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Enforcement

Overview

Our role

- Ensure that persons covered by the MPF System comply with MPF requirements

In 2005-06, we

- Recovered \$80.2 million of default MPF contributions at various levels of court or by persuasion and counselling of employers concerned
- Filed a total of 997 claims at the Small Claims Tribunal, District Court and High Court on behalf of 3 111 employees
- Applied for 924 summonses
- Submitted 369 claims via liquidators on behalf of 7 370 employees
- Imposed 13 financial penalties on 13 employers
- Applied for 126 garnishee orders on behalf of 598 employees

As at 31 March 2006:

- 98.5%, 96.7% and 77.0% respectively of employers, employees and self-employed persons were enrolled in MPF schemes



ENROLMENT Participation in the MPF System remained stable during the year. As at 31 March 2006, the enrolment rates for employers, employees and self-employed persons (SEPs) were 98.5%, 96.7% and 77.0% respectively, as compared with the March 2005 figures of 97.9%, 96.7% and 80.8%. In other words, about 228 200 employers, 1 992 500 employees and 287 200 SEPs have joined MPF by the end of March 2006. In addition, 14 900 employers, 268 400 employees and 21 800 SEPs have enrolled in the industry schemes set up for casual employees of the catering and construction industries.

Together with the employees who were already covered by existing occupational retirement schemes or statutory pension plans, about 84% of the total workforce in Hong Kong was covered under retirement protection schemes at the end of March 2006. The remaining 16% included 11% who were exempt from MPF (people aged below 18, people aged 65 or above, domestic employees and self-employed hawkers, etc), and 5% who should have joined but had not yet joined any MPF scheme.

Detailed statistics on enrolment are included in Part A of the Statistics section of this report.

ENQUIRIES AND COMPLAINTS The number of enquiries received by the MPFA in 2005-06 was 161 428 as compared with 136 264 in 2004-05, averaging about 540 per working day. The enquiries were mostly about enrolment, contribution arrangements, transfer or withdrawal of benefits, as well as default contributions and imposition of surcharges.

During the year, a total of 9 176 complaints were received as compared with 9 146 complaints received in 2004-05. Complaints relating to default contributions accounted for the majority of the cases recorded, followed by those relating to non-enrolment.

Statistics of enquiries and complaints are in Part D of the Statistics section.

ENFORCEMENT ACTIONS To protect scheme members' interests, the MPFA adopts various practicable means to enforce the law against employers who fail to make MPF contributions for their employees or who do not enrol their employees in MPF schemes. In accordance with the MPF legislation, a surcharge calculated at 5% of the default contribution amount is imposed on employers who default in making MPF contributions for their employees. The surcharges received are credited into the employees' MPF accounts. During the year, 328 400 such payment notices were issued.

Civil claims are an effective means to recover contributions and surcharges in arrears. Since 2004, an increasing number of claims have been filed with the District and High Courts. In 2005-06, the MPFA filed 86 claims at District Court and two claims at High Court on behalf of 1 513 employees in total. During the year, there were also 909 cases, involving 1 598 employees, submitted to the Small Claims Tribunal. District Court and High Court claims were found to be more cost-effective, benefiting more employees. In addition, the MPFA made 369 applications (on behalf of 7 370 employees) to liquidators in respect of default contribution cases.



When the MPFA investigates suspected default contribution cases, some employers would pay the contributions in arrears after persuasion and counselling by the MPFA's inspectors. Where the default situation continues, and if sufficient evidence and witnesses are available, the MPFA would, after obtaining legal advice, refer the cases to the Department of Justice and the Police for criminal prosecution. During the year, the MPFA completed investigation into 9 218 complaint cases and applied for 924 summonses. Among the 126 employers (involving 670 summonses) who had taken plea by 31 March 2006, 107 (involving 584 summonses) pleaded guilty or were convicted. The total amount of fines imposed was \$1,514,200. Among the summonses issued, 120 were laid against 22 directors/managers of limited companies. Thirteen of these directors/managers were convicted and fined \$7,000 to \$47,000 each. One case was withdrawn while the rest were pending court judgement.

The MPFA also applies for garnishee orders¹ to enforce court orders where the employers do not pay the judgement debt before the date set. A total of 126 garnishee orders were applied during the year, successfully recovering \$577,000 of outstanding MPF contributions and surcharges.

The MPFA is empowered under the MPF legislation to impose financial penalties on defaulting employers. During the year 2005-06, financial penalties of \$5,000 for each case were imposed on 13 employers with substantiated defaulting offences. They included repeated defaulters who owed substantial amounts of outstanding default contributions but had no complainants, and cases where there was prima facie evidence to proceed with prosecution but there was no willing witness. All of them admitted the default and paid the penalties.

Proactive Measures

In addition to carrying out investigations in response to complaints, the MPFA proactively inspects business establishments to check on non-enrolment and defaults in contribution. The number of proactive inspections conducted in 2005-06 was 2 552. Major targets of these inspections included construction sites, catering establishments and retail outlets. Joint inspections were held with the Labour Department at the work places of government contractors providing cleansing, pest control and security services.

In 2005-06, an additional team was set up under the Special Task Force, established since 2004, to conduct investigation of default contribution cases reported by trustees and which were not initiated by complainants. The Special Task Force completed investigation of about 820 employers during the year, and civil claims were pursued in substantiated cases.

During the year, the MPFA recovered \$80.2 million of default MPF contributions at various levels of court, or by persuasion and counselling of employers concerned. Statistics on enforcement actions are set out in Part E of the Statistics section.

1 This is a means of executing a court judgement to recover debts due. The court, upon application by the judgement creditor, could issue a garnishee order against a third person, such as a bank, to pay direct to the judgement creditor the debt due from him to the judgement debtor to satisfy the judgement debt.

