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**Bills Committee on Mandatory Provident
Fund Schemes (Amendment) Bill 2007**
<<2007年強制性公積金計劃(修訂)條例草案>>委員會

**Proposed amendments to
Mandatory Provident Fund Schemes Ordinance**
強制性公積金計劃條例的擬議修訂

17 July 2007

2007年7月17日



MAJOR LEGISLATIVE PROPOSALS

主要立法建議



MPF treatment of housing allowance and other housing benefit (Part 25 of Bill)

強積金對房屋津貼及其他房屋利益的處理 (草案第25部)

Issue

- Housing allowances/ benefits not “relevant income” (“RI”) => no mandatory contributions (“MCs”) payable
- ERs convert a portion of EEs’ salary as housing allowances/ benefits => reduce MCs payable

議題

- 房屋津貼/ 利益不屬於「有關入息」=> 無須供款
- 僱主把僱員部分薪金轉為房屋津貼/ 利益 => 減低強制性供款



MPF treatment of housing allowance and other housing benefit (Part 25 of Bill)

強積金對房屋津貼及其他房屋利益的處理 (草案第25部)

Primary justification in 1995

- Large housing allowances excluded from RI
 - => ↓ EEs' contribution burden
 - => unlikely to affect low-paid EEs

1995年提及的主要理據

- 從有關入息中豁除數額頗大的房屋津貼
 - => ↓ 僱員供款負擔
 - => 應不會影響低薪僱員



MPF treatment of housing allowance and other housing benefit (Part 25 of Bill)

強積金對房屋津貼及其他房屋利益的處理 (草案第25部)

Re-examination of justification

- If the intention was to alleviate EEs' contribution burden, exclusion arrangement should extend to –
 - => all EEs incurring housing expenses
 - => other significant expenses
- End up with MCs substantially reduced

重新考慮理據

- 如豁免安排是為了減輕僱員的供款負擔，則該安排應適用於 –
 - => 所有須付房屋開支的僱員
 - => 其他數額龐大的支出
- 強制性供款會減至極少



MPF treatment of housing allowance and other housing benefit (Part 25 of Bill)

強積金對房屋津貼及其他房屋利益的處理 (草案第25部)

Proposals

- Remove housing allowances/ benefits exclusion
- Treat housing allowances/ benefits on the same basis as other remuneration items

建議

- 取消房屋津貼/ 利益的豁免安排
- 用相同方法處理房屋津貼/ 利益及其他薪津項目



Improvement of arrears recovery mechanism (Part 27 of Bill)

改善追討欠款機制 (草案第27部)

Issue

- ERs take advantage of settlement period to delay payment => may inhibit recovery action
- MPFA can impose surcharge/ institute civil proceedings only after timeframe specified in respect of each step been complied with => no action possible in exceptional cases
- Issue surcharge notice to unreachable/ wound up ERs => resources wastage

議題

- 僱主利用結算期拖延付款 => 或會阻礙追討行動
- 只有在遵從法例所定時限行事，積金局才可向僱主徵收附加費/提起民事法律程序 => 不足以處理特殊個案
- 向不能聯絡/ 已清盤的僱主發出附加費通知 => 浪費資源



Improvement of arrears recovery mechanism (Part 27 of Bill)

改善追討欠款機制 (草案第27部)

Proposals

- ⇒ Remove settlement period
- ⇒ Clarify legal uncertainty to facilitate arrears recovery
- ⇒ Allow MPFA not to issue notices to ERs in specified circumstances

建議

- ⇒ 取消結算期
- ⇒ 澄清有關法律條文，以便追討拖欠供款
- ⇒ 容許積金局在指定情況下不需向僱主發出通知



OTHER LEGISLATIVE PROPOSALS

其他立法建議

**(A) Enhance the enforcement
of the MPF System**

加強強積金制度的執法



Greater effectiveness of service of MPF summonses (Part 20 of Bill)

提高送達強積金傳票的成效 (草案第20部)

Issue

- Serve summons on body corporate – send to registered office
=> registered address not valid => not good service of summons

Proposal

⇒ Also allow service of summons on ER's business address

議題

- 向法人團體送達傳票 – 送交註冊辦事處
=> 註冊辦事處地址失效 => 沒有妥善送達傳票

建議

⇒ 亦可把傳票送達僱主的業務地址



Expansion of power to require production of records (Part 26 of Bill)

擴大有關要求出示記錄的權力 (草案第26部)

Issue

- MPFA can only request production of records from ERs/ SEPs during on-site inspections

Proposal

- ⇒ Confer general power to MPFA to request production of records to ensure compliance with MPF legislation

議題

- 積金局只能在實地巡查時才可要求僱主/ 自僱人士出示紀錄

建議

- ⇒ 賦予積金局一般權力，可要求僱主/ 自僱人士出示紀錄，以確保他們遵守強積金法例的規定



Extension of the prosecution time bar (Part 18 of Bill)

延長檢控時限 (草案第18部)

Issue

- Prosecution time bar under s.43C & s.43E of MPFSO & s.26 of Exemption Regulation
=> 6 months after occurrence of offence

議題

- 《強積金條例》第43C及43E條和《豁免規例》第26條之檢控時限
=> 發生罪行後的 6 個月內



Extension of the prosecution time bar (Part 18 of Bill)

延長檢控時限 (草案第18部)

Proposal

- ⇒ Extend time bar to 6 months after offence is discovered by MPFA
- ⇒ Ref: s.43B of MPFSO amended in 2002

建議

- ⇒ 延長時限為積金局發現罪行後6個月內
- ⇒ 參考: 2002年修訂之《強積金條例》第43B條



(B) Improve administration and regulation of MPF scheme

改善強積金計劃的行政及規管



Content requirement of annual benefits statement (Part 22 of Bill)

周年權益報表的內容規定 (草案第22部)

Issue

- No mechanism for adjustments to the content requirements

Proposal

⇒ Allow for the addition of further ABS content requirements as prescribed by MPFA

議題

- 沒有機制調整周年權益報表內容規定

建議

⇒ 容許在周年權益報表加入由積金局訂明的內容規定



Transfer of accrued benefits on cessation of employment (Part 9 of Bill)

終止受僱時轉移累算權益 (草案第9部)

Issue

- MPF legislation: ER to notify TR of cessation of EE employment
- ER's failure => TR cannot transfer EE's accrued benefits

Proposal

⇒ Allow EE to submit notice by statutory declaration if ER fails to do so

議題

- 強積金法例：僱主須通知受託人僱員終止受僱一事
- 僱主沒有通知 => 受託人無法轉移僱員的累算權益

建議

⇒ 如僱主沒有呈交通知，准許僱員以法定聲明呈交通知



Withdrawal of accrued benefits of a deceased member (Part 17 of Bill)

提取已故成員的累算權益 (草案第17部)

Issue

- Unclear whether the Official Administrator is the deceased's “personal representative” (“PR”) for benefits withdrawal

Proposal

⇒ Explicitly state that the Official Administrator is the PR

議題

- 難以確定是否可視遺產管理官為已故成員的「遺產代理人」，提取累算權益

建議

⇒ 清楚說明遺產管理官可視為「遺產代理人」

Claiming of accrued benefits by scheme members (Parts 10 & 15 of Bill)



計劃成員申索累算權益 (草案第10及15部)

Issue

- ERs may delay making contributions => Members unable to claim accrued benefits in:
 - (1) **account balance \leq \$5,000 case** => 12 months preceding the claim, no MCs were paid/ required to be paid to any MPF schemes
 - (2) **permanent departure on a specified date case** => no MCs were paid/ required to be paid to any MPF scheme since specified date

議題

- 僱主可能延遲作出供款 => 成員未能申索累算權益：
 - (1) **帳戶結餘 \leq \$5,000個案** => 申索前12個月，沒有向/ 沒有被規定向任何強積金計劃支付供款，亦沒有人就該成員向/ 被規定向任何強積金計劃支付供款
 - (2) **在某指明日期永久離開個案** => 自指明日期起，沒有向/ 沒有被規定向任何強積金計劃支付供款，亦沒有人就該成員向/ 被規定向任何強積金計劃支付供款



Claiming of accrued benefits by scheme members (Parts 10 & 15 of Bill)

計劃成員申索累算權益 (草案第10及15部)

Proposal

⇒ Revise arrangement to facilitate benefits withdrawal

建議

⇒ 修訂安排以便提取累算權益



Unclaimed benefits (Part 12 of Bill)

無人申索的權益 (草案第12部)

Issue

- Unclear timeframe for treating benefits as unclaimed benefits
- Ineffective publication of newspaper notices to locate lost members
- Cumbersome treatment of benefits of members reaching retirement age

議題

- 把累算權益視為無人申索的權益之期限不明確
- 報章公告尋找已失去聯絡的成員之方法無效
- 處理已屆退休年齡成員之權益的程序繁複



Unclaimed benefits (Part 12 of Bill)

無人申索的權益 (草案第12部)

Proposals

- ⇒ Treat payment cheque un-presented for a specified period as unclaimed benefits
- ⇒ Set out timeframe for accrued benefits to become unclaimed benefits
- ⇒ Remove the newspaper publication requirements

建議

- ⇒ 把在某段期間內仍未兌現的權益支票當作無人申索的權益
- ⇒ 列明累算權益成爲無人申索權益的期限
- ⇒ 刪除在報章刊登公告的規定



Unclaimed benefits (Part 12 of Bill)

無人申索的權益 (草案第12部)

Proposals – Cont'd

- ⇒ TRs report new unclaimed benefits and those claimed by members to MPFA on quarterly basis
- ⇒ TRs to remind members annually reaching retirement age to apply for benefits withdrawal

建議 – 續

- ⇒ 受託人每季向積金局匯報新的無人申索權益及已被成員申索的無人申索權益
- ⇒ 受託人每年提醒已屆退休年齡的成員可申請提取累算權益



Disclosure of information by the MPFA (Part 14 of Bill)

積金局披露的資料 (草案第14部)

Issue

- MPFA cannot disclose information obtained in the exercise/ performance of functions
- May not be in the interest of information subject/ public

議題

- 積金局不能披露在行使/ 執行職能時取得的資料
- 未必符合資料當事人/ 公眾的利益



Disclosure of information by the MPFA (Part 14 of Bill)

積金局披露的資料 (草案第14部)

Proposals

- ⇒ Amend MPFSO to enable MPFA to disclose information:
 - about MPF funds/ schemes; or
 - with consent of information subject; or
 - already in public domain (including court proceedings); or
 - to Official Receiver/ liquidator

建議

- ⇒ 修訂《強積金條例》，讓積金局可披露：
 - 關於強積金成分基金/ 計劃的資料; 或
 - 得到資料當事人的同意可發放的資料; 或
 - 已在公共領域內(包括法庭聆訊)的資料; 或
 - 予破產管理署署長/ 清盤人的資料

Consent to restructuring of MPF schemes (Part 19 of Bill) 同意重組強積金計劃 (草案第19部)



Issue

- Law unclear on effect of MPFA's consent to restructure

Proposal

- ⇒ Spell out the effect of MPFA's consent
 - binding on parties concerned
 - overcome inability to obtain all ERs' / members' consent

議題

- 法例就積金局准許計劃重組的效力不清晰

建議

- ⇒ 訂明積金局所給予的准許的效力
 - 對各方具法律約束力
 - 解決不能取得所有僱主/ 成員准許的問題



Enrolment and contribution requirements for persons who cease to be exempt from MPF legislation (Part 8 of Bill)

不再獲豁免遵守強積金法例的人士登記參加計劃及供款的規定
(草案第8部)

Issue

- Exempt persons cease to be exempt whilst in same employment/ being an SEP
- MPF legislation is silent on when they should join MPF scheme/ how the contribution holiday applies

Proposal

⇒ Clarify that enrolment and contribution requirements apply as if his employment has begun on 1st day ceasing to be exempted

議題

- 豁免人士在同一受僱期間/ 仍屬自僱人士的情況下終止豁免資格
- 強積金法例沒有訂明他們何時需要參加強積金計劃/ 免供款期如何應用

建議

⇒ 闡明有關登記參加計劃及供款的規定適用，豁免人士不再獲豁免首日將被視為開始受僱首日



Serving of membership certificates and participation certificates (Part 16 of Bill)

送達成員證明書及參與證明書 (草案第16部)

Issue

- Send membership certificates/ participation certificates by post => must be registered
- Ordinary post => cheaper & more convenient

Proposal

⇒ Also allow these certificates be sent by ordinary post

議題

- 郵遞方式送遞成員證明書/參與證明書 => 必須掛號
- 普通郵遞 => 較廉宜及方便

建議

⇒ 上述證明書亦可以普通郵遞方式送遞



(C) Other technical and miscellaneous amendments

其他技術及雜項修訂

Appointment of investment manager (Part 13 of Bill) 委任投資經理 (草案第13部)



Issue

- TR to appoint investment manager except for feeder fund arrangement involving APIFs
- Feeder fund arrangement involving ITCISs still needs to appoint investment manager

Proposal

- ⇒ Exempt appointment of investment manager if:
 - invest only in single APIF or ITCIS; or
 - prior approval of MPFA

議題

- 受託人必須委任投資經理，如成分基金全數投資於單一核准匯集投資基金的聯接基金則除外
- 指數計劃的聯接基金仍須委任投資經理

建議

- ⇒ 可獲豁免委任投資經理如：
 - 成分基金只投資於單一核准匯集投資基金或指數計劃; 或
 - 得到積金局的事先批准



Minimum credit rating requirement for debt securities (Part 21 of Bill)

向債務證券施加的最低信貸評級規定 (草案第21部)

Issue

- Capital Preservation Funds may invest in debt securities:
 - remaining maturity period \leq 1 year
 - satisfy the minimum short term credit rating set by the MPFA
- Long term debt securities with remaining maturity under 1 year may not have short term credit rating

議題

- 保本基金可投資於債務證券：
 - 尚餘年期 \leq 一年
 - 符合積金局所定最低短期信貸評級
- 尚餘少於一年即到期的長期債券或沒有短期信貸評級



Minimum credit rating requirement for debt securities (Part 21 of Bill)

向債務證券施加的最低信貸評級規定 (草案第21部)

Proposal

⇒ Capital Preservation Funds may invest in debt securities that satisfy the minimum credit rating (long term or short term) set by MPFA

建議

⇒ 保本基金可投資於符合由積金局所釐定的最低(長期或短期)信貸評級的債務證券



Eligibility of subcustodians (Part 23 of Bill) 成爲次保管人的資格 (草案第23部)

Issue

- The following entities may act as subcustodians:
 - authorized financial institutions or registered trust companies in HK
 - overseas banks or overseas trust companies approved by MPFA
 - **wholly-owned subsidiaries** of the above entities

議題

- 以下機構可擔任次保管人：
 - 認可財務機構或在香港成立的註冊信託公司
 - 獲積金局核准的海外銀行或海外信託公司
 - 上述機構的全資附屬公司



Eligibility of subcustodians (Part 23 of Bill) 成爲次保管人的資格 (草案第23部)

Proposal

- ⇒ Allow subsidiaries or sister subsidiaries of HK or foreign banks or trust companies to be subcustodians:
- best use of existing subcustodian network
 - lower operation costs
 - enhance diversification of MPF investments

建議

- ⇒ 容許香港或海外銀行或信託公司的附屬公司或姊妹附屬公司擔任次保管人：
- 充分利用現有的次保管人網絡
 - 減低運作成本
 - 有助強積金投資的分散安排



Undertakings given by trustees (Part 2 of Bill)

受託人所作的承諾 (草案第2部)

Issue

- The MPF legislation requires certain undertakings to be given
- Possible disputes might arise as to the validity of an undertaking given not in the form of deed

Proposal

⇒ Amend relevant sections to require that undertakings must be given by deed (or like form acceptable to MPFA)

議題

- 強積金法例訂明須就某些法定規定作出承諾
- 以非契據形式所作出的承諾的有效性可能有爭議

建議

⇒ 修訂有關條文規定承諾須以契據形式（或積金局接納的類似形式）作出



Non-refusal requirement of trustees (Part 4 of Bill)

受託人不得作出拒絕的規定 (草案第4部)

Issue

- The Regulation provides for a “non-refusal requirement”
- Application for participation by ER/ maintaining a preserved account must not be refused – introduced to General Regulation in 2000
- No similar amendment introduced to MPFSO in 2000

Proposal

⇒ Amend the MPFSO for consistency

議題

- 規例載有「不得拒絕」的條文
- 就僱主參與計劃/ 維持保留帳戶的申請，受託人不得拒絕 – 於2000年修訂《一般規例》
- 於2000年時，沒有對《強積金條例》作出類似修訂

建議

⇒ 修訂《強積金條例》以令條文保持一致



Encumbrance of scheme assets (Part 3 of Bill)

計劃資產的產權負擔 (草案第3部)

Issue

- Provisions relating to custodial agreements in Schedule 3 to General Regulation amended in 2000
- Including provisions on circumstances under which encumbrance of scheme assets is allowed
- Similar provisions on encumbrance of scheme assets in section 70 of General Regulation not amended

議題

- 《一般規例》附表3所載的保管協議有關的條文於2000年修訂
- 包括了准許計劃資產受產權負擔的情況的條文
- 沒有就《一般規例》第70條同樣關乎計劃資產受產權負擔的條文作出類似修訂



Encumbrance of scheme asset (Part 3 of Bill)

計劃資產的產權負擔 (草案第3部)

Proposal

⇒ Amend section 70 to maintain consistency with Schedule 3

建議

⇒ 修訂第70條，以與附表3保持一致



Cancellation of approval of constituent funds and approved pooled investment funds (Part 11 of Bill) 取消成分基金及核准匯集投資基金的核准 (草案第11部)

Issue

- MPF legislation: No explicit power for cancellation of approval of constituents funds and pooled investment funds

Proposal

⇒ Provide explicit power for MPFA to cancel approval

議題

- 強積金法例：沒有明確規定可取消核准成分基金及核准匯集投資基金的核准

建議

⇒ 明確授權積金局取消核准



Specification of purposes of public registers (Part 7 of Bill) 公開紀錄冊的用途說明 (草案第7部)

Issue

- Public registers under MPFSO include:
 - Public register of approved trustees
 - Public register of MPF schemes
 - Public register of MPF exempted ORSO schemes
 - Public register of members with unclaimed benefits
- Public registers may contain personal data

議題

- 強積金條例下的公開紀錄冊包括：
 - 核准受託人公開紀錄冊
 - 強積金計劃公開紀錄冊
 - 獲強積金豁免職業退休計劃公開紀錄冊
 - 擁有無人申索的權益的成員公開紀錄冊
- 公開紀錄冊可能載有個人資料



Specification of purposes of public registers (Part 7 of Bill) 公開紀錄冊的用途說明 (草案第7部)

Issue

- MPF legislation: sets out the purpose of the establishment and maintenance of the “public register of members with unclaimed benefits” but not the 3 remaining registers

議題

- 強積金法例：訂明設立和保存「擁有無人申索的權益的成員公開紀錄冊」的目的，但並沒有就其餘 3 項公開紀錄冊訂明其目的



Specification of purposes of public registers (Part 7 of Bill) 公開紀錄冊的用途說明 (草案第7部)

Proposal

- ⇒ Amend MPFSO to specify purpose of the 3 remaining public registers
 - Enable public to ascertain whether trustees/ schemes have been approved/ registered/ exempted by MPFA

建議

- ⇒ 修訂《強積金條例》以訂明其餘 3 項公開紀錄冊的目的
 - 使公眾人士可確定受託人/ 計劃是否已獲積金局核准/ 註冊/ 豁免



Rectification of provisions regarding eligibility conditions for MPF exemption for ORSO schemes (Part 6 of Bill)

修訂有關職業退休計劃獲豁免於強積金制度的資格條件的條文 (草案第6部)

Issue

- A new “ORSO registered scheme” can apply for MPF exemption if:
 - established due to scheme restructuring or bona fide business transaction (i.e. a “successor scheme”); and
 - certain conditions are satisfied
- One condition: all or a class of members/ assets of the successor scheme transferred from MPF exempted ORSO registered scheme

議題

- 新設立的「職業退休註冊計劃」，仍可申請強積金豁免如：
 - 其設立是因計劃重組或真正業務交易(即“後繼計劃”)；及
 - 符合訂明的規定
- 一項規定: 新計劃的全部或某類別的成員/ 資產，已經由獲強積金豁免的職業退休註冊計劃轉移過來



Rectification of provisions regarding eligibility conditions for MPF exemption for ORSO schemes (Part 6 of Bill)

修訂有關職業退休計劃獲豁免於強積金制度的資格條件的條文 (草案第6部)

Issue

- However, ER cannot transfer before MPF exemption granted or ER breaches statutory requirement because EEs are neither enrolled in MPF schemes nor MPF exempted ORSO scheme

議題

- 但僱主不能在計劃獲強積金豁免前進行轉移，否則便違反法例規定，因為僱員既非強積金計劃成員，亦非獲強積金豁免職業退休計劃成員



Rectification of provisions regarding eligibility conditions for MPF exemption for ORSO schemes (Part 6 of Bill)

修訂有關職業退休計劃獲豁免於強積金制度的資格條件的條文 (草案第6部)

Proposal

- ⇒ Amend the specified condition
 - members and assets have been transferred or will be transferred as soon as practicable from ≥ 1 “relevant ORSO registered schemes”

議題

- ⇒ 修訂訂明的規定
 - 成員及資產已由 ≥ 1 項「有關職業退休註冊計劃」轉移過來，或將盡快轉移過來



Rectification of anomaly in Chinese translation of the term “years of post-MPF service” (Part 5 of Bill)

修正“years of post-MPF service”一詞的中文譯法 (草案第5 部)

Issue

- Definition of “years of post-MPF service”
 - refers to years of service under MPF exempted ORSO registered scheme, not MPF scheme
- Chinese translation of “years of post-MPF service” implies “years of service from the individual joining an MPF scheme” => misnomer

議題

- “years of post-MPF service” 的釋義
 - 與參加獲強積金豁免的職業退休註冊計劃 (而非強積金計劃) 的服務年期有關
- “years of post-MPF service” 的中文譯法帶有「參加強積金計劃後的服務年期」的涵義 => 未能表達應有涵義



Rectification of anomaly in Chinese translation of the term “years of post-MPF service” (Part 5 of Bill)

修正“years of post-MPF service”一詞的中文譯法 (草案第5 部)

Proposal

⇒ Amend the Chinese translation of “years of post-MPF service” to mean years of service after implementation of the MPF System

建議

⇒ 修訂 “years of post-MPF service” 的中文譯法為“強制性公積金實施後的服務年期”



Clarification of section 156(1) of General Regulation (Part 24 of Bill)

釐清《一般規例》第156(1)條 (草案第24部)

Issue

- EE's accrued benefits may be transferred between MPF schemes
- s.156(1) of General Regulation: Trustee must not effect a transfer if there are **outstanding contributions**
 - avoid multiple transfers of accrued benefits

議題

- 僱員的累算權益可在強積金計劃之間轉移
- 《一般規例》第156(1)條：如有未清繳供款，受託人不得作出轉移
 - 避免需要多次轉移累算權益



Clarification of section 156(1) of General Regulation (Part 24 of Bill)

釐清《一般規例》第156(1)條 (草案第24部)

Proposal

- ⇒ Clarify that s.156(1) also applies to:
 - cases with outstanding contribution surcharges alone; and
 - cases with both outstanding contributions and contribution surcharges

建議

- ⇒ 闡明第156(1)條亦適用於：
 - 只有未清繳供款附加費的個案；及
 - 有未清繳供款及供款附加費的個案



Clarification of section 136(1) of General Regulation (Part 27 of Bill)

釐清《一般規例》第136(1)條 (草案第27部)

Issue

- English text of s.136(1)(a) of General Regulation:
 - MPFA may require defaulter “to pay to the approved trustee of the registered scheme concerned within the period specified in the notice”
 - fails to mention as to what needs to be paid

議題

- 《一般規例》第136(1)(a)條的英文版：
 - 積金局可要求拖欠供款人「在該付款通知所指明的限期內，向有關註冊計劃的核准受託人付款」
 - 並無具體訂明需要支付甚麼款項

Clarification of section 136(1) of General Regulation (Part 27 of Bill)



釐清《一般規例》第136(1)條 (草案第27部)

Issue

- Chinese text of s.136(1)(a): clearly states that defaulter needs to pay “arrears and the contribution surcharge payable on those arrears” to TR

Proposal

- ⇒ Amend the English version of s.136(1)(a) to clarify that it is the arrears and the contribution surcharge on those arrears that should be paid by defaulter to TR

議題

- 第136(1)(a)條的中文版：清楚訂明拖欠供款人須向受託人支付「欠款及該等欠款的供款附加費」

建議

- ⇒ 建議修訂第136(1)(a)條的英文版，闡明拖欠供款人須向受託人支付的，是欠款及該等欠款的供款附加費



END
完