

**立法會**  
**Legislative Council**

LC Paper No. CB(2)923/15-16(02)

Ref : CB2/PS/2/14

**Joint Subcommittee on the arrangement of offsetting  
severance payments and long service payments  
against Mandatory Provident Fund accrued benefits**

**Background brief prepared by Legislative Council Secretariat  
for the meeting on 23 February 2016**

**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") since the Fourth Legislative Council ("LegCo").

**Background**

2. At present, there are provisions under the Employment Ordinance (Cap. 57) ("EO"), Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") and Occupational Retirement Schemes Ordinance (Cap. 426) ("ORSO") permitting employers to offset their SP or LSP payable against accrued benefits attributable to their contributions to MPF or ORSO schemes.

SP and LSP under EO

3. SP and LSP were introduced under EO in 1974 and 1986 respectively. They seek to provide compensation to employees dismissed owing to redundancy or other reasons after having served the same employer for a certain period of time so as to help alleviate an employee's short-term financial hardship caused by loss of employment.

### The MPF system

4. MPFSO provides that, among others, 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 \$30,000 and \$7,100 respectively, which also apply to self-employed persons who have to contribute 5% of his relevant income.

### The offsetting arrangement

5. MPFSO also empowers the making of regulations to permit withdrawal of accrued benefits arising from an employer's contributions for the purpose of offsetting SP or LSP payable to an employee under EO. Following enactment of MPFSO and subsequent amendments to sections 31I and 31Y of EO, if an employee becomes entitled to SP or LSP and accrued benefits attributable to his employer's contribution are being held in an MPF scheme, his SP or LSP can be offset against the accrued benefits. As for MPFSO, section 12A prescribes the procedures for paying accrued benefits under an MPF scheme to an employer (if the employer has already paid SP or LSP to the employee) and the procedures for paying accrued benefits under an MPF scheme to an employee (if the employer has not yet paid SP or LSP to the employee).

### **Past discussions by members**

6. 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

7. 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. These members had repeatedly urged the Government to review the matter, with a view to abolishing the offsetting arrangement early or removing it in phases.

8. 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 in 2000, only about one-third of the Hong Kong workforce had some forms of retirement protection. The MPF system had enabled more than 2.5 million employees to save for their retirement. 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. As of May 2015, the annualized internal rate of return (net of fees) of the MPF system since its inception was 5.1% and the annualized change of the Consumer Price Index for the same period was 1.7%, reflecting the role of the MPF system in providing retirement protection for scheme members.

9. On the impact of the offsetting arrangement on the MPF accrued benefits, the Administration advised that according to the statistics of the Mandatory Provident Fund Schemes Authority ("MPFA"), in the period between July 2001 and September 2014, the total net contribution made to MPF Schemes and total benefits paid to scheme members were \$395.3 billion and \$83.8 billion respectively, and the amount of SP and LSP paid from the accrued benefits derived from employers' contributions was \$24.3 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.

10. Referring to the Chief Executive("CE")'s pledge in his election manifesto to progressively reduce the proportion of accrued benefits attributable to employers' contributions that could be applied for the offsetting arrangement, some members held the view that CE should honour the pledge. Expressing strong disappointment that the Administration had not followed up on the matter, these members strongly called on the Administration to devise a concrete work plan and a timetable for implementation.

11. Some other members, however, advised that employer groups considered that the offsetting mechanism was a consensus reached after extensive consultation in enacting the MPF legislation. The employer groups pointed out that abolition of the offsetting mechanism would not only amount to a breach of such consensus, but would also increase employers' financial burden and impact significantly on the business environment of the small and medium-sized enterprises in particular. These members also expressed

concern that some employers would only retain employees with less than five years' service so as to evade the statutory obligations under EO to pay LSP to employees concerned if the offsetting arrangement was abolished. Some members considered it unfair to hold employers responsible for providing retirement protection for their employees, which was the responsibility of the Government.

12. 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.

13. The Administration further advised that the Labour Advisory Board had exchanged views on the subject of offsetting arrangement at its meeting in December 2013, with employer and employee representatives holding widely divergent views. Given that the offsetting arrangement was a complicated issue which could be dealt with in different ways gradually and that different approaches would have varying impact on employers and employees, the Administration would need to continue to listen to the views of various sectors of the community through the existing platforms. It would consider and examine the issue in a holistic and careful manner before deciding on the way forward. Members may wish to note that on 22 December 2015, the Commission on Poverty launched a six-month public engagement exercise with the release of a consultation document on retirement protection. Apart from addressing the retirement protection option to be adopted, the consultation document also reviews the operation of other pillars of retirement protection, including the offsetting arrangement.

#### Enhancement to the MPF system

14. Most members expressed concern that the management fees of the MPF schemes were generally on the high side, which would further erode the retirement benefits of employees. They considered that the Government should introduce measures to refine the MPF system including reducing the fund management fees and administration cost so as to enhance the system for the purpose of providing better protection for retirement life.

15. Members were advised that since the inception of the MPF system, MPFA and the Administration had been pursuing various measures and planned initiatives to lower MPF fees and increase employees' control on investment made. Notably, following the implementation of the Employee Choice Arrangement in November 2012, which provided employees with greater autonomy in choosing MPF schemes, a number of funds had reduced their management fees. Currently, there were more than 170 low-fee funds available in the market and the average Fund Expense Ratio of all funds had dropped from 2.10% in 2007 to 1.65% in February 2015. To facilitate greater scope for fee reduction, the Government and MPFA aimed to introduce a "core fund" as the default fund, which would be subject to fee control and based on long-term investment strategy that was consistent with retirement saving objectives, in each MPF scheme by 2016. In addition, MPFA had strengthened publicity and public education efforts on MPF investments.

16. Members may wish to note that the Mandatory Provident Fund Schemes (Amendment) Bill 2015, which aims to introduce a highly standardized and fee-controlled Default Investment Strategy (previously called the "core fund") into the MPF system, was introduced into LegCo on 25 November 2015. The Bill is being scrutinized by a Bills Committee.

### **Relevant papers**

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

## Appendix

### 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>
Panel on Manpower ("MP Panel")	25 January 2013	<u>Minutes</u>
MP 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>

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
FA Panel	29 January 2014	<a href="#">Minutes</a>
FA Panel and MP Panel	18 March 2014	<a href="#">Agenda</a> <a href="#">Minutes</a>
Subcommittee on Retirement Protection	25 March 2014	<a href="#">Agenda</a> <a href="#">Minutes</a>
	14 April 2015	<a href="#">Agenda</a> <a href="#">Minutes</a>
	15 July 2015	<a href="#">Minutes</a>
	30 December 2015	<a href="#">Agenda</a>

Council Business Division 2  
Legislative Council Secretariat  
19 February 2016