# *Early start ...*

## *Start saving when you are young*

# Enforcement

With the compliance rates remaining high, the MPFA sustained its law enforcement efforts to fulfill its objectives of protecting employees' rights and scheme members' interests and benefits, and upholding the integrity and credibility of the MPF System. In addition, new measures were implemented to improve recovery of MPF contributions in arrears on behalf of employees.

## ENROLMENT

Participation in the MPF System remained stable during the year. As at 31 March 2005, the enrolment rates for employers, employees and self-employed persons (SEPs) were 97.9%, 96.7% and 80.8% respectively, as compared with the March 2004 figures of 97.1%, 96% and 80.3%. In other words, about 224 000 employers, 1 889 000 employees and 292 000 SEPs have joined MPF by the end of March 2005.

Together with the employees who were already covered by existing occupational retirement schemes or statutory pension plans, about 85% of the total workforce in Hong Kong was covered under retirement protection schemes at the end of March 2005. The remaining 15% included 11% who were exempt from MPF (people aged below 18, people aged 65 or above, domestic employees and self-employed hawkers, etc), and 4% who should have joined but had not yet joined any MPF scheme. The employer and employee enrolment rates are close to optimum, considering that there are always employers and employees pending enrolment at any one time due to labour turnover and new businesses setting up[1].

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

1 Under the MPF legislation, new companies have 60 days to enrol their employees, and employees do not need to join the MPF System if their employment period is less than 60 days.

### Industry Schemes

The industry schemes are set up for casual employees of the catering and construction industries which, due to seasonal or work nature of the jobs, might employ daily-rated employees who would otherwise not be protected under the MPF System. By nature, these workers are employed for 60 days or less.

At the end of March 2005, 14 500 employers have enrolled in the industry schemes. A total of 299 900 casual employees and 22 300 SEPs respectively have also registered with the two approved trustees of the industry schemes. Simultaneously, many employees who are employed on non-casual terms in the catering and construction industries have been enrolled and protected under the master trust schemes instead of the industry schemes.

## ENQUIRIES AND COMPLAINTS

The number of enquiries received by the MPFA in 2004-05 was 136 264 as compared with 139 539 in 2003-04, averaging about 460 per working day. The enquiries were mostly about enrolment and contribution arrangements, as well as default contributions and imposition of surcharges.

During the year, a total of 9 146 complaints were received as compared with 10 204 complaints received in 2003-04. 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 adopted 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 amount in arrears 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, 304 000 such payment notices were issued to 57 200 employers. In addition, 1 700 notices covering surcharge rates of 15% or 20% per annum were issued in respect of defaulting periods before February 2003[2].

Civil claims are an effective means to recover contributions and surcharges in arrears. In 2004-05, the MPFA filed 1 183 claims (on behalf of 2 734 employees) with the Small Claims Tribunal and made 391 applications (on behalf of 6 088 employees) to liquidators or receivers in respect of default contribution cases. In 2004-05, the MPFA also commenced filing cases with the District Court and the High Court for those claims whose amounts had exceeded the limit that might be processed by the Small Claims Tribunal. During the year, 45 claims were filed at the District Court and 3 at the High Court, on behalf of 1 176 employees in total.

As cases reported by complainants are investigated, the MPFA would, after obtaining legal advice, refer the cases to the Department of Justice and the Police for criminal prosecution if sufficient evidence and witnesses are available. During the year, the MPFA completed investigation into 9 465 complaint cases and applied for 1 057 summonses, exceeding the targets of 7 350 cases and 750 summonses set for the year. All of the 93 employers (involving 726 summonses) who had taken plea by 31 March 2005 pleaded guilty or were convicted. The total amount of fines imposed was $1,370,800.

2 The surcharge rates of 15% and 20% per annum apply to contribution periods before the legislative amendments which introduced the 5% surcharge flat rate came into effect in February 2003.

The MPFA is empowered under the MPF legislation to impose financial penalties on defaulting employers. In 2004, the MPFA started imposing financial penalties on employers with substantiated defaulting offences. They included multiple 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. During the year 2004-05, financial penalties of $5,000 for each case were imposed on eight defaulting employers, all of whom admitted the default and paid the penalties.

## Proactive Measures

In addition to carrying out investigations in response to complaints, the MPFA proactively inspected business establishments to check on non-enrolment and defaults in contribution. The number of proactive inspections conducted in 2004-05 was 3 354, exceeding the target of 2 500 set at the beginning of the year. Major targets of these inspections included construction sites, catering establishments, retail outlets, as well as workplaces of government contractors providing general cleansing and security guard services.

A Special Task Force was set up at the end of the previous financial year to proactively investigate employers with multiple complaint records and long periods of default contribution as reported by trustees. In 2004-05, the Special Task Force covered over 2 000 such employers, out of which in-depth investigation was conducted on 284 employers. Among those employers investigated, 30% were false alarm cases, 46% of the employers subsequently rectified and paid the contributions and surcharge. Civil claims were pursued in respect of 19% of the cases. The remaining 5% was found non-pursuable because the employers concerned had ceased business.

The Special Task Force also investigated some employment establishments which had substantial amounts of default contributions. These employers generally rectified only the outstanding contributions for those employees who had complained, but not so for those who had not filed any complaint, or who had complained but wished to remain anonymous. As at 31 March 2005, a total of $4 million was recovered from these employers for 535 employees, while civil proceedings to recover $7 million were being processed.

## New Initiatives

In its continued efforts to enforce compliance with the MPF legislation, the MPFA employed more effective means to recover outstanding contributions and surcharges. Following the successful claims at the District Court, the MPFA filed its first claim at the High Court in December 2004. These claims have been found to be effective, as each claim at these courts involves more employees and a larger amount than those permitted under the Small Claims Tribunal claim mechanism. In 2004-05, about $5 million of MPF contributions were recovered for over 1 100 employees through these channels.

The MPFA also applied for garnishee orders[3] to enforce court orders where the employers did not pay the judgement debt before the date set. A total of nine garnishee orders were applied during the year, successfully recovering $381,000 of outstanding MPF contributions and surcharges.

In its efforts to fight against non-compliance to protect scheme members' interests, the MPFA has pursued available remedies, even where defaulting companies have gone into liquidation. During the year, the MPFA successfully prosecuted the directors of a liquidated company, and more summonses of similar nature had been filed.

In view of the public concerns about the deprivation of MPF (and other employment-related) rights of the low-skilled workers by their employers who were government service contractors, the MPFA held joint inspections with the Labour Department at the work places of government contractors providing cleansing, pest control and security services. Special efforts were also devoted to education and publicity exercises, and to monitoring and handling complaints from these workers, in collaboration with the relevant Government departments and labour unions.

Statistics on enforcement actions are set out in Part E of the Statistics section.

3 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.