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 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 a Relevant Employee who Commences Employment before the Age of 18

Employee who Commences Employment on or before 1 December 2000

11. For a relevant 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 to become 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, a relevant 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 to become 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).

<u>Employee who Commences Employment after 1 December 2000</u>

13. For a relevant employee who is under the age of 18 and commences employment after 1 December 2000, the employer should enrol the employee to become a member of a registered scheme on or before the first 60 days 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 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, a relevant 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) to become 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).

Contribution Period in respect of a Relevant Employee who Ceases Employment

15. 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).

16. 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.

17. 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.

Contribution Period in respect of a Relevant Employee who Attains the Age of 65

18. If a relevant employee reaches the age of 65, both the employer and the employee are required to make mandatory contributions for his relevant income paid or payable before the employee's attainment of the age of 65. If the relevant 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 received by the employee after the attainment of the age of 65. In case the relevant 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.

19. For example, if a relevant employee, who is remunerated on a calendar month basis, reaches the age of 65 during a month (e.g. 16 June 2002) 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 June 2002 as the income would be payable to the employee after his attainment of the age of 65. In case the employee ceases employment immediately on attainment of the age of 65 and all his outstanding relevant income is paid to him on the day before his 65th birthday, the last contribution period should start from 1 June 2002 and end on 15 June 2002 and the last mandatory contributions should be made on or before 25 June 2002 (being the tenth day after 15 June 2002). If the outstanding salaries are paid to this employee on or after 16 June 2002 (i.e. after his attainment of the age of 65), the salaries are not considered as relevant income and therefore no contribution is payable thereon.

Relevant Employee who is a Casual Employee

20. For the purposes of paragraphs 11 to 14, if the relevant 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 relevant 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 day when relevant income is paid to the employee, then the contributions would be due on the payment day of the relevant income rather than on the tenth day after the end of the contribution period.

DEFINITION OF TERMS

21. 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.

WARNING

22. 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.