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In this issue of Watson Wyatt Update

Publication of model letter by AFM

In 2009, the Netherlands Authority for the Financial Markets [*AFM-Autoriteit Financiële Markten*] will not, under certain conditions, monitor how the indexation label is used. The most important reason for this is that the label could cause confusion in shortfall situations, in which indexations are normally not expected to apply for the time being.

In essence, the conditions mean that pension funds must send a letter to their active participants and pensioners, in the event that they do not wish to use the indexation label in 2009. This letter should fulfil a number of requirements described in the explanatory notes that accompany the model letter. The AFM published this model letter on its website on 22 April 2009. The letter must describe the recovery measures that have been used by the pension fund in the recovery plan.

Re-insured funds, for which a separate procedure is being established, are not expected to use the model letter at the present time.

The deadline for submission is now 30 September 2009, whereas it was indicated previously that the letter had to be sent in the second quarter.

Inventory of principles of pension fund governance

On 19 March 2009, the Social and Economic Council [*SER-Sociaal Economische Raad*] published a report on the inventory and evaluation of the principles of good pension fund governance.

Accountability

More than 80% of the pension funds have appointed an accountability body. In the case of many funds with a participant's council, the participant's council and the accountability body are frequently made up of some of the same individuals. One of the reasons for this is the fact that there is already some level of expertise in the participant's council. This situation also appears to constitute an important reason as to why there is an unequal distribution of seats in many accountability bodies. Some of the fund providers supplement the participant's council in its capacity as a representative body with a representative acting on behalf of the employer. The fact that the participants council and the accountability body exist simultaneously seems to cause some uncertainty, partly by virtue of the fact that their duties and powers overlap. The Labour Foundation [*Stichting van de Arbeid*] and the Coordinating Body of Associations for the Elderly [*CSO-Coordinatieorgaan samenwerkended ouderenorganisaties*] will take part in a consultation together with the Association of Company Pension Funds [*OPF- Stichting voor Ondernemingspensionfondsen*], the Dutch Association of Industry-wide Pension Funds [*VB- Vereniging van Bedrijfstakpensionfonden*] and the Dutch Association of Insurers [*Verbond van Verzekeraars*] in order to consider whether the manner in which employer participation is now laid down in legislation should be amended, as part of which all members fulfil an equal role.

Internal supervision

Almost 80% of the pension funds have organised internal supervision measures. In the case of most pension funds, this takes the form of a visitation committee. A number of major corporate pension funds and industry-wide pension funds have created a separate body for internal supervision and only a small number of industry-wide pension funds have selected an audit committee. Only a single fund has opted for a one-tier board.

Other matters to be dealt with

The investigation has shown that a number of pension funds are undertaking auxiliary activities. In some cases, they undertake these activities themselves, but the majority undertake the activities using a separate legal person. Fund providers who undertake auxiliary activities themselves are acting in contravention of the Pension Act [*Pensioenwet*].

As far as transparency and expertise are concerned, it emerged from the evaluation that practically all pension funds have a complaints and disputes procedure. In addition, practically all pension funds have laid down the requirements with regard to the level of expertise that members of the Board are required to possess and have adopted a system of periodic evaluation.

Disadvantages of principles of pension fund governance

During the course of the evaluation of the principles of pension fund governance, the disadvantages of these were also assessed. The greatest problem for fund providers arose when seeking suitable candidates for the various bodies. This problem was also observed where members of the Board of the fund provider were concerned, partly in view of the fact that the requirements in terms of expertise had become more stringent.

With regard to internal supervision, it emerged from the evaluation that the high costs associated with the internal supervision were considered troublesome. It also became apparent that there were objections to the increase in bureaucracy. Finally, one of the objections to the principles was they did not make a distinction as to the size of the pension fund.

As a result of this last issue, the number of corporate pension funds has declined and small corporate pension funds are also contemplating going into liquidation as a result of the increased administrative burdens and costs.

Insured schemes

It emerged from the evaluation of principles of good pension fund governance that insurers also sufficiently complied with the principles. The information provided to active participants forms a focus and insurers employ a simple and accessible complaints procedure. Finally, insurers have put in place a system of internal supervision and 14 of the 16 insurers that took part in the evaluation indicated that they are accountable to the employer when it comes to the results achieved.

Governance, outsourcing and pension providers

"Governance, outsourcing and pension providers" together form one of the areas for supervision with regard to pension funds for 2009, according to De Nederlandsche Bank (DNB).

Many pension funds outsource their pension administration to an external party. This does not relieve the fund manager of responsibility with regard to the pension administration, however. Risk control and management also form a significant component of good pension fund governance.

In 2009, DNB is investigating whether fund administrators are able to adequately fulfil their responsibility when pension administration is outsourced. As part of this investigation, the aspects considered include the role of the administrator's office, the extent to which the administrator understands the cost and payment structure of the organisation to which the administration has been outsourced, the manner in which the segregation of duties is organised in the outsourcing, the manner in which the risks associated with outsourcing are controlled and the extent to which the risks associated with concentration arise as a result of the clustering of pension providers.

Therefore, the risk associated with outsourcing relates to many other aspects than just financial risks. For example, these include:

- Management risks
- Organisational risks
- ICT risks
- Personnel risks
- Integrity risks

The pension fund administration must be able to control these risks sufficiently and also be accountable to stakeholders and the supervisory body. It is essential that the various risks of outsourcing are monitored effectively, and more should be done than just examining whether the agreements of the Service Level Agreement with the pension provider have been complied with.

If a pension administrator has any doubts as to whether certain risks are being controlled, this must be raised with the administration organisation immediately so that both parties can reach a solution together. Finally, it is also in the interests of the administration organisation that the risks are placed in the proper context.

Ban on surviving spouse 'shopping around' could be lifted

As a result of the introduction of the Pensions Act [*Pensioenwet*], the surviving partner no longer has the option of 'shopping around' with the benefits payable to him/her upon death of the spouse. This means that the capital cannot be used in order to purchase a pension elsewhere. At present, a legislative proposal is being debated in the Lower House of the Dutch Parliament that will ensure that the unintentional ban on 'shopping around' is lifted.

The Pensions and Savings Funds Act [*PSW – Pensioen- en Spaarfondsenwet*] allowed eligible persons the option of having the sum payable to him/her upon death of the spouse transferred to a different provider on the date of retirement, to purchase a pension with that provider.

In accordance with Article 70, paragraph 3 of the Pension Act, value transfer is only permitted under circumstances referred to in Articles 71 to 92 inclusive. Shopping around is considered a form of value transfer and is governed by Articles 80 to 82 inclusive of the Pension Act. These Articles only lay down rules with regard to shopping around on the date of retirement and only allow this option (the right to shop around in the sense of Article 81) to the participant or the late participant. The Explanatory Memorandum of these articles does not provide further explanation of this amendment with regard to the Pensions and Savings Funds Act (PSW). This amendment has not been discussed during further parliamentary debate either. It may be concluded from this that shopping around on the part of the surviving spouse is no longer possible since the Pension Act came into force on 1 January 2007. The Pension Act only permits the option of shopping around to the (late) participant.

Member of the Lower House of Dutch Parliament Blok asked Minister Donner on 26 August 2008 whether the fact that the partner of a (late) participant was unable to shop around for a different provider was an unintentional consequence of the introduction of the Pension Act. The Minister was also asked as to whether he was willing to reinstate this option at the first available opportunity. The Minister responded on 16 September 2008 with a confirmation that this was the case and indicated at the time that the Pension Act would be amended in this regard in a collective act.

Collective Act of the legislation of the Ministry of Social Affairs and Employment (SZW) 2009

In the first ministerial memorandum of the amendment (of 16 February 2009), the option for the surviving partner to shop around was implemented. On 15 April 2009, an amendment was submitted by the same member of the Lower House, Blok, in which the date on which the Act came into force is set partly on 1 January 2007 and on 1 January 2008. The amendments are intended to reinstate the option of partner of the (late) participant to shop around, which was unintentionally rendered impossible by the introduction of the Pension Act and the Occupational Pension Scheme (Obligatory Participation) Act respectively.

Website

Further information is available on www.watsonwyatt.nl/update about:

- Surviving spouse pension and the ban on value transfer
- House approves prorated distribution of costs of pension
- The Budapest protocol

Further information

For more information on the matters covered in this issue of the Watson Wyatt Update, please contact Wichert Hoekert (Publication of model letter by AFM), Marijke Biewinga (Inventory of pension fund governance), Elke Op Het Veld (Governance, outsourcing and pension providers) or Jetty Lahoye (Ban on surviving spouse shopping around could be lifted).