

立法會
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Panel on Manpower and Panel on Financial Affairs

**Joint Subcommittee to Study the Arrangement of
Offsetting Severance Payments and Long Service Payments
against Mandatory Provident Fund Accrued Benefits**

**Minutes of meeting
held on Monday, 7 March 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon TANG Ka-piu, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, SBS
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon LEUNG Kwok-hung
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP

Member attending : Hon Frankie YICK Chi-ming, JP

**Members
absent** : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon IP Kwok-him, GBS, JP
Hon CHAN Yuen-han, SBS, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon CHUNG Kwok-pan

**Public Officers
attending** : Item I

Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare

Ms Melody LUK Wai-ling
Assistant Commissioner for Labour
(Labour Relations)

Ms Esther CHAN Lai-heung
Senior Labour Officer (Labour Relations)
Labour Department

Miss Wendy CHUNG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Ms Gabriella YEE
Head (Policy Development and Research) /
Mandatory Provident Fund Schemes Authority

**Attendance
by invitation** : Item I

Federation of Hong Kong Industries

Mr KWOK Chun-wah
Deputy Chairman

Neighbourhood and Worker's Service Centre

Mr Ivan WONG Yun-tat

The Federation of Hong Kong & Kowloon Labour Unions

Mr WONG Man-kuen
Coordinator

Money, Power, and Fame

Mr LEUNG Hoi-fu
Pension Shark in Chief

The Hong Kong Federation of Trade Unions
Rights & Benefits Committee

Mr KWAN Shing-kit
Secretary

Labour Party

Mr KWOK Wing-kin
Representative

The Democratic Party

Mr YUEN Hoi-man

Liberal Party

Mr SHIU Ka-fai
Vice Party Chair

Individual

Mr Joseph CHAN
Member of Central and Western District Council

Hong Kong Catering Industry Association

Mr Tony TAM
Vice President

Business and Professionals Alliance for Hong Kong
Committee on Youth

Mr Thomas CHEUNG Tsun-yung
Chairman

Hong Kong Small and Medium Enterprises Association
Committee on Youth

Mr Galam CHEUNG
Chairman

Hong Kong Federation of Restaurants & Related Trades

Mr TAM Hop-sing
Chief Executive Officer

Lok Ma Chau China-Hong Kong Freight Association

Mr Stanley CHAING
Chairman

Association of Restaurant Managers

Mr LEUNG Kui-tang
Vice-Chairman

Kowloon Truck Merchants Association Ltd.

Mr LEUNG Kun-kuen
Chairman

Hong Kong Container Tractor Owner Association Ltd.

Mr LAM Hoi-tat
Executive Vice Chairman and Secretarial General

The Lion Rock Institute

Mr Laurence PAK
Director of Operations

Hong Kong Taxi Owners' Association Ltd.

Mr WONG Po-keung
Chairman

The Hong Kong Federation of Trade Unions
Social Affairs Committee

Mr Stanley HO Ngai-kam
Member

Hong Kong Air Cargo Terminals Employees Union

Mr YAP Yee-liek
Vice Chairman

Hong Kong Department Stores and Commercial Staff
General Union

Mr MOK Kin-wing
Deputy Executive Director

Hong Kong Construction Industry Employees General
Union

Mr KAN Ming-tung
Deputy General Secretary

Kwai Chung Estate Labour Rights Concern Group

Miss Vincci WONG
Representative

Kwai Chung Standard Working Hours Concern Group

Miss LAI Choi-yin
Representative

前線員工權益關注組

Miss Rida CHEUNG

Institution of Dining Art

Mr Ray CHUI
Vice-Chairman

公屋被迫遷戶關注組

Mr LAI Chi-po
Member

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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

The Joint Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Deputy Chairman took over the chairmanship of the meeting in the absence of the Chairman.

3. The Joint Subcommittee received oral representations from 28 deputations/individual attending the meeting. The major views and concerns expressed by deputations/individual are summarized as follows :

- (a) some deputations were of the view that the arrangement of offsetting severance payments ("SP") and long service payments ("LSP") against Mandatory Provident Fund ("MPF") accrued benefits arising from employers'

contribution ("the offsetting arrangement") should be abolished. They expressed the following views :

- (i) the Chief Executive ("CE") should honour his election manifesto regarding the offsetting issue and draw up a timetable for the abolition of the offsetting arrangement;
 - (ii) the purpose of MPF was to assist the working population to save for retirement, while SP and LSP were intended for meeting the short-term financial needs of employees who became unemployed under specific circumstances. As the purposes of SP and LSP were different from that of MPF, it was unfair to offset SP or LSP against accrued benefits arising from employers' contribution to MPF;
 - (iii) accrued benefits attributable to employers' contribution withdrawn for offsetting SP and LSP had amounted to more than \$25 billion since July 2001 when the Mandatory Provident Fund Schemes Authority first collected SP and LSP related withdrawal data. In 2014, some 43 500 employees, out of the total 2.549 million of employee scheme members, were affected by the offsetting arrangements. A large number of employees were affected by the offsetting arrangement;
 - (iv) as a first step, the Administration should abolish the offsetting arrangement for non-civil service contract staff and employees of government outsourced contractors;
 - (v) the Administration should introduce a universal retirement protection scheme; and
 - (vi) instead of opposing the abolition of the offsetting arrangement, the business sector should seek for the implementation of rent control; and
- (b) some other deputations/individual were of the view that the offsetting arrangement should not be abolished. They expressed the following views :

- (i) the abolition of the offsetting arrangement was a deviation from the consensus reached during the enactment of the MPF Schemes Ordinance (Cap. 485);
- (ii) employers were facing a very difficult business environment. Abolition of the offsetting arrangement would further increase the financial burden of employers, especially those of the catering industry as well as medium, small and micro enterprises;
- (iii) instead of abolishing the offsetting arrangement, a review should be conducted on the MPF System to increase the transparency and reduce the management fees of MPF schemes, encourage employers and employees to increase their level of MPF contribution on a voluntary basis and transfer the management of MPF schemes to the Administration;
- (iv) there was overlapping between SP, LSP and MPF, which were not found in co-existence in most developed economies, including Australia, Canada, France, Germany, the United Kingdom and the United States of America;
- (v) MPF was not the only pillar for retirement protection. The Administration should do more in explaining this and the background to the offsetting arrangement to the public; and
- (vi) some of these deputations considered that the abolition of the offsetting arrangement might be explored, only if there was no retrospective effect on the MPF benefits accrued before the new law came into operation.

4. In response to the views and concerns of the deputations/individual attending the meeting, the Administration made the following points :

- (a) CE had indicated in his election manifesto that he would progressively reduce the proportion of the offsetting amount. The Administration was playing an active role in the public

consultation on retirement protection, which included the offsetting arrangement, and the study on the offsetting issue;

- (b) the offsetting issue and the issue of whether there was any functional overlapping among SP, LSP and MPF were complex;
- (c) in the longer term, there was a need to rationalize the relationship among SP, LSP and MPF; and
- (d) the views received in the public consultation exercise would be collated and analysed to facilitate thorough and in-depth discussions on the feasible options and the way forward.

II. Any other business

5. Members agreed that the next meeting would be held on 18 April 2016 at 9:00 am and relevant academics would be invited to give views at the meeting on the offsetting arrangement.

6. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 2
Legislative Council Secretariat
3 May 2016

**Proceedings of meeting of the
Joint Subcommittee to Study the Arrangement of
Offsetting Severance Payments and Long Service Payments
against Mandatory Provident Fund Accrued Benefits
held on Monday, 7 March 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
<i>Agenda item I - The arrangement of offsetting severance payments and long service payments against Mandatory Provident Fund accrued benefits</i>			
000000 - 001124	Deputy Chairman	Opening remarks	
001125 - 001624	Deputy Chairman Admin	Briefing by the Administration on the background to the arrangement of offsetting severance payments ("SP") and long service payments ("LSP") against Mandatory Provident Fund ("MPF") accrued benefits arising from employers' contribution ("the offsetting arrangement"), the current situation of offsetting and the Administration's public consultation on retirement protection, which included the offsetting issue.	
001625 - 002007	Deputy Chairman Mr KWOK Chun-wah, Federation of Hong Kong Industries	Presentation of views [LC Paper No. CB(2)1022/15-16(01)]	
002008 - 002204	Mr WONG Man-kuen, The Federation of Hong Kong & Kowloon Labour Unions	Presentation of views [LC Paper No. CB(2)1022/15-16(02)]	
002205 - 002511	Mr LEUNG Hoi-fu, Money, Power, and Fame	Presentation of views	
002512 - 002826	Mr KWAN Shing-kit, The Hong Kong Federation of Trade Unions Rights & Benefits Committee	Presentation of views	
002827 - 003050	Mr KWOK Wing-kin, Labour Party	Presentation of views [LC Paper No. CB(2)1041/15-16(01)]	
003051 - 003357	Mr YUEN Hoi-man, The Democratic Party	Presentation of views [LC Paper No. CB(2)1020/15-16(01)]	

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003358 - 003701	Mr SHIU Ka-fai, Liberal Party	Presentation of views	
003702 - 004002	Mr Joseph CHAN, member of Central and Western District Council	Presentation of views	
004003 - 004241	Mr Tony TAM, Hong Kong Catering Industry Association	Presentation of views [LC Paper No. CB(2)1022/15-16(03)]	
004242 - 004547	Mr Thomas CHEUNG Tsun-yung, Business and Professionals Alliance for Hong Kong Committee on Youth	Presentation of views [LC Paper No. CB(2)1041/15-16(02)]	
004548 - 004852	Mr Galam CHEUNG, Hong Kong Small and Medium Enterprises Association Committee on Youth	Presentation of views	
004853 - 005206	Mr TAM Hop-sing, Hong Kong Federation of Restaurants & Related Trades	Presentation of views [LC Paper No. CB(2)999/15-16(01)]	
005207 - 005446	Mr Stanley CHAING, Lok Ma Chau China-Hong Kong Freight Association	Presentation of views	
005447 - 005645	Mr LEUNG Kui-tang, Association of Restaurant Managers	Presentation of views [LC Paper No. CB(2)1022/15-16(03)]	
005646 - 005949	Mr LEUNG Kun-kuen, Kowloon Truck Merchants Association Ltd.	Presentation of views	
005950 - 010254	Mr LAM Hoi-tat, Hong Kong Container Tractor Owner Association Ltd.	Presentation of views	
010255 - 010613	Mr Laurence PAK, The Lion Rock Institute	Presentation of views	

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010614 - 010836	Mr WONG Po-keung, Hong Kong Taxi Owners' Association Ltd.	Presentation of views [LC Paper No. CB(2)1022/15-16(04)]	
010837 - 011130	Mr Stanley HO Ngai-kam, The Hong Kong Federation of Trade Unions Social Affairs Committee	Presentation of views	
011131 - 011443	Mr YAP Yee-liek, Hong Kong Air Cargo Terminals Employees Union	Presentation of views [LC Paper No. CB(2)1041/15-16(03)]	
011444 - 011752	Mr MOK Kin-wing, Hong Kong Department Stores and Commercial Staff General Union	Presentation of views	
011753 - 012004	Mr KAN Ming-tung, Hong Kong Construction Industry Employees General Union	Presentation of views	
012005 - 012238	Miss Vincci WONG, Kwai Chung Estate Labour Rights Concern Group	Presentation of views	
012239 - 012550	Miss LAI Choi-yin, Kwai Chung Standard Working Hours Concern Group	Presentation of views	
012551 - 012824	Miss Rida CHEUNG, 前線員工權益關注組	Presentation of views	
012825 - 012931	Mr Ray CHUI, Institution of Dining Art	Presentation of views [LC Paper No. CB(2)999/15-16(02)]	
012932 - 013204	Mr LAI Chi-po, 公屋被迫 遷戶關注組	Presentation of views	
013205 - 013441	Mr Ivan WONG Yun-tat, Neighbourhood and Worker's Service Centre	Presentation of views	

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013442 - 014006	Deputy Chairman Admin	Administration's response to the views expressed by deputations/individual.	
014007 - 014607	Deputy Chairman Mr KWOK Wai-keung Admin	<p>Mr KWOK Wai-keung's view that :</p> <ul style="list-style-type: none"> (a) abolition of the offsetting arrangement would facilitate the retention of staff; (b) abolition of the offsetting arrangement would not result in heavy burden on employers. SP and LSP were payable only under specific circumstances. An employee who was receiving the median monthly salary of \$14,800 would have to work for 39 years before being entitled to receiving the maximum amount of SP or LSP of \$390,000; and (c) the offsetting arrangement had resulted in a substantial reduction in ex-gratia payments to employees from the Protection of Wages on Insolvency Fund ("PWIF") for SP. <p>Administration's response that pending the outcome later this year of the judicial review case concerning the calculation of ex-gratia payment on SP under the Protection of Wages on Insolvency Ordinance (Cap. 380), a review would be conducted on the coverage of PWIF.</p>	
014608 - 015148	Deputy Chairman Mr LEE Cheuk-yan Mr TAM Hop-sing, Hong Kong Federation of Restaurants & Related Trades Mr SHIU Ka-fai, Liberal Party	<p>Mr LEE Cheuk-yan's view that :</p> <ul style="list-style-type: none"> (a) although the Chief Executive ("CE") had stated in his election manifesto that he would progressively reduce the proportion of the offsetting amount, there was no indication that the Administration had taken any step forward in respect of the matter. The Administration should put forward a proposal for progressively reducing the proportion of the offsetting amount; (b) if LSP was to be abolished in the rationalization of relationship among SP, LSP and MPF, legislation against unfair dismissal should be introduced; and 	

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		<p>(c) there was no consensus in the Legislative Council on the offsetting arrangement when legislation on MPF was enacted.</p> <p>Mr LEE's question regarding whether the business sector considered an abolition of the offsetting arrangement acceptable, if there was no retrospective effect on the MPF benefits accrued before the new law came into operation as mentioned by some deputations.</p> <p>Mr TAM Hop-sing's view that the Hong Kong Federation of Restaurants & Related Trades was opposed to the abolition of offsetting arrangement.</p> <p>Mr SHIU Ka-fai's view that the abolition of the offsetting arrangement with such a condition was unacceptable.</p>	
015149 - 015649	Deputy Chairman Mr POON Siu-ping Admin	<p>Mr POON Siu-ping's question regarding the Administration's way forward regarding the offsetting issue, given the divergent views of different sectors on the issue.</p> <p>Administration's response that :</p> <p>(a) after completion of the consultation period on 21 June 2016, the views received would be analysed. The Administration would consider conducting a study on the impact of the abolition of the offsetting arrangement on the business sector; and</p> <p>(b) the Administration maintained an open mind towards the offsetting issue.</p>	
015650 - 020229	Deputy Chairman Mr Tommy CHEUNG Admin	<p>Mr Tommy CHEUNG's view that :</p> <p>(a) when the MPF Schemes Ordinance ("MPFSO") (Cap. 485) was enacted, employer groups agreed to support implementation of the MPF System on the understanding that the law would clearly permit offsetting between MPF accrued benefits and SP/LSP so that employers would not need to pay twice;</p>	

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		<p>(b) the abolition of the offsetting arrangement would increase the financial burden of medium, small and micro enterprises; and</p> <p>(c) labour costs had risen from about 10% to over 30% of the total operation costs of enterprises in the past 40 years.</p>	
020230 - 020634	Deputy Chairman Mr Frankie YICK Admin	<p>Mr Frankie YICK's view that :</p> <p>(a) medium, small and micro enterprises were facing a difficult business environment. Those which had to close down generally lacked sufficient financial resources for settlement of SP, if the offsetting arrangement was abolished; and</p> <p>(b) the offsetting mechanism was a consensus reached after extensive consultations in enacting the MPF legislation.</p> <p>Administration's response that :</p> <p>(a) it was aware of the difficult business environment faced by medium, small and micro enterprises;</p> <p>(b) it hoped to gauge the views of different sectors on the offsetting issue in the current public consultation exercise on retirement protection; and</p> <p>(c) it would consider conducting a study on the impact of abolition of the offsetting arrangement on the business sector.</p>	
020635 - 021206	Deputy Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung's view that :</p> <p>(a) if CE intended to progressively reduce the proportion of the offsetting amount, the public consultation would not have been launched at this late stage when the tenure of CE would expire in about a year's time; and</p> <p>(b) the Administration should put forward a proposal for the progressive reduction in the proportion of the offsetting amount.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		Administration's response that there were divergent views on the offsetting issue. It would study all the views received in the public consultation exercise before proposing the way forward.	
021207 - 021722	Deputy Chairman Mr WONG Ting-kwong Admin	<p>Mr WONG Ting-kwong's question about eligibility for SP.</p> <p>Administration's response that an employee who had been in continuous employment for not less than 24 months would be eligible for SP if :</p> <ul style="list-style-type: none"> (a) the employee was dismissed by reason of redundancy; (b) a fixed-term employment contract expired without being renewed by reason of redundancy; or (c) the employee was laid off under the circumstances as stipulated in the Employment Ordinance (Cap. 57). <p>Mr WONG Ting-kwong's concern that :</p> <ul style="list-style-type: none"> (a) employer-employee relations were generally more harmonious in the past; and (b) medium, small and micro enterprises which had to close down generally lacked sufficient financial resources for settlement of SP. 	
021723 - 022310	Deputy Chairman Admin	<p>Deputy Chairman's concerns regarding :</p> <ul style="list-style-type: none"> (a) the party which would carry out the suggested study on the impact of the abolition of the offsetting arrangement on the business sector, the timetable for the study and whether the study would cover different scenarios; and (b) whether the Administration would study the effect of abolition of the offsetting arrangement on the public's confidence in the MPF System. 	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>Administration's response that :</p> <p>(a) the study, if undertaken, would be conducted by Government experts and cover different scenarios;</p> <p>(b) in the past few years, the Administration had introduced various legislative amendments to improve and simplify the administration of the MPF System, as well as to drive fees down; and</p> <p>(c) the Administration had no plan to study and assess the public perception on the MPF system.</p>	
022311 - 022909	Deputy Chairman Mr LEUNG Kwok-hung	<p>Mr LEUNG Kwok-hung's remark that :</p> <p>(a) the fact that accrued benefits attributable to employers' contribution withdrawn for offsetting SP and LSP had amounted to more than \$25 billion since the establishment of MPF reflected that a large number of employees had been victims of the offsetting arrangement; and</p> <p>(b) the current public consultation on retirement protection should have been launched at a much earlier time.</p>	
022910 - 023138	Admin Deputy Chairman Mr POON Siu-ping	<p>Administration's remark that it would analyse the views received at this meeting and the public consultation exercise on retirement protection.</p> <p>Date of next meeting and invitation of relevant academics to give views on the offsetting issue at the meeting.</p>	