

- (a) *The progress of review of contribution and recovery issues for enhancing the protection for employees and MPF scheme members, including the timetable for consultation with the Legislative Council*

Since the implementation of the Mandatory Provident Fund (“MPF”) System in December 2000, the Mandatory Provident Fund Schemes Authority (“MPFA”) has conducted a series of reviews on different aspects of the MPF legislation and for this particular purpose, set up the Mandatory Provident Fund Schemes Operation Review Committee (the “Review Committee”) in August 2001. The Review Committee is tasked to review the MPF legislation in relation to the administrative and operational aspects of MPF schemes for further improvements. A membership list of the Review Committee is at Annex A to LC Paper No. CB(1)806/05-06[11].

In the past few years, with the recommendations put forward by the MPFA, the Administration had introduced two Amendment Bills which covered about 50 legislative proposals, including amendments to enhance protection for employees and scheme members, into the Legislative Council (the “LegCo”). These two Bills were subsequently passed by the LegCo and the amendments have been brought into operation.

The review of the MPF legislation is an on-going exercise. As regards possible improvements to contribution and recovery issue, the MPFA has also recommended further proposals to speed up and enhance the current recovery of default contribution mechanism, such as improving the effectiveness of service of summons for MPF purpose, equipping the MPFA with further power to check employers’ compliance with the MPF legislation, extending the prosecution time-bar, etc. The Administration will study the recommendations of the MPFA to formulate further legislative amendments for the consideration of the LegCo.

Apart from improvements to the MPF System through legislative means, the MPFA has also initiated reviews and taken action to putting in place appropriate measures to better protect the interest of scheme members. These include deploying additional resources for site inspections and complaint enquiries; streamlining the recovery procedures; and widening the institution of legal proceedings in various law courts, etc.

- (b) *MPFA's plan and proposal(s) to address the concern about the lack of protection for employees whose employers have not registered with any MPF schemes*

The issues of non-enrolment and default contribution are governed by sections 7 and 7A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") respectively.

Under section 7(1), every employer of a relevant employee is required to ensure that his employee becomes a member of an MPF scheme within a prescribed period. Section 7(1A) further stipulates that an employer is required to ensure the enrolment of his employee in an MPF scheme throughout his employment. A breach of section 7(1A) is a continuous offence where an employer could be prosecuted more than once for his failure to enroll an employee in an MPF scheme and is liable to a daily penalty of \$500 for each day on which the offence is committed.

Under section 7A(1)(a) and 7A(2)(a), it is the legal responsibility of the employer to make mandatory contributions to an MPF scheme. Section 7A(8) further stipulates that mandatory contributions should be paid to the approved trustee of an MPF scheme of which the employee is a member within a prescribed period and in a prescribed manner.

Despite the operation of the above sections, there may still be some employees who would lodge a complaint for non-enrolment against their employers with the MPFA only after they have ceased

employment. To effectively tackle cases where the employer fails to enroll his employee into an MPF scheme and make mandatory contributions, the Review Committee has studied and recommended the possibility of further empowering the MPFA to initiate actions under the MPF legislation to recover mandatory contributions in non-enrolment cases. Under the proposal, the MPFA can pursue criminal prosecution to penalize the employer for defaulting contributions and initiate civil action to help recover the arrears, plus the applicable contribution surcharge, for the employee.

The Administration will study the recommendation of the MPFA to formulate appropriate legislative amendments for the consideration of the LegCo.

Mandatory Provident Fund Schemes Authority
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