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 to the Mandatory Provident Fund Schemes (Exemption) Regulation (the Exemption Regulation)[1], a new member's[2] benefits accrued under an MPF exempted ORSO registered scheme[3] will be subject to the preservation, portability and withdrawal requirements up to an amount equivalent to the "minimum MPF benefits". According to section 6(12), the minimum MPF benefits of a new member of a relevant scheme[4] may be withdrawn for making a payment under section 70A of the Occupational Retirement Schemes Ordinance (Cap. 426) (ORS Ordinance).

2. The benefits accrued in respect of an existing member[5] under an MPF exempted ORSO registered scheme will not be subject to the above preservation, portability and withdrawal requirements. That means that the existing member's benefits accrued under the ORSO scheme will be calculated based on the governing rules of the scheme and can be withdrawn upon the occurrence of the conditions specified under the governing rules, e.g. upon retirement, termination of service, death or disability. However, as required under sections 2(3) and 4(e), a trustee cannot forfeit an existing member's minimum MPF benefits upon the member's dismissal from employment.

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

2 A new member, in relation to an ORSO exempted scheme or ORSO registered scheme, means a new eligible employee who became a member of the scheme after 1 December 2000.

3 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.

4 A relevant scheme is an MPF exempted ORSO registered scheme.

5 An existing member, in relation to an ORSO exempted scheme or ORSO registered scheme, means a relevant employee who became a member of the scheme before or on 1 December 2000.

Nevertheless, the trustee may still withhold, in accordance with the governing rules of the scheme, the portion of benefits that is in excess of the minimum MPF benefits of the member who has been lawfully dismissed from employment.

3. Section 6H of the Mandatory Provident Fund Schemes Ordinance (the Ordinance) provides that the Mandatory Provident Fund Schemes Authority (the Authority) may issue guidelines for the guidance of approved trustees, service providers, participating employers and their employees, self-employed persons, regulated persons and other persons concerned with the Ordinance.

4. The Authority hereby issues guidelines with respect to:

(a) how to calculate the minimum MPF benefits;

(b) how to calculate an existing member's benefits upon dismissal for cause; and

(c) how the minimum MPF benefits are preserved.

5. 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. They are not intended to change any payment procedures permitted under the existing legislation.

EFFECTIVE DATE

6. These revised Guidelines (Version 6 – April 2025) shall become effective on 1 May 2025. The previous version of these Guidelines (Version 5 – June 2015) shall be superseded on that day.

CALCULATION OF MINIMUM MPF BENEFITS

7. "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 and held 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.

8. In determining the final average monthly relevant income, each of the last 12 months' relevant income will be capped by the applicable maximum level of relevant income per month, i.e. $20,000 on or before 31 May 2012, $25,000 from 1 June 2012[6] to 31 May 2014 (both days inclusive) or $30,000 on or after 1 June 2014[7], first before calculating the average. Illustration 1 demonstrates how to determine this average.

Illustration 1:

Date of joining the scheme: 28 June 2013

Date of leaving the scheme: 4 August 2014

	Monthly income $	Relevant income $
June 2013 (3 days)	2,700	2,700
July 2013 to May 2014	27,000	25,000
June 2014 to July 2014	27,000	27,000
August 2014 (3 days)	2,613	2,613

Final average monthly relevant income = average of the last 12 months' relevant income

= ($27,000 x 2 + $25,000 x 10)/12

= $25,333

(The above figures are for illustrative purpose only.)

6 The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011 (L.N. 167 & 168 of 2011) amended the maximum relevant income level with effect from 1 June 2012.

7 The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2013 (L.N. 134 & 135 of 2013) amended the maximum relevant income level with effect from 1 June 2014.

9. 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.

10. Illustrations 2 and 3 demonstrate the amount of benefits to be preserved in respect of a new member of an MPF exempted ORSO registered 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 benefits entitled (after vesting):

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

Minimum MPF benefits:

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 benefits that the new member is entitled to under the scheme will need to be transferred to an MPF scheme for preservation in the MPF System.

(The above figures are for illustrative purpose only.)

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 benefits entitled (after vesting):

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

Minimum MPF benefits:

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 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.

(The above figures are for illustrative purpose only.)

PAYMENT UPON DISMISSAL FOR CAUSE

11. Some governing rules of ORSO schemes allow an employer to forfeit the employer's funded portion of a member's benefits accrued under the scheme if the member is dismissed for cause (i.e. dismissed on the grounds 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 the grounds of misconduct, fraud, dishonesty or any other grounds). This requirement also

applies to existing members by virtue of section 2(3).

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

13. Therefore, out of the employer's funded portion of an existing member's benefits accrued under the scheme, an amount equivalent to the minimum MPF benefits cannot be withheld by a trustee upon the member's 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 benefits accrued under the scheme.

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

Illustration 4 (Existing member of defined contribution scheme):

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: (employer contribution account x 80%)	$36,000	$24,000	$60,000
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 (i.e. $39,000) is higher than the employer's funded portion of the existing member's benefits in respect of post-MPF service (i.e. $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 registered 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).

(The above figures are for illustrative purpose only.)

Illustration 5 (Existing member of defined benefit scheme):

Total years of service: 22 years

Total years of pre-MPF service: 7 years

Total years of post-MPF service: 15 years

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

	Pre-MPF	Post-MPF
Employee contribution account:	$90,000	$190,000

Final month salary: $30,000

Final average monthly relevant income: $30,000

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

Benefits entitled due to pre-MPF service (after vesting):

= 2.0 x $30,000 x 7 x 100% = $420,000

Benefits entitled due to post-MPF service (after vesting):

= 2.0 x $30,000 x 15 x 100% = $900,000

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

lesser of: (i) $900,000;

(ii) 1.2 x $30,000 x 15 = $540,000

i.e. $540,000

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

$900,000 - $190,000 = $710,000

The trustee cannot withhold the minimum MPF benefits in respect of the employer's funded portion of the existing member's vested benefits (i.e. $540,000). That means out of $710,000, the trustee can only withhold the excess amount, i.e. $710,000 - $540,000 = $170,000. However, the trustee can still withhold the employer's funded portion of the member's vested benefits in respect of pre-MPF service, i.e. $420,000 - $90,000 = $330,000. The amount the existing member can get from the scheme is $90,000 + ($900,000 - $170,000) = $820,000.

(The above figures are for illustrative purpose only.)

OFFSETTING OF MINIMUM MPF BENEFITS AGAINST SEVERANCE PAYMENT (SP)/LONG SERVICE PAYMENT (LSP)

15. Section 6(12) provides that the minimum MPF benefits of a new member of a relevant scheme may be withdrawn for making a payment under section 70A of the ORS Ordinance. If an employer has already paid SP/LSP to the member, and the member's vested benefits are held in an MPF exempted ORSO registered scheme, the employer may claim back the appropriate amount of benefits that can be used to offset SP/LSP under the Employment Ordinance out of the scheme, as permitted by section 70A of the ORS Ordinance. If an employer has not paid the whole amount of SP/LSP to the member, an application for an appropriate amount may be made in respect of the member for payment of the SP/LSP out of the scheme.

16. If the whole amount of a new member's benefits accrued under the MPF exempted ORSO registered scheme which are derived from the employer contributions is exhaustively claimed out of the scheme to offset SP/LSP, the remaining benefits, i.e. the benefits derived from the employee contributions up to the minimum MPF benefits, will need to be preserved.

17. If only part of a new member's benefits accrued under the MPF exempted ORSO registered scheme which are derived from the employer contributions is claimed out of the scheme to offset SP/LSP, the portion of

minimum MPF benefits to be preserved after offsetting will be the lesser of:

(a) the total benefits accrued under the scheme derived from both employer contributions and employee contributions less the amount of benefits claimed to offset SP/LSP; and

(b) the minimum MPF benefits.

18. These guidelines only explain how the minimum MPF benefits should be preserved after the offsetting of SP/LSP. The calculation and timing for payment of SP/LSP should follow the relevant provisions of the Employment Ordinance.

19. With effect from 1 May 2025 (Transition Date), accrued benefits derived from MPF employer mandatory contributions cannot be used to offset employees' SP/LSP in respect of the years of service starting from the Transition Date, but can continue to offset employees' SP/LSP in respect of the years of service before the Transition Date. Accrued benefits derived from MPF employer voluntary contributions can continue to be used to offset employees' SP/LSP in respect of the whole employment period.

20. The Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 (as reflected in, inter alia, the Employment Ordinance with effect from 1 May 2025) is also applicable to occupational retirement schemes under ORS Ordinance which are exempted under section 5 of the Ordinance (MPF-exempted ORSO schemes) in relation to employer contributions made to those occupational retirement schemes.

21. Since the contributions made under MPF exempted ORSO registered schemes are not differentiated into mandatory and voluntary portions, it is necessary to calculate the following from the vested benefits derived from

employer contributions:

(a) **"Carved-out benefits"**[8] – It is akin to the accrued benefits derived from MPF employer mandatory contributions, which cannot be used to offset employees' SP/LSP in respect of the years of service starting from the Transition Date, but can be used to offset employees' SP/LSP in respect of the years of service before the Transition Date; and

(b) **"Remaining benefits"**[9] – It is the remainder of vested benefits derived from employer contributions after deducting the "Carved-out benefits". It is akin to accrued benefits derived from MPF employer voluntary contributions, which can be used to offset employees' SP/LSP in respect of the whole employment period.

22. For details of the calculation of SP/LSP, "Carved-out benefits" and "Remaining benefits", please refer to the Labour Department's Thematic Webpage on the Abolition of MPF Offsetting Arrangement and Chapter 11 of "A Concise Guide to the Employment Ordinance" available on the Labour Department's webpage.

23. Illustrations 6 and 7 demonstrate how the minimum MPF benefits are preserved after offsetting of SP/LSP for employment terminated before the Transition Date.

24. Illustrations 8 and 9 demonstrate how the minimum MPF benefits are preserved after offsetting of SP/LSP for employment commencing on or after the Transition Date.

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[8] Please refer to "employer-funded (basic portion) exempt ORS benefit" as defined in section 1(1) of Part 1 of Schedule 11 to, as well as "employer-funded exempt ORS benefit" and "employer-funded (prescribed portion) exempt ORS benefit" under sections 2(1) and 2(5) of, the Employment Ordinance.

[9] Please refer to "employer-funded (prescribed portion) exempt ORS benefit" under sections 2(1) and 2(5) of the Employment Ordinance.

Illustration 6 (New member of defined contribution scheme for employment terminated before the Transition Date):

Years of post-MPF service: 5 years

Employer contribution account: $140,000

Employee contribution account: $30,000

Final average monthly relevant income: $15,000

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

Benefits entitled due to post-MPF service (after vesting):

= ($140,000 x 50%) + $30,000 = $100,000

SP/LSP entitled: $50,000

SP/LSP paid by the employer to the employee: $50,000

Vested benefits derived from employer contributions:

= $140,000 x 50% = $70,000

Amount to be offset from the vested benefits for the paid SP/LSP:

lesser of: (i) $70,000 (i.e. vested benefits derived from employer contributions);

(ii) $50,000 (i.e. SP/LSP paid by the employer to the employee)

i.e. $50,000 (i.e. amount to be paid to the employer from the vested benefits for offsetting SP/LSP)

Hence, amount of SP/LSP to be topped up by employer: Nil

Minimum MPF benefits:

lesser of: (i) $100,000;

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

i.e. $90,000

The portion of minimum MPF benefits to be preserved after offsetting:

lesser of:

(i) employee contribution account + vested benefits derived from employer contributions - the amount paid to the employer for offsetting SP/LSP:

= $30,000 + $70,000 - $50,000 = $50,000;

(ii) minimum MPF benefits:

= $90,000

i.e. $50,000

Amount to be paid to the employee from vested benefits:

= benefits entitled due to post-MPF service - amount to be offset from the vested benefits for the paid SP/LSP - portion of minimum MPF benefits to be preserved after offsetting

= $100,000 - $50,000 - $50,000 = Nil

(The above figures are for illustrative purpose only.)

Illustration 7 (New member of defined benefit scheme for employment terminated before the Transition Date):

Years of post-MPF service: 10 years

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

Employee contribution account: $160,000

Final month salary: $30,000

Final average monthly relevant income: $30,000

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

Benefits entitled due to post-MPF service (after vesting):

= 2.0 x $30,000 x 10 x 100% = $600,000

SP/LSP entitled: $150,000

SP/LSP paid by the employer to the employee: $150,000

Vested benefits derived from employer contributions:

= $600,000 - $160,000 = $440,000

Amount to be offset from the vested benefits for the paid SP/LSP:

lesser of: (i) \$440,000 (i.e. vested benefits derived from employer contributions);

(ii) \$150,000 (i.e. SP/LSP paid by the employer to the employee)

i.e. \$150,000 (i.e. amount to be paid to the employer from the vested benefits for offsetting SP/LSP)

Hence, amount of SP/LSP to be topped up by employer: Nil

Minimum MPF benefits:

lesser of: (i) \$600,000;

(ii) 1.2 x \$30,000 x 10 = \$360,000

i.e. \$360,000

The portion of minimum MPF benefits to be preserved after offsetting:

lesser of:

(i) employee contribution account + vested benefits derived from employer contributions - the amount paid to the employer for offsetting SP/LSP:

= \$160,000 + \$440,000 - \$150,000 = \$450,000;

(ii) minimum MPF benefits

= \$360,000

i.e. \$360,000

Amount to be paid to the employee from vested benefits:

= benefits entitled due to post-MPF service - amount to be offset from the vested benefits for the paid SP/LSP - portion of minimum MPF benefits to be preserved after offsetting

= \$600,000 - \$150,000 - \$360,000 = \$90,000

(The above figures are for illustrative purpose only.)

Illustration 8 (New member of defined contribution scheme for employment commencing on or after the Transition Date):

Years of post-MPF service: 5 years

Employer contribution account: $140,000

Employee contribution account: $30,000

Final average monthly relevant income: $15,000

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

Benefits entitled due to post-MPF service (after vesting):

= ($140,000 x 50%) + $30,000 = $100,000

SP/LSP entitled: $50,000

SP/LSP paid by the employer to the employee: $50,000

Vested benefits derived from employer contributions:

= $140,000 x 50% = $70,000

Carved-out benefits: $45,000 (i.e. $15,000 x 5% x 12 x 5)

Remaining benefits: $70,000 - $45,000 = $25,000

Amount to be offset from the vested benefits for the paid SP/LSP[10]:

lesser of: (i) $25,000 (i.e. Remaining benefits);

(ii) $50,000 (i.e. SP/LSP paid by the employer to the employee)

i.e. $25,000 (i.e. amount to be paid to the employer from the vested benefits for offsetting SP/LSP (removable benefits[11]))

Hence, amount of SP/LSP to be topped up by employer:

= SP/LSP paid by the employer to the employee - amount to be offset from the vested benefits for the paid SP/LSP

= $50,000 - $25,000 = $25,000

[10] For the amount to be offset from the Remaining benefits by employer, (i) if the employer has fully paid the SP/LSP, the amount to be offset shall be determined in accordance with section 70A(2) of the ORS Ordinance i.e. an amount equal to the amount of removable benefits[11]; and (ii) if the employer has only paid a part of the SP/LSP, the amount to be offset shall be determined in accordance with section 70A(2A) of the ORS Ordinance.

[11] Section 70A(1)(c) of the ORS Ordinance stipulates the definition of removable benefits.

Minimum MPF benefits:

lesser of: (i) \$100,000;

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

i.e. \$90,000

The portion of minimum MPF benefits to be preserved after offsetting:

lesser of:

(i) employee contribution account + vested benefits derived from employer contributions - the amount paid to the employer for offsetting SP/LSP:

= \$30,000 + \$70,000 - \$25,000 = \$75,000;

(ii) minimum MPF benefits:

= \$90,000

i.e. \$75,000

Amount to be paid to the employee from vested benefits:

= benefits entitled due to post-MPF service - amount to be offset from the vested benefits for the paid SP/LSP - portion of minimum MPF benefits to be preserved after offsetting

= \$100,000 - \$25,000 - \$75,000 = Nil

(The above figures are for illustrative purpose only.)

Illustration 9 (New member of defined benefit scheme for employment commencing on or after the Transition Date):

Years of post-MPF service: 10 years

Leaving service benefits: 2.0 x Final Month Salary x

Years of Service x Vesting Percentage

Employee contribution account: \$160,000

Final month salary: \$30,000

Final average monthly relevant income: \$30,000

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

Benefits entitled due to post-MPF service (after vesting):

= 2.0 x $30,000 x 10 x 100% = $600,000

SP/LSP entitled: $150,000

SP/LSP paid by the employer to the employee: $150,000

Vested benefits derived from employer contributions:

= $600,000 - $160,000 = $440,000

Carved-out benefits: $180,000 (i.e. $30,000 x 5% x 12 x 10)

Remaining benefits:

= $440,000 - $180,000 = $260,000

Amount to be offset from the vested benefits for the paid SP/LSP:

lesser of: (i) $260,000 (i.e. Remaining benefits);

(ii) $150,000 (i.e. SP/LSP paid by the employer to the employee)

i.e. $150,000 (i.e. amount to be paid to the employer from the vested benefits for offsetting SP/LSP (removable benefits))

Hence, amount of SP/LSP to be topped up by the employer: Nil

Minimum MPF benefits:

lesser of: (i) $600,000;

(ii) 1.2 x $30,000 x 10 = $360,000

i.e. $360,000

The portion of minimum MPF benefits to be preserved after offsetting:

lesser of:

(i) employee contribution account + vested benefits derived from employer contributions - the amount paid to the employer for offsetting SP/LSP:

= $160,000 + $440,000 - $150,000 = $450,000;

(ii) minimum MPF benefits:

= $360,000

i.e. $360,000

Amount to be paid to the employee from vested benefits:

= benefits entitled due to post-MPF service - amount to be offset from the vested benefits for the paid SP/LSP - portion of minimum MPF benefits to be preserved after offsetting

= $600,000 - $150,000 - $360,000 = $90,000

(The above figures are for illustrative purpose only.)

DEFINITION OF TERMS

25. Where a term used in the Guidelines is defined in the Ordinance, the ORS Ordinance or their respective subsidiary legislation then, except where specified in the Guidelines, that term carries the meaning as defined in the Ordinance, the ORS Ordinance or their respective subsidiary legislation.