Dutch Pension Act 2007

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The Pension and Savings Funds Act (1952) has been be replaced by the Pension Act (*Pensioenwet*), with effect from 1 January 2007. The Pension and Savings Funds Act was amended several times since its introduction in 1954, and this has made the Act less clear. In addition, pension regulations are currently set out in various laws. The implementation of pension schemes is governed by the provisions laid down in the Pension and Savings Funds Act (in the case of pension funds) and the Pension and Savings Funds Act Insurance Contract Rules (in the case of insured schemes). The Cabinet’s aim with the Pension Act is to create a clear statutory framework, based on three objectives:

- A major overhaul of the current Pension and Savings Funds Act;
- Implementation of changes in policy;
- Incorporation of the current agreements on division of tasks into the new Act.

The new Act also introduces a new supervisory framework for pension funds, the Financial Assessment Framework (FTK).

Pension agreement

Under the Pension Act, the primary responsibility for pension arrangements will still be with social partners. The partners must have a professional pension entity setting up the arrangement. This can be a pension fund or an insurance company. In this trilateral relationship, the pension fund carries out the pension arrangement.
The Pension Act needs to be more transparent regarding the responsibilities and rights of these parties.

The new Act distinguishes between 3 types of pension agreement:

- benefit agreement (DB)
- capital agreement
- contribution agreement (DC)

The new Act describes the contents of the pension agreement. The pension accrual starts at the latest from when the employee is 21 years old. The survivors’ pension for a cohabiting partner is the same as for a married/registered partner. The reduction of the pensionable salary will not affect accrued pension rights (solid final pay plans are not allowed).

Information obligation of the employer: starting letter

The employer ensures that the employee will be informed with a starting letter within three months after concluding the pension agreement. Although the Act sets out a series of basic conditions, essentially the substance of the pension scheme must be set out in clear and understandable language.

Performance agreement

The Pension Act introduces the concept of ‘pension administrator’, which means that there will no longer be any distinction between pension funds and insurers. A number of implementation aspects of the relationship between the employer, the employee and the pension administrator must be laid down in an agreement or a set of rules and regulations.

In any case the obligatory contents of the performance agreement are:

- way of fixing and payment of the contribution
- information obligations of the employer
- procedure for contributions in arrears
- procedure for changing the pension scheme
- indexation conditions
- what to do in case of capital gains or losses

Conditional indexation

Pension schemes will have to state explicitly whether or not the pensions are indexed, and if so, what system is used. The Pension Act also stipulates that conditional indexation must provide consistency between the expectations raised, the financing and the realisation of the conditional indexation. The starting point of the rules of indexation is consistency between raised expectations, credit facilities and realisation of indexation.
In every document and all kinds of information the disclaimer in the case of conditional indexation is obligatory. Without the disclaimer the indexation provisions will become unconditional according to the law.

Surrender of small pensions

The Pension and Savings Funds Act offers two ways of preventing a disproportionately heavy administrative burden for small pensions: small pensions may be surrendered upon retirement or earlier emigration, or contributions may be refunded in the case of membership for less than 12 months. Both of these options will cease to exist. Instead, pension administrators will have the option, subject to certain conditions, of surrendering small pensions of less than € 400 (as at the retirement date) two years after the employee's dismissal.
Pursuant to the new Act, it will also be possible to surrender small partner's pensions upon retirement and small extraordinary partner's pensions in the case of divorce.

Obligation to provide information in the case of DC pensions with individual freedom of investment

In the case of contribution agreements stipulating freedom of investment, the pension administrator bears responsibility for the investment mix, unless the participant wishes to take on that responsibility. Where the pension administrator is responsible, it must invest the funds 'prudently'. If the participant wishes to assume the responsibility, the pension administrator is required to provide advice. This means that the pension administrator will have to gather information about the participant's financial position, knowledge, experience, objectives and willingness to take risks (insofar as this can be reasonably considered relevant to the advice), and use that information as the basis for its advice. The participant must then be informed on an annual basis about how that advice relates to the investment mix selected. The supervisor in this regard is the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten, AFM*).

Communication

The Act states in detail which parties (pension fund, insurer, employer**)** have to inform the person concerned (participant, person entitled to a pension, early leavers and their partners), the frequency of delivering the information and the obligatory elements of the information.
Giving information digitally is allowed provided there is permission to do so.

The new supervisor for communication is the AFM. The AFM checks whether the information given is on time, correct and accessible and also checks whether communication statements are in line with the pension scheme. The AFM can introduce more policy rules.

Pension fund governance

In December 2005, the *Stichting van de Arbeid* (STAR) labour foundation published the report entitled “Principes voor goed pensioenfondsbestuur” (“Principles for proper pension fund governance”). The new Pension Act will stipulate that pension funds will have to comply with these principles by 1 January 2008 at the latest. The core of the principles is the periodical reporting on the policy pursued to all the parties concerned, and the realisation of an adequate and transparent internal supervision. The principles differentiate between three themes, namely the board, reporting and internal supervision.

Board
Most of the principles affecting the board are already laid down in existing legislation. Interesting new elements are:

- an adequate internal complaints and disputes procedure;
- insight into the policy and the decision-making procedures;
- an adequate communications policy;
- a procedure for a periodical evaluation of the performance of both the entire board and the individual members.

Accountability of the board
The principles stipulate that the board has to report on the policy, its implementation and compliance with the principles to an accountability body which has been specially set up for that purpose.
The accountability body will issue a judgement on the board’s actions on the basis of the annual report, the annual accounts and the internal supervision findings, and on the policy being pursued and to be pursued in the future.

Internal supervision
Transparent internal supervision means verifying policy and board procedures and processes, the checks and balances and the way in which long-term risks are dealt with. The findings of the internal supervision are included in the annual report and discussed by the board and the accountability body. According to the principles, pension funds can set up the internal supervision in four different ways:

- a three-yearly visitation committee;
- a separate supervisory body, for example a supervisory committee or board;
- a one tier board;
- an audit committee.

The new financial assessment framework (FTK) for pension funds
The minimum funding and solvency rules are an integral of the new Pensions Act. A pension fund’s financial position must be tested every year. The minimum provision for pensions is equal to the fair market value of the accrued liabilities, excluding non-guaranteed indexation. The minimum solvency position is such that the probability of a funding shortfall is less than 2,5%, given a one-year horizon. The minimum annual contribution is derived from the value of the pensions accrued during the year, including a solvency margin and possibly a contribution to fund indexation.

Distinction is made between various indexation systems. Reductions in contributions and refunds are allowed only if certain conditions are met, such as indexation being fully funded.

Insured schemes: specific topics

C policy

The Pension and Savings Fund Act offered employers the possibility of placing their pension commitments to employees with an insurer by giving employees the opportunity to take out their own contract with this insurer (known as the C policy). Employees with C policies were then policyholders. Under the new Pension Act, it is no longer possible for employees to act as policyholders when pension agreements are placed with an insurer. Employers are then the only ones who can place a pension agreement, regardless of whether the scheme is a basic one or a voluntary one.

C policies that were agreed on or before 31 December 2006 at the latest may continue to exist. This avoids a situation in which all current C policies would have to be converted into policies for which the employer is the policyholder as a consequence of the Pension Act.

Once the transition period has expired, the existing C policies will have to comply with a large number of new requirements under the Pension Act.

Collective transfer of value

An amendment to the Act has established that no unreasonable demands may be made in the form of exit conditions when an administration agreement/insurance agreement is terminated. This condition is intended to simplify collective transfer of value. It is incidentally not an entitlement to collective transfer of value.

Information provision

Some of the uneasiness felt by pensioners about the administration of pension schemes by insurance companies has to do with the information provided by the insurance companies. The Pension Act contains extensive instructions about providing information about the content of pension schemes and the way the pension scheme is administered (including about indexation). The government expects better information to play an important part in preventing complaints about the administration of directly insured schemes.

Participation and insured schemes

To promote participation by stakeholders in the administration of pension schemes, the Dutch Labour Foundation [*Stichting van de Arbeid]* (STAR) and the Coordinating Body of Associations for the Elderly [*Coördinatieorgaan Samenwerkende Ouderenorganisaties]* (CSO) have signed two voluntary agreements. Participation in the context of pension funds takes the form of either direct representation on the board or indirect representation through the members' council. The STAR and CSO have observed that not all the necessary steps have been taken with regard to participation in insured schemes. This was the reason for the amendment to the Pension Act.

When employers decide to place their pension schemes with pension insurers, an administration agreement is entered into with the insurer, stating both parties' obligations. In accordance with article 27 of the Staff Councils Act, the staff council (OR) has the right of assent with regard to every proposed decision to set up, change or cancel a scheme relating to the directly insured pension scheme.
Because the employer takes decisions about the pension scheme in consultation with the OR, participation by pensioners is different for insured schemes. This is provided for in the Pension Act by the introduction of a right to be heard for people entitled to a pension, in the event of decisions that affect the administration of the scheme or the level of pensioners' pension rights. This forces employers to pay attention to the views of the association of pensioners when taking to their proposed decision. To reduce the administrative burden, the duty to hear will only be made mandatory for insured schemes for at least 250 people (members and pensioners combined).
The Pension Act does not make it mandatory for an association of pensioners to be set up. This means that the provision only applies if such an association of pensioners already exists and the insured scheme is for 250 or more members and pensioners.

Governance for directly insured schemes

On 16 December 2005 the Dutch Labour Foundation (STAR) published a report containing its Principles for Good Pension Fund Governance. Pension administrators must fill in the details of these principles based on the Pension Act. The most salient features in the principles for good pension fund governance are their two new elements: the accountability body and internal supervision. Other topics include transparency, communication and complaints procedures.
"Good governance" is also important for directly insured schemes. It should be recognised here that the position of the insurer differs on a number of points from that of the pension fund. The principles take account of these differences with respect to accountability and supervision. The intention is not to regulate more with regard to internal supervision for insured schemes than is already laid down in the Financial Supervision Bill.
An evaluation will be carried out in 2008 that will reveal the way in which the principles have been given shape and content in practice. In view of the relationship between participation and governance, it has been decided to extend the duration of the voluntary participation agreement by one year until 1 January 2008.

Contribution arrears

In situations in which arrears have occurred in making contributions, the insurer will inform the members and the employer of this if it is necessary to waive pension contributions and/or to terminate risk insurance. The insurer must have made a demonstrable effort to collect the contribution before making this announcement. Insurers may only cancel the accrued pension three months after the interested parties have been informed at the earliest, backdated no more than five months (from the date of the notice). Cover for disability risk and/or death risk must be maintained for these three months. These new conditions relating to contribution arrears will come into force on 1 January 2008.

More information?

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