

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. The Mandatory Provident Fund Schemes (Amendment) Bill 2002 was passed on 12 July 2002. The enacted Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance 2002 (“the Amendment Ordinance”) was gazetted on 19 July 2002. Under section 4 of the Amendment Ordinance, provisions have been set out as regards the arrangements on contribution period in respect of a relevant employee. The relevant sections shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette (“the Date of Operation”).

3. 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.

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

EFFECTIVE DATE

5. These revised Guidelines shall become effective on the Date of Operation. The previous version of these Guidelines (Version 2 – May 2002) shall be superseded on that day.

CONTRIBUTION PERIOD

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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

13. 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 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.

14. 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 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).

Employee Who Commences Employment After 1 December 2000 but Before the Date of Operation

15. For an employee who is under the age of 18 and commences employment after 1 December 2000 but before the Date of Operation, 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.

16. 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) 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).

Employee Who Commences Employment On or After the Date of Operation

17. For an employee who is under the age of 18 and commences employment on or after the Date of Operation, 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.

Employees with Wage Period not more than 1 Month

18. 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

19. 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.

Contribution Period in Respect of a Relevant Employee Who Ceases Employment

Employee Who Ceases Employment Before the Date of Operation

20. 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).

21. 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.

22. 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 the Date of Operation

23. If a relevant employee (other than a casual employee) ceases employment on or after the Date of Operation, 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 the Date of Operation are set out in Annex C.

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

24. If an 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 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 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.

25. 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 2003) 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 2003 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 2003 and end on 15 June 2003 and the last mandatory contributions should be made on or before 10 July 2003 (being the tenth day after 30 June 2003). If the outstanding salaries are paid to this employee on or after 16 June 2003 (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.

Employee Who is a Casual Employee

26. For the purposes of paragraphs 13 to 19, 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

27. 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.

Illustrations: The Enrolment and Contribution Arrangements for an Employee Who Reaches the Age of 18 On or After the Date of Operation with Wage Period Not More than 1 Month

I. Monthly-paid employees – Employee reaches the age of 18 after commencement of employment but on or before the end of wage period in which the 30th day of employment falls

Assuming the Date of Operation is 1 February 2003

Date of employment	:	26 June 2003
Relevant income	:	\$2,500 for 26-30 June 2003 \$10,000 for July 2003 \$9,000 for August 2003
Date of 18 th birthday	:	28 July 2003
30 th day of employment	:	25 July 2003
60 th day of employment	:	24 August 2003
Date of commencement of employee contribution	:	1 August 2003
Date of commencement of employer contribution	:	28 July 2003
Amount of first employee contribution	:	\$450 (\$9,000 x 5% and \$9,000 being the relevant income for August 2003)
Amount of first employer contribution	:	\$514.52 (\$10,000 x 4/31 x 5% + \$9,000 x 5%)
Deadline for remittance of first employer/employee contribution	:	10 September 2003

II. Monthly-paid employees – Employee reaches the age of 18 after the end of the wage period in which the 30th day of employment falls

Assuming the Date of Operation is 1 February 2003

Date of employment	:	26 June 2003
Relevant income	:	\$2,500 for 26-30 June 2003 \$10,000 for July 2003 \$9,000 for August 2003 \$9,000 for September 2003
Date of 18 th birthday	:	15 September 2003
30 th day of employment	:	25 July 2003
60 th day of employment	:	24 August 2003
Date of commencement of employer and employee contribution	:	15 September 2003
Relevant income for mandatory contribution purposes for September 2003	:	\$4,800 (being \$9,000 x 16/30)
Amount of first employee contribution	:	\$0 for September 2003 (because \$4,800 is less than \$5,000)
Amount of first employer contribution	:	\$240 for September 2003 (\$4,800 x 5%)
Deadline for remittance of first employer/employee contribution	:	10 October 2003

**Illustrations: The Enrolment and Contribution Arrangements for an Employee
Who Reaches the Age of 18 On or After the Date of Operation
with Wage Period More than 1 Month**

I. Less frequent than monthly paid - Employee reaches the age of 18 after commencement of employment but on or before the end of the calendar month in which the 30th day of employment falls

Quarterly-paid employees

Assuming the Date of Operation is 1 February 2003

Date of employment	:	17 April 2003
Relevant income	:	\$30,000 per calendar quarter (i.e. ending on 31 March, 30 June, 30 September and 31 December; for the period from 17 April 2003 to 30 June 2003, the relevant income is only \$25,000)
18 th Birthday	:	20 May 2003
30 th day of employment	:	16 May 2003
60 th day of employment	:	15 June 2003
Date of commencement of employee contribution	:	1 June 2003
Date of commencement of employer contribution	:	20 May 2003
Amount of first employee contribution	:	\$500 (5% of relevant income of \$10,000 = \$25,000 x 30/75 and 30 being the number of days from 1 June 2003 to 30 June 2003 and 75 being the number of days from 17 April 2003 to 30 June 2003) (with minimum and maximum relevant income levels equal \$5,000 and \$20,000 respectively)
Amount of first employer contribution	:	\$700 (\$25,000 x 42/75 x 5% and 42 being the number of days from 20 May 2003 to 30 June 2003 and 75 being the number of days from 17 April 2003 to 30 June 2003)(with maximum relevant income level equals \$20,000 x 3 = \$60,000)
Deadline for remittance of first employer / employee contribution	:	10 July 2003
Amount of second employer / employee contribution	:	\$1,500 (\$30,000 x 5%)(with minimum and maximum relevant income levels equal \$5,000 x 3 = \$15,000 and \$20,000 x 3 = \$60,000 respectively)
Deadline for remittance of second employer / employee contribution	:	10 October 2003

II. Less frequent than monthly paid - Employee reaches the age of 18 after the end of the calendar month in which the 30th day of employment falls

Quarterly-paid employees

Assuming the Date of Operation is 1 February 2003

Date of employment	:	17 April 2003
Relevant income	:	\$30,000 per calendar quarter (i.e. ending on 31 March, 30 June, 30 September and 31 December; for the period from 17 April 2003 to 30 June 2003, the relevant income is only \$25,000)
18 th Birthday	:	1 July 2003
30 th day of employment	:	16 May 2003
60 th day of employment	:	15 June 2003
Date of commencement of employer / employee contribution	:	1 July 2003
Amount of first employee contribution	:	\$1,500 (5% of relevant income of \$30,000 (with minimum and maximum relevant income levels equal \$5,000 x 3 = \$15,000 and \$20,000 x 3 = \$60,000 respectively)
Amount of first employer contribution	:	\$1,500 (5% of relevant income of \$30,000)(with maximum relevant income level equals \$20,000 x 3 = \$60,000)
Deadline for remittance of first employer / employee contribution	:	10 October 2003

**Illustrations: The Last Mandatory Contribution for Employees
Ceasing Employment Under Different Payroll Cycles**

I. Monthly-paid employees

Assuming the Date of Operation is 1 February 2003

Date of cessation of employment	:	20 June 2003
Relevant income	:	\$4,000 for the period from 1 June 2003 to 20 June 2003
Amount of last employee contribution	:	\$nil (as \$4,000 is less than the minimum relevant income level of \$5,000)
Amount of last employer contribution	:	\$200 ($\$4,000 \times 5\%$) (with maximum relevant income level equals \$20,000)
Deadline for remittance of last employer contribution	:	10 July 2003

II. Weekly-paid employees

Assuming the Date of Operation is 1 February 2003

Date of cessation of employment	:	27 August 2003
Relevant income	:	\$2,000 per week with contribution period ending on every Saturday (i.e. \$2,000 for each contribution period ending on 2, 9, 16, 23 of August 2003); for the period from 24-27 August 2003, the relevant income is only \$1,000
Amount of last employee contribution	:	<p>\$100 (being \$2,000 x 5%) for the week ending on 2 August 2003 (with minimum and maximum relevant income levels equal \$1,120 (being \$160 x 7) and \$4,550 (being \$650 x 7) respectively)</p> <p>\$100 (being \$2,000 x 5%) for the week ending on 9 August 2003 (with minimum and maximum relevant income levels equal \$1,120 (being \$160 x 7) and \$4,550 (being \$650 x 7) respectively)</p> <p>\$100 (being \$2,000 x 5%) for the week ending on 16 August 2003 (with minimum and maximum relevant income levels equal \$1,120 (being \$160 x 7) and \$4,550 (being \$650 x 7) respectively)</p> <p>\$100 (being \$2,000 x 5%) for the week ending on 23 August 2003 (with minimum and maximum relevant income levels equal \$1,120 (being \$160 x 7) and \$4,550 (being \$650 x 7) respectively)</p> <p>\$nil for the last week (as \$1,000 is less than \$1,120 (being \$160 x 7))</p>
Amount of last employer contribution	:	<p>\$100 (being \$2,000 x 5%) for the week ending on 2 August 2003 (with maximum relevant income level equals \$4,550 (being \$650 x 7))</p> <p>\$100 (being \$2,000 x 5%) for the week ending on 9 August 2003 (with maximum relevant income level equals \$4,550 (being \$650 x 7))</p> <p>\$100 (being \$2,000 x 5%) for the week ending on 16 August 2003 (with maximum relevant income level equals \$4,550 (being \$650 x 7))</p>

\$100 (being \$2,000 x 5%) for the week ending on 23 August 2003 (with maximum relevant income level equals \$4,550 (being \$650 x 7))

\$50 (being \$1,000 x 5%) for the last week (with maximum relevant income level equals \$4,550 (being \$650 x 7))

Deadline for remittance of last employer/ employee contribution : 10 September 2003

III. Quarterly-paid employees

Assuming the Date of Operation is 1 February 2003

Date of cessation of employment	:	17 May 2003
Payment of relevant income	:	\$30,000 for calendar quarter (i.e. on 31 March, 30 June, 30 September and 31 December); for the period from 1 April to 17 May 2003, only \$15,000 is paid on 17 May 2003
Amount of last employee contribution	:	\$750 (\$15,000 x 5% (with minimum and maximum relevant income levels equal \$15,000 (being \$5,000 x 3) and \$60,000 (being \$20,000 x 3) respectively))
Amount of last employer contribution	:	\$750 (\$15,000 x 5%)(with maximum relevant income level equals \$60,000 (being \$20,000 x 3))
Deadline for remittance of last employer / employee contribution	:	10 June 2003