

## **MANDATORY PROVIDENT FUND SCHEMES AUTHORITY**

### **IV.2 Guidelines on Reports Relating to Payment of Mandatory Contributions**

#### **INTRODUCTION**

Sections 7A and 7C of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provide for the making of mandatory contributions.

2. Section 122 of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) provides for a mandatory contribution to be paid to the approved trustee of a registered scheme on or before the contribution day. Section 133 of the Regulation requires the trustee to send a written notice to a person who does not pay the mandatory contribution by the contribution day. This includes a person who fails to pay the full amount of the mandatory contribution due to errors in numerical calculation as reflected in the remittance statement submitted to the approved trustee. In that written notice, the trustee has to require the person to pay the mandatory contribution or to rectify the discrepancy in payment before the end of the settlement period which is the 30-day period following the contribution day for the payment of the relevant mandatory contribution. If the person still fails to pay the mandatory contribution or rectify the discrepancy in payment within the settlement period, the trustee is also required under section 135 of the Regulation to give a notice to the Authority reporting on the non-payment or discrepancy in payment of the mandatory contribution.

3. There may be circumstances where an employer frequently makes use of the settlement period to delay payment of mandatory contributions in respect of his employees. In other words, the employer does not pay by the contribution day but only pays within the settlement period. Under such circumstances, the approved trustee of the registered scheme concerned is not required to report to the Authority under section 135 of the Regulation; and the Authority does not have to issue any notice to the employer requiring payment of contribution surcharge to compensate the relevant employees for interest losses as a result of the default contributions.

4. Section 6H of the Ordinance provides that the Authority may issue guidelines for the guidance of approved trustees, service providers and other persons concerned with the Ordinance.

5. To facilitate the Authority to perform its enforcement duties in relation to default contributions and to closely monitor the situation mentioned in paragraph 3 above, the Authority hereby issues guidelines to approved trustees:

- (a) specifying the information required of the notice to be given to the Authority under section 135 of the Regulation; and
- (b) requiring notification to the Authority of the employers who, in respect of mandatory contributions for more than one contribution period, do not pay these mandatory contributions by the relevant contribution days but pay them within the relevant settlement periods and specifying the information required of the notification.

## NOTICE TO BE GIVEN UNDER SECTION 135 OF THE REGULATION

6. The notice to be given to the Authority under section 135 of the Regulation should include the following information:

Date of Report	
Scheme Registration Number	
Approval Number of Trustee	
English Name of the Defaulter (if applicable)	
Chinese Name of the Defaulter (if applicable)	
Participation Number (for employer only)	
HKID / Passport Number (for self-employed person only)	
Address of the Defaulter	
Phone Number of the Defaulter (if known)	
Fax Number of the Defaulter (if known)	
Start Date of the Contribution Period concerned (DDMMYYYY)	
End Date of the Contribution Period concerned (DDMMYYYY)	
Contribution Day concerned (DDMMYYYY)	
Amount in arrears (up to 2 decimal places)	
Number of Employees / Self-employed person concerned	
Any other remark trustee would like to bring attention to the Authority	
Number of Report (1 <sup>st</sup> , 2 <sup>nd</sup> or 3 <sup>rd</sup> ).	

7. In case that the trustee has no knowledge of the amount of arrears in respect of a defaulter, the trustee should report HK\$0.01 as the amount in arrears in the notice for easy identification by the Authority.

8. For those employers who have not enrolled any employee into the scheme, the trustee should exclude them or should file them separately for default contribution reporting purposes. Moreover, the trustee should report separately on those employers or self-employed persons who did not pay any mandatory contributions and on those employers / self-employed persons who have made contributions but discrepancies have been noted.

#### **NOTIFICATION TO THE AUTHORITY**

9. In relation to paragraph 5(b) above, the trustee of a registered scheme is required to notify the Authority if a participating employer who, for 4 or more times in a financial period of the scheme, pays mandatory contributions for his employees within the relevant settlement periods instead of by the relevant contribution days. The notice to the Authority should include the following information:

Date of Report		
Scheme Registration Number		
Approval Number of Trustee		
English Name of the Persistent Late Payer (if applicable)		
Chinese Name of the Persistent Late Payer (if applicable)		
Participation Number		
Address of the Persistent Late Payer		
Phone Number of the Persistent Late Payer (if known)		
Fax Number of the Persistent Late Payer (if known)		
1 <sup>st</sup> Contribution Period concerned	Start Date (DDMMYYYY)	
	End Date (DDMMYYYY)	
2 <sup>nd</sup> Contribution Period concerned	Start Date (DDMMYYYY)	
	End Date (DDMMYYYY)	
3 <sup>rd</sup> Contribution Period concerned	Start Date (DDMMYYYY)	
	End Date (DDMMYYYY)	
4 <sup>th</sup> Contribution Period concerned	Start Date (DDMMYYYY)	
	End Date (DDMMYYYY)	
Amount of Mandatory Contributions (up to 2 decimal places)	1 <sup>st</sup> Contribution Period concerned	
	2 <sup>nd</sup> Contribution Period concerned	
	3 <sup>rd</sup> Contribution Period concerned	
	4 <sup>th</sup> Contribution Period concerned	

10. In determining whether a late payment of mandatory contributions in respect of a contribution period falls within a financial period of the scheme, the contribution day for the relevant contribution period should be used as a reference. For example, the contribution day for the contribution period from 1 December 2001 to 31 December 2001 should be 10 January 2002. In case that mandatory contributions in respect of this contribution period is paid by an employer within the settlement period (i.e. between 11 January 2002 and 9 February 2002) and the financial period of the scheme ends on 31 December each year, the notification of persistent late payment for the contribution period from 1 December 2001 to 31 December 2001 should be included in the financial period of the scheme ending 31 December 2002.

11. In some cases, the relevant income of different employees of the same employer are paid in different patterns. For instance, some of the employees are paid on a monthly basis while others are paid on a weekly basis. For such cases, each contribution period of the same employer should be counted once for the purpose of reporting of persistent late payment. For example, the contribution period for some of the employees is from 1 December 2001 to 31 December 2001 while the contribution period for the remaining employees of the same employer is from 1 December to 7 December 2001. In the event that the employer makes mandatory contributions in respect of the two types of employees during the settlement period (i.e. between 11 January 2002 and 9 February 2002, and between 18 December 2001 and 16 January 2002 respectively), the employer should be treated as having made two late payments.

12. The trustee should send the notice to the Authority as soon as practicable on the fourth time in a financial period of the scheme when a participating employer pays mandatory contributions within the relevant settlement periods instead of by the relevant contribution day. In case a

participating employer continues to pay mandatory contributions within the relevant settlement periods instead of by the relevant contribution days for more than four times in a financial period of the scheme, trustee should notify the late payment to the Authority at least once every four times of such late payment.

13. In view of the fact that the data required under paragraphs 6 and 9 above may be voluminous, approved trustee of a registered scheme should submit the notice and the notification to the Authority by electronic means. The trustee should also comply with the requirements for electronic interface as informed by the Authority from time to time and enclose a covering letter with a summary of information submitted when submitting the notice and the notification. In case a trustee has technical problems in complying with the requirements for electronic interface, it may apply to the Authority for a 3-month exemption. The exemption may be renewed if warranted by circumstances. The summary should include the following information:

- (a) name of trustee;
- (b) name of scheme together with the scheme registration number;
- (c) date of submission;
- (d) total number of files submitted;
- (e) total number of records in each file;
- (f) name of each file submitted (and classified between non-payment cases or discrepancy cases for default contribution cases);
- (g) for file with default contribution cases, total sum of amount in arrears; and
- (h) for file with persistent late payment cases, total sum of mandatory contributions for the first contribution period

concerned.

## **DEFINITIONS OF TERMS**

14. 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. Approved trustees of registered schemes should make appropriate reference to the Ordinance and the subsidiary legislation, where necessary.