



LABOUR DEPARTMENT (Headquarters)

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Chairperson
Establishment Subcommittee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Connie SZETO
Clerk to the Establishment Subcommittee)

30 November 2018

Dear Ms SZETO,

**Government's responses to the follow-up issues
raised by the Establishment Subcommittee
at the meeting of 21 November 2018**

On 21 November 2018, the Establishment Subcommittee of the Legislative Council (LegCo) discussed the creation of one permanent post of Chief Labour Officer in the Labour Department (LD) for the purpose of taking up the various new tasks in relation to the abolition of the "offsetting" of severance payment (SP) and long service payment (LSP) with employers' mandatory contributions under the Mandatory Provident Fund (MPF) System. At the meeting, Members requested the Government to provide supplementary information. Our reply is as follows-

**Insofar as the regulation and supervision of the operation of MPF schemes
including the formulation and implementation of the relevant**

arrangements for abolishing the “offsetting” is concerned, the division of work in detail among different organisations, including the Mandatory Provident Fund Schemes Authority, the Financial Services and the Treasury Bureau, the Labour and Welfare Bureau and LD, before and after the passage of the enabling legislation relating to the abolition of the “offsetting”

The Mandatory Provident Fund Schemes Authority (MPFA) is the statutory body established under the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485) and tasked with the responsibilities of regulating and supervising the operation of MPF schemes. On the other hand, the Financial Services Branch (FSB) of the Financial Services and the Treasury Bureau is responsible for formulating policies relating to the MPF System. Under the arrangements for abolishing the use of employers' MPF contributions to offset SP and LSP, FSB and MPFA will continue to perform the above tasks.

As regards the Labour and Welfare Bureau (LWB) and LD, they are responsible for formulating the policies of abolishing the “offsetting” of employers' mandatory contributions under the MPF System with SP and LSP; devising specific proposals; engaging major stakeholders to work out the operation details; preparing the enabling legislation; and implementing and overseeing the effective operation of the various supporting measures under the abolition proposal after the passage of the legislation.

As the proposal for abolishing the “offsetting” will involve making amendments to the relevant provisions of MPFSO, and the proposed Designated Saving Accounts (DSAs) for employers may make use of the eMPF platform being developed by MPFA to facilitate and streamline the administrative procedures and arrangements for employers to make contributions to and withdraw monies from their DSAs, etc., LWB/LD has all along been working closely with FSB and MPFA in formulating the entire policy on abolishing the “offsetting”, the related system management and specific measures. For the implementation of the abolition proposal, LWB/LD will be responsible for monitoring the execution of the new policy, including ensuring employers making the required contributions to their DSAs, reimbursing the amount of subsidy committed by the Government to employers in accordance with the rules, handling disputes between employers and

employees, etc. For matters relating to the newly established DSA, as the eMPF platform is involved, LWB/LD will need to work out the relevant arrangements in collaboration with FSB and MPFA.

Detailed comparison of different proposals to abolish the “offsetting” arrangement, including the enhanced arrangements for abolishing the “offsetting” announced by the Chief Executive in the 2018 Policy Address and the proposal for the Government to set up a central fund

Some employer groups have suggested the Government to set up a “central fund” for employers to pay SP/LSP. Below is a summary of the comparison of (i) the “central fund” with (ii) the enhanced arrangements for abolishing the “offsetting” announced by the Chief Executive in the 2018 Policy Address, in particular the setting up of DSA.

Rationale

According to the provisions of the Employment Ordinance (EO) (Cap. 57), for cases where employees are granted SP/LSP¹, most of them arise from dismissals initiated by employers.

The objective of the DSA put forth by the Government is to assist individual employers to save up in advance to meet SP/LSP expenses arising from their own dismissal actions in future. Holding individual employers accountable for their own dismissal actions is in line with the rationale behind the provision of SP/LSP under EO. One of the functions of LSP is to safeguard employees against unreasonable dismissal. As the balance in DSA is the asset of individual employers, employers would likely use the fund cautiously and be prudent in dismissing employees. This will indirectly enhance the employment protection of employees, hence reducing the risk of employees being unreasonably dismissed.

Whereas in the case of the “central fund”, it works as a kind of collective insurance. Its operation is to require all employers to make contributions for the retrenchment or dismissal actions of individual employers. According to

¹ Employees who leave employment “involuntarily” under three situations (including employees who have worked continuously for the employer for five years or more resign after reaching the age of 65; are certified by medical practitioners as being permanently unfit for the relevant work; or die during employment) are entitled to LSP.

the statistics of MPFA on MPF “offsetting” claims, only around 5% of MPF participating employers were involved in “offsetting” in 2017. There are views that if SP/LSP is to be wholly paid by the “central fund”, the majority of the employers who seldom need to pay SP/LSP will be subsidising those few employers who retrench or dismiss their employees. Since the SP/LSP expenses arising from the dismissal of employees will be borne by the “central fund”, employers may act lightly in their dismissal decisions. Insofar as the employees are concerned, this will strip LSP of its function of safeguarding employees from unreasonable dismissal.

Moral hazards and abuses

For the DSA proposed by the Government, its saving balance is the asset of individual employers. If an employer has never used his fund, there is no need for him to keep on making contributions to his DSA once the fund has reached a certain amount (the current proposal being 15% of the annual income of all employees). As such, employers would use the relevant savings prudently and there will not be problems of moral hazards and abuses.

As for the “central fund”, since employers have already made their contributions, LSP caused by dismissals will in any case be paid from the collective pool. Given the fact that there would be no extra expenses for the employer but additional benefit for the employee, there would be huge incentive for employers and employees to join hands in applying for SP/LSP from the “central fund”. Moral hazards and possible abuses would hence increase the number of SP/LSP claims. Where that happens, all employers may need to make more contributions to the “central fund” in order to sustain its operation.

Where SP/LSP payable is to be fully borne by the “central fund”, after taking into account the problems of moral hazards and possible abuses, the amount of levy to be collected from employers is estimated to be on average around \$4,100 to \$5,300 (in 2016 prices) for each employee per year. Although moral hazards could be reduced through “co-sharing” between the fund and the employers, we believe the extent of such reduction would be limited if the employers’ share is only pitched at 20% of the SP/LSP payable as proposed by some employer groups. In order to substantially reduce moral hazards, the employers’ share would need to be significantly increased to, say 50%. While this mode of operation of the “central fund” may reduce the levy

payable by employers (on average around \$1,800 to \$2,200 per employee per year), each and every employer will then have to shoulder the remaining 50% of the SP/LSP when he dismisses an eligible employee. This practice may not be in the interests of employers as a whole.

There is another suggestion of resolving the moral hazard issue of the "central fund" by prohibiting employers from hiring new recruits within a period of time after a dismissal. While this arrangement may lower the risk of collusion between employers and employees in applying for SP/LSP from the "central fund", the concerned monitoring work would be administratively costly and involve huge amount of public money and manpower. Its effectiveness, however, may not be guaranteed. Besides, such an arrangement would greatly reduce labour market flexibility and go against the principle of a free market, which would likely not be supported by employers or even the labour groups. The Government thus has grave reservations.

Amount of employers' contributions

For the DSA in the Government's design, employers are to make monthly contributions equivalent to at least 1% of their employees' monthly income to the DSA under their own name. They may stop making contribution when the balance of the accumulated savings in the account reaches 15% of all employees' annual income. This is undoubtedly a more favourable option for employers with high staff turnover or infrequent dismissals.

As for the "central fund" proposal, employers are required to make contributions to the fund on a perpetual basis irrespective of their own staff turnover position, or even for those who have never been required to pay SP/LSP (like some sectors with more frequent staff turnover). As such, even if the same monthly contribution of 1% is made, in the long run the contributions to the DSA by individual employers will be less as compared with contributions to the "central fund".

Fairness

Even if the moral hazard issue of the "central fund" could be resolved, the mode of operation of the "central fund", i.e. all employers to make contributions for paying the retrenchment or dismissal actions of individual employers, is not fair to those sectors with relatively smaller chances of

business closures or more stable businesses.

From the above analysis, we consider that the DSA is more in tune with the principle of requiring individual employers to be accountable for their own dismissals, fairer to sectors with higher staff turnovers or with fewer dismissals, and will not incur unnecessary moral hazards and abuses. As such, comparing to the “central fund” option, we consider that the current enhanced arrangements of abolishing the “offsetting” put forth by the Government are more preferred.

Justifications for creating a permanent post

At the meeting of 21 November, Members considered that for the proposal for creating one permanent Chief Labour Officer post for implementing the abolition of the MPF “offsetting”, the Government should consider creating a supernumerary post first at this stage. We would like to take this opportunity to elaborate the justifications for the need for a permanent post in LD.

Abolishing the “offsetting” arrangement is one of the priority tasks of the current-term Government, and the community has also reached a broad consensus on the subject. Seeking approval from the Finance Committee of the LegCo to create a permanent post underlines the Government’s determination in implementing as soon as possible the abolition of the “offsetting”. The Government has expressly indicated that it would strive to introduce into the LegCo in 2020 the enabling bill to give effect to the abolition arrangements with a view to securing its passage by the LegCo by 2022, and to launch the various related supporting measures two years thereafter, including setting up the above-mentioned DSA for employers and mapping out the details of the Government subsidy scheme, so as to put the arrangements of abolishing the “offsetting” into effect. The work schedule is indeed very tight.

Abolition of the “offsetting” is a new and long-term task. As rightly pointed out by Members, the abolition of the “offsetting” arrangement is a highly controversial and complicated task. As such, whether it is the preparatory work at the early stage or the implementation work at the later stage, the task will have to be undertaken by a sufficiently senior officer with rich experiences in labour issues and political acumen in handling contentious and complex issues. The implementation work at the later stage also has to be

woven into the preparatory work of the early stage to ensure that the execution details agreed with various stakeholders can be fully implemented and smoothly operated. Furthermore, the DSA under the arrangements of abolishing the "offsetting" is a long-term measure which needs to be reviewed from time to time so that its operation can be suitably adjusted in the light of operational experience. For the subsidy to be provided by the Government, it will last for 25 years and will also be reviewed five years after operation. The labour relations issues which may be resulted from the abolition of "offsetting" is moreover a long-term and ongoing strategic task. It is therefore crystal clear that the Chief Labour Officer post to be created for undertaking these new tasks must be a permanent post.

The above apart, we consider it imperative to let Members know that the relevant staff unions in LD have expressed strong concerns and feedback on the issue of creating time-limited post. There are currently around 30 time-limited posts in the Labour Officer Grade in LD distributed across different ranks of the Grade. Under general circumstances, these time-limited posts can only be filled through internal deployment by way of acting appointments by staff of the next lower rank. The consequential vacancies thus arising could not be filled through hiring new recruits or staff promotion. As a result, some vacancies at the junior rank (i.e. Assistant Labour Officer II) have to be left unfilled for long. On the whole, creating time-limited posts could not help enhance the manpower of the relevant grade to cope with the additional workload faced by the department. Currently, most of the Assistant Labour Officers II are responsible for providing frontline services, including answering enquiries on labour legislation from employers and employees; processing employees' work injury cases; investigating suspected breaches of labour legislation by employers; and providing various employment services to job-seekers, etc. For the above-mentioned reason, the number of Assistant Labour Officer II posts left vacant presently accounts for around 15% of the total number of posts of the rank (including time-limited posts). We consider that creating time-limited posts amidst the long-term and ongoing need for manpower will not only intensify the vacancy situation of the junior rank in the Grade, adding further pressure on over-stretched staff providing frontline services, but is also unfair to a number of staff who, due to the absence of substantive posts, could not be promoted but have to undergo long durations of acting appointment.

With the aforementioned, we consider that there is a genuine need to

create a permanent rather than a time-limited supernumerary post for the sake of taking forward the abolition of the "offsetting", delivering the services provided by LD, or the staff taking up the relevant posts.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'MLUK', written in a cursive style.

(Ms/Melody/LUK)
for Commissioner for Labour