

Occupational Retirement Schemes (Recovery Of Arrears) Rules
(Made under section 73(1)(ea) of the Occupational
Retirement Schemes Ordinance (Cap. 426))

1. Commencement

These Rules shall come into operation on 1 December 2000.

2. Interpretation

(1) The expressions used in these Rules which are used in section 24A of the Ordinance have the same meanings in these Rules as in that section.

(2) In these Rules, unless the context otherwise requires---

"contribution" (供款), in relation to a relevant scheme, means any contribution required under the contribution requirements of the scheme to be paid by the relevant employer of the scheme;

"contribution requirements" (供款規定), in relation to a relevant scheme, means the requirements as to payment of contribution in respect of the scheme in accordance with---

(a) the terms of the scheme; and

(b) (where the scheme is a defined benefit scheme) the recommendations contained in an actuarial certificate supplied as regards the scheme to the Registrar in accordance with the Ordinance;

"contribution surcharge" (供款附加費) means contribution surcharge imposed under section 10;

"due date" (到期日), in relation to a contribution, means the due date as determined under section 3;

"financial penalty" (罰款) means financial penalty imposed under section 11.

3. Determination of the due date

(1) If the contribution requirements of a relevant scheme have specified the date on which the relevant employer is to pay a contribution, the due date for that contribution shall be the date so specified.

(2) If the contribution requirements of a relevant scheme have not specified the date on which the relevant employer is to pay a contribution, the due date for the contribution for each relevant period shall be---

(a) a day within a month next following the expiration of the relevant period as specified in a statement sent by the relevant employer to the designated person; or

(b) if not so specified, the tenth day after the relevant period.

(3) For the purpose of subsection (2)(a)---

(a) the specification of a day by the relevant employer may not be amended except

with the prior approval of the Registrar; and

(b) the relevant employer shall send a copy of the statement referred to in that subsection (and of any amendment to it) to the Registrar, at the same time as he sends it to the designated person.

(4) The relevant employer of a relevant scheme shall pay each contribution to the scheme on or before the due date for that contribution.

(5) For the purposes of this section---

"relevant period" (有關期間), in relation to any relevant scheme, means each period in respect of which a contribution is required to be paid under the contribution requirements of the scheme.

4. Settlement period and the designated person's duty to report arrears

(1) If a relevant employer of a relevant scheme fails to pay any contribution by the due date for it, the designated person shall, as soon as practicable after he becomes aware of the failure, by written notice require the relevant employer to pay the arrears within 30 days after the date of the notice.

(2) If the relevant employer of a relevant scheme fails to pay the arrears within the 30 days' period referred to in subsection (1), the designated person shall, within 7 days after that period, give written notice to the Registrar to inform him of the failure. The notice shall state---

(a) the name of the relevant employer concerned;

(b) the correspondence address and the telephone number and facsimile number (if any) of that relevant employer;

(c) the name of the relevant scheme concerned;

(d) the amount of the arrears and the due date concerned.

5. Registrar to give first payment notice

The Registrar shall, on receipt of a notice under section 4(2) in respect of a relevant scheme, give a first payment notice to the relevant employer, and send a copy to the designated person, requiring the relevant employer to pay to the designated person the arrears within a period specified in that payment notice.

6. Registrar to give second payment notice

(1) Where the relevant employer fails to pay the arrears within the period specified for payment in the Registrar's first payment notice, the designated person shall, within 7 days after that period, give a written notice to the Registrar to inform him of the failure.

(2) On receipt of a notice under subsection (1), the Registrar shall issue a second payment notice to the relevant employer, and send a copy to the designated person, requiring the relevant employer to pay within a period as specified in that payment notice---

- (a) the arrears and any contribution surcharge to the designated person; and
- (b) any financial penalty to the Registrar.

7. Registrar to give third payment notice

(1) Where the relevant employer fails to pay the arrears or contribution surcharge within the period specified in the Registrar's second payment notice, the designated person shall, within 7 days after that period, give a written notice to the Registrar to inform him of the failure.

(2) On receipt of a notice under subsection (1), the Registrar shall issue a third payment notice to the relevant employer, and send a copy to the designated person, requiring the relevant employer to pay within a period as specified in that payment notice---

- (a) the arrears and any contribution surcharge to the designated person; and
- (b) any financial penalty to the Registrar.

8. Registrar may give further payment notices

(1) Where the relevant employer fails to pay the arrears or contribution surcharge within the period specified for payment in the Registrar's third or subsequent payment notice, the designated person shall, within 7 days after that period, give a written notice to the Registrar to inform him of the failure.

(2) On receipt of a notice under subsection (1), the Registrar may in his discretion issue a fourth or subsequent payment notice to the relevant employer, and send a copy to the designated person, requiring the relevant employer to pay within a period as specified in that payment notice---

- (a) the arrears and any contribution surcharge to the designated person; and
- (b) any financial penalty to the Registrar.

9. Registrar needs not give payment notices if legal proceedings are pending

Notwithstanding sections 5, 6, 7 and 8, the Registrar shall not be required to give any payment notice to the relevant employer of a relevant scheme if legal proceedings are pending under section 24A(3) of the Ordinance to recover from the relevant employer the amount of any arrears and any contribution surcharge or financial penalty in default.

10. Contribution surcharge

(1) Where a relevant employer has failed to pay the arrears as required in the Registrar's first payment notice within the period specified for payment in that first payment notice, the Registrar may---

- (a) in his second payment notice, require the relevant employer to pay a contribution surcharge at a rate of 15 per cent per annum on the amount of the arrears, accruing from the day following the due date until the last day of the period specified for payment in that second payment notice;

(b) in his third or any subsequent payment notice, require the relevant employer to pay a contribution surcharge at a rate of 20 per cent per annum on the amount of the arrears, accruing from the day following the due date until the last day of the period specified for payment in that third or subsequent payment notice.

(2) Contribution surcharge collected shall be distributed among the affected members as if they were investment returns earned on the contributions concerned.

11. Financial penalty

(1) The Registrar may impose financial penalty authorized under section 24A(2)(a) of the Ordinance on a relevant employer who fails to pay the arrears as required in the Registrar's first payment notice by giving written notice to him.

(2) A notice given for the purposes of subsection (1) shall specify---

(a) the arrears that the relevant employer has failed to pay; and

(b) the financial penalty imposed.

Alan WONG

Registrar of Occupational Retirement Schemes

17 October 2000

Explanatory Note

These Rules are made for the purposes of section 24A of the Occupational Retirement Schemes Ordinance (Cap. 426). They---

(a) specify how the due date for contributions payable by the relevant employer is to be determined;

(b) impose a duty on the designated person to report arrears of contributions to the Registrar;

(c) provide for the issue of payment notices by the Registrar; and

(d) provide for the manner of imposition of contribution surcharges and financial penalties by the Registrar.