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LEGAL SERVICE DIVISION  
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28 February 2022

Ms CHEUNG Hoi-shan  
Assistant Commissioner for Labour (Policy Support)  
Labour Department  
Labour Administration Branch  
Policy Support  
16/F, Harbour Building  
38 Pier Road  
Central  
Hong Kong

Dear Ms CHEUNG,

**Employment and Retirement Schemes Legislation  
(Offsetting Arrangement) (Amendment) Bill 2022**

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the following matters:

The change to the offsetting arrangement under the Employment Ordinance (Cap. 57)

2. Part 2 of the Bill seeks to amend Cap. 57 to change the arrangement for offsetting severance payment ("SP") and long service payment ("LSP") with mandatory provident fund scheme ("MPF") benefits ("offsetting arrangement") to the effect that employers could no longer use the accrued benefits of their MPF mandatory contributions to offset the SP or LSP entitlements in respect of their employees' employment period

starting from the date on which the enacted Ordinance (if the bill is passed) comes into operation (“transition date”). However, the arrangement for using gratuities based on length of service to offset SP or LSP will remain unchanged. Please clarify the rationale for adopting a different approach to this arrangement.

### The definition of “post-transition employment period”

3. It is noted that, under clause 21 of the Bill, “post-transition employment period”, in relation to a specified employee, is defined in section 1(1) of the proposed new Schedule 11 to Cap. 57 to mean the period of the employee’s employment under the continuous contract concerned that *falls after (my emphasis)* the commencement of the transition date. Please clarify, in connection with the above clause:

- (a) whether “post-transition employment period” covers the time of employment that falls on the transition date; and
- (b) if so, for the sake of clarity and certainty, please consider whether “falls on or after” the commencement of the transition date should be used in the definition of “post-transition employment period” to reflect precisely the intended legal effect.

### Supporting measures

4. According to paragraph 12 of the Legislative Council (“LegCo”) Brief (File Ref: LD OPD/14-2/1(C)) issued by the Labour and Welfare Bureau on 9 February 2022, there may be a scenario in which some employees will be worse off after the abolition of the offsetting arrangement than what they would be entitled to under the current offsetting regime, and the Government has undertaken to make up for the shortfall by way of an administrative scheme (“Administrative Scheme”) should any such case arise. Further, according to paragraph 21 of the LegCo Brief, the Government will introduce a 25-year subsidy scheme (“Subsidy Scheme”) totaling \$33.2 billion at 2021 prices to assist employers to adapt to the proposed abolition of the offsetting arrangement.

5. It is noted that under section 4 of the Public Finance Ordinance (Cap. 2), no expenditure shall be charged on the general revenue except as provided by or under Cap. 2 or any other enactment. Please clarify:

- (a) whether any other legislative amendment(s) will be introduced to implement the Administrative Scheme and/or the Subsidy Scheme; and
- (b) whether the Administration intends to charge the expenditure relating to the Administrative Scheme and/or the Subsidy Scheme on the general revenue, and if so, the legal basis for doing so.

6. We look forward to receiving your reply in both English and Chinese as soon as practicable, preferably by **10 March 2022**.

Yours sincerely,



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Assistant Legal Adviser

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