

**Information on the MPF prosecution cases
related to housing allowance**

As at 30 July 2007, there are six cases with employers prosecuted for evading their responsibility to make MPF contributions through setting aside part of their employees' salary as housing allowances. These employers were charged for failing to comply with requirement imposed on an employer of payment of mandatory contributions under the Mandatory Provident Fund Schemes Ordinance ("the charges").

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

The two employers who pleaded not guilty to the charges were convicted at the Kwun Tong Magistracy which found the defendants guilty of not making mandatory contributions based on the employees' full amount of relevant income, setting aside about one-third of the employees' income as housing allowances where the employees had in fact no housing expenses or housing expenses less than the allowances granted.

In the first case, the Magistrate based his decision on evidentiary issues. In summary, the Magistrate found that the defendant had not overcome the prosecution's averment that the part of the employee's income labelled as housing allowance was not actually housing benefit. The defendant was fined \$2,100. The defendant did not pursue further legal action against that judgment.

In the second case, the Magistrate considered that the intent of the MPF legislation was to build retirement funds for employees. The employer's arbitrary labelling of a large percentage of the employee's low income as housing benefits and not relevant income was an attempt to save money and such arrangement defeated the purpose of the legislation and was evasion of the employer's MPF responsibility. The defendant was fined \$3,000. The appeal of the employer to the High Court against its conviction after trial in Kwun Tong Magistracy

was dismissed in May 2007. The High Court ruled that the term “housing allowance” had to be construed to mean only that part corresponding to actual and real housing expenses; otherwise, the purpose of the legislation (the funding of retirement benefits, as set out in the preamble) would be defeated. The employer then applied for leave to appeal to Court of Final Appeal but the application was rejected on 30 July 2007.

Mandatory Provident Fund Schemes Authority
August 2007