

# PROTECTING THE INTERESTS OF SCHEME MEMBERS

## OVERVIEW

### Our role

- To monitor enrolment in MPF schemes and withdrawal of MPF accrued benefits
- To handle and investigate complaints against non-compliant employers
- To take enforcement actions against non-compliance
- To recover default MPF contributions on behalf of scheme members
- To enhance the image of MPFA as a law enforcer and promote the understanding of MPF legislation

### In 2012-13, we

- Conducted 2 892 proactive inspections at employment establishments to check on compliance with MPF statutory requirements
- Recovered on behalf of employees \$120.3 million in default MPF contributions by taking various debt recovery actions
- Implemented measures to enhance the compliance of self-employed persons (“SEPs”) and took enforcement actions against non-compliant SEPs
- Applied for summonses against 83 scheme members who made false statements to withdraw their accrued benefits on grounds of permanent departure from Hong Kong
- Took steps to prevent non-compliance with MPF statutory requirements by promoting the understanding of MPF legislation through publicity and public education

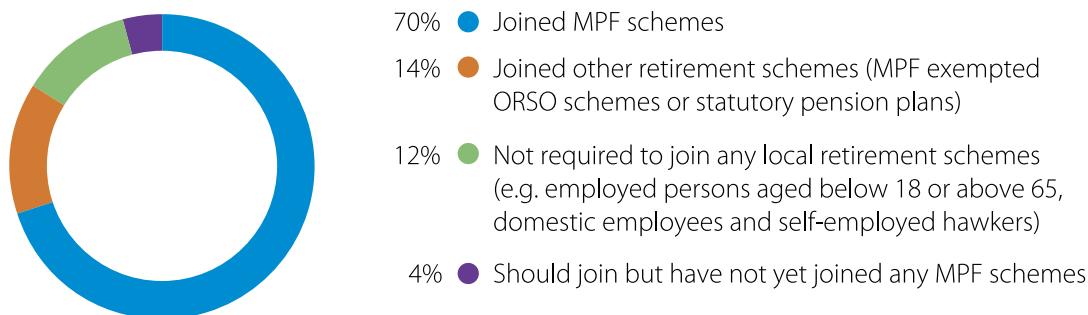
# PROTECTING THE INTERESTS OF SCHEME MEMBERS (CONTINUED)

## ENROLMENT

### Employed Population by Type of Retirement Schemes

(as at 31 March 2013)

At present, 84% of the working population in Hong Kong are under the coverage of MPF or other retirement protection schemes. Details are as shown in the following figure.



### MPF Enrolment Rates

Participation rates in the MPF System remained high throughout the year. As at 31 March 2013, the estimated enrolment rates and estimated numbers of participating members are as follows:

	Employer	Relevant Employee	Self-Employed Person
Number (rounded to the nearest 100)	259 100	2 376 400	219 000
Enrolment Rate (rounded to the nearest integer)	100%	98%	65%

More statistics on enrolment are in Part A of the Statistics section.

## ENQUIRIES AND COMPLAINTS

In 2012–13, we received:

- 117 638 Enquiries — Majority were about transfer or withdrawal of benefits, contribution arrangement and enrolment arrangement.
- 4 461 Complaints — Majority were about default contribution and non-enrolment.

More statistics relating to enquiries and complaints are in Part D of the Statistics section.

The number of complaints received per year has dropped from 8 000–10 000 before 2007–08 to 7 000–8 000 in the two years that followed and further to below 5 000 since 2010–11. We believe that effective enforcement measures by MPFA and heightened awareness of employers' MPF obligations through publicity and education activities have contributed to the downward trend.

## ENFORCEMENT ACTIONS AGAINST NON-COMPLIANT EMPLOYERS

Most employers are law-abiding. Unfortunately, there are still some who seek to evade their MPF obligations by not enrolling their employees in any MPF schemes or not making mandatory contributions for them. We continue to take enforcement actions against non-compliant employers to protect scheme members' interests.

### Proactive Inspection

Proactive inspection is one of the measures to uncover non-enrolment and default contribution cases. In 2012–13, we conducted 2 892 proactive inspections at employment establishments to check on compliance with MPF statutory requirements. Major targets included catering establishments, retail outlets and construction sites.

### Debt Recovery Actions

In 2012–13, we recovered on behalf of employees \$120.3 million in default MPF contributions through the courts, or by persuasion and counselling of the employers concerned. Debt recovery actions taken are summarized below:

Debt Recovery Actions	In 2012–13
A <b>surcharge</b> of 5% of the default amount is imposed on employers who fail to make MPF contributions for their employees. The surcharges received are credited into the relevant employees' MPF accounts.	We issued 252 000 surcharge notices to employers with defaulted cases reported by trustees.  We investigated about 20 500 employers regarding contributions and surcharges in arrears.
When a case is substantiated, we persuade the employers concerned to honour their obligations and, where appropriate, initiate <b>civil claims</b> against them.	On substantiated defaulted cases, we filed: <ul style="list-style-type: none"> <li>• 47 claims with the District Court on behalf of 1 184 employees</li> <li>• 313 claims with the Small Claims Tribunal on behalf of 1 432 employees</li> </ul> We made 123 applications for 1 783 employees to liquidators in respect of default contribution cases.
Where sufficient evidence is available, we refer non-compliant cases to the Department of Justice and the Police for <b>prosecution</b> .	We applied for 1 479 summonses in respect of default contribution cases and 96 summonses in respect of non-enrolment cases. As at 31 March 2013: <ul style="list-style-type: none"> <li>• 86 employers (involving 981 summonses) pleaded guilty or had been convicted after trial. The total amount of fines imposed was \$2,228,400; and</li> <li>• 11 directors/managers of limited companies (involving 131 summonses) had been convicted and fined between \$5,000 and \$36,000 each.</li> </ul> We applied for 11 court orders to compel convicted employers to rectify their non-compliance with enrolment and contribution requirements.
The MPFA is empowered under the MPF legislation to impose <b>financial penalties</b> on defaulters.	We imposed 31 financial penalties on 28 repeat defaulters.

# PROTECTING THE INTERESTS OF SCHEME MEMBERS (CONTINUED)

## ENFORCEMENT ACTIONS AGAINST TARGET GROUPS

### Non-Compliant SEPs

We continue to implement measures to enhance the compliance of SEPs. We proactively inspected suspected non-compliant SEPs, tackled SEP default contribution cases reported by trustees and followed up any non-compliant instances identified. Letters and leaflets on MPF rights and obligations were sent to SEPs upon their first joining an MPF scheme.

### Scheme Members Making False Statements to Withdraw Accrued Benefits on Grounds of Permanent Departure from Hong Kong

Scheme members who make false declarations in order to withdraw MPF benefits on grounds of permanent departure from Hong Kong<sup>1</sup> are another focus of our enforcement efforts. During the year, summonses were served on 83 scheme members for making false statements in this regard. By 31 March 2013, 59 of them pleaded guilty or had been convicted after trial and had been fined between \$2,000 and \$8,000. We are awaiting the court's decisions for the other cases. On 18 March 2013, a scheme member was sentenced to an eight-month prison term (suspended for three years) upon conviction of making false or misleading statements to MPF trustees in order to withdraw MPF benefits.

More statistics on enforcement actions taken relating to employers and specific target groups are in Part E of the Statistics section.

## DETERRENT TO NON-COMPLIANCE

### Legislative Amendments

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2012, which commenced operation on 1 November 2012, provides that it is a continuous offence for an employer to fail to pay mandatory contributions and a criminal offence for an employer to fail to pay any sum payable under tribunal or court awards. We believe that the new provisions will enhance the deterrent effect against default contributions by employers.

### Non-Compliant Employer and Officer Records

We have maintained a Non-Compliant Employer and Officer Records section in the Enforcement Corner on MPFA's website since mid-2011, to increase the transparency of MPFA's enforcement actions against non-compliant employers. From the database, members of the public can view and search for information on employers and officers with MPF non-compliance records, including criminal convictions and civil awards or judgments. As at 31 March 2013, the database contained 3 510 non-compliance records (comprising 700 criminal conviction records and 2 810 civil awards or judgments).

<sup>1</sup> Under the current MPF legislation, the benefits accrued in a member's account in an MPF scheme are to be preserved until retirement. Permanent departure from Hong Kong is one of the circumstances under which a scheme member may apply for early withdrawal of MPF accrued benefits.

## **Promotion of Understanding of MPF Legislation**

We notice that non-compliance is sometimes due to misunderstanding and/or unawareness of MPF requirements. While we strive to enforce the MPF legislation, we also help members of the public better understand the legislation. We continued to upload landmark enforcement cases and explain common misconceptions about MPF obligations and requirements in the Enforcement Corner on MPFA's website to promote understanding of MPF legislation. A TV drama series on common MPF offences and MPFA's enforcement actions launched in early 2012 was further promoted and rerun on TV panels on public vehicles from April to May 2012 to raise awareness and understanding of MPF requirements.

In April 2012, we issued letters to all employers to remind them of the importance of compliance with MPF obligations under the law and draw their attention to the financial penalty that may be imposed on offenders. To spread the messages more widely, we also placed print advertisements in all local newspapers in June 2012 and advertisements in the publications of six major employers and human resources associations from August to October 2012.

## **Intelligence Exchange with Stakeholders**

To enhance the efficiency of our enforcement efforts, we maintained close communication and exchanged intelligence with relevant stakeholders to enhance the deterrent effect against non-compliant employers and SEPs. We also maintained close contact with labour unions to monitor and keep abreast of the situations of specific industries, especially those which tended to have more non-compliant cases, including the catering, retail, cleaning, security and construction industries.