



強制性公積金計劃管理局
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY

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BY FAX

7 July 2004

Mrs Sharon Tong Lee Yin-ping
Clerk to Panel on Manpower
Legislative Council
8 Jackson Road
Central, Hong Kong

Dear Mrs Tong,

**Meeting of the LegCo Panel on Manpower
held on 20 May 2004**

The Permanent Secretary for Economic Development and Labour (Labour), Mr Matthew Cheung, has written to our Managing Director, Mrs Diana Chan, about the concern raised by the Hon Leung Yiu-chung at the captioned meeting. He also sent us the relevant extract of the draft minutes.

Under the existing Mandatory Provident Fund (MPF) legislation, an employer is required to enrol his employees in an MPF scheme and make MPF contributions, if the duration of the employment lasts for 60 days or more. During the discussion on the Labour Department's strategy for promoting good employer-employee relations at the meeting, the Hon Leung Yiu-chung expressed concern that an employer might evade his enrolment and contribution obligations under the MPF system by resorting to short-term or intermittent employment of less than 60 days.

There is already a mechanism to protect employees under the above circumstances. Item 7 of Part I of Schedule 1 to the MPF Schemes Ordinance (Cap. 485) deems a relevant employee working under a "continuous contract" so long as the requirement under section 3(1) of the Employment Ordinance¹ (Cap. 57) (EO) is fulfilled,

¹ In general, an employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a "continuous contract" regardless of how the employment contracts are structured. In any dispute as to whether a contract of employment is a "continuous contract", the onus of proving that it is not a "continuous contract" is on the employer.

notwithstanding that the employment term is broken down into a number of durations each shorter than 60 days. Those employees who work under a “continuous contract” as defined in the EO for over 60 days are required to be enrolled in MPF schemes. Accordingly, an employer would not be able to evade his MPF obligations simply by structuring short-term and intermittent employment contracts if the requirement of the EO is fulfilled. Furthermore, the 60-day rule does not apply to MPF Industry Schemes set up for casual employees in the catering and construction industries.

The MPFA is aware that certain employers may have required their employees to work under purported short-term contracts and re-employ them after a break. The MPFA considers such arrangements improper and they may be deemed as “continuous contracts”. We may take appropriate enforcement actions, including criminal prosecution, if there are sufficient evidence and prosecution witnesses.

We would like to express our sincere gratitude to the Hon Leung Yiu-chung for his interest in the MPF System, and hope the above would clarify the matter.

Please contact me at 2292 1177 for any enquiries on the above.

Yours sincerely,

(Estella Chan)
Senior Manager
Corporate Affairs Department

c.c. Mr Matthew Cheung, Permanent Secretary for Economic Development
and Labour (Labour)
Secretary for Financial Services and the Treasury (Attn: Mr Alan Lo)