EVERSHEDS SUTHERLAND

A global view
Global Pensions Agenda

Hong Kong

More stringent requirements for occupational plans

The Occupational Retirement Schemes Ordinance ("ORSO") provides for a registration system for occupational retirement schemes voluntarily set up by employers under the ORSO to ensure that these schemes are properly regulated. Amendments have now been introduced as a response to suspected abuses where investment products were offered via ORSO schemes to non-employees for general investment purposes. This was used to circumvent regulations for collective investment schemes in Hong Kong.

Action: Employers maintaining ORSO schemes should be aware of the new reporting requirements when they make their next annual statement. Employers should also review the membership of their ORSO schemes to ensure compliance with the new requirements.

Netherlands

More pre-retirement options from 2021

From 2021, there are two new ways for employers to make a limited pre-retirement possible.

- The limit for leave savings will be expanded from a maximum of 50 weeks to 100 weeks. Leave savings allow employees with fiscal privileges to save vacation and compensation leave. This leave can be taken at various times, which gives employees the option to increase their sustainable employability themselves. The leave can also be used for a reduction in working hours a number of years before retirement or to stop working earlier while retaining salary, so as a kind of pre-retirement opportunity.
- Employers are allowed to offer a kind of pre-retirement scheme up to a certain (rather low) level of benefits, to bridge the increase of the state old-age pensionable age. Employers must note that early retirement requires detailed customization. This so-called 'RVU' scheme has many possible forms (lump sum benefits, supplements to social security benefits, seniority schemes, etc.). It will have to be considered on a case-by-case basis whether there are possible compliance risks in a retirement situation, whether or not in combination with the threshold exemption. Please note that a non-compliant scheme will be penalised with a tax of 52% on top of the regular taxes.

Action: Consider on a case-by-case basis whether there are possible compliance risks in a pre-retirement situation, whether or not in combination with the threshold exemption. And for an update on other developments in the Netherlands, please see our **briefing on the Pension Agreement**.

Germany

New insolvency protection for pension benefits

In the past, staff pension funds ("Pensionskassen") have promised high interest rates. Many have encountered financial difficulties due to persistently low interest rates and have had to reduce pensions with the approval of the Federal Financial Supervisory Authority. The employer is obliged to make up the difference but, if it became insolvent, pensioners have until now been powerless against these reductions. Under a new law now in force, pension benefits will be protected against insolvency by the German pension protection fund ("PSVaG"). As of January 2022, in the event of a company insolvency, pensioners will receive the full pension previously promised by the PSVaG. Cases before 2022 will be covered in more limited circumstances.

Action: Employers will need to consider to what extent they continue to offer occupational pensions, due to the additional costs. The first contribution to the PSVaG is due on 31 December 2021. Employers who are not yet members of the PSVaG must notify their insolvency protection obligation by 31 March 2021.

USA

Growth in claims against sponsors

A new round of lawsuits has in recent months been hitting the sponsors of very large US 401(k) plans, including several multinational corporations. These ERISA-based suits claim that the sponsors failed to properly monitor and negotiate recordkeeping fees, and failed to engage in periodic requests for proposals, resulting in fees that were allegedly above market for large plans.

Action: Sponsors should review their circumstances with counsel and consider whether there are actions that can be taken now to manage this ongoing risk.

Ireland

Implementation of Second EU Shareholder Rights Directive ("SRD II")

The EU (Shareholders' Rights) Regulations 2020 transpose SRD II into Irish law. They aim to increase transparency and shareholder engagement. The Regulations introduce new disclosure requirements for Irish institutional investors, including pension plans, depending on whether they are "relevant institutional investors". Trustees need to consider whether they fall within this definition and what their legal obligations are under the Regulations.

Action: Trustees should assess which of their investments are caught by the Regulations, implement a compliance strategy and integrate SRD II into their investment selection process.

France

End of PERCO and Article 83 DC plans

The last step in the reform of French defined contribution ("DC") pensions plans was taken on 1 October 2020. "PERCO" and "Article 83" DC plans can now no longer be distributed by supplementary pension providers. They are replaced by plans called "PER Collectif" and "PER Obligatoire". PERCO and Article 83 type DC plans can still continue but most providers are encouraging their clients to update their pensions plans from the beginning of 2021.

Action: If not yet updated, companies should switch from PERCO and Article 83 plans to PER Collectif and PER Obligatoire. Liaise with the provider and then start providing information to employees.

UK

Latest on GMP equalisation

We have known since 2018 that pension plans must equalise for the effect of historic guaranteed minimum pensions ("GMPs"). The latest and final judgment in the long running Lloyds Bank GMP equalisation saga looked at what this means for transfers trustees have made since 17 May 1990. The judge concluded that individual transfers should have been calculated on an equalised basis. Where they were not, the transferring plan retains a liability to those members.

Action: Trustees should consider the implications of this judgment carefully and include historic transfers out as part of their GMP equalisation project. For more information, see our **speedbrief**.

Poland

Employee Capital Plan deadlines

Due to the COVID-19 pandemic, the roll out of Employee Capital Plans (a new type of automatic enrolment occupational pension plan) was delayed last year for employers with between 50 and 249 employees. The deadline for employers with at least 20 employees to implement the plan has now passed and no further delays are envisaged for employers with smaller headcounts. Employers with fewer than 20 employees are covered by the obligation to introduce the plan as from 1 January 2021.

Action: Note that the deadlines for concluding required agreements with selected financial institutions fall on 23 April 2021 (for Employee Capital Plan management agreement) and 10 May 2021 (for Employee Capital Plan maintenance agreement).

Ireland

Negative revaluation for 2020?

The Irish Consumer Price Index is showing an overall decrease for 2020. As such, there is a strong possibility that the government will declare a negative revaluation percentage for 2020 in spring 2021. This could mean that a negative revaluation percentage is declared in respect of preserved benefits in defined benefit plans.

Action: Consider whether defined benefit plan rules allow for the passing through of negative revaluation – this will depend on the specific circumstances and terms of the plan. Consider whether amendments are necessary to prepare for the return of deflation in 2021.

This Global Pensions Agenda is a very broad overview. You should not rely on this summary when making decisions - always check up to date details in each country.

*If you would like to know more, our International Pensions Promises course will provide a broad understanding of key issues affecting retirement benefits across a range of jurisdictions, combining plenary and stream sessions in an interactive environment. For further information and to book your place, click **here**.*

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