

Act Respecting Occupational Retirement Funds

Article 1

The scope of this Act

This present Act shall apply to occupational retirement funds in the meaning of the European Parliament and Council Directive 2003/41/EEC, on the activities and supervision of institutions for occupational retirement provision.

This present Act does not apply to the following:

1. retirement funds covered by Council Regulation (EEC) No. 1408/71, on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, and Council Regulation No. 574/72/EEC, on fixing the procedure for implementing Regulation (EEC) No. 1408/71.
2. funds covered by Council Directive 73/239/EEC, on the approximation of laws, regulations and administrative provisions in order to initiate and run operations in the field of direct assurance other than life assurance, Council Directive 85/611/EEC, on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS); Council Directive 93/22/EEC, on the founding and operation of financial institutions; and Council Directive 2002/83/EU, concerning life assurance.
3. funds that operate on a pay-as-you-go basis.
4. funds where the fund members have no legal rights to benefits and where the contributors can redeem their contributions without obligations for payment of retirement benefits having been met.

Article 2

Definitions

For the purposes of this Act:

Sponsoring undertaking: means an undertaking or other body which acts as an employer or in a self-employed capacity and which pays contributions into an occupational retirement fund.

Retirement benefits: means benefits paid by reference to reaching, or the expectation of reaching, retirement age or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability or cessation of employment, or in the form of support payments or services in case of sickness, indigence or death.

Retirement pension scheme: means a contract, an agreement or rules stipulating which retirement benefits are granted and under which conditions.

Member: means a person who is entitled to, or will be entitled to retirement benefits in accordance with the provisions of an occupational retirement contract based on the payment of contributions in accordance with the provisions of a retirement pension scheme agreement.

Occupational retirement pension fund: means a legal entity operating on a funded basis, established separately from the sponsoring undertaking for the purpose of providing retirement benefits on the basis of an agreement or contract.

Article 3

Membership in occupational retirement pension funds

Membership in an occupational retirement pension fund shall be based upon an agreement between the employees and their employer. Self-employed persons may enter into agreements regarding membership in occupational retirement pension funds.

Article 4

Conditions for operating an occupational retirement pension fund

The Ministry of Finance shall provide an occupational retirement pension fund with a license to operate upon meeting the same conditions as set forth in Section V of Act No. 129 of 1997, on the mandatory insurance of pension rights and on the activities of pension funds.

The provisions of Article 18 and Sections IV and VI – X of Act No. 129 of 1997 shall apply to the activities of occupational retirement pension funds unless otherwise indicated in this Act. The provisions of Article 32 of Act No. 129 of 1997 shall, however, not apply to the activities of occupational retirement pension funds.

An occupational retirement pension fund must be registered with the Financial Supervisory Authority and under its supervision. An occupational retirement pension fund shall restrict its activities to an operation that is linked to an occupational retirement pension. The activity of an occupational retirement pension fund must be financially and legally separated from the operation of a sponsoring undertaking.

Article 5

Investment requirements for occupational retirement pension funds

An occupational retirement pension fund shall formulate an investment policy and invest the fund's assets, having regard to the best terms on offer at any time and taking into account returns and risk. For that above purpose, the fund's investments must comply with the following rules:

1. Any investments must be guided by the interests of the fund members and the beneficiaries. In case of a potential conflict of interest, the fund or the entity which manages its portfolio shall ensure that the investment is made in the sole interest of members and beneficiaries.
2. The assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole.
3. The assets shall be invested predominately in regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must, in any event, be kept to prudent levels.

4. Investments in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the fund's assets. The fund shall also avoid excessive risk exposure to a single counterparty and to other derivative operations.
5. The assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulation of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers in the same group shall not expose the fund to excessive risk concentration.
6. Investment in the sponsoring undertaking shall be no more than 5% of the portfolio as a whole, and when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10% of the portfolio.

The provisions of Item 5 and Item 6 of paragraph 1 do not apply with regards to treasury bonds.

Article 6

Reserve fund

An occupational retirement pension fund shall provide a reserve fund that exceeds the fund's obligations in order to be able to cover any fluctuations because of pension schemes in cases where the fund, not its sponsoring undertakings, bear a biometric risk or where certain benefits or investment performance has been guaranteed. The reserve fund shall reflect the asset base and the type of risk in respect of the total range of schemes operated and be held on a permanent basis. These reserve fund assets shall be free of any foreseeable liabilities and serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits.

Article 7

The occupational retirement pension fund's duty to inform

An occupational retirement pension fund shall provide its members and beneficiaries with the following information upon their request:

- a. information regarding the investment policy principles according to Article 37 of Act No. 129/1997, on the mandatory insurance of pension rights and on activities of pension funds, which shall, at a minimum, provide information regarding the funds' investment risk measurement methods, the risk management processes and the strategic asset allocation with respect to the nature and duration of pension liabilities.
- b. in such instances where the member bears the investment risk, detailed and thorough information regarding investment options, if applicable, and the actual investment portfolio as well as information on risk exposure and costs related to the investments.
- c. detailed and substantial information on the arrangements relating to the transfer of pension rights to another occupational pension fund in the event of the termination of the employment relationship.

Each beneficiary shall receive, on retirement or when benefits become due, the appropriate information on the benefits and the corresponding options for their payment.

Article 8

Cross-border contributions

An occupational retirement pension fund that is authorised to operate in Iceland may receive contributions on behalf of an employee working in another state.

In the case of contributions from a Member State from within the European Economic Area, the retirement pension fund in question shall inform the Financial Supervisory Authority as to from which Member State within the European Economic Area the contribution in question comes, the name of the payer and the main characteristics of the relevant pension scheme.

The Financial Supervisory Authority shall inform the supervisory authority in the other Member State within the European Economic Area, in accordance with the provisions of paragraph 2, and notify the retirement pension fund in question thereof. Following this, the retirement pension fund may accept the contribution on behalf of an employee who works in another Member State within the European Economic Area in compliance with the laws and regulations of that Member State.

Article 9

Supervision

The Financial Supervisory Authority may require that particular aspects of the activities of an occupational retirement fund be restricted or temporarily suspended for the purpose of preventing conduct that is considered to be contrary to the provisions of this Act, particularly if:

- a. the fund does not protect in a satisfactory way the interests of the members and the beneficiaries,
- b. the fund no longer fulfils the requirements for its operating licence,
- c. the fund seriously neglects to perform its duties according to the rules that apply to its operation,
- d. the fund engages in cross border activities and does not comply with the requirements of labour and social legislation that have to do with occupational pension in the host state.

The decision to restrict or suspend certain aspects of the operation of an occupational retirement pension fund shall be justified in detail and communicated to the fund.

The Financial Supervisory Authority may require the seizure of the assets of an occupational retirement pension fund if the fund is no longer solvent in the opinion of the Financial Supervisory Authority or if the institution does not possess a compulsory reserve fund, cf. Article 6.

Article 10

Penal provisions

Article 55 of Act No. 129/1997, on mandatory insurance of pension rights and on activities of pension funds, shall apply to any violation of the provisions of this Act.

Article 11

Authorisation for the issue of regulations

The Minister of Finance may, by regulation, provide for the implementation of this Act in further detail.

Article 12

Incorporation

This Act entails the incorporation of Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision as adopted by the EEA Joint Committee Decision 88/2006 as published on 19 October 2006 in an Annex to the Official Journal of the European Union No. 52.

Article 13

Entry into force

This Act shall enter into force on 1 July 2007.