

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 benefits accrued under an MPF exempted ORSO registered scheme² 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 (“SP”) or long service payment (“LSP”).

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 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benefits accrued under the ORSO scheme will be calculated based on the governing rules of the scheme and can be withdrawn upon the occurrence of the conditions specified under the governing rules, e.g. upon retirement, termination of service, death or disability.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. Nevertheless, the trustee can still withhold in accordance with the governing

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

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.

rules of the scheme the portion of benefits that is in excess of the minimum MPF benefits.

3. The Mandatory Provident Fund Schemes Authority hereby issues guidelines with respect to how to calculate the minimum MPF benefits, how to calculate an existing member's benefits upon dismissal for cause and how to offset the minimum MPF benefits against 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. They are not intended to change any payment procedures permitted under the 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 scheme³, 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) $1.2 \times$ final average monthly relevant income \times 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

³ A relevant scheme is an MPF exempted ORSO registered scheme.

which is not more than the maximum level of relevant income per month as specified in Schedule 3 to the Ordinance;

⇒ “final average monthly relevant income”, in relation to a member of a relevant scheme, 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 complete 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 applicable

maximum level of relevant income per month, i.e. \$20,000 on or before 31 May 2012, \$25,000 from 1 June 2012⁴ to 31 May 2014 (both days inclusive) or \$30,000 on or after 1 June 2014⁵, 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

| | <u>Monthly income</u> \$ | <u>Relevant income</u> \$ |
|------------------------|-----------------------------|------------------------------|
| 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 |

$$\begin{aligned}
 \text{Final average monthly relevant income} &= \text{average of the last 12 complete} \\
 &\quad \text{month's relevant income} \\
 &= (\$27,000 \times 2 + \$25,000 \times 10)/12 \\
 &= \$25,333
 \end{aligned}$$

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.

⁴ 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.

⁵ The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2013 (L.N. 134 & 135 of 2013) amending the maximum relevant income level was approved by the Legislative Council on 17 July 2013 and becomes effective on 1 June 2014.

8. 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):

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

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.

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):

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

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.

PAYMENT UPON DISMISSAL FOR CAUSE

9. Some governing rules of ORSO schemes allow the 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 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 the 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 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.

11. 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.

12. 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

| | <u>Pre-MPF</u> | <u>Post-MPF</u> | <u>Total</u> |
|--------------------------------|----------------|-----------------|--------------|
| 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:

| | <u>Pre-MPF</u> | <u>Post-MPF</u> | <u>Total</u> |
|--|-----------------|-----------------|-----------------|
| From employer contribution account: (employer contribution account x 80%) | \$36,000 | \$24,000 | \$60,000 |
| From employee contribution account: | <u>\$20,000</u> | <u>\$15,000</u> | <u>\$35,000</u> |
| 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 benefits 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 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).

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

| | <u>Pre-MPF</u> | <u>Post-MPF</u> |
|--------------------------------|----------------|-----------------|
| 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):

$$= 2.0 \times \$30,000 \times 7 \times 100\% = \$420,000$$

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

$$= 2.0 \times \$30,000 \times 15 \times 100\% = \$900,000$$

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

- lesser of*
- (i) \$900,000;
 - (ii) $1.2 \times \$30,000 \times 15 = \$540,000$

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 $\$90,000 + (\$900,000 - \$170,000) = \$820,000$.

OFFSETTING OF MINIMUM MPF BENEFITS AGAINST SP/LSP

13. Section 6(12) provides that an employer may make use of the part of a new member's minimum MPF benefits derived from the employer's contributions to offset SP/LSP to which the member is entitled in accordance with the Employment Ordinance. If the employer has already made a payment of SP/LSP to the employee first, the employer may claim back the appropriate amount out of the scheme as permitted by the existing legislation.

14. If the SP/LSP entitlement is greater than or equal to a new member's benefits accrued under the scheme 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. benefits 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 benefits accrued under the scheme derived from the employer's contributions, then the amounts need to be preserved will be the lesser of -

- (a) the total benefits accrued under the scheme 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 SP/LSP offsetting works:

Illustration 6 (New member of defined contribution scheme):

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%

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

$$= (\$40,000 \times 50\%) + \$30,000 = \$50,000$$

Minimum MPF benefits:

lesser of (i) \$50,000;

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

i.e. \$50,000

SP/LSP entitled: \$50,000

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

Amount to be offset: lesser of \$20,000 and \$50,000 i.e. limited to \$20,000

Amount of SP/LSP to be topped up by employer: $\$50,000 - \$20,000 = \$30,000$

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 (New member of defined benefit scheme):

Years of post-MPF service: 10 years

Leaving service benefits: $2.0 \times \text{Final Month Salary} \times$

$\text{Years of Service} \times \text{Vesting Percentage}$

Employee contribution account balance: \$150,000

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):

$$= 2.0 \times \$30,000 \times 10 \times 100\% = \$600,000$$

Minimum MPF benefits:

lesser of (i) \$600,000;

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

i.e. \$360,000

SP/LSP entitled: \$200,000

Vested benefits derived out of employer's contributions:

$$\$600,000 - \$150,000 = \$450,000$$

Amount to be offset: \$200,000

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

Remaining benefits out of employer's contribution:

$$\$450,000 - \$200,000 = \$250,000$$

The portion of minimum MPF benefits to be preserved:

lesser of

(i) employee contribution account balance + vested benefits derived out of employer's contributions less the amount of SP/LSP;

(ii) minimum MPF benefits

i.e. lesser of

(i) $\$150,000 + \$250,000 = \$400,000$;

(ii) \$360,000

i.e. \$360,000

DEFINITION OF TERMS

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