MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

V.4 Guidelines on MPF Exempted ORSO Schemes - Preservation of Benefits

INTRODUCTION

Pursuant to sections 4, 5 and 6 of Schedule 2 of the Mandatory Provident Fund Schemes (Exemption) Regulation ("the Exemption Regulation")[1], a new member's benefits accrued under an MPF exempted ORSO registered scheme[2] will be subject to the preservation, portability and withdrawal requirements up to an amount equivalent to the "minimum MPF benefits". Section 6(12) also allows employers to use part of a new member's "minimum MPF benefits" to offset severance payment or long service payment.

2. The benefits accrued in respect of an existing member under an MPF exempted ORSO registered scheme will not be subject to the above preservation, portability and withdrawal requirements. That means their benefits accrued under the ORSO scheme will be calculated based on the governing rules of the scheme and can be withdrawn upon the occurrence of the conditions specified under the governing rules, e.g. upon retirement, termination of service, death or disability, etc. However, as required under sections 2(3) and 4(e), the trustee

Note [1] All references to sections made in this document refer to sections under Schedule 2 of the Exemption Regulation unless otherwise stated.

Note [2] An MPF exempted ORSO registered scheme means a scheme in respect of which an exemption certificate has been issued under section 16 of the Exemption Regulation.

cannot forfeit an existing member's "minimum MPF benefits" upon dismissal from employment. Nevertheless, the trustee can still withhold in accordance with the governing rules of the scheme the portion of benefits that is in excess of the minimum MPF benefits.

3. The Mandatory Provident Fund Schemes Authority ("the Authority") hereby issues guidelines with respect to how to calculate the minimum MPF benefits, how to calculate an existing member's benefit upon dismissal for cause and how to offset minimum MPF benefits against severance payment or long service payment ("SP/LSP").

4. These guidelines are only intended to illustrate how to calculate the amount of benefits that needs to be preserved under the MPF System or can be paid to a member under various circumstances. It is not intended to change any payment procedures permitted under existing legislation. In particular, employers can still pay SP/LSP to employees first and claim back the appropriate amount of the employer funded portion of employees' retirement benefits from the scheme.

CALCULATION OF MINIMUM MPF BENEFITS

5. "Minimum MPF benefits" is defined under section 1, in relation to a member of a relevant scheme, to mean the lesser of -

(a) the member's benefits accrued under the scheme during the period when the exemption certificate applied to the scheme which for this purpose means the years of post-MPF service; and

(b) 1.2 x final average monthly relevant income x years of post-MPF service;

where

- ⇨ "relevant income", in relation to a member of a relevant scheme, means the relevant income, as defined in Section 2 of the Mandatory Provident Fund Schemes Ordinance ("the Ordinance"), of the member per month which is not more than the maximum level of relevant income per month as specified in Schedule 3 of the Ordinance, that is $20,000;

- ⇨ "final average monthly relevant income", in relation to a member's relevant income, means the member's relevant income per month averaged over whichever of the following is applicable –

  (a) if the member has been a member of the scheme for not less than 12 months after the relevant date, i.e. the commencement date of the MPF System, the period of 12 months (excluding any unpaid leave or maternity leave taken by the member pursuant to any enactment or contract) immediately preceding the date of termination of his employment or the date on which he ceases to be a member or the date of the coming into effect of the withdrawal of the exemption certificate;

  (b) in any other case, the period (excluding any unpaid leave or maternity leave taken by the member pursuant to any enactment or contract) since the date the member joined the scheme or the relevant date, whichever is the later, to the date of the termination of his employment or the date on which he ceases to be a member or the date of the coming into effect of the withdrawal of the exemption certificate;

⇨ "years of post-MPF service", in relation to a member of a relevant scheme, means the member's continuous years of service (including complete months of a year) from the date he joined the scheme or the relevant date, whichever is the later, to the date of termination of his employment or the date on which he ceases to be a member or the date of the coming into effect of the withdrawal of exemption certificate.

6. In determining the final average monthly relevant income, each of the last 12 complete months' relevant income will be capped by the maximum level of relevant income per month, i.e. $20,000 first before calculating the average. Illustration 1 demonstrates how to determine this average.

Illustration 1 :

Date of joining the scheme : 28 January 2XX1

Date of leaving the scheme : 4 March 2XX2

	Monthly income $	Relevant income $
January 2XX1 (3 pay days)	2,000	2,000
February 2XX1 to April 2XX1	15,000	15,000
May 2XX1 to December 2XX1	18,000	18,000
January 2XX2 to February 2XX2	22,000	20,000
March 2XX2 (3 pay days)	3,000	3,000

Final average monthly relevant income	=	average of the last 12 complete month' s relevant income
	=	($20,000 x 2 + $18,000 x 8 + $15,000 x 2)/12
	=	$17,833

7. For those schemes that pay out pension benefits instead of lump sum benefits, item (a) of the definition of "minimum MPF benefits" shall mean the present value as at the date of termination of service, as determined by an actuary, of the pension benefits entitlement under the scheme of, or in respect of, the member.

8. Illustrations 2 and 3 demonstrate the amount of accrued benefits to be preserved in respect of a new member of an MPF exempted ORSO scheme.

Illustration 2 :

Years of post-MPF service : 5 years and 4 months

Employer contribution account : $50,000

Employee contribution account : $50,000

Final average monthly relevant income : $15,000

Vesting scale applicable (based on total years of service): 50%

Total accrued benefits entitled (after vesting) :

= $50,000 + $50,000 x 50% = $75,000

Minimum MPF benefit :

lesser of (i) \$75,000 ;

(ii) $1.2 \times \$15{,}000 \times 5\frac{4}{12} = \$96{,}000$

i.e. \$75,000

That means the whole of the accrued benefits that the new member is entitled to under the scheme will need to be preserved in the MPF System and transferred to an MPF scheme.

Illustration 3 :

Years of post-MPF service : 10 years and 8 months

Employer contribution account : \$150,000

Employee contribution account : \$150,000

Final average monthly relevant income : \$20,000

Vesting scale applicable (based on total years of service): 100%

Total accrued benefits entitled (after vesting) :

= \$150,000 + \$150,000 x 100% = \$300,000

Minimum MPF benefit :

lesser of (i) \$300,000 ;

(ii) $1.2 \times \$20{,}000 \times 10\frac{8}{12} = \$256{,}000$

i.e. \$256,000

That means only an amount equivalent to the minimum MPF benefits of the new member's accrued benefits (i.e. \$256,000) will need to be preserved in the MPF System. The excess (i.e. \$44,000) can be paid to the member in accordance with the governing rules of the scheme.

PAYMENT UPON DISMISSAL FOR CAUSE

9. Some governing rules of ORSO schemes allow employers to forfeit the employers' funded portion of a member's accrued benefits if the member is dismissed for cause (i.e. dismissed on the ground of misconduct, fraud, dishonesty or other grounds as provided for under section 9 of the Employment Ordinance (Cap. 57)). However, section 4(e) requires that no trustee shall forfeit a new member's minimum MPF benefits upon the member's dismissal from employment (and whether or not the dismissal is on ground of misconduct, fraud, dishonesty or any other ground). This requirement also applies to existing members by virtue of section 2(3).

10. That means, even for existing members, the trustee can no longer fully withhold the employer's funded portion of members' accrued benefits upon their dismissal for cause. The policy intention is to protect the minimum MPF benefits of existing members as if they were new members.

11. Therefore, out of the employer's funded portion of the existing member's accrued benefits, an amount equivalent to the minimum MPF benefits cannot be withheld by the trustee for dismissal for cause. Unlike the treatment of new members who are subject to preservation requirements, such minimum MPF benefits shall be paid to the existing member in the manner prescribed by the governing rules. The trustee, however, can still withhold the amount that is accrued prior to the commencement date of the MPF System and the amount accrued in respect of post-MPF service that is in excess of the minimum MPF benefits out of the employer's funded portion of the member's accrued benefits.

12. Illustrations 4 and 5 demonstrate how payments should be made to an existing member upon dismissal for cause.

Illustration 4 (Existing member) :

Total years of service : 8 years and 5 months

Total years of pre-MPF service : 5 years and 2 months

Total years of post-MPF service : 3 years and 3 months

	Pre-MPF	Post-MPF	Total
Employer contribution account :	$45,000	$30,000	$75,000
Employee contribution account :	$20,000	$15,000	$35,000
Final average monthly relevant income :	$15,000		

Vesting scale applicable (based on total years of service) : 80%

Vested benefits :

	Pre-MPF	Post-MPF	Total
From employer contribution account :	$36,000	$24,000	$60,000
(employer contribution account x 80%)			
From employee contribution account :	$20,000	$15,000	$35,000
Total :	$56,000	$39,000	$95,000

Minimum MPF benefits (applicable to post-MPF service only) :

lesser of (i) $39,000;

(ii) $1.2 \times \$15{,}000 \times 3\frac{3}{12} = \$58{,}500$

i.e. $39,000

As the amount of minimum MPF benefits ($39,000) is higher than the employer’ s funded portion of the existing member’ s benefit in respect of post-MPF service

($24,000), the trustee cannot withhold any of the employer’s funded portion in respect of post-MPF service. However, the trustee still has the right to withhold the employer’s funded portion of the member’s vested benefits in respect of pre-MPF service, i.e. $36,000. As existing members of MPF exempted ORSO schemes are exempted from the preservation, portability and withdrawal requirements, an amount equal to the total vested benefits less the amount withheld by the trustee shall be paid to the existing member (i.e. $95,000 - $36,000 = $59,000).

Illustration 5 (existing member) :

Total years of service : 10 years

Total years of pre-MPF service : 7 years

Total years of post-MPF service : 3 years

Leaving service benefit : 2.0 x Final Month Salary x Years of Service x Vesting Percentage

	Pre-MPF	Post-MPF
Employee contribution account :	$90,000	$40,000

Final month salary : $25,000

Vesting scale applicable (based on total years of service): 100%

Benefits entitled due to pre-MPF service :

= 2.0 x $25,000 x 7 x 100% = $350,000

Benefits entitled due to post-MPF service :

= 2.0 x $25,000 x 3 x 100% = $150,000

Minimum MPF benefit (applicable to post-MPF service only):

lesser of (i) $150,000 ;

(ii) 1.2 x $20,000 x 3 = $72,000

i.e. $72,000

The employer funded portion of the member's vested benefits with respect to post-MPF service is :

$150,000 - $40,000 = $110,000

That means the trustee cannot withhold the minimum MPF benefits in respect of the employer's funded portion of the existing member's accrued benefits (i.e. $72,000). Out of $110,000, the trustee can only withhold the excess amount of $38,000 (i.e. $110,000 - $72,000). However, the trustee can still withhold the employer's funded portion of the member's accrued benefits in respect of pre-MPF service, i.e. $350,000 - $90,000 = $260,000. The amount the existing member can get from the scheme is $350,000 + $150,000 - $38,000 - $260,000 = $202,000.

OFFSETTING OF MINIMUM MPF BENEFITS AGAINST SP/LSP

13. Section 6(12) provides that employers may make use of the part of a new member's minimum MPF benefits derived from the employer's contributions to offset severance payment or long service payment ("SP/LSP") to which the member is entitled in accordance with the Employment Ordinance (Cap. 57). If employers have already made a payment of SP/LSP to employees first,

they may claim back the appropriate amount out of the scheme as permitted by existing legislation.

14. If the SP/LSP entitlement is greater than or equal to a new member's accrued benefits derived from the employer's contributions, then the latter sum will all be paid to the new member as SP/LSP and the employer needs to top up the shortfall of SP/LSP out of the employer's own funds. However, the remaining benefits, i.e. derived from the employee's contributions up to the minimum MPF benefits will need to be preserved.

15. If the SP/LSP entitlement is less than a new member's accrued benefits derived from the employer's contributions, then the amounts need to be preserved will be the lesser of -

(a) the total accrued benefits derived from both the employer's and member's contributions less the amount of SP/LSP; and

(b) the minimum MPF benefits.

16. This guideline only explains how the minimum MPF benefits should be preserved after the offsetting of the SP/LSP. The basis for calculating the SP/LSP and the timing for payment of SP/LSP should follow the relevant provisions of the Employment Ordinance.

17. Illustrations 6 and 7 show how the offsetting will work out :

Illustration 6 :

Years of post-MPF service : 5 years

Employer contribution account : $40,000

Employee contribution account : $30,000

Final average monthly relevant income : $15,000

Vesting scale applicable (based on total years of service): 50%

Total benefits entitled :

= ($40,000 x 50%) + $30,000 = $50,000

Minimum MPF benefit :

lesser of (i) $50,000 ;

(ii) 1.2 x $15,000 x 5 = $90,000

i.e. $50,000

SP/LSP entitled : $25,000

Vested benefits derived out of employer' s contributions : $20,000

Amount to be offset : lesser of $20,000 and $25,000 i.e. limited to $20,000

Amount of SP/LSP to be topped up by employer : $25,000 - $20,000 = $5,000

The portion of minimum MPF benefits to be preserved :

lesser of employee contribution account and minimum MPF benefits

i.e. lesser of $30,000 and $50,000 = $30,000.

Illustration 7 :

Years of post-MPF service : 10 years

Leaving service benefit : 2.0 x Final Month Salary x
Years of Service x Vesting Percentage

Employee contribution account balance : $150,000

Final average monthly relevant income : $20,000

Final month salary : $25,000

Vesting scale applicable (based on total years of service): 100%

Benefits entitled (after vesting) :

= 2.0 x $25,000 x 10 x 100% = $500,000

Minimum MPF benefit :

lesser of (i) $500,000 ;

(ii) 1.2 x $20,000 x 10 = $240,000

i.e. $240,000

SP/LSP entitled : $133,000

Vested benefits derived out of employer’ s contributions :

$500,000 - $150,000 = $350,000

Amount to be offset : $133,000

Amount of SP/LSP to be topped up by employer : N.A.

Remaining benefits out of employer’ s contribution :

$350,000 - $133,000 = $217,000

The portion of minimum benefit to be preserved :

lesser of

(i) employee contribution account balance + any remaining benefits derived out of employer contribution account and

(ii) minimum MPF benefits

i.e. lesser of

(i) $150,000 + $217,000 = $367,000 and

(ii) $240,000

i.e. $240,000.