

Governance of supplementary pension schemes: the role of the employer

General Introduction

1. In the Netherlands supplementary pension schemes are of primary importance for the pension income of pensioners. The statutory social security pension is a benefit that is not income-linked, but which merely ensures a minimum income. The social pension benefit is currently (as at 1 January 2009) €966.75 net per month for single persons, and €673.33 net per month for married or cohabiting pensioners).
2. There are no employment law regulations in the Netherlands that require an employer to provide a pension scheme for his workers. In principle there is contractual freedom. However, approximately 96% of all employees do have a supplementary pension. This high participation rate is to a large degree due to the system of collective negotiation in the Netherlands, and the phenomenon of compulsory participation in the industry-wide pension schemes.

Powers of employer in establishing pension schemes

3. A supplementary pension plan constitutes a term of employment. The primary involvement of the employer is critical in deciding whether to set-up a pension scheme.
4. This can be implemented through means of:
 - a contractual agreement: set-down in an individual employment contract or in a collective labour agreement;
 - a compulsory industry-wide pension fund: the social partners must first agree the terms of the scheme, which should then be submitted to the Minister in order to be declared generally binding on a branch of industry.

Employer's control on substance of pension scheme

5. Subsequently the role of the employer is also present in determining the substance of the pension scheme. That substance reflects the outcome of the negotiation process between employer and employees.

Powers of employer in pension funds

6. Pension law in the Netherlands requires that a pension scheme is administered by either an underwriter or a pension fund (which may also include underwriters and institutions for occupational retirement provisions within the meaning of EC Directive 2003/41, that are established outside the Netherlands).
7. The employer has no powers regarding the governance of underwriters. However, the rule applies that an administration agreement must be concluded between the employer and the underwriter regarding the manner in which the pension scheme is administered. Through the provisions contained in the administration agreement, the employer can to some degree steer the underwriter.
8. The employer can exercise the following influence with respect to pension funds:
 - a. an administration agreement must be concluded between the employer and the pension fund. The agreement may record, amongst others, the procedures to be adopted for the amendment of the pension fund, including the extent to which the pension fund is required to observe amendments implemented by the employer;

NB: In the case of industry-wide pension funds, it may suffice to put in place unilateral regulations drawn up by the fund, provided that those regulations are binding on the employer;

- b. The employer's direct representation on the board of a pension fund, or indirect representation through the employers' organisation, is in principle fifty percent (parity);

NB: that is not to say that in his role on the board, the employer must solely be guided by the employer's interests. Pension law provisions dictate that the board is required to ensure that all interested parties feel that they have equal representation.

- c. A pension fund is required to set-up an oversight body, to which it is accountable for its policy, and on which the oversight body may render opinions and may request a review by the Enterprise Division of the Amsterdam District Court. The employer holds one-third of

the seats in the oversight body (the remaining seats are held for a one-third part by the employees and by the pension recipients).

Influential aspects of the employer

9. The employer has the possibility to exercise influence as follows:

a. With respect to the pension scheme itself:

- determining whether a scheme is to be introduced and its content and, in the wake of this, the need for a possible amendment to the scheme (ensuing from (collective) employment conditions negotiations, and whilst observing all other employees' rights [not dealt with further at this time]);
- in addition, it is possible to record in the pension scheme that, in the event of a radical change of circumstances, the employer shall be entitled to reduce or discontinue the employer's contributions.

b. With respect to the administration of the pension scheme:

b.1. underwriter: steering through means of the substance of the administration agreement;

b.2. pension fund: steering through means of

b.2.1. the substance of the administration agreement

b.2.2. the possibility to appoint and dismiss employer board members

b.2.3. the possibility to influence decisions by the pension fund board, through employer representatives appointed to the board;

b.2.4. termination of the administration agreement with the pension fund;

b.2.5. the decision-making processes of the oversight body.

NB: in the past the employer often held a right of consent (right of veto) with respect to (certain) decisions made by the pension fund. Since the introduction of the new Pension Law on 1 January 2008, this right of consent is prohibited. In the absence of this, the possibility to exercise influence may now be facilitated in one of the manners

described above, whereby the substance of the administration agreement forms the basis for any room for further negotiation by the pension fund.

The supplementary pension is a term of employment

10. It is essential to remember that a supplementary pension scheme ultimately is a term of employment, the embodiment of which is based in the general negotiations on employment terms.

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