

## **Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision**

**(Mém. A 2005, No. 104)**

as amended by:

- the law of 12 July 2013 on alternative investment fund managers and
  - transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;
  - amending:
    - the law of 17 December 2010 relating to undertakings for collective investment, as amended;
    - the law of 13 February 2007 relating to specialised investment funds, as amended;
    - the law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
    - the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAV) and pension savings associations (ASSEP), as amended;
    - the law of 13 July 2005 concerning the activities and supervision of the institutions for occupational retirement provision;
    - the law of 5 April 1993 on the financial sector, as amended;
    - the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
    - the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
    - the law of 10 August 1915 on commercial companies, as amended;
    - the law of 19 December 2002 on the Commercial and Companies Registry and the accounting practices and annual accounts of undertakings, as amended;
    - the Commercial Code;
    - the law of 4 December 1967 on income tax, as amended;
    - the law of 1 December 1936 on business tax, as amended;
    - the law on tax adaptation of 16 October 1934, as amended;
    - the law of 16 October 1934 on the assessment of properties and values, as amended;
    - the law of 12 February 1979 on value added tax, as amended

(Mém. A 2013, No. 119)

### **Chapter 1: *Definitions and scope***

#### **Article 1. Definitions**

For the purposes of this law, the following definitions shall apply:

1. "institution for occupational retirement provision" means: "an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:
  - individually or collectively between the employer(s) and employee(s) or their respective representatives, or
  - with self-employed persons, in compliance with the legislation of the home and host States, and which carries out activities directly arising therefrom";
2. "pension savings companies with variable capital" or "sepca" means: "an institution for occupational retirement provision
  - which has adopted the form of a société coopérative organisée sous forme d'une société anonyme (cooperative in the form of a public limited company) governed by Luxembourg law, and
  - the corporate purpose of which is the collection of assets and their investment in order to spread the investment risks and to optimise the results of the management of its assets by granting its members, in their capacity as shareholders, entitlement to a lump sum or a

temporary pension paid by reference to reaching, or the expectation of reaching, retirement, and

- whose shares are reserved to a circle of members defined by the articles of incorporation, and
- whose articles of incorporation provide that the share capital amount is equal, at any time, to the net asset value of the company.”;

3. “pension savings association” or “assep”: “an institution for occupational retirement provision

- which has adopted the form of a pension savings association, and
- the corporate purpose of which is the collection of assets and their investment in order to spread the investment risks and to optimise the results of the management of its assets by granting its members and beneficiaries entitlement to a lump sum or a temporary or lifelong pension paid by reference to reaching, or the expectation of reaching, retirement and, where appropriate, ancillary benefits, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death, and
- whose circle of members and beneficiaries is defined by the articles of incorporation, and
- whose articles of incorporation provide that it shall establish at all times, in respect of the total range of its pension schemes, an adequate amount of technical provisions corresponding to the financial commitments which arise out of its portfolio of existing pension contracts.”;

4. “pension fund subject to the supervision of the Commissariat aux Assurances” means: “an institution for occupational retirement provision within the meaning of Article 25(1) (hh) of the law of 6 December 1991 on the insurance sector, as amended”;

5. “pension scheme” means: “a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions”;

6. “sponsoring undertaking” means: “any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which pays contributions into an institution for occupational retirement provision”;

7. “retirement benefits” means: “benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death; these benefits may be in the form of payments for life, for a temporary period or as a lump sum”;

8. “members” means: “persons whose occupational activities entitle or will entitle them to retirement benefits in accordance with the provisions of a pension scheme”;

9. “beneficiaries” means: “persons receiving retirement benefits”;

10. “Directive 73/239/EEC” means: “First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended”;

11. “Directive 85/611/EEC” means: “Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended”;

12. “Directive 93/22/EEC” means: “Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field, as amended”;

13. “Directive 2000/12/EC” means: “Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking-up and pursuit of the business of credit institutions, as amended”;

14. “Directive 2002/83/EC” means: “Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance”;

15. “Directive 2003/41/EC” means: “Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision”;

*(Law of 12 July 2013)*

“15a. “Directive 2011/61/EU” means: “Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010”;

16. “Regulation (EEC) No 1408/71” means: “Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, as amended”;

17. “Regulation (EEC) No 574/72” means: “Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and to their families moving within the Community, as amended”;

18. “Member State” means: “a Member State of the European Union” means:

19. “home State” means: “the State in which the institution for occupational retirement provision has its registered office or its main administration or, if it does not have a registered office, its main administration”;

20. “host State” means: “the State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members”;

21. “competent authorities” means: “the national authorities designated to carry out the duties provided for in Directive 2003/41/EC”;

22. “home authorities” means: “the national authorities designated by the home State to carry out the duties provided for in Directive 2003/41/EC as home Member State of the institution for occupational retirement provision”;

23. “host authorities” means: “the national authorities designated by the host State to carry out the duties provided for in Directive 2003/41/EC as home Member State of the institution for occupational retirement provision”.

## **Article 2. Subject matter and scope**

1. This law lays down the rules relating to the taking-up and pursuit in Luxembourg of activities carried out by institutions for occupational retirement provision.

It shall apply to any institution for occupational retirement governed by Luxembourg law as well as any institution for occupational retirement provision governed by foreign law operating for sponsoring undertakings established in Luxembourg.

2. Institutions for occupational retirement provision shall limit their activities to retirement-benefit related operations and activities arising therefrom.

3. This law shall not apply to:

- a) institutions managing social-security schemes which are covered by Regulation (EEC) No 1408/71 and by Regulation (EEC) No 574/72;

*(Law of 12 July 2013)*

“b) institutions which fall within the scope of Directive 73/239/EEC, Directive 2009/65/EC, Directive 2004/39/EC, Directive 2006/48/EC, Directive 2002/83/EC and Directive 2011/61/EU;”

- c) institutions which operate on a pay-as-you-go basis;
- d) institutions where employees of the sponsoring undertakings have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for the payment of retirement benefits;
- e) undertakings using book-reserve schemes with a view to paying out retirement benefits to their employees.

## **Chapter 2: *Taking-up of business and conditions of operation for institutions for occupational retirement provision governed by Luxembourg law***

### **Article 3. Authorisation requirement**

No Luxembourg institution can carry out its activities of institution for occupational retirement provision without holding an authorisation.

The authorisation as institution for retirement can only be granted to institutions governed by Luxembourg law which have adopted the form of:

- a pension savings company with variable capital or a pension savings association, or
- a pension fund subject to the supervision of the Commissariat aux Assurances.

### **Article 4. Authorisation and operating conditions for institutions for occupational retirement provision governed by Luxembourg law**

1. The authorisation and operating conditions for pension savings companies with variable capital or pension savings associations are governed by the law applicable to institutions for occupational retirement provision in the form of sepcav and assep.

2. The authorisation and operating conditions for pension funds subject to the supervision of the Commissariat aux Assurances are governed by the amended law of 6 December 1991 on the insurance sector.

### **Article 5. Cross-border activities of institutions for occupational retirement provision governed by Luxembourg law and competent authorities**

1. The provisions relating to the cross-border activities of pension savings companies with variable capital or pension savings associations are governed by the law applicable to institutions for occupational retirement provision in the form of sepcav and assep.

The Commission de surveillance du secteur financier is the home authority of institutions for occupational retirement provision in the form of sepcav and assep.

2. The provisions relating to cross-border activities of pension funds subject to the supervision of the Commissariat aux Assurances are described in the Grand-ducal regulation of 31 August 2000 implementing Article 26(3) of the amended law of 6 December 1991 on the insurance sector.

The Commissariat aux Assurances is the home authority of the institutions for occupational retirement provision subject to the law on the insurance sector.

## **Chapter 3: *Taking-up of business and conditions of operation for EU institutions for occupational retirement provision***

### **Article 6. Taking-up of business and conditions of operation for institutions for occupational retirement provision authorised in other Member States**

Any institution for occupational retirement provision which obtained the authorisation and is supervised by a competent authority of another Member State can accept sponsorship from sponsoring undertakings established in Luxembourg as laid down in Article 7 of this law and in compliance with the provisions of the law of 8 June 1999 relating to supplementary pension schemes. Exercising these activities is not subject to authorisation by the Luxembourg competent authorities.

### **Article 7. Notification and cooperation procedure between the competent authorities in the context of cross-border activities in Luxembourg by institutions for occupational retirement provision authorised in other Members States**

1. The Inspection Générale de la Sécurité Sociale or "IGSS" is the host authority in the context of sponsorship accepted by institutions for occupational retirement provision authorised in other Member States to sponsoring undertakings established in Luxembourg.

2. Where an institution for occupational retirement provision authorised in another Member State wishes to accept sponsorship from a Luxembourg sponsoring undertaking, the IGSS is competent to

receive from the home authority the notification file which shall include at least the following information:

- (a) the name of the sponsoring undertaking;
- (b) the main characteristics of the pension scheme to be operated for the sponsoring undertaking.

3. Before an institution for occupational retirement provision starts operating a pension scheme for a Luxembourg sponsoring undertaking, the IGSS shall, within two months of receiving the information referred to in paragraph 2, inform the home authorities, if appropriate, of the requirements of social and labour law relevant to the field of occupational pensions under which the pension scheme sponsored by a Luxembourg undertaking must be operated, including the national requirements on the information to be provided to the members and beneficiaries and the requirements, where appropriate, that are to be applied in accordance with Article 18(7) of Directive 2003/41/EC. The home authorities shall communicate this information to the institution for occupational retirement provision.

4. On receiving the communication referred to in paragraph 3 of this Article, or if no communication is received from the home authorities on expiry of the period provided for in paragraph 3 of this Article, the institution for occupational retirement provision may start operating the pension scheme sponsored by the Luxembourg undertaking in accordance with the Luxembourg requirements of social and labour law relevant to the field of occupational pensions, including the national requirements on the information to be provided to the members and beneficiaries and the requirements that are to be applied in accordance with Article 18(7) of Directive 2003/41/EC.

5. The IGSS shall inform the home authorities of any significant change in the requirements of social and labour law relevant to the field of occupational pension schemes which may affect the characteristics of the pension scheme insofar as it concerns the operation of the pension scheme sponsored by a Luxembourg undertaking and in any rules that are to be applied in accordance with Article 18(7) of Directive 2003/41/EC and in respect of the information of the members and beneficiaries.

6. Should this supervision exercised by the IGSS on compliance with the provisions of the law of 8 June 1999 relating to supplementary pension schemes bring irregularities to light, the IGSS shall inform the home authority.

7. The home authority shall, in coordination with the IGSS, take the necessary measures to ensure that the institution for occupational retirement provision puts a stop to the detected breach of social and labour law.

8. If, despite the measures taken by the home authority or because appropriate measures are lacking in the home Member State, the institution for occupational retirement provision persists in breaching the provisions of the law of 8 June 1999 relating to supplementary pension schemes, the IGSS may, after informing the home authorities, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing the institution for occupational retirement provision from operating in Luxembourg for the sponsoring undertaking.

9. The IGSS may ask the home authority to decide on the ring-fencing of the assets and liabilities of the institution for occupational retirement provision, as provided for in Article 16(3) and Article 18(7) of Directive 2003/41/EC.

#### ***Chapter 4: Taking-up of business and operating conditions for non-EU institutions for occupational retirement provision***

#### **Article 8. Activities carried out in Luxembourg by non-EU institutions for occupational retirement provision**

The non-EU institutions for occupational retirement provision may provide their services to Luxembourg undertakings provided that they have been authorised in the home State pursuant to the laws providing that these institutions are subject to supervision considered by the IGSS to be equivalent to that laid down by EU law and cooperation between the competent authority of the home country and the IGSS is sufficiently ensured in order to guarantee compliance with the provisions of the law of 8 June 1999 relating to supplementary pension schemes.”