तथा घर का पता (पिछले निरीक्षण के बाद किसी परिवर्तन की स्थिति में तारीख सहित उल्लेख करें) कृपया अनुबंध 'ख' के अनुसार सूचना प्राप्त करके प्रस्तुत करें) ।
Name, father's name and residential address of principal Employer (Indicate change with date, if any, since alst inspection), (please alos obtain and furnish information as at Annexure 'B')

स्वामी या अधिष्ठाता/owner or occupier	प्रबंधक/ Manager

2. आसन्न नियोजक (को) यदि कोई हो, तो उनके ब्यौरे Particulars of immediate Employer (s) if any

क्र.सं Sl No	नाम तथा पता Name and Address	किए गए कार्य का स्वरूप Nature of work performed	
		परिसर में (कारखाना/ स्थापना/ दुकान) At premises (Fac / Estt. / Shop)	प्रधान नियोजक या एजेण्ट की देखरेख में कारखाना परिसर के बाहर Outside premises under the supervision of Principal Employer or his agent

कारखाना/स्थापना (बिजली सहित या बिजली के बिना) दुकान/ होटल /रेस्टोरा/ सिनेमा/पूर्वदर्शन थियेटर/समाचार - पत्र स्थापना/ सड़क मोटर परिवहन उपक्रम
* Factory / Estt. (with or without power) Shop / Hotel / Restaurant/ Cinema/ Preview Theatre / News Paper Estt. / road - motor transport undertaking

3. उसी स्थान पर या अन्यत्र कोई संबंधित कार्यालय आदि (गैर कार्यान्वित क्षेत्रों सहित) Connected offices (s) etc. at the same sation or elsewhere (including non implemented areas), if any				निरीक्षण की तारीख को कर्मचारियों की संख्या No. of employees on date of inspection			
क्र. सं Sl. No	नाम तथा पता Name and Address	कार्य का स्वरूप Nature of work	अनुपालन का स्थान Place of compliance	नियोजक Employer	व्याप्त Covered	अव्याप्त Not covered	व्याप्ति योग्य परन्तु अव्याप्त Coverable but not covered
				प्रधान Principal			
				अव्यव Immediate			
				जोड़ Total			

5. (क) मजदूरी पंजी में अधिनियम के अधीन यथा परिभाषित सभी प्रकार की मजदूरी शामिल है ? (a) Do wage Rolls include all type of wages as defined under the Act ?	
(ख) यदि नहीं तो, क्या नियोजक मजदूरी पंजी में उल्लिखित मजदूरी के अलावा अन्य मजदूरी को दिखाने के लिए कोई अन्य रिकार्ड रख रहा है । स्पष्ट रूप से उल्लेख करें । (b) If not, is employer maintaining any other record to exhibit wages in addition to those accounted for in wage Rolls ? - Specify	
6. क्या विनियम 32 के अधीन रजिस्टर ठीक तरह से रखा जा रहा है ? यदि नहीं तो त्रुटियों का उल्लेख करें तथा नियोजक को दिए गए अनुदेशों का उल्लेख करें । Is register under Reg. 32 being maintained properly ? If not, specify defects and indicate instructions given to the employer.	
7. (क) क्या विनियम 66 के तहत दुर्घटना पुस्तक ठीक तरह से रखी जा रही है । (a) Whether accident book under Reg. 66 is being maintained properly? (ख) क्या विनियम 102 क के अधीन निरीक्षण पुस्तक ठीक तरह से रखी जा रही है ? (b)Whether Inspection Book under Reg. 102- A is being main tained properly ?	

8. इस रिपोर्ट के पीछे क्रम. सं. 9 के अधीन तालिका में उल्लिखित संदत्त मजदूरी तथा अंशदानों की स्थिति को दृष्टिगत करते हुए निम्नलिखित सूचना दें :-
With reference to the position of wages & contributions paid and payable depicted in the table under S. No. 9 of this report overleaf give the following

(क)(1) कॉलम 5 से 13 में स्थिति के अनुसार नियोजक द्वारा कम (-) अधिक (+) अदा की गई अंशदान की राशि के ब्यौरे (a) Details of amount of contribution paid short (-) excess (+) by employer as per position in column 5 to 13	(2) बीमा निरीक्षक द्वारा पता लगाई गई हर तरह की छोड़ी गई मजदूरी के ब्यौरे (ii) Details of each kind of omitted wages detected by I.I
1. कर्मचारी का हिस्सा Employees' Share _____ 2. नियोजक का हिस्सा Employer's Share _____ 3. जोड़ Total _____	
(ख) समाप्त अंशदान अवधि (धों) के संबंध में संलग्न अनुबंध 'क' में पाई गई गलतियों का उल्लेख करें जिसके लिए निरीक्षण की तारीख तक अंशदान विवरणी शाखा कार्यालय में प्रस्तुत की गई है । In respect of expired contribution period (s) for which returns submitted to B.O. till the date of inspection, please furnish discrepanices noticed in Annexure - A enclosed.	

(ग) नियोजक द्वारा प्रस्तुत की गई अंशदान विवरणी के ब्यौरे (C) Details of RCs submitted by Employer

अंशदान की अवधि जिससे विवरणी संबंधित है C.P. to which Return relates	विवरणी के अनुसार कर्मचारियों की संख्या No. of Employees in Return	शाखा कार्यालय को विवरणी प्रस्तुत करने की तारीख Date of submission of Return to B.O	शाखा कार्यालय में विवरणी प्राप्त होने की तारीख Date of acceptance of Return at B.O	विवरणी की राशि Amount of Return	अंशदान विवरणी से जांच किए गए मामलों की संख्या No. of cases checked from R.C.
(क) (a)	(ख) (b)	(ग) (c)	(घ) (d)	(ङ) (f)	(च) (g)

9. अंशदान के निर्धारण तथा अदायगी के संबंध में उन अवधियों से संबंधित स्थिति जिनके लिए विवरणिका प्रस्तुत की गई तथा जिनके लिए अभी प्रस्तुत नहीं की गई, पिछले निरीक्षण से निरीक्षण अधिकारी द्वारा किए गए निरीक्षण के अनुसार अदा की गई और देय कुल मजदूरी के ब्यौरा, जारी

Position regarding assessment and payment of contribution for periods for which return (s) submitted and for period for which returns (s) not yet submitted Month wise details of total wages paid and payable as per inspection by I.O. since last inspection

मास Month	मजदूरी पर नियोजित कर्मचारियों की संख्या Total No. of persons employed for wages/ paid	ऐसे व्यक्ति को भुगतान की गई कुल मजदूरी Total amount paid to such person	विवरणिका की मदों के अनुसार मजदूरी अंशदान के ब्यौरे Details of Wages /Contributions as per calculations of								अदा किए गए अंशदान की सत्यता के लिए जांच के मामलों की संख्या No. of cases checked of correctness of contributions paid	अदा किए गए अंशदान के चालान की तारीख Date of challan of contribution paid	नियोजक तथा बीमा निरीक्षक की गणना में अन्तर के कारण Reasons for difference in Employer's & I.I's calculation
			नियोजक Employer				बीमा निरीक्षक Insurance Inspector						
			अदा की गई अंशदान की राशि Amount of Contribution Paid				देय अंशदान की राशि Amount of contributions payable						
			कर्मचारियों की संख्या No. of employ-ess'	कुल मजदूरी Total Wages	कर्मचारियों का हिस्सा Employees Share	नियोजक का हिस्सा Employer's Share	जोड़ Total	कर्मचारियों की कुल संख्या No. of employ-ees	कुल मजदूरी Total Wages	कर्मचारियों का हिस्सा Employ-ees' Share	नियोजक का हिस्सा Employers Share	जोड़ Total		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

10. क्या "सेवा छोड़ गए कर्मचारियों', 'नए कर्मचारियों तथा साक्षात्कार किए गए कर्मचारियों सहित योजना में व्याप्ति योग्य सभी कर्मचारियों अंशदान की अदायगी के लिए मजदूरी पंजी / कर्मचारियों के रजिस्टर में ठीक प्रकार गणना की गई है ?

Have all coverable employees including left service cases, new entrants' and employees interviewed' been concern by accounted for in wages rolls / Employees register for payment of contributions ?

11.(क) यदि ऊपर क्रम संख्या 1. का उत्तर नकारात्मक है तो योजना में व्याप्ति योग्य सेवा छोड़ गए कर्मचारियों और योजना में व्याप्त कर्मचारियों की छोड़ी गई मजदूरी की विसंगति का ब्यौरा दें, यदि आवश्यक हो, ब्यौरा देने के लिए अलग शीट संलग्न करें ।

If answer at S. No. 10 above is negative, give details of discrepancies in respect of such left out coverable employees as well as excluded wages of covered employees : attach separate sheet, if necessary.

(ख) मद 2 में मजदूरी पर देय अंशदानों की कुल राशि (b) Total amount of contributions dues on wages inf Col. 2	अवधि (वर्ष) Period (s)	लेखों में शामिल न की मजदूरी की कुल राशि Total amount of unaccounted wages	कर्मचारियों की संख्या तथा उनके रोजगार की प्रकृति No. of employees and nature of their employment	छोड़ी गई मजदूरी की किस्म Type of omitted wages	नियोजक के रिकार्ड का संदर्भ जहां चित्रित किया गया Reference to employer's record where depicted
	1	2	3	4	5
कर्मचारी का Employees' _____ नियोजक का Employer's _____ कुल Total _____					

12. पोषण फार्म की प्रस्तुति / प्रेषण में पाई गई अनियमितताएं यदि कोई हों
Irregularity observed, if any in the submission of Declaration Forms

13. (क) किस अवधि का खाता प्रस्तुत किया गया Period for which ledger produced (A)	(ख) कि मास के सभी अदायगी वाउचरों की जांच की गई Month for which all payments vouchers checked (B)	(ग) यदि निरीक्षण अवधि या आंशिक अवधि के लेजर जांच हेतु प्रस्तुत नहीं किया गया तो कारण बताएं (नियोजक का पत्र साथ लगाएं तथा इस प्रयोजनार्थ निर्धारित की गई अगली तारीख का उल्लेख करें) If ledger not produced for whole or part of the Inspetion period give reasons (attach employer's letter and indicate the next date fixed for the purpose). (c)

14. (क) क्या प्रकार की मजदूरी के लिए लेखा पुस्तकों की जांच की गई है भले ही मजदूरी पंजी / सहायक अदायगी रिकार्ड तथा वाउचर आदि के माध्यम से की गई हो । जांच की गई लेखा पुस्तकों के विवरण लिखें (a) Have Account Books been checked for all types of wages whether paid through wages Rools, subsidiary payment records and vouchers etc ? Indicate names for Account Books checked.	(ख) नियोजक प्रतिनिधि का नाम व पदनाम जिसे निरीक्षण में पाई गई विसंगतियों के बारे में सूचित किया गया है । उसके कथन को रिकार्ड करें । (d) Name and Designation of employer's representative who was informed about the discrepancies detected in inspection, Record his version.,

15. क्या नियोजक ने बकाया राशि का अनुपालन किया है तथा पिछले निरीक्षण में उल्लिखित कमियों / असंगतियों का सुधार किया है । चालान सहित ब्यौरे दें जिसके माध्यम से अनुपालन किया गया है । यदि अनुपालन नहीं किया है तो उसके कारण बताएं । Has employer made compliance of arrears and rectified discrepancies / irregularities pointed compliance made. If compliance not made reasons therefor.	

16. (क) यदि कारखाना /स्थापना व्याप्ति से निकालने योग्य है (तो कृपया बताएं कि क्या व्याप्ति से निकालने का कारण बन्दी है)
If the Factory / establishment / Shop qualified for uncoverage. (State whether uncoverage is due to closure):-

अव्याप्ति की तारीख Date of uncoverage	बन्द करने की तारीख Date of closure	क्या यह स्थायी रूप से बन्द होने का मामला है Whether it is a case of permanent closure	किस रिकार्ड के आधार पर बन्द करने की सिफारिश की गई है Records on which basis closure is recommended

(ख) यदि इकाई बन्द हो गई है तो क्या इसके स्थान पर कोई अन्य इकाई काम कर रही है। यदि ऐसा है तो ब्यौरा दें (b) If unit closed, whether any other unit is working in its place. If so, details be given :-	
17. निरीक्षण किए गए तथा हस्ताक्षर किए गए रिकार्ड के ब्यौरे (रिकार्ड के लेजर फोलियो / माह आदि का भी उल्लेख करें जहां बीमा निरीक्षक अपने हस्ताक्षर करता है) Details of records inspected, and signed (also indicated Ledger Folio/ Month etc. of the record where the Insurance Inspector put his signature)	
18. यदि कारखाना / स्थापना की व्याप्ति अनन्तिम थी तो क्या अंतिम व्याप्ति की औपचारिक तारीख निर्धारित करने के लिए रिकार्ड का निरीक्षण किया गया । व्याप्ति की अंतिम तारीख बताएं । ब्यौरे अलग से संलग्न करें । व्याप्ति की तारीख को अंतिम रूप न देने के कारण दें । If coverage of factory / establishment was provisional, whether records inspected to determine final date of coverage ? Indicate final date of coverage, Attach details separately. Give reasons for not finalising date of coverage.	
19. सामान्य टिप्पणी यदि कोई हो General Observations, if any :-	
20. नियोजक के बैंक का नाम व लेखा संख्या Name of Bank & A/c No.of the employer	
21. नियोजक के लेनदारों की सूची List of Creditors of employer	
22. नियोजक की चल /अचल सम्पति से संबंधित विस्तृत सूचना Detailed information regarding moveable/ immovable properties of employer.	
23. कोई अन्य संगत अभ्युक्ति Any other remarks considered to be relevant.	

दिनांक / Date

बीमा निरीक्षक के हस्ताक्षर / Signature of I.I

* कारखाना / विनिर्माण स्थापना (बिजली सहित या बिजली के बिना) /दुकान/ होटल/ रेस्टोरां / सिनेमा/ पूर्व दर्शन थियेटर/ सड़क मोटर परिवहन/ समाचार - पत्र स्थापना

* Factory / Manufacturing Estt. (with or without power) / Shop / Hotel / Restaurant / Cinema/ Preview Theatre/ Road Motor Transport/ Newspaper Estt.

अनुबंध 'क' / ANNEXURE 'A'
निरीक्षण रिपोर्ट का कालम 8 (ख) Co. 8 (b) of I.R.

क्षेत्रीय कार्यालय में प्रस्तुत अंशदान विवरणी में पाई गई विसंगतियों के ब्यौरे
Details of discrepancies observed in the R.C. alredy submitted to Regional Office

समाप्त अंशदान अवधि C.P. ending	अंशदान विवरणी में जांचे गए मामलों की संख्या No. of cases checked from R.C	बीमा संख्या (एँ) जिसके संबंध में विसंगतियाँ पाई गई Ins. No. (s) for which discrep-ancies observed	गणना की गई मजदूरी की राशि Amount of Wages calculated			अंशदान की देय राशि में अन्तर Difference in the Amount of contributions payable	उन दिनों की संख्या जिनके लिए मजदूरी अदा की गई No of days for which wages paid in the C.P	
			नियोजक द्वारा By Employer	बीमा निरीक्षक (यों) By I.I	मजदूरी में अन्तर Difference in Wages		नियोजक के अनुसार As per Employer	बीमा निरीक्षक के अनुसार As per I.I
1	2	3	4	5	6	7	8	9

दिनांक / Date

बीमा निरीक्षक के हस्ताक्षर / Signature of Insurance Inspector

अनुबंध 'ख' / ANNEXURE 'B
निरीक्षण रिपोर्ट का कालम संख्या -1 / (ख) Col. No. 1 of I.R

मालिक/अधिष्ठाता से संबंधित सूचना
INFORMATION REGARDING OWNER / OCCUPIER

1. कारखाना अधिनियम के अधीन घोषित अधिष्ठाता का नाम व आवासीय पता
   Name & Residential Address of the Occupier delcared Under Factories Act.

2. कारखाना अधिनियम के अधीन घोषित अधिष्ठा का नाम व आवासीय पता
   Name & Residential Address of the Occupier delcared Under factories Act.

3. उपर्युक (1) में था अधिसूचित अधिष्ठाता को ऐसा नियंत्रण न दिए जाने की स्थिति में, कारखाने का वित्तीय नियंत्रण रखने वाले व्यक्ति का नाम व आवासीय पता
   Name and Residential Address of the person in financial Control of the factory, in case such control is not vested with the Occupier notified as at (1) above

4. अधिष्ठता का नाम व आवासीय पता यदि कारखाना अधिनियम के अधीन अधिसूचित नहीं है
   Name and Residentail Address of the occupier if not notified under the Factories Act.

5. निम्नलिखित का नाम व आवासीय पता
   Name and Residential Address of

   (क.) प्रबंध निदेशक तथा लिमिटेड कम्पनी की स्थिति में सभी निदेशकों का
   Managing director and all Directors in case of Ltd.Co

   (ख) साझेदारी फर्म की स्थिति में सभी साझेदारों का
   All partners in case of partnership firm

   (ग) मालिक व संचालक का (कारखाने का संचालन हेतु दिए जाने की स्थिति में)
   Proprietor and Conductor (in case the factory is given for Conducting)

इस सूचना को देने वाले नियोजक के प्रतिनिधि के
हस्ताक्षर व पदनाम
Signature & Designation
of Employer's Representative
Furnishing this information.

दिनांक / Date

KB, CH-40, 02/05 / 10,000 Copies C-10-C

EMPLOYEES' STATE INSURANCE CORPORATION
INSPECTION REPORT

(BRANCH OFFICE OF FACTORY/ESTABLISHMENT)
(CASH SYSTEM)

TO BE SUBMITTED IN DUPLICATE

Code No.		Region	Inspection Division
Name and address		Name of Inspector	
Name of Bank :	A/c No.		
Exact nature of business carried on		Date of Inspection	
L.O. to which attached		Period covered by current inspection	
		Date of the last Inspection	
Name & Designation of person contacted for inspection		Period covered by last Inspection	
1. Name & Designation of incharge		2. Name & address of Parent factory / Establishment	3. No. of employees on date of inspection
			Covered Not coverable Coverable but not covered

4. Is compliance under the Act being made directly or through parent factory / Estt ?	
5. (a) Do wage rolls include all type of wages as defined under the Act ?	
(b) if not, is employer maintaing any other record to exhibit wages in addition to those accounted for in wage rolls ? Specify (for Ex. Imprest sheet)	
6. Is register under Reg. 32 being maintained properly ? If not, specify defects and indicate whether employer was advised suitably ?	

7. Position regarding assesment and payment of contribution since last Inspection (details to be given in Annexure "A")

Contributions paid since	Contribution payable as Per Reg. 32 Register		Amount Paid in short /excess if any	Remarks
	EC deducted	Total Contributions		

8. Verification of submission of Return of contribution & rate of contribution respect of past and current contribution period falling within the period covered by Inspection. (Details of discrepancy. if any, to be given separately)

Past Contribution periods						Current contribution periods		
C.P. ending (Date)	No. of IPS	Date of submission RC	Amount	Amt. of short/ excess payment if any	No. of cases Checked & Signed	C.P. ending (Date)	No. of cases Checked & Signed	Amt. of short/ excess payment if any

b. Have the Ins. number, checked been encircled and initialled, in RCs/employees Register ?

9. Discrepancy noticed in the maintainance of FORM-7 in terms of Reg 32 and got rectified on the spot

10. Have all the coverable employees including left service cases, new entrants and employees interviewed been correctly accounted for in wage Rolls/employees register for payment of contributions for different wage periods since last inspection? (Give details seperately in case of any discrepancy observed)

11 Irregularity obsered. If any. in the submission of Declaration forms

12. (a) Period for which ledger Produced	(b) Month for which all payment vouchers checked	If ledger not produced for whole or part of the Inspection, period give reasons (And attach employer's letter & furnish details of wages in annexure "B")

13. (a) Have Accounts books been checked for all types of wages whether paid through wage rolls, subsidiary payment records an vouchers etc., (indicate names of account books checked)

(b) Description of excluded wages detected if any (if necessary furnish details separately).

EMPLOYEES TREATED COVERED			EMPLOYEE COVERABLE BUT NOT TREATED COVERED		
Period (S)	Total amount	Type of excluded wages	Period	Total Amount	No. of Employees & nature of their employment

(c) Employer's version	
14. Is accident register under Reg. 66 being maintained properly ?	
15. Is Inspection book under Reg. 102-A being maintained properly and whether the observation made by the R.O. earlier have been noted in the Inspection book by the employer ?	
16. Has employer made compliance of arrears and rectified discrepancies/irregularities pointed out as a result of last Inspection?	
17. Have arrears of contributions payable and other discrepancies / Irregularities as a result of this Inspection brought to the notice of employer / or responsible official (Name & designation)	
18. Details of records Inspected and signed.	
19. If coverage was provisional, whether records Inspected to determine final date of coverage ? If so, attach denied report. If not, give reasons.	
20. General observations, if any.	

SIGNATURE OF INSPECTOR

P.T.O.

Wage Period	Employees (covered)	EC deducted	Total Contn. payable	Total Contn. paid	Date of payment	Remarks if any

Annexure 'B' Column-12 (-)

Wage period-wise wages if ledgers and other subsidiary records not checked

Wage Period	Wages in respect of employees		Wage Period	Wages in respect of employees		Wage Period	Wages in respect of employees	
	Covered	Not coverable		Covered	Not coverable		Covered	Not coverable

"निगम हिंदी पत्राचार का स्वागत करता है"

सी-1
C-I

सर्वेक्षण रजिस्टर के लिए प्रपत्र
PROFORMA FOR SURVEY REGISTER

रजिस्टर में प्रविष्टि की तारीख Date of entry in the register	**सी-1 संख्या** C-1 No.	**प्रभाग संख्या व जोन**Div. No. & Zone	**01 प्रपत्र/ सर्वेक्षण तारीख सहित** 01Form / Survey with date	**कार्य की प्रकृति** Nature of Work	**कर्मचारियों की संख्या**No. of employees		**शक्ति का प्रयोग करने/ न करने वाले**Power/ Non-power using	कारखाना/स्थापना का नाम व पताName & Address of Factory/ Establishment	प्रधान नियोजक का नाम व पताName & address of the Principal Employer	आबंटित कूट संख्याCode No. allotted	नियोजक को सी-11 जारी करने की तिथिDate of issue of C-11 to the employer
					10000/.रु. प्रतिमाह तक मजदूरी पाने वालेDrawing wages up to Rs. 10000/- p.m.	**10000/-रु. प्रतिमाह से अधिक मजदूरी पाने वाले**Drawing wages above Rs. 10000/- p.m.					
1	2	3	4	5	6		7	8	9	10	11

व्याप्ति की तारीखDate of Coverage		जारी करने की तारीखDate of Issue			बीमा निरीक्षक को संदर्भ की तारीखDate of reference to I.I.	बीमा निरीक्षक को अनुस्मारक की तारीखDate of reminder to I.I.	नियोजक को कारण बताओ नोटिस जारी करने की तारीखDate of issue of Show Cause Notice to employer	विधिक कार्रवाई हेतु संदर्भ की तारीखDate of reference for Legal Action	अभ्युक्तियां Remarks
अनंतिम Provisional	अंतिम Final	सी-2 C-2	सी-3C-3	सी-5C-5					
12		13			14	15	16	17	18

"निगम हिंदी पत्राचार का स्वागत करता है"

आवधिक (दो वर्षों में एक बार) सर्वेक्षण रजिस्टर

सी-2
C-2

क्रम संख्या S.No.	दिनांक Date	सी-1 संख्या एवं वर्ष C-1 No. & Year	कर्मचारियों की संख्या No. of employees		शक्ति सहित/शक्ति रहित With power/ Non-power	प्रभाग/ जोन Div./ Zone	कारखाना/स्थापना का नाम व पता Name & Address of Factory/establishment	सर्वेक्षण की तारीख Date of Survey	सर्वेक्षण की तारीख Date of Survey	सर्वेक्षण की तारीख Date of Survey	अभ्युक्तियां Remarks
			10000/-रु. प्रतिमाह तक मजदूरी पाने वाले Drawing wages up to Rs. 10000/- p.m.	10000/-रु. प्रतिमाह से अधिक मजदूरी पाने वाले Drawing wages above Rs. 10000/- p.m.				सर्वेक्षण की अवधि Period of Survey	सर्वेक्षण की अवधि Period of Survey	सर्वेक्षण की अवधि Period of Survey	
								कर्मचारियों की संख्या No. of employees	कर्मचारियों की संख्या No. of employees	कर्मचारियों की संख्या No. of employees	
1	2	3	4		5	6	7	8	9	10	

"निगम हिंदी पत्राचार का स्वागत करता है"

सी-6
C-6

कारखाना/स्थापना का नाम_____ कूट संख्या. व्याप्ति की तारीख. कर्मचारियों की संख्या निम्नलिखित तारीख के अनुसार
NAME OF FACTORY/ ESTABLISHMENT CODE NO DATE OF COVERAGE NO. OF EMPLOYEES AS ON

पता/ADDRESS दूरभाष संख्या TELEPHONE NO अनंतिम PROVISIONAL अंतिम FINAL पहली अप्रैल 1ST April पहली अक्तूबर 1st October

प्रधान नियोजक का नाम व पता _____ बैंक का नाम व खाता संख्या
Name & Address of Principal Employer Name of Bank & A/c. No

अंशदान अवधि Contribution Period	क्षेत्रीय कार्यालय में प्राप्त चालान के अनुसार प्राप्त अंशदान की विवरणी Details of Contributions Deposited as per Challan received in the Regional Office			अंशदान विवरणी के अनुसार विवरण Details as per R.C.		बकाया राशि संबंधित अवधि Period to which arrears pertain	जिल्दसाजी के लिए स्थान Space for Binding	क्षेत्रीय कार्यालय में प्राप्त चालान के अनुसार जमा कराये गए ब्याज, हर्जाना तथा बकायों आदि की राशि का विवरण Details of Amount Deposited towards interest, Damages, Arrear etc. as per Challans received at Regional Office				धन वापसी का ब्यौरा Particulars of Refund		अभ्युक्तियां Remarks
	चालान CHALLANS	राशि AMOUNT	आद्यक्षर Initials	राशि AMOUNT	आद्यक्षर Initials			चालान CHALLANS	राशि AMOUNT	भुगतान का स्वरूप Nature of Payment	आद्यक्षर Initials	राशि AMOUNT	मंजूरी की संदर्भ संख्या एवं तारीखReference No. & Date of Sanction	
	संख्या No.	तारीख Date	रु. पैसेRs. P.	सहायक/ जांचकर्ता D.A./ Checker	रु. पैसे Rs. P.	सहायक/जांचकर्ता D.A./ Checker			संख्या No.	तारीख Date	रु. पैसे Rs. P.	सहायक/जांचकर्ता D.A./Checker	रु. पैसे Rs. P.	
1	2	3	4 5	6	7	8 9	10	11		12	13 14	15 16	17	18 19
अप्रैल/ APRIL														
मई/ MAY														
जून/ JUNE														
जुलाई/ JULY														

अगस्त/ AUGUST																									
सितम्बर/ SEPTEMBER																									
अंशदान अवधि का जोड़ Total for Contribution Period							कर्मचारियों की संख्या No. of employees																		
अक्तूबर/ OCTOBER																									
नवम्बर/ NOVEMBER																									
दिसम्बर/ DECEMBER																									
जनवरी/ JANUARY																									
फरवरी/ FEBRUARY																									
मार्च/ MARCH																									
अंशदान अवधि का जोड़ Total for Contribution Period							कर्मचारियों की संख्या No. of employees																		

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय/Registered AD

सी/C-18

तदर्थ आधार पर/AD HOC BASIS

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/ No._____ दिनांक/Dated_____

सेवा में/To

1. मैसर्स/M/s_____
_____
_____
_____

2. श्री/Sh._____
_____
_____
_____

महोदय/Dear Sirs,

आपको सूचित किया जाता है कि कर्मचारी राज्य बीमा अधिनियम, 1948 (इसके बाद इसे अधिनियम कहा गया है) की धारा 39 के साथ पठित धारा 40 के अधीन, अधिनियम के अंतर्गत व्याप्त किसी कारखाने/ स्थापना के प्रधान नियोजक द्वारा यथा संशोधित कर्मचारी राज्य बीमा (केन्द्रीय) नियम, 1950 के नियम 51 में उल्लिखित दरों पर, प्रत्येक कर्मचारी के संबंध में नियोजक अंशदान तथा कर्मचारी अंशदान दोनों की अदायगी की जानी अपेक्षित है। कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 29, 31 तथा 33 के अनुसार, अंशदान, निर्धारित कालावधि के अंदर इस प्रयोजन के लिए निगम द्वारा प्राधिकृत बैंक में जमा किया जाना अपेक्षित है जब तक कि इसके लिए अन्यथा न कहा गया हो।

I have to state that under Section 40, read with Section 39 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act), the Principal Employer of the factory/establishment covered under the Act, is required to pay, in respect of every employee, both the employer's contribution and the employee's contribution at the rates specified in Rule 51 of the E.S.I (Central) Rules, 1950 (as amended). The contributions are required to be paid in terms of Regulation 29,31 and 33 of the ESI (General) Regulations 1950 into a bank duly authorized by the Corporation, except where otherwise provided, and within the periods laid down for the purpose.

कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 26 के अधीन यथा-उल्लिखित अंशदानों की एक विवरणी प्रपत्र 6 में, बैंक में जमा राशि की प्राप्ति के चालान की रसीदी प्रतियों सहित, प्रत्येक अंशदान अवधि की समाप्ति पर निगम के शाखा कार्यालय में भेजी जानी है।

A Return of Contributions is to be submitted in Form 6 along with receipted copies of Challans for the amounts deposited in the Bank, to the Branch Office of the Corporation at the expiry of each contribution period as specified under Regulation 26 of the ESI (General) Regulations, 1950.

1. कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 31 के साथ पठित विनियम 29 के अनुसार अंशदान की अदायगी करने में विफल रहने पर अंशदानों की अदायगी करने में चूक या विलंब के प्रत्येक दिन के लिए अंशदान के बकायों पर प्रधान नियोजक द्वारा क.रा.बी. (साधारण) विनियम, 1960 के विनियम 31क के अंतर्गत 19.10.1989 तक 6% प्रतिवर्ष की दर से 20.10.1989 से 31.08.1994 तक 12% प्रतिवर्ष की दर से और 01.09.1994 से 30.09.05 तक 15% तथा 1.10.05 से आगे 12% प्रतिवर्ष की दर से ब्याज देय है। क.रा.बी. अधिनियम या उसके अधीन बनाये गए विनियमों के अधीन देय किसी भी ब्याज की वसूली क.रा.बी. अधिनियम की धारा 45ग से 45झ के अधीन भू-राजस्व के बकाया के रूप में की जाएगी।

In case of failure to pay contributions in accordance with Regulation 29 read with Regulation 31 of ESI (General) Regulations 1950; interest @ 6% per annum up to 19.10.1989 @ 12% w.e.f. 20.10.89 to 31.8.94 @ 15% from 1.9.94 to 30.9.05 and 12% from 1.10.05 onwards under Regulation 31 A of the ESI (General) Regulations 1950 is also liable to be paid by the principal employer on the arrears of contributions for each day of default or delay in payment of contributions. Any interest payable under the ESI Act or the Regulations framed thereunder may be recovered as arrears of land revenue under section 45 C to 45 I of the ESI Act.

2. सूचना क्षेत्रीय निदेशक/संयुक्त निदेशक/उपनिदेशक/सहायक निदेशक, कर्मचारी राज्य बीमा निगम के समक्ष प्रस्तुत की गई है और उस पर विचार करने पर उनके समक्ष यह विश्वास करने का आधार है कि :-

Information has been laid before the Regional Director /Joint Director/Deputy Director/Asstt. Director of ESI Corporation and on consideration whereof he has reason to believe:-

(1) आपने कानूनी उपबंधों के अनुसार अंशदान की अभी तक अदायगी नहीं की है तथा अंशदान विवरणी भी नहीं भेजी है।

That you have so far not paid the contributions as per provisions of the Law and have also not submitted return of contributions:-

से/From_____ तक / to_____

से/From_____ तक / to_____

(2) आप अपने रिकार्ड के आधार पर परिकलित उपर्युक्त अवधियों के लिए अपने कर्मचारियों के संबंध में वास्तव में देय अंशदान के किसी प्रकार के विवरण देने में विफल रहे हैं।

That you have failed to furnish any particulars of the contributions actually due in respect of your employees for the above said periods as worked out on the basis of your records.

(3) जिस बीमा निरीक्षक ने दिनांक ----------को आपके कारखाने/स्थापना का दौरा किया था, उसके सामने आप देय अंशदान के संगत रिकार्डों को प्रस्तुत करने में असफल रहे हैं।

That you have failed to produce the relevant records of contributions payable, before the Insurance Inspector, who visited your factory/establishment on_____.

(4) आपने इस कार्यालय के पत्र संख्या ----------दिनांक---------- में यथा उल्लिखित ----------से---------- ----------तक की अवधि के लिए अंशदान के बकायों की अदायगी नहीं की है।

You have also not paid arrears of contribution for the period from_____ to_____as pointed out in this office letter No._____dated----------

3. कृपया ध्यान दें कि अधिनियम की धारा 45क के अधीन यदि कोई कारखाना/स्थापना धारा 44 के उपबंधों के अनुसार किसी प्रकार की विवरणी, विवरण, रजिस्टर अथवा रिकार्ड प्रस्तुत नहीं करता, भेजता या रखता तो निगम इस संबंध में उपलब्ध सूचना के आधार पर आदेश द्वारा कारखाना/स्थापना के कर्मचारियों के संबंध में देय अंशदान की राशि अवधारित कर सकता है तथा उक्त अधिनियम की धारा 45ग से 45झ के अधीन वसूली की जा सकती है।

Please note that under Section 45-A of the Act, where in respect of a factory/establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44, the Corporation may, on the basis of information available to it, by an order determine the amount of contributions payable in respect of employees of such factory/establishment and the same can be caused to be recovered under Section 45 C to 45 I of the said Act.

4. तथा जबकि, अधिनियम की धारा 45क के अधीन आपके कारखाने/स्थापना के कर्मचारियों के संबंध में देय अंशदान की राशि अवधारित करने तथा वसूल करने का प्रस्ताव है जो निम्न प्रकार है:-

And whereas it is proposed to determine and recover the amount of contribution payable in respect of the employees of your factory/establishment under Section 45 A of the Act as under:-

क्र.सं. Sl.No.	देयों की प्रकृति Nature of dues	अवधि Period	देय अंशदान की राशि Amount of contribution payable	गणना का आधार Basis for calculation
1.	2.	3.	4.	5.

तथा, जबकि उक्त अवधारण तथा वसूली के विरुद्ध मैसर्स ---------- को कारण बताने का एक अवसर प्रदान करने का प्रस्ताव है।

And whereas it is proposed to afford M/s_____ an opportunity to show cause against the said determination and recovery.

कृपया 30 दिन के अंदर बताएं कि यथा प्रस्तावित निर्धारण क्यों न किया जाए। यदि आपको कोई आपत्ति है तो आपको इसके विरुद्ध स्पष्टीकरण देने तथा/या ऊपर उल्लिखित समय के अंदर उपर्युक्त अवधि के लिए आपके रिकार्ड के अनुसार देय वास्तविक अंशदान के पूरे ब्योरे देते हुए एक विवरण पेश करने का अवसर दिया जाता है। यदि आप अपना पक्ष व्यक्तिगत रूप से प्रस्तुत करना चाहते हैं तो आप अपने मामले को प्रस्तुत करने के लिए आवश्यक दस्तावेजों के साथ दिनांक ---------- को ----------बजे पूर्वाह्न/अपराह्न स्वयं या किसी प्राधिकृत प्रतिनिधि के माध्यम से अधिकारी के सामने उपस्थित हों।

Please show cause within 30 days hereof as to why assessment should not be made as proposed above. In case you have any objections, you are hereby given an opportunity to explain the same and / or to file a statement giving full particulars of the contributions actually due as per your records for the above said period within the time specified above. In case you desire to represent your case personally you may appear before the undersigned in person or through an authorized representative on _____ at _____AM/PM with necessary documents to explain your case.

5. कृपया ध्यान रखें कि जब तक आप उपर्युक्त निर्धारित समय के अंदर इस कार्यालय को संदर्भगत कालावधि के लिए वास्तविक देय बताते हुए ऊपर पैरा 4 में यथा उल्लिखित रूप टीकरण तथा/या कोई बयान प्रस्तुत नहीं करेंगे, यह कार्यालय गुण-अवगुण के आधार पर मामले में अगली कार्रवाई करेगा तथा अधिनियम की धारा 45क के अधीन एक आदेश पारित किया जाएगा तथा आपकी ओर से देय अंशदान की राशि अवधारित की जाएगी तथा देय राशि की अदायगी में चूक या विलंब के प्रत्येक दिन के लिए देय अंशदान के बकायों पर कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 31क के अंतर्गत 19.10.1989 तक 6% की वार्षिक दर से, 20.10.1989 से 31.08.1994 तक 12% की दर से तथा 01.09.1994 से 30.09.05 तक 15% तथा 01.10.05 से 12% की वार्षिक दर से ब्याज सहित उक्त राशि क.रा.बी. अधिनियम, 1948 की धारा 45ग से 45झ के अधीन भू-राजस्व के बकाया के रूप में वसूल की जाएगी।

Please take notice that unless your explanation and/or a statement as mentioned in para 4 above giving the actual dues for the periods in question is submitted to this office within the time specified as above, this office shall proceed with the case on merits and an order shall be passed under Section 45 A of the Act determining the amount of contributions due from you together with the interest payable on the said amount for each day of default or delay in payment of contribution @ 6% per annum up to 19.10.1989, @ 12% w.e.f. 20.10.1989 to 31.08.1994 @ 15% from 1.9.94 to 30.9.05 and 12% from 1.10.05 onwards under Regulation 31 A of ESI (General) Regulations, 1950 and the same shall be recovered as arrears of Land Revenue under Section 45 C to 45 I of the Act.

भवदीय/yours faithfully,

*जो लागू न हो उसे काट दें
*Delete the part, which is not applicable.

सहायक/उपनिदेशक
ASSTT./DY.DIRECTOR

टिप्पणी : यदि आप राशि की अदायगी पहले ही कर चुके हैं तो कृपया चालान संख्या, अदायगी की तारीख तथा बैंक का नाम सूचित करें।

NOTE: In case you have already paid the amount please intimate the Challan number, date of payment and the name of the bank.

यदि आप प्रधान नियोजक नहीं हैं या अब प्रधान नियोजक नहीं रहे तो आपसे निवेदन है कि आप के पद पर न रहने की तारीख सूचित करें।

In case you are not the Principal Employer or have ceased to be the Principal Employer, you are requested to intimate the date from which you ceased to be the Principal Employer.

चेतावनी: कृपया ध्यान रहे कि समय पर अंशदानों की अदायगी करने में विफल रहना अधिनियम की धारा 85 तथा 85ख के उपबंधों को प्रवृत्त करता है तथा आप अभियोजन तथा हर्जानों की अदायगी के भागीदार बन सकते हैं जो बकायों की राशि के बराबर हो सकता है।

WARNING: Please note that failure to pay contributions in time attracts provisions of Sec.85 and 85 B of the Act, rendering you liable for prosecution and payment of damages which may be equal to the amount of arrears.

"निगम हिंदी पखवाड़ा का स्वागत करता है"

अनुलग्नक -क
Annexure –A
पंजीकृत पावती देय
Regd.A.D.
सी-18 वास्तविक आधार पर
C-18 Actual Basis

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No: दिनांक/Date_____

सेवा में/To

1. श्री/Sh_____
_____
_____

2. मैसर्स /M/s_____
_____
_____

महोदय/Dear Sir,

आपको सूचित किया जाता है कि कर्मचारी राज्य बीमा अधिनियम, 1948 (इसके बाद इसे अधिनियम कहा गया है) की धारा 39 के साथ पठित धारा 40 के अधीन, अधिनियम के अंतर्गत व्याप्त किसी कारखाने/ स्थापना के प्रधान नियोजक द्वारा यथा संशोधित कर्मचारी राज्य बीमा (केन्द्रीय) नियम, 1950 के नियम 51 में उल्लिखित दरों पर, प्रत्येक कर्मचारी के संबंध में नियोजक अंशदान तथा कर्मचारी अंशदान दोनों की अदायगी की जानी अपेक्षित है। कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 29, 31 तथा 33 के अनुसार, अंशदान, निर्धारित कालावधि के अंदर, इस प्रयोजन के लिए निगम द्वारा प्राधिकृत बैंक में जमा किया जाना अपेक्षित है जब तक कि इसके लिए अन्यथा न कहा गया हो।

I have to state that under Section 40, read with Section 39 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act), the Principal Employer of the factory/establishment covered under the Act, is required to pay, in respect of every employee, both the employer's contribution and the employee's contribution at the rates specified in Rule 51 of the E.S.I (Central) Rules, 1950 (as amended). The contributions are required to be paid in terms of Regulation 29,31 and 33 of the ESI (General) Regulations 1950 into a bank duly authorized by the Corporation, except where otherwise provided, and within the periods laid down for the purpose.

1- प्रत्येक अंशदान अवधि की समाप्ति पर कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 26 में यथा-निर्दिष्ट, निगम के शाखा कार्यालय को बैंक में जमा कराई गई राशि के प्राप्ति चालानों की प्राप्तियों सहित प्रपत्र 6 में अंशदान विवरणी भी भिजवानी होती है।

A return of contributions is to be submitted in Form-6 alongwith receipted copies of challans for the amount deposited in the Bank to the Branch Office of the Corporation at the expiry of each contribution period as specified under Regulation 26 of the Employees' State Insurance (General) Regulations 1950.

2. खेद की बात है कि आपने इस कार्यालय के पत्र संख्या ---------- दिनांक ---------- द्वारा सूचित निम्नलिखित अवधियों की अंशदान राशियों का कानूनी प्रावधानों के अनुसार अब तक भुगतान नहीं किया है तथा अंशदान विवरणी भी प्रस्तुत नहीं की है।

It is regretted that you have so far not paid the Contribution as per provisions of Law for the period (s) given below as pointed out by this office letter of even number dated_____and have also not submitted the return of Contribution :

(i) ----------से----------तक----------रु०

From_____to_____ Rs._____

(ii) ----------से----------तक----------रु०

From_____to_____ Rs._____

(iii) ----------से----------तक----------रु०

From_____ __to_____ Rs._____

(iv) ----------से----------तक----------रु०

From_____to_____ Rs._____

2- कृपया नोट करें कि अधिनियम के अंतर्गत कोई भी देय अंशदान क.रा.बी अधिनियम की धारा 45ग से 45झ के तहत वसूल किया जाएगा।
Please note that any contribution payable under the Act may be recovered under Section 45 C to 45 I of the Act.

4. कृपया यह भी नोट करें कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 31 के साथ पठित विनियम 29 के अनुसार अंशदान अदा करने में विफलता की स्थिति में अधिनियम की धारा 39(5) के अंतर्गत देरी/चूक के हरेक दिन के लिए बकाया अंशदान पर 12% वार्षिक दर से ब्याज़ देय हो जाता है। कर्मचारी राज्य बीमा अधिनियम की धारा 39(5) के अंतर्गत किसी भी देय ब्याज की कर्मचारी राज्य बीमा अधिनियम की धारा 45ग से 45झ के अंतर्गत वसूली की जाएगी।
It may also please be noted that in case of failure to pay contributions in accordance with Regulation 29, read with Regulations31 of the ESI (General) Regulations 1950, interest @ 12% per annum becomes payable under Section 39(5) of the Act on arrears of contributions for each day of default or delay in payment of contributions. Any interest payable under Section 39 (5) of the act may be recovered under Section 45 C to 45 I of the Act.

2. कृपया ध्यान रहे कि यदि अद्यतन बकाया अंशदान का भुगतान इस सूचना के 15 दिन के अंदर न किया गया तो यह कार्यालय क.रा.बी. अधिनियम की धारा 45ग से 45झ के अंतर्गत देय राशि को ब्याज सहित वसूल करने हेतु बाध्य होगा ।
Please take notice that unless contributions outstanding upto date are paid immediately and in any case within 15 days thereof under intimation to this office, this office will be constrained to cause the same to be recovered under Section 45 C to 45 I of the Act.

भवदीय/Yours faithfully,

सहायक/उप निदेशक/ASSTT./DY.DIRECTOR

टिप्पणी : यदि आपने इस राशि का भुगतान पहले ही कर दिया है तो कृपया बैंक का नाम, चालान संख्या व भुगतान की तारीख सूचित करें। यदि आप प्रधान नियोजक नहीं हैं अथवा प्रधान नियोजक नहीं रहे तो ऐसी स्थिति में आपसे निवेदन है कि जिस तिथि से आप प्रधान नियोजक नहीं रहे, सूचित करें।

NOTE: In case you have already paid the amount please intimate the Challan number date of payment and the name of the bank. In case you are not the Principal Employer or have ceased to be the Principal Employer, you are requested to please intimate the date from which you ceased to be the Principal Employer.

चेतावनी: कृपया नोट करें कि समय पर अंशदान का भुगतान करने में विफलता अधिनियम की धारा 85क और 85ख की व्यवस्थाओं को आकर्षित करती है और आपको बकाया राशि के बराबर हर्जाने और अभियोजन का भागी बनाती है।

WARNING: Please note that failure to pay contributions in time attracts provisions of Sec.85 A and 85 B of the Act, rendering you liable for prosecution and payment of damages which may be equal to the amount of arrears.

"निगम हिंदी पत्राचार का स्वागत करता है"

सी/C-18
(ब्याज /INTEREST)

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक/Dated_____

सेवा में/To

मैसर्स/M/s_____
_____
_____
_____

वि ाय : क.रा.बी. अधिनियम, 1948 के उपबंधों के अधीन अनुपालन-विलंब से की गई अदायगी पर ब्याज।
Subject: Compliance under the provisions of ESI Act, 1948- interest on delayed payments.

महोदय/Dear Sirs,

आपको सूचित किया जाता है कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 31क के साथ पठित क.रा.बी. अधिनियम की धारा 39(5) के अधीन निगम को अंशदान की विलंब से अदायगी किए जाने पर ब्याज की वसूली करने के लिए शक्तियां प्रदान की गई हैं।

I have to inform you that U/S 39(5) of the ESI Act, read with Regulation 31 A of ESI (General) Regulation, 1950 the Corporation has been empowered to charge the interest on the delayed payment of contributions.

कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 31 के साथ पठित विनियम 29 के अनुसार अंशदान की अदायगी करने में विफल रहने पर अंशदानों की अदायगी करने में चूक या विलंब के प्रत्येक दिन के लिए अंशदान के बकायों पर प्रधान नियोजक द्वारा क.रा.बी. (साधारण) विनियम, 1950 के विनियम 31क के अंतर्गत 19.10.1989 तक 6% प्रतिवर्ष की दर से, 20.10.1989 से 31.08.1994 तक 12% प्रतिव र्ा की दर से और 01.09.1994 से 30.09.05 तक 15% तथा 1.10.05 से आगे 12% प्रतिव र्ा की दर से ब्याज देय है। क.रा.बी. अधिनियम या उसके अधीन बनाये गए विनियमों के अधीन देय किसी भी ब्याज की वसूली क.रा.बी. अधिनियम की धारा 45ग से 45झ के अधीन भू-राजस्व के बकाया के रूप में की जाएगी।

In case of failure to pay contributions in accordance with Regulation 29 read with Regulation 31 of ESI (General) Regulations, 1950; interest @ 6% per annum up to 19.10.1989 @ 12% w.e.f. 20.10.89 to 31.8.94 @ 15% from 1.9.94 to 30.9.05 and 12% from 1.10.05 onwards under Regulation 31 A of the ESI (General) Regulations,1950 is also liable to be paid by the principal employer on the arrears of contributions for each day of default or delay in payment of contributions. Any interest payable under the ESI Act or the Regulations framed thereunder may be recovered as arrears of land revenue under section 45 C to 45 I of the ESI Act.

जबकि आप निर्धारित अवधि के अंदर अंशदान की अदायगी करने में विफल रहे हैं, आपके द्वारा नीचे दिए गए ब्योरों के अनुसार _____ रु. ब्याज की अदायगी अपेक्षित है:-

Since you have failed to pay the contributions within the stipulated period, you are required to pay interest Rupees_____as per details given below:-

क्र.सं. Sl.No.	मजदूरी अवधि Wage Period	देय अंशदान Contribution Payable	विलंब की अवधि Period of Delay	ब्याज की राशि Amount of Interest

आपका ध्यान उपर्युक्त विषय पर इस कार्यालय के समसंख्यक पत्र दिनांक _____ की ओर दिलाया जाता है और सूचित किया जाता है कि आपने अभी तक ब्याज के रूप में _____ रु. की राशि जमा नहीं की है।

I have also to invite your attention to this office letter of even No. dated _____on the above subject and to inform you that you have not deposited the amount of Rs._____towards the interest so far.

अतः आपसे निवेदन है कि उपर्युक्त परिकलित ब्याज_____ रु. तथा_____ रु. का बकाया भी चालान पर आवश्यक अभ्युक्ति देते हुए भारतीय स्टेट बैंक में शीघ्र जमा करा दें।

You are, therefore, requested to please deposit the interest of Rs._____calculated as above and also arrears of Rs._____in the State Bank of India, giving necessary remarks on the Challan form immediately.

कृपया ध्यान रखें कि उपरिलिखित ब्याज की राशि का शीघ्र अथवा किसी भी स्थिति में इसके 15 दिनों के भीतर इस कार्यालय को सूचित करते हुए भुगतान न किए जाने पर यह कार्यालय यथा संशोधित क.रा.बी. अधिनियम, 1948 की धारा 45ग से 45झ के अधीन या भू-राजस्व बकाया के रूप में वसूलने के लिए बाध्य होगा।

Please take notice that unless interest amounts as mentioned above are paid immediately or in any case within 15 days hereof under intimation to this office, this office will be constrained to cause the same to be recovered as an arrears of land revenue or under Section 45 C to 45 I of the ESI Act, 1948, as amended.

भवदीय/Yours faithfully,

सहायक/उपनिदेशक
ASSTT./DY.DIRECTOR

टिप्पणी : यदि आपने राशि अदा कर दी है तो कृपया चालान संख्या, भुगतान की तारीख तथा बैंक का नाम सूचित करें।

NOTE : In case you have already paid the amount please intimate the Challan number date of payment and the name of the bank.

यदि आप प्रधान नियोजक न हों अथवा इस बीच प्रधान नियोजक न रहे हों तो कृपया अपने प्रधान नियोजक न रहने की तारीख सूचित करें।

In case you are not the Principal Employer or have ceased to be the Principal Employer, you are requested to please intimate the date from which you ceased to be the Principal Employer.

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय
Registered AD
सी/C-19
ब्याज़ वसूली प्रमाण-पत्र
Recovery Certificate of Interest

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक/Dated_____

सेवा में/To
वसूली अधिकारी,
The Recovery Officer,
कर्मचारी राज्य बीमा निगम
ESI Corporation
_____

विषय: ----------से ---------- तक की अवधि के अंशदानों का भुगतान विलंब से करने पर कर्मचारी राज्य बीमा अधिनियम, 1948 (यथा संशोधित) की धारा 45ग से 45झ के अंतर्गत मैसर्स_____ से ब्याज की वसूली।

Subject: Recovery of interest on delayed payment of contribution for the period from_____to_____u/s 45 C to 45 I of the ESI Act, 1948 (as amended) for Rs_____ against M/s_____.

महोदय/Sir,

मैसर्स _____ और प्रधान नियोजक श्री_____निवासी_____ क.रा.बी.(साधारण) विनियम, 1950 के विनियम 31 के साथ पठित क.रा.बी. अधिनियम की धारा 39(5) के अंतर्गत_____ से_____ तक की अवधि हेतु देय ब्याज का भुगतान करने में असफल रहे हैं।

M/s _____and the Principal Employer named Shri_____resident of _____ _____have failed to pay the interest payable under Section 39 (5) of the ESI Act read with Regulation 31 of the ESI (General) Regulations, 1950 for the period from_____to_____.

उक्त अधिनियम की धारा 39(5) के अनुसार आपसे निवेदन है कि कारखाना/स्थापना/प्रधान नियोजक _____ से –(केवल_____ रुपए) की राशि की वसूली करें और इसे भारतीय स्टेट बैंक में क.रा.बी. निगम निधि के खाता संख्या 1 में जमा करें और इसकी सूचना निम्न हस्ताक्षरकर्ता को भी दें। कृपया इसे नियोजक की कूट संख्या tks_____ है, का उल्लेख करते हुए चालान द्वारा जमा करें।

In accordance with Section 39(5) of the said Act, you are requested to recover an amount of Rs._____(Rupees_____Only) from the factory/establishment/principal employer and deposit the same in State Bank of India for credit to ESI Fund Account NO.1, under intimation to the undersigned. This may please be done by challan quoting code no. of the employer which is _____.

भवदीय/Yours faithfully,

सहायक/उपनिदेशक
ASSTT./DY.DIRECTOR

प्रतिलिपि निम्नलिखित को प्रेषित:-
Copy forwarded to:

"निगम हिंदी पत्राचार का स्वागत करता है"

सी-19/**C-19**

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या /No: _____ दिनांक /Date_____

प्रेषक /From:-
प्राधिकृत अधिकारी/The Authorised Officer,
क.रा.बी. निगम, /ESI Corporation,
_____
_____

सेवा में /To,
वसूली अधिकारी /Recovery Officer
क.रा.बी. निगम/ESI Corporation,
_____

विषय:-कर्मचारी राज्य बीमा अधिनियम, 1948 (यथा संशोधित) की धारा 45ग से 45झ के अधीन अंशदानों की वसूली के लिए आवेदन।
मैसर्स ---------- के प्रधान नियोजक के विरुद्ध कर्मचारी राज्य बीमा निगम द्वारा ---- ----------रुपए तथा----------से 12% वार्षिक की दर से ब्याज का दावा।

Sub: Application for the recovery of contribution under Section 45 C to 45 I of the ESI Act, 1948 (As Amended)_____.
Claim of Rs._____plus interest @ 12% per annum from_____by the Employees' State Insurance Corporation against Shri_____Principal employer of the factory/estt._____situated at_____.

महोदय,/Sir,
मैसर्स----------नामक कारखाना/स्थापना कर्मचारी राज्य बीमा अधिनियम (जिसे इसके बाद अधिनियम कहा गया है) के उपबंधों के अधीन व्याप्त है।
The Factory/establishment M/s _____is covered under the provisions of ESI Act (hereinafter referred to as the Act.)

3- अधिनियम के अध्याय 4, अध्याय 5 तथा 6 के उपबंध ----------की सीमाओं के अंदर आने वाले क्षेत्रों में लागू किए गए हैं और इन क्षेत्रों में स्थित अधिनियम के अंतर्गत व्याप्त कारखानों/स्थापनाओं के लिए, अपने प्रधान नियोजक के माध्यम से अधिनियम की धारा 40 के अधीन, कर्मचारियों के संबंध में, कर्मचारी राज्य बीमा (सामान्य) नियम, 1950 (यथा-संशोधित) के नियम 51 में विनिर्दिष्ट दरों पर देय अंशदान का भुगतान, जिस कैलेण्डर माह में यह देय हो उसके अंतिम दिन से 21 दिन के अंदर जमा करना अपेक्षित है, जैसा कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के विनियम 31 में अधिकथित है।
The provisions of Chapter IV, Chapter V and VI of the Act are enforced in the areas falling within the limits of _____ and the factories/establishments covered under the Act and situated within the areas mentioned above are required to pay the contribution under Section 40 through their principal employer and at the rates specified in Rule 51 of the ESI (General) Rules, 1950 as amended in respect of the employees within 21 days from the last day of calendar month in which the contributions fall due, as laid down in Regulation 31 of the Employees' State Insurance (General) Regulations, 1950.

3. उपर्युक्त कारखाना/स्थापना तथा इसके प्रधान नियोजक को ---------- से ----------तक की अवधि के लिए अपने कर्मचारियों के संबंध में अंशदान के रूप में ----------रुपए की राशि तथा इस आवेदन की तारीख तक विलंब/चूक के प्रत्येक दिन के लिए 12% की दर से ब्याज के रूप में ----------रुपए की राशि कर्मचारी राज्य बीमा निगम को अदा करनी अपेक्षित थी/है। इस प्रकार कुल राशि ----------रुपए बनती है।
The above named factory/establishment and its principal employer were and are required to pay a sum of Rs._____as contributions in respect of employees for the period from _____to _____plus Rs._____as interest at the rate of 12% per annum for each day of delay/default upto the date of this application to the Employees' State Insurance Corporation. The total amount thus works out to Rs._____.

4. अंशदान की उपर्युक्त देय राशि नोटिस के बाद तथा उचित जाँच पड़ताल और निगम के पास उपलब्ध रिकार्ड के आधार पर नियत की गई है।

The amount of contribution payable as aforesaid has been determined after notice and reasonable enquiry and on the basis of records available with the Corporation.

5. उपर्युक्त कारखाना/स्थापना तथा प्रधान नियोजक अनुस्मारक देने के बाद भी उपर्युक्त अवधि के लिए अंशदान अदा करने में विफल रहे हैं। आवेदक निवेदन करता है कि कुल ----------रु० (केवल ----------रुपए) की राशि तथा इस राशि पर दिनांक----------से वसूली की तारीख तक 12% वार्षिक की दर से --------रु. (केवल ----------रुपए) प्रतिदिन के हिसाब से ब्याज (बैंक वसूली प्रभार सहित, यदि अदायगी चैक द्वारा की गई है) की अधिनियम की धारा 45ग से 45झ के अधीन वसूली की जाए तथा इसे आवेदक को सूचित करते हुए कर्मचारी राज्य बीमा निगम निधि लेखा संख्या 1 में क्रेडिट करने के लिए जमा किया जाए। इस राशि को चालान द्वारा जमा किया जाए जिस पर नियोजक की कूट संख्या----------लिखी जाए। इसे भारतीय स्टेट बैंक में कर्मचारी राज्य बीमा निगम के खाता संख्या-1 में जमा किया जाए और कोई बैंक व्यवस्था मौजूद न होने पर इसे क्षेत्रीय निदेशक के पास जमा कराएं।

The above named factory/establishment and the principal employer failed to pay the contributions for the above period inspite of reminders. The applicant prays that the total amount of Rs._____ (Rupees_____only) plus further amount of interest @ 12% per annum calculated on the amount, @ Rs. _____ per day from_____to the date of recovery (plus collection charges of the bank, if the payment is made by cheque) as being due to Employees' State Insurance Corporation from the said principal employer, may be recovered under Section 45 C to 45 I of the Act and remitted to the credit of the Employees' State Insurance Fund Account No.1 under advice to the applicant. This may please be done by challan quoting Code No. of the employer which is_____ . The amount/cheque may be deposited in SBI A/C No. 1, where the Employees' State Insurance Fund Account is operated or may be deposited with the Regional Director concerned where no banking arrangement is in existence.

6. कारखाना/स्थापना दिनांक ----------से अनंतिम रूप से व्याप्त किया गया है और यदि इसके बाद इसे किसी पूर्व तारीख से व्याप्ति योग्य पाया गया तो व्याप्ति की अनंतिम तारीख, जिसके लिए राशि का दावा प्रमाण-पत्र कार्यवाहियों में किया गया है, से पहले की देय राशि की पार्टी से वसूली का दावा करने का निगम का अधिकार सुरक्षित रहेगा।

The factory/establishment has been provisionally covered with effect from_____and if it is found to be covered subsequently from any prior date, the Corporation reserves the right to demand recovery of any amount that may be due from the party prior to the provisional date of coverage for which amount has been claimed in this certificate proceedings.

7. इस राशि का दावा इस कार्यालय के समसंख्यक आवेदन दिनांक ----------द्वारा पहले किए गए ----------रुपए की राशि के दावे के अतिरिक्त है।

This demand is in addition to the previous demand for Rs._____(Rs._____ _____)claimed vide this office application of even number dated _____.

भवदीय/Yours faithfully,

सहायक/उप निदेशक
ASSTT./DY.DIRECTOR

प्रतिलिपि /Copy to:

श्री/श्रीमती/Shri/Smt._____
_____

मैसर्स/M/s_____
_____
_____

बीमा निरीक्षक, डिवीजन संख्या /I.I.Div.No._____

"निगम हिंदी पत्राचार का स्वागत करता है"

डी/D-18

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक/Dated_____

नोटिस
NOTICE

1. मैसर्स---------- कारखाना/स्थापना जिस पर क.रा.बी. अधिनियम के उपबंध लागू होते हैं तथा जिनके लिए क.रा.बी. अधिनियम की धारा 40 के अनुसार अंशदान (नियोजक शेयर तथा कर्मचारी शेयर) अदा करना अपेक्षित है और जिन्होंने संलग्न विवरण में दिए गए ब्योरे के अनुसार क.रा.बी. अधिनियम के अधीन बनाए गए क.रा.बी.(साधारण) विनियम, 1950 में यथा निर्धारित रीति और तय समय के भीतर अंशदान का भुगतान करने में चूक की है/अंशदान का भुगतान करने में विफल रहे हैं।

Whereas M/s _____a factory/establishment to whom the provisions of the ESI Act are applicable and who are required to pay the contributions (Employer's share and Employees' share) in accordance with Section 40 of the ESI Act and have failed to pay the contributions/made a default in making the payment of the contributions within the stipulated time and manner prescribed in the ESI (General) Regulations, 1950 framed under the Act, as per the details furnished in the enclosed statement.

2. क.रा.बी. अधिनियम की धारा 85(ख)(ii) के साथ पठित क.रा.बी.(साधारण) विनियम, 1950 के विनियम 31ग के उपबंधों के अनुसार व इनके अंतर्गत मैसर्स----------से हर्जाना निर्धारित किए जाने और वसूले जाने का प्रस्ताव है।

And where it is proposed to determine and recover from M/s_____damages as per and under the provisions of the Regulation 31 C of ESI (General) Regulation, 1950 read with Section 85(B) (I) of the ESI Act.

3. मैसर्स----------को निर्धारण तथा वसूली के विरुद्ध कारण बताने का एक अवसर प्रदान करने का प्रस्ताव है।

And whereas it is proposed to afford M/s_____an opportunity to show cause against the determination and recovery.

4. अब उक्त कारखाना/स्थापना के नियोजक के रूप में---------- निवासी श्री ---------- ----------कृपया 15 दिनों के भीतर कारण बताएं कि उन पर पीछे/संलग्न विवरण के कॉलम संख्या 7 में यथा उल्लिखित प्रतिशतता तथा अधिकतम, उक्त विवरण के कॉलम संख्या 3 में उल्लिखित राशि तक हर्जाना क्यों न लगाया जाए और वसूला जाए।

Now Shri_____R/O_____ as the employer of the above factory/establishment may please show cause within 15 days why damages to the extent of percentage as indicated in Col. No.7 of the statement on the reverse/enclosed, subject to the maximum of the amount indicated in col. No.3 of the said statement may not be imposed and recovered.

5. यदि ऊपर संदर्भित अवधि के भीतर कोई उत्तर प्राप्त नहीं होगा तो यह माना जाएगा कि कोई उत्तर नहीं देना है और हर्जाना वसूलने की कार्रवाई गुण-दोष के आधार पर की जाएगी।

If no reply is received within the period as referred to above, it will be presumed that no reply is intended and the action to recover the damages will be taken on merits.

6. यदि श्री----------अपना मामला व्यक्तिगत रूप में प्रस्तुत करने के इच्छुक हैं तो वह दिनांक----------को ---------- पूर्वाह्न/अपराह्न में आवश्यक दस्तावेजों के साथ अपना पक्ष रखने के लिए निम्नहस्ताक्षरकर्ता के समक्ष उपस्थित हों। उनके उक्त तारीख तथा समय पर व्यक्तिगत सुनवाई के लिए उपस्थित होने में असमर्थ रहने की स्थिति में यह माना जाएगा कि वे व्यक्तिगत सुनवाई नहीं चाहते हैं और उनके द्वारा प्रस्तुत लिखित अभिवेदन पर विचार करने के बाद, मामले में गुण-दो ा के आधार पर निर्णय लिया जाएगा।

In case Shri_____desires to represent his case in person he may appear before the undersigned on_____at_____A.M./P.M. with necessary documents to explain his case. If he fails to attend the personal hearing on the above date and time it will be presumed that he does not want a personal hearing and the case will be decided on merits after taking into consideration the written representation submitted by him, if any.

सहायक/उप/संयुक्त/क्षेत्रीय निदेशक
ASSTT./DY./JT./ REGIONAL DIRECTOR

सेवा में/TO

1. मैसर्स/M/s_____
_____

2. प्रधान नियोजक(नाम से)Principal Employer (by name)
_____

विवरण
STATEMENT

क्रम संख्या Sl. No.	मजदूरी अवधि Wage period	अंशदान की राशि Amount of contribution	भुगतान हेतु नियत तारीख Due date for payment	भुगतान की वास्तविक तारीख Actual Date of payment	भुगतान में विलंब की अवधि वर्ष/माह/दिन Period of Delay in Pmt. Y./M./D.	देय राशि पर लगाए जाने वाले हर्जाने की प्रतिवर्ष प्रतिशत दर Rate of damages Leviable in % per annum of the amount due
1	2	3	4	5	6	7

"निगम हिंदी पत्राचार का स्वागत करता है"

पंजीकृत पावती देय

डी/D-19

क्षेत्रीय कार्यालय
REGIONAL OFFICE
कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ दिनांक/Dated_____

सेवा में/To

वसूली अधिकारी,
कर्मचारी राज्य बीमा निगम,
The Recovery Officer,
ESI Corporation
_____

वि ाय: कर्मचारी राज्य बीमा निगम को विलंबित अदायगी करने पर क.रा.बी. अधिनियम की धारा 85ख के अधीन हर्जानों की वसूली।

Subject: Recovery of damages under Section 85 B of the ESI Act for delayed payment of the ESI Corporation.

महोदय/Sir,

मैसर्स_____
और प्रधान नियोजक श्री_____ ने_____ को समाप्त अवधि का देय अंशदान का विलंब से भुगतान करने के लिए क.रा.बी. अधिनियम, 1948 यथा-संशोधित की धारा 85ख के साथ पठित विनियम 31ग के अंतर्गत लगाए गए हर्जाने की राशि_____ रुपये (केवल---------- रुपए) का भुगतान नहीं किया है।

M/s_____ and the Principal Employer named_____ have not paid the damages amounting to Rs._____(Rs._____) levied under Regulation 31 C read with Section 85 B of the Employees' State Insurance Act, 1948 as amended, for delayed payment of contributions due/paid for the contribution period ending on _____.

उक्त अधिनियम की धारा 85ख (2) के अनुसार आपसे निवेदन है कि कारखाना/स्थापना/प्रधान नियोजक से ---------- रुपये (केवल----------रुपए) की राशि की वसूली करें और उसे भारतीय स्टेट बैंक की अनुमोदित ाखा में क.रा.बी. निगम के खाता संख्या 1 में जमा करें और इसकी सूचना अधोहस्ताक्षरी को भी दें। ऐसा कृपया चालान में नियोजक की कूट संख्या जो----------है, का उल्लेख करते हुए किया जाए।

In accordance with Section 85 B(2) of the said Act you are requested to recover an amount of Rs._____(Rs._____) from the Factory/ establishment/the Principal Employer and deposit the same in approved Branch of State Bank of India for credit to the Employees' State Insurance Fund Account No. 1 under intimation to the undersigned. This may please be done by Challan quoting Code No. of the employer which is _____.

यह धनराशि किसी भी सरकारी खज़ाने में जमा न की जाए।
The amount should not be deposited in any Govt. Treasury.

यह मांग इस कार्यालय के समसंख्यक पत्र दिनांक ---------द्वारा दावा की गई ----------रुपये (केवल---------- ----------रुपए) की पिछली मांग के अतिरिक्त है।

This demand is in addition to the previous demand of Rs._____ (Rs._____) claimed vide this office application of even no. dated_____.

भवदीय/Yours faithfully,

सहा./उप/संयुक्त निदेशक
ASSTT./DY./JT. DIRECTOR

प्रतिलिपि निम्नलिखित को सूचनार्थ प्रेषित:
Copy forwarded for information to:
बीमा निरीक्षक----------बीमा प्रभाग, क.रा.बी. निगम।
Insurance Inspector._____ Inspection Division, ESI Corporation.

" निगम हिंदी पत्राचार का स्वागत करता है।"

सी/C-20

कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION

संख्या/No._____ निरीक्षण कार्यालय/Inspection Office

मैसर्स/M/s_____ स्टेशन/Station_____

_____

_____ दिनांक/Date_____

वि ाय: कर्मचारी राज्य बीमा अधिनियम के अंतर्गत कारखाने का निरीक्षण।
Subject: Inspection of Factory under Employees' State Insurance Act.

महोदय/Sir,

मैं दिनांक ----------को क.रा.बी. अधिनियम की धारा 45 के अंतर्गत आपके कारखाने का निरीक्षण करने के लिए आऊंगा। कृपया दिनांक ----------से ----------तक की अवधि के निम्नलिखित अभिलेख (रिकार्ड) निरीक्षण के लिए तैयार रखे जाएं:-

I shall be visiting your factory for inspection under section 45 of the E.S.I. Act on_____. The following records for the period from_____to_____may be kept readily available for my examination :-

क) हाजिरी पंजिका, मजदूरी रजिस्टर, रोकड़ बहियां, ठेके के कर्मचारियों का रिकार्ड, लैजर एवं वाउचर।
a) Muster Roll, Wages Register, Cash Books, Contractor's Employees' Records, Ledger &Vouchers.

ख) भुगतान किए गए अंशदान के चालान की प्रतियां।
b) Copies of Challans for contribution paid.

ग) विनियम 102-क. के अंतर्गत निरीक्षण पुस्तिका।
c) Inspection Book under Regulation 102-A.

घ) विनियम 32 के अंतर्गत कर्मचारियों का रजिस्टर।
d) Employees' Register under Regulation 32.

ड़) विनियम 66 के अंतर्गत दुर्घटना पुस्तिका।
e) Accident Book under Regulation 66.

च) अंशदान अवधि ---------- की अंशदान विवरणियां एवं घोषणा प्रपत्र विवरणी।
f) Returns of Contribution for Contribution periods_____Return of Declaration Forms.

छ) कारखाना/स्थापना के गठन के बारे में संबंधित दस्तावेज।
g) Relevant documents regarding constitution of the Factory/establishment.

ज) क.रा.बी. अधिनियम, 1948 के अंतर्गत रोजगार, मजदूरी का भुगतान एवं अंशदानों के भुगतान से संबंधित अन्य सभी दस्तावेज।
h) All other documents pertaining to employment, payment of wages and payment of contribution under the E.S.I.Act, 1948.

भवदीय/Yours faithfully,

बीमा निरीक्षक/Insurance Inspector

C-18/C-19 Register

(Hqrs. Inst. DO No. Part File T-11/12/3/2001/Ins.III Dated 13-08-2001

Sl. No.	Name, Address Of the Fy/estt and code no.	Name of Principal Employer.	Period Of Default	Date of issue of C-18	Amount of claim in C-18		If the claim is on Adhoc basis,date of Personal hearing.	Date of issue of order u/s 45-A of the ESI Act.
					On actual basis Rs. P.	On adhoc Basis Rs. P.		
1	2	3	4	5	6		7	8

Amount as Per order Passed under Section-45 A Rs. P.	Reference to page no of employer's arrear ledger.	Amount if any paid by the employer against C-18/45 A order			Date of issue of recovery certificate i.e. C-19, if amount not paid against C-18/45 A order	
		Date of Payment	Amount Paid	Period to which the amount relates	Due date for issue of C-19	Actual date of issue of C – 19
9	10	11(a)	11(b)	11(c)	12(a)	12(b)

Amount of claim in C-19 including interest					If payments\ made on Actual bases against Adhoc claim in C1-9 Whether R.D's order Obtained to accept the Claim.If so,date thereof	Amount paid against recovery Certificate				Daed initial of		Remarks
Period	Amount of Cont.	Amount of Int.	Date upto Which amount of Interest included/ worked Out	Total of Col (b) & (c) Rs. P		Period	Amount	Date of Payment	Balance, if any	D.A.	Supdt.	
13(a)	13(b)	13(c)	13(d)	13(e)	14	15(a)	15(b)	15(c)	15(d)	16(a)	16(b)	17

EMPLOYEES STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN, KOTLA ROAD,NEW DELHI

No. T-11/13/3/2001 Ins III Dated : 24.12.2001

To

The Regional Director/Director/
Joint Director I/c
ESI Corporation,
Regional Office/Sub-Regional Office

_____

Sub : Maintenance of C-18/C-19 register followed with D-18/D-19 Registers

Sir,

Please refer to D.O letter of even no dated 13.08.2001 from the additional commissioner (Rev.) regarding maintenance of C-18 registers in the region. Performa C-18 register was also enclosed with D.O. letter inviting further suggestions from the regions with a view to improve the quality of maintenance. The suggestions received from the regions have been examined and on the basis of suggestions Col 6 of the proforma od C-18 register has been modified as under

Amount of claim in C-18

On actual basis	On Adhoc Basis	
	On assumed wages due to default in payment of regular contribution	On omitted wages based on inspection report
Rs. P.	Rs. P	Rs. P
6(a)	6(b)	6(c)

Further to maintain uniformity it also has been decided that monthly summary may please be drawn in C-18.C-19 registers, in Performa enclosed.

Therefore, you may kindly amend Col.6 of the C-18 register accordingly and also ensure the drawal of monthly summary as per the Performa enclosed

Encl : As above

Yours faithfully

Section Officer
For Additional Commissioner (Rev.)

Copy for Information and necessary action :

1. Joint Directors (F&A), Dy. Director (F&A), Regional offices/Sub-Regional office.
2. Joint Director (Vig.) NZ/SZ/WZ/EZ.3
3. Deputy Director (Inspn) Hqrs. Office.
4. MSU/HRD Branch, Hqrs office

SECTION OFFICER

C-18/C-19 REGISTER SUMMARY FOR THE MONTH OF

Part - A **Ins Branch…....**

C-18 (ISSUED)

	ADHOC			ACTUAL	INTEREST	TOTAL
	Based on I.R.	**Based on Dfltr. List**	**ADHOC TOTAL**			
			1	**2**	**3**	**(1+2+3)**
B/F ISSUED DURING THE MONTH						
TOTAL						

PART-B

45-A ACTION

1.	Total no of cases where action due on C-18 ADHOC		
2.	No of cases where payment were received		
3.	Court Cases		
4.	Acknowledgements not received/notice return undelivered (Including closed/wherein about not known cases.		
5.	P.H. not over		
6.	Any other reasons.		
7.	Total no of cases where 45-A order not due (Col 2+3+4+5+6).		
8.	No of cases due for 45-A action(Col 1-7)		
9.	No of 45-A orders issued during the month.		
10.	No of cases pending for issue of 45-A orders, although due (col.8-9)		

PART-C

C-19 Cases

1.	Cases pending for C-19		
	(Total C-18 Actuals + C-18 Inerest + Total 45-A issued)		
2.	No. of cases where payment received against C-18 Actuals		
	C-18 Interest		
	45-A		
3.	Court Cases		
4.	Reopened Cases.		
5.	Not due for C-19		
	(Notice period for C-18 Actuals /Int & 45-A not over.		
6.	Any other reason.		
7.	Total No. of cases where C-19 not due (Col 2+3+4+5+6).		
8.	No of cases due for issue of C-19 (Col 1-7)		
9.	No of C-19 issued.		
10.	No of C-19 not issued, although due (Col 8-9)		

Note : Serial no of pending cases to be listed out.

Checked & found correct

EMPLOYS STATE INSURANCE CORPORATION_____

EMPLOYERS ARREARS LEDGER

Name of factory / Establishment
Address
Phone no

Name of Bank

No. of employees On 1st April _____
April _____

Date of coverage Prov/final

Date of uncover age

C-6 ledger

	Nature of arrears Pertainint to interest, Damages arrears of Contributions defected On inspection/review of files etc.	Amount Claimed	Date of issue of C-18/D-18	Order U/a 45 A/85/B	Date of issue of C-19/D-19	Dated initial of Supervisor	Amount eceived		Balanced amount, If not recovered in full Col 3-8	Dated initial of supervisor	Remarks
							No & Date of Challan	Amount			
1	2	3	4	5	6	7	8	9	10	11	12

"निगम हिंदी पत्राचार का स्वागत करता है"

सी/C-22



कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
बीमा निरीक्षक के अलावा किसी अन्य अधिकारी द्वारा किए गए निरीक्षण की रिपोर्ट
INSPECTION REPORT BY AN OFFICER OTHER THAN I.I.

भाग-क
PART-A

1.	क्षेत्र Region		
2.	(क) (a)	कारखाने का नाम व पता Name & Address of the Factory	
	(ख) (b)	कूट संख्या Code No.	
	(ग) (c)	की जा रही विनिर्माण प्रक्रिया/कारोबार की प्रकृति Nature of Manufacturing process/Business carried on	
3.	(क) (a)	बीमा निरीक्षक का नाम जिन्होंने निरीक्षण किया था Name of the I.I. who had conducted the Inspection	
	(ख) (b)	बीमा निरीक्षक द्वारा किए गए निरीक्षण की तारीख व अवधि Date & period of inspection conducted by I.I.	
	(ग) (c)	बीमा निरीक्षक द्वारा जाँचे गए सामान्य लैज़र की अवधि Period of General Ledger checked by I.I.	
4.	(क) (a)	निरीक्षण करने वाले अधिकारी का नाम व पदनाम Name & Designation of the Officer conducting Inspection.	
	(ख) (b)	ऐसे निरीक्षणों की तारीखें Date (s) of such inspection	
	(ग) (c)	निरीक्षण के लिए चुनी गई अवधि Period chosen for inspection	
	(घ) (d)	विस्तृत निरीक्षण के लिए चुनी गई अवधि Period chosen for detailed inspection	
	(ङ) (e)	लैज़र सत्यापन के लिए चुनी गई अवधि Period chosen for ledger verification.	
5.		निरीक्षण के लिए संपर्क किए गए कारखाने के कार्मिक का नाम व पदनाम Name & designation of official of the factory contacted for inspection	

भाग-ख
PART-B

1.	कारखाने के स्वामित्व की प्रकृति Nature of ownership of the Factory		
2.	(क) (a)	प्रधान नियोजक का नाम/पदनाम/पता Name of Principal Employer/Designation/Address	
	(ख) (b)	प्रबंधक/अधिष्ठाता का नाम व पता (कारखाना निरीक्षक द्वारा दी गई घोषणा के अनुसार) Name & Address of the Manager/Occupier (as per declaration of Inspector of Factories)	
3.	रिकार्ड पर उपलब्ध पिछली सूचना से कारखाने के स्वामित्व में कोई परिवर्तन हुआ है, यदि हाँ, तो परिवर्तन की प्रकृति तथा तारीख Whether there has been any change in the ownership of the Factory since the last information available on the record, if so, date and nature of the change.		
4.	क्या क.रा.बी. अधिनियम के अधीन कारखाने की व्याप्ति के संबंध में कोई परिवर्तन हुआ है। Whether there has been any change in regard to the coverage of the factory under the ESI Act.		
5.	(क) (a)	कारखाना परिसर से बाहर स्थित कोई कार्यालय या विभाग Offices or departments, if any situated outside the factory premises.	
	(ख) (b)	क्या इन विभागों तथा कार्यालयों में काम करने वाले व्यक्ति व्याप्त हैं। Whether the persons working in these departments and offices are covered.	
	(ग) (c)	इन कार्यालयों या विभागों में किए जा रहे कार्य की प्रकृति Nature of work done in these offices or departments.	
6.	आसन्न नियोजकों को सौंपे गए कार्य की प्रकृति Nature of work entrusted to immediate employers.		
	(क) (a)	कारखाना परिसर में At Factory Premises	
	(ख) (b)	कारखाना परिसर के बाहर Outside the Factory premises	
7.	क्या आसन्न नियोजकों के अधीन काम करने वाले व्यक्ति व्याप्त हैं। Whether the persons working under immediate employers are Covered		
	(क) (a)	कारखाना परिसर में At Factory Premises	
	(ख)(b)	कारखाना परिसर के बाहर Outside the Factory premises	

8. निरीक्षण की तारीख को प्रधान नियोजक द्वारा सीधे नियोजित कर्मचारियों की संख्या
No. of employees employed directly by the Principal Employer on the date of inspection.

			व्याप्त Covered	अव्याप्त Uncovered	अव्याप्त होने के संक्षिप्त कारण Brief reasons for not covered
	(क) (a)	कारखाना परिसर में At factory premises: (1) प्रशासनिक कार्यालयों में (i) Administrative Offices (2) कारखाने में (ii) Factory side (3) अन्य में संक्षिप्त विवरण सहित (iii) Others, with brief description thereof			
	(ख) (b)	कारखाना परिसर से बाहर Outside the factory premises (1) प्रशासनिक कार्यालयों में (i) Administrative Offices (2) कारखाने में (ii) Factory side (3) अन्य में संक्षिप्त विवरण सहित (iii) Others, with brief description thereof			
	(ग) (c)	आसन्न नियोजकों द्वारा नियोजित कर्मचारियों की संख्या No. of employees employed through immediate employer			
			व्याप्त Covered	अव्याप्त Uncovered	अव्याप्त होने के संक्षिप्त कारण Brief reasons for not covered
		(1) कारखाना परिसर में (i) At factory premises: (2) कारखाना परिसर से बाहर (ii) Outside the factory premises			
	(घ) (d)	क्या उपर्युक्त (1) तथा (2) पर उल्लिखित कर्मचारियों के बारे में अनुपालन प्रधान नियोजक द्वारा किया जाता है या आसन्न नियोजक द्वारा पृथक कूट संख्या के अंतर्गत, यदि उसे आवंटित किया गया है तो Whether compliance in respect of employees as at (i) & (ii) above are made through principal employer or under the separate code no. of the immediate employer allotted, if any.			
9.		क्या नियुक्ति के तत्काल बाद अस्थाई, एवजी तथा अनियत सभी कर्मचारियों के नाम उपस्थिति रजिस्टर में लिखे जाते हैं। Whether names of all employees including temporary, substitute and casual are brought to attendance register immediately after appointment.			

10	कर्मचारियों की प्रकृति और संख्या जिनके नाम मजदूरी रजिस्टरों में नहीं लिखे जाते और जिन्हें वाउचरों के माध्यम से भुगतान किया जाता है। Type & No. of employees whose names are not brought on wages registers and to whom payment is made through vouchers		
11.	क्या मजदूरी की निम्नलिखित मदों का भुगतान किया गया है और इन्हें शामिल किया है यानि उन्हें मजदूरी पंजिका में दर्शाया गया है। Whether the following Items of wages paid and accounted for i.e. whether they are shown in the wage roll.		
	(क) (a)	समयोपरि मजदूरी Overtime wages	
	(ख) (b)	मकान किराया भत्ता House Rent Allowance	
	(ग) (c)	छुट्टी की मजदूरी Leave wages	
	(घ) (d)	बोनस, बोनस के प्रकार का संक्षिप्त विवरण Bonus, Brief description of the type of bonus.	
	(ड.) (e)	मानदेय, अनुग्रह तथा अन्य भुगतान जो नियमित मजदूरी के भाग के रूप में नहीं हैं। Honorarium, exgratia and other payments not forming part of regular wages.	
12.		क्या मद संख्या 11 के अंतर्गत उल्लिखित भुगतान की मदों में से कोई मद 'मजदूरी' की परिभाषा के अंदर नहीं आती, यदि हॉ तो संक्षिप्त कारण बताएं। Whether any of the items of payment referred to under item No. 11 does not fall within the definition of the term "wages", if so, brief reasons thereof.	

भाग-ग
PART-C

1. अंशदान (नियोजक तथा कर्मचारी का)
Contribution (Employer's and Emplyees's)

अंशदान अवधि/माह Contribution period/ month	देय अंशदान की राशि Amount of contribution payable		
	बीमा निरीक्षक की गणना के अनुसार As per calculations of InsuranceInspector	निरीक्षण करने वाले अधिकारी की गणना के अनुसार As per calculations of the officer conducting inspection	विसंगतियों के कारण, यदि कोई हो Reason for discrepancies, if any

2. नियोजक द्वारा अंशदान की अदायगी में चूक
Defaults in payment of contribution by the employer.

क्र.सं. Sl.No.	माह Month	मजदूरी Wages	कर्मचारी का अंशदान Employees' contribution	नियोजक का अंशदान Employer's contribution	कुल Total

3.	नियोजक द्वारा चूक के लिए सूचित किए गए कारण Reasons advanced by the employer for default		
4.	नियोजक द्वारा अनुपालन की संभावना Prospects of compliance by the employer		
5.	नियोजक द्वारा दूसरे पहलुओं में अनुपालन संबंधी स्थिति Position regarding compliance by the employer in other respects.		
	(क) (a)	घोषणा प्रपत्र प्रस्तुत करना Submission of Declaration Form	
	(ख) (b)	अस्थाई पहचान कार्ड जारी करना Issue of T.I.C.	
	(ग) (c)	पहचान पत्र का वितरण Distribution of Identity Card	
	(घ) (d)	वितरण के लिए लंबित पहचान पत्रों की अनुमानित संख्या Rough idea of the No. of Identity Cards pending for distribution.	
	(ङ.) (e)	अंशदान विवरणियां प्रस्तुत करना Submission of RCs	
	(च) (f)	दुर्घटना रिपोर्ट तथा ईसिक-32 रिकॉर्ड प्रस्तुत करना Submission of Accident Reports & ESIC-32 record	
	(छ) (g)	निम्नलिखित रिकॉर्ड का अनुरक्षण।Maintenance of the following records. (1) विनियम 32 के अंतर्गत रजिस्टर क्या इसे मजदूरी रोल में जोड़ा गया है (i) Register under Regulation 32 whether it is incorporated in the wage roll itself. (2) दुर्घटना पुस्तक (ii) Accident Book	

	(ज) (h)	नियोजक द्वारा उठाया गया कोई अन्य बिंदु और मौके पर दिया गया स्पष्टीकरण Points if any, raised by the employer and clarified on the spot.	
	(झ) (i)	रिकॉर्ड प्रस्तुतीकरण में अनुभव की गई कोई कठिनाई Difficulties if any, experienced in the production of records.	
	(ञ) (j)	नियोजक की ओर से विशेष तौर पर रिकॉर्ड की निर्भरता के संबंध में सामान्य सार। General summing-up of the position employer's side, particularly in regard to dependability of records.	
	(ट) (k)	निरीक्षक द्वारा आगामी निरीक्षण के समय अनुपालन आदि तथा कोई अन्य ध्यान में रखने योग्य मदें। Compliance etc. and points if any to be kept in mind by the Inspector at the time of subsequent inspection.	
	(ठ) (l)	नियोजक के विरुद्ध कानूनी कार्रवाई करने के संबंध में सिफारिश, यदि कोई हो। Recommendation, if any, with regard to legal action against employer.	

"निगम हिंदी पत्राचार का स्वागत करता है"

भाग-घ

PART-D

निरीक्षक के निरीक्षण पर टिप्पणियाँ

Comments on Inspector's Inspection

1. विभिन्न मदों के तहत नियोजक द्वारा प्रस्तुत सूचना/ब्योरों में मदवार पाई गई विसंगतियाँ, यदि कोई हों। (यदि आवश्यक हो तो अतिरिक्त शीट संलग्न करें)
Item-wise discrepancies, if any observed in the information/details furnished by the Inspector under different items. (attach additional sheet, if necessary)

क्र.सं. Sl.No.	मद की प्रकार Nature of Item	अवधि Period	लैजर फोलियो/वाउचर संख्या Ledger Folio/ Voucher No.	बीमा निरीक्षक द्वारा सूचित राशि Amount reported by the I.I.	अधिकारी द्वारा पाई गई राशि Amount observed by the officer.

2.	क्या विसंगतियों तथा चूकों में निरीक्षक की ओर से भारी लापरवाही तथा कर्तव्य की अवहेलना नजर आती है। Whether the discrepancies and omissions suggested gross negligence and dereliction of duty on the part of the Inspector	
3.	यदि विसंगतियाँ नहीं पायी गई हैं तो निरीक्षण करने वाले अधिकारी, निरीक्षण रिपोर्ट की गुणवत्ता पर अपनी अभ्युक्ति दें। If no discrepancies have been observed, the Inspecting Officer may give remarks on the quality of the Inspection report.	

निरीक्षण करने वाले अधिकारी के हस्ताक्षर
Signature of Inspecting Officer

दिनांक/Date:

स्थान/Place:

"निगम हिंदी पखवाड़ा का स्वागत करता है"

सी/C-23

कर्मचारी राज्य बीमा निगम
EMPLOYEES' STATE INSURANCE CORPORATION
सर्वेक्षण रिपोर्ट/SURVEY REPORT

भाग-क/PART-A

1.	क्षेत्र/Region	2.	निरीक्षण डिवीजन/ Inspection Div.
3.	निरीक्षक का नाम Name of the Inspector	4.	सर्वेक्षण की तारीख Date of Survey
5.	पिछले सर्वेक्षण की तारीख Date of last Survey		
6.	फैक्टरी/स्थापना का नाम Name of the Factory/Estt.		
7.	राज्य, जिला सहित पूर्ण डाक पता Postal address including State Distt.		
8.	ताल्लुका/राजस्व ग्राम का नाम/हदबस्त संख्या Name of Taluka/Revenue Village/Hadbust No.		
9.	क्या कार्यान्वयन क्षेत्र में है, यदि हाँ, तो क्षेत्र का नाम Whether in the implemented area, if so, name of the area.		
10	(i) नियोजक की कोड संख्या, यदि पहले से व्याप्त है Employer's code no., if covered earlier.		
	(ii) पहले कारखाना/स्थापना को बंद किए जाने की तारीख Date from which earlier factory/estt.closed down.		
	(iii) क्या इसी स्थान/गाला में कोई अन्य कारखाना/स्थापना पहले कार्यरत था। यदि हाँ, तो आवंटित की गई कोड संख्या का ब्यौरा दें। Whether in the same place/Gala any other factory/ estt. was functioning earlier. If so, details of Code No. allotted, if any		
11.	कर्मचारी(यों) का नाम जिससे संपर्क किया Name & designation of the official (s) contacted.		

भाग-ख/PART-B

1.	(क) (a)	क्या यह एक सार्वजनिक अथवा निजी लिमिटेड कम्पनी/साझेदारी/स्वामित्व वाली/मालिकाना/ सहकारी संस्था है(संस्था के संगम ज्ञापन और संगम अनुच्छेद/साझेदारी विलेख/संकल्प की प्रति संलग्न करें)। Whether it is Public or Private Ltd. Company Partnership/Proprietorship/Co-operative Society/ Ownership (attach copy of Memorandum & Articles of Association/ Partnership Deed/Resolution		
	(ख) (b)	मौजूदा मालिक/प्रबंध निदेशक, निदेशक/प्रबंध साझेदारों/सहकारी समिति के सचिव का नाम, मौजूदा तथा स्थायी निवासीय पता दें। Give name, present & permanent residential address of present Proprietor/Managing Directors,Director/Managing Partners, Partners/Secretary of the Co-operative Society.		
2.		कारखाना/स्थापना के शुरू करने की तारीख Date of Start of factory/estt.		

3.	(क) (a)	कारखाना/स्थापना में चल रहे काम का स्वरूप Nature of work carried on in the factory/estt.		
	(ख) (b)	क्या विनिर्माण प्रक्रिया में शक्ति का प्रयोग किया जाता है। यदि हाँ, तो कब से (शक्ति से चलाई जाने वाली मशीन का ब्यौरा दिया जाए)। Whether power is used in the manufacturing Process. If so, since when (details of machine to be specified which are run by power).		
	(ग) (c)	कारखाने के परिसर/कारखाने के परिसर के बाहर आसन्न नियोजक के माध्यम से अथवा प्रधान नियोजक के पर्यवेक्षण में किये गये कार्य का स्वरूप। Nature of work performed through immediate employer at the factory premises/outside the factory premises or under the supervision of the Principal employer.		
4.	(क) (a)	क्या व्याप्ति योग्य है? यदि हाँ, तो संबंधित तारीखें जब फैक्टरी में10/20 व्यक्ति या10/20 से अधिक कर्मचारी नियोजित थे(आसन्न नियोजक द्वारा अस्थायी/अनियत तथा उजरती दर कर्मचारियों को शामिल करके)। Whether coverable? If so, relevant date when the factory had 10/20 or more than 10/20 employees (including temporary/casual and piece rated employees engaged by the immediate employer).		
	(ख) (b)	विनिर्माण प्रक्रिया के लिए शक्ति(पावर)के बारे में दस्तावेजी साक्ष्य का विवरण, मजदूरी पर नियोजित व्यक्तियों की संख्या जिस पर व्याप्ति आधारित है। Details of documentary evidence regarding use of power in manufacturing process, no. of employees employed for wages on which coverage is based.		
5.		अगर व्याप्ति योग्य नहीं है तो अव्याप्ति का स्प ट कारण बताएं। If no coverable please give the exact reason for non-coverage.		
6		क्या कर्मचारी भवि य निधि अधिनियम के अधीन व्याप्त है? यदि हाँ, तो कोड संख्या और व्याप्ति की तारीख। If covered under EPF Act? if, so, Code No. and date of coverage.		
7.	(क) (a)	निरीक्षण किए गए रिकार्ड तथा रजिस्टरों की सूची और इनके निरीक्षण की अवधि। यदि निरीक्षण नहीं किया गया है तो इसके कारण तथा बकाया रिकार्ड अर्थात् अगले निरीक्षण की तारीख को निर्धारित करने आदि के लिए की गई व्यवस्था का उल्लेख करें। List of records and registers and period for which inspected, if not inspected, reasons thereto and arrangement made with the employer for inspection of the remaining records, viz. fixing of date of next inspection, etc.		
	(ख) (b)	रिकार्डों के उक्त सत्यापन से सामने आए विवरण/ब्यौरा(महत्वपूर्ण सूचना को रिकार्ड किया जाये तथा नियोजक से सत्यापित करवाया जाए) Particulars/data emerged from the said verification of records (important information should be recorded and got attested by the employer).		

केवल उपांतिक(मार्जिनल) कारखानों के मामले में/IN CASE OF MARGINAL FACTORIES ONLY

8.	(क)	यदि कारखाने के परिसर में काम करने वाले व्यक्तियों की संख्या 10/20 या उससे अधिक केवल तब बनती है जब कार्यकारी साझेदारी/प्रबंधक/अंशकालिक कर्मचारियों अथवा सामान्य रूप से कारखाना परिसर के बाहर काम करने वाले कर्मचारियों को शामिल किया जाए तो ऐसे प्रत्येक व्यक्ति के पूरे, किन्तु संक्षिप्त ब्योरे, उनके पदनाम सहित दें जो पुनः व्याप्ति की तारीख पर काम पर पाए गए हों(यदि आवश्यक हो तो अतिरिक्त कागज का प्रयोग करें)।		
	(a)	If the number of employees working in the factory premises comes to 10/20 or more only by inclusion of employees like working partners/ Managers/Part-time employees or employees working ordinarily outside the factory premises, give full and precise particulars of each such person with their designations and found working on the date of re-coverage, (use extra sheet if necessary).		
	(ख)	ऐसे दस्तावेजों के ब्योरे दें, जिनसे यह पता चले कि उक्त कर्मचारी कारखाने के परिसर में कार्य कर रहे थे।		
	(b)	Give particulars of documents, which may show that the said employees were working in the factory premises.		
	(ग)	अन्य कोई अभ्युक्तियाँ		
	(c)	Any other remarks.		

स्थान/Place:

तारीख/Date:

बीमा निरीक्षक के हस्ताक्षर
Signature of the Insurance Inspector

HQRS INSTRUCTIONS REFERRED TO IN THE MANNUAL			
SL. NO.	**HQRS. INSTRUCTION NO**	**CHAPTER**	**PARA NO.**
1.	P-11 (21)-33/Misc./95-Ins.-IV dated 02.02.1999	CHAPTER-II	L.2.5
2.	T-11/13/51/98-Ins.-IV dated 30.01.2001	CHAPTER-II	L.2.6
3.	T-11/14/43/1/2001-Ins.-IV dated 24.10.2002	CHAPTER-II	L.2.8
4.	P-11/13/85-Ins.-IV, Instruction No.11 dated 14.10.1986 and 16.04.1987	CHAPTER-II	L.2.10
5.	P-11/14/4/79-Ins.Desk dated 16.12.1979	CHAPTER-II	L.2.11
6.	T-11/13/23/75-Ins.-IV dated 04.03.1998	CHAPTER-II	L.2.11
7.	T-11/13/232/20/75-Ins.-IV dated 24.03.1998	CHAPTER-II	L.2.13
8.	P-11(21)-34/2/94-Ins.-IV dated 30.11.2002	CHAPTER-II	L.2.19
9.	T-11/13/32/1/99-Ins.-IV dated 16.01.2001	CHAPTER-III	L.3.5
10.	P-11(21)-1/1/2000-Ins.-IV dated 14.02.2003	CHAPTER-III	L.3.5
11.	T-11/13/31/1/95-Ins.-IV dated 28.08.2002	CHAPTER-III	L.3.6
12.	P-11-21/4/75-Ins. Desk-I dated 02.02.1977	CHAPTER-III	L.3.12
13.	T-11/13/31/2/94-Ins.-IV dated 26.12.200...	CHAPTER-III	L.3.12
14.	P-11/21/4/75-Ins.Desk-I dated 02.02.1977 and P-11/21/4/79 Ins. Desk-I dated 26.02.1979	CHAPTER-III	L.3.12
15.	T-11/13/-Ins.-IV dated 16.01.2001	CHAPTER-III	L.3.12
16.	P-11/14/12/22/2001-Ins.-IV dated 07.10.2002	CHAPTER-III	L.3.13
17.	P-12(11)-11/27/99-Ins.-IV dated 14.06.1999	CHAPTER-III	L.3.14
18.	P-12(11)-44/3/2002-Ins.-IV dated 02.04.2002	CHAPTER-III	L.3.14
19.	S-11/13/01/2002-Ins.-IV dated 22.11.2002	CHAPTER-III	L.3.15
20.	P-12/11/Misc./2010-Rev.-II dated 07.08.2010	CHAPTER-III	L.3.15
21.	P-11/14/1/97-Ins.-IV dated 03.05.2002	CHAPTER-V	P.5.4
22.	P-11/14/1/08-Rev.-II dated 11.07.2008	CHAPTER-V	P.5.4
23.	P-11/19/2009-Rev.-I dated 03.08.2009	CHAPTER-V	P.5.7

24.	S-11/13/1/2009-Rev.-II dated 30.09.2010	CHAPTER-V	P.5.9
25.	P-12/11/31/21-99-Ins.-IV dated 01.05.2010	CHAPTER-V	P.5.16
26.	P-12/11/31/21-99-Rev.-II dated 31.12.2008	CHAPTER-V	P.5.16
27.	P-12/11/11/103/2008-Rev.-II dated 12.01.2011	CHAPTER-V	P.5.16
28.	T-11/13/23/20/75-Ins.-IV dated 04.03.1998	CHAPTER-VI	L.6.7
29.	P-11/14/96-Ins.-IV dated 02.02.1999	CHAPTER-VI	L.6.8
30.	P-12(11)11/27/99-Ins.-IV dated 31.03.2000	CHAPTER-VI	L.6.15
31.	T-11/13/54/4/2001-Ins.-IV dated 24.09.2002	CHAPTER-VI	L.6.16
32.	S-11/12/1/2002-Ins.-IV Col.-IV dated 28.08.2002	CHAPTER-VI	L.6.16
33.	T-11/13/23/20/75-Ins.-IV dated 04.03.1998	CHAPTER-VI	L.6.16
34.	T-11/13/54/3/93-Ins.-IV dated 11.11.1999	CHAPTER-VII	L7.9
35.	T-11/13/13/1/99-Ins.-IV dated 02.05.2000	CHAPTER-VII	L7.9
36.	S-11/12/1/2002-Ins.-IV Col.II dated 02.04.2003	CHAPTER-VII	L7.9
37.	P-11/13/97-Ins.-IV (2/97) dated 27.01.1997	CHAPTER-VII	L7.9
38.	T-11/13/53/08/2001-Ins.-IV dated 21.11.2001	CHAPTER-VII	L7.9
39.	P-11/13/97-Ins.-IV dated 02.02.1999	CHAPTER-VII	L7.9
40.	P-11/13/97-Ins.-IV dated 06.05.2003	CHAPTER-VII	L7.9
41.	S-11/12/2/2007-Rev.-II dated 14.03.2008	CHAPTER-VIII	L8.13
42.	T-11/14/41/84-Ins.-IV dated 09.03.2000	CHAPTER-VIII	L8.16
43.	T-11/14/41/84-Ins.-IV dated 09.03.2010	CHAPTER-IX	L9.4
44.	T-11/14/41/84-Ins.-IV dated 09.03.2000	CHAPTER-IX	L9.9
45.	S-11/15/1/98-Ins.-IV dated 16.11.1999	CHAPTER-X	L.10.2
46.	S-11/15/1/98-Ins.-IV dated 11.06.1999	CHAPTER-X	L.10.2
47.	S-11/15/1/98-Ins.-IV dated 30.03.1999	CHAPTER-X	L.10.2
48.	S-11/13/1/1/2009-Rev.-II dated 30.09.2010	CHAPTER-X	L.10.2
49.	Z-17/11/52/11/MPR (DG)/97-Ins.-IV dated 12.12.2002	CHAPTER-X	L.10.2

50.	Z-11/15/199-P&D dated 17.06.1999	CHAPTER-X	L.10.6
51.	T-11/13/3/2008-Rev.-II dated 31.12.2008	CHAPTER-X	L.10.6
52.	S-11/13/1/1/2009-Rev.-II dated 30.09.2010	CHAPTER-X	L.10.6
53.	Q-11-20/3/2003-Ins.-III dated 24.01.2003	CHAPTER-XI	P.11.13
54.	T-11/13/C-6-Ledger/2004/Ins.-III dated 05.05.2005	CHAPTER-XI	P.11.19
55.	P-12/11/11/38/2010/Rev.-II dated 10.01.2010	CHAPTER-XI	P.11.26
56.	P-11/14/57/Misc./03-Rev.-II dated 07.03.2006	CHAPTER-XI	P.11.26
57.	T-11/13/BIFR/2011-Rev.-I dated 12.01.2011	CHAPTER-XII	L.12.4
58.	P-11/14/57/Misc./03-Rev.-II dated 07.03.2006	CHAPTER-XII	L.12.6
59.	T-11/13/3/2006-Rev.-I dated 19.04.2007	CHAPTER-XII	L.12.7
60.	T-11/13/1/2010-Rev.-I dated 16.08.2010	CHAPTER-XII	L.12.7
61.	T-11/13/3/95-Ins.-III dated 28.11.2000	CHAPTER-XII	L.12.9
62.	V-36/15/2000-Ins.-III dated 26.07.2002	CHAPTER-XII	L.12.9
63.	S-11/12/1/2000-Ins.-IV dated 01.05.2000	CHAPTER-XII	L.12.10
64.	T-11/13/3/95-Ins.-III dated 21.06.1999	CHAPTER-XII	L.12.10
65.	T-11/22/Policy/MPR/2005-Ins.-III dated 23.03.2005	CHAPTER-XII	L.12.16
66.	T-11/13/3/95-Ins.-III dated 16.02.2001	CHAPTER-XIII	L.13.2
67.	T-11/13/3/2008-Rev.-I dated 01.05.2008	CHAPTER-XIII	L.13.3
68.	T-11/13/3/95-Ins.-III dated 16.10.2001	CHAPTER-XIII	L.13.3
69.	T-11/13/3/2002-Ins.-I dated 27.11.2002	CHAPTER-XIII	L.13.3
70.	S-11/12/2/2007-Rev.-II dated 05.07.2008	CHAPTER-XIII	L.13.3
71.	P.11/14/41/79-Ins.-IV dated 26.06.1982	CHAPTER-XIII	L.13.4
72.	P.11/14/5/85-Ins.-IV dated 17.07.1985	CHAPTER-XIII	L.13.4
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9.	Monitoring the performance of ROs/SROs on the review of employers' files.
10.	Allotment of Regional Code Number to the newly set up Regions / Sub – Regions.
11.	Deals with queries raised in the SC/ESIC meetings and Parliament Questions relating to the Branch.
12.	Examination and approval of replies to external and internal audit report related to Revenue Branch-I.
13.	Replies to the queries raised by Standing Committee / ESI Corporation meeting and Parliament Question related to above matters.
14.	Examination of Tour notes of Officers related to Revenue Branch-I.
15.	Policy in respect of Monthly performance report of Revenue Branch Officers.
16.	Examination of Inspection report related to this Branch.

REVENUE BRANCH-II	
1.	Examination of High court judgements against the Corporation relating to revenue matters for filing S.L.P. in the Supreme Court.
2.	Circulation of important Supreme Court judgements and issue of instructions in respect of revenue maters based on judgements.
3.	Examination and circulation of important High Court judgements.
4.	Examination of E.OI. Court judgements in respect of revenue maters where Regional Director is deciding not to file appeal.
5.	Issues related to appointment and payment of fees to the advocate of E.I. Court / High Court.
6.	Monitoring of progress in prosecution under Section 85 of ESI Act and under Section 406 / 409 of IPC.
7.	Policy matters relating to test inspection, inspection and survey of factories/ establishments.
8.	Interpretation of Section 1(5), 1 (6), 2*(9), 2(13), 2(17), 2(19-A), 2(22) and 93-A of ESI Act; Attending to the complaints received from the Employers', Employers' Association, Trade Unions and references received from Regional Offices / Sub Regional Offices and VIPs on coverage, demand of contributions / recovery of contribution.

9.	Periodical review of Prosecution cases, E.I. Court cases, High Court cases, Inspection, Survey, Test Inspection, FDC.
10.	Issue related to coverage of factories / establishments.
11.	Examination and compliance report on revenue matters submitted by Regional Directors in response to the report of the Hqrs. Inspection Team / Senior officers.
12.	Supply of information of external audit in r/o of matters dealt in Revenue Branch – II.
13.	Examination of tour notes of Regional Directors relating to revenue matters.

REVENUE RECOVERY CELL

1.	Monitoring Recovery in the Regions.
2.	Issue instructions/ directions to Recovery Officers / Regional Directors.
3.	Arranges Training Programmes in Revenue and Recovery at various centers of National Academy of Direct Taxes.
4.	Arranges meetings of Recovery Officers in the Regions to redress grievances of Recovery officers.
5.	Makes proposals for appointment of Recovery Officers in the Regions.
6.	Frames general policy / rules and fixes target of recovery for Recovery Officers.
7.	To review the position of recovery progress quarterly to launch special drive for better recovery.
8.	To put annual position of recovery progress before the Director General and take action accordingly.
9.	To implement the Regional Recovery Cells in the regions through notification by the Ministry of Labour.
10.	Replies to the queries raised in the Standing Committee / Corporation meetings and Parliament Questions concerning revenue matters.

PLANNING & DEVELOPMENT SECTION

1.	Formulates strategies and plans for implementation of ESI Scheme to new areas and new sectors of employment.
2.	Scrutinize and process proposals for amendment of ESI Act, Central Rules and General Regulations.
3.	Coordinates Parliament Questions / Parliamentary Committees (Standing Committee/ Consultative Committee), various Sub Committees of the ESI Corporation on Insurance matters – Task Force etc.
4.	Work relating to ISSA & ILO - preparation of Reports / Country Papers / Reports on ILO Conventions.
5.	Deputation of officers for participation in ISSA meetings etc.
6.	Labour Ministers' Conferences / Indian Labour Conferences etc.
7.	O&M Meetings by DG / FC / IC.