

**Information Paper for the
LegCo Panel on Manpower
Meeting on 17 May 2001**

**Proposed Amendments to Clarify
Offsetting Provisions of the Employment Ordinance**

Introduction

This paper informs Members about the Administration's plan to introduce clarifying and technical amendments to the Employment Ordinance (EO), Cap. 57 to reflect the original policy intent that an employer is allowed to offset severance payment (SP)/long service payment (LSP) against Mandatory Provident Fund (MPF) Scheme benefits which have been withdrawn by an employee.

Background

2. In establishing the Mandatory Provident Fund Schemes, the policy intent was to carry forth the long-established practice under the EO, whereby SP/LSP is offset against the amount of gratuities or occupational retirement scheme benefits made to an employee, to the MPF schemes in respect of MPF scheme benefits arising from employer's contributions.

The Problem

3. However, the relevant sections of the EO which provide for the offsetting arrangement (sections 31I and 31Y) are worded in such a way that offsetting can only occur where a relevant MPF scheme benefit *is being held* in a MPF scheme.

4. This may give rise to the following situations :-

- (a) where an employee has already withdrawn his entire accrued MPF scheme benefits upon reaching the retirement age of 65

(as allowed under the Mandatory Provident Fund Schemes Ordinance) but continues his employment with the employer then when he eventually leaves his employment, the employer would not be able to offset the SP/LSP payable to the employee against the MPF scheme benefits previously paid to or in respect of the employee because no MPF scheme benefit *is being held* at the time; and

- (b) where an employee has accrued occupational retirement scheme benefits carried forward to a MPF scheme as voluntary contributions or where an employer makes voluntary MPF contributions on top of the legally required amount for an employee and the scheme rules allow the employee to withdraw his accrued MPF scheme benefits in respect of the employer's voluntary contributions without leaving employment.

5. The above situations are not in line with the policy that an employer should not be required to make double payment in respect of SP/LSP and provident fund/MPF contributions. The wording of sections 31I and 31Y is also inconsistent with the existing provisions under the EO governing the offsetting arrangement where an employee dies in service. The wording of section 31YA(1) of the EO allows LSP to be offset against MPF scheme benefits being held in a MPF scheme or *previously paid* to or in respect of an employee who dies during employment. The wording of sections 31I and 31Y presents an anomaly that should be rectified.

6. Since the Mandatory Provident Fund Schemes Ordinance exempts an employee who has reached 64 on 1 December 2000 and his employer from making MPF contributions, the situation as described in paragraph 4(a) above will not occur until early 2002. However, the situation as described in paragraph 4(b) can theoretically take place anytime from the commencement of the MPF scheme. According to the MPF Schemes Authority, however, while some MPF scheme rules do provide for such flexibility, it is generally not common that an employee would be allowed to take out his accrued MPF benefits in respect of the employer's voluntary contributions before leaving the company. In fact, there have not been any reported cases of double payments thus far.

EO(Amendment) Bill 2001

7. We intend to introduce the EO (Amendment) Bill 2001 to make the necessary clarifying and technical amendments as early as possible.

8. The Labour Advisory Board has no objection to the above proposed amendments.

Advice Sought

9. Members are invited to note the Administration's proposal to introduce the Employment (Amendment) Bill 2001 on the above clarifying amendments.

Education and Manpower Bureau
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