

1 December 2000

Newsletter: ORSO\ER\2000\1

To: Employers who operate
an MPF exempted ORSO registered scheme

Dear Sirs,

Mandatory Provident Fund Schemes (Exemption) Regulation
(the “Exemption Regulation”)
Certain Matters relating to MPF Exempted ORSO Schemes

As your ORSO registered scheme (hereinafter the “Scheme”) has been granted an MPF exemption certificate under the Exemption Regulation, we would like to remind you of the major requirements you need to fulfill as the relevant employer. In this regard, we set out these major requirements in the following Bulletins for your attention:-

<u>Bulletin</u>	<u>Topics</u>
Bulletin 1	Recovery of Contribution in Arrears
Bulletin 2	Appointment and/or Retirement of Trustees or the Directors of Corporate Trustees and Investment Managers
Bulletin 3	Reporting of Membership
Bulletin 4	Periodic Fee

As a responsible employer, we strongly urge you to read through the Bulletins which we believe will facilitate your complying with the relevant legislation as well as safeguarding the interests of the members of the Scheme.

If you have any queries, please contact the Authority’s hotline at 2918 0102 or 2292 1162.

Yours faithfully,

(Hendena Yu)
Executive Director
ORSO Schemes Division

Encl.

<p>BULLETIN 1</p> <p>MPF EXEMPTED ORSO SCHEMES</p> <p>RECOVERY OF CONTRIBUTION IN ARREARS</p>
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Occupational Retirement Schemes (Recovery of Arrears) Rules

The Occupational Retirement Schemes (Recovery of Arrears) Rules (“the Rules”), made for the recovery of contribution in arrears under an MPF exempted ORSO registered scheme, was gazetted on 20 October 2000 and has been approved by the Legislative Council to come into operation on 1 December 2000. A copy of which can be bought from the Hong Kong Government Publication Centre. Alternatively, you may obtain a copy from the Mandatory Provident Fund Schemes Authority (the “Authority”) or download a copy from the Authority’s website at <http://www.mpfahk.org> by selecting the Occupational Retirement Schemes Ordinance (Cap. 426).

The essence of the Rules is to empower the Authority to closely monitor and rectify those unfavourable situations where the employer of an MPF-exempted ORSO registered scheme fails to make the required contributions to the scheme when they fall due. Failure to do so could also render the employer subject to contribution surcharge and financial penalty imposed by the Authority. Under certain situations, the Authority may institute legal proceedings to recover as a debt due to the Authority any arrears and contribution surcharge and penalty.

In ascertaining whether there is any contribution in arrears, the contribution due date will be determined in the following manner:-

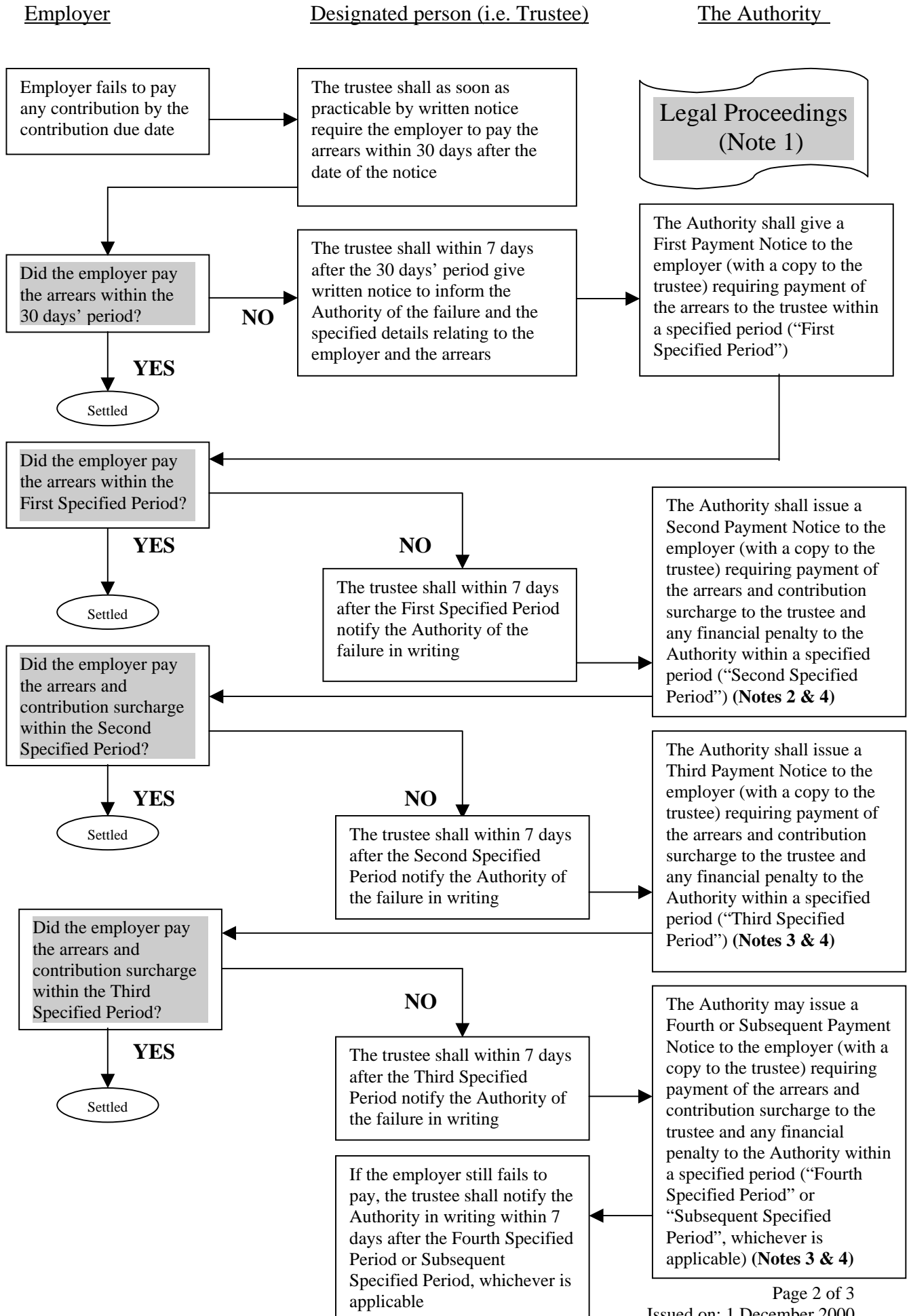
- (i) the date on which the employer is required to pay a contribution as specified in the governing rules of the Scheme, if any; or
- (ii) if applicable, the recommendations on payment of contribution contained and specified in the relevant actuarial certificate; or
- (iii) a day within a month next following the expiration of the “relevant period” as specified in a statement made by the employer to the trustee; or
- (iv) the 10th day after the “relevant period”.

“Relevant period” means each period in respect of which a contribution is required to be paid as required under the governing rules or the actuarial certificate of the Scheme.

Under the circumstance that the employer specifies in a statement the due date for contribution in accordance with (iii) above and sends it to the trustee, the employer shall send a copy of the statement to the Authority simultaneously. The day so specified may not be amended except with the prior approval of the Authority.

As illustrated in the flowchart below, if an employer fails to pay any contribution by the due date, the designated person (i.e. the trustee) is obligated to undertake various actions pursuant to the Rules so as to ensure that members’ interests are being safeguarded.

FLOWCHART ON CONTRIBUTION IN ARREARS



Notes to Flowchart on Contribution in Arrears

1. The Authority may institute legal proceedings against the employer to recover as a debt due to the Authority any arrears and contribution surcharge and penalty, if warranted, at any time considered appropriate. If the instituted legal proceedings are still pending, issuance of Payment Notices by the Authority shall not be required.

2. Contribution surcharge (which may be imposed by the Authority) covered in the Second Payment Notice is calculated as follows:-

15% per annum \times Amount of the Arrears \times Number of days overdue*

**counted from the day following the contribution due date to last day of the Second Specified Period*

3. Contribution surcharge (which may be imposed by the Authority) covered in the Third Payment Notice, Fourth Payment Notice or Subsequent Payment Notice, whichever is applicable, is calculated as follows:-

20% per annum \times Amount of the Arrears \times Number of days overdue**

***counted from the day following the contribution due date to last day of the Third Specified Period, Fourth Specified Period or Subsequent Specified Period, whichever is applicable*

4. Financial penalty does not exceed the greater of HK\$5,000 and 10% of the arrears.

BULLETIN 2
MPF EXEMPTED ORSO SCHEMES
APPOINTMENT AND / OR RETIREMENT OF TRUSTEES OR THE
DIRECTORS OF CORPORATE TRUSTEES AND INVESTMENT
MANAGERS

Appointment and / or Retirement of Trustees or the Directors of Corporate Trustees and Investment Managers

Under the Exemption Regulation, the person who has the power to retire or appoint a trustee (be it a corporate trustee or an individual trustee) shall apply in writing for the Mandatory Provident Fund Schemes Authority's ("the Authority's") **prior** approval before retiring or appointing the trustee of the Scheme ("prior approval requirements"). In the case of a corporate trustee changing its directors, the former shall obtain the Authority's **prior** approval before retiring and appointing its directors if it is not (A) a registered trust company in Hong Kong ("RTC"); or (B) an overseas trust company which is comparable to a RTC and has a significant presence and control in Hong Kong.

In relation to the prior approval requirements, the Authority is prepared to exercise its power to exempt the person who has the power to retire or appoint a trustee from these prior approval requirements if the appointee / retiree is a RTC. In this connection, the employer of the Scheme shall notify the Authority in writing within 1 month after the date of appointment or retirement of the RTC. In other words, if the appointee / retiree is not a RTC, the prior approval requirements should still apply.

Based on the foregoing, the prescribed forms and fees for applying for approval of appointment of trustee/director of a corporate trustee are summarized as follows:

<u>Types of Trustee</u>	<u>Prescribed Form</u>	<u>Prescribed Fee</u>
Corporate Trustee (A) RTC	Form OI-TC is not required to be submitted. The employer shall notify the Authority in writing within 1 month after the date of appointment / retirement.	Nil
(B) An overseas trust company which is comparable to a RTC and has a significant presence and control in Hong Kong	Form OI-TC	HK\$11,250
Individual Trustee	Form OI-TI	HK\$4,900
Director of a Corporate Trustee which is not a trustee to which (A) or (B) above applies	Form OI-D	HK\$4,900

In making an application for approval of appointment of trustee/director of a corporate trustee, reference can be made to the following guidelines which can be downloaded from the Authority's website at <http://www.mpfahk.org>:-

- Guidelines V.6 on MPF Exempted ORSO Schemes – Application for Approval of Appointment of Trustees
- Guidelines V.7 on MPF Exempted ORSO Schemes – Application for Approval of Appointment of Directors of Trustees (i.e. Trustees refer to corporate trustee which is not a trustee to which (A) or (B) above applies)

If the trustees of a scheme are all individuals, then, upon the retirement of an existing trustee or appointment of a new trustee, there must be **not less than 2** trustees and at least 1 must be a non-employer trustee. Generally, the standards specified in the Exemption Regulation imposing upon a non-employer trustee are more stringent than an employer trustee.

Appointment of Investment Manager on and after 1 December 2000

In appointing an investment manager for a Scheme on and after 1 December 2000, the Exemption Regulation requires that it must be an investment management company that (a) is registered under the Securities Ordinance as an investment adviser or (b) a company authorised by an overseas authority recognised by the Authority to carry on business as an investment adviser.

To date, the list of overseas authorities recognised by the Authority for the purpose of (b) above is as follows:-

<u>Jurisdiction</u>	<u>Regulatory Authority</u>
France	Autorité des marchés financier (AMF)
Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BAFin) (German Financial Supervisory Authority)
Ireland	Central Bank of Ireland (CBI)
Luxembourg	The Commission du Surveillance du Secteur Financier (CSSF)
United Kingdom	Financial Services Authority (FSA)
United States of America	Securities and Exchange Commission (SEC)

The trustee shall then, upon submission of the annual return as required under the Exemption Regulation, notify the Authority in writing the appointment and the matters relied upon by him in judging that the investment manager satisfies requirement (a) or (b).

Exercising Appropriate Care, Diligence and Prudence

The trustees and investment managers have to satisfy the standards of duty and care stipulated under the Exemption Regulation in administering the Scheme, i.e. with respect to Scheme's administration, management and maintenance in the case of the trustees and with respect to managing the investment of the Scheme's assets in the case of the investment managers. In performing their respective duties, the trustees and investment managers shall comply with the following requirements:-

- (i) to exercise care, diligence and prudence;

- (ii) to use all relevant knowledge and skill;
- (iii) to ensure the assets are invested in a diversified manner so as to minimize the risk of losses of those assets; and
- (iv) to act in the best interests of the scheme members and in accordance with the governing rules of the Scheme.

BULLETIN 3
MPF EXEMPTED ORSO SCHEMES
REPORTING OF MEMBERSHIP

Reporting of Membership

You are reminded to submit the following information to the Authority within 3 months after 1 December 2000 (i.e. **on or before 28 February 2001**):-

- (a) the total number of your employees;
- (b) the number of employees who are exempt persons but not members of the ORSO Scheme;
- (c) the number of employees who are not members of the ORSO Scheme but are members of an MPF scheme;
- (d) the number of existing members who have become members of an MPF scheme; and
- (e) the number of existing members who have decided to stay in the ORSO Scheme

In this regard, you may wish to use the suggested reporting membership statement provided to you by the Authority through the trustee of the Scheme upon your successful application for an MPF exemption certificate.

BULLETIN 4 ORSO SCHEMES PERIODIC FEE

Periodic Fee

The Authority is concerned to note that some employers have failed to pay the periodic fee in respect of their ORSO schemes. The Authority reiterates that the periodic fee should be paid within 1 month after the due date as required under the Occupational Retirement Schemes Ordinance (the "Ordinance"). The due date falls on the first and any subsequent anniversary date of registration of the ORSO scheme. If the fee is not paid within one month after the due date, a surcharge equal to the amount of the unpaid fee will be chargeable. The Ordinance also provides that non-payment of periodic fee is a ground for cancellation of the registration status of the ORSO scheme and as such could lead to the withdrawal of its MPF exemption certificate by the Authority.

Among those employers who failed to pay the periodic fee on time, it has come to our attention that non-payment or late payment of periodic fee could be due to various reasons including negligence of employers, non-receipt of Periodic Fee Payment Advice issued by the Authority etc.

In order to avoid any misconceptions, we wish to particularly reiterate that the Periodic Fee Payment Advice issued to the relevant employer ahead of the due date is not the Authority's obligation. Instead, it is issued to remind employers of this requirement. Moreover, negligence of employers will not be accepted as a reasonable excuse for non-payment or late payment. Non-receipt or late receipt of this Advice due to postal or negligence of employers or other reasons do not alter the statutory requirements that the employer should pay the periodic fee before the due date and surcharge of equal amount will be imposed for late payment.

As a responsible employer, you should be fully aware of your obligations under the Ordinance, inter alia, to pay the periodic fee before the due date without the prompting of the Authority.