

First director sent to prison after MPF contributions default in Hong Kong

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As Hong Kong employers are well aware, the Mandatory Provident Fund Scheme Ordinance provides that any employer that, without reasonable excuse, fails to make a timely payment of mandatory contributions commits an offence and could be fined up to HKD 450,000. Culpable bosses could also face up to four years' imprisonment. The Mandatory Provident Fund Authority can initiate civil actions for outstanding contributions and surcharges and also launch prosecutions against the employers. On this front, taking the figures from the Mandatory Provident Fund Authority in July 2017, 433 summonses were issued to Hong Kong employers and directors/managers of companies for prosecution in 2016 to 2017.

Where the Court issues a civil order to pay outstanding MPF contributions and surcharges which goes unheeded by the employer without reasonable excuse, the employer faces a further fine of up to HK\$350,000 and another three years' imprisonment. If it is a corporate employer then any individual officer (e.g. director) may also be liable if that person knew or ought to have known about the breach and did not act to address it. A further HK\$500 a day for continuing offences may apply as well.

It is not uncommon to see corporate employers fined for breach of that Ordinance. However, seeing individuals imprisoned for it is very unusual.

On 10 July 2017, a company director who had failed to comply with a Court order to pay outstanding Mandatory Provident Fund contribution was sentenced to 21 days' imprisonment. The employer in question had failed to pay its MPF contributions and surcharges of about \$380,000 in 2015 and 2016. The MPF Authority filed a claim against the company, and the Court ordered it to pay the arrears and surcharges. The employer even then made only a partial payment, in breach of the Court order. This led to the Authority commencing a prosecution in April 2017. The employer pled guilty to the charge.

Relative to a possible sentence of over 3 years, this 21 days is obviously at the bottom end of the scale, but it is doubtful that the director of that company took very much comfort from that when packing his toothbrush for his extended stay away from home. Perhaps the length of the sentence is

less important than the fact of it so far as its deterrent value is concerned. No doubt the guilty plea acted to reduce the sentence. After the publicity attracted by this conviction it would not be guaranteed that future sentences would not be longer.

The Court has displayed a strong attitude against default on MPF contributions by employers. Although the employment statutes in Hong Kong are usually seen as being pro-employer, this judgment shows that the Court will punish robustly employers who serially or deliberately deprive employees of their basic rights and entitlements.

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