

C033e

A BILL

To Amend sections 31I and 31Y of the Employment Ordinance to clarify that an employer may reduce a severance payment or long service payment payable to an employee by a relevant mandatory provident fund scheme benefit that has been paid to or in respect of the employee; and to make a clarifying amendment to section 31YA(1) of the Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Employment (Amendment) Ordinance 2001.

(2) Section 4 comes into operation at the beginning of the day on which this Ordinance is published in the Gazette.

(3) Except as provided by subsection (2), this Ordinance is deemed to have come into operation on 25 May 2001.

2. Severance payment to be reduced by amount of gratuities and benefits in certain cases

Section 31I of the Employment Ordinance (Cap. 57) is amended---

(a) in paragraph (b), by adding ", or has been paid to or in respect of the employee" after "employee";

(b) by adding "to or in respect of the employee" before "to the extent".

3. Long service payment to be reduced by amount of gratuities and benefits in certain cases

Section 31Y is amended---

(a) in paragraph (b), by adding ", or has been paid to or in respect of the employee" after "employee";

(b) by adding "to or in respect of the employee" before "to the extent".

4. Reduction of long service payment and other amounts on employee's death

Section 31YA(1) is amended by adding "就該僱員而被持有、" after "扣除".

5. Transitional and savings

(1) If, before 25 May 2001---

(a) a relevant mandatory provident fund scheme benefit has been paid to or in respect of an employee; and

(b) either---

(i) a severance payment has been paid to the employee; or

(ii) the employee becomes entitled to a severance payment,
then---

(c) the amendment made by this Ordinance to section 31I of the principal Ordinance does not affect the employee in relation to the benefit and the payment; and

(d) the employer of the employee---

(i) where paragraph (b)(i) is applicable, is not entitled to recover from the employee any portion of the payment that has been paid on the ground solely that the payment could have been reduced if it were paid on or after 25 May 2001; and

(ii) where paragraph (b)(ii) is applicable, is liable to pay the payment as if section 31I of the principal Ordinance had not been amended by this Ordinance.

(2) If, before 25 May 2001---

(a) a relevant mandatory provident fund scheme benefit has been paid to or in respect of an employee; and

(b) either---

(i) a long service payment has been paid to the employee; or

(ii) the employee becomes entitled to a long service payment,
then---

(c) the amendment made by this Ordinance to section 31Y of the principal Ordinance does not affect the employee in relation to the benefit and the payment; and

(d) the employer of the employee---

(i) where paragraph (b)(i) is applicable, is not entitled to recover from the employee any portion of the payment that has been paid on the ground solely that the payment could have been reduced if it were paid on or after 25 May 2001; and

(ii) where paragraph (b)(ii) is applicable, is liable to pay the payment as if section 31Y of the principal Ordinance had not been amended by this Ordinance.

(3) If---

(a) at any time before the date of publication of this Ordinance in the Gazette, a relevant mandatory provident fund scheme benefit has been paid to or in respect of an employee; and

(b) on or after 25 May 2001, the employee becomes entitled to a severance payment, then the employer of the employee may, on or after the date of publication, reduce the payment by the benefit in accordance with section 31I of the principal Ordinance as amended by this Ordinance.

(4) If---

(a) at any time before the date of publication of this Ordinance in the Gazette, a relevant mandatory provident fund scheme benefit has been paid to or in respect of an employee; and

(b) on or after 25 May 2001, the employee becomes entitled to a long service payment,

then the employer of the employee may, on or after the date of publication, reduce the payment by the benefit in accordance with section 31Y of the principal Ordinance as amended by this Ordinance.

(5) If, at any time on or after 25 May 2001 but before the date of publication of this Ordinance in the Gazette---

(a) a severance payment, to which an employee's entitlement arises on or after 25 May 2001, has been paid to the employee; and

(b) the payment has not been reduced, in accordance with section 31I of the principal Ordinance as amended by this Ordinance, by a relevant mandatory provident fund scheme benefit that has been paid to or in respect of the employee at any time before the date of publication,

then the employer of the employee may, on or after the date of publication, recover from the employee an amount equal to---

(c) if the payment is more than the benefit, the benefit ;

(d) if the payment is not more than the benefit, the payment.

(6) If, at any time on or after 25 May 2001 but before the date of publication of this Ordinance in the Gazette---

(a) a long service payment, to which an employee's entitlement arises on or after 25 May 2001, has been paid to the employee; and

(b) the payment has not been reduced, in accordance with section 31Y of the principal Ordinance as amended by this Ordinance, by a relevant mandatory provident fund scheme benefit that has been paid to or in respect of the employee at any time before the date of publication,

then the employer of the employee may, on or after the date of publication, recover from the employee an amount equal to---

(c) if the payment is more than the benefit, the benefit;

(d) if the payment is not more than the benefit, the payment.

(7) In this section, "principal Ordinance" (主體條例) means the Employment Ordinance (Cap. 57) as in force immediately before 25 May 2001.

Explanatory Memorandum

This Bill makes technical, clarifying amendments to sections 31I, 31Y and 31YA(1) of the Employment Ordinance (Cap. 57). In particular---

(a) sections 31I(b) and 31Y(b) are amended to bring them in line with the wording adopted in section 31YA(1)(b)(ii) of the Ordinance; and

(b) the Chinese text of section 31YA(1) is amended to more accurately reflect the underlying policy intent of this provision.

2. Under the amended sections 31I and 31Y, a severance payment or a long service payment payable to an employee is to be reduced by a relevant mandatory provident

fund scheme benefit that has been paid to or in respect of the employee.

3. Clause 5 provides for transitional and savings provisions in view of the commencement date specified in clause 1(3). (That date is the date of publication of the Bill in the Gazette.)