

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 29 July 2005

To all institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs and all parties involved in the operation and control of these institutions

CIRCULAR CSSF 05/201

Re: Entry into force of the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs)

Ladies and Gentlemen,

We are pleased to draw your attention to the adoption of the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), which was published in the *Mémorial A* – No. 108 of 26 July 2005.

The law of 13 July 2005 transposes Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision into Luxembourg legislation.

This circular briefly outlines the main amendments this law brings about.

1. Technical provisions / investment rules

The law of 13 July 2005 introduces more comprehensive rules with respect to the calculation of technical provisions and investment rules. It recognises the qualitative approach adopted by the law of 8 June 1999 for the calculation of technical provisions and introduces two alternative bases for the definition of the maximum interest rate.

A mostly qualitative approach to the investment rules is endorsed insofar as it provides that assets be managed in accordance with the principles of security, quality, liquidity, profitability and diversification, and not in accordance with quantitative requirements that apply uniformly to all pension funds. Assets shall be invested in line with the “prudent person” rule and investment decisions shall be taken in the light of the commitments entered into by the fund. A restricted number of qualitative and quantitative rules are laid down with a view to limiting investments in instruments issued by the sponsoring undertaking and its group, as well as investments on non-regulated markets and in derivative instruments.

The law also requires additional assets where the institution itself, and not the sponsoring undertaking or a financial institution, underwrites biometrical risks or guarantees a given level of benefits or a given return.

2. Provision of services abroad

The law authorises institutions for occupational retirement provision to freely accept sponsorship by undertakings located abroad. It establishes, within the European Union, the legal basis for notification and co-operation mechanisms between competent authorities for the cross-border management of pension schemes by institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs. Where the SEPCAVs and the ASSEPs wish to accept sponsorship from sponsoring undertakings located in other Member States of the European Union, they shall notify their intention to the CSSF in accordance with article 97 paragraph (3) of the law.

3. Structure of the pension fund’s constitutive documents

The pension rules are separated from the articles of incorporation and can henceforth have a life of their own. The articles shall specify the terms of incorporation and of the amendment of the pension rules. The articles can provide for the possibility of multiple pension rules within a fund or a structure in the form of general rules accompanied with specific rules per subfund, employer or scheme. Certain technical elements which have so far featured in the pension rules shall henceforth be included in a separate technical note. A more comprehensive description of the characteristics of every pension scheme shall be made in the pension rules and in a technical note.

4. Liability manager

The liability manager’s role is strengthened. Liability managers are now required to co-operate with the CSSF.

5. Depositaries

For umbrella-type pension funds, the articles of incorporation can provide for the appointment of a depositary per subfund, provided that the assets of a subfund exclusively belong to the members’ rights relating to this subfund and the creditors’ rights whose debt arose from the establishment, operation or liquidation of this subfund. The depositary shall be established in Luxembourg or in another EU Member State and be duly authorised for the activity of custody of the assets, in accordance with Directive

93/22/EEC or Directive 2000/12/EC, or authorised as depositary for the purposes of Directive 85/611/EEC.

6. Central administration

The central administration of the pension fund shall be located in Luxembourg.

Every pension fund shall have a sound administrative and accounting organisation and adequate internal control procedures. The pension fund is required to set up an administrative organisation and written procedures on the requirements in this field.

7. Investment strategies

Every three years, pension funds shall prepare, respectively review a statement on their investment strategy, containing such elements as the risk measurement methods and the strategic asset diversification.

8. Transitional provisions

For the majority of the provisions, the law fully integrates the text and wording of Directive 2003/41/EC and keeps the provisions of the law of 8 June 1999 creating the pension funds in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs) unchanged as far as possible.

The pension funds existing at the entry into force of the law of 13 July 2005 are considered as approved under the new law and fall under its scope. They have until 23 September 2005 to comply with the new legal provisions.

The pension funds are invited to check if their constitutive documents comply with the new rules and to make the necessary amendments where applicable, notably with regard to the content and the structure of the fund's documents.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Simone DELCOURT
Director

Jean-Nicolas SCHAUS
Director General