

HOW TO SET UP

AN INTERNATIONAL PENSION VEHICLE

DESCRIPTION

There are three Luxembourg structures that allow a sponsor to establish a pension funding vehicle within the meaning of the 2003 European Directive on pension funds (the IORP Directive on the activities of Institutions for Occupational Retirement Provision).

LEGAL FORM

Two pension fund vehicles are regulated by the financial supervisory authority, the *Commission de Surveillance du Secteur Financier* (CSSF):

- SEPCAV – *société d'épargne-pension à capital variable* (pension savings company with variable capital). This vehicle, which is similar to the SICAV, can only be used for defined contribution (DC) schemes;
- ASSEP – *Association d'épargne-pension* (pension savings association). This vehicle is suitable for both DC and/or defined benefit (DB) schemes. It is able to pay out a lump sum or an annuity and may also pay ancillary benefits such as death in service, disability pension and payments to widows and orphans.

A third pension fund vehicle is regulated by the insurance supervisory authority, the *Commissariat aux Assurances* - CAA:

- the CAA pension fund is suitable for DC, DB and/or supplemental benefits in case of death or disability of members. It has a choice of four legal structures, but in practice the asbl, a non-profit making association, is the most commonly used.

All three vehicles can be organised as an umbrella structure: different share classes can be used to separate investment styles (DC plans) or different types of plan (DB and DC schemes), or where differing social and labour law provisions make this necessary. All three types of fund can be organised as a "multi-employer" scheme.

SUPERVISORY AUTHORITY

The SEPCAV/ASSEP are supervised by the *Commission de Surveillance du Secteur Financier* (CSSF). The CAA pension fund is supervised by the *Commissariat aux Assurances* (CAA).

AUTHORISATION REQUIREMENT

Prior to starting its activities:

- a SEPCAV/ASSEP must apply for authorisation from the CSSF. Directors, managers, asset managers, liability managers and the scheme rules must be approved;
- a CAA pension fund must apply for authorisation from the CAA.

A pension fund operating cross-border in different countries will be supervised only by the home Member State supervisory authority.

LEGAL AND REGULATORY FRAMEWORK

SEPCAVs and ASSEPs are subject to the Law of 13 July 2005 implementing the EU IORP Directive. This amended the 1999 Law which created the SEPCAV and the ASSEP.

CAA pension funds are subject to the Regulation of the *Commissariat aux Assurances* of 31 August 2000 creating the CAA pension fund.

CENTRAL ADMINISTRATION

The central administration must be based in Luxembourg, to enable the CSSF or the CAA to carry out its role of prudential supervision. The pension fund must

CAPITAL BASE

The minimum capital for a SEPCAV is EUR 1 million, which must be reached within two years. Beneficiaries are shareholders in the fund. The ASSEP is not a company but an association and beneficiaries are creditors of the fund. The technical reserves should reach a minimum of EUR 5 million after ten years. For DB plans, technical reserves need to be valued by a recognised actuarial method. The CAA pension fund must have sufficient technical provisions in relation to its commitments. Sponsoring companies assume a residual financial guarantee.

appoint a Luxembourg custodian bank. The custodian's responsibilities include supervision of the investment policy and the payment of contributions by members/payments to scheme beneficiaries.

ELIGIBLE INVESTORS

A pension fund can be set up for one employer, or with a multi-employer structure. The status of the underlying affiliated members depends on the legal structure.

PROMOTER

The sponsor is not required to have any activity in Luxembourg.

- A professional organisation of employers could set up a pension fund for its members;
- A multinational company could organise the funding of several pension plans of its subsidiaries in a single structure;
- A financial services company could set up a pension fund for its corporate customers.

PROFESSIONAL STANDING AND EXPERIENCE

SEPCAV/ASSEP: The CSSF will verify whether the organisational, human and material means of the entity concerned are such as to properly and professionally perform its activities.

CAA pension fund: The CAA will verify that the person or entity that manages the pension fund satisfies the competence and reputation criteria. If management is delegated, the fund manager must have adequate internal organisation for the exercise of its mandate.

EXTERNAL AUDITING

Luxembourg pension funds are subject to an external audit to be carried out annually by an independent, Luxembourg based auditor.

AUTHORISATION PROCEDURE

SEPCAV/ASSEP: An application file containing the constitutive documents and details of the organisational structure must be submitted to the CSSF.

For a CAA pension fund the CAA will establish whether four conditions have been met:

- the object of the fund must be limited to the purposes of a pension fund;
- the central administration must be in Luxembourg;
- the principle of financial responsibility of the employer must be listed in the articles;
- the managers must satisfy the competence and reputation criteria.

A Luxembourg based pension fund has to advise the CSSF or the CAA of its planned cross-border activity. The process is detailed in a CEIOPS document known as the Budapest Protocol, published in February 2006. The procedure* will take a maximum of five months, and typically less than three.

* Supervisory bodies in several EU member states (eg. DNB in the Netherlands, BaFin in Germany and the CBFA in Belgium) have issued documents on their websites concerning social and labour law, investment rules and communication requirements.

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)

www.commassu.lu

Commissariat aux Assurances
(Luxembourg insurance supervisory authority)