

For information on
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**Legislative Council Panel on Financial Affairs
and Panel on Manpower**

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

Purpose

This paper briefs Members on the existing arrangement of offsetting severance payments (SP) and long service payments (LSP) against Mandatory Provident Fund (MPF) accrued benefits arising from an employer's contribution, and its background.

The Arrangements

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

Severance payments and long service payments under the EO

3. SP and LSP were introduced under the 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.

4. At the time when SP and LSP were first introduced, there was no mandatory retirement protection scheme. To encourage employers to voluntarily provide their employees with termination or retirement protection benefits, the EO stipulates that an employer may offset his/her contributions made to a voluntary retirement scheme in respect of an employee or gratuity

based on length of service paid to an employee against the SP or LSP payable to the latter. In the subsequent enactment of the ORSO in 1992, guided by the same principle, employers who have provided ORSO schemes for their employees were permitted to offset their voluntary contributions against the SP or LSP payable to the employees concerned. Irrespective of any offsetting arrangement that may be made by his/her employer, an employee's entitlements to SP or LSP under the EO will not be affected.

Offsetting arrangement under the EO and MPFSO

5. The MPFSO and its subsidiary legislation were enacted in 1995 and 1998 respectively. The MPFSO passed by the Legislative Council in 1995 empowers the making of regulations to permit withdrawal of accrued benefits arising from an employer's contributions for the purpose of offsetting the SP or LSP payable to an employee under the EO. This aimed to strike a balance between the interests of employers and employees. The arrangement has been reflected in the EO and the MPFSO. Specifically, through subsequent amendments to sections 31I and 31Y of the EO, if an employee becomes entitled to SP or LSP and accrued benefits attributable to his/her employer's contribution are being held in an MPF scheme, his/her SP or LSP can be offset against the aforementioned accrued benefits. As for the 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).

Concerns of employees and employers

6. The MPF system has been in operation for over 10 years since its inception in 2000. The labour sector is concerned that the offsetting of SP or LSP against MPF accrued benefits arising from an employer's contribution would result in a level of MPF accrued benefits not sufficient for employees' retirement protection. It strongly requests abolishing the offsetting mechanism so as to reinforce retirement protection for employees.

7. On the other hand, employer groups consider that the offsetting mechanism was a consensus reached after extensive consultations in enacting the MPF legislation. Employer groups agreed to support the implementation of the MPF System on the understanding that the law would permit the offsetting between MPF accrued benefits and SP/LSP. The employer groups opine that abolition of the offsetting mechanism does not only amount to a breach of such

consensus but will also increase employers' financial burden and impact significantly on the business environment of the small and medium enterprises ("SMEs") in particular. They strongly object to the abolition of the offsetting mechanism.

Way Forward

8. The arrangement of offsetting SP and LSP against MPF accrued benefits arising from an employer's contribution is an issue with wide read-across implications and of major concern to the community. The Labour Advisory Board exchanged views on the subject at its meeting in December 2013, with employer and employee representatives holding widely divergent views. The issue affects the interests of various stakeholders, the retirement protection of employees and the operating costs of employers (especially SMEs). The Government will continue to listen to the views of different sectors, and will consider and examine the issue in a holistic and careful manner.

Labour and Welfare Bureau
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