

Abolition of Offsetting Arrangement

(To be implemented in 2025)

- ▶ The Legislative Council passed the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 on 9 June 2022 to abolish the use of the accrued benefits of employers' mandatory contributions under the Mandatory Provident Fund (MPF) System to offset severance payments (SP) and long service payments (LSP) (the offsetting arrangement)
- ▶ The Government will implement the abolition of the offsetting arrangement in tandem with the full implementation of the eMPF Platform of the Mandatory Provident Fund Schemes Authority, which is expected to be in 2025

KEY POINTS OF ABOLITION OF OFFSETTING ARRANGEMENT

- ▶ The offsetting arrangement will be abolished starting from a date to be appointed – the transition date;
- ▶ After the transition date, employers can no longer use the accrued benefits derived from their mandatory MPF contributions (ERMC) to offset employees' SP/LSP ;
- ▶ Accrued benefits derived from employers' voluntary MPF contributions (ERVC) and gratuities based on employees' years of service can continue to be used to offset SP/LSP;
- ▶ The abolition has no retrospective effect. There is “grandfathering” arrangement for the pre-transition portion of employees' SP/LSP.

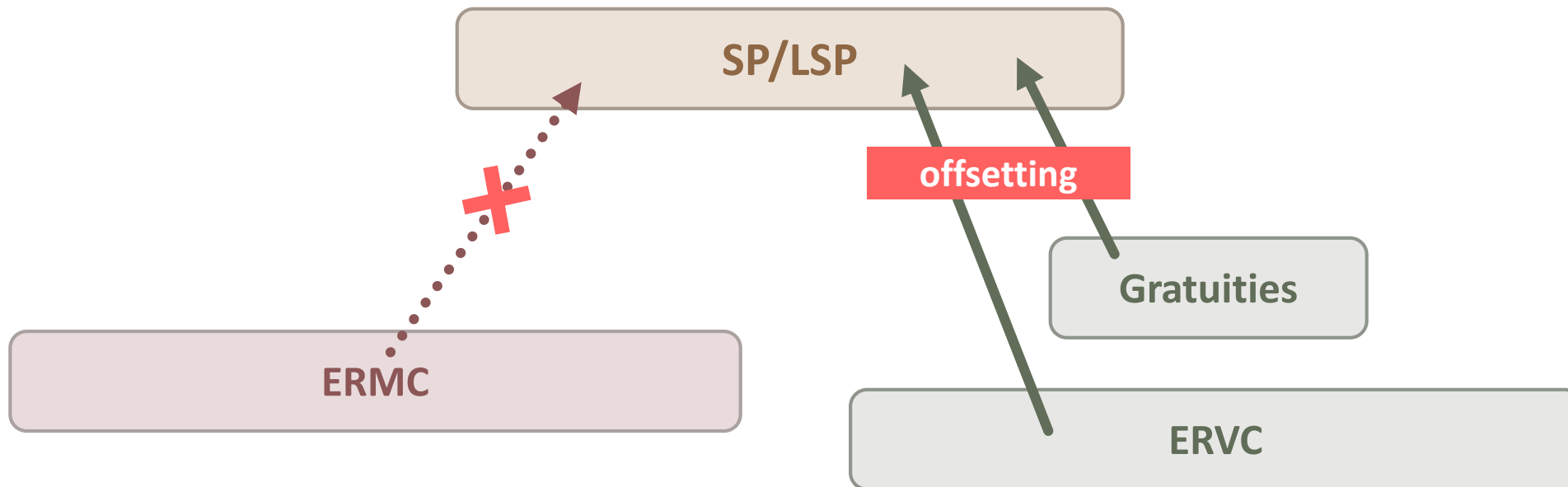


If the employee's employment commences after the transition date, how will the offsetting arrangement be changed?

IF THE EMPLOYEE'S EMPLOYMENT COMMENCES AFTER THE TRANSITION DATE

AFTER THE TRANSITION DATE

- ▶ The employer can **no longer use ERMC to offset SP/LSP**
- ▶ Other arrangements remain unchanged –
 1. **ERVC and gratuities based on length of service can continue to be used to offset SP/LSP**



IF THE EMPLOYEE'S EMPLOYMENT COMMENCES AFTER THE TRANSITION DATE (CONT'D)

2. Calculation of SP/LSP remains unchanged:–

Rate for calculating SP/LSP:

Two-thirds of the monthly wages subject to a maximum of \$22,500, for each year of service

Monthly wages for calculating SP/LSP:

The employee's last monthly wages before termination of employment

Maximum payment of SP/LSP:

\$390,000

Remain unchanged

CALCULATION OF SP/LSP & THE OFFSETTING ARRANGEMENT FOR EMPLOYEES WHOSE EMPLOYMENT COMMENCES AFTER THE TRANSITION DATE : ILLUSTRATIVE EXAMPLE

Last month's wages before termination of employment
\$18,000

$$\times \frac{2}{3} \times$$

Years of service
7 years

=

SP/LSP \$84,000



Aggregate benefits of the employee

SP/LSP \$84,000




+

Non-offsettable

ERMC retained in the employees' MPF account \$75,600

=

Aggregate benefits of the employee \$159,600

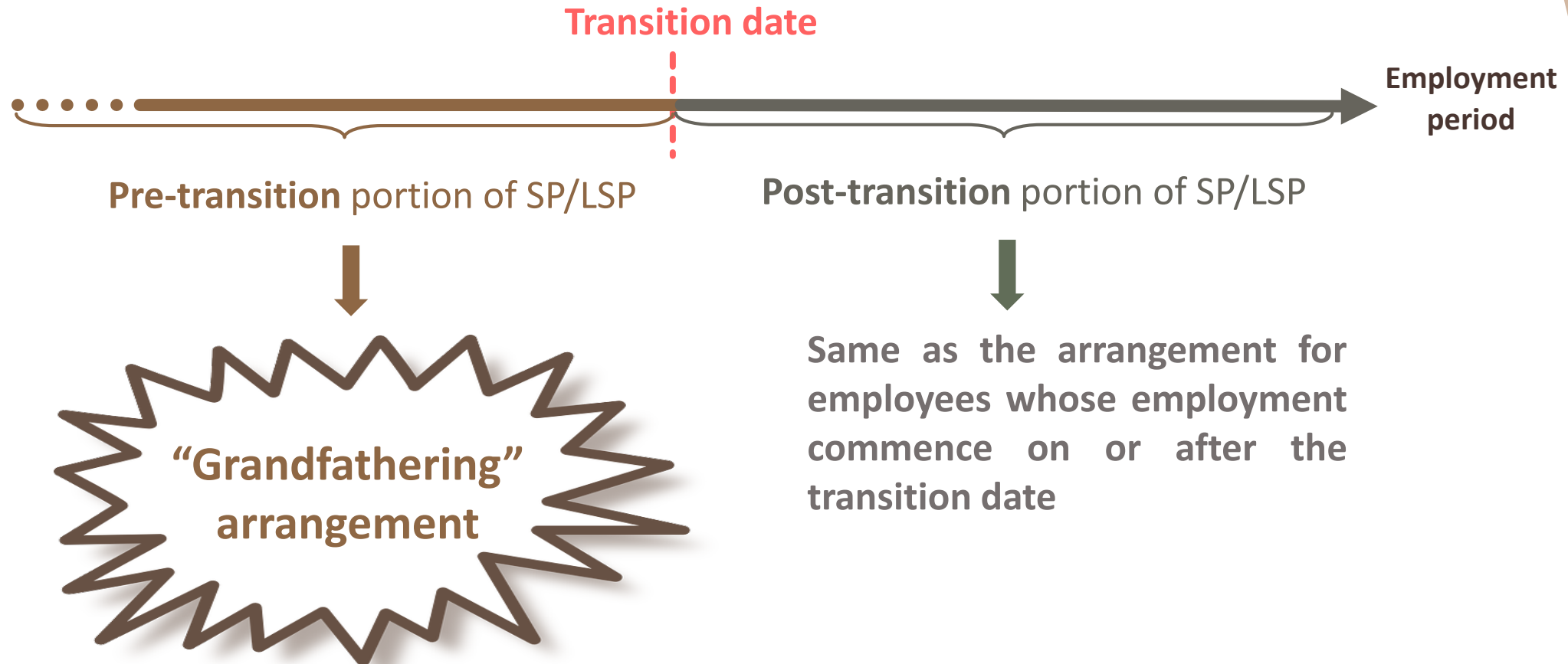


If the employee's employment commences before the transition date, how will the offsetting arrangement be changed?



IF THE EMPLOYEE'S EMPLOYMENT COMMENCES BEFORE THE TRANSITION DATE

- ▶ SP/LSP will comprise: (i) a pre-transition portion and (ii) a post-transition portion



THE “GRANDFATHERING” ARRANGEMENT

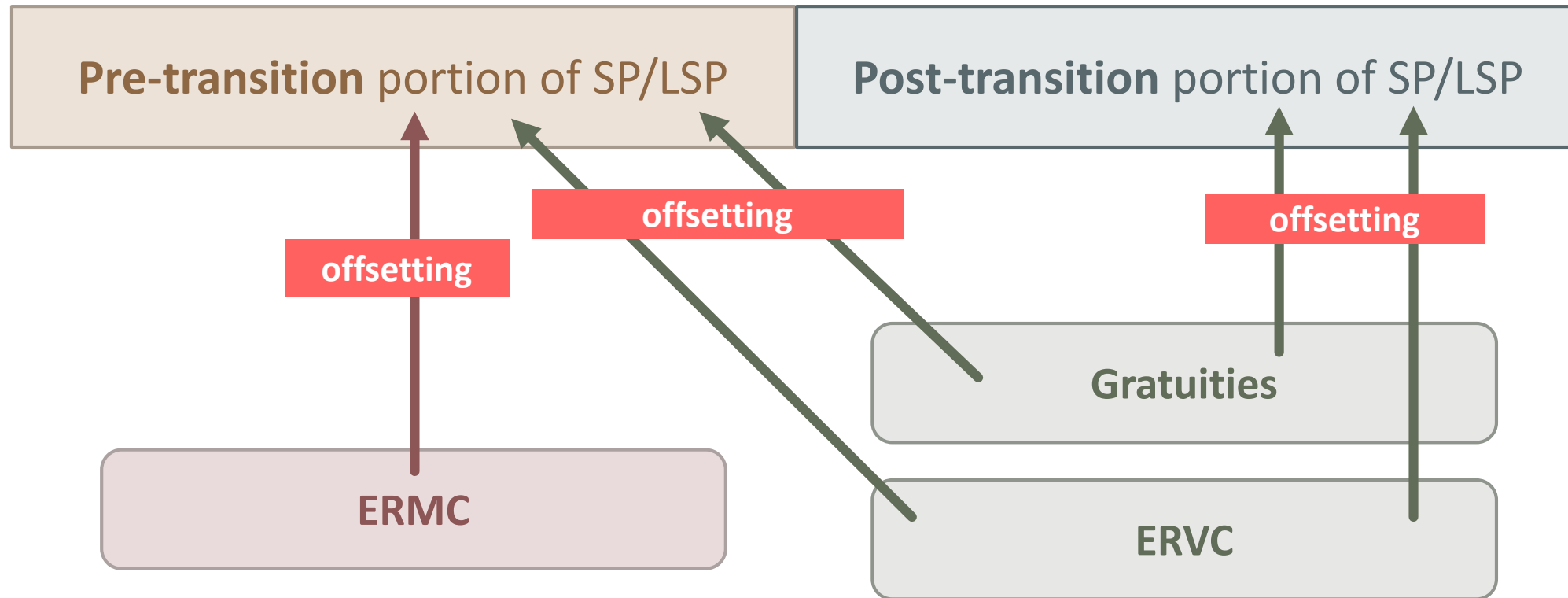
1

The abolition will have no retrospective effect – employers may continue to use the accrued benefits derived from employers’ MPF contributions (irrespective of contributions made before, on or after the transition date, and irrespective of mandatory or voluntary contributions) to offset the pre-transition portion of SP/LSP

2

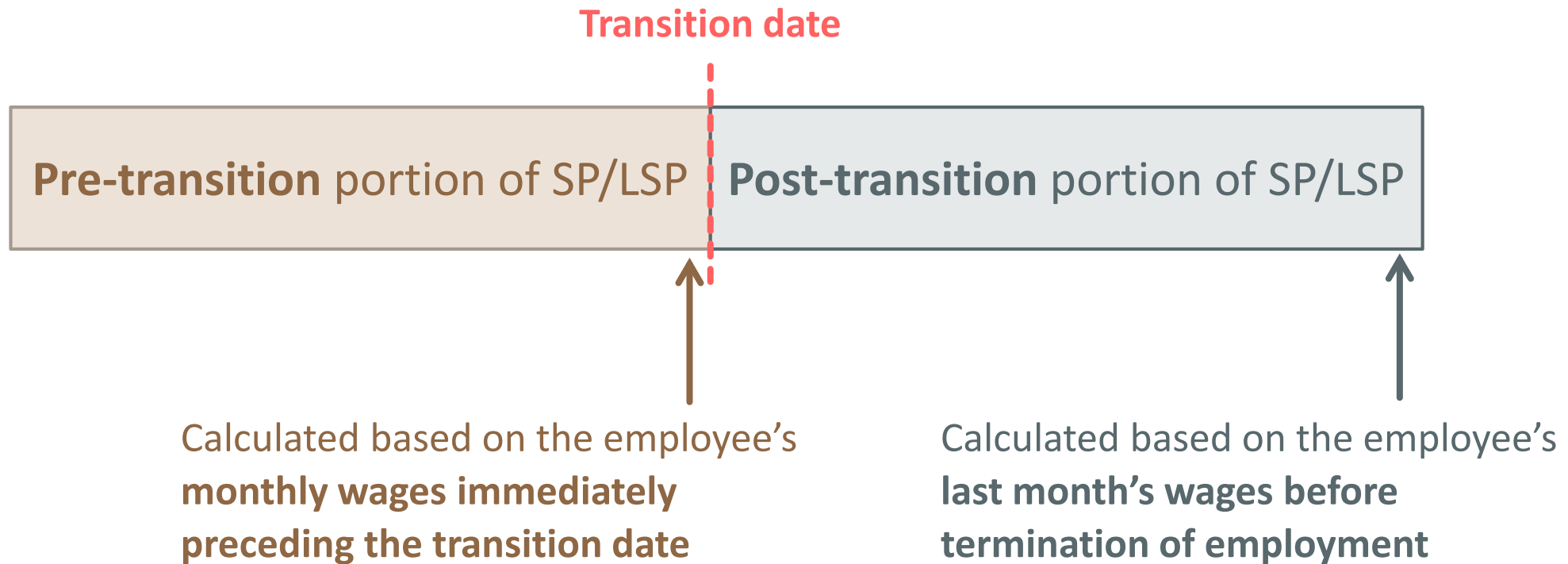
The pre-transition portion of SP/LSP would be calculated on the basis of the monthly wages immediately preceding the transition date

THE OFFSETTING ARRANGEMENT FOR EMPLOYEE WHOSE EMPLOYMENT COMMENCES BEFORE THE TRANSITION DATE



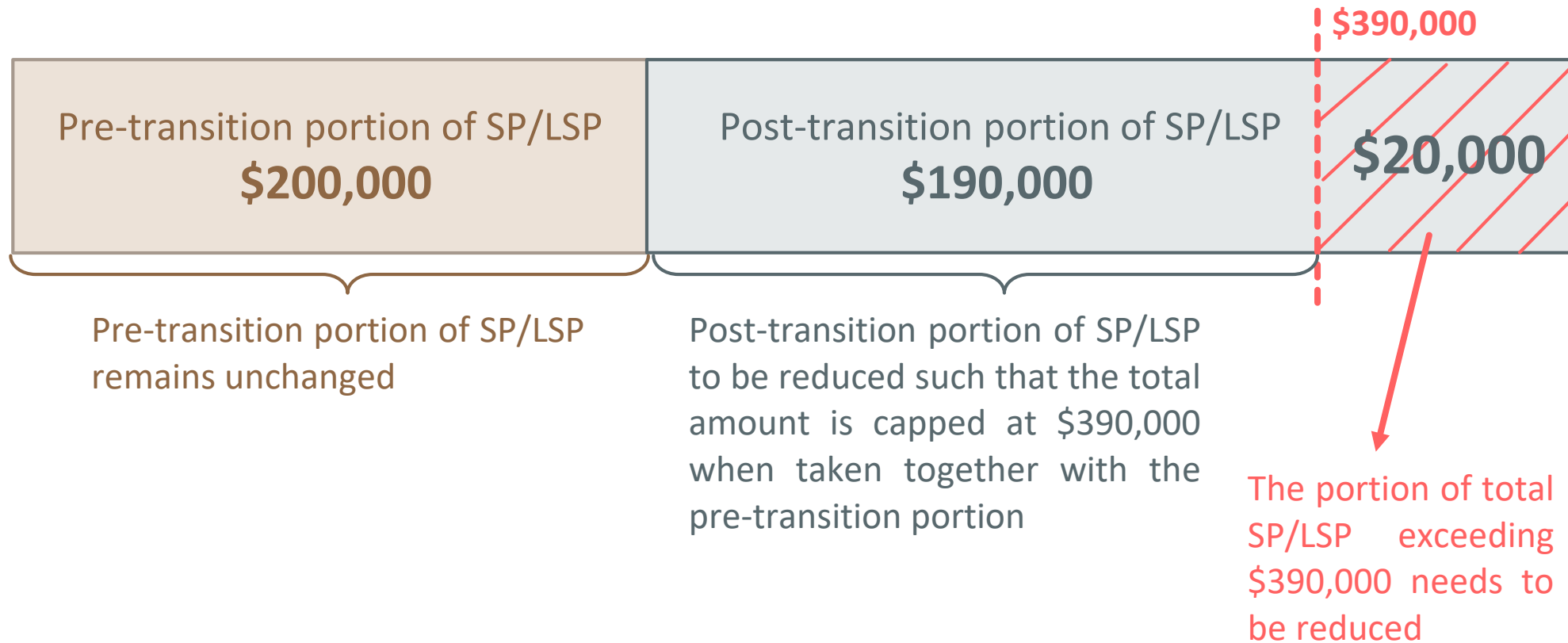
- ERMC (whole employment period) can only be used to offset pre-transition portion of SP/LSP
- ERVC and gratuities (whole employment period) can be used to offset pre- and/or post-transition portions of SP/LSP

CALCULATION OF SP/LSP FOR EMPLOYEE WHOSE EMPLOYMENT COMMENCES BEFORE THE TRANSITION DATE



IF THE AGGREGATE SUM OF THE PRE- AND POST-TRANSITION PORTIONS OF SP/LSP EXCEEDS THE MAXIMUM PAYMENT OF \$390,000

Assume: Pre-transition portion of SP/LSP \$200,000, and post-transition portion of SP/LSP \$210,000



CALCULATION OF SP/LSP FOR EMPLOYEES WHOSE EMPLOYMENT COMMENCES BEFORE THE TRANSITION DATE : ILLUSTRATIVE EXAMPLE


Pre-transition portion of SP/LSP -

Monthly wages immediately preceding transition date
\$15,000

$$\times \frac{2}{3} \times$$

Years of service before transition date
4 years

=



Pre-transition portion of SP/LSP
\$40,000

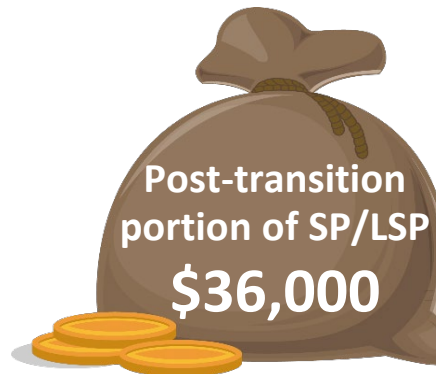
Post-transition portion of SP/LSP -

Last month's wages before termination of employment
\$18,000

$$\times \frac{2}{3} \times$$

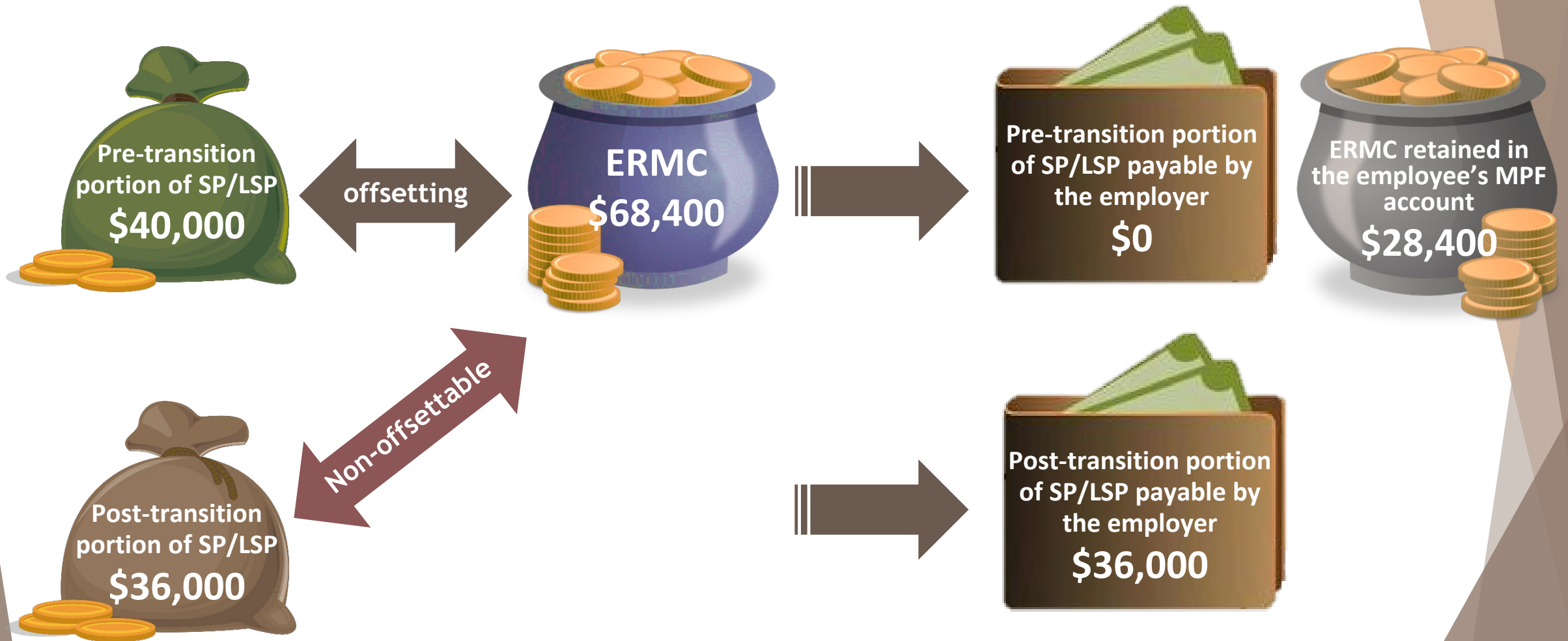
Years of service after transition date
3 years

=



Post-transition portion of SP/LSP
\$36,000

OFFSETTING ARRANGEMENT FOR EMPLOYEES WHOSE EMPLOYMENT COMMENCES BEFORE THE TRANSITION DATE : ILLUSTRATIVE EXAMPLE (CONT'D)



OFFSETTING ARRANGEMENT FOR EMPLOYEES WHOSE EMPLOYMENT COMMENCES BEFORE THE TRANSITION DATE : ILLUSTRATIVE EXAMPLE (CONT'D)

Aggregate benefits of the employee



EMPLOYERS DISMISS EMPLOYEES BEFORE THE ABOLITION OF OFFSETTING ARRANGEMENT WILL NOT SAVE SP/LSP EXPENSES

1

Employers can continue to use the accrued benefits derived from their MPF contributions (whole employment period) to offset the pre-transition portion of SP/LSP.

3

If an employee's total SP/LSP exceeds \$390,000 cap, the amount in excess of the cap will be deducted from the post-transition portion i.e. to be deducted from the "non-offsettable" portion of SP/LSP.

2

The pre-transition portion SP/LSP will be calculated on the basis of the monthly wages immediately preceding the transition date but not before the termination of employment, irrespective of the employee's length of employment after the transition date, such that the amount of pre-transition SP/LSP payable by the employer will be the same as that before the abolition of offsetting arrangement.

EMPLOYERS DISMISSING EMPLOYEES BEFORE THE ABOLITION AND EMPLOYING NEW EMPLOYEES WILL INCUR HIGHER SP/LSP EXPENSES

Example 1

	Employer continues to employ Employee A after the transition date		Employer dismisses Employee A before the transition date, and employs a new Employee B	
	Pre-transition portion	Post-transition portion	Employee A	Employee B
SP/LSP	\$60,000 ¹	\$75,000 ²	\$60,000 ³	\$75,000 ⁴
ERMC that can be used to offset SP/LSP	\$121,500 ⁵	— ⁶	\$54,000 ⁷	— ⁶
Balance of SP/LSP payable by the employer	— ⁸	\$75,000	\$6,000 ⁹	\$75,000
SP/LSP payable by the employer	\$75,000		\$81,000	

- The amount is calculated by Employee A's last monthly wages before the transition date (\$18,000) x 2/3 x 5 years of service.
- The amount is calculated by Employee A's last monthly wages at the time of dismissal (\$22,500) x 2/3 x 5 years of service.
- Calculated by Employee A's last monthly wages at the time of dismissal (\$18,000) x 2/3 x 5 years of service.
- Calculated by Employee B's last monthly wages at the time of dismissal (\$22,500) x 2/3 x 5 years of service.
- The amount is calculated by Employee A's monthly wages of (\$18,000) x 5% x 12 months x 5 years plus (\$22,500) x 5% x 12 months x 5 years assuming no investment return and relevant salary adjustment takes effect on the transition date.
- SP/LSP arising from the post-transition employment period cannot be offset by ERMC.
- The amount is calculated by Employee A's monthly wages of (\$18,000) x 5% x 12 months x 5 years assuming no salary change and investment return.
- Since ERMC (\$121,500) can fully offset the pre-transition portion of SP/LSP (\$60,000), the employer is not required to pay that portion.
- Since ERMC (\$54,000) cannot fully offset the SP/LSP of Employee A (\$60,000), the employer is required to make a top-up payment of \$6,000.

EMPLOYERS DISMISSING EMPLOYEES BEFORE THE ABOLITION AND EMPLOYING NEW EMPLOYEES WILL INCUR HIGHER SP/LSP EXPENSES (CONT'D)

Example 2

	Employer continues to employ Employee A after the transition date		Employer dismisses Employee A before the transition date, and employs a new Employee B	
	Pre-transition portion	Post-transition portion	Employee A	Employee B
SP/LSP	\$390,000 ¹	— ²	\$390,000 ³	\$75,000 ⁴
ERMC that can be used to offset SP/LSP	\$420,000 ⁵	— ⁷	\$350,000 ⁶	— ⁷
Balance of SP/LSP payable by the employer	— ⁸	—	\$40,000 ⁹	\$75,000
SP/LSP payable by the employer	\$0		\$115,000	

- The amount is calculated by Employee A's last monthly wages before the transition date (\$22,500) x 2/3 x 26 years of service.
- Since the pre-transition portion of Employee's SP/LSP has already reached the maximum payment of \$390,000, he/she will not receive additional SP/LSP notwithstanding the extension of his/her employment beyond the transition date.
- Calculated by Employee A's last monthly wages at the time of dismissal (\$22,500) x 2/3 x 26 years of service and has reached the maximum payment of \$390,000.
- Calculated by Employee B's last monthly wages at the time of dismissal (\$22,500) x 2/3 x 5 years of service.
- The amount is calculated by Employee A's monthly wages of (\$22,500) x 5% x 12 months x 31 years (i.e. \$418,500 and rounding up to \$420,000) assuming no investment return and relevant salary adjustment takes effect on the transition date.
- The amount is calculated by Employee A's monthly wages of (\$22,500) x 5% x 12 months x 26 years (i.e. \$351,000 and rounding down to \$350,000) assuming no salary change and investment return.
- SP/LSP arising from the post-transition employment period cannot be offset by ERMC.
- Since ERMC (\$420,000) can fully offset the pre-transition portion of SP/LSP (\$390,000), the employer is not required to pay that portion.
- Since ERMC (\$350,000) cannot fully offset the SP/LSP of Employee A (\$390,000), the employer is required to make a top-up payment of \$40,000.

AGGREGATE BENEFITS OF EMPLOYEES

- ▶ Under the following special circumstances, the aggregate benefits received by an employee whose employment commences before the transition date may be smaller than that under the current offsetting regime –
 - a) if there is substantial pay rise after the transition date, the difference between the wage level for calculating pre-transition portion of SP/LSP (wages before the transition date) and that under existing calculation will be great;
 - b) long pre-transition employment period, thus magnifying the impact on item (a);
 - c) short post-transition employment period, and thus the benefits that the employee gains from the abolition are relatively small.
- ▶ The Government has undertaken to make up for the shortfall for affected employees should any such cases arise to ensure that employees' benefits will not be less due to the policy change.

I am member of an occupational retirement scheme. Is the offsetting arrangement applicable to me?



THE ADAPTED ABOLITION ARRANGEMENTS

- ▶ The adapted abolition arrangements will be applicable to employees who are members of the following occupational retirement schemes (ORS) –

1

ORS under the Occupational Retirement Schemes Ordinance



2

The school provident funds under the Grant/Subsidized Schools Provident Fund Rules



3

Overseas ORS of employees from outside Hong Kong who are exempted from the MPF System



THE ADAPTED ABOLITION ARRANGEMENTS (CONT'D)

- ▶ Since the benefits under the above schemes are not differentiated into mandatory and voluntary portions, a portion of “non-offsettable” benefits will be carved out from the ORS benefits (akin to ERM).C).

Calculation of “non-offsettable” benefits

$$\text{Final average monthly relevant income} \times \text{Years of service with ORS benefits} \times 5\% \times 12$$

THE ADAPTED ABOLITION ARRANGEMENTS (CONT'D)

“Non-offsettable” benefits – akin to **ERMC** and can only be used to offset the pre-transition portion of SP/LSP

Remaining benefits after carving out the “non-offsettable” benefits – **akin to ERVC** and can offset the pre- and/or post-transition portions of SP/LSP

THE ADAPTED ABOLITION ARRANGEMENTS (CONT'D)

Formula for calculating “Non-offsettable” benefits

Final average monthly
relevant income
\$18,000

×

Years of service with
ORS benefits
7 years

×

5%

×

12 =

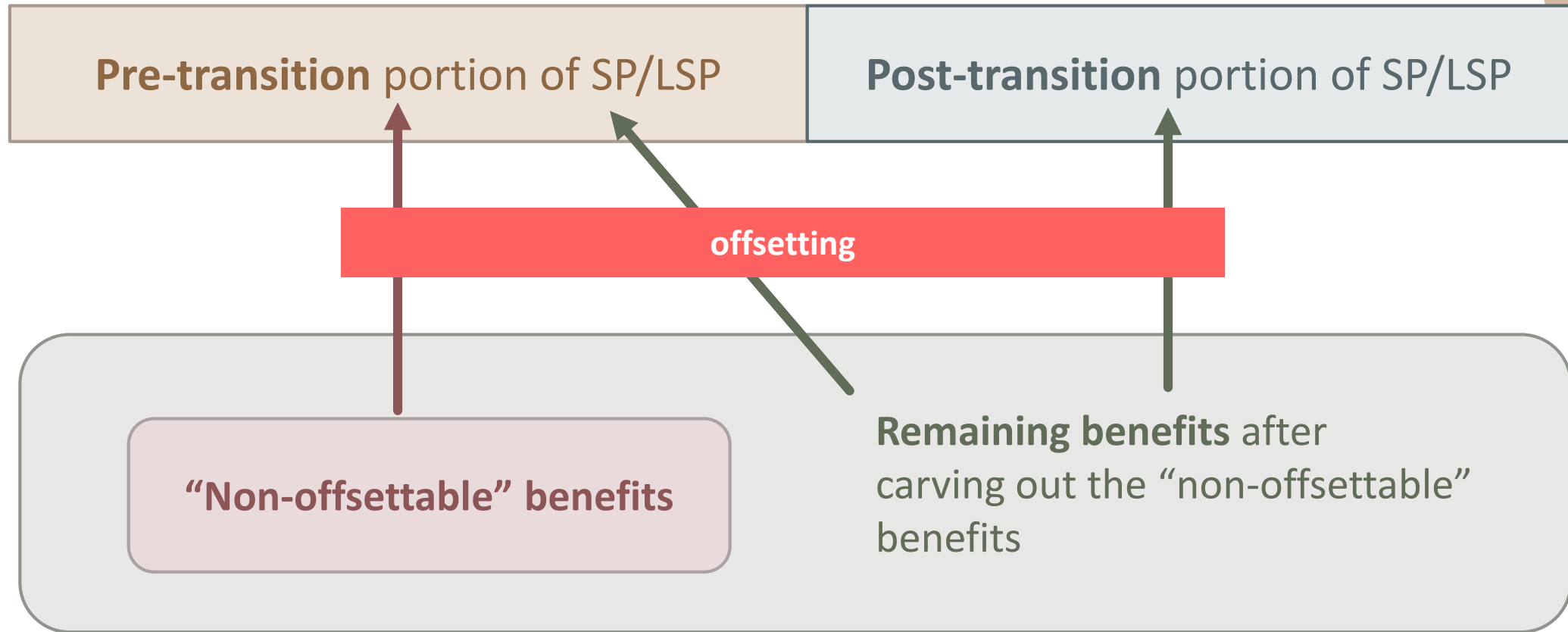
“Non-offsettable”
benefits
\$75,600

Remaining benefits

$$\$109,440^* - \$75,600 = \mathbf{\$33,840}$$

* Assuming the vested ORS benefits derived from the employer's contributions is \$109,440.

THE ADAPTED ABOLITION ARRANGEMENTS (CONT'D)



- "Non-offsettable" benefits** can only be used to offset pre-transition portion of SP/LSP
- Remaining benefits** can be used to offset pre- and/or post-transition portion of SP/LSP



The above arrangements are not applicable to employees who are currently not covered by the MPF System or other statutory retirement schemes. Their SP/LSP will continue to be calculated on the basis of the last monthly wages before termination of employment.

SUPPORTING MEASURES



Government Subsidy Scheme:
The Government announced in October 2021 the refined Government subsidy scheme to provide targeted assistance to employers (especially micro, small and medium-sized enterprises) to adapt to the policy change



Designated Savings Accounts Scheme :
To consult stakeholders in due course

THANK YOU