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India

Transferee Held Liable for Provident Fund Default of the Transferor

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In a business transfer, the transferee/purchaser of the business may be held liable for the previous defaults of the transferor in making provident fund (social security) contributions, despite any express agreement between the parties specifically assigning such liabilities, the Supreme Court of India ("Supreme Court") has held in a recent decision.¹

In its decision, the Supreme Court observed that:

- the relevant legislation (being the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act")) is a beneficial legislation which needs to be construed in the best interests of employees;
- in addition to payment of outstanding contributions, the transferee may also be made liable for payment of punitive damages as determined under the EPF Act;
- inter-se covenants between two entities would not insulate the new employer from damages that may be imposed under the EPF Act.

¹*McLeod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and others*, 2014(8)SCALE272