

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

IV.20 Guidelines on Prepayment of Contributions

INTRODUCTION

Section 4(1) of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provides that the persons specified in Part I of Schedule 1 to the Ordinance are exempt from the provisions of the Ordinance to the extent described therein. According to item 7 of Part I of Schedule 1 to the Ordinance, exempt persons include relevant employees (other than casual employees) who leave employment before the last day of the prescribed period of 60 days. No mandatory contributions are therefore required to be made for or by these persons.

2. An employer may wish to make mandatory contributions in respect of his relevant employees before the last day of the 60-day period. There are also circumstances that an employer would like to prepay mandatory contributions for his relevant employees before the completion of a contribution period.

3. Section 7C(1)(b) of the Ordinance provides that a self-employed person other than a self-employed person who is less than 18 or, is 65 years of age or more (“SEP”) must make mandatory contributions before the end of each contribution period. Contribution period is defined in section 131 of the Mandatory Provident Fund Schemes (General) Regulation. An SEP may wish to prepay mandatory contributions before the completion of a contribution

period.

4. 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.

5. The Authority hereby issues guidelines setting out the views of the Authority on prepayment of contributions.

TREATMENT OF PREPAID CONTRIBUTIONS

6. Prepayment of mandatory contributions such as those specified in paragraphs 2 and 3 above are allowed and can be treated as a mandatory contribution to the scheme under section 2(3) of the Ordinance. Section 2(3) of the Ordinance stipulates that “an amount that is paid as a contribution to a registered scheme contingently on the basis that the amount will later constitute a mandatory contribution to the scheme shall for all purposes be treated as a mandatory contribution to the scheme (and the provisions of the Ordinance shall apply accordingly) unless and until it is certain that the amount will not constitute a mandatory contribution to the scheme”.

Mandatory Contributions Before the Last Day of the 60-day Period

7. In the event that the relevant employee leaves employment before the last day of the 60-day period, the prepaid mandatory contributions for a relevant employee made before the last day of the 60-day period would become “not required to be made”. Unless the governing rules of a registered scheme permit these payments to be retained in the scheme, a refund should be made.

Mandatory Contributions During the Contribution Period

8. As described in paragraphs 2 and 3 above, mandatory contributions may be prepaid to a registered scheme in respect of a relevant employee or an SEP during the course of a contribution period. However, it may not be possible to ascertain with absolute accuracy the amount of the mandatory contributions required to be made until the passage of the period. This may be the case if the employee (SEP) ceases employment (self-employment) before the end of the contribution period. The approved trustee of a registered scheme can deal with the prepaid contributions in a manner similar to that suggested in paragraph 7 above and refund any amount in excess to the employee, employer or the SEP concerned.

Voluntary Contributions

9. The treatment of voluntary contributions made would depend on the governing rules of the scheme concerned.

DEFINITION OF TERMS

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

WARNING

11. While the above represents the current view of the Authority, it must be stressed that the Authority is not empowered to definitively interpret the law. The Authority, therefore, urges you to obtain advice from your own professional advisers, particularly your solicitor. In the event that the Authority's advice or opinions are subsequently determined to be wrong by a court of law, the Authority will not be held liable for consequent loss or

damage.