

# Mandatory Provident Fund in Hong Kong: What is on the Horizon?

## 香港的强制性公积金：哪些变化即将来临？

The Mandatory Provident Fund Schemes (Amendment) Bill 2014 was passed by the Legislative Council in January 2015 to amend the Mandatory Provident Fund Schemes Ordinance and its subsidiary legislation. This article discusses the issues that are new and in debate, and their implications to employers.

2014年强制性公积金计划（修订）草案于2015年1月获立法会通过，对强制性公积金计划条例及其附属立法进行修订。本文讨论最新的和存在争议的议题，以及其对雇主的意义。





BY JULIA GORHAM (HEAD OF EMPLOYMENT, ASIA),  
ANITA LAM (OF COUNSEL), STEPHANIE WONG  
(TRAINEE SOLICITOR)

作者: Julia Gorham (Head of Employment, Asia), Anita Lam (Of  
Counsel), Stephanie Wong (Trainee Solicitor)

The Mandatory Provident Fund Schemes (Amendment) Bill 2014 ("Bill") was passed by the Legislative Council in January 2015 to amend the Mandatory Provident Fund Schemes Ordinance ("MPFSO") and its subsidiary legislation. Some of the major changes include enabling mandatory provident fund ("MPF") benefits to be withdrawn on terminal illness and by instalments from MPF schemes.

## WHAT IS CURRENT

The objective of the MPF system is to provide for a mandatory savings retirement scheme in Hong Kong. Generally, an employee may only withdraw the accrued benefits under his/her MPF scheme when he/she reaches retirement age. "Retirement age" is defined as 65 years old under the MPFSO. Early withdrawal before the retirement age may be possible in a few limited circumstances. Such circumstances include:

- early retirement if the employee has attained 60 years old and has ceased work;
- permanent departure from Hong Kong;
- total incapacity, which means the employee is permanently unfit to perform the kind of work he/she was last performing before becoming incapacitated;
- death; and
- where the balance of the employee's MPF account is less than HK\$5,000 and no contributions have been made to such scheme for 12 months. The employee needs to declare that he/she will not become employed or self-employed in the foreseeable future.

## WHAT IS NEW

### Withdrawal of accrued benefits on the basis of terminal illness

The Bill introduces an additional ground for early withdrawal of the accrued MPF benefits. When the provision comes into force, an employee may withdraw his/her MPF benefits on the ground of terminal illness. Terminal illness is defined to refer to any illness which is likely to reduce the life expectancy of the employee to 12 months or less.

To withdraw the accrued benefits on the ground of terminal illness, the employee is required to produce proof of terminal illness by providing a medical certificate issued by a registered medical practitioner or registered Chinese medicine practitioner within 12 months before the date of lodging the request. The payment will be the full amount of the employee's MPF benefits.

2014年强制性公积金计划（修订）条例草案（以下简称“草案”）于2015年1月获立法会通过，对强制性公积金计划条例（以下简称“条例”）及其附属法例进行修订。主要的变化包括：强制性公积金（“强积金”）的累算权益在罹患末期疾病情况下可以提前提取，以及强积金计划的累算权益可以分期方式提取。

## 目前状况

强积金制度的目的是为在香港提供一个强制储蓄退休计划。一般情况下，雇员只可于其达到退休年龄时提取其强积金计划下的累算权益。条例提到的“退休年龄”是指65岁。在以下情况，雇员可于达到退休年龄之前提前提取强积金的累算权益：

- 提前退休：如果员工达到60岁并不再工作；
- 永久性的离开香港；
- 完全丧失行为能力，意指雇员永久地不适合执行其于丧失行为能力之前所执行的最后一类工作；





- 死亡；以及
- 如果员工的强积金账户余额少于港币5,000元，且已有12个月没有对该计划作出供款。该雇员需要声明，他/她在可预见的未来将不会受雇或自雇。

## 最新进展

### 罹患末期疾病时的累算权益提取

草案为提前提取强积金的累算权益提供了一个额外的情况。规定生效之后，雇员可以罹患末期疾病为理由提取强积金累算权益。末期疾病定义为：将员工的预期寿命减至12个月或以下的任何疾病。

如以罹患末期疾病为理由提取强积金累算权益，雇员需要提供其罹患末期疾病的证明。该证明需是由注册医生或注册中医在提交该申索日期前12个月内签发的医学证明书。提取的数额是强积金累算权益的整笔款项。

### 累算权益的分期提取

按照现有的框架，如果符合提取条件，强积金的累算权益应立即或以后一次性提取。但是，新的框架提供了以分期方式提取强积金的累算权益的选择。雇员可以根据该计划

的条款，用书面说明的方式选择分期提取其累算权益；该书面指示应包括支付累算权益的时间、次数或提取数额。

### 收费的限制

除了核准受托人为向第三方（核准受托人除外）为了作出累算权益的支付而出售或购买投资所产生的必要交易费用，强积金受托人不得就整笔支付的累算权益收取任何额外费用或罚款。另外，如雇员选择分期提取累算权益，强积金受托人亦不可对其任何一年内的首12期付款收取任何额外费用或罚款。每期可提取的数额将没有限制。

## 争议问题

### 关于遣散费和长期服务金的强积金抵销机制的变化

根据《香港雇佣条例》（第57章）（简称《雇佣条例》），如果已按连续性合约受雇超过两年的雇员遭到裁员或停工，雇员有权获得遣散费。按连续性合约受雇超过五年的员工，如果被解雇且无权获得遣散费，雇员有权获得长期服务金。

目前，遣散费及长期服务金可以用作抵销雇主对雇员的强积金账户作出的任何供款。

### Phased withdrawal of accrued benefits

Under the current framework, the full accrued MPF benefits must be withdrawn in one lump sum immediately or at a later date when the conditions for withdrawal are satisfied. However, under the new framework, there will be a phased withdrawal option. Employees will be able to withdraw his/her accrued benefits by instalments by giving written instructions regarding the time, frequency or amount of payment in accordance with the governing rules of the scheme.

### Restriction on charges

Apart from the necessary transaction costs incurred by the approved trustee in selling or purchasing investments to give effect to the payment and are payable to a third party (other than the approved trustee), MPF trustees will no longer be able to charge any additional fees or financial penalties from the employee for payment of the accrued benefits in a lump sum, or if the employee elects for the accrued benefits to be paid by instalments, the first 12 instalments in any year. There will be no restriction on the amount that may be withdrawn every time.

社会上一直有着该法定抵销的规定是否应该废除，或抵销比例是否应该降低的辩论。如果抵销机制被废除，将可能影响解雇连续雇用两年以上员工的成本。

在2014年的施政报告中，香港政府确认没有即时的计划改变抵销机制的现状。2014年7月，劳工及福利局的张建宗局长评论说，虽然政府愿意听取各界的意见，但是并没有计划成立专门的小组研究抵销机制。

这个问题在2015年的施政报告中没有进一步讨论。抵销机制是否会被废除或者变更仍然是未知之数。

## 意义

草案的修改预期会受到员工欢迎，因为该修改为提取强积金累算权益提供了更大的灵活性。罹患末期疾病的雇员也将能够提前提取强积金的累算权益，让其可以用款

项支付医疗费用和满足其生活需要。

由于强积金受托人仅可以收取为应付支付强积金的累算权益进行的有关投资买卖产生的必要交易成本，雇员将有较少顾虑他们的强积金累算权益会因需要支付强积金受托人费用而减少。通过允许以分期方式提取强积金的累算权益，员工将有更大的自由度管理其强积金累算权益，令其可以因应市场情况得到更有利的回报。

现时，草案的新规定尚未生效，雇主没有需要采取任何即时的行动。草案所带来的变化将对强积金受托人的影响更大。

如果有关废除或修订抵销规定的讨论重新开始，雇主将需要为抵销安排可能带来的变化做好准备，相应地监督任何应付的遣散费或长期服务金。

**“ 现时，草案的新规定尚未生效，雇主没有需要采取任何即时的行动。草案所带来的变化将对强积金受托人的影响更大。 ”**

## WHAT IS IN DEBATE

### Changes to the MPF offsetting mechanism regarding severance and long service payments

Under the Hong Kong Employment Ordinance (Cap 57) ("EO"), an employee is entitled to a severance payment if he/she has been employed by the employer under a continuous contract for over two years and his/her employment is terminated on the basis of a redundancy or lay-off. An employee is entitled to a long service payment if he/she has been employed by the employer under a continuous contract for over five years and he/she is dismissed and not entitled to receive a severance payment.

Currently, the severance and long service payments can be set-off against any MPF contributions made by the employer.

However, there have been heated debates as to whether the statutory offsetting provisions should be abolished, or the offset ratio should be lowered. If the offsetting

mechanism is to be abolished, this will likely have impact on the costs of terminating staff who have been continuously employed for more than two years.

In the 2014 policy address, the Hong Kong government confirmed that there was no immediate plan to change the status quo of the offsetting mechanism. In July 2014, Matthew Cheung, the Secretary for Labour & Welfare, commented that while the Government was open to hear the views of different parties, there was no plan to set up a dedicated group to look into the off-setting mechanism.

This matter was not discussed further in the recent 2015 policy address. It remains to be seen whether the offsetting mechanism will indeed be abolished or altered.

## IMPLICATIONS

The changes introduced by the Bill will likely be welcomed by employees as they provide for greater flexibility regarding withdrawal of accrued MPF benefits.

Employees who are terminally ill will also be able to withdraw their accrued MPF benefits earlier, such that the money could be used to pay their medical expenses and meet their needs.

As MPF trustees will only be allowed to charge the necessary transaction costs incurred in relation to the sale and purchase of investments to facilitate the payment of the accrued MPF benefits, employees should have less concerns that their accrued MPF benefits will be reduced by MPF trustee fees. By permitting the accrued MPF benefits to be withdrawn in instalments, employees will have greater freedom to manage their accrued MPF benefits so that a more favourable return can be achieved based on the market conditions.

In the meantime, as the new provisions in the Bill are not yet in force, no immediate actions are required from employers. However, the changes brought about by the Bill will have greater impact on MPF trustees.

If discussions in relation to the abolition of or amendments to the offsetting provisions resume, employers would need to be prepared for possible changes to the offsetting arrangement and manage any severance or long service payments payable accordingly. 

