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Pensions issues in cross-border acquisitions Q&A: Singapore

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Retirement benefits

1. Is there a legal requirement on both employers and employees to make pension contributions to the government to fund some form of state retirement pension in your jurisdiction? If so, how does this requirement operate?

The Central Provident Fund Act (Cap. 36) of Singapore (the CPF Act) provides a statutorily mandated scheme of retirement and other benefits for Singapore Citizens (SCs) and Singapore Permanent Residents (PRs).

With continuous amendments over the past five decades, the Central Provident Fund (CPF) has developed into a multi-purpose fund consisting of a variety of different schemes. The major schemes under the CPF (other than for retirement purposes) include healthcare, home ownership and insurance schemes.

The CPF Act requires every employer to register itself and its employees and, in addition to the payment of employees' salaries, make contributions to each employee's Central Provident Fund Account (CPF Account). The employer's contribution to the CPF Account is based on a prescribed percentage of that employee's "wages" (meaning remuneration in money, including bonuses and commissions, due in respect of their employment).

The employee must also contribute to their CPF Account at a prescribed rate. Employee contributions are usually made direct by the employer via salary deductions. This is a legal requirement managed by the employer and there are penalties for late payment; it is not possible to "opt-out" of making CPF contributions in respect of eligible employees.

As an indicative guide, an employer's monthly contribution for an employee aged 55 or below, earning S$750 or more per month, is 17% of the monthly salary, and the employee's contribution is 20% of the monthly salary, accounting for 37% in total. Total monthly contributions from the employer and employee are currently capped at S$1,800 in aggregate. These numbers are subject to revision from time to time, and have historically been revised fairly frequently.

The sum in the employee's CPF Account can be withdrawn by that employee in accordance with the CPF Act, which generally allows for withdrawal on reaching the age of 55 years or for the purposes of certain approved investments, for example, for housing or medical care (see *Part III Withdrawal of Contributions, CPF Act*).

Under the Central Provident Fund (Exemption – Foreign Employees) Order 2002 (S523/2002), foreign employees (meaning employees who are neither SCs nor PRs) are exempted from the CPF Act. This means that CPF contributions by, or in respect of, foreign employees are neither required nor permitted. PRs are included in the scheme on a sliding scale from the time they became a PR until two years into their status as PR, at which point they and their employer must contribute at the same rate as SCs.

This means that SCs and PRs are, technically, marginally more expensive to employ than foreign employees. However, it is unlawful for an employer to take this factor into account when formulating a salary offer. In other words, an employer cannot offer a reduced salary to a SC or PR to compensate for the employer's CPF contributions.

2. Is supplementary (that is, non-state) pension provision available and/or legally required in your jurisdiction? If so:

- **Is this provided mainly through contractual arrangements between individuals and product providers (such as insurers) or by employer-sponsored and/or industry-wide schemes?**
- **Is tax relief available on contributions made to such schemes for both employees and employers?**

The payment of CPF contributions under the CPF Act is the only mandatory pension scheme generally applicable to relevant employees in Singapore. In addition to the CPF, however, there are the following schemes:

- **Government Pension Scheme.** This is a supplementary non-contributory pay-as-you-go pension scheme, which is limited to certain civil servants, including designated government administrative employees and senior police and intelligence officers.
- **Saver Scheme.** This scheme is for designated members of the Singapore Armed Forces.
- **Supplementary Retirement Scheme.** This is a voluntary government-operated pension scheme without employer involvement that allows participants to voluntarily contribute up to a certain fixed amount into the scheme each year and which enjoys certain tax advantages.

Although additional private pension schemes are permitted under Singapore law, most employees (SCs and PRs), as well as expatriates, do not usually make use of them. Singapore employers, including large, international companies, generally do not offer any additional pension benefits to their employees, whether such employees are covered by the CPF Act or not. A recent study showed that 64% of Singapore citizens were saving for their retirement solely through the CPF (Aviva: Consumer Attitudes Survey 2014).

A minority of Singaporeans have endowment or investment-linked plans to supplement their retirement fund, or otherwise supplement the CPF with direct investments such as shares, bonds or unit trusts.

Typically, if a company wishes to provide a foreign employee with a pension benefit equivalent to their home pension scheme (for example, because the employee is "missing out" on his usual pension contributions by working in Singapore), the employee's salary will simply be raised to provide for this.

However, if an employer wishes to provide a private pension scheme for its employees (in addition to CPF contributions), there are a number of private pension providers in Singapore. Although private pension schemes are relatively new to Singapore, certain companies have recognised that private pension plans can help their employees supplement their retirement savings and harmonise their compensation packages. For example, a private pension plan may be designed to mirror the CPF to cater for expatriate employees only, as the CPF Act does not permit employers to make contributions to the CPF on behalf of their expatriate employees.

Private pensions are provided through contractual arrangements, either between individuals and product providers, or between employers and product providers under an umbrella arrangement.

Employees can claim tax deductions for mandatory contributions made to the CPF and Supplementary Retirement Scheme. The full amount of government pensions received in Singapore is exempt from tax provided that the employee is considered resident in Singapore for tax purposes. Employees cannot claim tax deductions for voluntary contributions (meaning contributions made over and above the mandatory amount) to the CPF and Supplementary Retirement Scheme. Employers do not enjoy any tax benefits for contributions (mandatory or voluntary) made to the CPF and Supplementary Retirement Scheme.

For private pensions, depending on the trust structure, the employee may enjoy tax free contributions or benefits, and the investment income may also be tax free.

3. Where supplementary schemes are provided, do these schemes provide pensions, the value of which:

- **Is linked to the employee's salary (defined benefit)?**
- **Is linked to employer and/or employee contributions and investment return on those contributions (defined contribution)?**

Both the Government Pension Scheme and the Saver Scheme (see Question 2) are linked to defined benefit. The Supplementary Retirement Scheme is linked to defined contribution.

For private pensions, both defined benefit pension schemes (linked to the employee's salary) and defined contribution pension schemes (linked to the employer's and/or employee's contributions) are available in Singapore. The terms of any pension scheme will be set out through contractual arrangements.

4. Please confirm what level of government supervision operates in respect of work-based and/or supplementary pension provision in your jurisdiction. If a specific government body exists to monitor and/or regulate such provision, please confirm the scope of its powers and provide examples of its intervention (if possible).

The primary legislation governing pensions in Singapore is the CPF Act. In addition, the Pensions Act (Cap. 225) governs the granting of pensions, gratuities and other allowances to officers in the public service of Singapore.

The CPF is administered by the Central Provident Fund Board (CPF Board), a statutory board operating under the Ministry of Manpower and consisting of representatives of government, as well as employer, employee and industry representatives appointed by government ministers. The CPF Board is responsible for the custody of funds and for administering the various CPF schemes, including the retirement scheme, but it does not have any investment responsibilities. GIC Private Limited (formerly the Singapore Government Investment Corporation, GIC) is the body responsible for investing the scheme's assets.

In addition, the Accountant-General's Department (a department of the Ministry of Finance) oversees the Government Pension Scheme and a Board of Trustees (BOT) appointed by the Armed Forces Council (AFC) oversees the Saver Scheme. The Saver Scheme is managed by the BOT, with input from professional fund managers and the Monetary Authority of Singapore. Under the Singapore Armed Forces Act (Cap. 295), the Armed Forces Council (AFC) is responsible for the administration of matters relating to the Singapore Armed Forces. The AFC is in turn responsible to the Ministry of Defence.

The government does not administer or oversee supplementary pension schemes in the private sector.

5. Where an employer elects or is required to provide a work-based pension for its employees is this commonly funded or unfunded in your jurisdiction? If unfunded, how is allowance made for the future funding obligation, and how is this recorded in the employing company's accounts or financial records?

In contrast to the majority of other publicly managed pension schemes, the Singaporean CPF system operates on a fully funded basis. Individuals rely exclusively on defined contribution funds accumulating in their CPF Accounts, that is, individual accounts maintained directly with the CPF Board.

Because the CPF is operated by the Singapore government and every employee has an individual CPF Account directly with the CPF Board, the employer is not required to record the CPF funds accumulated by each individual employee. As such, these matters are not recorded in the employing company's accounts or financial records.

6. Are there any established customs and practices to provide pension or retirement benefits for employees in addition to any legal obligations that may already apply to an employer? If so, please explain what these are and (if possible) provide examples of their operation and provision.

No, there are no established customs and practices to provide pension or retirement benefits for employees, beyond an employer's legal obligation to make contributions to each eligible employee's CPF Account.

If an employer wishes to provide equal pension and retirement benefits to all of its employees, it may put in place a private pension scheme for the benefit of foreign employees that mirrors the terms of the CPF for SCs and PRs, as foreign employees are prohibited from participating in the CPF scheme. The contributions made to the private pension scheme would, through the terms of the private pension scheme, mirror the contributions made to the CPF on behalf of the employer's SCs and PRs.

7. If an employee is transferred as part of a business acquisition, is the transferee obliged to provide pension provision in respect of the transferring employees? If so, is the transferee required to honour existing pension rights or provide equivalent rights? If so, how is this dealt with in practice?

There is no transfer issue with respect to the CPF scheme, as each employee has their individual CPF Account directly with the CPF Board and not with the employer. Employers and employees simply contribute directly to the CPF Account of the relevant employee held with the CPF Board. Accordingly, there is no need to transfer pension benefits upon a change of employment. Instead, the new employer simply begins paying into the employee's existing CPF Account.

With respect to private pensions, the key legislation is the Employment Act (Cap. 91) (the EA). Although specific entitlements under the EA are fairly complex, in summary the EA offers protection to employees of a Singapore company who hold either:

- A non-managerial, non-executive or non-professional job, regardless of salary level.
- A managerial or executive job but who are earning less than S$4,500 per month.

Section 18A of the EA deals with the transfer of employment where an undertaking (or part of an undertaking) is transferred from one person to another. It provides that:

- The transfer of an undertaking (or part of it) will not operate to terminate the contract of service of any employee employed by the transferor in the undertaking (or part of it) which is transferred.
- The contract of service will have effect after the transfer as if originally made between the employee and the transferee.

This means that where an employee's contract provides for private pension benefits, and that employee is covered by the EA:

- The pension benefits will survive a business transfer.
- The transferee will be obliged to honour the existing pension benefits or provide equivalent (and no less beneficial) benefits.

8. In the scenario described under Question 7 above, please confirm which party assumes responsibility for the provision and funding of any pension or retirement benefits that have accrued prior to the date of the transfer.

If any CPF contributions have not been made by an employer during a period of employment in breach of the CPF Act, the original employer (the transferor) will remain liable for those non-payments. The new employer (that is, the transferee) is obliged to make CPF contributions into the employee's CPF Account following completion of the transfer (*see Question 7*).

9. Can employees that are working outside of their home jurisdiction, and employees of a subsidiary company in a different jurisdiction, participate in a pension scheme established by a "home" parent company? Are the same tax reliefs referred to in Question 2 still available in these circumstances?

There are generally no prohibitions placed on employees working abroad and employees of a foreign subsidiary company participating in a pension scheme established by a parent company in Singapore. However, only SCs and PRs are able to take part in the CPF scheme (*Retirement benefits*). Contributions in relation to employment outside Singapore are not taxable as this is considered to be foreign-sourced income.

10. What information would a buyer usually request about pensions and other retirement benefits in a due diligence exercise relating to a private company acquisition? Would the seller commonly provide this information?

A buyer generally requests information on the number of employees covered by the CPF Act and the annual cost of the employer's contributions to the CPF. A buyer will also request evidence (or at least, confirmation) that all CPF contributions have been made on time and in accordance with Singapore law.

Although operating an additional private pension scheme for employees is unusual in Singapore, a buyer will want the seller to confirm that no other pension schemes are in existence. A buyer may also request a list of active members of each scheme (and those that will become eligible in the next six months) showing date of birth, age, date of commencement of pensionable service, current salary and other relevant data, details of any voluntary contributions, and schemes to which each group company has ceased to contribute.

A seller generally provides this information, which is typically confirmed through warranty statements in the acquisition agreement.

11. What provisions would commonly be inserted in a share purchase or asset purchase agreement relating to pensions and other retirement benefits (for example, would specific warranties be given by the seller?)

Warranties relating to pensions and other retirement benefits given by the seller in the acquisition document may include:

- That no pension schemes exist other than specifically identified schemes, and that no obligations exist (whether actual or contingent and whether legally enforceable or not) to provide or contribute to any other scheme.
- That there has been disclosed to the buyer:
  - all material details of each scheme, including copies or details of each document which confers or describes an actual, prospective or contingent right to benefits under each scheme;
  - a list detailing each person who is a member of, or has any rights to benefits under, each scheme; and
  - details of the benefits payable or prospectively or contingently payable under each scheme in respect of each person.
- That each amount due to the trustees or administrators of a scheme from the target group has been paid, and that there is no pension funding deficit or accrued employment liabilities.
- That there is no proceeding or claim (other than routine claims for benefits) outstanding, pending or threatened against the trustees or administrators of a scheme or a target group company in connection with a pension scheme, and that no fact or circumstance exists that may give rise to a proceeding or claim of that kind.
- That each scheme is duly registered under applicable law and that all contributions have been made in accordance with applicable law.

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