

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. 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 the Amendment Ordinance, the Authority would issue one payment notice instead of two payment notices. Nevertheless, under section 136(6) of the Regulation, the Authority is still empowered to issue further notices where the case warrants. The notice would demand payment of contribution in arrears and impose a contribution surcharge at a flat rate of 5% of the contribution in arrears. 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”).

5. 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.

6. 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.

EFFECTIVE DATE

7. These revised Guidelines shall become effective on the Date of Operation. Version 2 of the Guidelines (July 2001) shall be superseded on that day.

NOTICE TO BE GIVEN UNDER SECTION 135 OF THE REGULATION

8. 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 st or 2 nd)	

9. 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.

10. 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

11. In relation to paragraph 6(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. For the purpose of reporting persistent late payment, reference should be made to the contribution day of the same employer and not the contribution period of the employee. For example, for employees who are remunerated on a weekly basis, the contribution day for all the contribution

periods ending in the same month (e.g. 4 weeks) would fall on the same day and if the employer of the employees concerned pay mandatory contributions within the settlement period instead of by the contribution day, the employer should be treated as having made one late payment rather than four. 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 st Late Payment after Contribution Day	Contribution Day (DDMMYYYY)	
2 nd Late Payment after Contribution Day	Contribution Day (DDMMYYYY)	
3 rd Late Payment after Contribution Day	Contribution Day (DDMMYYYY)	
4 th Late Payment after Contribution Day	Contribution Day (DDMMYYYY)	
Amount of Mandatory Contributions (up to 2 decimal places)	1 st Late Payment after Contribution Day	
	2 nd Late Payment after Contribution Day	
	3 rd Late Payment after Contribution Day	
	4 th Late Payment after Contribution Day	

12. 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 2002 to 31 December 2002 should be 10 January 2003. 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 2003 and 10 February 2003 (as 9 February 2003 is a Sunday)) 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 2002 to 31 December 2002 should be included in the financial period of the scheme ending 31 December 2003.

13. In some cases, the relevant income of different employees of the same employer is 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, reference should be made to the contribution day of the same employer for the purpose of reporting persistent late payment. For example, the contribution period for some of the employees is from 1 March 2003 to 31 March 2003 while the contribution period for the remaining employees of the same employer is from 1 March 2003 to 7 March 2003. 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 April 2003 and 10 May 2003), the employer should be treated as having made one late payment only.

14. 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, the trustee should notify the late payment to the Authority at least once every four times of such late payment.

15. In view of the fact that the data required under paragraphs 8 and 11 above may be voluminous, the 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 (current reporting requirement is set out in the circular letter issued on 8 November 2000) and enclose a covering letter with a summary of information submitted when submitting the notice and the notification. 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

16. 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.