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Panel on Manpower and Panel on Financial Affairs

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for the joint meeting on 18 March 2014**

**The arrangement of offsetting severance payments and long service
payments against Mandatory Provident Fund accrued benefits**

Purpose

This paper summarizes Members' discussions on issues relating to the arrangement of offsetting severance payments ("SP") and long service payments ("LSP") against Mandatory Provident Fund ("MPF") accrued benefits (hereafter referred to as the "offsetting arrangement") in the Fourth and Fifth Legislative Council ("LegCo").

The MPF System

2. The Mandatory Provident Fund Schemes Ordinance (Cap. 485) provides that unless exempted, an employer and an employee must each contribute 5% of the employee's relevant income to a registered MPF scheme, subject to the maximum and minimum levels of monthly income for contribution purposes, currently at \$25,000 and \$6,500 respectively, which also apply to self-employed persons who have to contribute 5% of his relevant income. However, if the relevant income of the employee or self-employed person concerned is less than the Minimum Relevant Income Level, he is not required to make MPF contribution himself, and his employer has to make MPF contribution for him. For an employee or a self-employed person whose relevant income is above the Maximum Relevant Income Level, both he and his employer are not required to make mandatory contribution in respect of the excess relevant income.

Past discussions by Members

3. The subject of offsetting arrangement and related issues were brought up at meetings of various committees when members discussed issues relating to the MPF System and retirement protection for the workforce. The major concerns and suggestions raised by Members are summarized below.

Impact of offsetting arrangement on the retirement protection for the workforce

4. Some members expressed grave concern about substantial reduction in the MPF accrued benefits of employees as a result of the offsetting arrangement, thereby defeating the purpose of the MPF System in providing retirement protection for the workforce. In particular, there were concerns about the adverse effect of the offsetting arrangement on employees under contract employment and those when their companies became insolvent as the employees concerned would need more savings to meet their financial needs. Members had repeatedly urged the Government to review the matter, with a view to abolishing the offsetting arrangement early or removing it in phases.

5. According to the Administration, the MPF System aimed to assist the employed population in accumulating retirement savings through contributions by both employers and employees so as to enhance retirement protection for the employed population in Hong Kong. Before the implementation of the MPF System, only about one-third of the Hong Kong workforce had some forms of retirement protection. As at the end of September 2010, around 2 500 000 employees and self-employed persons as well as 241 000 employers were participating in MPF schemes. The total value of assets accumulated under the MPF System exceeded \$345.7 billion. Together with other retirement protection schemes, around 90% of the working population had participated in a retirement protection scheme. In addition, scheme members might decide whether to top up retirement savings for better protection through voluntary contributions or other investments.

6. On the impact of the offsetting arrangement on the MPF accrued benefits, the Administration advised members of the former Subcommittee on Retirement Protection formed in the Fourth LegCo that according to the data collected from trustees by the Mandatory Provident Fund Scheme Authority ("MPFA"), the total amount of MPF accrued benefits used to offset SP or LSP during the period between 1 July 2001 and 31 March 2011 was \$15,289 million, whilst the aggregate net asset

values of all MPF schemes as at 31 March 2011 was \$378.2 billion. As MPFA collected the above information for the purpose of monitoring the withdrawal of benefits from MPF schemes from an overall perspective, MPFA did not have the withdrawal record of individual accounts nor data on the number of scheme members whose accrued benefits had been withdrawn by their employers for offsetting SP or LSP.

7. As regards the impact of offsetting arrangement on low-income employees under contract employment, the Administration provided members with information on the estimated amount of accrued benefits for scheme members at different income levels at the age of 65 as well as the scenario that the employee concerned who had worked under 15 three-year contracts with the portions of accrued benefits from employers' contribution used for offsetting SP or LSP, details of which are set out in **Appendix I**.

8. While noting that the Chief Executive of the current term has stated in his election manifesto the initiative to progressively reduce the proportion of accrued benefits attributable to employers' contributions that could be applied for the offsetting arrangement, some members expressed strong disappointment that the Administration had not put forth any measures in the 2013 and 2014 Policy Addresses to follow up on the matter. They criticized that the relevant bureaux (i.e. the Financial Services and the Treasury Bureau and the Labour and Welfare Bureau had shirked their responsibilities on the matter by claiming that issues relating to the offsetting arrangement were under study. They called on the two bureaux to make concerted efforts to devise a concrete work plan and a timetable for implementation, including commencing public consultation on the matter as early as possible within the current term of the Fifth LegCo.

9. On the other hand, some members were concerned that abolition of the offsetting arrangement would increase the financial burden on employers, especially the small and medium-sized enterprises. They stressed the need for the Administration to conduct thorough consultation with the relevant stakeholders on the matter. Some members commented that as SP and LSP provided certain protection to employees on account of their service with the same employer, the offsetting arrangement was reasonable, lest employees would be provided with "double benefit" for the same period of service. These members were not supportive of conducting a review on the offsetting arrangement. Besides, they opined that employees should be encouraged to make other arrangements to cater for their retirement needs instead of relying solely on the accrued benefits from the MPF schemes.

10. The Administration explained that the offsetting arrangement actually predated the implementation of the MPF System. Before the implementation of the MPF System, employers were allowed to offset SP/LSP from the accrued benefits derived from their contributions to the occupational retirement schemes for employees. During formulation of the current framework for the MPF System and related legislation, there had been extensive consultation and discussion among stakeholders before a consensus was finally reached for the extension of the offsetting arrangement to apply to MPF benefits. The Administration stressed that the offsetting arrangement against the MPF accrued benefit was adopted after extensive consultation and balancing all relevant considerations, which was complicated and controversial, and there were still divergent views among different stakeholders on the matter. As the issues involved straddled policy areas across bureaux and interests of different sectors, it would require joint efforts of the relevant bureaux to study the matter.

Issues of enhancing employees' control over MPF investment

11. The offsetting arrangement was an issue of concern when Members discussed the Employee Choice Arrangement ("ECA") which allowed partial portability of MPF benefits. Members noted the Administration's view that allowing full portability of MPF benefits, such as through allowing employees to transfer all the accrued benefits derived from employer mandatory contributions from the employer-chosen schemes to MPF schemes of their own choice, or allowing employees to choose trustees for making contributions in respect of both the employer's and the employee's portions, would increase the complexity of the offsetting arrangement. Some members criticized that the Administration was overly concerned about facilitating the offsetting arrangements rather than safeguarding the interests of employees. They stressed that employees should be given full control of their MPF investments. They opined that if alternatives to allow employees full control of their MPF investments would increase the complexity of offsetting SP/LSP, the offsetting arrangement should be abolished altogether.

12. As regards the relationship between the offsetting arrangement and MPF full portability, MPFA pointed out that the issue should be examined before the full portability arrangement for employees could be implemented, and there would be additional burden in the implementation of full portability if the offsetting arrangement was not abolished. The Administration pointed out that the abolition of the offsetting arrangement was not a prerequisite to achieve MPF full portability.

MPFA was studying the cost and effectiveness of various proposals to facilitate implementation of MPF full portability, including working with Hong Kong Monetary Authority to launch an electronic platform in around mid-2014 to further accelerate the process of ECA transfer between trustees.

Enhancement to the MPF System

13. A question was raised, at the Special Finance Committee meeting on 8 April 2013, on the methods and measures to reduce MPF fees and enhance the MPF System as well as the timetable for implementing these measures. The Administration advised that MPFA and the Administration were pursuing a basket of short, medium and long-term measures to achieve substantial reduction in MPF fees. On short-term measures, MPFA was pressing ahead with those measures suggested in the Consultancy Study on MPF Trustees' Administration Costs announced in November 2012 which could be implemented within the existing legislative framework to reduce administration costs. These included promoting electronic platforms, encouraging employees to consolidate their accounts, and encouraging trustees to consolidate MPF schemes/funds that were smaller in scale or less cost-efficient. Regarding medium-term measures, the Administration and MPFA were considering feasible options to enable MPFA to better perform its functions, which included specifying regulatory requirements for seeking MPFA's approval for MPF funds. The Administration aimed to introduce the proposed legislative amendments into LegCo by July 2014. As regards long-term measures, the Administration was discussing with MPFA the rationalization of fund choices and introduction of a cap on MPF fees in case of market failure, with a view to preparing a proposal for public consultation within 2013.

Relevant papers

14. A list of the relevant papers on the LegCo website is in **Appendix II**.

**Extract from the Administration's paper for
Subcommittee on Retirement Protection
(LC Paper No. CB(2)2350/10-11(01))**

Appendix I

Projected accrued benefits

The Mandatory Provident Fund Schemes Authority has made the following assumptions in arriving at the projected accrued benefits set out in the table below –

- (a) the annualised internal rate of return after deductions of fees and charges is 5.5%;
- (b) the employee concerned has worked under 15 three-year contracts, with the portions of accrued benefits from employers' contribution made available for offsetting severance payments (SP)/long service payments (LSP);
- (c) monthly relevant income remains unchanged for the entire employment period;
- (d) the employer and employee mandatory contribution is calculated as 5% of an employee's relevant income over the entire employment period;
- (e) the minimum and maximum levels of relevant income remain unchanged over the entire employment period at \$6,500 and \$25,000 per month respectively; and
- (f) the calculation of and eligibility for SP/LSP under the Employment Ordinance (Cap. 57) remain unchanged over the entire employment period.

Monthly income (Min RI assumed at \$6,500 and Max RI assumed at \$25,000)	Estimated amount of accrued benefits at age 65 (mandatory contribution only, and assuming accrued benefits from employers' contribution are used for offsetting SP/LSP)
(A)	(B)
\$5,000	\$0
(assuming Min RI at \$5,000)	\$592,597
\$6,500	\$770,376
\$7,000	\$829,636
\$8,000	\$948,155
\$9,000	\$1,066,675
\$10,000	\$1,185,194
\$11,000	\$1,303,713
\$20,000	\$2,370,388

Monthly income (Min RI assumed at \$6,500 and Max RI assumed at \$25,000)	Estimated amount of accrued benefits at age 65 (mandatory contribution only, and assuming accrued benefits from employers' contribution are used for offsetting SP/LSP) *
\$25,000 (assuming Max RI at \$20,000)	\$3,206,407 \$2,370,388

* Excluding SP/LSP. Employees concerned may make investments using their SP/LSP received for preparation of their retirement life.

Based on Q4 2010 data –

If Min RI is set at \$5,000, 156 400 employees/SEPs will be excluded from making mandatory contributions; if Min RI is set at \$6,500, 337 300 employees/SEPs will be excluded from making mandatory contributions. With the implementation of the Statutory Minimum Wage, the actual figure is expected to be smaller.

Relevant papers on the arrangement of offsetting severance payments and long service payments against Mandatory Provident Fund accrued benefits

Committee	Date of meeting	Paper
Panel on Financial Affairs ("FA Panel")	17 October 2008	<u>Minutes</u>
FA Panel	1 December 2008	<u>Minutes</u>
Legislative Council	8 July 2009	<u>Report of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2009</u>
Subcommittee on Retirement Protection	19 July 2011	<u>Minutes</u>
Subcommittee on Retirement Protection	8 May 2012	<u>Minutes</u>
FA Panel	7 January 2013	<u>Minutes</u>
Manpower Panel	25 January 2013	<u>Minutes</u>
Manpower Panel	19 February 2013	<u>Minutes</u>
FA Panel	4 March 2013	<u>Minutes</u>
Special meeting of the Finance Committee for examination of Estimates of Expenditure 2013-2014	April 2013	<u>Report on examination of the Estimates of Expenditure 2013-2014</u>
FA Panel	3 May 2013	<u>Minutes</u>
FA Panel	29 January 2014	<u>Minutes</u>