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

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 4 OF 2022



Carrie LAM
Chief Executive
16 June 2022

An Ordinance 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 (4 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 (1AA).

(3) Section 31V—

Repeal subsection (1A)

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 (4 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—

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

Part 2
Section 19

Ord. No. 4 of 2022
A129

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.

31IA. 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

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- 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—

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- (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 (4 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

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- (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 (4 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 (4 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;

employer-funded ORS benefit (僱主供款職業退休計劃利益) has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57);

employer-funded (specified) ORS benefit (僱主供款(指明)職業退休計劃利益) has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57);

post-transition portion (轉制後部分) has the meaning given by section 1(1) of Schedule 11 to the Employment Ordinance (Cap. 57);

pre-transition portion (轉制前部分) has the meaning given by section 1(1) of Schedule 11 to the Employment Ordinance (Cap. 57);

specified employee (指明僱員) has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57).”.

- (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, if the employer has only paid a part of the severance payment or long service payment (***paid Cap. 57 payment***), the payment under subsection (2) must be of an amount equal to—
- (a) if the employee is not a specified employee—the lesser of the following—
 - (i) the amount of the removable benefits;
 - (ii) so much of the vested benefits mentioned in subsection (1)(b) that are employer-funded (specified) ORS benefits and that would remain if they were to be reduced by an amount of the unpaid part of the severance payment or long service payment (***unpaid Cap. 57 payment***) under the benefits reduction provision; or
 - (b) if the employee is a specified employee—the sum of the amounts under subparagraphs (i) and (ii)—
 - (i) the lesser of the following—
 - (A) so much of the removable benefits that are such benefits because of a reduction by an amount of the pre-transition portion of the paid *Cap. 57 payment*;
 - (B) so much of the vested benefits mentioned in subsection (1)(b) that are employer-funded ORS benefits and that would remain if they were to be reduced by an amount of the pre-transition portion of the unpaid *Cap. 57 payment* under the benefits reduction provision;

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- (ii) the lesser of the following—
 - (A) so much of the removable benefits that are such benefits because of a reduction by an amount of the post-transition portion of the paid Cap. 57 payment;
 - (B) so much of the vested benefits mentioned in subsection (1)(b) that are employer-funded (specified) ORS benefits and that would remain if they were to be reduced by an amount of the post-transition portion of the unpaid Cap. 57 payment under the benefits reduction provision.

(2B) For the purposes of subsection (2A)(a)(ii) and (b)(i)(B) and (ii)(B), a reduction under the benefits reduction provision is a reduction under the provision that applies on the basis that the unpaid Cap. 57 payment had also been paid.”.

(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 (4 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

- “(1AA) 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;

employer-funded MPFS benefit (僱主供款強積金計劃權益) has the meaning given by section 1(1) of Schedule 11 to the Employment Ordinance (Cap. 57);

employer-funded (voluntary) MPFS benefit (僱主供款(自願性)強積金計劃權益) has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57);

post-transition portion (轉制後部分) has the meaning given by section 1(1) of Schedule 11 to the Employment Ordinance (Cap. 57);

pre-transition portion (轉制前部分) has the meaning given by section 1(1) of Schedule 11 to the Employment Ordinance (Cap. 57);

specified employee (指明僱員) has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57).”.

- (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, if the employer has only paid a part of the severance payment or long service payment (*paid Cap. 57 payment*), the payment under subsection (2) must be of an amount equal to—

- (a) if the employee is not a specified employee—the lesser of the following—
- (i) the amount of the removable benefits;
 - (ii) so much of the accrued benefits mentioned in subsection (1)(b) that are employer-funded (voluntary) MPFS benefits and that would remain if they were to be reduced by an amount of the unpaid part of the severance payment or long service

- payment (*unpaid Cap. 57 payment*) under the benefits reduction provision; or
- (b) if the employee is a specified employee—the sum of the amounts under subparagraphs (i) and (ii)—
- (i) the lesser of the following—
- (A) so much of the removable benefits that are such benefits because of a reduction by an amount of the pre-transition portion of the paid Cap. 57 payment;
- (B) so much of the accrued benefits mentioned in subsection (1)(b) that are employer-funded MPFS benefits and that would remain if they were to be reduced by an amount of the pre-transition portion of the unpaid Cap. 57 payment under the benefits reduction provision;
- (ii) the lesser of the following—
- (A) so much of the removable benefits that are such benefits because of a reduction by an amount of the post-transition portion of the paid Cap. 57 payment;
- (B) so much of the accrued benefits mentioned in subsection (1)(b) that are employer-funded (voluntary) MPFS benefits and that would remain if they were to be reduced by an amount of the post-transition portion

of the unpaid Cap. 57 payment under the benefits reduction provision.

(2B) For the purposes of subsection (2A)(a)(ii) and (b)(i)(B) and (ii)(B), a reduction under the benefits reduction provision is a reduction under the provision that applies on the basis that the unpaid Cap. 57 payment had also been paid.”.

(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 (4 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.”.