

## Setting up an international pension fund in Luxembourg

### Frequently Asked Questions

#### 1) What Luxembourg structures are available to create a multinational pension fund?

Luxembourg offers various solutions for pension funds. Three forms of regulated vehicles exist for the creation of a multinational pension fund under the EU Directive on Institutions for Occupational Retirement Provision (the IORP Directive):

- For defined benefit plans and for defined contribution plans of all types the **ASSEP** (*association d'épargne-pension*), a pension fund in the form of an association, is the suitable vehicle. It can accommodate several plans in a single legal entity by adopting a multiple compartment (umbrella) structure. An ASSEP can also fund death and disability benefits. In this case, appropriate reserves need to be set aside;
- For pure defined contribution plans without any form of guarantee by the sponsor the **SEPCAV** (*société d'épargne-pension à capital variable*), which is comparable to an investment company with variable capital could be another solution. The SEPCAV can also accommodate several plans in a single legal entity by adopting a multiple compartment (umbrella) structure.

These two vehicles are regulated by the Commission de la Surveillance du Secteur Financier under the law of 13 July 2005 on pension funds in the form of SEPCAV or ASSEP.

A third option lies within the framework of insurance legislation. These funds, which are supervised by the *Commissariat aux Assurances* and defined by a Regulation of 31 August 2000, are referred to as **CAA Pension Funds**. The CAA Pension Fund is suitable for defined contribution and defined benefit schemes (or both types in an umbrella structure) and/or supplemental benefits in case of death or disability of members, and is similar to the ASSEP in this respect. Four legal structures are available.

Furthermore, besides the three forms mentioned above, Luxembourg offers attractive alternatives to traditional pension funds, as mentioned under item 4) below.

**2) What are the advantages for a pension fund to be domiciled in an international financial centre?**

Managing a pension fund requires the participation of a wide range of specialists: asset managers, liability managers/actuaries, administrators, custodians, insurers and auditors. This requires efficient coordination, especially in a multi-national pension environment. As the 2<sup>nd</sup> largest centre in the world for investment funds with some 1,600 billion euros under management and a concentration of international experts in these fields, Luxembourg offers an ideal environment for pan-European pension fund management. Luxembourg institutions, including the relevant regulatory authorities, have broad experience and understanding of international investment schemes. Furthermore, the need to provide advice to Luxembourg's internationally mobile workforce has provided Luxembourg employee benefit consultants with a wealth of experience in this area.

**3) Why is expertise in foreign languages an important factor when managing a pan-European pension fund?**

Under article 11 of the European Directive 2003/41/EC, it is mandatory to inform members and beneficiaries about their pension plan. Hence, a promoter aiming to provide a pan-European pension plan must be able to communicate in a number of languages. The multilingual and multicultural profile of staff in the Luxembourg financial sector, combined with their experience in cross-border servicing, constitutes a great advantage. Documents for approval by the regulatory authority may be prepared in English, French or German. Dutch, Spanish, Portuguese and Italian are also used as working languages.

**4) What other solutions exist for companies seeking to set up a multi-country pension scheme?**

In certain cases, the use of cross-border IORPs can, for various reasons, appear as not providing the most efficient pension solution, particularly for smaller pension plans. However, Luxembourg offers a range of alternative solutions for structuring pension arrangements. These solutions can be considered as intermediary or, as the case may be, supplementary levels for an integrated pension solution, such as pension pooling vehicles, group insurance contracts and pension trusts. Such solutions have in recent years

been successfully launched out of Luxembourg by a number of large multinational groups

**5) Does Luxembourg legislation allow the transfer of pension assets both in to and out of Luxembourg?**

It does. The Luxembourg legislator has structured the available pension vehicles in a way that facilitates the use of such vehicles by international players, offering flexible solutions to meet specific requirements (e.g. under host country regulation). Luxembourg is confident that it offers a privileged environment for pension funds. Pension funds are not necessarily required to provide their services to local employees in Luxembourg in order to be able to operate from the Grand-Duchy.

The Luxembourg authorities are keen to maintain a competitive regulatory environment, guaranteeing the stability required for such long term activities as pension fund management while at the same time reacting rapidly when adaptation to new opportunities and constraints is required.

**6) Are reporting and governance obligations an obstacle to developing pension funds?**

This is an area where the right balance needs to be struck between good governance and administrative burden; too burdensome a regime can be over-demanding for smaller funds, whereas the necessary conditions for the maintenance of assets to cover the obligations of the pension fund must be met on an ongoing basis. The Luxembourg supervisory authorities, with their pragmatic approach, provide an efficient framework reconciling both requirements. Luxembourg regulation is principle-based and the governance requirements fully reflect the EU standards set out in the directive. This permits the fund to be structured to comply with host country regulations and the expectations of the participants in the key areas of plan design, composition of boards, investment policy and funding requirements.

**7) What are the funding requirements for pan-European DB pension funds located in Luxembourg?**

Local prudential rules are based on the principle that funding should be adequate to meet the obligations of the pension fund and appropriate in the light of the risks of the plan and the investment policy pursued. There are no preconceived requirements and the funding plan may stipulate minimum funding requirements based, for instance, on expected return on plan assets

or the funding rate required in the pension rules. No additional buffers are required as long as the sponsor guarantees its pension obligations.

**8) May a sponsor recover surpluses if its pension fund is overfunded?**

In Luxembourg, sponsors may be permitted to recover overfunding in certain circumstances and where host country legislation allows – this must be determined on a case-by-case basis. This represents a strong advantage for Luxembourg vehicles such as the ASSEP and the CAA Pension fund.

**9) How does the tax regime for Luxembourg pension funds work?**

The tax regime for Luxembourg pension funds as such is designed to be as “tax neutral” as possible.

Funds are considered as taxable entities and the reporting requirements in respect of members and beneficiaries are designed to allow the transmission of information to tax authorities of the beneficiaries’ country of residence so as to obtain or facilitate application of double tax treaties signed by Luxembourg. As at February 2009, Luxembourg had double tax treaties with 52 countries and another 22 in negotiation.

The specific characteristics of each pension fund, such as its legal structure and the location of assets held, will determine its tax status.

Other tax-efficient solutions may also be considered, such as the use of tax-transparent contractual investment funds for pooling of pension assets. Furthermore, the appropriateness and possible tax impact of other investment techniques, such as securities lending, on the tax situation of a pension fund would need to be assessed on a case-by-case basis.

The tax treatment of contributions and benefits will generally be determined by the country in which the employer, sponsor, employee or pensioner are located. The treatment of different possible scenarios is outside the scope of this document and it is advisable that they be addressed at an early stage of any project considering cross-border pension solutions.

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