

Press release

LCQ2: Defaulted payment of MPF contributions

Wednesday, April 30, 2008

Following is a question by the Hon Lau Chin-shek and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (April 30):

Question:

Will the Government inform this Council:

(a) whether it knows the number of claims filed by the Mandatory Provident Fund Schemes Authority (MPFSA) to the Small Claims Tribunal and various levels of courts in each of the past three years to recover from employers Mandatory Provident Fund (MPF) contributions in arrears, as well as the amounts involved;

(b) whether it knows among the above cases, the number of those in which the claims were allowed but the employers concerned had failed to settle the arrears in accordance with the court judgments and the amounts involved, and the number of those in which the arrears had successfully been recovered eventually and the amounts involved, broken down by the various means of execution of judgments (including charging orders against premises, garnishee orders, writs of fieri facias and winding up, etc.); and the administrative costs incurred by MPFSA in dealing with such cases each year, as well as the grades and number of staff involved; and

(c) of the new measures the authorities have in place to further improve the situation of defaulted payment of MPF contributions?

Reply:

Madam President,

(a) The number of claims filed by the Mandatory Provident Fund Schemes Authority (MPFA) to the Small Claims Tribunal and various levels of courts to recover from

employers the Mandatory Provident Fund (MPF) contributions in arrears in the past three years starting from 2005/06 are 997, 1127 and 1227 respectively. The amounts involved are around \$36 million, \$62 million and \$71 million respectively.

(b) The claims were allowed in all the above cases. Of these, the number of cases in which the employers concerned had failed to settle all or part of the arrears in accordance with the court judgments are 510, 553 and 260 respectively. The amounts involved are around \$11 million, \$16 million and \$5 million respectively.

On the cases where the employers have failed to settle the arrears in accordance with the court judgments, the actions taken by the MPFA to execute the court judgments include applying for seizure of employers' assets through bailiff actions, applying for garnishee orders to freeze the employers' bank accounts, applying for charging orders to obtain the money from the sale of employers' assets and applying for winding-up.

In the past three years, the number of cases where applications were made by MPFA for bailiff action to seize the employers' assets were 320, 301 and 400 respectively and the number of cases where amounts were successfully recovered were 102, 84 and 88 respectively. The number of cases where applications for garnishee orders were made in the past three years were 126, 165 and 169 respectively and the number of cases where amounts were successfully recovered were 33, 35 and 41 respectively. The MPFA started to use charging order to execute the judgment a year ago. The MPFA made five applications for charging orders in the past year, and funds were successfully recovered in one of those cases. Regarding applications for winding up, the MPFA did not make any formal applications for winding up of employers in the past three years, but it has issued "Statutory Demand" in three cases to indicate that it would formally file application for winding up if the employer concerned cannot repay the debt by the date specified in the Statutory Demand. One of the employers repaid all the arrears after the Statutory Demand was issued. The employers in the other two cases were wound up by third parties at the same time, and the MPFA filed proof of debt in those cases to recover the arrears on behalf of the employees. The MPFA does not keep statistics of the total and respective amounts recovered through different means of executing the judgments.

The figures above are set out in table at Annex for Members' reference. The MPFA has a dedicated team of about 200 staff of different grades and ranks (including inspectors, officers and executive assistants) to assume responsibility for

the recovery of arrears and related work, including making applications for executing the court judgments against employers who did not pay the arrears in accordance with the judgments.

(c) The MPFA is committed to taking vigorous enforcement actions against non-compliant employers and enhancing the intensity and effectiveness of the enforcement actions through different measures. In the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 passed in January this year, and the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 which is currently being scrutinized by the Legislative Council, we have proposed a number of legislative amendments to enhance the enforcement actions of the MPFA, in particular to increase penalties against breaches, and to expedite the handling of default contribution cases. These proposals include:

- (i) enhance MPFA's power to require production of information from employers and other persons for enforcement actions;
- (ii) remove the settlement period to expedite recovery of outstanding contributions;
- (iii) increase the maximum penalty against default contributions to a fine of \$350,000 and imprisonment for three years;
- (iv) in cases where the employers failed to remit the deducted wages as mandatory contributions, to further increase the maximum penalty to a fine of \$450,000 and imprisonment for four years;
- (v) impose liability on employers for payment of contributions in non-enrolment cases, with a maximum penalty of a fine of \$350,000 and imprisonment for three years for non-compliance;
- (vi) increase the maximum penalty against non-enrolment to a fine of \$350,000 and imprisonment for three years;
- (vii) empower the MPFA to recover past outstanding contributions in non-enrolment cases;
- (viii) empower the court to issue order to direct employers to rectify non-enrolment and / or non-payment of mandatory contributions and contribution surcharge;
- (ix) make it an offence if the employers failed to comply with the court order, who will be subject to a maximum penalty of a fine of \$350,000 and imprisonment for three years, and a daily fine of \$500 for each day during which the offence is continued;
- (x) extend the liability of officers concerned in the management of the company under section 44 of the Mandatory Provident Fund Schemes Ordinance to include cases where the company concerned commits the offence of non-compliance with court

order. The officers concerned will be subject to a maximum penalty of a fine of \$350,000 and imprisonment for three years, and a daily fine of \$500 for each day during which the offence is continued; and

(xi) make it an offence if employers provide false pay-records to employees, who will be subject to a maximum penalty of a fine of \$100,000 and imprisonment for one year on first conviction and to a fine of \$200,000 and imprisonment for two years on each subsequent conviction.

Moreover, the MPFA has increased resources and manpower to enhance efficiency in handling the arrears recovery cases. The MPFA will continue to review and improve different measures in the light of actual operational experience so as to enhance the effectiveness of the enforcement actions and better protect the employees' interests.