



# CHAPTER III

## SUPERVISION OF PENSION FUNDS

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### 1. Developments in the pension funds sector in 2001

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#### 1.1. Pension funds

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In 2001 the CSSF approved two new pension funds subject to the Law of 8 June 1999 as amended. The two funds, Dexia Pension Fund and Prime Pension, BGL Assep B, were established in the legal form of pension savings associations (Assep).

Dexia Pension Fund is an umbrella-type Assep set up by the Dexia Group. The first subfund is reserved for the Group's Luxembourg employees.

Prime Pension, BGL Assep B is an Assep that accepts existing pension commitments covering executive officers of Banque Générale du Luxembourg S.A.

The approval of these two new funds raises the total number of pension funds subject to the Law of 8 June 1999 as amended to five - three Asseps and two Sepcavs as at 31 December 2001.

While the number of funds approved in 2001 was low, the outlook for 2002 is favourable. Half a dozen applications for approval are currently being processed and a certain number of other applications are under preparation with professionals in the sector.

#### List of pension funds subject to CSSF supervision

##### *Pension savings associations (Assep)*

DEXIA PENSION FUND  
69, route d'Esch, L-2953 Luxembourg

PRIME PENSION, BGL ASSEP B  
50, avenue J.F. Kennedy, L-2951 Luxembourg

THE UNILEVER INTERNATIONAL PENSION PLAN  
5, rue Plaetis, L-2338 Luxembourg

##### *Pension savings companies with variable capital (Sepcav)*

APF INTERNATIONAL  
16, avenue Grand-Duc Jean, L-1842 Howald

KPMG – LOMBARD INTERNATIONAL PENSION SCHEME,  
Airport Center - 2, route de Trèves, L-2633 Senningerberg

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## 1.2. Liability managers

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Since the Law of 1 August 2001 was passed, amending Article 45 (12) of the Law of 8 June 1999, the CSSF now publishes a list of professionals in the Mémorial at least once each end-year that are authorised to act as liability managers within the meaning of the Law of 8 June 1999 as amended.

At 31 December 2001 the number of authorised liability managers amounted to seven.

The liability manager's legal mission is to assess the commitments of the Assep and to periodically determine the acquired rights of the beneficiaries. The manager is responsible for determining the level of technical provisions to be established with different maturities, based on appropriate assumptions and actuarial techniques, while taking account of the characteristics of the undertaking and the beneficiary population. When pension funds are set up the liability manager establishes the financing plan, which must be brought up to date at least once per year according to the development of the assets and commitments of the Assep, but also occasionally when significant events and unforeseen circumstances so require.

In addition to his legal mission the liability manager may also accept contractual missions, such as preparing the accounts of the Assep, drafting the annual report, or ensuring the duty to provide beneficiaries with information.

### **Official list of professionals approved to act as liability managers for pension funds subject to the Law of 8 June 1999 as amended**

ACTUALUX S.A.  
5, place de la Gare, L-1616 Luxembourg

BARNETT WADDINGHAM S.A.  
16, avenue Grand-Duc Jean, L-1842 Howald

DEXIA INSURANCE & PENSIONS SERVICES S.A.  
2, rue Nicolas Bové, L-1253 Luxembourg

ESOFAC INTERNATIONAL S.A.  
37, rue Michel Engels, L-1465 Luxembourg

LA LUXEMBOURGEOISE-VIE S.A.  
51, avenue de la Gare, L-1611 Luxembourg

LE FOYER VIE Compagnie Luxembourgeoise d'Assurances S.A.  
6, rue Albert Borschette, L-1246 Luxembourg

WILLIAM M. MERCER S.A.  
68, boulevard du Souverain, B-1170 Bruxelles

### 2. Developments in the legal framework

The Law of 1 August 2001 amended certain provisions of the law of 8 June 1999 creating pension funds in the form of pension savings companies with variable capital (Sepcav) and pension savings associations (Assep).

Some of these amendments are innovative and are therefore of particular interest. They relate to the incorporation papers, the contributor's contribution and the managers of the pension fund.

The new Law thus confirms that the pension rules are an integral part of the articles of association, but specifies that while it is compulsory to publish the articles, it is not obligatory to publish the pension rules. These rules do not need to be filed with the registry nor published in the *Mémorial*. The Law now requires the articles of association of the pension fund to specify how the pension rules can be amended. The authority to amend the pension rules may be delegated to the Board of Directors of the pension fund. From now on these same pension rules must contain a description of the principles governing the distribution of a possible surplus if the pension fund is liquidated.

In order to effectively manage a pension fund as soon as it is formed, the Law of 1 August 2001 authorises the employer to provide the Sepcav and the Assep respectively with an initial subscription. However, the amount of the subscription is restricted in terms of volume – for Sepcavs to the minimum share capital and for Asseps to the minimum amount of technical provisions. Contrary to the Sepcav, where it is compulsory to repurchase shares representing the subscription as contributions are paid, in the case of Asseps it is not necessary to pay off the subscription, which may thus represent a kind of safety margin.

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The new Law specifically states that foreign asset managers be subject in their country of origin to prudential supervision carried out by a supervisory authority acting in the interests of the beneficiaries. As far as liability management is concerned, the Law describes the missions of the liability manager and the nature of delegating the management of the fund's liabilities. Details are also provided on the content of the minimum financing plan which the pension fund must submit to the CSSF. The depository bank is given the additional mission of supervising the prompt payment of contributions by contributors.

The purpose of other amendments is to clarify the provisions of the Law of 8 June 1999 or to align the pension funds system with the system for UCIs.

The Law also specifies that the investment of the shareholders of a Sepcav is restricted to the capitalised value of the contributions paid by the contributor in their favour. While the principle of the "sealing" of the subfunds is confirmed, the option to depart from this by statutory provision and to allow the joint liability of the subfunds towards third party creditors has been introduced. In order to align the Assep and Sepcav systems, a second threshold has been set for triggering the liquidation procedure for Asseps. A quorum for attendance at the General Meeting has also been introduced for valid deliberations to be held on dissolving the pension fund. This applies at the two trigger points. In order to protect beneficiaries it is clearly laid down that a pension fund cannot grant credits or act as guarantor on behalf of third parties.

Following the example of UCIs, the external auditors of a pension fund must provide evidence of appropriate professional experience, i.e. in-depth professional experience in the financial field and a sufficiently strong structure to ensure that a pension fund is properly supervised.

The supervisory authority now has the option to establish rules on the scope of the auditors' mandate and on the content of the audit report of the pension fund's annual accounting statements. At the pension fund's expense the supervisory authority may have an independent auditor carry out a special audit on certain ad hoc aspects of the activity and operations of a pension fund.

In terms of taxation both Asseps and Sepcavs are now required to provide the Luxembourg tax authority with the register of beneficiaries showing the names and addresses of affiliated members and beneficiaries, their total rights at the financial year end and payments made during the financial year.

Finally, changes in terminology have been made concerning in particular the notion of 'contributing company', which has been replaced by 'non-beneficiary contributor' so as to allow groups of individuals which are not in the legal form of a commercial company to pay contributions into a pension fund.

### 3. Prudential supervisory practice

Since pension funds are a relatively recent innovation they continue to raise many questions in the financial sector. We will outline some of the questions which may be of more general interest.

Decisions of principle or interpretations of the law have now been adopted on the following points in particular:

- **Withdrawal from a pension fund other than in cases of death or retirement**

In response to a question raised on the conditions available for withdrawing from a pension fund, it was accepted that the Law of 8 June 1999 as amended allows early withdrawals under the specific circumstances stated in the pension rules, such as a change of employer or the member's disability. It is also possible to withdraw from the pension fund before retirement in the cases laid down in Article 13 of the Law of 8 June 1999 relating to supplementary pension schemes, as well as those set out in the national social security law of the member's State.

- **Option of providing for a qualifying period in a Sepcav**

The question was raised as to the acceptability of a qualifying period within a Sepcav during which the member does not yet have acquired rights, and as to how shares of the Sepcav are repurchased if the member withdraws from the Sepcav before the end of the probationary period.

The CSSF may accept the existence of a qualifying period within a Sepcav on condition that the Sepcav's pension rules provide the necessary details of the probationary period.

As far as the means of repurchasing the shares of the Sepcav are concerned, under Article 8 (1) of the Law, the pension rules must provide for the Sepcav to repurchase and cancel the shares of the member if the latter withdraws before the end of the qualifying period. Since the member may freely access the proceeds of the repurchase, the pension rules may provide for the member to waive the right to the proceeds in favour of the contributor if he leaves the company before the end of the probationary period.

- **Allocation of an operating surplus**

In defined contribution schemes an operating surplus will basically arise from redundant contributions following the withdrawal of members before the end of the qualifying period. In defined benefit schemes it may also arise from unexpected developments in the economic situation or in demographic or actuarial figures, or from a particularly favourable yield from the pension fund's assets.

The different legal nature of Sepcavs and Asseps is crucial to the treatment of an operating surplus.

In the event of a repurchase of shares following the withdrawal of the member before acquired rights are earned, the legal nature of Sepcavs prohibits them from retaining the proceeds of the repurchase in the company's accounts and recording a debt vis-à-vis the employer under liabilities. Surplus contributions that have become redundant must be returned to the employer.

In certain circumstances the legal nature of Asseps, on the other hand, allows employers' contributions acknowledged as surplus to be retained in the balance sheet. The treatment of such surpluses depends on the provisions of the pension rules. Surpluses may remain in the pension fund if the pension rules provide for them to be absorbed either by reducing the future level of the employer's contributions or by increasing members' rights and benefits. If, on the other hand, the pension rules entitle the contributor to recover the capitalised value of the contributions acknowledged as surplus, the surpluses must be reimbursed to the employer. The object of a pension fund does not allow it to use and make a profit from parts of the assets of the contributing employer.

- **Reporting**

The CSSF requires pension funds to provide a certain amount of financial information on a quarterly basis. A hard copy of this information is forwarded to the CSSF no later than the 20th of the month following the end of quarter date. The choice of format is left to the pension fund, which may therefore use internal documents established for reporting or for internal audit purposes.

This financial information must include a statement of assets, particularly the breakdown and particulars of the securities portfolio, information on transactions concerning derivatives and information on the population of members (number of members, structure by age group) and on the financial flows of benefits and contributions. On the year end date, the quarterly reporting is supplemented by a draft balance sheet and profit and loss account.

- **Financing a defined benefit pension fund**

In requiring each pension fund to establish sufficient technical provisions to cover all its commitments, Article 62 (1) sets out the principle that pension funds must establish technical provisions for all the types of commitments made and that these provisions must be of sufficient amounts. The result is that an actuarial computation technique appropriate to the commitments must be chosen, and prudential actuarial and economic assumptions and mortality tables for calculating the technical provisions must be accepted.

In general it is considered appropriate to use methods that include salary forecasts to finance pension payment undertakings. The use of a prospective method which takes account of future salary increases is therefore generally recommended. The use of a retrospective method of calculation may be deemed acceptable if the technical provisions arising out of this method do not prove to be lower than the result of a sufficiently prudential prospective method.

Paragraph (2) of the above-mentioned Article introduces a standard of minimum financing. This means that the acquired rights of members and beneficiaries should be fully financed. Net assets must be at least equivalent to the technical provisions established for current and future benefits because of past services. If a case of under-funding arises, however, the supervisory authority should immediately be informed and an adjustment plan must be submitted.

- **Multiple employer pension funds**

The Law allows the existence of umbrella-type pension funds or pension funds that cover several employers within the same fund.

In this context different cases are possible:

- to open several subfunds for an employer, each subfund pursuing a different investment policy (life-cycle);
- to create subfunds per employer (distinguishing them by the circle of beneficiaries);
- to include several employers within a subfund.

The option of combining several employers within the same subfund is easier to implement for defined contribution schemes. In defined benefit schemes, the combining of several employers or undertakings within a subfund is in principle to be avoided due to the joint liability that prevails within a subfund. An exception to this principle can be considered for companies belonging to the same group, on condition that the group is able to demonstrate a high rate of solvency.

Whatever the case, the pension rules of a multiple employer fund should clearly stipulate how the assets of the fund are to be divided, particularly any surplus, on the one hand in general (if a contributor wishes to withdraw from the fund, for example), but also in the special cases such as liquidation of the fund or the insolvency of one of the employers.

The pension rules of a multiple employer fund may be presented in such a way as to show a general part that applies to the pension fund as a whole plus specific rules relating to the details of the pension undertaking for each employer. These specific pension rules are an integral part of the pension rules of the fund.

