



The purpose of this issue of the PECOMA Pension News is to provide a concise summary of the changes in the shape and regulation of the market for occupational retirement provision (as company pensions are now called – see item 1).

## **Institutions for occupational retirement provision**

1. EU directive 2003/41 on "Institutions for occupational retirement provision" (IORP – they used to be known as pension funds) was implemented in Luxembourg separately for pension funds regulated by the "Commissariat aux Assurances" (CAA) by way of an amendment dated 23 May 2005 of the Grand-Ducal Regulation of 31 August 2000 and for pension funds regulated by the "Commission de Surveillance du Secteur Financier" (CSSF) by way of a new law of 13 July 2005 on IORP in the form of assep or sepcav, which replaces the previous law of 8 June 1999 on pension funds. Luxembourg was thus one of the few countries implementing this legislation before the deadline of 23 September 2005.
2. The objective of this legislation is to enable pension funds to provide their services on a cross-border basis. This European passport is intended to encourage competition and to develop an internal market in the pension field. The legislation provides a framework for the activities of pension funds, but it does not harmonise labour law and taxation affecting occupational pensions. For this reason we expect its impact to be modest, and in view of the criticism of the recently proposed directive the prospect of true pension portability remains a distant one.
3. The impact of the new regulation on existing pension funds was limited, firstly because there are still relatively few pension funds active in Luxembourg (CAA pension funds: 4, CSSF pension funds: 15) and secondly, because the existing regulation required very little change in substance. Principal changes for the regulation of CSSF pension funds are
  - a. the revision of investment restrictions and provisioning requirements to provide to Luxembourg pension funds the different options offered by the directive.
  - b. the separation of the constitution of the fund from the pension rules and the possibility to appoint more than one custodian, thus making the creation and management of multi-compartment pension funds easier.
  - c. the reinforcement of regulatory oversight by the introduction of a formal requirement for the central administration of the fund to be in Luxembourg and the obligation for the liability manager to report directly to the CSSF.
4. Point 3.a. applies to CAA pension funds as well, points 3.b. and 3.c. are only relevant indirectly, due to the different regulatory regime for these funds.

## **Full funding of the insolvency guarantee scheme (PSVaG)**

5. The PSVaG has issued its annual circular, which indicates a slightly reduced contribution rate of +/- 3,5‰ for 2006 and which provides details of the proposed move to full funding of vested rights upon insolvency. Legislation is expected before the end of the year and the one-off cost of full funding is estimated at 9‰ on the 2005 contribution basis. Employers will have the choice of either paying this amount in 15 equal annual instalments from 31 March 2007 or to pay a discounted lump-sum on that date.

## **Application of dependency contribution**

6. The law of 23 December 2005 in respect of the dependency contribution sets out the basis for the charge to dependency contribution in the context of occupational pension schemes. All benefits from occupational pension schemes (including those from personal contributions) falling due from 1 January 2006 are subject to the dependency contribution (currently 1%, which is non-deductible for tax purposes), provided the recipient is subject to the dependency contribution by virtue of their residence and/or occupation. This applies both to capital payments falling due from 2006 (upon retirement or termination of employment on or after 1 January 2006) and to pension payments falling due from 2006 (regardless as to whether the pension started before or after 1 January 2006).
7. The dependency contribution is not due on benefits falling due before 2006 (including capital payments in 2006 in respect of retirement or termination of employment before 2006) and is not due on contributions made to pension plans. Any contributions already paid will be refunded and any provisions made for dependency contributions on premiums or pensions provisions can be reversed.
8. In principle, the pension scheme is required to deduct the dependency contribution from benefits and pay it over to the social security authority. However, the procedures for the declaration, verification and collection of the dependency contribution have not been agreed and we recommend that all pension schemes deduct and retain the dependency contribution on all benefit payments falling due from January 2006. New forms for the declaration of beneficiaries have been issued by the IGSS in this context. Pensioners may need to be informed separately about this change in procedure.



### Circulars from the IGSS

9. Circular 2005/02 confirms the position of the IGSS that employers are required to make pension contributions for employees on maternity or parental leave, based on the last known salary before the commencement of leave. It had been argued that the requirement for ongoing contributions should be limited to periods, for which the employer pays a salary, but the position of the Luxembourg authorities is clearly different. This clarification may raise the need to amend pension plan rules accordingly, where these rules still state the contrary or are indeed silent on this matter.
10. Circular 2005/03 (as amended by circular 2006/01) clarifies and modifies a number of technical issues of relevance to the operation and administration of pension schemes.
11. Non-standard working patterns
  - a. For part-time workers the salary to be taken into account for pension contributions is the salary of the equivalent full-time worker, which is then pro-rated to the actual time worked. This ensures that the correct contribution or benefit rates are applied in each case.
  - b. Temporary workers provided by agencies or other companies should be affiliated to the pension scheme of their employer, not the company where they are working.
  - c. Employees with split salaries need only be members of one pension plan, and their total salary can be taken into account for the definition of contributions or benefits in that plan, provided an employment contract exists with each employer concerned and on the assumption that the other company does not provide a pension plan. This applies also to the recognition of disability pensions or similar payments in the determination of pensionable salary.
12. The IGSS has now accepted that occupational plans can be limited to the provision of death and/or disability benefits only, rather than these being of an accessory nature to retirement plans.
13. The recognition of prior service periods has clarified. Such recognition has always been possible, where it applies to service periods prior to the introduction of a pension scheme or where a new employee transfers vested rights from a previous employment. It is now also possible to recognise prior service periods on an individual level, provided such recognition is agreed in the contract of employment.
14. The scope of the de-minimis limit for the encashment of vested rights has been clarified. It takes into account the pension rights from employers and personal contributions and is calculated after aggregation of all pension entitlements from the last employer and the deferred pension rights with previous employers in Luxembourg. For this reason all applications for encashment must be approved in advance by the IGSS (see point 17. below).
15. The treatment of non-vested rights in the case of transfers and mergers of businesses has been clarified. At the time of such a transaction all vested and non-vested rights are transferred to the new employer, but the entitlement of the employee only vested upon completion of the vesting period, taking service periods at the previous and the new employer together.
16. The IGSS has reminded employers to include all premiums and contributions to pension plans in the respective tax declarations, which must also contain the correct scheme references for each element of the pension plan. In this context it should be noted that scheme references are made up of the tax reference of the employer plus a suffix for each pension plan and each benefit category (retirement, death, disability, personal contribution) of the pension plan.
17. As mentioned above, the IGSS again requires most applications for encashment or transfer involving taxation of pension benefits to be approved prior to payment and that no advances be paid to beneficiaries. This reinstates a previous procedure and we expect further clarification of the procedure in the 4<sup>th</sup> quarter of 2006.
18. Book reserve schemes reinsured with the PSVaG must use the new "Heubeck-Richttafeln 2005" from the financial year 2005 onwards. In addition, the PSVaG will not accept certificates not signed by the liability manager.
19. Circular 2005/04 mainly covers the data to be provided to the IGSS by each pension scheme in the future. However, it does clarify that the upper limit of 20% of salary for deductibility of pension contributions does not apply to premiums paid for death and disability benefits. This is very important at the administrative level and makes the financial management of pensions schemes with third-party risk insurers a little easier.

---

*PECOMA International S.A. is an employee benefits and actuarial consultancy advising its customers in the areas of risk benefits and retirement planning. We also assist our customers in finding the appropriate funding vehicle for their benefits and retirement plans. We deal with all aspects in this area, be it financial or actuarial, tax, accounting or labour law issues.*

*For further information, please do not hesitate to get in touch with us.*

*Customer contact:  
Gerd Gebhard, Director  
Tel 2626091 / Fax 26262100 / [info@pecoma.lu](mailto:info@pecoma.lu)*