

For information

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2007**

Complaint cases related to housing allowance issues

Purpose

This note is prepared in response to the request by Members at the meeting of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2007 for information related to the complaint cases received by Mandatory Provident Fund Schemes Authority (“MPFA”) relating to employers’ abuse of exclusion of housing allowance from the existing definition of “relevant income” for Mandatory Provident Fund (“MPF”) contributions and the amount of MPF contributions involved, the follow-up actions taken and/or the penalty imposed in respect of the complaint cases.

The Complaint Cases

2. Since the implementation of the MPF System in December 2000, the MPFA has received around 400 complaint cases related to housing allowance issues. These complaint cases involved about 50 employers engaged in different industries, mainly in the security guards industry, cleansing industry and catering industry. Some of the employers are employing over a thousand employees while others have a much smaller number of employees¹. These employers were alleged to have allocated a certain portion of some of their

¹ MPFA estimates that, in total, these employers employ 20,000 to 30,000 employees. However, it should be noted that not all of these employees may have housing allowance issues.

employees' salaries and wages as housing allowances, thereby reducing the amount of relevant income and the amount of mandatory contributions payable for the employees concerned. The allocation ranged from around 10% to 65% of the total salaries.

The Follow-up Actions

3. Where there is sufficient evidence, the MPFA will consider prosecuting those employers who abuse the exclusion of housing allowance from the definition of "relevant income" for evading mandatory contributions. The MPFA's focus has been on those cases where there is evidence that the employers have converted part of their employees' salaries and wages to "housing allowances" in circumstances where there has been no regard to underlying liability of the employees for housing costs. As at 20 September 2007, there were six cases where prosecution action had been taken against employers for evading their responsibility to make MPF contributions under the Mandatory Provident Fund Schemes Ordinance through setting aside part of their employees' salaries as housing allowances. The employees involved in the six prosecution cases had about 30% to 65% of their monthly salaries allocated by their employers as housing allowances. Of the six employers, three were engaged in the security guard industry.

4. Amongst the six cases, four employers pleaded guilty and two who pleaded not guilty to the charges were convicted after trial. The four employers who pleaded guilty were fined \$12,000, \$29,500, \$13,000 and \$33,500 respectively. The other two employers who were convicted after trial

were fined \$2,100 and \$3,000 respectively.

5. One employer who was convicted after trial appealed to the High Court but the appeal was dismissed. The High Court ruled that the term “housing allowance” has to be construed to mean only that part corresponding to actual and real housing expenses; otherwise, the purpose of the MPF legislation (the funding of retirement benefits as set out in the preamble) would be defeated. The employer’s subsequent application for leave with the Court of Final Appeal was rejected on 30 July 2007.

6. In the light of the above judgment which makes the meaning of the term “housing allowance” clearer, the MPFA is now closely following up with those employers which are involved in the housing allowance complaint cases by drawing their attention to the judgment and taking steps to ensure that they rectify by making the MPF contributions that are in arrears, if any, for the employees concerned as soon as possible. In the process, the MPFA will first issue letters to employers urging them to rectify their cases as soon as possible. The MPFA will then call the employers and/ or meet with them to understand their plans to settle the underpaid MPF contributions. Further follow-up action will be taken to confirm that the employers have made the rectification according to their plans. For those employers who fail to rectify, where warranted, legal actions will be taken against them. This serves to ensure that the interest of employees is duly protected.

Mandatory Provident Fund Schemes Authority
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