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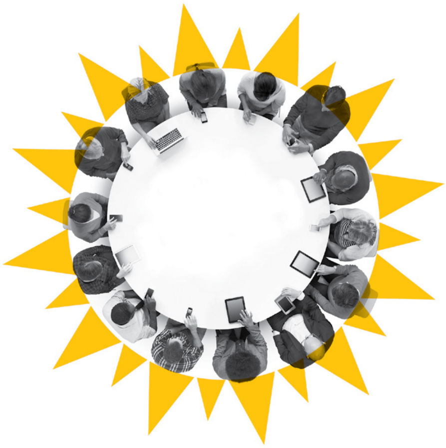

Shedding light on the issues
Global pensions agenda

May 2019

1 Poland - new employee capital plans

The act on employee capital plans, introducing a new type of "third pillar" pension savings plan, entered into force on 1 January 2019. The new provisions will apply to the biggest employers (those with at least 250 employees) from 1 July 2019 and will gradually cover all employers by 2021. The minimum contributions will need to be paid by both employers and employees - 1.5% of salary by the employer and 2% by the employee. Additional contributions will also be possible, up to a limit of 4% for employee and employer, amounting to 8% in total.

Action — The biggest employers (those with at least 250 employees) should initiate implementation of the employee capital plan as soon as possible. Other employers should factor in the associated additional costs and take note of the implementation deadlines applicable to them.

2 USA - litigation against fiduciaries

Plaintiffs' lawyers have filed claims against the fiduciaries of several large defined benefit pension plans, claiming that the actuarial assumptions used to convert between optional forms of benefit were not reasonable.

Action — Although this litigation is in the very early stages, plan sponsors may want to review the reasonableness of the actuarial assumptions in their plans to determine whether they could have any exposure. If a sponsor chooses to do so, it should consider involving legal counsel early in the process to attempt to maintain attorney-client privilege with respect to any actuarial analysis.

3 Norway - loss of early retirement pension on transfer of undertaking

A recent Supreme Court ruling concludes that the loss of a potential early retirement pension may give the employee the right to maintain employment with the transferor. Under Norwegian law, an employee may exercise a right to maintain employment with the transferor only if the transfer has significant negative effects for the employment. The employee in question had the necessary length of service and less than two years left until she could initiate the early retirement pension with the transferor. It was therefore likely that she would lose a pension worth approximately EUR 135,000 as a consequence of the transfer. The loss was regarded as enough to activate the right to maintain the employment with the transferor.

Action — Consider the potential implications of this judgment when planning a transfer of employment from one employer to another.

4 Netherlands - tax penalty (*RVU*) for early retirement

If an employer offers a termination package close to retirement which could be understood as an early retirement facility, the employer risks a substantial tax penalty. At the end of December 2018, the Tax Authorities published a Q&A on how to deal with this. This Q&A provides guidelines on the situations in which these penalties are not applicable.

Action — Before offering a termination package, investigate whether the package triggers a tax penalty (*RVU*).

5 Spain - collective bargaining agreements

The Spanish Government has enacted a Royal-Decree Act enabling trade unions and business associations to include clauses in collective bargaining agreements (CBAs) forcing employees to retire provided certain conditions are met. In this regard, employees must be entitled to 100% of ordinary retirement benefits and the CBA must also set out an alternative employment plan, which must include, among other things, measures aimed at the improvement of employment quality or the conversion of fixed-term contracts into indefinite ones.

Action — Employers should review CBAs to check whether they contain any provision on forced retirement and, if so, whether those provisions set out any obligation to be complied with.

6 France - reform of DB plans

In April 2019, the French Government issued a first draft of the defined benefit (DB) plans reform law. Currently, most DB plans provide for employees to remain with the company until retirement if they are to benefit from the DB pension. This condition does not comply with the EU Portability Directive 2014/50. The new law (*ordonnance*) will prohibit such conditions and will provide for a cap on the amount of pensions of 30% of final salary. The reform is expected to be implemented before July.

Action — Affected companies must follow the legislative procedure and restructure their DB plans.

7 Germany - IORP II implementation

In December 2018, Germany implemented the EU IORP II Directive into national law, mainly by amending the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*). The changes concentrate on cross-border and particularly governance aspects (investment, compliance, and documentation) for pension funds (*Pensionsfonds*) and staff pension funds (*Pensionskassen*). Information obligations are now more detailed and further obligations can derive from a local regulation (*Verordnung*) but none have been implemented yet.

Action — Affected organisations should familiarise themselves with the new obligations and ensure compliance.

8 Netherlands - conditional pension

In the context of the abolition of early retirement plans (*VPL-aanspraken*), a transitional measure was introduced that allowed employers to grant additional pension entitlements for years of service prior to 2006. The financing of these entitlements could be postponed for a maximum of 15 years or must be paid at retirement. This postponement period will expire on short notice.

Action — The funding of these conditional pensions by the pension provider should be monitored.

9 Ireland - Brexit planning

Of the (remaining) EU states, Ireland is likely to feel the greatest effects of Brexit. This will extend to the Irish pensions sector, which is linked in many ways to the UK. In particular, many Irish pension schemes (i) employ administration providers with UK operations, (ii) will have assets invested in the UK / through UK investment managers, and (iii) have sponsors whose business will be impacted by Brexit. So Brexit will cause issues for Irish pension schemes on a number of fronts, from the direct (like data protection and investment implications), to the indirect (potential impact on employer covenant).

Action — Trustees, sponsors and service providers should be talking about, and planning for, life after Brexit.

10 Poland - liquidation of the Open Pension Funds

The Polish government has announced a plan to liquidate the "second pillar" Open Pension Funds in 2020 and transfer all their funds either to ZUS (Social Insurance Authority) or "third pillar" Individual Pension Accounts (IKE), depending on the decision of affected individuals. The funds transferred to IKEs will be charged with a 15% "transfer fee". A draft act concerning this change has not yet been published.

Action – It is unlikely that this will affect employers directly but the progress of this legislation should be reviewed.

11 UK - new powers for the Pensions Regulator

The UK Government intends to introduce a number of new powers for the Pensions Regulator including a power to impose civil sanctions of up to £1 million, criminal sanctions for "wilful or reckless" behaviour in relation to a pension plan, new notifiable events and changes to the existing "moral hazard" regime.

Action — Watch out for legislation implementing these changes and the final form any new powers will take. There is more detail on the proposals **here**.

12 Italy - "Quota 100", a new early retirement scheme

For 2019-2021, Law Decree no. 4/2019 introduced (on a trial basis) a retirement scheme for employees of 62 or older who have accrued at least 38 years of social security contributions. The expression "Quota 100" refers to the fact that the worker is entitled to retire when the sum of his or her age plus the years of contributions totals 100. Private employees who have satisfied the requirements on 31 December 2018 will be entitled to retire on 1 April 2019, whereas private employees who will meet the requirements from 1 January 2019, will be entitled to retire three months after meeting the conditions. Otherwise, for all public employees who have met the pension requirements by the date of entry into force of the Decree (29 January 2019), the first exit date is 1 August 2019.

Action — Inform employees of the changes.

For more detail on these or any other issues, speak to your usual Eversheds Sutherland adviser or contact:

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