

Hong Kong Intellectual Property Association Limited

Offsetting of Severance Payments and Long Service Payments against MPF contributions

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Dear members of the Legco,

Pursuant to section 12A of the Mandatory Provident Fund Schemes Ordinance, offsetting of severance payments or long service payments against the employer's contribution to MPF is allowed in Hong Kong.

An employer who is liable to pay an employee severance payments or long service payments under the Hong Kong Employment Ordinance can offset the severance payments or long service payments with the accrued benefits from the employer's contributions made to the MPF.

Employers, after paying the employee severance payments or long service payments, can apply to the MPF trustee with supporting evidence for re-payment of the paid amount from the MPF.

We understand that voices have arisen in the society on removing this offsetting arrangement.

Our view is that the remove of this offsetting arrangement should not be proposed without a thorough and complete consideration of reform to the whole retirement protection system in Hong Kong.

History of the retirement protection development in Hong Kong should be considered. Severance payments were introduced by the British Government in the 1970s as a protection to those being unemployed due to redundancy. In principle, employees with minimum 2 years of service can claim severance payments from the employers on redundancy.

In the 1980s, the British Government also introduced the long service payments to further enhance the protection to employees. In short, employees with at least 5 years

of service can make claims.

Based on above, as far as we can understand, severance payments or long service payments have long acted in the function of retirement protection, designed to set a minimum on what employees would receive in the event of dismissal or retirement. This minimum level, as far as we believe, is a level being agreed by the legislative bodies at that time.

Viewing the circumstances from certain perspectives, employers of Hong Kong have already bore this responsibility of retirement protection for employees since 1970s.

Without arguments, the introduction of the MPF is another improvement to the retirement protection for employees in the 1990s. The MPF is a more extensive system, covering most of the employees in Hong Kong.

Without arguments, MPF serves the same function as severance payments and long service payments, as a kind of retirement protection.

We submit that employee should not be paid twice on the minimum amount of retirement protection. Hence, we agree to the set up of the offsetting arrangement and such offsetting was also passed by the Legco members at that time.

Based on above, we can see the strong historical logic of the offsetting arrangement and it will be logically unfair to the employers that after contributing long years (say more than 10 years) to the MPF, also has to pay long service payments together.

If the society and the government is intended to improve the retirement protection to the whole society further, the consideration and discussion should focus on the overall MPF system, but not a piece-meal move to remove the offset arrangement. This will result in double benefit to the employees resulting unfairness to the employers, who have long been contributing to the retirement protection since the 1970s.

We are welcome for further comprehensive proposal on retirement protection from the society for consideration.

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