

# LUXEMBOURG PENSION FUNDS: FINALLY UNDER STARTER'S ORDERS

Following ten years of uncertainty, cross-border pension funds can now target the international market after European legislators removed the main tax obstacles.

Since 1999 the Grand Duchy of Luxembourg has had specific legislation for funding supplementary pensions through legally independent vehicles known as pension funds. Luxembourg pension funds<sup>(1)</sup>, which are subject to the prudential supervision of either the financial supervisory authority (*Commission de Surveillance du Secteur Financier*) or the insurance supervisory authority (*Commissariat aux assurances*), provide services on a pan-European basis since they benefit from the European passport<sup>(2)</sup>.

This new market experienced a slow start due to several factors. The setting-up of a uniform pension system within a multinational company is subject to a lengthy in-house decision process, notably as a result of the need to coordinate and organise various local pension plans within the pension fund as well as the necessity for holding negotiations with employee representatives to that end. Moreover, structuring a pension fund presents real challenges as regards tax issues, the respect of certain legal provisions in the employer's country<sup>(3)</sup>, as well as governance.

On the eve of the 10th anniversary of the Luxembourg law on pension funds, it is worthwhile pointing out some major developments in these fields.

First, as regards tax issues, the main points of contention, which consisted in discriminatory treatments for pension funds operating on a cross-border basis, have been settled. The IORP Directive does not address tax issues. Nevertheless, the work of the European Commission and the Court of Justice of the European Communities has clarified that the deductibility of contributions paid by an employer to a pension fund set up in another Member State, retirement benefits paid by this pension fund to a beneficiary established in a different Member State as well as the transfer of assets from a local pension scheme to a pension fund set up in another

Member State may not give rise to the application of discriminatory tax rules.

Recently Luxembourg has successfully initiated the notification procedure provided for by the directive, allowing certain Luxembourg pension funds to offer services in Europe, notably in countries that have long-standing experience with respect to supplementary pensions.

These first positive signs from abroad are evidence of the quality and adequacy of the Luxembourg vehicles for funding occupational pension schemes. The choice of structures available and specifically the possibility of setting up umbrella pension funds make it possible to optimise the funding of supplementary pensions for a multinational group, for instance enabling the company to set up different pension schemes within one vehicle that respect labour and social law provisions for each individual employer, the representation of employees through ad hoc committees and confidentiality of information on schemes and benefits.

<sup>(1)</sup> (i) Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision; (ii) Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital and pension savings, which replaced the law of 9 June 1999; (iii) Grand-Ducal regulation of 31 August 2000 on pension funds subject to the prudential supervision of the Insurance committee, as amended.

<sup>(2)</sup> In accordance with Directive 2003/41/EC on institutions for occupational retirement provision ("the IORP Directive").

<sup>(3)</sup> Under the IORP Directive a pension fund must abide by the labour and social law in force in the country where the employer is established.



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