TPC Newsletter
Global Legislative Developments

This document summarises recent legislative developments and trends related to employee benefits and highlights recently passed and pending legislation that may require employers to take action to comply with new rules. This document should not be seen as exhaustive and any action should be taken in conjunction with your Global Benefit Consultant.

About TPC Employee Benefits

Headquartered in Hamburg, we have operations nationwide as a leading provider of specialised consultancy services on all relevant pensions and benefits topics for Germany. For multinational organisations TPC offers the management of their most complex global benefits requirements.

Our company's portfolio of services offers all-round, all-inclusive support. It extends from professional consultancy and customer-specific planning to pragmatic implementation and documentation – all from a single source backed by 60 years of experience.

TPC is a Partner of the International Benefits Network (IBN), a strategic global alliacne of like-minded local consultants and intermediaries. We engage with our local partners to provide first hand benefit insight from the countries you may be interested in. To ensure you are prepared and your benefits are fit for purpose; we liaise with our partners to provide you with news, developments and legislative updates.

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Contries covered in this Issue:

+ AMERICAS: Canada
+ EUROPE: France, Germany
+ MIDDLE EAST: Israel, South Africa

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Recent developments summary

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Americas

Canada

Temporary solvency funding relief

The federal government introduced a moratorium on solvency special payments from April 1, 2020, to December 30, 2020. It is now considering the following relief measures for 2021 and beyond to mitigate the impacts of the pandemic on defined benefit (DB) plan sponsors:

1. **Extending the solvency amortization period to ten years:** Under this approach, federally regulated DB plans would be allowed to extend the amortization period for solvency special payments from five to ten years, provided they obtain either buy-in from plan beneficiaries or a letter of credit covering the difference in payments resulting from the extended amortization. Given the extended duration of this relief option, the government would require informed consent from plan beneficiaries.
2. **One-time extension of solvency amortization period to ten years:** This approach would allow plans to extend their amortization schedules to ten years for the 2021 plan year only, such that solvency funding requirements for 2021 would be one-tenth the plan's solvency deficiency, instead of one-fifth (as currently required).
3. **Extension of the letter of credit limit:** Currently, federal pension legislation permits plan providers to use letters of credit from financial institutions to cover up to 15% of solvency liabilities, in place of solvency special payments. This approach would temporarily extend the limit on the use of the letter of credit from the current 15 per cent of solvency liabilities, to a new limit to be determined at the discretion of the issuer.
4. **Alternative valuation methodologies:** This approach would allow plan sponsors to employ an alternative methodology for solvency valuations, in order to shield plans from volatility in funding contribution levels resulting from extreme market changes. For example, plan sponsors could be permitted to use a discount rate averaged over three years rather than the market discount rate or calculate the average solvency ratio over five years instead of three. Alternatively, the requirement to file a valuation report at the end of 2020 may be deferred or made optional.

Governance proposals

The government is considering a number of permanent measures to enhance plan governance and administration.

Currently, if a multi-employer pension plan is administered by a pension committee (such as in the case of non-unionized environments), the committee must include plan member and retiree representatives. The consultation paper proposes to apply the requirement for member and retiree representation to single-employer plans and multiemployer plans that are governed by Boards of Trustees.

Additionally, all multi-employer negotiated contribution plans would be required to establish and maintain funding policies as well. Since negotiated contribution plans generally have fixed contribution rates and allow benefits to be reduced to address funding deficits, the government says funding policies would assist them in managing risk and benefit security. Funding policies would be encouraged but not required for single-employer and other multi-employer DB plans.

The federal government is also considering measures to encourage federally regulated pension plans to consider environmental, social and governance (ESG) factors in their investment and risk management strategies, including the risks and opportunities presented by climate change.

One possible approach would be to mandate that pension plans disclose in their statements of investment policies and procedures (SIPPs) whether and how they consider ESG factors. This would mirror the requirement currently in place in Ontario.

Pension plan administrators could also be required to file their SIPPs with the Office of the Superintendent of Financial Institutions (OSFI) or provide them to OSFI upon request.

Introduction of solvency reserve accounts

The paper also proposes a legislative framework for solvency reserve accounts (SRAs). An SRA would operate as a separate or notional account within a DB pension fund into which an employer could remit solvency special payments. The funds remitted in respect of special payments could be withdrawn by the employer if the plan later develops a surplus on a solvency basis and is fully funded on a going concern basis, subject to certain conditions. Employers would not be required to seek the approval of OSFI to withdraw funds from an SRA.

Introduction of variable payment life annuities

It is proposed that federally regulated Pooled Retirement Pension Plans (PRPPs) and defined contribution (DC) pension plans would be able to offer variable payment life annuities (VPLAs). VPLAs will provide plan members with lifetime retirement income payments that vary based on investment returns and the mortality experience of the fund.

In order to ensure that VPLA payments are consistent with the fund’s ability to provide a lifetime retirement income, VPLAs would be required to implement any required benefit changes at least once every three years, based on an actuarial valuation of the fund’s sustainability. In order to operate, the plan must reasonably expect the VPLA fund to maintain a minimum of 10 members on an ongoing basis.

Plan members who elect a VPLA would be permitted to receive a VPLA based on just a portion of their account balance, while transferring the remaining funds to a locked-in retirement income vehicle, leaving them in the plan to be withdrawn as variable benefits (if the plan so permits), or using them to purchase a fixed life annuity from a regulated insurance provider.

Any retiree with a spouse or common law partner would have to obtain spousal consent to participate in a VPLA.

If the VPLA option is terminated, the administrator would need to submit a termination report to OSFI. Members would be entitled to receive the commuted value of their VPLA benefits and would be provided the same portability options currently available to members of PRPP and DC plans.

Europe

France

Medical policies sub-annual termination

Since March 2014, French home and car insurance consumers have been able to terminate their insurance contract at any time after the first anniversary date with just 30 days' notice.

The French government have extended this law to medical insurance contracts on December 1st 2020. The law applies to all medical contracts, ongoing and new. This measure aims to ease the termination of insurance policies (the consumer will no longer need to worry about a termination schedule) and to increase the buying power of French consumers. Prior to December 2020, the termination could only be asked to be effective for the next renewal (usually January 1st), and had to be asked at least 2 months before the expiration of the policy.

The policies concerned are:

- The individual policies: the subscriber can ask for sub-annual termination.
- The group policies: the employer is the only person that can ask for sub-annual termination.

Insurance policies providing coverage for death and disabilities are not affected by this new law.

To decrease the administrative formality of consumers, the law also allows subscribers changing plans to instruct their new insurer to trigger cancellation arrangements with the prior insurer.

While the government wishes to encourage the insurers to lower their prices, this new law might have the opposite effect. Insurance is based on the principle of risk pooling: it divides the risk among the policyholders and the policyholders' contribution are used to pay claims to those who need it. Thus facing more volatile policyholders, the control over risk is lowered and health insurance premiums could increase.

Germany

Case law pension equalization system

In case law, there are developments for pension equalization in occupational pension schemes, from which new challenges arise for employers.

Judgment of the Federal Constitutional Court of 26.05.2020 (1 BvL 5/18)

If an external division is carried out - the division is not carried out at the pension provider the pension was previously financed - this may result in transfer losses to the detriment of the person entitled to equalization due to the establishment of an entitlement with another pension provider and the different calculation bases applicable there. This may be unconstitutional. The Federal Constitutional Court has ruled that the equalization value in the case of external division must be determined by the court in such a way that fundamental rights are safeguarded, i.e. the person entitled to equalization does not have to expect an unreasonable reduction in his or her pension benefits compared to a fictitious internal division.

A loss of up to 10% would be reasonable and appropriate. If the deviation is greater than 10%, another external pension provider must be selected or an internal division must be carried out. The aim must be to remain within the 10% corridor.

Limitation of the employer's duty to provide information

The employer does not have a general duty to provide information in order to protect the employee's financial interests. However, if the employer provides information without being obliged to do so, this information must be correct, unambiguous and complete. Otherwise, the employer is liable for damages suffered by the employee as a result of the incorrect information. This is the result of a decision by the Federal Labor Court (BAG, ruling dated February 18, 2020 - 3 AZR 206/18).

Sharp rise in costs for insolvency protection

On November 6, Pensionssicherungsverein (insolvency protection) announced the contribution rate for 2020. This is at a value of 4.2 per mille (previous year: 3.1 per mille). The sharp increase in the contribution rate is due, among other things, to the spread of the Corona pandemic and the associated economic consequences for German market economy.

Middle East & Africa

Israel

National average earnings value frozen for determining benefit levels

The national average earnings reported by the Central Bureau of Statistics is Increased by approximately 11% over the period September 2019 to September 2020. This is due to increased unemployment of employees with relatively low salaries.

The Institute of Insurance has frozen the value of the national average earnings used for determining contributions to National Insurance and for determining benefit levels. Similarly, the mandatory minimum salary remains unadjusted for 2021.

South Africa

Retirement: Provident Fund Annuitisation

Set to go ahead as of 01 March 2021, new retirement fund law states there will no longer be a difference between a Pension and a Provident Fund. These changes are aimed at aligning the taxation of different retirement funding vehicles and lessening reliance on the State for social security pensions for people over 60 years.

Currently when retiring from a Pension or Retirement Annuity you may receive a lump sum of 1/3 of your benefit and with the remaining 2/3 benefit you have to purchase a monthly pension or annuity. Until 01 March 2021 having a Provident Fund meant you may be paid out your full lump sum in cash at retirement.

On a Provident Fund after 01 March 2021 you will effectively have 2 sums of money in the Fund.

1) Full cash withdrawal availability at retirement on your Share of Fund (SOF) from contributions made ON or BEFORE 01 March 2021 plus growth; and

2) Your SOF value from all contributions plus growth AFTER 01 March 2021 will be subject to the new annuitisation laws at retirement.

Specific exclusions to these new provisions are:

A) Any member who is aged 55 or older on t 01t March 2021 will not be affected by the new annuitisation law.
B) Should your benefit (made up of new contributions from 01 March 2021 to Retirement) be less than R247 000 you can still receive a lump sum in cash at retirement should you choose to do so.

Health Benefits: COVID-19 vaccine

The Covid-19 vaccine has been included in the amended Prescribed Minimum Benefit (PMB) regulations. This means that all private medical schemes are required to cover a basket of Covid-19 related benefits, including the vaccine when it becomes available, at full cost without co-payment from the member. The basket of Covid-19 PMB benefits now includes:

- Screening consultation in a doctor network
- Screening test after a risk assessment
- Clinically appropriate diagnostic tests for patients who test positive
- Medical management including in-hospital treatment and rehabilitation with a designated service provider (DSP) appointed by the scheme
- Vaccination

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