

LEGISLATIVE COUNCIL BRIEF

**OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE
(CHAPTER 426)**

Occupational Retirement Schemes (Recovery of Arrears) Rules

INTRODUCTION

Annex

The Registrar of Occupational Retirement Schemes (the Registrar) has made the Occupational Retirement Schemes (Recovery of Arrears) Rules (the Rules) at the Annex under section 24A of the Occupational Retirement Schemes Ordinance (the ORSO), in respect of registered occupational retirement schemes (ORSO schemes) exempted under section 5 of the Mandatory Provident Fund Schemes Ordinance (the MPFSO), to provide for the recovery from the relevant employer any arrears in contribution which has not been paid by that employer when it became due.

BACKGROUND AND ARGUMENT

2. Under section 5 of the MPFSO, the Mandatory Provident Fund Schemes Authority (MPFA) has exempted members of certain ORSO schemes from the requirements of the MPFSO (relevant schemes). Section 24A was added to the ORSO in 1998 (which will come into operation on 1 December 2000), to empower the Registrar to recover the arrears in respect of a relevant scheme.

3. Section 24A of the ORSO empowers the Registrar to recover the arrears in respect of a relevant scheme. It states that if any arrears arise in respect of a relevant scheme, the Registrar may, in accordance with the rules made under section 73 of the ORSO for the purpose, impose on the relevant employer a financial penalty and a contribution surcharge. Besides, the Registrar shall request the relevant employer to pay the arrears in contribution on or before a date specified in a notice, and take steps to recover the arrears and any financial penalty and contribution surcharge imposed. The Registrar may take legal action against the employer to recover the arrears, financial penalty and contribution surcharge.

4. In order to facilitate the Registrar to carry out his duties as set out in section 24A, it is necessary for the Registrar to make rules under section 73, to provide for the recovery of contribution arrears in respect of a relevant scheme.

THE RULES

5. **Rule 3** specifies the due date for contribution, which should be the day specified in the scheme terms or the actuary's recommendations if applicable. If the scheme terms or actuary's recommendations are silent on the due date, the employer would be required to pay the contribution on a specific date within a month following the expiry of the relevant period for which that contribution should be paid.

6. **Rule 4** specifies the duties of the designated person¹ who will be tasked to collect the arrears in contribution from the relevant employer when it becomes due, and where the employer still fails to pay the arrears, report the particulars in relation to the arrears to the Registrar.

7. **Rules 5 to 8** provide for the issue of payment notices by the Registrar to the employer, requiring the latter to pay the arrears.

First Payment notice - On receipt of the report on the arrears from the designated person, the Registrar shall issue a payment notice to the employer requesting the employer to pay the arrears within a payment period specified in the notice (**Rule 5**).

Second Payment notice - If the employer still fails to pay the arrears after the payment period under Rule 5, the Registrar will then issue a second payment notice to require the employer to pay the arrears together with any contribution surcharge and financial penalty imposed on the employer under section 24A(2) of the ORSO (**Rule 6**).

Third and further payment notices - If the employer still fails to pay the arrears within the payment period specified in the second payment notice, a third payment notice will be issued by the Registrar. Further payment notices may be issued by the Registrar if the employer still fails to pay the arrears. (**Rules 7 and 8**).

¹ A designated person may be the trustee, the administrator or insurer of the relevant scheme.

8. **Rule 10** specifies that the rates of contribution surcharge which the Registrar may impose. The longer the outstanding period, the higher the contribution surcharge rate.

9. **Rule 11** specifies that the Registrar may impose financial penalty 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.

PUBLIC CONSULTATION

10. The corporate trustees of the relevant schemes, the relevant professional bodies and associations have been consulted. In general they welcome the introduction of the Rules.

BASIC LAW IMPLICATIONS

11. The Department of Justice advises that the Rules are consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

12. The Department of Justices advises that the Rules have no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

13. There are no financial or staffing implications for the Government.

ECONOMIC IMPLICATIONS

14. The Rules will be beneficial by helping to enhance compliance with the MPF-exempted ORSO schemes. As the relevant employers are only requested to fulfil their existing obligations under the scheme terms and actuarial certificates, the Rules do not have any economic implication.

PUBLICITY

15. The Rules will be published in the Gazette on 20 October 2000. The Registrar will also issue a circular letter to the relevant employers and trustees/scheme administrators to inform them of the provisions of the Rules.

LEGISLATIVE TIMETABLE

16. The Rules will be tabled at the Legislative Council sitting on 25 October for negative vetting.

ENQUIRY

17. Enquiries on this Brief may be directed to Miss Maureen To, Principal Assistant Secretary for Financial Services, at 2528 9016.

Financial Services Bureau
18 October 2000

**OCCUPATIONAL RETIREMENT SCHEMES (RECOVERY
OF ARREARS) RULES**

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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.

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.