

## **Press Release**

### **LCQ3: Protecting employees who have lodged complaints about their employers defaulting on Mandatory Provident Fund contributions**

Wednesday, October 18, 2017

Following is a question by the Hon Luk Chung-Hung and a reply by the Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (October 18):

Question:

Quite a number of workers have relayed to me that after they had lodged complaints with the authorities about their employers defaulting on Mandatory Provident Fund (MPF) contributions, they met with difficulties created repeatedly for them in their work and were even dismissed by their employers. In this connection, will the Government inform this Council:

(1) of the number of complaints received by the authorities about employers allegedly breaching the Mandatory Provident Fund Schemes Ordinance, and the respective numbers of cases in which the employers concerned were prosecuted and convicted, in each of the past three years, together with a breakdown by the breach, the industry and the amount of contributions involved; whether there was an upward trend in the number of cases of employers defaulting on MPF contributions in the past three years;

(2) in respect of some employees' concerns that they may meet with difficulties created for them in work by their employers and even dismissal after lodging non-anonymous complaints about their employers defaulting on MPF contributions, of the mechanisms currently in place for protecting the rights and interests of complainants; and

(3) whether the authorities will conduct a review on matters such as the investigation approach, prosecution procedure and evidential requirements in respect of suspected cases of employers defaulting on MPF contributions and make necessary legislative amendments, so that the employers concerned have no means to get to know whether or not the investigations against them have been initiated on receipt of complaints nor the identities of the complainants, thereby enhancing the protection for the complainants; if so, of the details and

the timetable; if not, the reasons for that?

Reply:

Acting President,

First of all, even if an employee lodges an anonymous complaint with the Mandatory Provident Fund Schemes Authority (MPFA) about non-compliance with the Mandatory Provident Fund Schemes Ordinance by his/her employer, the MPFA will process the complaint and conduct investigation as appropriate. Replies to the various parts of Hon Luk Chung-hung's question are as follows:

(1) According to the MPFA's records, there were 3 695, 3 834 and 3 399 cases of complaints against employers in 2014-15, 2015-16 and 2016-17 respectively. The number of complaints does not show an upward trend. The complaints were mainly about default contribution, non-enrolment, failure to provide contribution records, failure to provide notices of termination to trustees, and wrongful deduction of wages for Mandatory Provident Fund (MPF) contribution purposes. The amount of MPF contributions recovered by the MPFA on behalf of employees was over \$130 million for each of the past three years. On the number of prosecution summonses, there were a total of 575, 457 and 433 summonses issued in 2014-15, 2015-16 and 2016-17 respectively. Please refer to Annex for the breakdown of complaints and prosecution cases.

(2) and (3) To protect employees who lodge complaints, the MPFA will not disclose to employers the source of complaints or the complainants' identity during the investigation process unless consent is obtained from the complainants. After investigation and collection of evidence, the MPFA will act in accordance with the guidelines contained in the Prosecution Code of the Department of Justice, and seek legal advice in considering whether the case satisfies prosecution standards and principles in determining if the case meets the requirements for initiating criminal prosecution. In respect of the standard of proof, the requirements under the Evidence Ordinance shall apply. The MPFA will, from time to time, review the policy and procedures regarding the investigation and prosecution of suspected cases of employers defaulting on contributions as well as related legislative provisions. The MPFA also meets with the Department of Justice on a regular basis regarding the above in order to tackle non-compliant employers more effectively and provide better

protection to complainants. In light of recent comments received, the MPFA has been revisiting the issue of employees being dismissed after lodging complaints against their non-compliant employers. The MPFA plans to liaise with the Labour Department to draw reference to their experience in enforcing the Employment Ordinance with respect to unreasonable and/or unfair dismissal, and explore how the existing MPF regulatory regime could be refined to better handle unreasonable and/or unfair dismissal of employees after they have lodged complaints against their employers for defaulting on MPF contributions.

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