

LEGISLATIVE COUNCIL BRIEF

EMPLOYMENT AND RETIREMENT SCHEMES LEGISLATION (OFFSETTING ARRANGEMENT) (AMENDMENT) BILL 2022

INTRODUCTION

At the meeting of the Executive Council on 4 January 2022, the Council ADVISED and the Chief Executive (CE) ORDERED that the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 (the Bill) at **Annex A** should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

2. Currently, employers are allowed to use the accrued benefits¹ of employers' mandatory contributions (ERMC) under the Mandatory Provident Fund (MPF) System to offset severance payments (SP) and long service payments (LSP) (the offsetting arrangement). Likewise, benefits of employers' contributions to other occupational retirement schemes can also be used to offset SP/LSP. The community, in particular the labour sector, has been pressing for the abolition of such practice to improve employees' retirement protection. CE announced in the 2018 Policy Address the abolition of the offsetting arrangement. To give effect to the proposal, it is necessary to make amendments to the following eight pieces of ordinance/subsidiary legislation, which currently provide for the offsetting arrangement or contain provisions that need to be consequentially amended upon the abolition of the arrangement –

- (i) Employment Ordinance (Cap. 57) (EO);
- (ii) Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO);
- (iii) Mandatory Provident Fund Schemes (Exemption) Regulation

¹ Under the Mandatory Provident Fund Schemes Ordinance, “accrued benefits”, in relation to a registered scheme, means the amount of each scheme member’s beneficial interest in the registered scheme at any time, including sums derived from the contributions made by or in respect of that scheme member together with the income or profits arising from any investments of the contributions, but taking into account any losses in respect of the investments and any amounts paid in respect of the scheme member.

(Cap. 485B) (MPFS (Exemption) Regulation);

- (iv) Occupational Retirement Schemes Ordinance (Cap. 426) (ORSO);
- (v) Grant Schools Provident Fund Rules (Cap. 279C);
- (vi) Subsidized Schools Provident Fund Rules (Cap. 279D);
- (vii) Protection of Wages on Insolvency Ordinance (Cap. 380) (PWIO);
and
- (viii) Inland Revenue Ordinance (Cap. 112) (IRO).

A. Legislative Proposals

(a) Abolition of offsetting arrangement under MPF System and “grandfathering” arrangement

3. The offsetting arrangement will be abolished starting from a date to be appointed after the enactment of the Bill (the transition date). Thereafter, employers can no longer use ERM to offset the SP/LSP entitlement under EO in respect of an employee’s employment period starting from the transition date (post-transition employment period) (post-transition portion of SP/LSP).

4. The abolition will have no retrospective effect. Employers may continue to use the accrued benefits derived from their MPF contributions (irrespective of whether the contributions are made before, on or after the transition date, and irrespective of whether the contributions are mandatory or voluntary) to offset an employee’s SP/LSP entitlement in respect of the employment before the transition date (pre-transition employment period) (pre-transition portion of SP/LSP). This “grandfathering” arrangement helps reduce the risk of large-scale dismissals before the transition date, or else some employers may dismiss employees (particularly those with long years of service) before the abolition takes effect in order to use ERM to offset SP/LSP. The arrangement of allowing employers to use contributions made before, on or after the transition date to offset pre-transition portion of SP/LSP can also obviate the need to segregate an employee’s MPF account into separate accounts to record pre- and post-transition date MPF contributions (and the returns derived therefrom), which

would lead to a proliferation of accounts and a high administrative cost².

5. Currently, some employers are making MPF contributions in excess of the mandatory requirement of 5% of the relevant income³ for their employees (i.e. MPF voluntary contributions). These voluntary contributions and the returns derived therefrom (ERVC) can continue to be used to offset both pre- or post-transition portion of SP/LSP. Likewise, gratuities based on length of service as contractual payment of employers to employees can continue to be used to offset SP/LSP. These arrangements will remain unchanged after the abolition of the offsetting arrangement.

(b) Calculation of SP/LSP

6. The current rate for calculating SP/LSP is two-thirds of the last monthly wages (or the average monthly wages over the period of the last 12 months before the termination of employment, if the employee elects so), subject to a maximum of \$22,500, for each year of service; and the maximum payment of SP/LSP is \$390,000. The rate and maximum payment of SP/LSP will remain unchanged after the abolition of the offsetting arrangement. If an employee has worked for a long period such that the aggregate sum of his/her pre- and post-transition portion of SP/LSP exceeds \$390,000, the post-transition portion will be the remainder of \$390,000 after first deducting the pre-transition portion.

7. Pre-transition portion of SP/LSP would be calculated on the basis of the monthly wages immediately preceding the transition date. This aims to contain the SP/LSP liability of an employer in respect of the pre-transition employment period of his/her employees, so as to guard against the risk of deliberate dismissals that may otherwise take place before the abolition should the last monthly wages before the termination of employment be used for calculating pre-transition portion of SP/LSP.

8. Currently, a monthly rated employee may choose to calculate his/her SP/LSP on the basis of his/her last monthly wages before the relevant date of dismissal or elect to have his/her wages averaged over the period of 12 months

² In the short run, this arrangement may benefit employers as they could use ERMC made after the transition date to offset pre-transition portion of SP/LSP in the event that ERMC made before the transition date are not sufficient for offsetting. In the long run, ERMC made before the transition date would grow due to investment returns and would likely outgrow the “offsettable” pre-transition portion of SP/LSP. Hence, it is likely in the long run that there would be no need to use ERMC made after the transition date to offset pre-transition portion of SP/LSP.

³ “Relevant income” is defined in MPFSO and is subject to the maximum level of \$30,000 as specified in Schedule 3 to MPFSO for the purpose of making mandatory contributions.

immediately preceding the relevant date⁴. The same options will be provided to employees in calculating his/her pre-transition portion of SP/LSP.

9. After the abolition, there could be cases where an employee, while fulfilling the requisite years of service for entitlement to SP/LSP upon termination of employment⁵, only has less than 12 months' service before the transition date. The employee would be given the option of having his/her wages averaged over the pre-transition employment period for the purpose of calculating pre-transition portion of SP/LSP.

10. There may also be cases where the pre-transition employment period of a monthly rated employee is less than a month, or the pre-transition employment period of a non-monthly rated employee is less than 30 days. In such cases, the pre-transition portion of SP/LSP of the employee concerned would be calculated based on his/her first month's wages (for monthly rated employees), or any 18 days' wages chosen by the employee during the first 30 normal working days⁶ (for non-monthly rated employees) after commencement of employment.

11. To facilitate calculation of pre-transition portion of SP/LSP, employers will be required to keep wage and employment records of the employees covering the 12 months of the employees' employment (or a shorter period for an employee who has worked for less than 12 months) immediately preceding the transition date. Where a monthly rated employee has less than a month's service, or a non-monthly rated employee has less than 30 days of service preceding the transition date, the employer will be required to keep wage and employment records of the monthly rated employee's first month of employment, or those of the non-monthly rated employee's first 30 normal working days.

12. 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, i.e. the total amount of SP/LSP entitlement

⁴ Where the employee so elects, in the case of a monthly rated employee, the monthly average shall not exceed \$22,500. For non-monthly rated employees, the total wages for the period of 12 months shall, for the purpose of calculating the daily average, not exceed 12 times \$22,500.

⁵ The minimum requirements for entitlement to SP and LSP are having worked under a continuous contract for two years and five years respectively as counted from the date of commencement of employment of an employee to the relevant date of termination of the employment contract.

⁶ Under EO, an employee who is not monthly rated may choose 18 days' wages based on any 18 days occurring during his/her last 30 normal working days, or two-thirds of \$22,500, whichever is less, to calculate the amount of SP/LSP that he/she is entitled to.

plus ERMC left in their MPF accounts after offsetting is smaller than that under the existing regime⁷. The Government has undertaken to make up for the shortfall by way of an administrative scheme should any such case arise.

(c) Adapted abolition arrangements

13. The abolition of the offsetting arrangement will also be applicable to –
- (a) Occupational retirement schemes under ORSO which are exempted under section 5 of MPFSO (MPF-exempted ORSO schemes) in relation to employers' contributions made to those occupational retirement schemes.
 - (b) The two school provident funds under the Grant/Subsidized Schools Provident Fund Rules (G/SSPF Rules) in relation to Government/school donations made to those school provident funds.

The abolition of the offsetting arrangement for the above schemes/funds will take effect on the same date as the abolition of the offsetting arrangement for MPF schemes.

- (c) Cases where an employer is exempted from making mandatory MPF contributions for an employee pursuant to section 4(3)(b) of MPFSO⁸ but the employer has nonetheless made contributions to a provident, pension, retirement or superannuation scheme (however described) in a place outside Hong Kong. Such cases are rare but should they happen, we propose to apply the same adapted abolition arrangements as set out in the ensuing paragraphs.
14. Since employers' contributions under the MPF-exempted ORSO schemes and Government/school donations under the school provident funds (ORS benefits) are not differentiated into mandatory and voluntary contributions,

⁷ Under some special circumstances, the amount of aggregate benefits received by an employee could be less than that under the current offsetting regime. For example, if (a) the employee has a substantial pay rise after the transition date, and thus a much lower wage level (i.e. the monthly wages immediately preceding the transition date) is used to calculate pre-transition portion of SP/LSP; (b) the employee's pre-transition employment period is long, and thus the above effect is amplified; and/or (c) the employee's post-transition employment period is short, and thus the employee's benefits gained from the abolition are relatively small.

⁸ Section 4(3)(b) of MPFSO exempts any person entering Hong Kong for the purpose of being employed or self-employed if that person is a member of a provident, pension, retirement or superannuation scheme (however described) of a place outside Hong Kong.

the following adapted abolition arrangements will be put in place to calculate and carve out a portion of “non-offsettable benefits” from ORS benefits by using the formula below. The “non-offsettable benefits”, which is akin to ERMC, cannot be used to offset post-transition portion of SP/LSP for the scenarios described in paragraph 13 above–

$$\frac{\text{Final average monthly relevant income (capped at \$30,000)}}{\text{Years of service with ORS benefits}} \times 5\% \times 12$$

The formula is modelled on the calculation for minimum MPF benefits (MMB)⁹ under the MPFS (Exemption) Regulation. MMB refers to the minimum amount of ORS benefits (comprising accrued benefits derived from the employee’s contributions plus, if any, the benefits derived from the employer’s contributions under the vesting scale prescribed by the relevant ORSO scheme rules) that must be transferred from an employee’s account when the employee changes from an MPF-exempted ORSO scheme to an MPF scheme. The “non-offsettable benefits” as calculated by the formula above is akin to ERMC (5% of relevant income of the employee).

15. For cases with only post-transition portion of SP/LSP, the “non-offsettable benefits” cannot be used for offsetting. After deducting the amount of “non-offsettable benefits”, the remaining amount (akin to ERVC) can be used for offsetting. For cases with both pre- and post-transition portion of SP/LSP, the “non-offsettable benefits” can only be used to offset the pre-transition portion. The remaining amount can be used to offset both pre- and post-transition portion.

(d) Application of the abolition arrangement

16. Employees who are currently not covered by the MPF System (e.g. domestic helpers) or other statutory retirement schemes are not affected by the offsetting arrangement. Hence, the abolition of offsetting will have no impact on them. Their SP/LSP, if eligible, will continue to be calculated on the basis of the last monthly wages (or the average monthly wages of the 12-month period)

⁹ For an employee who joined an MPF-exempted ORSO scheme after 1 December 2000, MMB must be calculated upon termination of employment, and transferred from the ORSO scheme to (a) an MPF scheme in which the member’s new employer is a participating employer or (b) an MPF scheme, nominated by the member, that accepts transfers of MMB. MMB means the lesser of –

- (i) the member’s benefits accrued and held under the scheme during the course of employment, i.e. benefits derived from the employee’s contributions, plus the benefits derived from the employer’s contributions under the vesting scale; or
- (ii) $1.2 \text{ (i.e. } 5\% \times 2 \times 12) \times \text{ final average monthly relevant income (capped at \$30,000, same as the maximum level of relevant income as specified in MPFSO)} \times \text{ years of post-MPF service.}$

before the termination of employment.

(e) Ex gratia payment from Protection of Wages on Insolvency Fund (PWIF)

17. Currently, PWIF may grant an ex gratia payment for SP to an employee upon the latter's application. If an applicant (i.e. an employee) has received such an ex gratia payment from PWIF, the applicant's rights to the accrued benefits in an MPF scheme or ORS benefits (which are "offsettable" items for SP) attributable to the employer's contributions (up to the amount of SP paid from PWIF) would be transferred to and vested in the PWIF Board. This means that the PWIF Board is entitled to recover the amount of ex gratia payment on SP from MPF/ORS benefits attributable to contributions by the employer (i.e. the so-called "subrogation" right of the PWIF Board). Upon the abolition of offsetting, ERMC or the "non-offsettable benefits" of an employee's ORS benefits can no longer be used to offset post-transition portion of SP, and thus should not be included in the MPF/ORS benefits to be recovered by the PWIF Board. Legislative amendment will be made to reflect the above.

18. The second amendment concerns the scenario involving wage reduction of an employee. Under section 16 of PWIO, for situations involving wage reduction, the ex gratia payment from PWIF is calculated on the basis of an employee's wage level before wage reduction, or a wage level in between the employee's reduced wages and his/her pre-reduction wages, whichever is less, on the conditions that (a) his/her employer has undertaken to pay SP on the basis of the pre-reduced wage level in writing before the wage reduction, and (b) the wage reduction took place within 12 months immediately before the date of termination of employment. The purpose is to allow for calculation of the ex gratia payment in a more favourable manner to the employee. Under the "grandfathering" arrangement for the abolition of the offsetting arrangement, the amount of pre-transition portion of SP should be calculated on the basis of the monthly wages immediately preceding the transition date (please refer to paragraph 7 above) unless otherwise provided for. Therefore, legislative amendment is necessary to expressly provide for the wage reduction scenario in order to continue to apply the above practice.

(f) Salaries tax treatment for LSP and SP

19. LSP is prima facie an income from employment assessable to salaries tax under IRO. Since LSP can be offset by non-taxable ERMC under the current offsetting arrangement, it is the established practice of the Inland Revenue Department not to tax LSP paid in accordance with EO. After the abolition of the offsetting arrangement, LSP cannot be offset by ERMC and the said established practice of not taxing LSP will no longer apply. Therefore, it is necessary to amend IRO to stipulate that LSP paid in accordance with EO is not chargeable to salaries tax.

20. SP paid in accordance with EO is generally regarded as a compensation for loss of employment and should not be taxable as an income from employment. But to avoid doubt, it is also necessary to amend IRO to make clear that SP paid in accordance with EO is not chargeable to salaries tax upon the abolition of the offsetting arrangement.

B. Supporting Measures

21. The Government will achieve the stated policy objective of abolishing the offsetting arrangement under the MPF System once the Bill is passed into law. Bearing in mind that the new regime would incur additional financial burden on employers, the Government will put in place supporting measures to facilitate the transition. Such support is helpful in particular to micro, small and medium-sized enterprises (MSMEs). First and foremost, to assist employers to adapt to the policy change, the Government will introduce a 25-year subsidy scheme totalling \$33.2 billion at 2021 prices. As announced in the Policy Address Supplement published in October 2021, the Government subsidy scheme has been refined to provide targeted assistance to employers, especially MSMEs, in the initial years after the abolition¹⁰.

22. Another supporting measure is the introduction of a Designated Savings Accounts (DSA) Scheme¹¹ under which employers will be mandated to save up for meeting their future SP/LSP liabilities after the abolition. A new piece of legislation will be enacted to implement the Scheme. The DSA Scheme will ride on the eMPF Platform being developed by the Mandatory Provident Fund Schemes Authority, which is expected to be fully implemented in 2025 at the earliest. We plan to introduce the bill for the DSA Scheme into the LegCo in Q2 2022. Prior to that, we plan to consult key stakeholders (including the LegCo Panel on Manpower) on the implementation details. As the DSA Scheme will only be implemented when the eMPF Platform is fully operational, we can afford the time to consult stakeholders without delaying passage of the Bill for abolishing the offsetting arrangement or its eventual implementation in 2025 at the earliest.

OTHER OPTIONS

23. Introducing legislative amendments is the only way to implement the initiative of abolishing the offsetting arrangement.

¹⁰ The LegCo Brief on the refined Government subsidy scheme was issued on 8 October 2021.

¹¹ A new bill, namely the Designated Savings Accounts for Severance Payment and Long Service Payment Bill, will need to be introduced into LegCo to implement the Scheme.

THE BILL

24. The main provisions of the Bill are as follows –

- (a) Clauses 5 and 6 amend sections 31I and 31IA of EO to amend the offsetting arrangement in respect of SP – only gratuities based on length of service, certain portion of ORS benefits in excess of an amount calculated in accordance with a prescribed formula and ERVC may be offset against SP payable to employees.
- (b) Clauses 10 to 13 amend sections 31Y, 31YAA and 31YA of, and add new sections 31YB and 31YC to, EO to amend the offsetting arrangement in respect of LSP – only gratuities based on length of service, certain portion of ORS benefits in excess of an amount calculated in accordance with a prescribed formula and ERVC may be offset against LSP payable to employees.
- (c) Clause 21 adds a new Schedule 11 to EO to specifically provide for the offsetting arrangement for employees whose employment commences before the transition date and ends on or after the transition date.
- (d) Clauses 22 and 23 amend sections 8 and 9 of IRO to exclude SP and LSP paid in accordance with EO from being income in respect of which salaries tax is chargeable.
- (e) Clauses 24 and 25 amend rule 13 of the G/SSPF Rules so that the arrangement to offset G/SSPF benefits against SP/LSP is aligned with the offsetting arrangement as stipulated in EO as amended by the Bill.
- (f) Clause 28 amends section 24 of PWIO so that ERMC and the “non-offsettable benefits” among the ORS benefits are not included in the subrogation amount to be recovered by the PWIF Board.
- (g) Clause 31 adds a new Schedule 2 to PWIO to specify the wage level to be adopted for the calculation of pre- and post-transition portion of SP in case of wage reduction that takes place within 12 months immediately before the PWIF applicant is dismissed or laid off.
- (h) Clauses 32 and 33 amend section 70A of ORSO and section 12A of MPFSO respectively to reflect the change to the portion of occupational retirement scheme benefits and MPF benefits that may be paid for offsetting.

- (i) Clause 34 amends section 6 of Schedule 2 to the MPFS (Exemption) Regulation to reflect the change to the portion of minimum MPF benefits that may be withdrawn for offsetting.

LEGISLATIVE TIMETABLE

25. The legislative timetable will be –

Publication in the Gazette	11 February 2022
First Reading and commencement of Second Reading debate	23 February 2022
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

26. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the legislation amended, and has no productivity, gender or environmental implications.

27. The proposal will have positive sustainability implications on the whole. Although it would entail additional cost on employers, the abolition of the offsetting arrangement can help preserve the accrued benefits in the MPF System for retirement protection for employees, making MPF a more sustainable pillar of Hong Kong's retirement protection system and a better safeguard for employees after retirement. It will also have positive implications on families facing financial difficulties in case of unemployment as the affected employees would receive their entitled SP/LSP at the prevailing rates without offsetting in case of dismissals.

28. More employees may seek to claim SP/LSP after the abolition, although on the other hand more employers may attempt to avoid the additional cost of paying SP/LSP. More labour disputes between employers and employees over SP/LSP claims are anticipated after the abolition of the offsetting arrangement.

29. The economic, financial and civil service implications are set out at **Annex B**.

PUBLIC CONSULTATION

30. Following CE's announcement of the enhanced proposal for the abolition of the offsetting arrangement in October 2018, the Labour and Welfare Bureau/Labour Department (LD) met with major business chambers, employers' associations, labour groups, etc. to explain the enhanced proposal. We also briefed the Labour Advisory Board (LAB) and LegCo Panel on Manpower¹² in October and November 2018 respectively, and on the further details of the abolition arrangement in April 2021. Upon the announcement of refinement of the Government subsidy scheme to provide more targeted assistance to employers in October 2021, we met with and explained the refined scheme to stakeholders including LAB, LegCo Panel on Manpower, employers' associations, labour unions and political parties to foster their understanding. We also briefed the LegCo Panel on Manpower on the above legislative proposals in its special meeting on 4 February 2022.

PUBLICITY

31. A press release will be issued on the day when the Bill is gazetted. A spokesperson from LD will be available to handle enquiries.

ENQUIRIES

32. Enquiries relating to this brief can be addressed to Ms CHEUNG Hoi-shan, Assistant Commissioner for Labour (Policy Support), on 2852 3633.

Labour and Welfare Bureau
9 February 2022

¹² Members of the Panel on Commerce and Industry and the Panel on Financial Affairs as well as other LegCo members were invited to join the discussion.

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

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A BILL

To

Amend the Employment Ordinance and certain other legislation concerning employment and retirement schemes so that mandatory provident fund scheme benefits attributable to employers' mandatory contributions, and certain portions of occupational retirement scheme benefits and of schools provident fund benefits, may no longer be offset against severance payments or long service payments payable to employees; to provide for a transitional arrangement under which the change in such offsetting does not apply in relation to severance payments or long service payments attributable to employment periods falling before the change and the amounts of such payments are generally calculated by reference to the latest wages for such employment periods; and to make related and miscellaneous amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022.

- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Employment Ordinance (Cap. 57)

3. Section 2 amended (interpretation)

- (1) Section 2(1)—
- (a) definition of *relevant mandatory provident fund scheme benefit*;
 - (b) definition of *relevant occupational retirement scheme benefit*—

Repeal the definitions.

- (2) Section 2(1)—

Add in alphabetical order

“employer-funded exempt ORS benefit (僱主供款豁免職業退休計劃利益)—see subsection (4);

employer-funded non-exempt ORS benefit (僱主供款非豁免職業退休計劃利益), in relation to an employee, means an employer-funded ORS benefit of the employee that is not an employer-funded exempt ORS benefit;

employer-funded ORS benefit (僱主供款職業退休計劃利益), in relation to an employee, means a benefit that is—

- (a) payable under an occupational retirement scheme on the retirement, death, incapacity or termination of service of the employee; and
- (b) attributable to a contribution made to such a scheme by the employer;

employer-funded (prescribed portion) exempt ORS benefit (僱主供款(訂明部分)豁免職業退休計劃利益)—see subsection (5);

employer-funded (specified) ORS benefit (僱主供款(指明)職業退休計劃利益), in relation to an employee, means—

- (a) an employer-funded non-exempt ORS benefit of the employee; or
- (b) an employer-funded (prescribed portion) exempt ORS benefit of the employee;

employer-funded (voluntary) MPFS benefit (僱主供款(自願性)強積金計劃權益), in relation to an employee, means any accrued benefits of the employee that are—

- (a) held by the approved trustee of a mandatory provident fund scheme in respect of the employee; and
- (b) attributable to a voluntary contribution (as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)) made to such a scheme by the employer;

specified employee (指明僱員) means an employee in relation to whom the conditions under section 31ZEA(2)(a), (b) and (c) are met;

transition date (轉制日) means the date on which the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 (of 2022) comes into operation;”.

- (3) After section 2(3)—

Add

“(4) For the purposes of this Ordinance, an employer-funded ORS benefit of an employee payable under an

occupational retirement scheme is an employer-funded exempt ORS benefit of the employee if the employee—

- (a) is exempt under section 4(3)(b) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or
 - (b) is, as a member of the scheme, a person in relation to whom an exemption from the operation of Part 3 of that Ordinance, given under section 5(1) of that Ordinance, has effect.
- (5) For the purposes of this Ordinance, an employer-funded exempt ORS benefit of an employee is, to the extent that its amount exceeds the reference amount calculated in accordance with the following formula, an employer-funded (prescribed portion) exempt ORS benefit of the employee—

$$A = B \times C \times 5\% \times 12$$

where—

- A means the reference amount;
- B means the employee's final average monthly relevant income; and
- C means the number of the employee's years (and pro rata for an incomplete year) of service to which the employer-funded exempt ORS benefit is attributable.

- (6) In subsection (5)—
- final average monthly relevant income* (最終每月平均有關入息), in relation to an employee—
- (a) if the occupational retirement scheme under which the employer-funded exempt ORS benefit concerned is payable in respect of the employee is a

relevant scheme (as defined by section 1(1) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B))—has the meaning given by that section; or

- (b) in any other case—means the amount that is equivalent to the relevant income per month for the definition of *final average monthly relevant income* in that section that would be obtained by applying paragraph (a)(i) of that definition in relation to the employee on the basis that the employee were a member of a relevant scheme falling within paragraph (a) of that definition.”.

4. Section 31G amended (amount of severance payment)

- (1) Section 31G(1)—
Repeal
“in any case”.
- (2) Section 31G(1)(a)—
Repeal
“; and”
Substitute
“; or”.
- (3) Section 31G—
Repeal subsection (1A).
- (4) Section 31G—
Repeal subsection (2)
Substitute

“(2) Despite subsection (1), the employee may, for a calculation under that subsection, elect to have the employee’s wages averaged over the period of 12 months immediately preceding the relevant date as if—

- (a) in the case of a monthly rated employee—the amount specified under paragraph (a) of that subsection for the calculation were two-thirds of the employee’s average monthly wages during such a period, or two-thirds of \$22,500, whichever is less; or
- (b) in any other case—the amount specified under paragraph (b) of that subsection for the calculation were 18 times the employee’s average daily wages during such a period.

(2A) For calculating the average daily wages under subsection (2)(b), the total wages for the period of 12 months must not exceed 12 times \$22,500.”.

(5) Section 31G—

Repeal subsection (3).

(6) At the end of section 31G—

Add

“Note—

See also section 31ZEA, and section 2 of Schedule 11.”.

5. Section 31I substituted

Section 31I—

Repeal the section

Substitute

“31I. Severance payment to be reduced by amount of gratuities and benefits in certain cases

(1) This section applies if—

(a) an employee becomes entitled to payment of a severance payment under this Part; and

(b) any of the following conditions is met—

(i) because of the operation of the employee’s contract of employment, one or more gratuities based on length of service have been paid to the employee;

(ii) because of the operation of that contract, one or more employer-funded (specified) ORS benefits have been paid to the employee;

(iii) one or more employer-funded (voluntary) MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee, or have been paid to or in respect of the employee.

(2) The severance payment is to be reduced by the aggregate amount of every one of the gratuities and benefits referred to in subsection (1)(b) to the extent that it relates to the employee’s years of service for which the severance payment is payable.

Note—

See also section 31ZEA, and section 3 of Schedule 11.”.

6. Section 31IA amended (gratuity or benefit to be reduced by amount of severance payment in certain cases)

(1) Section 31IA—

Repeal subsection (1)

Substitute

- “(1) This section applies if—
- (a) any of the following conditions is met in relation to an employee—
 - (i) because of the operation of the employee’s contract of employment, the employee becomes entitled to payment of one or more gratuities based on length of service;
 - (ii) because of the operation of that contract, the employee becomes entitled to payment of one or more employer-funded (specified) ORS benefits;
 - (iii) one or more employer-funded (voluntary) MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee; and
 - (b) the employee has been paid a severance payment under this Part.
- (1A) The aggregate amount of every one of the gratuities and benefits referred to in subsection (1)(a) is to be reduced by the whole amount of the severance payment to the extent that it is attributable to the same years of service as those for which the severance payment is payable.”
- (2) Section 31IA(2)—
- Repeal**
“Subsection (1)”
- Substitute**
“Subsection (1A)”.
- (3) Section 31IA—

Repeal subsection (3).

- (4) At the end of section 31IA—
- Add**
“Note—
See also section 31ZEA, and section 3 of Schedule 11.”.
7. **Section 31S amended (general exclusions from right to long service payment by reason of dismissal)**
- (1) Section 31S(6)—
- Repeal**
“and (2)(b)”.
- (2) Section 31S(6)(a)—
- Repeal**
“or (2)(b) as appropriate,”
- Substitute**
“and”.
- (3) Section 31S(6)(a)—
- Repeal**
“or (2)(b) for”
- Substitute**
“for”.
- (4) Section 31S(6)(b), English text—
- Repeal**
“, that”
- Substitute**
“and that”.

8. Section 31V amended (amount of long service payment)

(1) Section 31V(1)(a)—

Repeal

“; and”

Substitute

“; or”.

(2) Section 31V—

Repeal subsection (IAA).

(3) Section 31V—

Repeal subsection (IA)

Substitute

“(1A) Despite subsection (1), the employee may, for a calculation under that subsection, elect to have the employee’s wages averaged over the period of 12 months immediately preceding the relevant date as if—

(a) in the case of a monthly rated employee—the amount specified under paragraph (a) of that subsection for the calculation were two-thirds of the employee’s average monthly wages during such a period, or two-thirds of \$22,500, whichever is less; or

(b) in any other case—the amount specified under paragraph (b) of that subsection for the calculation were 18 times the employee’s average daily wages during such a period.

(1B) For calculating the average daily wages under subsection (1A)(b), the total wages for the period of 12 months must not exceed 12 times \$22,500.”.

(4) Section 31V—

Repeal subsection (2).

(5) At the end of section 31V—

Add

“Note—

See also section 31ZEA, and section 4 of Schedule 11.”.

9. Section 31W repealed (calculation of period of employment)

Section 31W—

Repeal the section.

10. Section 31Y substituted

Section 31Y—

Repeal the section

Substitute

“31Y. Long service payment to be reduced by amount of gratuities and benefits in certain cases

(1) This section applies if—

(a) an employee becomes entitled to payment of a long service payment under this Part; and

(b) any of the following conditions is met—

(i) because of the operation of the employee’s contract of employment, one or more gratuities based on length of service have been paid to the employee;

(ii) because of the operation of that contract, one or more employer-funded (specified) ORS benefits have been paid to the employee;

(iii) one or more employer-funded (voluntary) MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee, or have been paid to or in respect of the employee.

(2) The long service payment is to be reduced by the aggregate amount of every one of the gratuities and benefits referred to in subsection (1)(b) to the extent that it relates to the employee's years of service for which the long service payment is payable.

Note—

See also section 31ZEA, and section 5 of Schedule 11.”.

11. Section 31YAA amended (gratuity or benefit to be reduced by amount of long service payment in certain cases)

(1) Section 31YAA—

Repeal subsection (1)

Substitute

“(1) This section applies if—

(a) any of the following conditions is met in relation to an employee—

(i) because of the operation of the employee's contract of employment, the employee becomes entitled to payment of one or more gratuities based on length of service;

(ii) because of the operation of that contract, the employee becomes entitled to payment of one or more employer-funded (specified) ORS benefits;

(iii) one or more employer-funded (voluntary) MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee; and

(b) the employee has been paid a long service payment under this Part.

(1A) The aggregate amount of every one of the gratuities and benefits referred to in subsection (1)(a) is to be reduced by the whole amount of the long service payment to the extent that it is attributable to the same years of service as those for which the long service payment is payable.”.

(2) Section 31YAA(2)—

Repeal

“Subsection (1)”

Substitute

“Subsection (1A)”.

(3) Section 31YAA—

Repeal subsection (3).

(4) At the end of section 31YAA—

Add

“Note—

See also section 31ZEA, and section 5 of Schedule 11.”.

12. Section 31YA substituted

Section 31YA—

Repeal the section

Substitute

“31YA. Long service payment to be reduced by amount of gratuities and benefits on employee’s death

- (1) This section applies if—
- (a) an employee has died;
 - (b) as a result of the death, a person becomes entitled to payment of a long service payment under section 31RA; and
 - (c) any of the following conditions is met—
 - (i) because of the operation of the employee’s contract of employment, one or more gratuities based on length of service have been paid to the person in respect of the employee;
 - (ii) because of the operation of that contract, one or more employer-funded (specified) ORS benefits have been paid to the person in respect of the employee;
 - (iii) one or more employer-funded (voluntary) MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee, or have been paid to or in respect of the employee.
- (2) The long service payment is to be reduced by the aggregate amount of every one of the gratuities and benefits referred to in subsection (1)(c) to the extent that it relates to the employee’s years of service for which the long service payment is payable.

Note—

See also section 31ZEA, and section 5 of Schedule 11.”

13. Sections 31YB and 31YC added

After section 31YA—

Add

“31YB. Gratuity or benefit to be reduced by amount of long service payment on employee’s death

- (1) This section applies if—
- (a) an employee has died;
 - (b) any of the following conditions is met in relation to a person—
 - (i) as a result of the death, the person, because of the operation of the employee’s contract of employment, becomes entitled to payment of one or more gratuities based on length of service;
 - (ii) as a result of the death, the person, because of the operation of that contract, becomes entitled to payment of one or more employer-funded (specified) ORS benefits;
 - (iii) as a result of the death, the person becomes entitled to payment of one or more employer-funded (voluntary) MPFS benefits; and
 - (c) a long service payment has been paid under section 31RA to the person in respect of the employee.
- (2) The aggregate amount of every one of the gratuities and benefits referred to in subsection (1)(b) is to be reduced by the whole amount of the long service payment to the extent that it is attributable to the same years of service as those for which the long service payment is payable.

- (3) Subsection (2) has effect even though the years of service for which the long service payment was made exceed those to which the gratuity or benefit is attributable.

Note—

See also section 31ZEA, and section 5 of Schedule 11.

31YC. Certain persons' entitlements to gratuities or benefits on employee's death

- (1) This section applies if—
- (a) an employee has died;
 - (b) as a result of the death, the employer is required to pay a long service payment under section 31RA to a person (*Person A*); and
 - (c) any of the following conditions is met in relation to another person (*Person B*)—
 - (i) as a result of the death, Person B, because of the operation of the employee's contract of employment, becomes entitled to payment of one or more gratuities based on length of service;
 - (ii) as a result of the death, Person B, because of the operation of that contract, becomes entitled to payment of one or more employer-funded (specified) ORS benefits;
 - (iii) as a result of the death, Person B becomes entitled to payment of one or more employer-funded (voluntary) MPFS benefits.
- (2) A reference to a gratuity based on length of service, employer-funded (specified) ORS benefit or employer-funded (voluntary) MPFS benefit in subsection (1)(c) is a

reference to such a gratuity or benefit relating to the employee's years of service for which the long service payment is payable.

- (3) Person B is entitled to payment of any gratuities or benefits mentioned in subsection (1)(c) only to the extent that the aggregate amount of every one of such gratuities and benefits exceeds the amount of the long service payment.
- (4) Subsection (5) applies if—
- (a) the employer has paid a long service payment mentioned in subsection (1)(b) to Person A; and
 - (b) either or both of the following conditions are met—
 - (i) as a result of the employee's death, the administrator of an occupational retirement scheme has paid an employer-funded (specified) ORS benefit to Person B;
 - (ii) as a result of the employee's death, the approved trustee of a mandatory provident fund scheme has paid an employer-funded (voluntary) MPFS benefit to Person B.
- (5) Person B must repay the benefit to the administrator or trustee except for an amount the payment of which Person B is entitled to under subsection (3).
- (6) On being repaid the benefit, the administrator or trustee must pay it to the employer concerned.

Note—

See also section 31ZEA, and section 5 of Schedule 11."

14. Section 31ZEA added

Part VC, before section 31ZF—

Add

“31ZEA. Application of Parts VA and VB to certain employees

- (1) Parts VA and VB have effect in relation to an employee engaged under a continuous contract of employment subject to subsections (2) and (3), and any enactments are to be construed accordingly.
- (2) Parts VA and VB have effect in relation to such an employee with the modifications set out in Schedule 11 if—
 - (a) the employee’s employment under the continuous contract commenced before the transition date;
 - (b) the relevant date for the termination of the employment falls on or after the transition date; and
 - (c) either or both of the following conditions are met in relation to the employee—
 - (i) contributions are payable by the employer to an occupational retirement scheme because of the operation of that contract;
 - (ii) contributions are payable by the employer to a mandatory provident fund scheme under the Mandatory Provident Fund Schemes Ordinance (Cap. 485).
- (3) If the relevant date for the termination of the employee’s employment under the continuous contract precedes the transition date, then Parts VA and VB as in force immediately before the transition date continue to have effect in relation to the employee as if the amendments to this Ordinance made by the Employment and Retirement Schemes Legislation (Offsetting Arrangement)

(Amendment) Ordinance 2022 (of 2022) had not been made.”.

15. Section 31ZF amended (re-employment after retirement at a specified age)

- (1) Section 31ZF(1)—

Repeal

“Subject to subsection (2), where”

Substitute

“Where”.

- (2) Section 31ZF(1)—

Repeal paragraph (c).

- (3) Section 31ZF(1)—

Repeal paragraph (d)

Substitute

“(d) the long service payment to which the employee would have been entitled had the employee been dismissed at the relevant date were wholly available to be reduced under section 31Y; and”.

- (4) Section 31ZF—

Repeal subsection (2).

16. Section 31ZG repealed (transitional)

Section 31ZG—

Repeal the section.

17. **Section 49A amended (requirement to keep wage and employment records)**

(1) After section 49A(1)—

Add

“(1A) Without limiting subsection (1), an employer who engages a specified employee must at all times keep and maintain a record covering the specified period of—

- (a) the wages paid to the employee in respect of each wage period; and
- (b) the employee’s wage period.”.

(2) Section 49A(2), after “subsection (1)”—

Add

“or (1A)”.

(3) After section 49A(7)—

Add

“(8) In subsection (1A)—
specified period (指明期間), in relation to a specified employee, means—

- (a) if the employee’s pre-transition employment period is not less than 12 months—the period of 12 months immediately preceding the transition date; or
- (b) if the employee’s pre-transition employment period is less than 12 months—
 - (i) in the case of a monthly rated employee—
 - (A) if the employee’s pre-transition employment period covers not less than a month—that employment period; or

(B) if the employee’s pre-transition employment period covers less than a month—the first month of the employee’s whole employment period; or

(ii) in any other case—

(A) if the employee’s pre-transition employment period covers not less than 30 normal working days—that employment period; or

(B) if the employee’s pre-transition employment period covers less than 30 normal working days—the period covering the employee’s first 30 normal working days in the employee’s whole employment period.

(9) In the definition of *specified period* in subsection (8)—
pre-transition employment period (轉制前僱傭期) has the meaning given by section 1(1) of Schedule 11;

whole employment period (整段僱傭期) has the meaning given by section 1(1) of Schedule 11.”.

18. **Section 67A amended (amendment of limitation imposed on severance payment and long service payment)**

Section 67A—

Repeal

everything after “\$22,500”

Substitute

“in—

- (a) sections 31G and 31V (including those sections as modified by Schedule 11);
- (b) this section; and
- (c) sections 7 and 8 of Schedule 2 to the Protection of Wages on Insolvency Ordinance (Cap. 380),

by substituting a different amount specified in the resolution.”.

19. Third Schedule amended (death of employer or of employee)

Third Schedule, paragraph 14, after “in Part VA of this Ordinance”—

Add

“(including that Part as modified by Schedule 11)”.

20. Seventh Schedule amended

Seventh Schedule—

Repeal Table B.

21. Schedule 11 added

After Schedule 10—

Add

“Schedule 11

[ss. 31ZEA, 49A & 67A
& Third Sch.]

**Modifications to Parts VA and VB for Specified
Employees**

Part 1

Preliminary

1. Interpretation

(1) In the modified Parts VA and VB—

employer-funded (basic portion) exempt ORS benefit (僱主供款(基本部分)豁免職業退休計劃利益), in relation to a specified employee, means an employer-funded exempt ORS benefit of the employee that is not an employer-funded (prescribed portion) exempt ORS benefit;

employer-funded (mandatory) MPFS benefit (僱主供款(強制性)強積金計劃權益), in relation to a specified employee, means the accrued benefits of the employee that are—

- (a) held by the approved trustee of a mandatory provident fund scheme in respect of the employee; and
- (b) attributable to a mandatory contribution (as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)) made to such a scheme by the employer;

employer-funded MPFS benefit (僱主供款強積金計劃權益), in relation to a specified employee, means—

- (a) an employer-funded (mandatory) MPFS benefit of the employee; or
- (b) an employer-funded (voluntary) MPFS benefit of the employee;

post-transition employment period (轉制後僱傭期), in relation to a specified employee, means the period of the employee's employment under the continuous contract concerned that falls after the commencement of the transition date;

post-transition portion (轉制後部分), in relation to a severance payment or long service payment for a specified employee, means the portion of the payment that is attributable to the employee's post-transition employment period;

pre-transition employment period (轉制前僱傭期), in relation to a specified employee, means the period of the employee's employment under the continuous contract concerned that falls before the transition date;

pre-transition portion (轉制前部分), in relation to a severance payment or long service payment for a specified employee, means the portion of the payment that is attributable to the employee's pre-transition employment period;

whole employment period (整段僱傭期), in relation to a specified employee, means the whole period of the employee's employment under the continuous contract concerned.

(2) In subsection (1)—

modified (經變通) means modified by Part 2 or 3 of this Schedule.

Part 2

Modifications to Part VA

2. Section 31G modified

Section 31G is modified to read as follows—

“31G. Amount of severance payment

- (1) Subject to this Part, the amount of a severance payment to which a specified employee is entitled is the sum of the amounts under paragraphs (a) and (b)—
 - (a) an amount calculated by multiplying the number of years (and pro rata for an incomplete year) of the employee's pre-transition employment period by—
 - (i) in the case of a monthly rated employee—
 - (A) if the employee's pre-transition employment period covers not less than a month—two-thirds of the employee's last full month's wages for the pre-transition employment period, or two-thirds of \$22,500, whichever is less; or
 - (B) if the employee's pre-transition employment period covers less than a month—two-thirds of the employee's first full month's wages for the whole employment period,

- or two-thirds of \$22,500, whichever is less; or
- (ii) in any other case—
- (A) if the employee's pre-transition employment period covers not less than 30 normal working days—18 days' wages based on any 18 days chosen by the employee and occurring during the employee's last 30 normal working days in the pre-transition employment period, or two-thirds of \$22,500, whichever is less; or
- (B) if the employee's pre-transition employment period covers less than 30 normal working days—18 days' wages based on any 18 days chosen by the employee and occurring during the employee's first 30 normal working days in the whole employment period, or two-thirds of \$22,500, whichever is less;
- (b) an amount calculated by multiplying the number of years (and pro rata for an incomplete year) of the employee's post-transition employment period by—
- (i) in the case of a monthly rated employee—two-thirds of the employee's last full month's wages for the whole employment period, or two-thirds of \$22,500, whichever is less; or

- (ii) in any other case—18 days' wages based on any 18 days chosen by the employee and occurring during the employee's last 30 normal working days in the whole employment period, or two-thirds of \$22,500, whichever is less.
- (2) However, the amount of the severance payment must not exceed, where the relevant date occurs in a period specified in column 1 of Table A in the Seventh Schedule, the amount specified in column 2 of that table opposite to the period (*applicable ceiling*).
- (3) In case the amount of the severance payment would, but for subsection (2), exceed the applicable ceiling, then for removing the excess—
- (a) if the amount of the pre-transition portion of the payment would, but for that subsection, exceed the applicable ceiling—
- (i) the amount of the pre-transition portion of the payment is to be reduced to an amount equivalent to the applicable ceiling; and
- (ii) the amount of the post-transition portion of the payment is to be reduced to zero; or
- (b) in any other case—
- (i) the amount of the pre-transition portion of the payment need not be reduced; and
- (ii) the amount of the post-transition portion of the payment is to be reduced to the

- difference between the applicable ceiling and the amount of the pre-transition portion of the payment.
- (4) Despite subsection (1), the employee may, for a calculation under paragraph (a)(i)(A) or (ii)(A) or (b) of that subsection, elect to have the employee's wages averaged over the specified period as if—
- (a) in the case of paragraph (a)(i)(A) or (b)(i) of that subsection—the amount specified under that paragraph for the calculation were two-thirds of the employee's average monthly wages during the specified period, or two-thirds of \$22,500, whichever is less; or
- (b) in the case of paragraph (a)(ii)(A) or (b)(ii) of that subsection—the amount specified under that paragraph for the calculation were 18 times the employee's average daily wages during the specified period.
- (5) For calculating the average daily wages under subsection (4)(b), the total wages for the specified period must not exceed the number of months (and pro rata for an incomplete month) of the specified period times \$22,500.
- (6) In subsections (4) and (5)—
- specified period* (指明期間)—
- (a) in relation to an election under subsection (4) for a calculation under subsection (1)(a)(i)(A) or (ii)(A), means—
- (i) if the employee's pre-transition employment period is not less than 12

- months—the period of 12 months immediately preceding the transition date; or
- (ii) if the employee's pre-transition employment period is less than 12 months—that employment period; or
- (b) in relation to an election under subsection (4) for a calculation under subsection (1)(b), means the period of 12 months immediately preceding the relevant date.
- (7) For the purposes of this section, in the case of a specified employee who was employed under a continuous contract otherwise than by way of manual labour and whose average monthly wages during the period of 12 months immediately preceding the commencement date of the Employment (Amendment) Ordinance 1990 (41 of 1990) exceed \$15,000, a reference to the employee's pre-transition employment period does not include any period of the employment falling before 1 January 1980.”.

3. Sections 31I and 31IA modified

Sections 31I and 31IA are modified to read as follows—

“31I. Severance payment to be reduced by amount of gratuities and benefits in certain cases

- (1) This section applies if—
- (a) a specified employee becomes entitled to payment of a severance payment under this Part; and

- (b) any of the following conditions is met—
 - (i) because of the operation of the employee's contract of employment, one or more gratuities based on length of service have been paid to the employee;
 - (ii) because of the operation of that contract, one or more employer-funded ORS benefits have been paid to the employee;
 - (iii) one or more employer-funded MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee, or have been paid to or in respect of the employee.
- (2) The pre-transition portion of the severance payment is to be reduced by the aggregate amount of the qualifying items specified under subsection (4)(a), (b), (c), (d) and (e) to the extent that—
 - (a) the gratuity or benefit relates to the employee's years of service for which the severance payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
 - (b) in the case of a qualifying item specified under subsection (4)(a), (b) or (c)—the gratuity or benefit has not been used for a reduction under subsection (3).
- (3) The post-transition portion of the severance payment is to be reduced by the aggregate amount of the qualifying items specified under subsection (4)(a), (b) and (c) to the extent that—

- (a) the gratuity or benefit relates to the employee's years of service for which the severance payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
- (b) the gratuity or benefit has not been used for a reduction under subsection (2).
- (4) The following items are qualifying items specified for the purposes of subsections (2) and (3)—
 - (a) every one of the gratuities referred to in subsection (1)(b)(i);
 - (b) every one of the employer-funded ORS benefits referred to in subsection (1)(b)(ii) that are employer-funded (specified) ORS benefits;
 - (c) every one of the employer-funded MPFS benefits referred to in subsection (1)(b)(iii) that are employer-funded (voluntary) MPFS benefits;
 - (d) every one of the employer-funded ORS benefits referred to in subsection (1)(b)(ii) that are employer-funded (basic portion) exempt ORS benefits;
 - (e) every one of the employer-funded MPFS benefits referred to in subsection (1)(b)(iii) that are employer-funded (mandatory) MPFS benefits.

311A. Gratuity or benefit to be reduced by amount of severance payment in certain cases

- (1) This section applies if—

- (a) any of the following conditions is met in relation to a specified employee—
 - (i) because of the operation of the employee's contract of employment, the employee becomes entitled to payment of one or more gratuities based on length of service;
 - (ii) because of the operation of that contract, the employee becomes entitled to payment of one or more employer-funded ORS benefits;
 - (iii) one or more employer-funded MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee; and
 - (b) the employee has been paid a severance payment under this Part.
- (1A) The aggregate amount of the qualifying items specified under subsection (1C)(a), (b), (c), (d) and (e) is to be reduced by the whole amount of the pre-transition portion of the severance payment to the extent that—
- (a) the gratuity or benefit is attributable to the same years of service as those for which the severance payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
 - (b) in the case of a qualifying item specified under subsection (1C)(a), (b) or (c)—the gratuity or benefit has not been reduced under subsection (1B).

- (1B) The aggregate amount of the qualifying items specified under subsection (1C)(a), (b) and (c) is to be reduced by the whole amount of the post-transition portion of the severance payment to the extent that—
- (a) the gratuity or benefit is attributable to the same years of service as those for which the severance payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
 - (b) the gratuity or benefit has not been reduced under subsection (1A).
- (1C) The following items are qualifying items specified for the purposes of subsections (1A) and (1B)—
- (a) every one of the gratuities referred to in subsection (1)(a)(i);
 - (b) every one of the employer-funded ORS benefits referred to in subsection (1)(a)(ii) that are employer-funded (specified) ORS benefits;
 - (c) every one of the employer-funded MPFS benefits referred to in subsection (1)(a)(iii) that are employer-funded (voluntary) MPFS benefits;
 - (d) every one of the employer-funded ORS benefits referred to in subsection (1)(a)(ii) that are employer-funded (basic portion) exempt ORS benefits;
 - (e) every one of the employer-funded MPFS benefits referred to in subsection (1)(a)(iii) that

are employer-funded (mandatory) MPFS benefits.

- (2) Subsections (1A) and (1B) have effect even though the years of service for which the severance payment (including both the pre-transition portion and post-transition portion of the payment) was made exceed those to which the gratuity or benefit is attributable.”

Part 3

Modifications to Part VB

4. Section 31V modified

Section 31V is modified to read as follows—

“31V. Amount of long service payment

- (1) Subject to this Part, the amount of a long service payment payable under section 31R(1) or 31RA(1) is, in relation to a specified employee, the sum of the amounts under paragraphs (a) and (b)—
- (a) an amount calculated by multiplying the number of years (and pro rata for an incomplete year) of the employee’s pre-transition employment period by—
- (i) in the case of a monthly rated employee—
- (A) if the employee’s pre-transition employment period covers not less than a month—two-thirds of the employee’s last full month’s wages

for the pre-transition employment period, or two-thirds of \$22,500, whichever is less; or

- (B) if the employee’s pre-transition employment period covers less than a month—two-thirds of the employee’s first full month’s wages for the whole employment period, or two-thirds of \$22,500, whichever is less; or
- (ii) in any other case—
- (A) if the employee’s pre-transition employment period covers not less than 30 normal working days—18 days’ wages based on any 18 days chosen by the employee and occurring during the employee’s last 30 normal working days in the pre-transition employment period, or two-thirds of \$22,500, whichever is less; or
- (B) if the employee’s pre-transition employment period covers less than 30 normal working days—18 days’ wages based on any 18 days chosen by the employee and occurring during the employee’s first 30 normal working days in the whole employment period, or two-thirds of \$22,500, whichever is less;

- (b) an amount calculated by multiplying the number of years (and pro rata for an incomplete year) of the employee's post-transition employment period by—
 - (i) in the case of a monthly rated employee—two-thirds of the employee's last full month's wages for the whole employment period, or two-thirds of \$22,500, whichever is less; or
 - (ii) in any other case—18 days' wages based on any 18 days chosen by the employee and occurring during the employee's last 30 normal working days in the whole employment period, or two-thirds of \$22,500, whichever is less.
- (2) However, the amount of the long service payment must not exceed, where the relevant date occurs in a period specified in column 1 of Table A in the Seventh Schedule, the amount specified in column 2 of that table opposite to the period (*applicable ceiling*).
- (3) In case the amount of the long service payment would, but for subsection (2), exceed the applicable ceiling, then for removing the excess—
 - (a) if the amount of the pre-transition portion of the payment would, but for that subsection, exceed the applicable ceiling—
 - (i) the amount of the pre-transition portion of the payment is to be reduced to an amount equivalent to the applicable ceiling; and

- (ii) the amount of the post-transition portion of the payment is to be reduced to zero; or
- (b) in any other case—
 - (i) the amount of the pre-transition portion of the payment need not be reduced; and
 - (ii) the amount of the post-transition portion of the payment is to be reduced to the difference between the applicable ceiling and the amount of the pre-transition portion of the payment.
- (4) Despite subsection (1), the employee may, for a calculation under paragraph (a)(i)(A) or (ii)(A) or (b) of that subsection, elect to have the employee's wages averaged over the specified period as if—
 - (a) in the case of paragraph (a)(i)(A) or (b)(i) of that subsection—the amount specified under that paragraph for the calculation were two-thirds of the employee's average monthly wages during the specified period, or two-thirds of \$22,500, whichever is less; or
 - (b) in the case of paragraph (a)(ii)(A) or (b)(ii) of that subsection—the amount specified under that paragraph for the calculation were 18 times the employee's average daily wages during the specified period.
- (5) For calculating the average daily wages under subsection (4)(b), the total wages for the specified period must not exceed the number of months (and pro rata for an incomplete month) of the specified period times \$22,500.

- (6) In subsections (4) and (5)—
specified period (指明期間)—
- (a) in relation to an election under subsection (4) for a calculation under subsection (1)(a)(i)(A) or (ii)(A), means—
 - (i) if the employee's pre-transition employment period is not less than 12 months—the period of 12 months immediately preceding the transition date; or
 - (ii) if the employee's pre-transition employment period is less than 12 months—that employment period; or
 - (b) in relation to an election under subsection (4) for a calculation under subsection (1)(b), means the period of 12 months immediately preceding the relevant date.
- (7) For the purposes of this section, in the case of a specified employee who was employed under a continuous contract otherwise than by way of manual labour and whose average monthly wages during the period of 12 months immediately preceding the commencement date of the Employment (Amendment) Ordinance 1990 (41 of 1990) exceed \$15,000, a reference to the employee's pre-transition employment period does not include any period of the employment falling before 1 January 1980.”

5. Sections 31Y, 31YAA, 31YA, 31YB and 31YC modified

Sections 31Y, 31YAA, 31YA, 31YB and 31YC are modified to read as follows—

“31Y. Long service payment to be reduced by amount of gratuities and benefits in certain cases

- (1) This section applies if—
- (a) a specified employee becomes entitled to payment of a long service payment under this Part; and
 - (b) any of the following conditions is met—
 - (i) because of the operation of the employee's contract of employment, one or more gratuities based on length of service have been paid to the employee;
 - (ii) because of the operation of that contract, one or more employer-funded ORS benefits have been paid to the employee;
 - (iii) one or more employer-funded MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee, or have been paid to or in respect of the employee.
- (2) The pre-transition portion of the long service payment is to be reduced by the aggregate amount of the qualifying items specified under subsection (4)(a), (b), (c), (d) and (e) to the extent that—
- (a) the gratuity or benefit relates to the employee's years of service for which the long service payment (including both the pre-transition

- portion and post-transition portion of the payment) is payable; and
- (b) in the case of a qualifying item specified under subsection (4)(a), (b) or (c)—the gratuity or benefit has not been used for a reduction under subsection (3).
- (3) The post-transition portion of the long service payment is to be reduced by the aggregate amount of the qualifying items specified under subsection (4)(a), (b) and (c) to the extent that—
- (a) the gratuity or benefit relates to the employee's years of service for which the long service payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
 - (b) the gratuity or benefit has not been used for a reduction under subsection (2).
- (4) The following items are qualifying items specified for the purposes of subsections (2) and (3)—
- (a) every one of the gratuities referred to in subsection (1)(b)(i);
 - (b) every one of the employer-funded ORS benefits referred to in subsection (1)(b)(ii) that are employer-funded (specified) ORS benefits;
 - (c) every one of the employer-funded MPFS benefits referred to in subsection (1)(b)(iii) that are employer-funded (voluntary) MPFS benefits;
 - (d) every one of the employer-funded ORS benefits referred to in subsection (1)(b)(ii) that

- are employer-funded (basic portion) exempt ORS benefits;
- (e) every one of the employer-funded MPFS benefits referred to in subsection (1)(b)(iii) that are employer-funded (mandatory) MPFS benefits.

31YAA. Gratuity or benefit to be reduced by amount of long service payment in certain cases

- (1) This section applies if—
- (a) any of the following conditions is met in relation to a specified employee—
 - (i) because of the operation of the employee's contract of employment, the employee becomes entitled to payment of one or more gratuities based on length of service;
 - (ii) because of the operation of that contract, the employee becomes entitled to payment of one or more employer-funded ORS benefits;
 - (iii) one or more employer-funded MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee; and
 - (b) the employee has been paid a long service payment under this Part.
- (1A) The aggregate amount of the qualifying items specified under subsection (1C)(a), (b), (c), (d) and (e) is to be reduced by the whole amount of the pre-

transition portion of the long service payment to the extent that—

- (a) the gratuity or benefit is attributable to the same years of service as those for which the long service payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
- (b) in the case of a qualifying item specified under subsection (1C)(a), (b) or (c)—the gratuity or benefit has not been reduced under subsection (1B).

(1B) The aggregate amount of the qualifying items specified under subsection (1C)(a), (b) and (c) is to be reduced by the whole amount of the post-transition portion of the long service payment to the extent that—

- (a) the gratuity or benefit is attributable to the same years of service as those for which the long service payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
- (b) the gratuity or benefit has not been reduced under subsection (1A).

(1C) The following items are qualifying items specified for the purposes of subsections (1A) and (1B)—

- (a) every one of the gratuities referred to in subsection (1)(a)(i);
- (b) every one of the employer-funded ORS benefits referred to in subsection (1)(a)(ii) that are employer-funded (specified) ORS benefits;

- (c) every one of the employer-funded MPFS benefits referred to in subsection (1)(a)(iii) that are employer-funded (voluntary) MPFS benefits;
- (d) every one of the employer-funded ORS benefits referred to in subsection (1)(a)(ii) that are employer-funded (basic portion) exempt ORS benefits;
- (e) every one of the employer-funded MPFS benefits referred to in subsection (1)(a)(iii) that are employer-funded (mandatory) MPFS benefits.

(2) Subsections (1A) and (1B) have effect even though the years of service for which the long service payment (including both the pre-transition portion and post-transition portion of the payment) was made exceed those to which the gratuity or benefit is attributable.

31YA. Long service payment to be reduced by amount of gratuities and benefits on specified employee's death

- (1) This section applies if—
 - (a) a specified employee has died;
 - (b) as a result of the death, a person becomes entitled to payment of a long service payment under section 31RA; and
 - (c) any of the following conditions is met—
 - (i) because of the operation of the employee's contract of employment, one or more gratuities based on length of

- service have been paid to the person in respect of the employee;
- (ii) because of the operation of that contract, one or more employer-funded ORS benefits have been paid to the person in respect of the employee;
 - (iii) one or more employer-funded MPFS benefits are being held in one or more mandatory provident fund schemes in respect of the employee, or have been paid to or in respect of the employee.
- (2) The pre-transition portion of the long service payment is to be reduced by the aggregate amount of the qualifying items specified under subsection (4)(a), (b), (c), (d) and (e) to the extent that—
- (a) the gratuity or benefit relates to the employee's years of service for which the long service payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
 - (b) in the case of a qualifying item specified under subsection (4)(a), (b) or (c)—the gratuity or benefit has not been used for a reduction under subsection (3).
- (3) The post-transition portion of the long service payment is to be reduced by the aggregate amount of the qualifying items specified under subsection (4)(a), (b) and (c) to the extent that—
- (a) the gratuity or benefit relates to the employee's years of service for which the long service payment (including both the pre-transition

- portion and post-transition portion of the payment) is payable; and
- (b) the gratuity or benefit has not been used for a reduction under subsection (2).
- (4) The following items are qualifying items specified for the purposes of subsections (2) and (3)—
- (a) every one of the gratuities referred to in subsection (1)(c)(i);
 - (b) every one of the employer-funded ORS benefits referred to in subsection (1)(c)(ii) that are employer-funded (specified) ORS benefits;
 - (c) every one of the employer-funded MPFS benefits referred to in subsection (1)(c)(iii) that are employer-funded (voluntary) MPFS benefits;
 - (d) every one of the employer-funded ORS benefits referred to in subsection (1)(c)(ii) that are employer-funded (basic portion) exempt ORS benefits;
 - (e) every one of the employer-funded MPFS benefits referred to in subsection (1)(c)(iii) that are employer-funded (mandatory) MPFS benefits.

31YB. Gratuity or benefit to be reduced by amount of long service payment on specified employee's death

- (1) This section applies if—
- (a) a specified employee has died;
 - (b) any of the following conditions is met in relation to a person—

- (i) as a result of the death, the person, because of the operation of the employee's contract of employment, becomes entitled to payment of one or more gratuities based on length of service;
 - (ii) as a result of the death, the person, because of the operation of that contract, becomes entitled to payment of one or more employer-funded ORS benefits;
 - (iii) as a result of the death, the person becomes entitled to payment of one or more employer-funded MPFS benefits; and
- (c) a long service payment has been paid under section 31RA to the person in respect of the employee.
- (2) The aggregate amount of the qualifying items specified under subsection (4)(a), (b), (c), (d) and (e) is to be reduced by the whole amount of the pre-transition portion of the long service payment to the extent that—
- (a) the gratuity or benefit is attributable to the same years of service as those for which the long service payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
 - (b) in the case of a qualifying item specified under subsection (4)(a), (b) or (c)—the gratuity or benefit has not been reduced under subsection (3).

- (3) The aggregate amount of the qualifying items specified under subsection (4)(a), (b) and (c) is to be reduced by the whole amount of the post-transition portion of the long service payment to the extent that—
- (a) the gratuity or benefit is attributable to the same years of service as those for which the long service payment (including both the pre-transition portion and post-transition portion of the payment) is payable; and
 - (b) the gratuity or benefit has not been reduced under subsection (2).
- (4) The following items are qualifying items specified for the purposes of subsections (2) and (3)—
- (a) every one of the gratuities referred to in subsection (1)(b)(i);
 - (b) every one of the employer-funded ORS benefits referred to in subsection (1)(b)(ii) that are employer-funded (specified) ORS benefits;
 - (c) every one of the employer-funded MPFS benefits referred to in subsection (1)(b)(iii) that are employer-funded (voluntary) MPFS benefits;
 - (d) every one of the employer-funded ORS benefits referred to in subsection (1)(b)(ii) that are employer-funded (basic portion) exempt ORS benefits;
 - (e) every one of the employer-funded MPFS benefits referred to in subsection (1)(b)(iii)

that are employer-funded (mandatory) MPFS benefits.

- (5) Subsections (2) and (3) have effect even though the years of service for which the long service payment (including both the pre-transition portion and post-transition portion of the payment) was made exceed those to which the gratuity or benefit is attributable.

31YC. Certain persons' entitlements to gratuities or benefits on specified employee's death

- (1) This section applies if—
- (a) a specified employee has died;
 - (b) as a result of the death, the employer is required to pay a long service payment under section 31RA to a person (*Person A*); and
 - (c) any of the following conditions is met in relation to another person (*Person B*)—
 - (i) as a result of the death, Person B, because of the operation of the employee's contract of employment, becomes entitled to payment of one or more gratuities based on length of service;
 - (ii) as a result of the death, Person B, because of the operation of that contract, becomes entitled to payment of one or more employer-funded ORS benefits;
 - (iii) as a result of the death, Person B becomes entitled to payment of one or more employer-funded MPFS benefits.

- (2) A reference to a gratuity based on length of service, employer-funded ORS benefit or employer-funded MPFS benefit in subsection (1)(c) is a reference to such a gratuity or benefit relating to the employee's years of service for which the long service payment is payable.
- (3) Person B is entitled to payment of any gratuities or benefits mentioned in subsection (1)(c) only to the extent of the aggregate amount of every one of such gratuities and benefits that would remain if such gratuities and benefits were to be reduced under section 31YB that applies on the basis that Person B were entitled to payment of, and had been paid, the amount of the long service payment.
- (4) Subsection (5) applies if—
- (a) the employer has paid a long service payment mentioned in subsection (1)(b) to Person A; and
 - (b) either or both of the following conditions are met—
 - (i) as a result of the employee's death, the administrator of an occupational retirement scheme has paid an employer-funded ORS benefit to Person B;
 - (ii) as a result of the employee's death, the approved trustee of a mandatory provident fund scheme has paid an employer-funded MPFS benefit to Person B.

- (5) Person B must repay the benefit to the administrator or trustee except for an amount the payment of which Person B is entitled to under subsection (3).
 - (6) On being repaid the benefit, the administrator or trustee must pay it to the employer concerned.”.”.
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Part 3

Amendments to Other Legislation Concerning Employment and Retirement Schemes

Division 1—Inland Revenue Ordinance (Cap. 112)

22. Section 8 amended (charge of salaries tax)

- (1) After section 8(2)(cc)—

Add

- “(cd) a payment—

- (i) received by the person on the dismissal or lay-off of the person in the circumstances described in section 31B of the Employment Ordinance (Cap. 57); and
- (ii) calculated in accordance with section 31G of that Ordinance;

- (ce) a payment—

- (i) received by the person on the dismissal, or termination of the contract of employment, of the person in the circumstances described in section 31R of the Employment Ordinance (Cap. 57); and
- (ii) calculated in accordance with section 31V of that Ordinance;

- (cf) a payment—

- (i) received in respect of the person on his or her death in the circumstances described in section 31RA of the Employment Ordinance (Cap. 57); and

(ii) calculated in accordance with section 31V of that Ordinance;”.

(2) After section 8(2A)—

Add

“(2B) For determining whether any sum, benefit or payment falls within subsection (2)(c)(i), (cb), (cc)(i) or (ii), (cd), (ce) or (cf), it is immaterial whether or not the sum, benefit or payment was to any extent available to be reduced under—

- (a) in relation to subsection (2)(c)(i), (cb) or (cc)(i) or (ii)—section 31IA, 31YAA or 31YB of the Employment Ordinance (Cap. 57);
- (b) in relation to subsection (2)(cd)—section 31I of that Ordinance;
- (c) in relation to subsection (2)(ce)—section 31Y of that Ordinance; or
- (d) in relation to subsection (2)(cf)—section 31YA of that Ordinance.”.

23. Section 9 amended (definition of income from employment)

After section 9(1)(ae)—

Add

- “(af) so much of any payment—
- (i) received by an employee on the dismissal, or termination of the contract of employment, of the employee in the circumstances described in section 31R of the Employment Ordinance (Cap. 57); and
 - (ii) calculated based on the period of employment of the employee,

that exceeds a payment falling within section 8(2)(ce);

(ag) so much of any payment—

- (i) received in respect of an employee on his or her death in the circumstances described in section 31RA of the Employment Ordinance (Cap. 57); and
 - (ii) calculated based on the period of employment of the employee,
- that exceeds a payment falling within section 8(2)(cf);”.

**Division 2—Grant Schools Provident Fund Rules (Cap. 279
sub. leg. C)**

24. Rule 13 amended (benefits)

(1) Rule 13(7)(a)—

Repeal

“and has re-commenced employment in a subsidized school or a grant school”

Substitute

“(Cap. 57) and has re-commenced employment in a subsidized school, grant school or DSS school”.

(2) Rule 13(7)(b)—

Repeal

everything after “closed”

Substitute

“, and subject to paragraph (8), the amount standing to the credit of that account at the date of the relevant cessation of the contributor’s employment (*fund benefit*) must be paid to the contributor.”.

(3) After rule 13(7)—

Add

- “(8) The portion of the fund benefit that is attributable neither to the contributor’s contributions nor to dividends declared on such contributions (*specified fund benefit*) must, to the extent that it is available to be reduced by an amount of a severance payment or long service payment mentioned in paragraph (7)(a)—
- (a) subject to subparagraph (b), be paid to the Government; or
 - (b) if the severance payment or long service payment was paid by a DSS school—be paid to the school.
- (9) For the purposes of paragraph (8), the extent to which a specified fund benefit is available to be reduced by an amount of a severance payment or long service payment is determined in accordance with Cap. 57.
- (10) In applying Cap. 57 to a determination under paragraph (9) in relation to a specified fund benefit of a contributor—
- (a) the benefit is taken to be an employer-funded exempt ORS benefit (within the meaning of section 2 of Cap. 57) of the contributor;
 - (b) the contributor is taken to have become entitled to the payment of the benefit because of the operation of the contributor’s contract of employment;
 - (c) the reference to the employee’s final average monthly relevant income in the formula in section 2(5) of Cap. 57 is taken to be a reference to the contributor’s salary per month averaged over the period of 12 months immediately preceding the date

of the relevant cessation of the contributor’s employment; and

- (d) section 31ZEA(2)(c) of Cap. 57 is to be disregarded, and accordingly, if section 31ZEA(2)(a) and (b) of Cap. 57 is satisfied in relation to the relevant employment of the contributor, then Parts VA and VB of Cap. 57 have effect in relation to the contributor with the modifications set out in Schedule 11 to Cap. 57.
- (11) In paragraph (10)(c), the reference to the contributor’s salary—
- (a) subject to subparagraph (b), is a reference to the contributor’s basic salary, including any allowances approved for that purpose by the Permanent Secretary; or
 - (b) to the extent that the relevant employment of the contributor is an employment in a DSS school—is a reference to the contributor’s salary under the contributor’s contract of employment.
- (12) If the date of the relevant cessation of a contributor’s employment mentioned in paragraph (7) precedes the date on which the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 (of 2022) comes into operation (*transition date*), then this rule as in force immediately before the transition date continues to have effect in relation to the contributor as if the amendments to this rule made by that Ordinance had not been made.”

**Division 3—Subsidized Schools Provident Fund Rules (Cap.
279 sub. leg. D)**

25. Rule 13 amended (benefits)

- (1) Rule 13(7)(a), after “(Cap. 57)”—

Add

“(Cap. 57)”.

- (2) Rule 13(7)(b)—

Repeal

everything after “closed”

Substitute

“, and subject to paragraph (8), the amount standing to the credit of that account at the date of the relevant cessation of the contributor’s employment (*fund benefit*) must be paid to the contributor.”.

- (3) After rule 13(7)—

Add

“(8) The portion of the fund benefit that is attributable neither to the contributor’s contributions nor to dividends declared on such contributions (*specified fund benefit*) must, to the extent that it is available to be reduced by an amount of a severance payment or long service payment mentioned in paragraph (7)(a)—

- (a) subject to subparagraph (b), be paid to the Government; or
(b) if the severance payment or long service payment was paid by a DSS school—be paid to the school.

- (9) For the purposes of paragraph (8), the extent to which a specified fund benefit is available to be reduced by an amount of a severance payment or long service payment is determined in accordance with Cap. 57.
- (10) In applying Cap. 57 to a determination under paragraph (9) in relation to a specified fund benefit of a contributor—
- (a) the benefit is taken to be an employer-funded exempt ORS benefit (within the meaning of section 2 of Cap. 57) of the contributor;
- (b) the contributor is taken to have become entitled to the payment of the benefit because of the operation of the contributor’s contract of employment;
- (c) the reference to the employee’s final average monthly relevant income in the formula in section 2(5) of Cap. 57 is taken to be a reference to the contributor’s salary per month averaged over the period of 12 months immediately preceding the date of the relevant cessation of the contributor’s employment; and
- (d) section 31ZEA(2)(c) of Cap. 57 is to be disregarded, and accordingly, if section 31ZEA(2)(a) and (b) of Cap. 57 is satisfied in relation to the relevant employment of the contributor, then Parts VA and VB of Cap. 57 have effect in relation to the contributor with the modifications set out in Schedule 11 to Cap. 57.
- (11) In paragraph (10)(c), the reference to the contributor’s salary—
- (a) subject to subparagraph (b), is a reference to the contributor’s basic salary, including any allowances

approved for that purpose by the Permanent Secretary; or

- (b) to the extent that the relevant employment of the contributor is an employment in a DSS school—is a reference to the contributor’s salary under the contributor’s contract of employment.
- (12) If the date of the relevant cessation of a contributor’s employment mentioned in paragraph (7) precedes the date on which the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 (of 2022) comes into operation (*transition date*), then this rule as in force immediately before the transition date continues to have effect in relation to the contributor as if the amendments to this rule made by that Ordinance had not been made.”

Division 4—Protection of Wages on Insolvency Ordinance (Cap. 380)

26. Section 3 amended (establishment and incorporation of Wages on Insolvency Fund Board)

- (1) Section 3(2)—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

- (2) Section 3(4)—

Repeal

“The Schedule”

Substitute

“Schedule 1”.

27. Section 16 amended (payment)

- (1) Section 16(2B)(a)—

Repeal subparagraph (A)

Substitute

“(A) in accordance with Schedule 2; or”.

- (2) Section 16(2B)—

Repeal paragraph (c).

- (3) Section 16(2B)(d)—

Repeal

everything after “off”

Substitute

“, the reference to the undertaking in paragraph (a)(B) is to be construed as a reference to the undertaking that is the most favourable to the applicant among those given to the applicant during that period.”.

28. Section 24 amended (subrogation)

Section 24—

Repeal subsections (2B) and (2C)

Substitute

“(2B) If—

- (a) an applicant is entitled to a payment of benefits under an occupational retirement scheme or is a person for whom accrued benefits in a mandatory provident fund scheme are held; and

(b) an ex gratia payment is made to the applicant under section 16 in respect of a severance payment that the employer has failed to pay,

the applicant's rights and remedies in respect of the benefits (*specified benefits*) are, to the extent of the subrogation amount specified under subsection (2C), transferred to, and vested in, the Board for the benefit of the Fund. The Board may take such steps as it considers necessary to enforce those rights and remedies.

(2C) For the purposes of subsection (2B), the subrogation amount is the amount of the specified benefits that would be available to be reduced under section 31IA of the Employment Ordinance (Cap. 57).

(2D) For applying section 31IA of the Employment Ordinance (Cap. 57) for the purposes of subsection (2C), a reference in that section to a severance payment paid under Part VA of that Ordinance is taken to be a reference to an ex gratia payment mentioned in subsection (2B)(b)."

29. **Section 28 amended (power of Chief Executive to amend Schedule)**

(1) Section 28, heading, after "Schedule"—

Add

"1".

(2) Section 28—

Repeal

"the Schedule"

Substitute

"Schedule 1".

30. **Schedule renumbered (Protection of Wages on Insolvency Fund Board)**

The Schedule—

Renumber the Schedule as Schedule 1.

31. **Schedule 2 added**

After Schedule 1—

Add

"Schedule 2

[s. 16]

**Calculation of More Favourable Severance
Payment under Section 16(2B)(a)(A)**

Part 1

Preliminary

1. Interpretation

In this Schedule—

Cap. 57 (《第 57 章》) means the Employment Ordinance (Cap. 57);

pre-reduction employment period (減薪前僱傭期), in relation to an applicant, means the period of the applicant's employment under the contract of employment concerned that falls before the date on which the specified wage reduction took effect in relation to the applicant;

qualifying wage reduction (合資格減薪), in relation to an applicant, means a wage reduction—

- (a) that has occurred in relation to the applicant during the period of 12 months immediately before the applicant is dismissed or laid off; and
- (b) in respect of which an undertaking as described in section 16(2B)(a)(ii) has been given;

specified applicant (指明申請人) means an applicant who is a specified employee as defined by section 2(1) of Cap. 57;

specified wage reduction (指明減薪), in relation to an applicant, means—

- (a) if it appears to the Commissioner that only one qualifying wage reduction has occurred in relation to the applicant—that reduction; or
- (b) if it appears to the Commissioner that more than one qualifying wage reduction has occurred in relation to the applicant—the qualifying wage reduction in respect of the highest wage.

Part 2

Calculation for Applicants other than Specified Applicants

2. Application of Part 2

This Part applies in relation to the calculation under section 16(2B)(a)(A) of the entitlement to severance payment of an applicant who is not a specified applicant.

3. Calculation of entitlement to severance payment: application of section 31G of Cap. 57

The applicant's entitlement is calculated in accordance with section 31G of Cap. 57 subject to the following—

- (a) the reference to the applicant's last full month's wages in subsection (1)(a) of that section is to be construed as a reference to the applicant's last full month's wages for the applicant's pre-reduction employment period;
- (b) the reference to the applicant's last 30 normal working days in subsection (1)(b) of that section is to be construed as a reference to the applicant's last 30 normal working days in the applicant's pre-reduction employment period; and
- (c) the reference to the relevant date in subsection (2) of that section is to be construed as a reference to the date on which the specified wage reduction took effect in relation to the applicant.

Part 3

Calculation for Specified Applicants

Division 1—General Provisions

4. Application of Part 3

This Part applies in relation to the calculation under section 16(2B)(a)(A) of the entitlement to severance payment of a specified applicant.

5. Interpretation (Part 3)

(1) In this Part—

pre-transition (pre-reduction) employment period (轉制前(減薪前)僱傭期), in relation to a specified applicant mentioned in sections 7 and 9 of this Schedule, means the period—

- (a) beginning on the day on which the applicant's employment under the contract of employment concerned commenced; and
- (b) ending on the expiry of the day immediately preceding the date on which the specified (pre-transition) wage reduction took effect in relation to the applicant;

qualifying (pre-transition) wage reduction (合資格(轉制前)減薪) means a qualifying wage reduction that has occurred before the date on which the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 (of 2022) comes into operation;

section 31G of Cap. 57 (《第 57 章》第 31G 條)—see subsection (2);

specified (pre-transition) wage reduction (指明(轉制前)減薪), in relation to a specified applicant mentioned in sections 7 and 9 of this Schedule, means—

- (a) if it appears to the Commissioner that only one qualifying (pre-transition) wage reduction has occurred in relation to the applicant—that reduction; or
- (b) if it appears to the Commissioner that more than one qualifying (pre-transition) wage reduction has

occurred in relation to the applicant—the qualifying (pre-transition) wage reduction in respect of the highest wage.

- (2) In this Part, a reference to section 31G of Cap. 57 is to be construed as a reference to that section as modified by section 2 of Schedule 11 to Cap. 57 (as required by section 31ZEA of Cap. 57).

6. Calculation of entitlement to severance payment: application of section 31G of Cap. 57

Subject to Division 2 of this Part, the specified applicant's entitlement is calculated in accordance with section 31G of Cap. 57.

Division 2—Application of Section 31G of Cap. 57 for Specified Applicants

7. Application of section 31G of Cap. 57: subsection (1)(a)

- (1) This section applies if it appears to the Commissioner that a qualifying (pre-transition) wage reduction has occurred in relation to a specified applicant.
- (2) For applying section 31G of Cap. 57 in relation to the applicant, the amount specified under subsection (1)(a) of that section in relation to the applicant is to be construed as an amount calculated by multiplying the number of years (and pro rata for an incomplete year) of the applicant's pre-transition employment period by—
 - (a) if the applicant is a monthly rated employee—two-thirds of the applicant's last full month's wages for the applicant's pre-transition (pre-reduction)

employment period, or two-thirds of \$22,500, whichever is less; or

- (b) in any other case—18 days' wages based on any 18 days chosen by the applicant and occurring during the applicant's last 30 normal working days in the applicant's pre-transition (pre-reduction) employment period, or two-thirds of \$22,500, whichever is less.

Note—

See also section 67A of Cap. 57.

- (3) In subsection (2)—

pre-transition employment period (轉制前僱傭期) has the meaning given by section 1(1) of Schedule 11 to Cap. 57.

8. Application of section 31G of Cap. 57: subsection (1)(b)

- (1) For applying section 31G of Cap. 57 in relation to a specified applicant, the amount specified under subsection (1)(b) of that section in relation to the applicant is to be construed as an amount calculated by multiplying the number of years (and pro rata for an incomplete year) of the applicant's post-transition employment period by—
- (a) if the applicant is a monthly rated employee—two-thirds of the applicant's last full month's wages for the applicant's pre-reduction employment period, or two-thirds of \$22,500, whichever is less; or
- (b) in any other case—18 days' wages based on any 18 days chosen by the applicant and occurring during the applicant's last 30 normal working days in the applicant's pre-reduction employment period, or two-thirds of \$22,500, whichever is less.

Note—

See also section 67A of Cap. 57.

- (2) In subsection (1)—

post-transition employment period (轉制後僱傭期) has the meaning given by section 1(1) of Schedule 11 to Cap. 57.

9. Application of section 31G of Cap. 57: paragraph (a) of definition of *specified period* in subsection (6)

- (1) This section applies if it appears to the Commissioner that a qualifying (pre-transition) wage reduction has occurred in relation to a specified applicant.

- (2) For applying section 31G of Cap. 57 in relation to the applicant, the period specified under paragraph (a) of the definition of *specified period* in subsection (6) of that section in relation to the applicant is to be construed as—

(a) if the applicant's pre-transition (pre-reduction) employment period is not less than 12 months—the period of 12 months immediately preceding the date on which the specified (pre-transition) wage reduction took effect in relation to the applicant; or

(b) if the applicant's pre-transition (pre-reduction) employment period is less than 12 months—that employment period.

10. Application of section 31G of Cap. 57: paragraph (b) of definition of *specified period* in subsection (6)

For applying section 31G of Cap. 57 in relation to a specified applicant, the period specified under paragraph (b) of the definition of *specified period* in subsection (6) of that section in relation to the applicant is to be construed as—

- (a) if the applicant's pre-reduction employment period is not less than 12 months—the period of 12 months immediately preceding the date on which the specified wage reduction took effect in relation to the applicant; or
- (b) if the applicant's pre-reduction employment period is less than 12 months—that employment period.”.

Division 5—Occupational Retirement Schemes Ordinance (Cap. 426)

32. Section 70A amended (certain amounts relating to severance payments and long service payments to be paid from vested benefits)

(1) Before section 70A(1)—

Add

“(1AA) In this section—

benefits reduction provision (扣減利益條文) means the following provision of the Employment Ordinance (Cap. 57)—

- (a) in relation to the reduction of a part of vested benefits by an amount of a severance payment—section 31IA; or
- (b) in relation to the reduction of a part of vested benefits by an amount of a long service payment—section 31YAA or 31YB;

Cap. 57 payment reduction provision (扣減《第 57 章》款項條文) means the following provision of the Employment Ordinance (Cap. 57)—

- (a) in relation to the reduction of an amount of a severance payment by a part of vested benefits—section 31I; or
- (b) in relation to the reduction of an amount of a long service payment by a part of vested benefits—section 31Y or 31YA.”.

(2) Section 70A(1)—

Repeal paragraph (c)

Substitute

“(c) a part of those benefits is available to be reduced by an amount of the severance payment or long service payment, or the part of such a payment, that has been so paid (*removable benefits*) under the benefits reduction provision.”.

(3) Section 70A—

Repeal subsection (2)

Substitute

“(2) As soon as practicable after receiving an application under subsection (1), the administrator of the occupational retirement scheme concerned must, on being satisfied as to the employer's entitlement to a payment under this subsection, pay to the employer from the vested benefits concerned an amount equal to the amount of the removable benefits.

(2A) However, an employer who has only paid a part of the severance payment or long service payment is entitled to a payment under subsection (2) only to the extent that the amount of the removable benefits exceeds the amount of the unpaid part of the severance payment or long service payment.”.

(4) Section 70A(3)—

Repeal paragraph (c)

Substitute

“(c) a part of those benefits is available to reduce an amount of the severance payment or long service payment, or the part of such a payment, that has not been so paid (*deductible benefits*) under the Cap. 57 payment reduction provision.”

(5) Section 70A(4)—

Repeal

everything after “satisfied”

Substitute

“as to the recipient’s entitlement to a payment under this subsection, pay to or in respect of the employee from the vested benefits concerned an amount equal to the amount of the deductible benefits.”

(6) Section 70A—

Repeal subsection (5).

(7) After section 70A(8)—

Add

“(9) If an employee falls within section 31ZEA(3) of the Employment Ordinance (Cap. 57), then this section as in force immediately before the date on which the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 (of 2022) (*Amendment Ordinance*) comes into operation continues to have effect in relation to the employee as if the amendments to this section made by the Amendment Ordinance had not been made.”

**Division 6—Mandatory Provident Fund Schemes Ordinance
(Cap. 485)**

33. **Section 12A amended (certain amounts relating to severance payments and long service payments to be paid from accrued benefits)**

(1) Before section 12A(1)—

Add

“(IAA) In this section—

benefits reduction provision (扣減權益條文) means the following provision of the Employment Ordinance (Cap. 57)—

(a) in relation to the reduction of a part of accrued benefits by an amount of a severance payment—section 31IA; or

(b) in relation to the reduction of a part of accrued benefits by an amount of a long service payment—section 31YAA or 31YB;

Cap. 57 payment reduction provision (扣減《第 57 章》款項條文) means the following provision of the Employment Ordinance (Cap. 57)—

(a) in relation to the reduction of an amount of a severance payment by a part of accrued benefits—section 31I; or

(b) in relation to the reduction of an amount of a long service payment by a part of accrued benefits—section 31Y or 31YA.”

(2) Section 12A(1)—

Repeal paragraph (c)

Substitute

“(c) a part of those benefits is available to be reduced by an amount of the severance payment or long service payment, or the part of such a payment, that has been so paid (*removable benefits*) under the benefits reduction provision.”.

(3) Section 12A(2)—

Repeal

everything after “this subsection”

Substitute

“, pay to the employer from the accrued benefits concerned an amount equal to the amount of the removable benefits.”.

(4) After section 12A(2)—

Add

“(2A) However, an employer who has only paid a part of the severance payment or long service payment is entitled to a payment under subsection (2) only to the extent that the amount of the removable benefits exceeds the amount of the unpaid part of the severance payment or long service payment.”.

(5) Section 12A(3)—

Repeal paragraph (c)

Substitute

“(c) a part of those benefits is available to reduce an amount of the severance payment or long service payment, or the part of such a payment, that has not been so paid (*deductible benefits*) under the Cap. 57 payment reduction provision.”.

(6) Section 12A(4)—

Repeal

everything after “satisfied”

Substitute

“as to the recipient’s entitlement to a payment under this subsection, pay to or in respect of the employee from the accrued benefits concerned an amount equal to the amount of the deductible benefits.”.

(7) Section 12A—

Repeal subsection (5).

(8) After section 12A(7)—

Add

“(8) If an employee falls within section 31ZEA(3) of the Employment Ordinance (Cap. 57), then this section as in force immediately before the date on which the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 (of 2022) (*Amendment Ordinance*) comes into operation continues to have effect in relation to the employee as if the amendments to this section made by the Amendment Ordinance had not been made.”.

**Division 7—Mandatory Provident Fund Schemes
(Exemption) Regulation (Cap. 485 sub. leg. B)**

34. **Schedule 2 amended (mandatory conditions)**

Schedule 2, section 6—

Repeal subsection (12)

Substitute

- “(12) The minimum MPF benefits of a new member of a relevant scheme may be withdrawn for making a payment under section 70A of the relevant Ordinance.”.
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Explanatory Memorandum

The main object of this Bill is to amend the Employment Ordinance (Cap. 57) (*Cap. 57*) and certain other legislation concerning employment and retirement schemes so that mandatory provident fund scheme benefits attributable to employers' mandatory contributions, and certain portions of occupational retirement scheme benefits and of schools provident fund benefits, may no longer be offset against severance payments or long service payments payable to employees. The Bill also provides for a transitional arrangement for the change in such offsetting and makes related and miscellaneous amendments to the enactments concerned.

2. The Bill is divided into 3 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Employment Ordinance

4. Under the existing Cap. 57, an arrangement (*offsetting arrangement*) is in place for gratuities based on length of service, occupational retirement scheme benefits attributable to employers' contributions (*employer-funded ORS benefits*) and mandatory provident fund scheme benefits attributable to employers' contributions (*employer-funded MPFS benefits*) to be offset against severance payments or long service payments payable to employees. Part 2 amends Cap. 57 to change the offsetting arrangement. After the change, apart from gratuities based on length of service, only the following may be offset against the severance payments or long service payments—

- (a) certain portions of employer-funded ORS benefits in excess of an amount calculated in accordance with a prescribed formula; and
 - (b) employer-funded MPFS benefits attributable to employers' voluntary contributions.
5. Clause 3 amends section 2 of Cap. 57 to repeal certain existing definitions and to provide for the meanings of certain expressions that are necessary for the interpretation of the new provisions of Cap. 57 added by the Bill.
 6. Clause 4 amends section 31G of Cap. 57 to remove the obsolete provisions in, and to make certain textual amendments to, that section.
 7. Clauses 5 and 6 amend sections 31I and 31IA of Cap. 57 respectively to make the change to the offsetting arrangement in respect of severance payments payable to employees.
 8. Clause 7 makes certain minor amendments to section 31S of Cap. 57.
 9. Clause 8 amends section 31V of Cap. 57 to remove the obsolete provisions in, and to make certain textual amendments to, that section.
 10. Clause 9 repeals section 31W of Cap. 57, which is obsolete.
 11. Clauses 10 and 11 amend sections 31Y and 31YAA of Cap. 57 respectively to make the change to the offsetting arrangement in respect of long service payments payable to employees.
 12. Clauses 12 and 13 respectively replace section 31YA of Cap. 57 and add new sections 31YB and 31YC to Cap. 57—
 - (a) to make the change to the offsetting arrangement in respect of long service payments payable on the employees' deaths; and

- (b) to reorganize the provisions.
13. Clause 14 adds a new section 31ZEA to Cap. 57 so that—
 - (a) a transitional arrangement for the change to the offsetting arrangement applies to an employee (*specified employee*) who is covered by an occupational retirement scheme, or the mandatory provident fund scheme, and whose employment commences before the date on which the change takes effect (*transition date*) and terminates on or after the transition date; and
 - (b) the pre-amended Cap. 57 continues to have effect in relation to an employee if the termination of the employee's employment precedes the transition date.
 14. Clause 15 consequentially amends section 31ZF of Cap. 57.
 15. Clause 16 repeals section 31ZG of Cap. 57, which is obsolete.
 16. Clause 17 amends section 49A of Cap. 57 to impose a requirement on an employer to keep and maintain certain wage and employment records for specified employees.
 17. Clauses 18 and 19 consequentially amend section 67A of Cap. 57, and the Third Schedule to Cap. 57, respectively.
 18. Clause 20 repeals Table B of the Seventh Schedule to Cap. 57, which is obsolete.
 19. Clause 21 adds a new Schedule 11 to Cap. 57 for implementing the transitional arrangement for specified employees under the new section 31ZEA of Cap. 57. That Schedule—
 - (a) modifies section 31G of Cap. 57 for specified employees so that, for calculating severance payments payable to them, each of the payments is divided into 2 portions, namely a portion attributable to the employment period falling before the transition date (*pre-transition portion*)

of the severance payment) and a portion attributable to the employment period falling after the commencement of the transition date (*post-transition portion of the severance payment*), and the amount of the pre-transition portion of the severance payment is generally calculated by reference to the latest wages for the employment period falling before the transition date;

- (b) modifies sections 31I and 31IA of Cap. 57 for specified employees so that the change to the offsetting arrangement applies to the post-transition portions of the severance payments payable to them, but not the pre-transition portions of the severance payments;
- (c) modifies section 31V of Cap. 57 for specified employees so that, for calculating long service payments payable to them, each of the payments is divided into 2 portions, namely a portion attributable to the employment period falling before the transition date (*pre-transition portion of the long service payment*) and a portion attributable to the employment period falling after the commencement of the transition date (*post-transition portion of the long service payment*), and the amount of the pre-transition portion of the long service payment is generally calculated by reference to the latest wages for the employment period falling before the transition date;
- (d) modifies sections 31Y and 31YAA of Cap. 57 for specified employees so that the change to the offsetting arrangement applies to the post-transition portions of the long service payments payable to them, but not the pre-transition portions of the long service payments; and
- (e) modifies sections 31YA, 31YB and 31YC of Cap. 57 for specified employees so that the change to the offsetting arrangement applies to the post-transition portions of the

long service payments payable on their deaths, but not the pre-transition portions of the long service payments.

Part 3—Amendments to Other Legislation Concerning Employment and Retirement Schemes

- 20. Division 1 of Part 3 amends sections 8 and 9 of the Inland Revenue Ordinance (Cap. 112)—
 - (a) to exclude severance payments and long service payments (including such payments that could be, but have not been, offset under the offsetting arrangement) from being income in respect of which salaries tax is chargeable; and
 - (b) to clarify that if any payments that are based on length of service and received by employees on their dismissals etc. exceed the amounts of long service payments calculated in accordance with section 31V of Cap. 57, the excesses are income in respect of which salaries tax is chargeable.
- 21. Divisions 2 and 3 of Part 3 amend rule 13 of the Grant Schools Provident Fund Rules (Cap. 279 sub. leg. C) and rule 13 of the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg. D) respectively so that the offsetting of Grant Schools Provident Fund benefits and Subsidized Schools Provident Fund benefits against severance payments or long service payments in the circumstances described in those rules is aligned with the offsetting arrangement as changed by the Bill.
- 22. The Protection of Wages on Insolvency Ordinance (Cap. 380) provides for the protection of employees in certain circumstances, including where the employers fail to pay severance payments. Division 4 of Part 3 amends certain provisions of, and adds a new Schedule 2 to, that Ordinance in view of the change to the offsetting arrangement in respect of severance payments.

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23. Section 70A of the Occupational Retirement Schemes Ordinance (Cap. 426) and section 12A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) respectively provide for mechanisms under which occupational retirement scheme benefits and mandatory provident fund scheme benefits may be paid for implementing the offsetting arrangement. Divisions 5 and 6 of Part 3 amend those sections in view of the change to the offsetting arrangement.
24. Division 7 of Part 3 amends section 6 of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) in view of the change to the offsetting arrangement.

Implications of the Proposal

Economic Implications

The abolition of the offsetting arrangement would help preserve the accrued benefits in employees' Mandatory Provident Fund (MPF) accounts for meeting their retirement needs, thereby strengthening the MPF System as one of the pillars of Hong Kong's retirement protection system.

2. However, it would entail additional costs on employers. Sectors with higher incidence of triggering severance payments/long service payments (SP/LSP) and those micro, small and medium-sized enterprises with thinner profits would face somewhat larger cost burden than others. With the "grandfathering" arrangement and 25-year Government subsidy scheme in place, it can be envisaged that the additional financial burden on the affected employers would be notably alleviated, especially in the initial years after the policy change, thereby mitigating the risk of massive layoffs and the consequential shocks to the labour market. Mandatory contributions to Designated Savings Accounts (DSA) saved up over time should also help employers pay for the additional SP/LSP expenses. All in all, as enterprises, having taken into account the specific circumstances of their industry and their cost structure, would adopt different strategies to absorb or mitigate the rise in costs over time, the cost impact on employers should generally be manageable.

Financial Implications

3. There would be financial implications for individual bureaux/departments, in terms of staff costs¹ and additional funding for subsidized or subvented organisations and outsourcing services², etc., for paying post-transition portion of SP/LSP which can no longer be offset by the employer's contributions under the MPF System. The costs are yet to be assessed.

¹ While the Employment Ordinance (EO) is not binding on the Government, it is the Government's promulgated policy that the terms and conditions of employment for non-civil service contract (NCSC) staff should be no less favourable than the requirements under EO. After the abolition, employers' mandatory contributions can no longer be used to offset the post-transition portion of SP/LSP of NCSC staff while gratuities, if applicable, can continue to be used to offset both pre- and post-transition portion of SP/LSP.

² For example, the relevant subsidized or subvented organisations or outsourcing service contractors may request the Government to shoulder the additional SP/LSP expenses which have not been factored in in the relevant funding arrangements/contract prices.

4. The financial commitment of the Government for the refined Government subsidy scheme is \$33.2 billion (in 2021 prices)³. Depending on the actual implementation date of the subsidy scheme, the overall financial commitment may further increase due to changes in the price level and the subsidy applications approved.

5. The Government has undertaken to make up for the shortfall in the case that an employee is worse off after the abolition of the offsetting arrangement than they would be entitled under the current offsetting regime. It is envisaged that there will not be many such cases and their number would gradually decrease as there would be fewer and fewer employees with a pre-transition date service. Depending on the actual expenses thus incurred, the Labour Department (LD) would endeavour to absorb the relevant cost and, where necessary, seek additional resources in accordance with the established resource allocation mechanism.

Civil Service Implications

6. A total of 19 permanent civil service posts were approved for LD in the 2017 and 2019 Resource Allocation Exercise to undertake the work relating to the abolition of the offsetting arrangement. It is estimated that substantial manpower would be further required for administering the abolition arrangements, including administering the Government subsidy scheme and handling labour disputes/employment claims after the abolition of the offsetting arrangement. The additional staff requirements would be sought with justifications in accordance with the established resource allocation mechanism⁴.

³ Based on the set of offsetting claims data for 2019 provided by the Mandatory Provident Fund Schemes Authority.

⁴ Recurrent provision of \$5.1 million was approved in 2017 and further recurrent provision of \$13.5 million was approved in 2019 for the creation of additional civil service posts in LD. In addition, non-recurrent provision of \$447.2 million was approved in 2020 for building DSA functionalities on the eMPF Platform and commissioning an outsourced agent to develop the DSA System and administer the DSA Scheme in the initial five years.