

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

IV.11 Guidelines on Contribution Period in Respect of a Relevant Employee

INTRODUCTION

Section 7A(10) of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) sets out the definition of a contribution period in respect of a relevant employee.

2. Section 6H of the Ordinance provides that the Mandatory Provident Fund Schemes Authority (“the Authority”) may issue guidelines for the guidance of approved trustees, service providers and other persons concerned with the Ordinance.

3. The Authority hereby issues guidelines on the determination of a contribution period in respect of a relevant employee.

CONTRIBUTION PERIOD

4. Section 7A(10) defines contribution period in respect of a relevant employee to mean a period for which an employer pays or should pay relevant income to the employee. Whether a payment of relevant income is a payment for a completed contribution period or a partial payment within a contribution period is a matter of fact.

5. In determining whether a payment of relevant income is a partial payment within a contribution period, the Authority will consider both the payment pattern and the terms of employment. The Authority’s view is

illustrated in the following examples.

6. An employer usually pays salary to a relevant employee at the end of a month. At the request of the employee, the salary payments for two months are split into four equal, bi-weekly instalments. The monthly payment pattern resumes after these two months. In this case, the bi-weekly payments are deviations from a regular pattern. The Authority considers these two months as two monthly contribution periods rather than four bi-weekly contribution periods and therefore only one mandatory contribution is required to be made for each of these two months.

7. Some employers may regularly make two salary payments to their employees in a month. For example, an employer may make two equal payments, say on the 10th and 25th of each month, to a relevant employee. The payment on the 10th represents salary earned from the beginning of the month to the 10th and the pre-payment of salary from the 10th to the middle of the month. Similarly, the payment on the 25th represents salary earned from the middle of the month to the 25th and the prepayment of salary from the 25th to the end of the month.

8. In this case the payment pattern may indicate either a bi-weekly or a monthly contribution period. Reference should then be made to the terms of employment to determine whether the contribution period is a fortnight or a month.

9. If either the date or the amount of the payments made in the middle of the month by the employer in the previous example is not specified in the employment contract or is at the discretion of the employer, then the first payment should normally be regarded as a partial payment made within a

contribution period. In other words, the contribution period for the employee should be a month.

10. As section 22 of the Employment Ordinance (Cap. 57) provides that the wage period in respect of which wages are payable under a contract of employment shall be deemed to be one month unless the contrary is proved, the Authority is of the opinion that unless there is strong evidence which suggests otherwise, the contribution period of a relevant employee will normally be of a one-month period.

Contribution Period in Respect of an Employee Who Commences Employment Before the Age of 18

Employee Who Commences Employment On or Before 1 December 2000

11. For an employee who is under the age of 18 on 1 December 2000 and has commenced employment on or before 1 December 2000, the employer should enrol the employee as a member of a registered scheme on or before 29 January 2001 or the employee's 18th birthday, whichever is the later. If the employee attains the age of 18 on or after 31 December 2000, both the employer and the employee should make mandatory contributions from the employee's 18th birthday. Where the employee attains the age of 18 on or before 30 December 2000, the employer should make mandatory contributions from the employee's 18th birthday while the employee should make mandatory contributions from 31 December 2000.

12. For example, an employee who commences employment on 15 November 2000 attains the age of 18 on 1 March 2001. The employer should enrol the employee on or before 1 March 2001 as a member of a registered scheme and both the employer and the employee should make mandatory

contributions from 1 March 2001 (i.e. the 18th birthday of the employee).

Employee Who Commences Employment After 1 December 2000 but Before 1 February 2003

13. For an employee who is under the age of 18 and commences employment after 1 December 2000 but before 1 February 2003, the employer should enrol the employee as a member of a registered scheme on or before the 60th day of employment or the day on which the employee attains the age of 18, whichever is the later. In the event that the employee attains the age of 18 within the first 30 days of employment, the employer should make mandatory contributions from the employee's 18th birthday and the employee should make mandatory contributions from the 31st day of employment. In the case that the employee attains the age of 18 after the first 30 days of employment, both the employer and the employee should make mandatory contributions from the 18th birthday of the employee.

14. For example, an employee commences employment on 15 December 2000 attains the age of 18 on 1 January 2001. The employer should enrol the employee on or before 12 February 2001 (i.e. the 60th day of employment) as a member of a registered scheme. As the employee attains the age of 18 within the first 30 days of employment (i.e. 13 January 2001), the employer should make mandatory contributions for the employee from 1 January 2001 (i.e. the employee's 18th birthday) and the employee should make mandatory contributions from the 31st day of employment (i.e. 14 January 2001).

Employee Who Commences Employment On or After 1 February 2003 and Reaches the Age of 18 Before 18 January 2008

15. For an employee who commences employment on or after 1

February 2003 whilst under the age of 18 and attains the age of 18 before 18 January 2008, the employer should enrol the employee as a member of a registered scheme on or before the 60th day of employment or the day on which the employee attains the age of 18, whichever is the later.

Employees with Wage Period not more than 1 Month

16. In the event that the employee attains the age of 18 on or before the last day of the wage period in which the 30th day of employment falls, the employer should make mandatory contributions from the employee's 18th birthday and the employee should make mandatory contributions from the first day immediately following the wage period in which the 30th day of employment falls. In case the employee attains the age of 18 after the wage period in which the 30th day of employment falls, both the employer and the employee should make mandatory contributions from the 18th birthday of the employee. Examples of the enrolment and contribution arrangements for this category of employees are set out in Annex A.

Employees with Wage Period more than 1 Month

17. In the event that the employee attains the age of 18 on or before the last day of the calendar month in which the 30th day of employment falls, the employer should make mandatory contributions from the employee's 18th birthday and the employee should make mandatory contributions from the first day immediately following the calendar month in which the 30th day of employment falls. In case the employee attains the age of 18 after the last day of the calendar month in which the 30th day of employment falls, both the employer and the employee should make mandatory contributions from the 18th birthday of the employee. Examples of the enrolment and contribution arrangements for this category of employees are set out in Annex B.

Employee Who Commences Employment On or After 1 February 2003 and Reaches the Age of 18 On or After 18 January 2008

18. For an employee who commences employment on or after 1 February 2003 whilst under the age of 18 and attains the age of 18 on or after 18 January 2008, section 7D of the Ordinance provides that the Ordinance applies to the employer and the employee as if they had entered into the contract of employment on the day on which the employee reaches 18 years of age. For example, an employee commences employment on 15 January 2008 and attains the age of 18 on 2 April 2008. If the employee remains in the same employment on 31 May 2008 (i.e. the 60th day of employment from 2 April 2008), his employer is required to enrol him as a member of a registered scheme and make mandatory contributions for his relevant income from 2 April 2008.

Contribution Period in Respect of a Relevant Employee Who Ceases Employment

Employee Who Ceases Employment Before 1 February 2003

19. If, in accordance with the employment contract, all outstanding relevant income becomes payable to a relevant employee on his cessation of employment, then the contribution period comes to an end on the day when the employment is terminated. Accordingly, the mandatory contributions in respect of the relevant employee for the relevant income paid or payable on the last day of employment should be made on or before the tenth day after the day of cessation of employment (i.e. the last day of the contribution period).

20. However, if part of the relevant income becomes payable after the cessation of work, then the employment contract is not considered to be terminated until the employer's legal obligations under the employment contract terminate or are performed. Once the employer's legal obligations under the

employment contract terminate or are performed (i.e. the last batch of relevant income is paid or becomes payable), the contribution period will come to an end and the mandatory contributions in respect of the relevant employee should be made on or before the tenth day after the last day of that contribution period.

21. For example, if a relevant employee remunerated on a calendar month basis ceases employment on 10 April 2001 and all his outstanding relevant income is paid to him on that day, the mandatory contributions for his last contribution period should fall due on 20 April 2001. However, if his salary for April is payable under his employment contract on 30 April 2001 (following the normal remuneration cycle), the contribution period would end on 30 April 2001 and the mandatory contributions would be due on 10 May 2001.

Employee Who Ceases Employment On or After 1 February 2003

22. If a relevant employee (other than a casual employee) ceases employment on or after the 1 February 2003, the employer may make the last contribution in respect of the employee on or before the tenth day after the last day of the calendar month in which the employee ceases employment. Examples of the contribution arrangement for employees who cease employment on or after 1 February 2003 are set out in Annex C.

Contribution Period in Respect of an Employee Who Attains the Age of 65

23. If an employee reaches the age of 65, both the employer and the employee are required to make mandatory contributions for his relevant income earned before the employee's attainment of the age of 65. If the employee remains in the same employment after the attainment of the age of 65, no mandatory contribution is required to be made for any income earned by the employee after the attainment of the age of 65. In case the employee ceases

employment immediately on attainment of the age of 65, the last contribution period for the employee should end on the completion of the last contribution period before his attainment of the age of 65. The employer should make the last mandatory contribution in respect of the employee on or before the tenth day after the last day of the calendar month in which the employee attains the age of 65.

24. For example, if an employee, who is remunerated on a calendar month basis, reaches the age of 65 during a month (e.g. 16 June 2005) and remains in the same employment after the attainment of the age of 65, no mandatory contribution is required to be made by both the employer and the employee for income earned by the employee for the period from 16 June 2005 to 30 June 2005. The last contribution period should start from 1 June 2005 and end on 15 June 2005 and the last mandatory contributions should be made on or before 10 July 2005 (being the tenth day after 30 June 2005). Similarly, in case the employee ceases employment immediately on attainment of the age of 65, the last contribution period should start from 1 June 2005 and end on 15 June 2005 and the last mandatory contributions should be made on or before 10 July 2005 (being the tenth day after 30 June 2005). Even if the outstanding salaries for the period from 1 June 2005 to 15 June 2005 are paid to this employee on or after 16 June 2005 (i.e. after his attainment of the age of 65), the salaries for the period before the employee's attainment of the age of 65 should be considered as relevant income and therefore mandatory contribution is payable thereon.

Employee Who is a Casual Employee

25. For the purposes of paragraphs 13 to 18, if the employee is a casual employee, the deadline for enrolment would be 10 days rather than 60 days and mandatory contributions for the employee by both the employer and the

employee should be made from the employee's 18th birthday. In all other examples set out above, if the employee is a casual employee who is a member of an industry scheme and his employer has agreed with the approved trustee to make mandatory contributions on the next working day (other than a Saturday) immediately subsequent to the payment of a relevant income for the relevant contribution period, then the contributions would be due on the next working day (other than a Saturday) subsequent to the payment day of the relevant income rather than on the tenth day after the end of the contribution period.

DEFINITION OF TERMS

26. Except where otherwise specified in the Guidelines, the terms common to the Ordinance and the subsidiary legislation of the Ordinance carry the same meanings as defined in the Ordinance and the subsidiary legislation. Reference should be made to the Ordinance and the subsidiary legislation, where necessary.