

ALLEN & OVERY

VARIOUS CHANGES TO THE LAW ON OCCUPATIONAL PENSIONS

What do employers need to know?

Yesterday an act has entered into force which makes various changes to the legal framework of occupational pensions for employees, self-employed individuals and self-employed company leaders.

You will need to assess whether your existing pension arrangements are in line with the new rules and, if necessary, amend them. Pension funds and insurers will also need to comply with additional obligations and formalities.

The key changes in respect of occupational pension arrangements for employees and self-employed company leaders relate to the following areas:

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We briefly summarise the key changes below.

- **Self-employed company leaders** – Before the act, there was hardly any legal framework in place covering the occupational pension arrangements of self-employed company leaders. The new act introduces a minimum legal framework for these arrangements.

The new rules relate to, among other things, the following:

 - protection of entitlements via the introduction of acquired rights;
 - formal requirements of the pension plan or individual pension agreement;
 - obligation to inform the company leader;
 - possibility of obtaining early pay-outs or advance payments and of pledging the pension entitlements.
- **Obligation to inform affiliates** – A major focus of the new act is on being transparent with affiliates about their pension entitlements. In this respect, the new act contains the following measures:
 - Firstly, the content of the annual *pension statement* is amended slightly in view of the information that will be made available to the employee in the Sigedis DB2P database.
 - Secondly, the pension statement must only be provided to active affiliates (ie not to employees who have exited from the occupational pension arrangement or former affiliates who are receiving annuity benefit payments).
 - Thirdly, it is now possible to provide the pension statement in electronic format if certain conditions are met.
 - Fourthly, the pension institution may delegate its responsibility to provide the pension statement to Sigedis, provided that the pension institution and Sigedis enter into an agreement in this respect.
 - Finally, the new act contains several implementation measures in respect of the *Sigedis DB2P database*. For example, the content of the database is now determined by the act. Individuals will be able to verify specific information on all of their occupational pension entitlements (accrued under the regime of the employees, self-employed or civil servants).
- The pension institution is responsible for providing the required data to the Sigedis DB2P database. If no pension institution is involved (ie in respect of non-externalised occupational pension arrangements), the employer must provide the required data.
- **Exit from plan** – The situations in which an affiliated employee is considered to have exited from the occupational pension arrangement are amended. This is important from an employer's perspective as an exit triggers certain obligations and liabilities on the part of the employer (eg obligation to provide additional funding to fill any gaps between the employee's acquired rights and the minimum guaranteed return).
 - The new act allows the employer to set up a *multi-organisier plan* so that if an affiliated employee is transferred from one 'organisier' to another, this does not result in an exit from the plan. This can be useful for intra-group employee transfers.
 - Also, if the *employee's status or employment situation changes* (eg as a result of a promotion) so that he/she no longer meets all the requirements for affiliation to the pension plan, this is now recognised as an exit triggering event.

However, the consequences of an exit are suspended until the termination of the employee's employment for a reason other than death or retirement. By way of exception, the employee must have the possibility of transferring his/her reserves to the welcome structure if the employee loses death cover (if any) as a result of the exit and if the pension plan allows the employee the option of transferring the acquired reserves to a welcome structure on exit.
- Finally, it is now clarified that in order to ensure that there is no exit from the pension plan on a *transfer of undertaking* (or a transfer of a part of an undertaking), the transferee must take over the transferor's pension plan both in respect of future as well as past service.

Another important change is that in all cases where there has been an exit, the timing of the *additional funding* is amended. The organiser is required to provide additional funding only in one of the following circumstances:

- the employee retires;
- the pension arrangement is abolished; or
- the employee transfers his/her reserves following his/her exit.

– **Retirement age under plan** – The plan rules or individual pension agreement must now clearly set out what the retirement age is (ie date as from which the occupational retirement benefits are payable).

– **Continued employment after the retirement age determined in the plan** – An employee must continue to benefit from the occupational pension arrangement for as long as he/she is employed by the employer who set up the arrangement.

This means that employees who continue to work for the employer after they have reached the retirement age determined in the plan rules or in the individual pension agreement must also remain affiliated to the occupational pension arrangement and benefit from the cover under the arrangement. Apart from some technical amendments in this respect to the text of the Occupational Pensions Act, the preparatory works contain some additional statements on how to apply this rule in practice.

– **Purchase of real estate in the EEA** – In certain circumstances employees are permitted to receive an advance payment of their occupational retirement benefit or to pledge their entitlements under the occupational pension arrangement with a view to purchase, build or renovate real estate.

Until now this real estate had to be located within the European Union. Under the new rules the real estate must be located within the European Economic Area (EEA), ie in one of the EU countries or Iceland, Liechtenstein or Norway.

– **Granting of an occupational pension at the end of a career** – Employers are not allowed to grant an individual occupational pension to an employee in the last 36 months of that employee's career.

The text of the Occupational Pensions Act has been amended to clarify that the relevant (end) date of this 36-month period is (depending on the case at hand):

- the employee's retirement;
- the start date of the employee's early retirement (under the 'SWT/RCC' regime); or
- the start date of the employee's pseudo early retirement (ie the period during which the employee receives so-called Canada Dry allowances).

– **Sigedis reporting versus FSMA reporting** –

Pension funds and insurers are obliged to provide certain information to the FSMA on the pension arrangements that they are managing. As stated above, they also have extensive reporting obligations in connection with the Sigedis DB2P database. The new rules state that if a pension fund or insurer has already provided information to the Sigedis DB2P database, no additional reporting of that data need be made to the FSMA.

– **Prescription period of five years** – The current complex set of rules on the prescription of claims related to occupational pension arrangements is replaced by a uniform regime with a prescription period of five years.

This applies to all claims (whether based in contract or tort) made by employees, self-employed company leaders, affiliates or beneficiaries against the organiser (ie the employer or the sector entity) and/or the pension institution (ie the insurer or the pension fund).

In short, the five-year period starts running from the moment the individual concerned has sufficient information to bring a claim or can reasonably be expected to have sufficient information to bring a claim.

- **Labour courts** – As from 1 September 2014, all claims relating to occupational pensions must be handled by the labour tribunals and courts.

This applies to all claims made by employees, self-employed company leaders, affiliates or beneficiaries against the organiser (ie the employer or the sector entity) and/or the pension institution (ie the insurer or the pension fund).

- **Effective date of new rules** – Any formal amendments to existing occupational pension arrangements required as a result of the new act must be finalised by 1 July 2017, at the latest.

However, this does not mean that the new rules are only effective as from that date. Indeed, most of the new rules are effective (and must be complied with) as from 29 June 2014 (even though the plan rules or individual pension agreement may still need to be amended). For some rules, another effective date applies. For example, the extended information obligations only apply as from 1 January 2016.

- **Harmonisation of occupational pension arrangements for blue-collar and white-collar employees** – Please see our eAlert of 9 May 2014.

We will provide you with a more detailed explanation of some of these changes shortly.

Meanwhile, we are happy to answer any questions that you may have on these changes and to assist you in reviewing your company's occupational pension arrangements.



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