

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

IV.16 Guidelines on MPF Coverage on Employees Working Outside Hong Kong

INTRODUCTION

The Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) sets out the legal framework for the Mandatory Provident Fund System (“MPF System”) which covers most of the employees and self-employed persons in Hong Kong. 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.

2. Enquiries have been received on whether the MPF System covers employees working outside Hong Kong. The Authority hereby issues guidelines on this issue.

COVERAGE OF THE MPF SYSTEM

3. The guiding principle on the coverage of the MPF System is that the Ordinance is intended to cover only those employees who are employed in or from Hong Kong. In general terms, the Hong Kong legislation does not have legal effect outside Hong Kong unless it expressly states that it has such effect. The Ordinance is not expressed to have effect outside Hong Kong.

4. An employee employed in or from Hong Kong does not have to be working in Hong Kong. In certain cases an employee working outside Hong Kong

may be covered by the MPF System if there is sufficient connection between the employee and Hong Kong.

5. Whether there is sufficient connection between Hong Kong and an employee working outside Hong Kong is a matter of fact. Some examples of the more common arrangements are set out below. The Authority advises that each case should be considered individually based on its own circumstances and, if in doubt, the relevant employers and employees should seek legal advice.

Employees Working Overseas who should be covered by the MPF System

6. Broadly speaking, a Hong Kong resident employed from Hong Kong to work overseas for a limited period (say 3 years) by a company engaging in business in Hong Kong should be sufficiently connected to Hong Kong and therefore the employer has to make contributions for this employee according to the provisions of the Ordinance. Whether the employee's salary is paid in Hong Kong and whether the employer is incorporated in Hong Kong are irrelevant. For example, an engineer employed from Hong Kong by the Hong Kong representative office of a company incorporated in the People's Republic of China to supervise a project in Beijing should be covered by the MPF System.

7. An employee who is employed in and working in Hong Kong but is normally residing outside Hong Kong should also be covered by the MPF System. For example, an employee who is employed in Hong Kong but who is residing in Shenzhen and commuting to Hong Kong daily should be covered by the MPF System.

8. A person who is employed in Hong Kong but who is working outside Hong Kong on a temporary basis is also covered by the MPF System. Examples of such persons include aircraft crews and pilots, cross-boundary lorry drivers and

professionals on overseas assignments.

Employees Working Overseas who should not be covered by the MPF System

9. Generally speaking, the following categories of employees working outside Hong Kong are likely to be insufficiently connected to Hong Kong for the purposes of the Ordinance and hence they should not be covered by the MPF System:

- a) Persons employed outside Hong Kong by an overseas establishment of a Hong Kong holding company or by a company incorporated in Hong Kong (“a Hong Kong company”). Whether the persons are Hong Kong residents is irrelevant. For example, the local workers employed in Shenzhen by a local subsidiary of a Hong Kong company are not covered by the MPF System. Persons employed by the New York branch of a Hong Kong company who are working in New York are also not covered by the MPF System. Similarly, a Hong Kong resident employed in Shenzhen by a Shenzhen branch of a Hong Kong company is not covered by the MPF System, even if the person has to perform some of his work in Hong Kong.
- b) Hong Kong residents who are working for foreign companies outside Hong Kong. For example, a Hong Kong resident employed by a Japanese company and working in Tokyo is not covered by the MPF System.

DEFINITION OF TERMS

10. 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

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.