

Failure to make MPF contributions for employees may lead to serious consequences

A Disciplinary Committee of the Institute recently reprimanded a CPA who breached the Fundamental Principle of Professional Behaviour set out in the *Code of Ethics for Professional Accountants* as a result of their failure to make Mandatory Provident Fund (MPF) contributions for employees on three occasions, in breach of the Mandatory Provident Fund Schemes Ordinance (MPFSO). The CPA was ordered to pay a heavy penalty of over HK\$400,000 to the Institute.

The three occasions of breaches of the MPFSO were:

- (a) The CPA failed to enrol an employee in an MPF scheme and make MPF contributions for the employee for the period from February 2009 to June 2011. He was prosecuted and fined a total of HK\$122,000 by court in February 2012.
- (b) The CPA's firm failed to make MPF contributions for 10 employees. The firm was ordered by the Small Claims Tribunal in March 2016 to pay contributions in arrears and surcharges.
- (c) The CPA's firm failed to make MPF contributions for 6 employees for a number of months in 2015. The firm was ordered by the Small Claims Tribunal in August 2016 to pay contributions in arrears and surcharges. It was also ordered to pay a financial penalty of HK\$5,000 to the Mandatory Provident Fund Schemes Authority (MPFA).

The breaches of the MPFSO were prolonged and affected a number of employees. The Disciplinary Committee noted the seriousness of the CPA's and his firm's failure to meet their statutory obligation. It is stated in the disciplinary order that: "In the eyes of the society, compliance with making statutory contributions is a fundamental obligation

to an employer. Professionals are expected by the society to adhere to their basic statutory obligations. In the present Complaint, the Respondents have failed to do so repeatedly. The Disciplinary Committee is of the view that the Respondents may commit same or similar offences in the future, and potentially bring the profession into disrepute. The Complaint is therefore of a serious nature that the extent of sanctions should not be light nor inadequate."

The Disciplinary Committee also commented that: "As a general note, the Disciplinary Committee is of the view that heavy sanctions (including cancellation of practising certificate) should be imposed against members of the profession who repeatedly and knowingly fail to make statutory contributions or fail to meet their statutory obligation, to deter members bringing the profession into disrepute, and to maintain the public's confidence in the profession."

Compliance with relevant laws and regulations

The MPF is a form of retirement protection for employees. Making MPF contributions is one of the obligations of an employer under the MPFSO. Those contributions belong to employees; thus, employers should pay them to trustees on time.

The MPFA website states: "Defaulting on contributions is a criminal offence and the defaulter is liable to a maximum penalty of a HK\$450,000 fine and imprisonment for four years. The MPFA can also impose a financial penalty of HK\$5,000 or 10 percent of the default amount, whichever is greater, on the defaulting employer."

The MPFA set up the Non-Compliant Employer and Officer Records (NCEOR) in May 2011. Members of the public can view information from NCEOR on

employers and their officers with MPF non-compliance records resulting from MPFA initiated legal proceedings.

The Institute will inquire into violations of MPFSO by its members. Regulatory actions will be taken for non-compliance with the Code of Ethics. There is an expectation that CPAs will fulfill their statutory obligations, as required.

The Fundamental Principle of Professional Behaviour set out in the Code of Ethics requires that professional accountants comply with relevant laws and regulations and avoid any conduct that discredits the profession. The principle is further elaborated in the Code of Ethics as follows: "The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know may discredit the profession. This includes conduct that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession."

Members of the Institute are reminded that making MPF contributions for employees is a statutory obligation and is not to be regarded simply as a civil matter between an employer and their employees.



This article is contributed by the Institute's Compliance Department. It contains information extracted from MPFA website (www.mpfa.org.hk) and disciplinary order (available at the Institute's website www.hkicpa.org.hk). For more information, please visit the websites.