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PRIVATE PENSIONS: SELECTED COUNTRY PROFILES

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This report is part of the OECD Insurance and Private Pensions Compendium, available on the OECD Web site at www.oecd.org/daf/insurance-pensions/ The Compendium brings together a wide range of policy issues, comparative surveys and reports on insurance and private pensions activities. Book 1 deals with insurance issues and Book 2 is devoted to Private Pensions. The Compendium seeks to facilitate an exchange of experience on market developments and promote "best practices" in the regulation and supervision of insurance and private pensions activities in emerging economies.
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Insurance and Private Pensions Unit
Financial Affairs Division
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AUSTRALIA

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

In Australia, the term "superannuation" refers to savings specifically dedicated to the provision of financial support in the retirement period. The term is preferred to "pension" for historical reasons, largely because of the long-standing preference for lump sum benefits rather than income streams.

The mandatory 'Superannuation Guarantee' was established under the *Superannuation Guarantee (Administration) Act 1992*.

The *Superannuation Industry (Supervision) Act 1993* (SIS Act) governs how superannuation schemes are structured and managed.

B. GENERAL STRUCTURE

Types of plans

The Australian superannuation system accommodates both employer-based and personal (or retail) schemes.

Mandatory occupational pension plans

The 'Superannuation Guarantee' is a mandatory, fully funded, privately managed individual account scheme. It is compulsory for employers to provide a minimum level of superannuation support on behalf of their employees (currently 8% of salary, rising to 9% in 2002/03). A small number of employees are excluded from this scheme, including the self-employed and employees earning less than $450 per month.

Employers that do not contribute are subject to the Superannuation Guarantee Charge. This comprises the shortfall of the minimum level of superannuation support in addition to interest and an administrative cost component. It is more expensive to pay the Superannuation Guarantee Charge than the mandatory contribution, not least because this Charge is not a deductible business expense, unlike the Superannuation Guarantee.

For the 1999-2000 financial year, Superannuation Guarantee contributions were in the order of $A 18 billion. This accounted for 40% of the total amount of contributions made to superannuation funds.

Voluntary occupational pension plans

For the 1999-2000 financial year voluntary superannuation contributions accounted for 60% of total superannuation contributions.

Some employees negotiate additional contributions from their employer out of their pre-tax salary. These contributions, commonly referred to as ‘salary sacrifice’ are treated favourably as employer contributions for taxation purposes. Other employees might contribute amounts addition to the SG requirements by making "top up" contributions to the same fund to which their employer contributes on their behalf or by entering into a personal superannuation arrangement via a retail fund. These contributions are known as undeducted contributions. The contributions and the benefits attributable to these contributions are not taxable (although the investment earnings on the contributions are taxable).

Various large corporations and public sector agencies provide superannuation support above and beyond what is required under the Superannuation Guarantee. The conditions of this support tend to vary between employers, with benefits often depending on length of service and human resource management and other employment condition considerations. However, there is evidence that the degree of such support is diminishing as the mandatory contribution rates for the Superannuation Guarantee scheme increase towards the maximum 9% level.

From 1 July 1997, contributing spouses can make contributions to a complying superannuation fund on behalf of their low income or non-working spouse. Depending on the income of the spouse, the contributor may also receive an 18% tax rebate on the first $A 3000 of such contributions (i.e. a maximum tax rebate of $A 540).

A proposal has also been put forward to treat superannuation interests as a separate matrimonial asset and to allow superannuation interests to be divided on marriage breakdown. Specifically, the proposal gives separating couples the ability to divide their superannuation by agreement or when unable to agree by court order. The proposal contemplates that in some cases a splittable benefit will not be made to the non-member spouse directly, but will instead be paid into a superannuation fund on their behalf.

Superannuation schemes are mainly defined contribution (or accumulation) in nature.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Information to be provided

Plan parameters and tax treatment

Generally speaking, Australia operates a taxation system on superannuation arrangements at all three points: contributions, earnings and benefits. In general, favourable (concessional) taxation treatment applies to both compulsory and voluntary superannuation. The national support for superannuation in the form of tax expenditure is estimated to be in the region of $A 10 billion per annum.

a) Contributions

Since 1992 employer contributions have been compulsory under the Superannuation Guarantee system. The level of contributions commenced at 3% and is currently set at 8% of earnings – all contributions are made by the employer. By 2002/2003 the required employer contribution level will have increased to 9%.

Employer contributions are tax deductible to the employer but become taxable income in the hands of the superannuation fund and are subject to tax at a rate of 15%. Employer contributions for employee "salary sacrifice" initiatives are treated favourably for tax purposes and the upper limit on the amount of tax favoured employer contributions that can be made in any particular workplace is quite generous.

Since 1996, a 15% taxation surcharge has applied to the contributions of high-income earners.

b) Income

Since 1988, earnings of superannuation funds have been taxed at a rate of 15%. The effective taxation rate is reduced to the extent that income accrues in the form of company dividends on which corporate tax has already been paid or capital gains.

c) Benefits

The minimum retirement age in order for individuals to be able to access their superannuation savings is currently 55 years. By 2025 it will be 60 years with the increase being phased in gradually. No early withdrawals are permitted, except in certain limited circumstances such as death, total and permanent disability, severe financial hardship and specified compassionate grounds set out in legislation. In addition to the statutory preservation rules, individual funds may specify additional restrictions on withdrawals in their trust deeds for their own commercial or social reasons.

Benefits can take the form of lump sum, pension, or annuities with tax/transfer incentives to encourage income streams. At present, approximately 75% of retirement benefits are paid as lump sums. However, as a result of tax based measures that encourage pension/annuity products, a trend seems to have begun towards ‘allocated pensions’.

Superannuation products available are:

i) allocated pensions, with rules setting out the minimum and maximum withdrawals each year;

ii) term certain annuities, where fixed amounts are payable for a specified number of years; and

iii) lifetime annuities, where a regular amount is paid throughout life.

The dollar size of benefits paid in lump sums has so far been relatively small: according to the 1997 Retirement and Retirement Intentions Survey carried out by the Australian Bureau of Statistics, about 50% of lump sum retirement payments were less than $60 000 for the period 1993-1997. The majority of lump sum payments were used for retirement related purposes such as investments and paying off the mortgage on the family home.

Taxation of lump sum benefits was introduced in 1983. Since that time benefits are still taxed concessionally, but at a less generous rate than applied previously. The amount of taxation depends on the type of benefit and its size.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

In Australia, whether a pension or annuity is indexed, and the rate of the indexation, is a commercial decision determined by the institution offering the income stream product. The SIS legislation does not explicitly address the need (or otherwise) for the indexation of benefits.

Many public sector funds guarantee full inflation protection to pensioners. In the private sector however, it is more common for increases to be made on a discretionary basis or limited to a maximum amount, such as 5%.

Vesting and portability

The vesting of a benefit refers to a member's legal entitlement to a benefit when leaving a fund for any reason. It does not mean that the member can take that benefit in cash – merely that they have a legal right to the benefit and its payment to them at a future date.

In Australia, a member's vested benefits include:

- The member contributions made to the fund, plus the net investment earnings on those contributions (member financed benefits); and

- An employer's mandatory contributions to the fund, plus the net investment earnings on those contributions. An employer's mandatory payments comprise the employer's Superannuation Guarantee contribution and any award contributions (provision of superannuation by an employer to employees as prescribed under an industrial award) .

The SIS legislation does not prescribe a minimum vesting requirement for the part of the benefit funded by voluntary employer contributions (ie non-mandatory employer contributions), and this is a matter for product design in each scheme.

Portability refers to the ability of members to transfer their superannuation benefits from one fund to another as employment changes without being restricted by fees or rules. Portability is not currently prescribed by the legislation. While many funds do allow portability this is a matter of fund design and some funds retain the benefits of a member until that member retires from the workforce. Retained benefits normally accrue income and interest payments in the period between the member changing employment and retiring.

Benefit guarantees

There is no government-provided guarantee of member benefits. Instead, the security of superannuation benefits is predicated upon compliance with the supervisory regime established under SIS.

Access to pension schemes

For most Australians, retirement income will be provided by a combination of a partial or full age pension (provided by the Government), funded superannuation benefits and other savings outside the superannuation system (eg private housing, equity investments etc).

Superannuation benefits can be paid either as a lump sum amount or income stream, in the form of (private) pensions or annuities. Pensions are where the fund pays the member a regular, predetermined income stream, usually for the rest of the fund member's life. The pension payment is generally set as a percentage of the member's salary at or near retirement. An 'annuity' is similar to a pension but a superannuation fund does not pay the member directly. Instead, the member, or the trustee of the fund, uses a lump sum benefit to buy an annuity from a life office or other similar registered organisation. As annuities are usually purchased with a single payment, they can be more flexible than a pension, in that the recipient can tailor the annuity to their needs and circumstances.

As noted above, Australians have generally preferred to take their benefits as a lump sum. This was due to a large part to the fact that Australia's taxation and public pension systems were, prior to 1983, more favourable to lump sums rather than income streams. In recent years, the Government has tried to encourage the use of pension and other income streams by balancing the tax treatment between lump sums and income streams. Importantly, the Government introduced the Reasonable Benefit Limit (RBL). A RBL is the maximum concessionally taxed superannuation benefit that a person can receive over a lifetime. Superannuation benefits that are greater than a persons' RBL are taxed at the highest marginal rate. To encourage retirees to finance retirement via an income stream rather than a cash payout, the RBL for pensions is more generous than for lump sums (it is twice the level). The pension RBL will apply if a person takes at least 50% of their accrued benefits in the form of a complying pension.

Disclosure to members

The information requirements under the superannuation regime are an integral part of the Government's approach to the supervision of the superannuation industry. The Australian Securities and Investments Commission (ASIC), is the government body responsible for all consumer protection matters in the financial services sector, particularly in connection with product disclosure. ASIC plays a leading role in ensuring that consumers receive adequate information to make informed decisions about financial products and services including superannuation.

The SIS legislation requires information to be provided to:

- <u>New members when they first join the fund</u>. Disclosure of matters such as the main features of the fund, the management and financial condition of the fund and the investment performance of the fund is required. This is to be done within 3 months of the person becoming a member of the fund.

- <u>Continuing members</u>. The information required for continuing members is usually sent out to the member in a member benefit statement. Such information must include: the contact details of the fund, specific details of the withdrawal benefits and any eligible rollover fund details (an eligible rollover fund is a superannuation entity which is eligible to receive lost or small benefits automatically rolled over from other funds). If applicable, disclosure of contributions and rolled over benefits; withdrawals; fees, charges and expenses deducted; employer contributions; net earnings; death benefits; other significant benefits; and unpaid contributions. Disclosure of this information is required at least once a year, within six months after the completion of the accounting period of the fund.

- Exiting members when they leave the fund. Details of the following is required – funds' contact details, withdrawal benefits, death benefits, insurance continuation options and the funds' internal complaints arrangements and functions of the Superannuation Complaints Tribunal (see below). This information should be given within a month of the member leaving if possible.

- Members on the occurrence of a 'significant event'. A significant event is generally any event in relation to the fund that the trustee believes the member would reasonably expect to be informed of. There are however, three specific instances of significant events that must be reported to the members. These include changes to the governing rules which would adversely affect the member, the transfer of member to a different category of membership or to a different fund, and receipt by the fund of a notice of non-compliance from the prudential regulator, the Australian Prudential Regulation Authority (APRA). This information is generally required within three months or within twelve months if the event is not adverse).

- Members/others on request. Examples of information a member may request include the governing rules, audited accounts, latest actuarial report (where relevant) and the latest annual report of the fund. Such information should be provided to the members within 1 month of their request. If other persons request information, the fund must provided audited accounts, together with any related auditor's reports and the most recent annual report.

Individual and collective rights of action

ASIC is the government body responsible for overseeing consumer issues particularly those dealing with individual product concerns.

Superannuation fund members have the right to bring civil and criminal action against trustees and investment managers who fail in their duties.

Superannuation fund members have access to a comprehensive mechanism for dispute resolution, through the compulsory fund-based internal arrangements. Specifically, all funds must appoint a contact person to receive enquiries and complaints. Trustees are also required to notify members regularly who the contact person is for enquiries and complaints and how to contact that person. Complaints should be dealt with in writing within 90 days and when the fund advises a complainant about the outcome of a complaint they must also be advised of the existence and function of the external Superannuation Complaints Tribunal (SCT)

The SCT is a statutory body established to deal with complaints about decisions of superannuation fund trustees affecting the rights and benefits of individual beneficiaries of the trust. Complaints may only be made on the grounds that the decision concerned is 'unfair or unreasonable'. The SCT tries to resolve complaints by conciliation or voluntary arbitration, without the need for people to go to Court. A SCT decision may only be overturned on a question of law, by appeal to the Federal Court. It is important to note that the SCT cannot hear a complaint unless it has already been made to the trustees under the funds' internal complaints arrangements.

B. PENSION PLAN ADMINISTRATION

Superannuation contributions may be paid into retirement savings accounts (RSAs) offered by financial institutions or paid into a complying superannuation fund. Superannuation funds must be established as trusts, whereas RSAs are a contractual form of low cost savings akin to term deposits. They are simple capital guaranteed products offered by deposit taking institutions (such as banks or credit unions) or by life insurance companies. RSAs currently account for less than 1% of superannuation assets.

From a commercial (but not statutory) viewpoint, there are five types of superannuation funds: public sector funds, corporate superannuation funds for white collar workers, retail funds (see personal pension plans below), industry superannuation funds and small (self managed) superannuation funds. At present, employees have no automatic choice as to which superannuation fund their contributions are deposited in. Instead, in many cases, industrial awards or employers make this decision. However, this may change in the future as the Government has announced its commitment to allow employees greater choice and to promote greater competition and efficiency. Specifically, the Government is contemplating requiring employers to allow employees a choice as to the superannuation fund or RSA into which their SG contributions are paid.

In September 2000, there were over 217,000 superannuation funds in Australia. The vast majority of these were "small" (over 98%) with the reminder comprising all other types of funds. The industry is heavily concentrated with the largest 100 superannuation funds accounting for 57% of total superannuation assets.

All types of superannuation fund are able to accept both mandatory and voluntary contributions.

Other institutions such as banks, life insurance companies and investment managers also play important roles as service providers. They may offer investment services, custodianship of assets, administration of records and other similar services.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

As the Australian Constitution contains no superannuation head of power *per se*, it is not compulsory for superannuation schemes to be subject to the relevant supervisory and regulatory authorities. However, the large majority of schemes do submit to regulation under the SIS Act as they would otherwise not be permitted to claim tax concessions or accept Superannuation Guarantee contributions. Once the trustee of a fund has chosen to be subject to the SIS Act they cannot revoke this choice.

Providers of "public offer" (i.e. retail) superannuation are required to be licensed by the Australian Prudential Regulation Authority (APRA). There are currently 160 approved trustees who are responsible for around 600 retail superannuation funds.

Pension fund governance

Boards of trustees manage all superannuation schemes (this does not apply to RSAs). Trustees are responsible for the management, operation and investments of superannuation funds.

Trustee boards of all funds other than small funds or retail funds are required to include equal employee and employer representation.. Trustees may delegate their tasks to service providers such as external fund administrators, actuaries, lawyers and investment managers. However, trustees are personally liable to fund members for their decisions. Penalties range from disqualification and fines to prison terms.

Financial requirements

Since superannuation schemes are mainly Defined Contribution (Accumulation), there are no minimum funding requirements. It is important to note that over 70% of superannuation funds by number are accumulation funds.

Technical requirements

There are no requirements to have a minimum rate of return, except that small amounts (under $A1000) cannot be eroded by administration charges and Retirement Savings Accounts cannot be eroded by negative interest (i.e. they must be capital guaranteed).

Investment regulation

APRA, the industry regulator, was established in 1999 to regulate the financial sector from a prudential perspective. APRA is responsible for the prudential regulation of superannuation funds, general and life insurance companies and deposit-taking institutions such as banks, building societies and credit unions.

Direct investment controls have always been rejected by Australian Governments on the basis that trustees should be given the commercial freedom to maximise long-term returns for members, subject to an appropriate regard to risk. The prudent person rule has been put in place by legislation and there are no quantitative limits on asset classes.

There are generally no statutory asset requirements for superannuation funds. The sole exceptions are the 5% ceiling on “in-house” assets (i.e. investments back into the employer sponsor), a “no borrowing” rule and restrictions on lending to members. It is important to note that there is some encouragement of portfolio diversification through the trust covenants that are set out in the legislation. Diversification is not, however, explicitly required.

Compulsory insurance and guarantees

Superannuation schemes are not required to insure against bankruptcy or insolvency of the employer.

Reporting to supervisory authorities

Superannuation funds and Retirement Savings Account providers must send their annual reports to APRA within the period set out in the SIS legislation after the end of their year of income. This is now generally four months.

Since 1995 Risk Management Statements (RMS) have been compulsory for superannuation schemes which invest in derivative products. Trustees of funds investing in derivatives are required to disclose the risk management practices and controls adopted for derivatives in a RMS. This ensures that trustees are aware of and focus on the impact which derivatives can have on the investment profile of a fund.

APRA requires regulated superannuation funds paying complying pensions to produce an annual actuarial certification that there is a high degree of probability that pensions will continue to be paid under the governing rules of the fund.

B.2 GROUP INSURANCE PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

See Section II.i. “Regulatory Framework of Mandatory Occupational Pension Plans” above.

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

Information to be provided

BELGIUM

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

The legislation applicable to the pension system is:

The insurance contract law with regards to life insurance contract;

The general law on supplementary pensions (Law of 6 April 1995 which came into force on 1 January 1996) which regulates mainly the social aspects of the pension schemes;

The law on the supervision of insurance companies and pension funds which regulates mainly the technical and investment aspects of the schemes; to this can be added the law of 9 July 1975 and the Royal decrees of 14 May 1983 and 7 May 2000;

Insurance companies and pension funds are regulated by the Ministry of Economic Affairs and the Insurance Supervisory Body. The latter is responsible for supervision.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Employers can voluntarily establish occupational pension schemes and determine their terms and conditions. If the employee makes a personal contribution to finance the pension plan, however, and if the plan covers all the employees, the scheme must be set up:

Either under a collective agreement if the company has a work council or a health, safety and workplace improvement committee;

Or, if no such structure exists, via an amendment to the staff regulations.

An employee who already has a contract of employment binding them to the employer's overheads is not required to become a member of this scheme unless the plan is established via a collective agreement; however, any employee belonging to the relevant category in Pension Plan Rules and joining the company after such a plan is created must become a member.

Some free supplementary pension system for the self-employed or pension systems specific to certain self-employed professions exist as well. These voluntary occupational pension plans must be funded and are managed by life insurance companies or pension funds. Group insurance contract represents around 70% of the market, the last quarter is covered by pension funds. Since 1986, supplementary pensions can not be paid out of companies' budgets or out of book reserves.

Most of the schemes are defined- benefit, but defined contributions plans are starting to develop.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Individuals have the opportunity to take out personal pension plans managed by insurance companies or banks.

The terms and conditions applicable to such pension plans are determined on the basis of the individual requirements. These schemes operate on a funded basis.

Plan parameters and tax treatment

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

a) Contributions

Contributions to occupational pension schemes are tax-deductible for both the employee and the employer. In most cases, the employer pays the larger part of the funding cost.

b) Income

Interest accrued and capital gain realised under occupational pension schemes during the holder's working life are also tax-exempted.

c) Benefits

Lump-sum are taxed at a flat rate of 16.5% or 10% and annuities are taxed at the standard rate.

The legal retirement age is 65 for both men and women. Actually it used to be 60 for women and will be gradually increased to 65 in 2004.

In Defined Benefit schemes, the employer generally promises a benefit that is a proportion of the last salary and in relation with the years of service.

Benefits can be paid in lump sum or annuities according to the pension plan rules.

More and more, the DB schemes are separated from the state pension. For instance, plans called “step-rate” have one part linked to the salary up to the legal ceiling on pension and another linked to the salary exceeding the ceiling.

Furthermore defined contributions schemes are developing. The employees have the choice between several schemes which includes not only a choice on the investments but also the coverage of risks (death, invalidity).

Due to the ceiling on fiscal exemption, the pension generally does not exceed 80 % of the gross final salary.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Two systems of voluntary pension plans are implemented. Here are those characteristics:

i- Long-term saving

This is mainly life insurance contract. The fiscal deductibility is applied under certain conditions:

Ceiling of the deductible contribution according to the professional income;

The subscriber of the contract must fit with certain criteria (*inter alia* age at the subscription date) and he should be the insured as well as the taxable person.

The contract should be set according to certain criteria (minimum term)

Benefits at the end of the contract are taxable under a moderate flat rate.

ii- Pension saving

Pension saving may be:

Life insurance contracts;

Individual pension saving accounts underwritten by a financial institution (eg banks);

Enrolment in a mutual fund;

The fiscal deduction is subject to certain criteria:

Conditions linked to the subscriber: age on the subscription date, being taxable under the income tax treatment, maximum age in order to benefit from tax incentives;

Conditions linked to the contract: minimum term;

Benefits received at the end of the contract are taxable at a moderate flat rate.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

Life insurance companies and pension funds cannot promise the indexation of annuities.

In any case, benefits are generally lump-sum.

Vesting and portability

Since the 1995 law, rights are vested after one year membership.

In the past, pension plan rules could stipulate a non-payment of part of the benefits corresponding to the employer's contributions if the employment agreement was terminated prematurely for whatever reason.

The 1995 law grants the subscriber entitlement to the supplementary pension set up with his employer. If the reserves should prove to be insufficient to cover the vested rights, the employer is obliged to settle the difference (this financial strain applies only to Defined benefits schemes).

The objective of the law is to enhance mobility on the labour market.

In the case of termination of the employment contract, the employee has three options concerning his vested reserves:

He can choose to keep those reserves where they are and should confirm this explicitly;

He can transfer the vested rights to the group insurance or the pension fund of his new employer. This decision should be notified to the former employer within 30 days from the day the employer was informed of the amount of his vested reserves. The vested reserve is calculated on the date of the termination of the employment contract and adjusted to the date of transfer;

He can transfer the reserves to an institution managing extra-legal pension.

Moreover, if the employer decides to switch to another pension vehicle, this may not reduce the vested rights of his employees.

Benefit guarantees

The 1995 Law determines the minimum amount of the acquired reserve in case of early retirement.

Access to pension schemes

Affiliation is immediate for workers over 25 years old.

By virtue of the law of 6 April 1995, the pension commitment cannot contain any illegal distinction between workers belonging to the same category and particularly any discrimination between men and women in respect of years of service provided after 17 May 1990 (other than differences warranted by the respective life expectancies of men and women). In particular the retirement age in supplementary pension schemes must be the same for both sexes.

Employees working part-time have the same rights as the employees working full-time, but in proportion to their employment rate.

Disclosure to members

At least once a year, the employer informs the employees of their vested rights.

The pension plan rules should be disclosed to enrolees.

Individual and collective rights of action

i.- Principle

The pension fund holds the civil liability for errors committed by its governing bodies for as far as these errors are committed in the exercise of the mandate and the competencies the governing bodies have been assigned with.

It follows that the governing bodies can only be held personally responsible if they exceed their mandate or competencies.

The legislation does not impose any insurance.

ii- Plan members and beneficiaries can prosecute on the following bases:

civil liabilities

against the pension fund: in case of mismanagement by the governing bodies in the exercise of their mission. For instance, a simple mistake in the information passed on the beneficiaries.

against the governing bodies personally: if the governing body was to commit a criminal offence on a wrongful act, such as fraud or misappropriation of funds.

penal liability

Both the pension fund as the governing bodies may be criminally prosecuted (separately or jointly) for whatever penal offence (fraud, embezzlement, misappropriation etc)

There is no statutory compensation scheme in place.

B. PENSION PLAN ADMINISTRATION

Providers of voluntary occupational pension plan may be:

Insurance companies

Pension funds created by a company or a group of companies, by economic or industry sector;

Pension funds created by organisations representing doctors, dentists, associations, exclusively for their members which are generally connected with agreements on their honoraria.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

Pension funds are generally in the form of non-profit making associations. They can also be formed as a mutual insurance association.

Pension funds have to be agreed and must provide the supervisory authorities with the detailed information and documents which enable them to get a description of the planned activity and to scrutinise the legal, financial and technical files of the funds involved:

The main elements of this information are:

the by-law;

the identity of the administrators and managers (fit and proper requirements applied) ;

an overview of the plan' arrangements;

the technical basis for the calculation of the contributions;

the technical basis for the calculation of the technical provisions;

the solvency margin (if relevant, for pension funds);

Pension fund governance

An actuary must be appointed. The actuary's duties include reporting to the Insurance Supervisory Body on the operating reserves and advising the pension fund managers in relation to financing, operating reserves and reinsurance.

An agreed auditor is *inter alia* responsible for reporting to the Supervisory Body on the financial and managerial situation of the pension fund. Pension funds are subject to specific accounting rules.

Financial requirements

The method used to calculate the minimum operating reserves is defined by the regulations and must comply with a number of criteria. The operating reserves are calculated on the basis of mortality tables and a maximum interest rate of 6%.

Due to the fall in interest rates over the past few years, the actuarial rate was reduced in 1999 with consequently a considerable increase of the mandatory minimum reserves.

Mortality tables are fixed by the regulation.

Since 1985, pension funds have been subject to a solvency margin requirement in relation to death and invalidity benefits; that margin is based on the capital risks insured.

Assets are valued on the basis of their market value.

Valuation is performed annually.

Technical requirements

An insurance company has an obligation of results and, consequently must prove its solvency.

A pension fund has normally only an obligation of the best result, even if the employer promised a defined benefit to its employees.

Investment regulation

The regulation of investments has been harmonised for both pension funds and insurance companies. It only deals with the assets covering technical provisions and the solvency margin.

Few constraints remain in the field of the investments covering the technical provisions.

The main restrictions are quantitative and focused on the dispersion of the investments and too high-risk investments:

10% maximum of total reserves should be invested in the bonds issued by states or firms not belonging to OECD countries (Zone A);

10% maximum of total reserves may be invested in mutual investments funds not subject to legislation of an EU member state;

non-quoted (not negotiated on a regulated market) values must not represent more than 10% of total reserves.

5% maximum of the reserves can be invested in real estates certificates of one issuer.

options, futures and other derivatives not serving as a cover may not represent more than 5% of the total reserves of the pension funds;

non-guaranteed loans from a single borrower must not exceed 1% of the total reserves, and on the all must not represent more than 5% of the total reserves;

10% maximum can be invested in a single real estate;

Lastly equities, bonds from one issuer and/ or loan to one borrower must not exceed 5% of the reserves.

Investment management must also respect the criteria of security, profitability and liquidity.

The investment must be localised in the European Union but securities may be hold by credit or investment institutions located out of the EU if agreed by a public body which role is similar to Belgium Banking and Finance Commission.

Self-investment should be limited to 15%.

Lastly, there must be currency matching or convertibility between assets and technical provisions.

Compulsory insurance and guarantees

Pension funds are generally non-profit-making associations, which cannot become bankrupt in the legal sense of the term. If they run into financial difficulties, the regulations impose a recovery package, along with other measures.

Reporting to supervisory authorities

Annually, pension funds should disclose to the supervisory authorities:

The annual accounts;

The boards of directors annual report on management;

The auditor’s report to the general meeting;

The appointed auditor’ s report to the supervisory authority;

The general meeting ‘ s minutes;

A summary statement of the representatives securities of technical reserves;

A detailed list of representative securities;

A statement of the Solvability Margin;

The localisation of representative securities;

Statistics (including the actuary report on technical reserves).

B.2 GROUP INSURANCE PLANS

Legal requirements for life insurance companies

The insurance companies have to adopt the form of joint-stock company, mutual or co-operative.

Other requirements are similar to those applied to pension funds.

Information to the supervisory authorities must include also the reinsurance modalities and the name of the reinsurers.

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

Participants rights are set by the contract

Providers of voluntary personal pension plan may be life insurance companies in the case of long-term savings, or life insurance companies, financial institution, and mutual funds in the case of pension savings.

FINLAND

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

In Finland the regulatory framework of the statutory earning-related pension insurance is based on the Employees' Pensions Act (395/1961; TEL) and on the other Acts for specific groups of workers (134/1962;LEL, 72/1956;MEL, 467/1969;MYEL, 662/1985;TaEL and 468/1969;YEL). These compulsory, statutory pensions schemes are managed in Finland by employment pension insurance companies, pension foundations and pension funds (TEL) or by special pension institutions for the specific group of workers (LEL, MEL, MYEL TaEL and YEL).

The operations of the employment pension insurance companies, which can manage only the statutory pension schemes, are regulated by the Employment Pension Insurance Companies Act (354/1997).

Besides of the statutory pension schemes the voluntary, supplementary pension plans and benefits can, by the law, be included the rules of the pension foundations and pension funds, whose operations are regulated by the Pension Foundations Act (1774/1995) and the Insurance Funds Act (1164/1992).

The Insurance Supervision Authority, subject to the Ministry of Social Affairs and Health, carries out the operative supervision and inspection of the individual pension institutions. This authority is independent in its supervision activities. The Ministry of Social Affairs and Health is responsible for e.g. drafting of legislation concerning these pension institutions as well as intergovernmental issues related to this. Supervision of the pension institutions is done on the basis of annual accounts, actuarial statement and statistical information received every year.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Finland has two parallel statutory pension systems in private sector: the national pensions scheme and the employment pensions scheme. The national pensions scheme provides pensions on the basis of residence to guarantee a minimum income, whereas the other scheme is based on employment and related to earnings. A person's national pension is co-ordinated with his or her pension from the employment pensions schemes.

The earnings- related employment pension cover is a part of Finland's social security system, because it is compulsory and its scope and benefits are precisely defined by law (defined benefit system). The statutory employment pensions schemes cover the working population totally, either as employees or as self-employed persons including farmers and seamen.

The statutory employment pensions of the private sector are administrated by private institutions: employment pension insurance companies, pension foundations and pension funds or special pension institutions.

The benefits of the statutory pension schemes are regulated by the Employees' Pension Act and by other employment pension laws of specific groups of workers (LEL, TaEL, MYEL and MEL).

The financing of the statutory pension schemes is a mixture of pay-as-you-go (PAYG) and funded (about 30 percent of salaries).

Voluntary occupational pension plans

In Finland a pension foundation and a insurance/pension fund established by an employer or many employers, without carrying on insurance operations in a businesslike way, grant the persons covered by their sphere of operations and their beneficiaries pensions and comparable benefits that can be considered to fall within the scope of social insurance of persons.

Because of the statutory employment pensions schemes cover the working population totally in Finland and because its relatively high pension-level, the role of voluntary, supplementary pensions schemes is rather limited. He main purpose of this kind of an optional group pension insurance is to lower the retirement age, to compensate for a missing job history and to raise the replacement rate for elderly employees to 60 percent. Supplementary benefits are usually defined so that a supplementary benefit combined with a statutory employment gives the target total benefit level, normally 60 to 66 percent of the final wages. This full target benefit normally accrues in 25-30 years and the retirement age is about 60-65 years.

The pension foundations and pension funds carrying voluntary supplementary pension insurance in Finland are as a rule closed, i.e. they do not accept new insured.

According the law the benefits and other requirements of the voluntary, supplementary pensions schemes must be included in the rules of a pension foundation or a pension fund.

Because of the voluntariness of the plan the waiting periods to membership vary widely between the different supplementary pension arrangements, lasting normally from one to five years. A right to paid-up-free-pension is not included in every pension foundation's or fund's rules. The voluntary pension forms are generally the same as under the Employees' Pensions Act. There are also some recommendations of the Association of Pension Foundations for different pension forms (model contract).

A voluntary, supplementary pensions schemes can be arranged by an employer in a pension foundation, established by mainly one employer, or in a pension fund, established by several employers.

The benefits are funded in full, with some exceptions of pension foundations. The funding system collects contributions to cover the future pensions as well as annual expenditure. According to the Degrees concerning pension foundations' and pension funds' coverage of the pension liabilities (1137/1998, 1138/1998) pension liability for retired persons shall be covered wholly by 2004 and that for active persons by 2010. The main purpose of these Decrees is to diversify and decentralise the assets covering the pension liability in order to reduce risks relating to investments. The European Economic Area (EEA) are handled equally with domestic investments and OECD countries are equated with EEA to some extend.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

A voluntary, supplementary pension scheme can be arranged also by concluding a group insurance or a personal insurance contract with an insurance company. In this case the insurance is regarded as a life insurance and is managed by life insurance companies.

Individuals can arrange for private pensions. The conditions of the private pension are fixed up to the individual requirement. Private pension schemes are operated on a funded basis.

Plan parameters and tax treatment

Mandatory occupational pension plans

a) Contributions

The Ministry of Social Affairs and Health fixes rates of contributions for pension plans. Until 1993, contributions in TEL plans were paid by employers only. In 1993 employees' pension contributions were introduced.

In 2001 the TEL contribution (TEL = Employees' Pensions Act) is on average 21.1 per cent of wages/salaries. The employees' employment pension contribution is 4.5 per cent of wages. Employers thus pay on average 16.6 per cent.

Employers' and employees' contributions to supplementary pensions schemes are tax deductible up to a certain reasonable ceiling which is defined so that the total pension, including both statutory and voluntary pensions, can be at most 60 percent of the pensionable wage and the lowest retirement age can be 60 years.

b) Income

For pensioners both the supplementary pension and the statutory pension are taxable as earned income.

Domestic mutual and joint-stock insurance companies are taxed as other mutual and joint-stock companies. They pay an income tax of 29 percent. The pension foundation and funds are taxed in the same way.

c) Benefits

The basic benefits are almost the same in all schemes: a) An old age pension at the age of 65. This retirement pension can be advanced to 60 years or deferred over 65. In these cases the amount of pension is changed permanently so that the actuarial value of the pension liability remains unchanged. b) A disability pension for invalids. c) An early disability pension from the age of 60 on. d) A part-time pension at the age of 58 for a person who cuts down on working considerably (age limit is 56 by 2002). e) A survivor's pension to the children and surviving spouse of a deceased. f) An unemployment pension for an employee or self-employed person between 60 and 65 who has been unemployed for a prolonged period and who has received unemployment benefit for the maximum duration.

There are no upper limits in Finnish marks for the pension or the pensionable earnings. The maximum amount is however limited to 60 percent of the highest pensionable earnings. This limit applies to all pensions accrued under different systems, including statutory employment accident insurance and the statutory third party liability motor insurance.

The statutory pension must accrue from each year of contract of employment or period of self-employment. It accrues at the rate of 1.5 percent per year for those under 60 and at 2.5 percent per year for those over 60.

Voluntary occupational pension plans

a) Contributions

In pension foundations for voluntary occupational pension plans, the employer pays contributions or sets guarantees annually to cover the liabilities and the expenditure. In pension funds the founders and sometimes also the insured persons pay contribution to the fund according to the fund's by-laws (rules).

b) Income

Information to be provided

c) Benefits

See Mandatory occupational pension plans, Section c) "Benefits" above.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Information to be provided

<u>II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS</u>

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

Statutory earnings-related pensions are index-linked. The earnings-related pensions in payment are annually re-valued in line with the TEL index which follows the changes in prices and wages. Accrued pension rights and pensions of those under 65 are adjusted in line with the TEL index where changes in prices and wages have the same weighting. Pensions of those over 65 are adjusted by a TEL index where changes in prices have a weighting of 80 per cent, whereas changes in wages have a weighting of 20 per cent.

Vesting and portability

Full pension entitlement is retained after the termination of employment relationship or entrepreneurship.

Statutory benefits can only be deferred or advanced, there is no possibility to take out lump-sums or transfer of funds, since only part of the accrued benefit rights are actually funded.

There is full portability of benefit rights between schemes. The pension institution with which the worker was last insured issues the decision on the earnings-related pension and pays out the pension, regardless of the fact that the person may have been insured with several private-sector pension institutions during his or her working career.

The Central Pension Security Institute acts as a centralised clearing house and keeps track of contributions and periods of employment under different pension statutory pension schemes. It annually settles the pension institutions’ liabilities and does the necessary clearing to ensure that the costs of each pension institution correspond to the contributions claimed.

Benefit guarantees

Statutory benefits are fully safeguarded by a pension insurance system.

Access to pension schemes

All persons aged 14 or older are eligible to become members of a statutory pension plan. The period of time entitling to an old age pension is calculated from the age of 23 years up to 65 years.

Disclosure to members

Workers must be informed of eligibility conditions and benefit rules.

Individual and collective rights of action

Information to be provided

B. PENSION PLAN ADMINISTRATION

Under the TEL Pension Act an employer is free to choose in which pension institution he wants to take out his statutory earnings-related pensions insurance. He can choose between the insurance companies which have obtained authorisation from the Council of State for managing statutory earnings-related pension insurance, or a pension fund or set up a pension foundation.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

An insurance company may be incorporated by one or more natural persons or legal persons (founders). In the case of an employment pension insurance company the founders are usually employers (companies or other enterprises). At least half of the founders shall have their residence or, if the founder is a legal person, the place of the registered office in the European Economic Area, unless the Insurance Supervision Authority grants an exemption from this requirement. No founder may be incompetent, bankrupt or a person whose business activities have been prohibited. Before an insurance company can be incorporated, an application for licence shall be submitted to the Government addressed to the Ministry of Social Affairs and Health. The employment pension insurance companies shall have a guarantee capital of initial fund of at least EUR 5,000,000.

As a rule, pension funds and foundations used to be pension institutions of one employer (founder). Today, however, most pension foundations are joint ones. A joint pension foundation may be set up, for instance, by an employer and a pension foundation established by an employer, Finnish employers within a group referred to in the Act on Insurance Companies, a co-operative, a limited partnership or general partnership and employers under their authority, and, with the permission by the Insurance Supervision Authority, by other corporations that share a financial or operational link. The minimum number of people insured in pension foundations is 30 (voluntary supplementary pension cover) or 300 (statutory pension cover). For funds the equivalent limits are 100 and 300 people. For pension funds and pension foundations the legislation does not lay down any basic capital. However, taking account of the extent and nature of the future operations of a pension institution, some initial contributions to it are demanded.

Before a pension fund or pension foundation can be registered its by-laws (rules) shall be submitted to the Insurance Supervision Authority.

Pension fund governance

The administration of pension institutions rests with the Board of Directors. There are minimum regulations concerning the number of board members which must be elected among the employer and through a body representing the employees.

The Board of Directors sees to it that pension institution’s administration and operations are run properly. It is responsible for appropriate monitoring of the pension institution’s accountancy and financial assets. It shall draw up a plan concerning the investments of the assets.

A pension institution must have an administrator or manager appointed by the Board of the Directors. The administrator sees to the institution's day-to-day administration.

The pension institutions shall have in their administration sufficient expertise and professional skills in investment and insurance operations in order to maintain the institution's solidity and productivity. The administrators shall also have special qualifications and pension institution must have an actuary carrying out insurance-related technical calculations and investigations.

Financial requirements

In the statutory system, only part of the pension liability needs to be funded. The rest can be financed on a pay-as-you-go (PAYG) basis. The PAYG component is paid into the pooling mechanism managed by the Central Pension Security Institute.

Funding is carried out on an individual level, and the pension institution alone is responsible for the funded components of the pensions. Since 1986, the calculated values of the technical provisions, must be fully covered by proper capital assets.

The funding annual surplus may be transferred to the reserve for future bonuses to be credited to the policyholders or may be used to reduce contributions, as long as solvency margins are met. Otherwise, strengthening of solvency takes priority in the use of surplus funds.

Solvency is measured by a newly defined solvency margin (means "operating capital"), which besides the company's own book capital, also includes the difference between the fair value of the assets and the book value of assets, and some voluntary reserves. The solvency border is 6-9 %. There is a target zone which has a lower limit at 12-18 percent and an upper limit at 24-36 percent. The limits depend on the company's assets risks.

Technical requirements

The actuarial principles to be followed are described in the Insurance Companies Act, the Act on Earnings-Related Pension Insurance Companies, and the acts on the earnings-related pension. The pension funds observe the same actuarial principles as the insurance companies, where appropriate. When calculating technical provisions, a discount rate of 3 percent is used. When calculating technical provisions in voluntary pension plans, the discount rate is 4,1 percent for the year 2001.

Investment regulation

EU directives on life insurance have been applied also in the investment of pension assets in the pension scheme as well as in insurance company investments. Self-investment is permitted, mainly in the form loans to the sponsoring company, up to 25 % of assets. The employer is charged an interest on these loans which must be at least equal to that used for calculating the pension liabilities.

There is a currency-matching requirement: a maximum of 20 percent of liabilities to be met in a certain currency can be covered by assets in another currency.

Portfolio restrictions include a ceiling of 50% in quoted shares, 5% in unquoted shares (not allowed for pension foundations in compulsory schemes), 70% in mortgage loans, and 40% in real estate. In addition to this in voluntary pension schemes, 25 % of the assets of the pension foundation may be invested in other assets.

These restrictions apply only to the assets covering pension liabilities.

Compulsory insurance and guarantees

A statutory, collective (i.e. including all pension institutions and funds) join liability system has been created for statutory earnings-related pension insurance handled by private pension institutions in order to safeguard the benefits of the insured.

Reporting to supervisory authorities

A pension fund and a pension foundation shall annually submit to the Insurance Supervision Authority its final accounts, the auditors' statement a statistical report on its activities and the minutes of the general meeting of the fund. The amount of the pension liabilities based on the rules of the pension fund must be disclosed in the balance sheet of the pension fund. Every six months pension fund and foundation must submit the calculation of the solvency margin and calculation of the covering of pension liabilities (compulsory pension scheme only).

An employment pension insurance company must annually submit to the Insurance Supervision Authority its final accounts, a statement of the auditors, calculation of the solvency margin and a statistical report on its activities, including the funds' balance sheet. Quarterly it must submit the calculation of the solvency margin and calculation of the covering of technical margin.

B.2 GROUP INSURANCE PLANS

Since 1994, insurance companies that administer statutory earnings-related pension insurance may not engage in any other insurance business. Investment regulations for insurance companies are applied also to these companies that administer exclusively statutory pension plans.

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

Information to be provided

Vesting and portability

There is immediate vesting of pension contributions.

In some pension funds it is possible, if so stated in the rules, to take out lump-sums. Otherwise the rights are not transferable or portable.

Benefit guarantees

In voluntary supplementary pension systems there are no benefit guarantees other than the assets covering the liabilities.

Access to pension schemes

The access to pension plan is stated in the rules of the fund or foundation. Nowadays most of the funds and foundations do not accept new insured.

Disclosure to members

Workers must be informed of eligibility conditions and benefit rules.

Individual and collective rights of action

Information to be provided

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

Information to be provided

GERMANY

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

All occupational pension plans are subject to the 1974 Occupational Pensions Act. The law was amended in 1999 to encourage the establishment of more occupational plans and increase the security of pension commitments made as of 1999.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

There are no statutory obligations to offer or participate in occupational pension plans in Germany. It is, however, envisaged to give employees a statutory entitlement to an occupational pension scheme financed by conversion of earnings.

Voluntary occupational pension plans

Occupational pension plans can be established through an individual employment contract, company agreements for all employees or through collective employment agreements (only in the building industry and the public sector).

Occupational pension plans are sponsored on a voluntary basis. The principle of the voluntary nature of occupational pensions was reaffirmed in the treaty of unification between the two German States.

Occupational pension plans offer benefits supplementary to those of the mandatory social security system. Contracting-out of the public system is not permitted.

Pure defined-contribution schemes are not allowed under current law. The draft pension reform bill, however, will provide such schemes from 2002 onwards (see under B 4 below).

Pension obligations must be funded.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

A decision whether to make personal provision for old age and in what from must be taken by the individual.

In principle any form of private assets may be used to secure a reasonable standard of living in old age, although there are, of course, differences in the appropriation, period in which the capital is tied up, opportunities and risks. In addition to life insurance policies, shares and share based investment funds, it is primarily real estate and other investment funds, fixed-interest securities and long-term bank deposit accounts which are suitable for pension provision.

Property, which directly covers a major part of the cost of living in old age and is inflation-proof, is by far the most important form of private provision. Real estate represents two thirds of private assets, compared with life insurance, for example, which represents only 7%. In 1993 about 80% of employee households had a life insurance policy.

A significant part of the standard of living in old age is already secured by private assets. For the present generation of pensioners, the total of all benefits from the State pension, occupational pensions and private old-age, surviving dependants and disability provision is broken down as follows (status 1995):

about 8% amounts paid out by life insurance companies in the event of a claim and

about 14% pensioner´s income from monetary and property assets, i.e. interest, dividends, rental income and the rental value of residential property which they use themselves,

making a total amount of about 22% from private pensions (3rd pillar);

about 7% pensions from occupational schemes, including supplementary provision by the public sector (2nd pillar);

just over 70% income benefits from the State pension, civil servants pension scheme, Farmer´s Pension Funds and statutory accident insurance (1st pillar).

It is envisaged in the pension reform for pension funds to be introduced as an additional means of implementing occupational old-age provision. Pension funds are obliged to provide insurance cover for biometric risks and are accordingly subject to insurance supervision. However, the regulations on capital investment are much more liberal to the extent that “defined contribution” commitments with a guaranteed minimum pay-out are implemented through a pension fund.

The possibility of a contribution commitment with guaranteed minimum pay-out is also to be included in the law on occupational pension schemes in the course of pension reform. Employers will thus be able to restrict their commitment essentially to the payment of a specific contribution. However, employers must undertake to ensure that at least the total of contributions paid in is available when an employee reaches pensionable age. The guaranteed minimum payment is covered by the assurance against insolvency.

Plan parameters and tax treatment

a) Contributions

Taxation of contributions to private pension schemes is very complex as it depends on the nature of the scheme. Book reserves are the most attractive form of pension scheme for sponsoring employers, as contributions reduce taxable profits, and the pension reserves can be reinvested in the company. Taxes become payable only when the reserves are released which increases profits; at the same time, pension payments are considered operating expenses which in turn offsets the increase in profits.

Contributions to support funds are paid only by employers. This also applies where contributions are borne economically by the employee in the form of earnings conversion. Contributions are tax-deductible up to certain limits depending on the type and average level of benefits promised.

Contributions to pension funds and premiums for direct insurance enjoy limited tax advantages through the application of a flat 20 percent tax instead of the higher corporate tax rate. The preferential tax, however, will only be applied up to a limit.[1] Employers' contributions represent taxable income for the employee. Benefits from pension funds and direct insurance are taxed only on the portion that represents interest earned; for old-age pensions the taxable amount corresponds to 27 per cent of the total benefit. Lump-sum distributions from direct insurance are tax-free. Benefits from book reserve schemes and support funds, however, represent fully taxable income for the beneficiary.

b) Income

Information to be provided

c) Benefits

The level of benefit promises is not limited by law but determined by agreements between management and labour.

No limits are imposed on the level of benefit promises in book reserve schemes.

[1] Currently DM 3408 p.a.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

New indexation requirements were introduced in 1999. Employers need to adjust pensions to prices at least every 3 years. For pension funds and direct insurance, this rule is considered fulfilled if all surplus is used for pension increases. Employers who have contractually committed to increase pensions by at least 1 per cent p.a. are exempt. If an employer is unable to do so for economic reason, the rule is waived. Previously, employers had to make up for suspended indexation once the economic conditions of the company improved. This is no longer the case.

Vesting and portability

There is a minimum vesting period of ten years. Benefits vest also if the workers has been in the company at least 12 years and enrolled in the pension plan for the past 3 years. The pension reform makes provision for a reduction of the vesting period to 5 years. The necessary minimum age will be reduced from 35 to 30 years.

Vested benefits (i.e. after ten years) must be left in the old employer as deferred benefits. Vested benefits cannot be transferred to a new plan.

Benefit guarantees

The government does not explicitly guarantee pension benefits. However, direct commitments and support fund commitments are subject to statutory assurance against insolvency which is funded from employer contributions. Direct insurance and pension funds are subject to insurance supervision.

Access to pension schemes

It is within the discretionary power of the employer to restrict occupational pension awards to particular groups of workers. However, to do so he must advance general selection criteria that must not run counter to constitutional provisions and labour law (such as equality of the sexes).

Disclosure to members

A statutory disclosure obligation on the part of employers exists only in relation to employees withdrawing prematurely from the scheme. More extensive disclosure and information obligations may be contractually agreed.

Individual and collective rights of action

Under the 1974 Act workers are deemed to be contractual partners of the employer. A unilateral declaration of pension award guidelines (pension rules) by the employer, or simply a general statement of intent on his part to introduce pension benefits, is binding on him in law. In the former case the guidelines automatically become part of each individual contract of employment; in the latter case he can also, using his discretionary power equitably (i.e. taking due account of the interests of the workers), lay down the detailed rules of the pension scheme. From the legal standpoint, a general award is a unilateral acceptance of a contractual commitment.

B. PENSION PLAN ADMINISTRATION

There are four main options for pension provision:

- Benefit mutuals set up as separate legal entities (*Pensionskassen*): these are treated as mutual insurance companies and are supervised as such by the Insurance Supervisor. However, *Pensionskassen* are also similar in nature and regulatory framework to the pension funds of other countries OECD countries. They require full funding of pension liabilities and involve action on the part of the employer to set up the mutual insurance company.

- Direct insurance contracted by the employer with an insurance company on behalf of the employee.

- Pension plans financed through book reserves: under this scheme, the company forms pension reserves in form of liabilities in the balance sheet; firms must accrue a book reserve to offset the pension benefits earned by employees as these benefits accrue. Book reserves are accrued under the "entry age normal" method. Under this method, current service costs (and thus pension accruals) are set at a level annual amount over the anticipated work life of each employee. Stated differently, the book reserve accrual in each period is equal to the estimate of the present value of the pension benefits earned during this period. The interest rate used in the calculation of the entry-age normal contribution rate is set by statute and is uniform across firms. The tax law regulates the valuation method and assumptions in order to control the level of reserve that can be held on a tax-deductible basis; the discount rate to be applied is currently set at 6 percent.

- Support funds (*Unterstützungskassen*): these are legally independent pension institutions sponsored by a single or several employers. Contributions to a support fund, which are allowed only up to specific limits, are operating expenses for the employer. Support funds may not grant employees any pension entitlements, so that the employer remains obliged to make pension payments. Support funds are not under any restrictions as regards the use of pension capital.

B.1 PENSION FUND ADMINISTERED PLANS

The regulations applied to *Pensionskassen* are the same as those applied to other insurance companies.

B.2 GROUP INSURANCE PLANS

Direct insurance is given when the employer concludes a group insurance plan with a private insurer in favour of his employees. These plans are subject to full insurance supervision (see below under II. ii. B)

B.3 BOOK RESERVE PLANS AND SUPPORT FUNDS

Licensing and registration

There are no specific licensing requirements, and no formal registration of an employer pension plan takes place.

Governance and legal requirements

Book reserve plans are administered in the company. Support funds are legally independent pension institutions sponsored by a single or several employers.

Financial requirements

Book reserve plans are financed from reserves in the company. Tax law sets out the extent to which profit-reducing reserves may be formed. Support funds are financed from employer contributions. However, the pension obligations cannot be fully financed through a support fund. There are legal limitations to the extent to which contributions may be made as operating expenses to a support fund.

Technical requirements

As book reserve plans and support funds are not subject to supervision, there are no technical requirements to be observed.

Investment regulations

The capital tied for financing book reserve plans in the company may be freely invested. Support funds are not subject to any capital investment restrictions. For example, support funds can be fully invested in assets of the sponsoring entity.

Compulsory insurance and guarantees

Since 1974, book reserve and unfunded support funds plans must be insured against bankruptcy of the employer through a mutual insurance corporation, the *Pensions-Sicherungs-Verein* (PSV). The PSV carries the statutory assurance against insolvency and as a mutual insurance society is subject to insurance supervision.

The insurance covers all due benefit payments and vested acquired rights of still active workers. Hence unvested benefits are not insured. The PSV is not required to pay a monthly pension in excess of three times the Social Security Contribution Ceiling. Certain pension benefits - such as enrichments granted in the last year prior to insolvency that exceed the benefits granted in the prior year - are excluded from coverage.

In case of insolvency of the plan as a result of bankruptcy of the employer, the PSV acts as claimant on behalf of the beneficiaries; single premium annuity contracts are taken out with a consortium of insurance companies to cover pension payments. The shortfall resulting from the difference between the funds received in the insolvency process and the costs of the annuity contracts is financed through a levy from all participating companies.

Employers are required by law to make contributions sufficient to finance the insolvency insurance on a pay-as-you-go basis. Required contributions are based on the size of the employer's pension liabilities, including pensions in pay to retired workers. The annual contribution rate is set equal to the ratio of the capital required in the year by the PSV to the total amount of employers' liabilities for pension benefits. Hence, the contribution rate is not linked to a measure of the likelihood of the firm's insolvency.

Reporting to supervisory authorities

Book reserve plans and support funds are not subject to government supervision.

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Reference is made to the general description of the structure of German supplementary private pension system as outlined in Section I., Part B "Voluntary personal pension plans" above. As far as individuals use investments funds or personal savings plans for old age provision where the member fully bears the investment risk and/or where is no cover against biometric risks (such as longevity, disability or provision for surviving dependants) there is no risk for the pension provider. Therefore any further consideration of this type of pension schemes is not necessary.

As far as individuals use insurance contracts for old-age provision the individual contractual agreements between the policy holder and the insurance company form the basis for the contributions, benefits, vested rights, transferability and portability, benefit guarantees etc. Contractual agreements are subject to German Insurance Contract Law (Versicherungsvertragsgesetz). To a certain extent they are also part of the prudential rules insurance companies are subject to (e.g. disclosures). Therefore reference is made also to comments under point B of this section.

B. PENSION PLAN ADMINISTRATION

It is common practice in Germany to finance individual old-age provision via insurance contracts. Insurance business is a regulated business. The main purpose of insurance regulation and insurance supervision is to prevent or remedy any irregularities prejudicial to the interest of the insured persons. In particular the regulatory framework (Versicherungsaufsichtsgesetz/Insurance Supervision Law) requires among others the protection of the interests of the insured by monitoring the adequacy of technical provisions established by the insurance company, proper investment activity, application of good business practice (including sound administrative and accounting procedures and internal control mechanisms) and an adequate solvency position.

The prudential framework for the insurance sector is co-ordinated within the EU by prudential Directives. It comprises rules on corporate governance, financial and technical requirements, investment regulation etc. Therefore reference can be made to exhaustive descriptions of the EU-insurance supervisory regime.

HUNGARY

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

Mandatory personal pension plans

Act LXXXII of 1997 on Private Pension ad Private Pension Funds

Act LXXX of 1997 on Persons Entitled to Social Security Benefits and Private Pension, as well as the Coverage of these Services

Governmental Decree No. 169/1997 (X.6.) on the Organisational and Operational Rules of the Guarantee Fund of the Funds

Governmental Decree No. 170/1997 (X.6.) on the Actuarial and Financial Planning Rules Related to the Activities of Private Pension Funds, as well as on Reserving Requirements

Governmental Decree No. 171/1997 (X.6.) on the Investment and Economic Activities of Private Pension Funds

Governmental Decree No. 172/1997 (X.6.) on the Tasks Related to the Central Registration by Funds and the Data Supply Obligation of Funds and Employers Related to Fund Members

Governmental Decree No. 173/1997 (X.6.) on the Specific Annual Reporting and Bookkeeping Liabilities of Private Pension Funds

Governmental Decree No. 174/1997 (X.6.) on the Specific Annual Reporting and Bookkeeping Liabilities of the Guarantee Fund of the Funds

Voluntary personal pension plans

Act XCVI of 1993 on Voluntary Private Funds

Governmental Decree No. 267/1997 (X.6.) on the Investment and Economic Activities of Voluntary Pension Funds

Governmental Decree No. 269/1997 (X.6.) on the Specific Annual Reporting and Bookkeeping Liabilities of Voluntary Pension Funds

B. GENERAL STRUCTURE

Types of plans

Since 1997, two pension systems have been working in parallel in Hungary: the "old" system which contains the state (mandated) PAYG social security pension and the voluntary (supplementary) private pensions, and the new, "mixed-financing" system. The latter (the multi-pillar system) consists of the - decreased - state pension, a mandated private pension and a voluntary, supplementary private pension pillar.

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Not applicable

Mandatory personal pension plans

The mandatory private pension system was legislated in 1997, with the actual operation and real flow of contributions to the pension funds starting in 1998. It is obligatory for persons who first became insured after June 30, 1998 (following the conclusion of their full-time studies (i.e. new entrants to the labour force) and are less than 42 years old) to join the mixed financing pension system - and by doing so, a private pension fund. In case if a new entrant fails to choose and join a pension fund, he/she will be directed to the relevant territorial fund by the employer. Persons employed and insured prior to the above date could choose voluntarily until August 31, 1999 whether they would remain in the new system or become a member of a pension fund, thus the mixed-financed system. All voluntary entrants may overrule their decision once, the deadline for this was originally established as December 31, 2000, but was extended by a recent amendment for December 31, 2002. There is no upper age limit for the selection of the new system, however participants choosing the new system, would receive approximately 75% of the state pension that they would have received if they had remained in the old system, which set up a rational limit depending primarily on the age. Therefore, contribution to the mandatory private pension schemes is mandated for new entrants and for those have joined voluntarily except if they revise their decision and transfer their collected contribution back to the state pension fund, the opportunity of which is limited in time and frequency.

Only DC schemes are applied that are provided via pension funds

Mandatory pension funds may be funded by employers (separately or jointly), chambers of trades (separately or jointly), professional associations (jointly or separately or with chambers of trade), employees' interest organisations (i.e. trade unions, jointly or separately, or with the above mentioned entities), regional self-governments and also, voluntary pension funds may extend their activity to the mandatory pension provision. The owners of the pension funds are the members themselves, therefore, these pension funds legally work as mutual foundations.

Voluntary personal pension plans

In Hungary, the supplementary private pension schemes started to work in 1994, after the relevant regulation had been passed in 1993. The participation is completely voluntary for both employees and employers. However, if the employer decides to contribute to only one employee's pension plan, it may not deny a same amount/percentage of contribution to the other employees if they have worked for more than 6 months at the company, regardless of the chosen pension fund.

Supplementary pensions are provided only by DC schemes via so-called voluntary pension funds.

The voluntary pension funds are founded by – a minimum of - 15 persons and therefore operate as mutual foundations: the funds are owned by the fund members. Both closed and open funds are permitted and are subject to the same regulatory framework.

Plan parameters and tax treatment

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Not applicable

Mandatory personal pension plans

a). Contributions

Mandatory contributions are paid from gross income, however 25% can be deducted from the tax. A limited amount of supplementary contribution may be paid to the members' individual accounts (in mandatory schemes) both by the employers and employees which is subject to the same tax rules as the supplementary (voluntary) pension contributions (see below).

In mandated private pension plans contribution is withdrawn from the employee's salary, and transferred to the pension funds by the employer. The amount of the contribution was set up originally (in 1997) at 6% of the gross wage to be increased gradually to 8% from 2000, however - after an amendment made by the Parliament - it has been fixed at 6% for an indefinite period. (However, it is expected to increase to 8% by 2003.) Either the employer or employee may pay additional (supplementary) contributions which are limited in both case (and altogether) to 4% of the gross salary. The size of the contribution - regarding both the mandated and voluntary contributions - has a ceiling: it need not (and may not) be paid on income over double the gross average wage.

b). Income

Investment yields are tax exempt.

c). Benefits

The retirement age of the state pension system is also applied for mandatory private pensions, which will be equal to 62 for both men and women from 2009, to be introduced gradually. There is no minimum contribution period imposed to get pension benefits from mandated private pension plans, however 180 month of contribution period is required to qualify for the minimum benefit guarantee.

Benefits from mandatory pension plans are essentially life-annuities, which may include individual joint and survivors annuities as chosen by the insured retiree. Four annuity's options are available: individual life annuity, joint life annuity for a fix period, with a set beginning, joint life annuity for a fix period, with a set end and joint survivorship annuity.

Lump-sums are only permitted for people who have contributed for fewer than 15 years (they are therefore not eligible for the minimum benefit guaranteed by the state). Also workers who can buy an annuity worth more than twice the guaranteed benefit can draw the extra balance as a lump-sum.

The integration with the state pension system is insured by the minimum benefit guarantee provided by the state via the Guarantee Fund.

Benefits are taxable with 50% of discount.

Voluntary personal pension plans

a) Contributions

In voluntary private pension plans the minimum level of contribution is defined by the pension fund. Contribution may be paid by the employer or the participants themselves. In the former case the employer must sign a contract with the fund.

Employees' contributions are paid from taxed income although are subject to 30% of tax deduction. Contribution paid by the employer is tax-exempt - up to an upper limit (HUF 200,000 or HUF 230,000) - as well as the investment yield.

b) Income

Information to be provided

c) Benefits

The retirement age of the state pension system is also applied for voluntary private pensions. However, the collected amount may be withdrawn before the retirement age (10 years of contribution is required for that), in which case it is not considered as pension benefit and hence is subject to the personal income tax. There is no minimum contribution period imposed to get pension benefits from voluntary pension plans.

Benefits from voluntary pension plans may be annuity or lump-sum depending on the choice of the participants.

Pension benefits may be first paid at retirement age and are also tax exempt with the proviso that the participant has been a member and his contribution has been paid at least for three years in case of lump-sum, or the length of the annuity is at least three years. After ten years of membership, participants may ask for the withdrawal of their collected amount however that is not considered as pension benefit and is subject to personal income tax.

II.i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II.ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

Not applicable

II.iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

The pension benefit must be indexed once annually at least in scale of the state pension index, which is determined on the equal basis of the price and wage index (so called Swiss-indexation)

Vesting and portability

Full and immediate vesting must be provided.

The collected amount is not eligible before retirement.

The option to transfer from one fund to another is available, subject to the condition that the participant must spend a minimum 6 months of period with the fund. However, the fund transferred from may charge expenses to the transferring member, the upper limit of which is 0.1% of the transferred sum.

Benefit guarantees

In case of liquidation of a pension fund, the Guarantee Fund is responsible for the protection of the collected individual amounts and benefits. In case of beneficiaries, the provision of the total benefit's amount is guaranteed, while the guarantee of the rights of people being in the collection period is limited to the individual capital collected before the starting date of the liquidation process.

Minimum state benefit guarantee is provided by the state via the Guarantee Fund by the following: anyone contributing 15 years in the mandatory private pension system must receive at least the equivalent of 25% of their state pension benefit from the private pension scheme.

Access to pension schemes

Obligatory to join a private pension scheme for new employees (included also self-employed) whose age is less than 42. Those who were already employed before June 30, 1998 could join a mandatory pension plan until August 31, 1999. Thus, the eligibility was complete but limited in time, and now is insured exclusively to the new employees.

Anti-discrimination rules are imposed by the Act requiring that no religious, racial, ethnic, political, age or sex discrimination shall be applied against fund members.

Disclosure to members

Participants must be notified annually - and any time for request - on the cumulative amount in their accounts explaining the division of the respective sources (contribution, investment yield) and presenting the deducted operational and investment costs.

The following information must be disclosed in the Financial Gazette every year, within 150 days after the end of the fiscal year:

the starting date of the operation of the fund,

the names and titles of the fund's officials,

the balance sheet of the fund (changes compared to the previous year),

the membership of the fund,

revenues from contributions and other sources,

the breakdown of revenues between the reserves,

the value of services provided by the fund (changes in the value),

the operational costs of the fund,

the main indicators of the investment performance of the fund (changes),

the name of the fund's assets manager (changes),

the penalties imposed by the Supervisory Authority and the causes of imposing such penalties, the use of the Guarantee Fund,

all other major indicators that ensure the comparability of the performance of the funds.

The balance sheet and the profit and loss statement as well as its auditor's clause must be also published in a national daily paper every year, within 30 days after approval by the general meeting, but at latest by May 31st following the years under review. The investment policy has to be published by May 31st of the year to be sent to the supervision within 15 days of the above date.

Individual and collective right of action

Participants have two options for the assertion of their rights: they can declare the claim at the Supervisory Authority, which operates a separate claim office to this purpose, and also may take legal action at the county court.

B. PENSION PLAN ADMINISTRATION

Mandated pension plans may be provided only by mandatory private pension funds. The minimum size of a pension fund is determined by the number of participants: at least 2000 members have to join the fund.

The mandatory private pension funds may be established either as closed or open funds, regardless of the type of the founders. The same regulation is applied for closed and open funds, the only difference is the limitation of the participation in the former.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

The licensing procedure of a mandatory pension fund contains of two steps. First, the founders of the pension fund must apply to the HFSA for a foundation permit. The application must contain the draft Deed of Foundation, estimates for the membership, the description of how the founder intends to ensure the needed personal, physical and financial resources and the Deed of Foundation of the founder. The permit of foundation is valid for 180 days and the fund must to apply to the HSFA for operational licence within this period. To this second license the fund has to provide the following documents: the Deed of Foundation, the by-laws; the court's decision on registration of the fund, bank account, tax and social security registration numbers; certificate on a minimum of 2000 members; the (short and long-term) financial plan; internal regulation on asset management and valuation, service provision and internal control system; details on the members of the Boards and on the official auditor, certificate on personal, material and IT (data base) conditions, contract(s) with third-party administrators, asset managers (if any) and the custodian institutions. The HSFA may give or reject the licence, require the modification of the documentation, but in any case it must take the final decision in 30 days. Until the fund receives the license, it may operate only in limited framework.

The fund must also be registered at the county court of territorial jurisdiction. The application for this must be submitted within thirty days after the foundation and the court must take the final decision in 15 days.

Pension fund governance

Pension funds are a form of mutual saving association, where the plan members are the owners of the institution operating the plan - i. e. pension fund - and the entities are subject to specific regulation. All persons have the same voting and representation rights, independent of their level of ownership of the mutual.

The main decision-making body is the assembly of all the members, or the general delegate assembly of their representatives. The general meeting shall be convened at least twice a year. The exclusive rights of the assembly are - inter alia - the followings:

to modify the Deed of Foundation and to approve and modify the by-law of the fund;

to elect and remove the members and the chairperson of the Board of Directors and the Auditing Committee, as well as to fix their remuneration;

to approve the annual report of the Board of Directors, and the financial plan of the fund;

to validate claims for damages against persons acting on behalf of the fund, members of the Board of Directors and the supervisory committee before the operational license takes effect, as well as to represent the fund in legal proceedings launched against persons eligible for representation by the fund;

to decide on joining or leaving any interest representation organization, on the dissolution, disintegration or merger of the fund with another fund;

to elect and release the auditor;

to decide on the method of collecting membership fees.

The funds must be operated by the members of a Board of Directors, who are chosen by the assembly and audited by an elected auditing committee. The Board must appoint certain experts, such as an executive director, an investment advisor, actuary, accountant, and lawyer. It is also required to appoint an external custodian. On the other hand, they may choose to manage the pension fund assets themselves or delegate this function to financial institutions.

The board of directors has responsibility over all functions related to the pension plan, which are set up on a defined contribution basis, but must still attain a minimum return relative to a market benchmark. The board of directors, however, do not have personal liability for ensuring that returns do not fall below this level. The main responsibility of the board of directors is the adequate management of the fund according to the respective regulation, the by-laws of the fund and the decisions of the general assembly. In this framework, the board must prepare the main documents of the fund such as the by-law, the financial plan and following the general assembly's passing it, take care of their execution. In addition, the board is required to prepare and approve the internal regulation of the asset management and asset valuation as well as the regulation on the service of the benefits. However, the board may engage third party companies and contract out the investment of the fund's assets, the administration and record keeping and the annuity service. The board is also responsible for the reporting and disclosure towards the supervisory agency as well as the members.

There are no professional and special legal requirements for the board of directors partly related to the fact that they are elected by the members of the general assembly. However, several rules are imposed requiring unblemished professional and civil antecedents. At the same time, the regulations impose professional requirement – in addition to the rules described above – for the management of the fund, such as the adequate specialised qualification and work experience for the executive director, the manager in charge with the investments or the actuary.

The governance structure, the responsibilities of the governing body and the suitability standards for the managers of open funds are exactly the same as those of the closed funds.

The fund may delegate the main activities such as the administration and registration, the asset management and the actuarial tasks to third party companies. The two latter functions may be carried out by the fund itself only in case if the fund establish a so-called own activity reserve which must be equal to a minimum of HUF 100 million. The third party asset manager may exclusively be an investment company, financial institution or investment fund management company that is duly authorised by the Hungarian Financial Supervisory Authority (HFSA) and whose registered and paid up capital is more than HUF 500 million in case of the pension fund’s assets exceed HUF 2 billion.

The fund must engage a custodian institution with the additional responsibility of calculating the market-based asset value and the control of compliance of the investment activity with the relevant regulation.

The appointment of an actuary is also required but the contracting out of this function is also allowed. Actuaries are subject to specific suitability requirements that include adequate university degree, five-year experience gained in insurance or private pension field and also, they must have no conviction or received any civil penalty. The actuary is responsible for the accuracy of the data and the appropriate method applied in the financial plan, the actuary’s reports and in the calculation of the adequate accumulation of reserves. The actuary must also countersign the main documents regarding the annuity services such as the risk-sharing contract with the insurance company from which the fund buys the annuity and the internal regulation on the annuity services.

The fund also must employ an independent certified public auditor. The auditor must examine all reports, balances and financial plans and disclose his/her opinion on such reports. In case if the auditor knows that the assets and reserves are expected to significantly decrease, he/she must notify the auditing committee or the board and must also initiate the convocation of the assembly and notify the Supervisory Authority.

In order to avoid conflicts of interests, mandatory pension funds may not have ownership in a business organisation in which the founders of the fund, the employers of the fund members, the donors or service providers of the fund own more than 10 percent of the called up share capital.

Financial requirements

There is no minimum capital requirement for mandatory pension funds, however, the number of participants is limited: a fund may have no less than 2000 members.

Since only DC schemes work in Hungary, there are no specific funding and solvency rules imposed.

Until January 1, 2002, the asset valuation must be carried out on a quarterly basis, based on the market value. From the date above, the asset valuation will be carried out by the custodian institution, on a daily basis.

Specific accounting regulation is applied for pension funds.

Minimum rate of return requirement is applied as part of the reserve mechanism of mandatory pension funds. Each year the HFSA determines an expected return band. If the annual return of the fund exceeds the upper limit, the excess amount has to be credited to the return-adjustment reserve, which is also continuously credited from the monthly contributions. If the return does not reach the lower boundary of the band, the fund must credit an amount - that is needed for the returns to fall within the band - from the return-adjustment reserve to the individual accounts. According to practice so far, the benchmark has been related to the official return index of the long-term government bonds.

Technical requirements

Specific rules are imposed on the actuarial method, reporting and financial planning obligations, the service computation and the creation and use of the fund reserves. In addition to the regulation, internal rules have to be set up on the annuity services containing every related detailed requirements such as the description of data and procedures necessary for the computation of the annuities (procedures and formulas, mortality table, technical interest rates, cost factors, etc).

Rate of return must be determined on a quarterly basis, based on the market value of the fund assets. From January 1 2002, the report on the standing of their assets and the calculation of rate of return must be done on daily basis.

In calculating the annuity, unified mortality rate must be applied for men and women.

Investment regulation

Prudent person management of the fund assets is explicitly required, however a broad wide of quantitative rules is also applied. The statement of investment policies has to be approved and revised every year by the board of directors, and its minimum contents is imposed by the regulation. The detailed quantitative rules are the followings.

Diversification requirement: funds may invest maximum 10% of its assets in securities issued by the same issuer (except for state bonds). Overall value of securities issued by an organisation belonging to the same banking group cannot exceed 20% of the invested fund assets (MPF)

There is no currency matching and maturity matching requirement.

Limit of self-investment/conflicts of interest requirement: funds may not have ownership in business organisations in which the founders of the fund, the employers of the fund members, the donors or service suppliers of the fund own more than 10% of the stakes

Other quantitative rules are also applied. Investment is limited to:

60% in portfolio category II[2] (except for state bonds),

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[2] Portfolio category I: amount fixed on a deposit account at a lending institution for max. one year, Hungarian state bond, if booked as current asset, securities for which the Hungarian state undertakes cash surety, if booked as current asset
Portfolio category II: amount fixed on a deposit account at a lending institution for more than one year, Hungarian state bond if booked as invested assets, securities for which the Hungarian state undertakes cash surety, if booked as invested assets, state bonds issued in OECD member states, distributed and introduced on recognised securities market in Hungary, bonds issued by business organisations registered in Hungary and covered by bank guarantee, bonds issued by lending institutions registered in Hungary, bonds issued by international financial organisations, distributed and introduced on recognised securities market in Hungary, stocks listed in Category A on the Budapest Stock Exchange, mortgage bonds issued by mortgage banks registered in Hungary.
Portfolio category III.: bonds issued by business organisations registered in Hungary, bonds issued by Hungarian local governments, bonds issued in OECD member states, distributed and introduced on recognised securities market

30% in portfolio category III

50% in quoted shares,

40% in bonds,

50% in investment units,

10% in mortgage bonds,

10% in real estate investment unit.

Direct investment in real estate is prohibited.

Ownership concentration limit: funds shall not directly own more than 10% of the registered capital or equity of a business organisation for more than a year.

Foreign investment is limited to 20% of the fund's assets, and within investments made abroad the ratio of investments made in non-OECD countries shall not exceed 30%

Foreign investment is limited to 30% (from next year, at present this is 20%) of the fund's assets, and within investments made abroad the ratio of investments made in non-OECD countries shall not exceed 30%. Investment in bonds issued by non-OECD countries is limited to 5%. Investment in shares issued in non-OECD countries is prohibited.

Compulsory insurance and guarantees

The guarantee fund of the mandatory pension funds was set up by the regulation. The membership is mandatory for all pension funds, and the basic income of the guarantee fund comes from the obligatory contribution paid by funds quarterly. The guarantee fee must be equal 0.3-0.5% of the contribution paid by participants (currently is 0.4%).

The main tasks of the Guarantee Fund are:

to make payments in specific cases (minimum benefit guarantee, frozen liabilities, low level of service reserves),

actuarial forecast - at least every year - regarding the liabilities of the guarantee fund,

to represent the party aggrieved in arbitration or liquidation proceeding upon assignment by fund members eligible for damages.

In case of liquidation from the starting date any measures can only be taken by the liquidator, no new member can be admitted, and payments under way shall be suspended; and contributions can only be collected by the guarantee fund. At the starting date of the liquidation proceeding the list of assets belonging to the funds must be immediately closed and transferred to the liquidator. During the liquidation

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in Hungary, bonds issued abroad, and distributed in Hungary, stocks listed in Category B on the Budapest Stock Exchange, stocks issued in Hungary and introduced on recognised securities market, stocks issued in OECD member states and introduced on recognised securities market, investment units issued by investment funds registered abroad and introduced on recognised Hungarian securities market, real estate, investment units issued by real estate investment fund registered in Hungary, futures, options proceeding these assets shall be handled separately, and can be used to fulfill other liabilities only after the fulfillment of due liabilities towards members or surviving dependents against the coverage reserve.

Reporting to supervisory authorities

The authority supervising both mandatory and voluntary pension funds is the Hungarian Financial Supervisory Authority (HFSA), which supervises the whole financial sector including e.g. banks, financial institutions, investment companies and insurance companies.

The reporting obligation of pension funds is carried out on regular (annual and quarterly reports) and ad hoc (in case of merging, disintegration or liquidation, or if the HFSA requires) basis. The quarterly report consists of the profit and loss statement, the presentation of changes in the coverage and secondary provisions of the fund, the investment and liquidity report and the presentation of changes in membership. The quarterly report must be sent to the HFSA in 45 days after the end of the quarter.

The annual report contains four main parts: the balance sheet, the profit and loss statement, the supplementary annex and the business (operational) report and it must be provided by the end of May.

B.2 GROUP INSURANCE PLANS

Not applicable

<u>II.iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS</u>

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There is no requirement on benefit indexation.

Vesting and portability

Full and immediate vesting must be provided.

The collected amount is eligible before retirement with tax penalties.

The option to transfer from one fund to another is completely available, without any restriction on time or cost.

Benefit guarantees

There is no benefit guarantee in voluntary pension plans.

Access to pension schemes

Any Hungarian citizen and foreign person with working permit in Hungary whose age is more than 16 may join one or more voluntary pension fund.

Closed pension funds may define the criteria of membership in the by-law of the fund.

Anti-discrimination rules are imposed by the Act requiring that no religious, racial, ethnic, political, age or sex discrimination shall be applied against fund members.

Disclosure to members

Participants must be notified annually - and any time for request - on the cumulative amount in their accounts explaining the division of the respective sources (contribution, investment yield) and presenting the deducted operational and investment costs.

The balance sheet and the profit and loss statement as well as its auditor's clause must be also published in a national daily paper every year, within 30 days after approval by the general meeting, but at latest by June 30 following the years under review.

Individual and collective right of action

Participants have two options for the assertion of their rights: they can declare the claim at the Supervisory Authority, which operates a separate claim office to this purpose, and also may take legal action at the county court.

B. PENSION PLAN ADMINISTRATION

Information to be provided

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

Voluntary pension funds must apply for registration to the county court of the territorial jurisdiction within 30 days after the foundation.

The funds also must apply for operational license to the HFSA within 90 days after the foundation. The application must contain - inter alia - legal certifications on the constituent assembly and the registration, the by-laws, the financial plan, the certificate on personal, material conditions, the contracts with third party companies and employers. The HFSA must take the final decision on the license within in 30 days.

Pension fund governance

Voluntary pension funds are a form of mutual saving association with the same governance structure as mandatory funds, with the following differences.

There is no obligation to appoint an executive director and a lawyer in case of voluntary funds. However, the Board of the fund has to appoint an actuary in case if the fund provides annuities, and an investment expert, if the asset management is not delegated to third party companies. Similarly, the appointment of the accountant, the external custodian and auditor is also required.

The governance structure, the responsibilities of the governing body and the suitability standards for the managers of open voluntary funds are exactly the same as those of the closed funds.

The fund may delegate the main activities such as the administration and registration and the asset management to third party companies. Third party asset manager may be any company that is duly authorised by the Hungarian Financial Supervisory Authority, without any limit on the registered and paid up capital.

The fund must engage a custodian institution with the additional responsibility of calculating the market-based asset value and the control of compliance of the investment activity with the relevant regulation.

The appointment of an actuary is only required if the fund provides annuities to the members.

The fund also must employ an independent certified public auditor with the same responsibility as the auditors of mandatory funds.

In order to decease the potential conflicts of interests, voluntary pension funds may invest up to 10% of the fund assets in the employers contributing to the fund and in business organisation in which the employer owns more than 10 percent of the called up share capital.

Financial requirements

There is no minimum capital requirement for pension funds. The number of participants is limited to 15 persons.

Since only DC schemes work in Hungary, there are no specific funding and solvency rules imposed.

The asset valuation must be carried out on a quarterly basis, based on the market value.

Specific accounting regulation is applied for pension funds.

There is no minimum rate of return requirement for voluntary pension funds.

Technical requirements

Rate of return must be determined on a quarterly basis, based on the market value of the fund assets. There is no specific regulation on annuities.

Investment regulation

Prudent person management of the fund assets is explicitly required, however a broad range of quantitative rules is also applied. The statement of investment policies has to be approved and revised every year by the board of directors, and its minimum contents is imposed by the regulation. The detailed quantitative rules are the following.

Diversification requirement: funds may invest maximum 10% of its assets in securities issued by the same issuer (except for state bonds).

There is no currency matching and maturity matching requirement.

Limit of self-investment/conflicts of interest requirement: funds may not invest more than 10% of the fund assets in the employer contributing to the fund and in business organisations in which the employer owns more than 10% of the stakes.

Other quantitative rules are also applied. Investment is limited to:

70% in portfolio category II[3] (except for state bonds),

30% in portfolio category III

60% in quoted shares,

50% in bonds,

50% in investment units,

10% in mortgage bonds,

10% in real estate investment unit

10% in real estate

loan for fund members is limited to 5%.

Ownership concentration limit: funds shall not directly own more than 10% of the registered capital or equity of a business organisation for more than a year.

Foreign investment is limited to 20% of the fund's assets, and within investments made abroad the ratio of investments made in non-OECD countries shall not exceed 30%. Investment in bonds issued by non-OECD countries is limited to 5%. Investment in shares issued in non-OECD countries is prohibited.

From this year voluntary pension funds are allowed to offer to their members alternative portfolio investments.

Compulsory insurance and guarantees

There is no compulsory insolvency insurance for voluntary pension funds.

[3] see Footnote 1

Reporting to supervisory authorities

The same kind of reports must be provided by voluntary funds as mandatory private pension funds.

B.2 GROUP INSURANCE PLANS

Not applicable

IRELAND

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

In order to receive the most favourable tax treatment, almost all occupational pension schemes in Ireland are established as trusts and administered by trustees. Pensions scheme trustees are bound by the terms of their trust, by trust law generally and by legislation dealing with pension trusts. The following sources of law apply in the regulation of pension schemes in Ireland:

Case Law

The concept of the trust was first developed in the courts and it has been adapted and extended over time through further court decisions. The body of court decisions on trust are the first, and the largest, source of law affecting trustees. Over time, a large body of case-law has developed on all aspects of trusts and their operation. Many of the rules laid down by the courts can be changed by the expressed terms of a particular trust, but unless this is done these general rules will apply.

Legislation

In some areas of trust law, the rules developed by the courts have been changed or added to by legislation. The Trustee Acts, apply to all trusts and the Pensions Acts, apply only to pension trusts.

The Trustee Acts

The Trustee Act, 1893 deals with the appointment and removal of trustees, and gives them certain powers. The Trustee (Authorised Investments) Act, 1958 give trustees certain (rather limited) powers of investment. Many of the provisions of the Trustee Acts, only apply if they are not excluded or changed by the terms of the trust, so the Acts must be read together with the trust documents. The rules regarding authorised investments, for instance, are nearly always overridden by trust documents, and trustees are given much wider powers of investment.

The Pensions Acts, 1990 & 1996

The Pensions Act, 1990 & the Pensions (Amendment Act), 1996 affect virtually every aspect of pension scheme operation and unlike the Trustee Acts, cannot be overridden by the trust documents. If there is a conflict between trust documents and the Pensions Acts, the Acts must be applied. If the trust documents do not exactly reflect Pensions Act provisions, then the trust documents and the Pension Acts, will have to be read and applied together. The Pensions Act 1990 recommended the creation of a Pensions Board (see below) to supervise the operation of pension plans.

European Union Law

European Union Law is part of the law of Ireland. Any decisions of the European Court of Justice affecting pensions will apply in Ireland and EU Pensions Directives have to be transposed into national law. Part VII of the Pensions Act, 1990 gives effect to:

Article 119 of the Treaty of Rome which provides for equal pay for men and women.

Council Directive 86/378/EC of 24th July 1986 which specifically provides for the implementation of the principle of equal treatment in occupational social security schemes.

Council Directive 96/97/EC which amended Directive 86/378/EC in order to adapt the provisions which were affected by Barber case law.

The Trust documents

Pension Trusts are long and complex and written trust documents are always used. In practice, a written document is needed in order to obtain tax approval. The document creating and controlling a trust is usually called a 'Trust Deed' or 'Declaration of Trust'. Very often a pension trust is set up at first with only a basic trust deed called an 'Interim Trust Deed'. The idea is to begin collecting contributions and building up a fund without delay. In due course all the details of the scheme (such as the powers and duties of the trustees and the amount of the benefits to be paid) will be settled and incorporated into a 'Definitive Trust Deed and Rules'. From time to time the terms of the trust may be altered by a 'Deed of Amendment' or a 'Deed of Variation' and trustees may retire or be appointed by a 'Deed of Retirement' or a 'Deed of Appointment'. All these documents together are called the trust documents. As already mentioned, the trust documents may change many of the rules of case- law and legislation which would otherwise apply.

Revenue Requirements

Before a pension scheme is approved by the Revenue Commissioners and in order to avail of valuable tax concessions, it has to satisfy certain requirements, which are laid down in the legislation under which the scheme is approved. This legislation was in Chapter II Part I of the Finance Act, 1972, which is now replaced by the Taxes Consolidation Act, 1997. This Act sets out in broad terms the conditions for approval, but the more detailed conditions are decided upon by the Revenue in exercise of their powers under the Act. The trust documents therefore, have to be drawn in such away that these conditions are satisfied before the Revenue will approve the scheme to ensure that it is approvable and, once first approved, that it continues to satisfy the condition and thereby remain approved.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Occupational pension plans in Ireland are voluntary. Traditionally, most plans have taken the form of defined benefits. However, defined contribution plans have become increasingly popular in recent years, in particular amongst multinational and smaller local companies.

The main types of occupational pension arrangements are:

public service pension schemes run on a pay-as-you-go basis. Those covered include civil servants, Gardá and Defence Forces, local authority employees, teachers and health workers;

funded occupational pension schemes set up by, on negotiated with, employers to provide benefits for their employees. These include funded schemes set up by commercial State entities and agencies.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

These are individual pension arrangements which operate on a money purchase basis; in all other respects they are similar to a defined contribution scheme. Invariably they are effected with an insurance company.

The Insurance Acts and Regulations provide regulations for the life assurance business. The terms and conditions applicable to personal pension plans are determined on the basis of the individual requirements. Personal pension plans are managed by insurance companies or banks.

Plan parameters and tax treatment

The tax treatment of occupational pension schemes is regulated under the Finance Act, 1972 (now the Taxes Consolidation Act, 1997). In order to obtain tax approval, schemes must satisfy a number of conditions. One of the main conditions is that the scheme must be set up as an irrevocable trust and from this must be held separate from the other assets of the employer. Most occupational pension schemes in Ireland have received tax approval and the vast majority have "exempt approved status", which confers the following benefits:-

1. the employee's contribution is tax deductible:

2. the employer's contribution is allowable as a management expense for tax purposes; and

3. the investment income and capital profits of the scheme are generally exempt from tax.

The tax treatment of personal pension plans is similar to the treatment of occupational schemes.

a) Contributions

Contributions to defined contribution plans are usually between 5%-10% of pensionable salary. Contributions are often shared equally between employer and employee.

Employer contributions to occupational pension plans are allowed as a business expense for Corporation Tax. In order to receive tax approval for either defined benefit or defined contribution plans employers must contribute at least one-sixth of the cost towards retirement benefits.

Employer contributions to approved pension plans are non-taxable benefits to the employee.

Employee contributions to an approved pension plan receive tax relief at the employee's highest rate of tax, up to an annual limit of 15% of gross annual earnings.

Additional voluntary employee contributions are permitted, on condition that the total of the normal employee plan contribution and the additional voluntary contribution does not exceed 15% of total remuneration in any year. These AVCs receive tax relief up to this maximum, including the normal employee earnings.

Employee contributions may be refunded on leaving service prior to benefits vesting but the refund is liable to income tax at 25%.

Under defined benefit plans, the standard accrual rate is 1.67% per year of service, which leads to a benefit of 2.3rds of final pensionable earnings after a service period of 40 years.

b) Income

Only income earned under exempt approved pension schemes are tax exempt, with the exception of a single 6% tax on gross investment income in 1988 as stipulated in the 1988 Finance Act. This tax has not been repeated.

c) Benefits

The normal retirement age is 65 years for both men and women. However, it is possible to retire early, from age 50 onwards with the employer's consent.

Early retirement due to ill health is permitted at any age.

Benefits from approved pension plans are subject to income tax. Lump sum benefits are normally not permitted but commutation of part of the employee's pension benefit at retirement is tax-free. The commutation is limited usually to 3/80ths of final remuneration for each year of service with a maximum of 1.5 times final remuneration after 40 years. It is possible to achieve the maximum commutation after 20 years with the last employer if an accelerated scale is applied.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

Plans often adjust pensions in the course of payment, even though they are not under any statutory obligation to do so.

Vesting and portability

According to the 1990 Pensions Act, benefits must vest after 5 years of plan membership.

Vested benefits must be preserved. Within defined benefit plans, the deferred benefit must retain the structure of the benefits had it been active (including any survivor entitlement) and must be revalued in deferral, as from 1996 or later leaving service, by the lesser of 4%, or the annual rate of consumer price movement. Alternatively, the Pensions Act provides for a transfer value (including allowance for revaluation) be available for transfer to another employer's pension plan or for the purchase of an approved life insurance Buy-Out Bond. Accumulated assets under defined contribution plans continue to earn the plan rate investment return.

Benefit guarantees

i. The insolvency of an employer will usually constitute a winding-up event for the purposes of any occupational pension scheme established by that employer. On liquidation or receivership of an insolvent employer which had established a pension scheme, often the employer will have failed to make contributions to the pension scheme on its own behalf and may also have failed to pay over contributions deducted from employees pay. The Protection of Employees' (Employer's Insolvency) Act, 1984 provides that the Minister, on application, shall make a payment out of the Social Insurance Fund in respect of unpaid relevant contributions. Relevant contributions are defined as contributions falling to be paid by the employer in accordance with an occupational pension scheme, either on its own account or in respect of employees. The total sum payable in respect of employer contributions is the lesser of :

4. The amount payable by the employer in the twelve months preceding the insolvency

5. The amount certified by an actuary as being necessary to meet the liabilities of the scheme to the employees on the dissolution.

   The total sum payable in respect of employee contributions is such sums as were deducted from employees' pay in the twelve months preceding the date on which the employer became insolvent.

   Under Section 87 of the Pensions Act, the Pensions Board may seek an order from the Court directing payment by an employer to a scheme of unpaid contributions (whether employer or employee). In the case of pension scheme insolvencies, this provision may be of benefit to scheme members.

Section 48 of the Pensions Act, sets out the order of priorities on the wind up of a defined benefit scheme. See *Funding Standard* in Part B Pension Plan Administration which lists those priorities.

ii. There no minimum State benefit guarantees provided.

Access to pension schemes

For large firms in the private sector, the most prevalent length of service condition to qualify for pension benefits is one year, though a significant number require from three to five years service. Over 40% of large firms have a minimum age of entry for pension benefits of between 18 - 20 and nearly 45% of firms require that the employee must be age 25 or more before being admitted to the scheme. Most plans have a maximum entry age of 55 years, although some permit entry up to the age of 60. Mandatory membership as a condition of employment is permitted.

Exceptions to eligibility requirements for executives are often made.

The Anti - Discrimination (Pay) Act, 1974 provides for equal pay for men and women for work for equal value. There is no reference to occupational pensions in this Act, but the definition of "remuneration" in Section 1 of the Act is broadly the same as the definition of "pay" in Article 119 and has been held by Equality Officers and the Labour Court in a series of determinations over the years to compise occupational pensions. Furthermore, Part VII of the Pensions Act 1990, provides for the implementation of the principle of equal treatment of men and women in occupational pension schemes and gives effect to Council Directive 86/378/EC in this regard.

Disclosure to members

In accordance with Part V of the Pensions Act, trustees must account to scheme members by giving them basic information about the scheme, their personal entitlements, and how the scheme is being administered. Scheme members have rights to request and obtain information about their personal entitlements. Specific information must also be given about benefit rights and any options available should they leave employment, retire or die, and on the wind up of their scheme.

There is a wide range of documents, depending on the size and type of this scheme, that have to be made available - some automatically and some on request - to help members to monitor the operation of their schemes. These include:

Trust Deeds and Rules (all schemes)

Annual Audited Accounts and Annual Audited Reports (larger defined benefit schemes only)

Actuarial Valuation Report (defined benefit plans schemes only)

Annual Report (all schemes) which may be in an alternative form for defined contribution or small defined benefit schemes.

The underlying intention of provisions on compulsory and voluntary reporting, which have become known as "whistleblowing" provisions is to protect the interests of scheme members. These provisions place a mandatory requirement on a range of specified persons involved in the operations of pension schemes to report actual or suspected fraud or material misappropriation to the Pensions Board. The Pensions Board then has the authority to apply to the High Court for an order to restore the scheme's assets or to prohibit any action which could result in misappropriation.

Individual and collective rights of action

Members of certain occupational pension schemes have a right to participate in the selection of a number of trustees of their plan. In order to have this right, a person must be a qualified member of a scheme which has 50 or more qualified members. Specific rules on the participation by members in the selection of trustees are set down in the Pensions Act and it's underlying Regulations.

B. PENSION PLAN ADMINISTRATION

Single and multiple employer pension funds, employers and life insurance companies manage occupational pensions in Ireland.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

In order to receive the most favourable tax, occupational pensions schemes in Ireland must first be approved by the Revenue Commissioners. Schemes must be administered by trustees. Trustees are required to register their scheme with the Pensions Board.

Pension fund governance

According to the 1990 Pensions Act, the duties and responsibilities of trustees are to ensure that contributions are paid into the fund and are properly invested. In addition, benefits should be paid in accordance with the rules of the scheme and membership and financial records should be kept.

Non-compliance with the requirements of the Pensions Act may result in a fine of up to £10,000 for trustees, or imprisonment of up to two years, or both. The Pensions Board has the legal authority to request the replacement of trustees if it considers it to be in the best interests of the scheme members.

Financial requirements

Trustees of defined benefit funded plans are required to ensure their plan complies with what is termed a *Funding Standard.* This is to ensure that, at a minimum, the plan has sufficient funds to secure pension rights which members have built up, should a plan have to be wound up at any stage.

To comply with the funding standard, a defined benefit plan must be able to meet certain liabilities, set down in the Act:

pensions in payment at the date of winding up must firstly be secured straight away;

benefits provided by AVCs, transfer payments from other plans and benefits earned in respect of pensionable service completed after 1st January 1991, must then be secured;

other benefits, principally those earned by pensionable service completed service prior to 1st January 1991, are then secured in accordance with the priorities specified in the plan rules. These pre 1991 rights, which in most cases are already fully secured, must be 100% funded by the date of the first actuarial funding certificate that arises after 1st January 2001.

Trustees must demonstrate the level of the plans funding to the Pensions Board through the submission of an actuarial funding certificate, signed by an actuary, at least every 3½ years.

Investment of the, plans assets in the employer's business, or in any one shareholding or property, or in certain specified types of assets that exceeds a certain percentage, cannot be taken into account for the purposes of meeting the Funding Standard.

Technical requirements

(i) Although requiring that an actuarial valuation be prepared at least every 3½ years, the Pensions Act does not prescribe the content of the valuation report, other than to state that the resources and liabilities of the scheme must be valued by the actuary to the scheme. Valuation reports prepared by actuaries follow a standard format. The format is determined in accordance with Guidance Note 9(ROI) issued by the Societies of Actuaries in Ireland. This Guidance Note is mandatory on all actuaries who are members of that society who is practising in Ireland. Since only Fellows or the Institute of Faculties of Actuaries can prepare valuation reports and issue actuarial certificates under the Pensions Act, and those practising in Ireland are members of the Society of Actuaries in Ireland, the guidance note is, in effect, mandatory on all defined benefits schemes in Ireland.

(ii) Having carried out a valuation, the actuary is then in a position to prepare the actuarial funding certificate which must be in the form specified in the Occupational Pension Schemes (Funding Standard) Regulations, 1983 ("the Funding Standard Regulations"). As with the actuarial valuation, schemes must prepare an actuarial funding certificate at an effective date at least every 3½ years and can choose any date within that period as the effective date of the certificate. The funding certificate must be submitted to the Pensions Board by the trustees within 9 months of the effective date of the certificate. In preparing the certificate, actuaries must have regard to such financial and other assumptions as they consider to be appropriate on the effective date of the certificate.

The funding certificate is a "snapshot" of the funding position of the pension scheme at a particular date. The approach adapted for the funding standard is to assume that the scheme is to be discontinued and wound -up at the effective date of the certificate and to require the actuary to certify whether the assets at that date are sufficient to meet the liabilities at the date of the assumed wind-up. Future service is not taken into account.

(iii)-(vi) Apart from the foregoing there are no other technical requirements prescribed in legislation. Actuaries in Ireland are bound by their own professional Guidance Notes which are not underpinned by statute at this point in time, but this is likely to happen in the near future.

Investment regulation

The Pensions Act 1990, requires trustees to provide for the proper investment for the assets of the scheme in accordance with the "prudent man principle".

Compulsory insurance and guarantees

There is no Compulsory Insurance and Guarantee scheme in operation in Ireland at this time. The Pensions Board has prepared a report on a Pensions Compensation Scheme for the Minister for Social, Community and Family Affairs. It is possible that the forthcoming Pensions Bill may facilitate the introduction of such a scheme.

Reporting to supervisory authorities

There are two government bodies which act as pensions regulators in Ireland: the Revenue Commissioner and the Pensions Board.

The Revenue Commissioner has authority to grant approval for tax purposes of company-sponsored plans.

The Pensions Board was set up under the terms of the Pensions Act, 1990 to oversee the operation of the act. The main functions of the Board are:

to monitor and supervise the operation of the Pensions Act, and pensions developments generally:

to issue guidelines on the duties and responsibilities of pension plan trustees and codes of practice on specific aspects of their responsibilities:

to encourage the provisions of appropriate training of trustees and to advise the relevant Minister standards of trustees:

to advise the relevant Minister, and through him Government, on the operation of the Pensions Act and on all pension matters.

The Board has extensive powers directly and indirectly through the Court. It can also prosecute proceedings through the Courts for breaches of the Pensions Act.

The Pensions Board can make rulings on disputes about the operation of plans and has the legal jurisdiction to make rulings on conflicts between the Pensions Act 1990 and plan rules.

B.2 GROUP INSURANCE PLANS

Group pension schemes provided by life assurance companies are considered to be occupational pension schemes and are therefore governed by the 1990 Pensions Act, in addition to the Insurance Regulations.

The Pensions Act also applies when life assurance companies manage assets on behalf of a private occupational pension scheme, independent of their life assurance business.

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

Personal pension plans are provided by life insurance companies. No additional regulation to those of insurance companies are applied.

ITALY

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

The legislation consists of Legislative Decree n.124/1993, which came into force a few months after the Amato reform of the public pension system (law n. 421/1992) and the Dini reform of 1995 (Law no. 335/1995), which simultaneously addressed both the public pension system and supplementary, private pensions.

The regulations thus created has been later modified and integrated with other provisions thereby reaching today new legislation principally introducing individual pension schemes and tax reform (law n. 47/2000).

The 1993 legislation first recognised private pension plans and distinguished between so-called closed funds (occupational plans) and open funds (mostly personal plans, but they can be used also as occupational plans).

With regards to the schemes existing before the introduction of d.lgs.n.124/1993 the new legislation keeps "old" occupational autonomous funds and "old" occupational non-autonomous funds alive; these funds continue to operate in the already-adopted forms, even though with some modifications to the dispositions of the new regulation regarding the internal structure.

All the above mentioned types of plans, even with some exceptions restricted to the old occupational non-autonomous funds, are placed under the control of the new pensions regulator, the Commissione di Vigilanza sui Fondi Pensione (Covip), instituted by the d.lgs.124/1993 and then transformed in a public authority by the law n.335/1995

GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

The new closed funds, so called because they are normally restricted to particular companies, groups, categories, geographical areas, created under the new regulatory framework are mostly set up under agreements between employers' and employees' associations, although they can also be set up, in absence of collective negotiations, at the unilateral initiative of either employers or workers.

Collective agreements can also provide for schemes administered by open pension funds, if a closed fund does not exist. The basic principle of the pension funds (both closed and open) is *voluntary subscription*. The law guarantees the freedom for individuals to adhere or not to supplementary pension schemes. Employees who choose not to participate in closed fund referred to the worker's category in which they participate, in principle are now allowed to participate in any open fund: however, in such a case severe fiscal penalizations are applied relating to tax- deductibility of contributions.

The law, with reference to the new funds, privileges the defined contribution plans and contemplates defined benefit plans only for self-employed workers.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Personal pension plans are available through open funds and, since 1°January 2001, through life insurance policies subject to the condition that they are directed to supplement retirement income.

Plan parameters and tax treatment

With the law n.133 of 13 May 1999 the Government has been delegated to adopt measures in order to reform the tax treatment of private pension schemes. In particular, it provided for:

an increase in the amount of contributions that can benefit of tax-deductibility;

the lining up of pension fund's tax-treatment with that of companies engaged in asset management (investment fund management companies), with a slightly more favourable taxation of private pension funds incomes;

the exemption from tax of benefits disbursed for the part corresponding to contributions and incomes that have already been taxed, and taxation as employee income for the remaining part.

The Italian Government carried out the revision of tax treatment through legislative decree No. 47/2000 (recently modified by the legislative decree n.168/2001) and the new provisions are in force since 1° January 2001.

The tax treatment of private pension provisions is of the hybrid E(T)T type, as contributions are, to a limit extent, exempt while fund incomes are taxed, but in the form of a prepayment (in fact, when benefits are disbursed, only the part that has not already been taxed is subject to taxation).

An additional area of legislative action regards the identification of the characteristics that life assurance policies must respect in order to be recognised as a third-pillar social security instrument.

Thus, in order to qualify for the same tax incentives which pension funds are eligible for, life insurance policies will have to be subject to the same age requirements for the granting of benefits and to the same constraints to payment of lump sums instead of annuities.

Other forms of personal savings will receive a less favourable tax treatment, as they are not necessarily directed to supplement retirement income.

The details of the tax treatment of private pensions in Italy are as follows:

a) Contributions:

Shares of trattamento di fine rapporto (TFR) (similar to severance pay)

These are tax exempt for workers and are deductible from the employers' enterprise income up to 3% of the severance pay made over to pension funds.

In order to set up occupational plans the system prescribes to the employers, for workers hired the first time after 1993, to allocate the entire TFR to the pension fund.

The intention, in fact, is for the bulk of the contributions to pension funds to come from the severance pay system:

- for workers starting their first job who sign up with an occupational plan, the whole annual severance pay allocation (equal by law to 6.91% of gross earnings) will have to be contributed to the fund;

- for other workers, the use of severance pay resources will influence the overall contribution, since only if the overall contribution is up to twice the amount of the severance pay allocation made over to pension funds, the employee's contribution will be fully eligible for tax facilitation

Workers' contributions

These contributions are eligible for tax deductibility up to 12% of total income with a cap of 10 million lire. As far as the income from employment the tax benefit is valid if a share of TFR, equivalent at least one half of the overall contribution (by both employer and employee), is paid into pension fund. Self-employed contributions are eligible for tax deductibility up to 12% of total personal income with a ceiling of 10 million lire.

Employers' contributions

Employer contributions are entirely tax-deductible.

There is no prescribed minimum contribution rate, or ratio of employer to employee contributions in occupational pension plans, but both employers and employees must contribute.

Employers' contributions are exempt from normal social security contributions and subject only to a 10% solidarity contribution.

Employer contributions are not required for personal pension plans.

b) Income:

Pension funds pay tax on the income they earn on their assets, net of the expenses they incur. The reducing of pension funds' current tax rate of 11% has been considered.

c) Benefits:

Benefits are paid when members reach the age fixed for eligibility for an old age pension under the compulsory system (from 2000 onwards, this will be 65 for men and 60 for women) and at least 5 years of contributions, alternatively, in the case of long-service pensions, benefits are paid subject to three conditions: retirement from work, age not more than 10 years less than that required to qualify for an old-age pension and at least 15 years of contributions.

Pension savings cannot be retrieved before retirement except for some specific circumstances such as serious illness.

Beneficiaries can take up to 50% (33% in order to skip fiscal penalizations, see below) in a lump sum and the entire amount or the remaining part in the form of an annuity. No maximum replacement rate for annuities is imposed.

Under the recent changes in the law, benefits that have already been taxed as fund income are tax exempt. It is therefore necessary to distinguish between lump-sum disbursements and annuities:

Lump sums:

The sums will benefit from *separate taxation*,[4] If the lump sum does not exceed 1/3 of the total entitlement the tax is applied only at the part not taxed as pension fund income.

Annuities:

The part not taxed as pension fund income will be taxed in the same way as employee income.

[4] A method of taxation that is applied to incomes generated in more than one year; the effect is to reduce the tax rate applicable with respect to the marginal rate.

<u>II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS</u>

Not applicable

<u>II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS</u>

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no specific indexation requirements on deferred or retirement benefits.

Vesting and portability

There is immediate vesting of employer and employee contributions. The portability of closed pension fund accounts is subject to some restrictions: in the first five years of a fund's existence accounts may only be transferred to another fund after five years of membership, subsequently they may be transferred after three years. These restrictions do not apply if a worker changes employer.

In cessation of a labour link with an employer, a worker has three options. He can draw down the accumulated balance, transfer the balance to a closed fund, sign up with an open pension fund provider or with a life insurance company .The fiscal provisions are, however, less favourable in the case the worker opts for the accumulated balance.

Benefit guarantees

The new legislative framework does not envisage any form of minimum benefits guaranteed by the state. However, guarantees of investment return may be given by financial or insurance companies.

Access to pension schemes

Access to occupational pension schemes is generally linked to collective bargaining arrangements.

Disclosure to members

The subjects authorised to manage a closed pension fund's resources or to set up open pension funds, must show all the data available on the assets managed on their respective financial statements or on the report forms required by the supervisory authority. The authorities competent for each sector will conduct the controls for which they have responsibility on the above subjects.

Every year pension funds must give to members a complete information about financial, economic and statutory aspects in accordance with rules issued by Covip.

Individual and collective rights of action

There are only individual rights of action.

B. PENSION PLAN ADMINISTRATION

The law recognizes the pension fund as the single legal entity allowed to manage defined contribution occupational pension assets during the accumulation stage. Defined benefit plans, meanwhile, can only be managed by life insurance companies.

The law also requires financial institutions to be involved in different stages of the running of pension funds. Closed pension funds must enter into a contractual agreement with financial intermediaries (banks, investment firms, insurance companies and investment fund management companies) for the management of the fund itself by these entities[5].

Similarly, the payment of pension benefits and additional insurance cover (e.g. disability and survivors' benefits) must be entrusted to a life insurance company. Closed funds must contract with insurance companies to offer for example annuities products for their affiliates.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

Pension funds are independent legal entities (associations or foundations) with assets separated from those of the sponsor.

Authorisation to closed funds will be conceded at the end of an administrative procedure conducted by Covip. For open funds the administrative procedure is jointly conducted by Covip and the supervisory body of the sector to which the organisation applying to introduce the pension fund belongs. For life insurance policies there is not an administrative procedure of authorisation.

Pension fund governance

Closed pension funds are endowed with corporate governing bodies jointly appointed by the sponsoring company and the general meeting of the subscribers. The members of these organs must possess the necessary requisites of professional standing and experience as laid down by a special-purpose statutory provision.

The closed pension funds' representatives, including board of directors and board of statutory auditors, must include an equal number of employee and employer representatives. For old pension funds internal to

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5 The funds set up before 1993 are an important exception in this respect since they are allowed to manage their assets directly.

a company or a public entity, the fund will provide a special supervisory body whose members will represent the employees and the employer in equal proportions.

The board's main responsibilities include the selection of a financial institution for the management of the pension fund assets, as well as the selection of a life insurance company for the administration of pension benefits.

There are no limits on fees and commissions paid by plan members.

Financial requirements

Since the schemes are of a defined contribution nature, with no explicit return guarantees, there is full funding. No additional solvency requirements are imposed on the funds.

Technical requirements

See Financial requirements above

Investment regulation

The primary requirement of, first, the legislator and then the supervisory authorities is represented by the maintenance of high standards of security for the rights of the participants in the fund, without penalising the returns on investment.

Quantitative restrictions are aimed at guaranteeing the achievement of predetermined results through a prudent and sound management and at the same time guaranteeing sufficient flexibility to the managers and governing bodies of the pension fund.

The financial instruments and real estate in which the resources of pension funds may be invested are subject to restrictions. These limits, summarized in Table 1, were established by the legislative decree n.124/1993 and the Ministry of the Treasury in Decree 703 of 21 November 1996.

The underlying criteria for investment is the need to observe prudent and sound management, the objective of investment diversification to limit risks, the efficient management of resources, the containment of costs and the maximisation of returns.

In this context, the limitations applied to the various types of investment provide an extremely wide framework of action and do not set out to obstruct the action of the pension fund or its administrators.

However, the legislator has taken care to ensure that the limitations that have been introduced regard the prohibition to make excessive investments in the shares of a single company and in the shares issued by the subject making contributions to the fund.

Other limitations concern the use of bonds and shares non transacted on the regular markets of the EU, the USA, Canada and Japan or issued by non-OECD countries and the derivates.

The foregoing measure has also dealt with the question of "currency matching". The provisions laid down provide for a very attenuated form of matching insofar as they foresee that the fund will be obliged to invest at least one third of the assets in a currency matching that in which the benefits of the fund will be denominated.

This solution is aimed to ensure that the asset managers of the pension fund will be guaranteed the above-mentioned operational flexibility in order that they may achieve the predetermined goals of the fund as well as being able to adequately spread the risks accepted in terms, inter alia, of foreign currency.

Table 1: Restrictions on pension fund investments
(percentages of the fund's total assets)

Type of asset	Upper limit
Liquidity	20%
Shares of closed-end (securities and real-estate investment funds)	20%; 25% of the value of the closed-end investment fund
Debt and equity securities:	
a) issued by OECD countries or residents thereof and not traded in regulated markets	50%; equity securities 10%, debt and equity securities issued by subjects different from OECD countries and international organisms 20%
b) issued by non-OECD countries or residents thereof and traded in regulated markets	5%
c) issued by a single issuer or by subjects of the same group	15%
d) shares or capital parts issued by the company or the companies required to contribute to the fund	20% if one company; 30% if a category fund
e) loan issued or asked	0%
f) shares or capital parts issued by a single issuer	5% of the nominal value of all the shares or capital parts of the issuer, if he is listed, and 10% if it is non listed. In any case the fund cannot purchase a commanding position over the issuer

Compulsory insurance and guarantees

There are no compulsory insurance systems for closed pension funds. However, if pension funds are authorised to pay annuities directly, they must insure themselves against survival risk.

Reporting to supervisory authorities

The supervisory Authority (Covip) may ask for all information needed for supervisory purposes. Regular reporting is in course of implementation.

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no indexation requirements.

Vesting and portability

There is immediate vesting of contributions.

The portability of personal pension plan is subject to some restrictions: accounts may only be transferred to another personal pension plan or to a pension fund after three years of membership. This restriction does not apply if a worker changes employer.

Benefit guarantees

There are no minimum benefits.

Access to pension schemes

Everyone can access to pension schemes if he has an income or if he is dependant on a worker.

Disclosure to members

Every year open pension funds and life insurance companies must give to members a complete information about financial, economic and statutory aspects in accordance with rules issued by Covip, for the open funds, and by Isvap, the supervisory authority of insurance sector for personal pension plan via insurance contract.

Individual and collective rights of action

There are only individual rights of action.

B. PENSION PLAN ADMINISTRATION

The open funds are formed as a separate patrimony, created by banks, insurance companies and financial institutions. The company that has created the open fund manages defined contribution during accumulation stage. The payment of pension benefits and additional insurance cover (e.g. disability and survivor' benefits) must be entrusted to a life insurance company.

With reference to life insurance policies, the insurance company manages the contributions and pay the pension benefits. Personal pension plans established as life insurance policies are covered by insurance law. However, life insurance policies are qualified as personal pension plans if they comply with the same requirements provided for occupational.

JAPAN

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

Occupational and personal pension plans are subject to different legislation. There are also three main types of occupational plans, each of which is subject to different legislation. The Employees Pension Fund (EPFs) were instituted and are regulated under the 1965 revision of the Employees Pension Insurance Act (EPIA). Tax Qualified Plans (TQPs) are subject exclusively to a specific tax legislation. Lump-sum retirement benefit plans are not subject to any specific legislation and are therefore not discussed in this report. They are mainly used as a form of severance payment and for early retirement purposes.

The Ministry of Health, Labour and Welfare has responsibility for the regulation and supervision of EPFs. The tax authorities have responsibility for the regulation and supervision of TQPs.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Employees Pension Fund (EPFs) are established on a voluntary basis by employers, a trade or a regional industrial association. However, because they substitute a part of benefits form the public pension scheme, the Employees' Pension Insurance (EPI), they fall under Japanese social security legislation and may be considered mandatory.

Only defined benefit schemes are currently permitted. However, there is a new proposal being discussed in parliament that will permit the operation of defined contribution schemes from October 2001.

The TQP offers benefits supplementary to those of the public scheme.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Information to be provided

Plan parameters and tax treatment

a) Contributions

EPF contributions paid by employers are deductible as social security expenses. They are not accounted as part of an employee’s wage and therefore, no income tax is levied when contributions are made by the employer.

For TQPs, employer contributions are also fully tax deductible.

b) Income

As for treatment of a fund’s accumulated assets, a portion of these, up to a certain level, is tax exempt while a special corporate tax of 1% is levied on the portion exceeding the stipulated limit. The limit is set at 2.7 times the funding required to meet the benefits of the substitutional component.

c) Benefits

Benefit provision from EPFs are subject to the same legislation as those form the EPI. They are subject to a minimum retirement age (currently 60 for men and women). Benefits must be paid in the form of a life-time annuity, but up to one half can be a fixed-term annuity. Lump-sums are not permitted. The annuity must be at least 30 per cent more generous than the social security benefits that are being replaced. Supplementary benefits offered in addition to the 30% floor are not subject to any specific regulations.

EPF pension benefits are treated as miscellaneous income, just as with the public pension scheme, and lump-sum benefits paid by EPFs are treated as taxable separation benefits.

Benefits from TQPs may take any form, thus in practice full lump-sum payments are permitted. A minimum retirement age of 65 for men and 60 for women is required to receive pension benefits.

EPFs enjoy the same tax treatment as public pensions, the so-called “EET” (exempted, exempted, taxed), namely because they are designed to replace a substantial portion of public pensions and are supervised by the Ministry of Health, Labour and Welfare.

TQPs are subject to a similar tax treatment as EPF.

TQP plans and EPF plans, on the other hand, receive more favourable tax treatment than do book reserve plans (LSRBP). For a book reserve plan, the employer's tax deduction is limited to 40 percent of the value of the accruing lump sum benefit payable in the event of voluntary termination.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

Benefits form EPFs must be indexed according to the same formula as the EPI. The cost-of-living adjustment is funded directly by a government transfer.

There are no specific indexation requirements for TQP benefits.

Vesting and portability

Substitutive benefits are vested after one month in EPFs. On the other hand, the supplementary component of benefits is vested after twenty years of contributions. However, in 1997 the minimum preserved benefit was introduced, which is defined for each participant or beneficiary as the expected benefits right corresponding to his or her past service based on plan provisions rules.

Workers who leave an EPF after twenty years of contributions must defer vested benefits. For early leavers with a contribution record under twenty years the plan must transfer the cash equivalent of the vested benefits to the employee as a lump-sum. The worker may then transfer it to the Pension Fund Association, who will offer her an annuity in exchange at retirement.

The Pension Fund Association acts as the clearinghouse for the transfer of benefit rights of workers who change pension plans as a result of a change in employment. The amount that has been accumulated for a job-changing employee is transferred to the Pension Fund Association, which in turn will pay an annuity to the worker at retirement.

The actuarial assumptions used in calculating the transfer amount are controlled by the Pension Fund Association. An interest rate of 5.5 percent is used for discounting.

There are no vesting rules for TQPs, or specific rules on the portability of TQP benefits.

Benefit guarantees

The "Pension Benefit Guarantee Program" protects pension payments from EPFs by supplementing a portion of a shortfall in pension should a fund be terminated due to bankruptcy.

Access to pension schemes

If a single company establishes its own EPF by itself, the fund must have 500 or more subscribers.

If affiliated companies, such as a parent company and its subsidiary, establish an EPF jointly, the fund must have 800 or more subscribers.

If companies of the same or similar businesses or companies located in the same area establish an EPF jointly, the fund must have 3,000 or more subscribers.

The insured persons of Employees' Pension Insurance whose employer has established an EPF are automatically enrolled in the fund.

Disclosure to members

New accounting standards will be introduced in fiscal 2000 which will require that sponsoring companies disclose any unfunded liability evaluated by the projected unit credit method with respect to their expected obligations for separation benefits (LSRBP) and pension benefits (TQP and EPF).

These changes may press companies not only to reduce unfunded liability of their pension plans, but also to implement pension plans in such a way as to change their funding method from internal book reserve to external advanced funding.

Moreover, the actuarial and financial reports which must be submitted to the government should be authenticated by a certified pension actuary in accordance with reasonable actuarial methods and assumptions.

Individual and collective rights of action

Information to be provided

B. PENSION PLAN ADMINISTRATION

The two main types of pension plan (EPF and TQP) are subject to very different administrative requirements. The EPF must be administered via a pension fund, while TQPs are directly administered by trust banks and life insurance companies.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

Contracting-out of the EPI and setting up instead an EPF is permitted for large employers on an individual basis (those with more than 500 full-time employees), for controlled groups of employers (more than 800 employees) and for multi-employer groups (more than 3,000 employees). Besides the minimum size requirement, four other requirements must be met for establishing a contracted-out plan. First, the firm must have made a profit for each of the preceding three years. Second, at least half of the full-time employees of the firm must vote in favour of establishing the plan. Third, if a union represents at least a third of the employees, it must approve the plan by a majority vote. Fourth, the firm must have had a stable or growing labour force for the preceding three years. Once a firm has established a contracted-out plan, it can continue such a plan even if it later fails to meet the initial size and profitability requirements.

Each EPF is a public juridical entity as provided for under the EPIA, and is legally independent from the sponsoring employer or employers. Due to its status as a juridical entity, each EPF is granted special powers under public law and is subject to special government supervision and regulations. For example, each fund is required to obtain the authorisation of the Minister of Health and Welfare with respect to establishment or termination or to the amendment of EPF rules.

The basic requirement for establishing an EPF are the size requirements described above and the obligation to provide benefits that should exceed those of the substituted public component by 30% or more.

Administration and record-keeping services of EPFs can be sub-contracted to the Pension Funds Association, a non-profit, private-sector organisation that is also in charge of providing benefit insurance and ensuring portability of pension benefits the system (see below).

Pension fund governance

An EPF is operated by a board composed of delegates who are elected among the sponsoring employers and the plan's participants in equal numbers.

Financial requirements

EPFs are required to be fully-funded. A new funding requirement called "Minimum Funding Standard" (MFS) was introduced in fiscal 1997 to secure pension entitlement. MFS is a present value of all MPB, calculated as if an EPF were terminating, using the discount rate based on the rates of long-term (20 years) National Bonds. If an EPF is funded at less than 90% of MFS, employers should recover within 7 years.

Actuarial valuation should be undertaken at least every 5 years, and unfunded liability should be amortized over a period of 3 to 20 years.

Any surplus of pension assets in EPFs is prohibited from reversing to employers.

Technical requirements

Actuarial standards (including recent changes) for financing EPFs are as follows:

- Until fiscal 1996, actuarial valuation of plan assets was based on book value. At the end of fiscal 1997, however, it was revised on a marked-value basis.

- The discount rate had been fixed at 5.5% for all EPFs by regulation. However, in April 1997, deregulation took place so that each EPF could/should determine the discount rate based on its own assets management policy.

Investment regulation

Assets of EPF should be managed efficiently and safely, and the directors of EPF are entrusted with the duty of care and loyalty to participants and beneficiaries under EPIA. On the other hand, the responsibilities or duties of money managers (such as trust banks or life insurance companies and so on) are regulated by the appropriate business laws governing their contract with the EPF.

EPF asset management was subject to very restrictive regulations until the 1980's. In the 1990's, however, a series of deregulations in the area of pension asset management have drastically taken place. Under traditional regulations, two types of restrictions were imposed on EPFs: one for money manager selection and another for asset allocation. Concerning the selection of money managers, only trust banks and life insurance companies were allowed to manage pension assets until fiscal 1989. In 1990, however, deregulation allowed investment advisors to manage up to one-third of an EPF's assets accumulated after the deregulation. This ceiling was raised to one-half in April 1996, and was utterly eliminated in 1999.

On the other hand, each individual portfolio managed by a money manager on behalf of a specific EPF must comply with the so-called 5-3-3-2 rule. This rule set a floor on the shares of each portfolio which could be held in bonds or cash (50%) as well as ceilings on the shares held in equities (30%), foreign securities (30%), and real estate (20%). In April 1996, the 5-3-3-2 rule imposed on money managers was abolished, and it was applied to the overall assets of each EPF. Subsequently, in December 1997, the rule was eliminated.

In April 1990, alongside the deregulation described above, EPFs were allowed to operate the in-house investment of a portion of plan assets, subject to specific conditions. As a result, a series of deregulations in the area of pension asset management during the 1990's have enabled EPFs to control asset management according to maturity or other factors affecting their own risk tolerances.

Compulsory insurance and guarantees

There is a compulsory bankruptcy insurance scheme for EPFs. It is administered as a co-insurance system by the Pension Funds Association, a public agency. EPFs are required to make contributions to this plan termination insurance programme since 1989. Contributions are intended to reflect the statistical likelihood of termination as well as the unfunded liability if the plan is terminated. It would appear that the proxy for financial soundness in Japan is imply the size of the employer, as the required contribution per participant declines gradually as the number of participants increases.

Reporting to supervisory authorities

EPFs are obligated to report annually their budgets and settlements of accounts, and to submit quarterly their operational reports to supervisory authorities.

B.2 GROUP INSURANCE PLANS

Licensing and registration

TQPs are administered by either insurance companies or trust banks. Approximately 87 percent of the number of TQP contracts in Japan are group insurance plans. In order to qualify for favourable tax treatment under a TQP, a pension plan must meet a set of requirements specified by the Corporate Tax Law. The principal requirements which pension plan contracts should satisfy in order to qualify for favourable tax treatment are:

Entrusting of pension plan assets to outside financial institutions (trust banks or insurance companies).

The plan should be designed with the sole purpose of providing a retirement pension.

Contributions are to be made by employers, and workers should be designated as the beneficiaries of the plan.

The amount of contributions and pension to be provided should be set according to proper actuarial calculation, and actuarial valuation of the plan should be undertaken at a regular interval of not longer than 5 years.

Surplus of pension assets should be reversed to the employer when actuarial evaluations are made.

After confirming that each plan and contract meets the requirements outlined in 4(2), the entrusted institutions obtain approval of the National Tax Administration. The institutions conduct custodial operations and investment management of assets as well as pay out benefits to separated or retired employees. In case of disciplinary discharge, the institution does not have to pay out benefits.

Governance requirements

They are eligible contracts between employers and outside financial institutions, based upon the retirement pension provision rules. These agreements designate employees as the beneficiaries, and entrust the management and operation of the plans to the financial institutions as a fiduciary.

Financial requirements

Funding requirements have not been introduced for TQPs, and asset valuation is still based on book value. Actuarial valuations for TQPs must be conducted at least every five years. If one such valuation determines that the plan is overfunded the surplus amount is returned to the owner. If underfunded, contributions must be revised accordingly.

Technical requirements

Information to be provided

Investment regulation

TQP assets are not subject to any additional regulations to those which are applicable to the administering institutions (insurance companies and trust banks).

Compulsory insurance and guarantees

There is no compulsory insurance scheme for TQPs

Reporting to supervisory authorities

Information to be provided

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

Information to be provided

KOREA

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

Neither the Retirement Allowance (RA) system, based on employment termination indemnities, nor personal pension plans were established by specially enacted pension laws. Instead, regulation is made under a variety of laws, including the Labour Standards Act, the Corporation Tax Law and the Regulations on Supervision of each financial industry, for the Retirement Allowance system.

Personal pension plans are regulated by the Special Tax Treatment Control Law and the Income Tax Law.

Supervision of both the RA and PP plans are upheld by the Trust Business Act, the Regulation on Supervision of Trust Business, Securities Investment Trust Business Act, Regulation on Supervision of Securities Investment Trust Business, Insurance Business Act and the Regulation on Supervision of Insurance Business.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans (Retirement Allowance plans)

Instead of occupational pension plans, Korea has the mandated retirement allowance system. The Retirement Allowance system is a kind of mandated severance payment which should be given at each severance based on mandatory termination indemnities provided under the Retirement Allowance System, established in 1953. The system is a type of defined benefits, because the benefits are predetermined by an employee's service period and final wage. In its intrinsic trait, the system does not have portability system, so it can serve as retirement savings for only those who retire after long service.

Book value funding is allowed for the RA. For financial security, however, employers can entrust some or all of the fund in their contractual form to insurers, banks and trust investment companies with tax benefits. These financial companies sell especially made open-end retirement allowance funds: Retirement Insurance and Retirement Trust.

Voluntary occupational pension plans

Not applicable

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Personal pension plans are voluntary in Korea and were first introduced in 1994.

Plan parameters and tax treatment

a) Contributions

Since the RA system allows the book value funding method, employers do not need to contribute periodically for the mandatory occupational pension plans. However, companies which have paid capital over 7 billion won (1 US$ = 1,269 won, as of May 28, 2001), should recalculate their retirement allowance liabilities each year and debit it as retirement debts. The Labour Standard Acts encourage employers to entrust the RA to financial companies as contractual form with tax benefits.

There are several tax qualifying requirements for personal pension plans. First of all saving periods should be at least 10 years and annuity is begun from 55 years.

Contributions paid to personal pension plans subscribed to before January 1, 2001 are income tax deductible. Deduction of personal pension contributions is permitted up to 720,000 won (or 40% of the contributions paid). After January 1, 20001, the tax system for personal pension plans was changed to EET from the previous EEE, thereby enlarging income tax deductions up to 2,400,000 won (or 100% of the contributions paid). The total contribution limit is 12,000,000 won per year. For previous personal pensions, the EEE tax will be effective until the expiring date.

b) Income

Not applicable

c) Benefits

For mandatory occupational pension plans, full benefits should be given after one year of service and as lump sum according to the Labour Standard Act. Most private sectors employees' normal retirement age is 55. Full benefits under the National Pension Plan can only be received from age 60, so a discrepancy exists between retirement allowance and the national pension. Retiring employees with long periods of service are likely to start their own business with retirement allowances. Those with shorter periods are likely to spend it as living costs during unemployment periods. Annuity-type benefits can only be received from retirement insurance which is sold by insurers. Since usually employers entrust only a part of their retirement debt to insurers, however, these annuities cannot be expected to be dominant in the future.

An employer is required to pay to the retiring employee at least a lump sum equal to the amount of the employee's total years of service in the company multiplied by the average monthly salary over the last three months. Guaranteed bonuses and allowances are included in the definition of monthly earnings.

For personal pension plans, the earliest age from which benefits may be received is 55. Benefits are payable as life annuities, as defined period annuities or as lump sum benefits. The required minimum period is 5 years. Tax qualifying annuities with over 5 years benefits are excluded from taxable income under the previous tax system.

Current personal pension tax qualifying requirements are similar to the previous one with the exception of income tax for benefits.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

Since the retirement allowance is lump sum, there is no indexation of benefits. Moreover, life insurers have not sold indexed annuities for retirement insurance up to now.

Vesting and portability

According to the Labour Standard Act, all regular employees who have served at least one year should be vested full benefits without any scaled benefits schedule. Benefits should be based on both service period and average monthly salary from the last 3 months. No portability system is in place for RA. Retiring employees with short periods of service are likely to spend RA as living costs during unemployment period. RA had been important as unemployment insurance until 1998, when formal unemployment insurance was introduced.

Benefit guarantees

Only limited safeguards are available to guarantee RA benefits in case of corporate failure, as only a small fraction of RA debts are entrusted with outside financial companies. The majority of employees whose funds are book reserved within their companies are offered limited guarantees by the Wage Claim Guarantee Act. This stipulates that in case of company insolvency, employees are entitled to a maximum payment equal to their final three months' salary. Workers who retired with their retirement allowances unpaid are entitled to payment equal to their final three years' retirement allowance up to 3,600 thousand won.

Access to pension schemes

Under the Labour Standards Act, those who employ more than 5 employees are mandated to establish a retirement allowance system.

Disclosure to members

Annual disclosure of contributions, accumulated amount and expected payment to plan participants is required of the financial companies which sell retirement insurance or retirement trusts. More general information such as Trust Asset Management Reports (provided every six months), Business Reports (provided on request) and net asset values and fees are also provided regularly to plan participants.

Individual and collective rights of action

In the limited number of cases where funds are administered in outside financial companies, asset managers can be held liable for compensation to the beneficiaries for losses incurred as a result of mismanagement, fraud or other illegal acts on its part.

B. PENSION PLAN ADMINISTRATION

Since the retirement allowance is entrusted to banks, insurance companies and investment trust management companies in contractual form, the financial companies administer and invest the entrusted retirement allowance. The two contractual forms are Retirement Insurance and Retirement Trust.

B.1 PENSION FUND ADMINISTERED PLANS (Contractual form)

Licensing and registration

No licensing and registration is required for employers. In order to sell retirement insurance or trust, financial companies need to report whether their product meets the requirement under the Labour Standards Act.

Pension fund governance

Since the retirement insurance and trust are in contractual form, there are no specific governance or legal requirements. For the retirement insurance or trust, there are several legal requirements.

Financial requirements

For the insolvency of retirement allowances due to bankruptcy, etc., employers with over 5 employees are obliged to purchase a wage claims guarantee fund.

Technical requirements

It is common for fund managers to use asset-liability or similar risk management models. Retirement insurance or trust in Korea is not required to evaluate their performance on a regular basis. There are also no specific benchmarks on which to evaluate performance and there are no specific actions required by the supervisory authority in the case of poor performance.

Investment regulation

Pension funds are subject to general investment rules applied to general financial products sold by financial companies. Pension fund portfolio plans must be submitted to the supervisory authority when applying for a licence to operate. There are no minimum content requirements. Insurance companies manage pension funds according to asset management rules provided in the relevant regulations.

Compulsory insurance and guarantees

For the insolvency of retirement allowance, employers are obliged to buy wage claims guarantee fund operated by the Ministry of Labour. For the insolvency of insurers or banks, those financial institutions are required to buy deposit insurance operated by the Korea Deposit Insurance Corporations. The maximum guarantee per person is 50 million won.

Reporting to supervisory authorities

The Financial Supervisory Service supervises licensed financial institutions which should report their financial statements every year.

B.2 GROUP INSURANCE PLANS

Not applicable

B.3 BOOK RESERVE PLANS

Licensing and registration

There are no licensing and registration requirements under the Labour Standards Act. However, the Act stipulates minimum requirements to qualify for retirement insurance and retirement trust. Employers are encouraged to deposit money in retirement insurance or trust with financial companies designated by the Corporation Tax Law. These are then licensed by the Financial Supervisory Services.

Financial requirements

No specific financial requirements exist for the book reserve plans.

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

Not applicable

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no safeguards against inflation for the personal pension plans.

Vesting and portability

Savings from personal pensions can be withdrawn with a tax penalty. Personal pension plans can be transferred between financial companies.

Benefit guarantees

For the insolvency of financial institutions, general deposit insurance applies.

Access to pension schemes

Personal pension plans are voluntary, so every domestic resident over the age of 18 years can buy the schemes.

Disclosure to members

There are no specific legal disclosure requirements for personal pension plans. Instead, disclosure is dependent on the disclosure rules of each financial industry.

Individual and collective rights of action

There are no particular legal clauses for individual and collective rights for the personal pension.

B. PENSION PLAN ADMINISTRATION

Financial companies which are permitted to deal with personal pension plans are banks, investment and trust companies, life insurance companies, non-life insurance companies and post offices. At the end of 2000, the total assets for personal pensions sold by the financial companies was 19,075 billion won.

MEXICO

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

In December 1995 the Mexican Congress approved a series of reforms to the Social Security Law, allowing the creation of the new privately managed, mandatory pension system for private sector workers. In order to implement the reforms, the Retirement Savings Systems Law was enacted in April 1996.

The Retirement Savings Systems Law set out the structure and power of the Mexican Pension Fund Regulatory and Supervisory Agency (National Commission for the Retirement Savings System - CONSAR) and the regulation for the establishment, operation and supervision of Retirement Fund Administrators (AFORES) and Investment Funds Specialized in Retirement Savings (SIEFORES). The Retirement Savings Systems Law granted CONSAR full supervisory authority over AFORES and SIEFORES.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

There is a voluntary venue for firms to offer their workers an occupational private pension plan as an optional additional source of income. A few multinational companies have developed defined benefit plans, which are complementary to the mandatory defined contribution private plan.

Mandatory personal pension plans

The new fully funded, defined contribution pension system is constituted by retirement open funds (SIEFORES) privately administrated by specialized institutions, Retirement Fund Administrators (AFORES), which can be established by the private sector, trade unions and Mexican Social Security

Institute. Private sector workers participate on a mandatory contribution basis, and they can make additional voluntary contributions.

Workers can choose between pension fund managers without intervention from the part of employer.

Voluntary personal pension plans

Individuals can make additional voluntary contributions to the SIEFORES of their choice.

Plan parameters and tax treatment

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Employers, providing to their employees an occupational pension plan additional to the mandatory system, may obtain fiscal benefits if the plan is registered at the Ministry of Finance, though there is no specific legislation for this type of plans.

Mandatory personal pension plans

a) Contributions

Contributions are transferred to workers' individual retirement accounts, which are composed of three "sub-accounts": 1) Retirement Contributions; 2) Housing Contributions; 3) Voluntary Contributions.

Contributions to individual private pension accounts are compulsory for all private sector workers in the Retirement, Severance at Old Age and Old Age sub-account, and on the housing sub-account, if the worker is not paying a loan granted by the Housing Institute (INFONAVIT).

Personal accounts are funded through contributions to Retirement, Severance at Old Age and Old Age insurance, representing 6.5% of income. From this 6.5%, 79.2% is financed by the employer, 17.3% by the employee and 3.5% by the government. The government also supplements this contribution with a fixed amount (called "the social quota"), equal to 5.5% of the minimum daily salary at the beginning of the new system, adjusted to variations in the Consumer Price Index (CPI).

Contributions to the INFONAVIT housing sub-account are totally financed by the employer and equivalent to 5% of income.

Total contributions to the retirement individual accounts represent between 12.5% and 17% of workers' income.

Employer contributions are deductible from pre-tax profit. Employee contributions are taxed as income.

b) Income

The benefits received at the retirement age in mandatory and voluntary personal pension plans depend on the balance accumulated in individual accounts during working life. At retirement, workers can choose between gradual withdrawals with the AFORE or purchasing a life annuity from an insurance company.

Earnings: interest gains are taxable except for tax-exempted securities (e.g government bonds).

c) Benefits

The pension age is currently set at 65 years or at 60 in case of severance at old age. Workers can obtain an anticipated retirement when they reach 1250 weeks of contribution, their individual account balance is enough to purchase a life annuity at least 30% higher than the minimum pension guaranteed by the government[6], and a life insurance premium for his beneficiaries has been covered.

At retirement age, in case of contributions for less than 1250 weeks, workers are allowed to cash out their total balance in a single exhibition or they can continue contributing in order to reach the 1250 weeks that are required to obtain a pension.

As an additional source of income to their pension, employees can cash out at the time of their retirement the resources accumulated in the complementary 1992-1997 retirement saving system where employees contributed 2% of income to the retirement sub-account and 5% of income to the housing sub-account. Since the pension reform of 1997, the accumulated balance can be transferred to the workers' individual accounts in the new pension system.

The Mexican government has recognized vested liabilities rights to "transitional workers", private sector employees who contributed to the old system and were not retired before 1 July 1997. At retirement, transitional workers could choose the highest amount between (*i*) earned amount as if they had stayed in the previous Defined Benefit system and (*ii*) accumulated balances in individual accounts.

Benefits are tax-exempted up to certain limits, then are taxable as income.

Voluntary personal pension plans

a) Contributions

Voluntary contributions sub-account, has no minimum deposit limits. Withdrawals are allowed every six months and the accumulated balance can be used to increase the amount of the pension.

Employer contributions are non-deductible. Employee contributions are taxed as income.

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6 The guaranteed minimum pension is equivalent to the minimum salary at the beginning of the new system (July, 1997), indexed by the CPI.

b) Income

The benefits received at the retirement age in mandatory and voluntary personal pension plans depend on the balance accumulated in individual accounts during working life. At retirement, workers can choose between gradual withdrawals with the AFORE or purchasing a life annuity from an insurance company.

c) Benefits

There is no minimum age for cashing out the balance of the voluntary savings subaccount.

Withdrawals are tax-exempted.

<u>II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS</u>

Not applicable

<u>II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS</u>

Information to be provided

<u>II. ii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS</u>

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

Life annuities must be indexed to the CPI. Programmed withdrawals are not indexed. The minimum pension guaranteed is indexed to the CPI.

Vesting and Portability

There is immediate vesting of the plan rights.

At the time the employees joint the private pension scheme, they select a pension fund manager of their choice. In Mexico individuals may change managers without cost after a year of permanence with their current manager. (Only one change is allowed per year).

Retirement savings accumulated on a voluntary basis can be withdrawn every six months.

Benefit guarantees

Current Mexican regulation does not require minimum rates of return for private pension funds.

If, at retirement age, the accumulated amount in the individual account is not enough to purchase an annuity of at least the minimum pension guaranteed by the government for the worker and his beneficiaries, then this guarantee operates for all those who had contributed at least 1250 weeks to the system.

The guaranteed minimum pension is paid under programmed withdrawals. When the resources accumulated by the worker are spent, the government assume the responsibility for the payment of the monthly pension.

Access to pension schemes

Personal pension plans are mandatory for private sector workers.

Disclosure to members

CONSAR introduced compulsory public rating of the private pension funds on the basis of the quality of their assets, management and market risks (since the individuals are responsible for their investment, obtaining reliable information appears to be costly and time consuming).

According to private pension regulation, individual retirement funds must distribute prospectuses describing their portfolio and investment policies. The information of these documents should be reviewed and approved by CONSAR.

Individual and collective rights of action

Each AFORE is required to establish a specialized unit to respond to questions and claims from workers and employers. Claims not settled by this unit are presented in a government run system of conciliation.

B. PENSION PLAN ADMINISTRATION

The mandatory personal pension plans must be provided via pension funds (SIEFORES). These legal entities are vehicles used for the investment of the pension plan assets. They are legally separated from their management companies (AFORES), and the plan members are their shareholders.

Licensing and registration

The establishment of AFORES requires authorization of CONSAR, which may grant or deny on its discretion. CONSAR examines the business plan, shareholding, the automated systems, and the control and management of the AFORES. CONSAR is authorized to withdraw the license of an AFORE or SIEFORE in case of non-compliance of normative acts and regulations.

Pension fund governance

The Retirement Savings Systems Law stipulates that fit and proper requirements should be applicable to the senior management of AFORES. Members of the board of directors, the general director and the compliance officer of each Administrator of Funds for Retirement must be approved by CONSAR on the basis of the moral integrity and technical/management capacities, and may be removed if they don't comply with the regulatory requirements.

Pension regulations authorize AFORES to be majority-controlled by foreign financial institutions (but not by individuals or industrial concerns) from countries that signed international treaties for the liberalization of financial services with Mexico. Up to 49% of the shares of such foreign-owned AFORES may be held by other foreign or Mexican shareholders. Foreign-owned AFORES will receive equal treatment with Mexican-owned AFORES and will not be subject to the types of market share limitations that Mexico enforces against foreign-owned banks and broker/dealers.

The degree of market control allowed to each AFORE is regulated. During the first four years, an AFORE is not allowed to control more that 17% of potential market. Market share limit on the system accounts may attain 20% after first four years. This percentage is determined by the number of retirement accounts, not by its the size.

Financial requirements

AFORE is a single-purpose business corporation with independent capitalization. Each AFORE has to maintain a minimum paid-in capital of US$ 2.73 million[7] and a special reserve equal to the greater of US$2.73 million or 1% of the total workers assets under management. The paid-in capital and special reserve are required to be invested in shares of the SIEFORES managed by the AFORE.

Technical requirements

AFORES should have automated systems necessary for the administration of the individual accounts. Systems must fulfill the technical requirements for supporting capacity, disk space and processing capacity.

Moreover, AFORES are required to have a digital electronic channel of telecommunications and systems to keep statistical information of the administration of the individual accounts.

[7] 1 US Dollar = 9.14 Mexican Peso. Source: Fix rate from Mexican Central Bank, as of June 5, 2001.

Investment regulation

The Pension System Law consents to every AFORE to manage and offer to its clients a variety of funds (SIEFORES) with different portfolio compositions. According to secondary law, the SIEFORES that invest resources of the mandatory pension plan should fundamentally invest in instruments indexed to inflation or offering a real rate of return.

According to the law, non-government securities must be rated by an authorized rating agency and comply with the rating levels established by CONSAR. The Law allows investing in securities that are rated in the top three rating categories for short-term obligations (less than a year) and in the two highest rating levels for medium and long-term instruments.

Investment regulation established by the Retirement Savings System Law stipulates:

a) Main Investment limits:

> At least 51% of the funds' assets must be invested in inflation-linked or inflation protected securities (except for funds that receive only voluntary contributions).
>
> At least 65% of the funds' assets must be invested in securities that either have maturity shorter than 183 days or have floating interest rates whose rate is revised in less than 183 days (except for funds that receive only voluntary contributions).
>
> Up to 5% of funds' assets can be invested in Government Repos. Up to 35% of the funds' assets can be invested in corporate bonds, and within that limit, up to 10% in instruments issued by private financial institutions. No other investments are permitted.

b) Minimum diversification requirements

> Up to 10% of the funds' assets can be invested in debt issued by any single issuer (except for credit institutions, Federal Government and the Central Bank).
>
> Up to 15% can be invested in debt issued by related entities.

c) Self-investment / Conflicts of interest

> Up to 5% (or under special authorization 10%) can be invested in securities issued by entities with which the fund manager has any kind of financial relationship.

d) Ownership concentration limits

> Up to 20% of the amount outstanding of any single issue (except for credit institutions, Federal Government and the Central Bank).

e) Direct limits on foreign investments

> Law does not permit investment in foreign securities. Pension funds can invest up to 10% of their assets in foreign currency denominated securities issued by the Federal Government or the Central Bank (e.g. Brady bonds).

Compulsory insurance and guarantees

The Administrators of the resources are required to meet the investment regime and the minimum capitalization requirements. There is not compulsory insurance or guarantees involved in the pension plan administration.

Reporting to supervisory authorities

Mexican private pension system is characterized by tight supervision of the retirement funds.

The regulatory agency receives information on a daily basis and compliance is sanctioned on a t+1 basis. The information is sent early in the morning and processed for regulatory purposes before noon.

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

With the exception of vesting and portability, the same applies to voluntary personal pension plans as mandatory personal pension plans. Regarding vesting and portability: retirement savings accumulated on a voluntary basis can be withdrawn every six months.

NETHERLANDS

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

The main act in the field of group pension schemes is the Pensioen- en spaarfondsenwet (PSW) (Pensions and Savings Funds Act). The basic principle of this act is that employers are not obliged to supply supplementary pensions. However, when an employer intends to supply supplementary pensions he can do so:

a. either by joining a pension fund for a branch of industry,

b. or by establishing a *company pension fund*,

c. or by taking out a *group pension policy* with a life assurance company.

Therefore, group pension schemes have to be separated from the employer and the activities he pursues. Normally a pension fund will have the legal form of a foundation.

Another main principle of the PSW is that a group pension scheme has to be pre-funded. Because group pension schemes are separated from the employer, pension assets are separated from company assets.

Although the PSW does not imply a legal obligation for supplying supplementary pensions, according to the Wet verplichte deelneming in een bedrijfstakpensioenfonds 2000 (Wet Bpf 2000) (Industrial Pension Funds (Compulsory Membership) Act 2000) the Minister of Social Affairs and Employment may decide a pension scheme administered by a pension fund for a branch of industry to be provided mandatory. The minister may take such a decision at the request of the relevant labour unions and associations of employers.

B. GENERAL STRUCTURE

Occupational pension plans supply - in addition to the AOW[8] (the national old-age pension) - income related pensions to employees (civil servants included) and some groups of self-employed. Occupational pension plans are administered by pension funds and by life assurance companies.

[8] Dutch statutory pension provides a flat rate benefit, where unmarried individuals are entitled to benefits of 70% of the minimum wage and married individuals – 50% of the minimum wage

Typically the occupational pension plans in the Netherlands are of the defined benefit type, offering a benefit of 70 percent of earnings (the AOW pension included) over a 40 year service period. There are also defined contribution pension plans.

Types of plans

Mandatory occupational pension plans

There are three types of occupational pension plans, i.e. plans executed by:

a fund for a branch of industry,

a company pension fund,

a pension fund for professions.

<u>Pension funds for a branch of industry</u>

A pension fund for a branch of industry executes a pension plan agreed upon by labour organisations and organisations of employers in a specific branch of industry. At the request of the mentioned organisations – and under the condition that these organisations are deemed to be representative for the relevant branch of industry – a pension fund for a branch of industry may be provided compulsory under the Industrial Pension Funds (Compulsory Membership) Act 2000.

Reasons for mandatory provision of a pension fund for a branch of industry may be to prevent competitive distortions only because of differences in pension costs or because an employer supplies supplementary pensions while his competitors do not. Moreover, by making mandatory group pension scheme the risks of adverse selection is minimised.

Mandatory provision of a pension fund for a branch of industry would imply that all employers active in a specified branch of industry must join that pension fund. I.e. employers are obliged to put forward for insurance the names of all the employees involved and must pay premiums to the relevant pension fund.

However, even when a pension fund for a branch of industry has been made mandatory, an employer may be exempted from joining the pension fund - at the discretion of the board of the relevant pension fund for a branch of industry - provided that:

at least 6 months before the filing of the request to make a branch pension fund compulsory, the company already had its own pension scheme;

a company is becoming part, or has become a part, of a concern which as a whole remains outside the scope of the fund;

a company is exempted from a binding industry-wide collective labour agreement with regard to the conclusion of a separate collective labour agreement;

the investment performance of the branch pension fund is considered inadequate. That is to say that if the average investment return is below a pre-set self chosen benchmark for more than 5 years, the company can opt out.

By the end of 2000 there were 92 pension funds for a branch of industry, of which 67 had been provided mandatory.

Company pension funds

Where an employer supplies supplementary pensions and provided that the company is not obliged to participate in a branch pension fund the employer, it is possible to execute the plan by a company pension fund. Such a fund has to be established by the employer and the employees. A company pension fund is a separate legal entity and is not liable for debts of the employer. The administration board of the company pension fund must hold a number of employees' representatives at least equal to the number of employers' representatives.

By the end of 2000 there were 883 company pension funds is 847. Of these funds about 45 per cent are fully reinsured with a life insurance company and about 55 per cent are partly or not reinsured.

Pension funds for professions

According to the Act on compulsory participation in a pension regulation for professional groups (Wet betreffende verplichte deelneming in een beroepspensioenregeling, Wet BPR) the minister can make participation in a pension scheme for a professions compulsory for the profession as a whole. This will occur at the request of an organization or organizations representing a majority of the professionals concerned.

By the end of 2000 there were 11 of such pension funds for professions such as medical doctors, actuaries.

Voluntary occupational pension plans

Not applicable

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Personal pension plans are offered by life insurance companies. They are defined contribution plans in the accumulation stage, but must be converted into an annuity at retirement.

Plan parameters and tax treatment

Mandatory occupational pension plans

The tax treatment for occupational pension plans is of the EET format. Pension funds are exempt from corporation tax, which is levied on profits.

The detailed plan parameters and tax treatment are as follows:

a) Contributions

Contributions from employers and employees are tax-deductible[9]. The tax advantages offered, however, are contingent on the level of replacement income provided: Employer contributions are deductible from the company's pre-tax profits as business expenses. Contributions are tax deductible insofar as the pensions promised do not exceed an income replacement of not more than 70 percent of earnings[10]

b) Income

Returns on investment of pension funds are tax exempt.

c) Benefits

Pension benefits by the beneficiaries are taxed as income on receipt..

Voluntary personal pension plans

Premiums for personal pension plans are tax deductible provided one can demonstrate to the Inland Revenue Authority that one is confronted with a so-called pension deficit (i.e. it is expected that the applicable pension provisions (AOW and occupational pension provisions) will together not provide a benefit of no more than 70 percent of earnings).

Benefits from personal pension plans may be paid as annuities or lump sums. Annuities are taxed as normal income.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

The Dutch law (PSW- Pensions and Savings Funds Act) contains no provisions requiring that pension benefits have to be indexed after the retirement age.

Vesting and portability

Vesting

9 Wage Tax Law (Wet op de Loonbelasting)

10 Normally based on a service period of 40 years (accumulation rate of 1 ¾ percent per year). An accumulation rate of 2 percent per year is also allowed, assuming a service period of 35 years.

Pension rights will be vested from the very start that an employee becomes a member of a pension fund. Generally the vesting of pension rights will start from the age of 25 years.

Employees leaving a firm can opt to defer benefits in the current plan or to transfer them to the plan of the new employer. It is not allowed to redeem pension rights by lump sum payments. However, plan sponsors have the legal possibility – but not the obligation - to disburse premiums paid to the plan by the employer in case the period of service is less than one year. The preservation of deferred pension rights is achieved by equal indexing mechanisms similar to those available for pensioners in the previous plan. In cases where the employee opts to *defer benefits* under the current plan, the fund calculates the level of the "proportionate pension" to which the individual is entitled. This is equivalent to the difference between the pension which the member would have received had he/she remained in employment until reaching pensionable age, and the pension which he/she would have received had he been a member from the date upon which his membership terminated until pensionable age.

Portability

In 1994 Parliament passed a bill obliging pension funds to contribute to a transfer of pension rights, when requested. This act also provides for rules to compute the value of pension rights to be transferred. The actuarial assumptions used in calculating the transfer amount are now controlled by the institution that runs the clearinghouse.

Benefit guarantees

There is no statutory system of benefit insurance.

Access to pension schemes

There are no statutory requirements for eligibility to pension plans, but most plans impose conditions such as:

the employee must be 25 years of age or older;

the employee must be employed on a permanent basis or on the basis of a specific contract;

the employee must earn a certain minimum income.

Certain legal requirements exist, on the other hand, on eligibility to pension benefits:

it is illegal to discriminate between men and women, both directly and indirectly. Moreover, the government is proposing a bill that will prescribe equal benefits for men and women. It is considered to be necessary to stipulate the equal benefit rule as women who changed their survivors pension into an old age pension have usually received a smaller amount of old age pension than men. This is due to the fact that, statistically, women live longer and have older husbands. The equal benefits bill should be a general rule for second pillar pensions and should be introduced for defined contribution plans.

Part-time workers are regarded as equal to full-time workers before the law. It is illegal to exclude part-time workers from pension plans.

Survivors' pensions may not discriminate between men and women. - Divorcees' pensions. According to the Wet Pensioenverevening bij echtscheiding (Pension Divorce Settlement Act), in the event of a divorce or a dissolution of a marriage after legal separation, the former spouse is entitled to - in principle - half of the old-age pension rights accrued by the member of a pension scheme during the period of their marriage. This implies that the former spouse is entitled to benefit payments from the time that the member of a pension fund retires. The pension fund has to be informed of this within two years subsequent to the divorce.

Disclosure to members

The following information must be disclosed to members:

when an employee becomes a member of a fund he has to be informed about the plan. After that a member has to be informed yearly about changes in the plan.

a pension fund must inform its members annually of the actual vested rights of the member and of the pension rights a member may accrue if he would continue service until retirement at 65 years. - on request the fund has to inform a participant about the plan or the accrued pension rights on any time. The fund may charge the member for the service requested.

Pension funds must submit supervisory returns to the PVK. There is no legal obligation to make the supervisory returns available to the members. However, often the deed of incorporation and the funds' constitution or its pension regulations stipulate that some financial information will be at the disposal of members of the pension fund.

According to the Dutch Civil Codes the larger pension funds must disclose annual accounts. These accounts will be at the disposal of members as well.

Individual and collective rights of action

<u>The right to vote</u>

The PVK strictly controls that all the employees can vote an employee representative. No specific legal requirements are made regarding the eligibility for election. However, there are requirements regarding the qualifications of (aspirant) members of the board.

According to the PSW, equal representation of employers and employees (or organizations of employers and employees) should be preserved in the board of a pension fund. Recently, it has been made legally possible that pensioners are represented in the board of pension funds. In that case the pensioner takes place an employee seat in the board. The regulations of a pension fund may limit the influence of pensioners, but it is not allowed to make the membership of pensioners in the board impossible.

The deelnemersraad (board of participants) has especially the purpose to let pensioners have a say in the decision-making. It is always possible to install such a board of participants. Pension funds are obliged to do so on request of at least 5% of the members and pensioners, or organizations representing these groups. When there is a board of participants, it has the authority to advise about some legally mentioned affairs, for example at major general decisions, amendments of regulations etc. The board of participants has the right to get all the information that is necessary to fulfil its duty. The managing board is not obliged to follow the advice, but in that case it must inform the board of participants, and explain why the advice is not being followed. Concerning the legally mentioned affairs referred to before, the board of participants has also a right to complain. The PVK has the authority to deal with these complaints. In case of a well-founded complaint the managing board must react to the PVK. The PVK does not have the possibility to impose a sanction, directly related to the complaint, but of course the general sanctions may be used.

B. PENSION PLAN ADMINISTRATION

If an employer decides to set-up an occupational pension plan, the PSW Act requires that pension contributions are placed outside the employer's company. As mentioned before he can do so:

a. either by joining a pension fund for a branch of industry,

b. or by establishing a company pension fund,

c. or by taking out a group pension policy with a life assurance company.

Therefore, occupational pension plans have to be separated from the employer and the activities it pursues. Another main principle of the PSW is that a group pension scheme has to be pre-funded. Because occupational pension plans are separated from the employer, pension assets are separated from company assets.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

When a pension fund has been set up, it must notify the PVK) within three months, using a specific application form. The application must include a copy of the deed of incorporation and the funds' constitution. Initialised copies of the pension regulations and the agreement between the employer and the fund must also be submitted[11]. The pension fund must also submit an Actuariële en Bedrijfstechnische Nota (Actuarial and Technical Business Memorandum). These documents must comply with legal standards according to the PSW and the Civil Code.

The PVK has to assess whether the documents in accordance with the legal standards and also whether the pension fund can be supposed to fulfil its pension commitments in the future. Non-fulfillment of this duty to notify is a violation that can be followed by a penalty.

Normally a pension fund will have the legal form of a foundation.

Pension fund governance

Licensing laws place specific requirements on the governance of pension funds. Such requirements include:

the board of a pension fund must consist of (representatives of organisations of) employers and employees on equal proportions,

contributions have to be paid at least every calendar quarter,

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[11] If a pension fund for a branch of industry does want to apply for a decision to be provided mandatory, it has to submit the relevant documents to the Minister of Social Affairs and Employment.

a pension fund must have a reduction scheme in force[12],

rules governing the termination of participation in a pension fund and subsequent entitlement to benefit rights proportional to realised years of service,

rules governing the separation of pension rights in the case of a divorce.

The PSW lays down that equal representation of employers and employees or organisations of employers and employees should be preserved in the board of pension fund[13]. As mentioned before, it has recently been made legally possible that pensioners are represented in the managing board of pension funds.

Until recently there were no requirements in order to become a member of the managing board of a pension fund. In order to improve the quality of the members of a managing board from 2000 on the PVK has the power to test the fitness and propriety of members of the managing board. The PVK also has the power to disqualify (aspirant) members of the board of a pension fund. Next to this there is a requirement that decisions concerning the day-to-day policy have to be made by at least two members of the managing board. When taking decisions the managing board has to consider in balanced way the interest of all the parties involved.

The board of the pension fund has responsibility to inform participants about various aspects of the plan as outlined in the PSW Act. The board can manage the pension fund assets in-house or it can delegate this function to a financial institution.

Financial requirements

The PSW stipulates that a pension fund must be pre-funded. A pension fund must always hold adequate technical provisions representing its accrued benefit obligations (vested pension rights). Two possible financing systems would be either a capital funding system or a payments covering system. The first system normally will apply to financing vested pension rights acquired during the active period of service. Extra allowances (e.g. through conditional indexing of pensions) may be financed through the second system.

No specific solvency rules apply to pension funds. However, because of the legal requirement that pension funds must be pre-funded, assets of pension funds must at least equal the prudently valued technical provision. As stipulated in the Beleidsnota Actuariële Principes Pensioenfondsen (Guidance Note on Actuarial Principles for Pension Funds) (see also below under Technical requirements), the PVK requires pension funds to hold excess assets as an investment cushion, in order to protect vested rights against adverse price movements of assets. The level of such a cushion would depend on the actual composition of the investment portfolio and historical evidence of adverse market price movements. The cushion may be assessed against the minimum position of the technical provisions.

12 A reduction scheme implies that the rules and regulations – in cases where the financial situation of a pension fund deteriorates – the fund may amend the rights or duties of members.

13 For branch industry funds the managing board consists of representatives from employers' organisations and the trade unions. In case of company pension funds, the board consists of representatives for the employees and employer.

Technical requirements

In July 1997 the PVK released the Actuariële Principes Pensioenfondsen, specifying and clarifying the existing prudential rules on the financial structure of pension funds[14]. Technical provisions should be computed on the basis of methods and bases, each of which has to be determined in a manner that is sufficiently prudent. Such methods and bases would include probability systems (mortality, disability, withdrawal from service), discount rates, etc. In applying such methods and bases the investment policy, the policy on cost-of-living indexing of pensions, the (future) level of premiums and (future) costs, the consequences of future developments regarding salaries, prices or wages, mortality, admissions and membership termination should be taken into consideration.

In the case that the cost-of-living indexing policy pursued includes that the granting of allowances linked to cost-of-living indexes is conditional and at the discretion of the board of management, a discount rate of not more than 4% should be applied. This case applies to most of the pension funds.

Investment regulation

Regulations stipulate that pension funds should invest the funds dedicated to the pension plan in a sound manner. In other words: the managing directors of a pension fund should act according to the so-called 'prudent man rule'. The prudent man rule implies that the investment policy pursued is based on sound, transparent and consistent arguments, a proper implementation of the investment policy, a tight professional organisation and control. Special attention should be given to diversification (countries, sectors, currencies) and to the proper use of derivatives. On this latter in 1994 a Circulaire over het gebruik van derivaten (Guidance Note on the use of derivatives*)* was released by the PVK. This note does not regulate specific limits on the use of derivatives. Investments in derivatives should comply with the guiding principles pension fund investments as set out before.

To company pension funds, a special rule applies to investments in the sponsoring company: it is not allowed to invest more than 5 percent of the assets of the pension fund in shares or bonds of, or loans to the sponsoring company. However, if a pension funds holds assets in excess of its - prudently valued - technical provisions, it is allowed to expand the percentage of investments in the sponsoring company to - at a maximum - 10 percent, in so far the amount of assets in excess of technical provisions would allow it to do so.

No further specific rules or limits apply to the investments of pension funds.

Compulsory insurance and guarantees

There is no statutory system of benefit insurance.

As a general rule the PSW takes as a starting point that a pension fund is self-administered. It is at the discretion of the managing board of a pension fund to decide to reinsure all or part of the pension liabilities with a life assurer. However, when the PVK deems it necessary in the interest of members, deferred members and other parties involved, it may require the fund to reinsure its liabilities.

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[14] The PVK is in the process of preparing so-called New Actuarial Principles (NAP) that will apply to pension funds and insurance companies as well. These NAP will take the assets and liabilities valued at fair value as a starting point and will impose risk oriented solvency requirements.

Reporting to supervisory authorities

Pension funds must submit annually supervisory returns to the PVK at the latest before 1st July following the financial year. These supervisory returns include a balance sheet and a profit and loss account (including specifications of premiums, benefits paid, etc.) and additional forms on investments, returns on investments, technical provisions, an actuarial report, analysis of technical results. The returns have to be certified by an external auditor and the actuarial report has to be produced by an actuary.

Larger pension funds (turnover - premiums and investment income - of Dfl 6 million or more) must also disclose their annual accounts. As such it is allowed to disclose relevant forms of the supervisory returns to the PVK . The Raad voor de Jaarverslaggeving (Dutch Annual Accounts Board) released a Directive on the Annual Accounts of Pension Funds. Generally speaking this directive is comparable to the supervisory returns to the PVK. However, whereas the PVK up till now does not impose valuation rules[15], the directive does recommend market value as a rule for valuing assets.

B.2 GROUP INSURANCE PLANS

Group insurance policies must comply with the so-called B-Scheme or C -Scheme[16], as stipulated in annexes to the PSW.

The employer places these contracts of insurance without the intermediary of a pension fund. These contracts are governed by the Regelen verzekeringsovereenkomsten PSW (Rules regarding group insurance contracts). In general these are based upon the PSW. For example this implies that persons working part time must be treated equally to full time employees and that the rules on portability of pension rights are equally applicable.

From January 2000 on, the PVK is in charge of supervision of these types of contracts. In 1999 there were about 44,000 of these contracts of insurance in the Netherlands. The supervision will be executed on the basis of random samples.

15 It should be noted that the Guidance Note on Actuarial Principles for Pension Funds, when applying a test on assets covering technical provisions (including a cushion for adverse price movements of assets), presupposes a valuation at market value for all assets. However, it is stated that this does not necessarily apply to the supervisory returns or annual accounts. Of course the returns or annual accounts should include information on the market value of assets!

16 The B-scheme rules stipulate minimum requirements to group life assurance policies in order to preserve equivalent requirements as are applicable to pension funds. The C-scheme rules apply in the case that an employer guarantees his employees - fixed or income related - funds that the employee must allocate to conclude a insurance contract with a life assurance company.

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

Not applicable

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no indexation requirements.

Vesting and portability

There are no legal requirements.

Benefit guarantees

There are no legal requirements

Access to pension schemes

There are no legal requirements.

Disclosure to members

The Regeling informatieverstrekking aan verzekeringnemers 1998 (Regulation concerning the information to be supplied to policyholders 1998) stipulates the information that the insurer has to supply to its (aspirant) policyholders.

Individual and collective right of action

There are no legal requirements

B. PENSION PLAN ADMINISTRATION

Life insurance companies provide personal pensions in the Netherlands. No additional regulations are applicable to insurance companies that administer

NEW ZEALAND

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEMS

A. LEGAL FOUNDATION

In New Zealand, the term "**superannuation**" is used to refer to savings that are targeted to provision for retirement. While some schemes still provide pensions, or have pension benefits as an option, by far the majority now provides lump sums. Persons receiving lump sums and wanting pensions may purchase annuities from life insurance companies, but in practice very few choose to do so.

The broad legal framework for superannuation is contained in the Superannuation Schemes Act 1989, which enables registration of schemes which have as their principal purpose the provision of retirement benefits. Schemes are almost entirely constituted as trusts, the very few exceptions being historical schemes established under statute.

By way of background, a number of reforms have taken place in New Zealand since the 1970s. Initially these were oriented towards tax-favored pension arrangements, but concern arose as to the effectiveness of such schemes in the light of then current economic theory, not to mention prevalent use for tax avoidance purposes. A significant structural reform in the late 1980s thus saw the taxation status of retirement savings schemes placed on a comparable basis to other such forms of savings as simple bank accounts, with no concessions for contributions or investment roll-up, and all proceeds (including scheme pensions) payable tax free in the hands of the recipients.

The Superannuation Schemes Act 1989 therefore provides for prudential supervision appropriate to a non-concessionary tax regime, and has no prescriptive elements in terms of scheme design. The benefits of registration have been seen as the confidence given to people to become members because of the level of prudential supervision not obtaining elsewhere, and (at least initially) some reduced level of compliance cost compared to other forms of savings. The Act is administered by the Government Actuary, who carries out the role of the supervisory authority.

Other legislation affecting superannuation schemes includes the Trustee Act 1956 and amendments, the Income Tax Act 1994, the Financial Reporting Act 1993, and the Securities Act 1978 and amendments. In 1997 the latter was extended to require superannuation schemes above a minimum size and not closed to new members to have a prospectus and investment statement. Consideration is currently being given to withdrawing this requirement for occupational (employer sponsored) schemes.

The Retirement Income Act 1993 established a Retirement Commissioner charged with a role to develop and promote methods of improving the effectiveness of the retirement income policies from time to time implemented by the Government in New Zealand, the role to include promoting education about retirement income issues and publishing information about such issues. In practice the educational aspect has received the major attention.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

In New Zealand it is employers who traditionally have had the major role in establishing superannuation schemes, not trade unions or individuals. Those trade union or enterprise-based schemes which were established prior to 1987 to allow members the benefits of tax concessions have largely been wound up; restrictions on collective bargaining contained in the Employment Contracts Act 1991 (recently repealed) would also have had a negative effect. Some larger employers provide more than one scheme, or different sections within a scheme, to cater for different types of employees.

For smaller employers, “multi-employer” schemes have become increasingly popular. A master trust, with trustees appointed by the scheme’s promoter, is established with the facility for employers to complete participating agreements which set out the contributions and benefits for those of the employer’s employees who become members. The employer will usually have control of such matters as use of reserve funds, etc, subject to the master trust overarching provisions. Such arrangements may permit a wide range of investment options, and keep down administration and compliance costs for employers (and hence members). Member protections may however also be attenuated, as the Superannuation Schemes Act 1989 did not envisage such arrangements.

Overall coverage of employees by occupational schemes appears to be relatively poor, with membership having fallen steadily both in real terms and as a percentage of the employed labour force since 1990. From figures on private employer schemes taken from annual reports of the Government Actuary, together with published figures on Government employee scheme membership, and labour force statistics from Statistics New Zealand, the coverage as a percentage of the employed workforce can be calculated as about 22.5% from 1990 until 1993, and then falls steadily to 15.6% by 1999.

It should be noted however that home ownership in New Zealand is very high by OECD standards, and hence that mortgage repayment commitments are likely to overshadow other forms of savings.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

These are voluntary schemes, and apart from registration under the Superannuation Schemes Act 1989, differ from other forms of pooled investment savings such as managed funds and unit trusts only by the requirement to be “principally for the purpose of providing retirement benefits”, and perhaps extended facilities for attaching ancillary risk insurance benefits.

The “principal purpose” rule may be given effect by a scheme requirement that savings can not be accessed until a certain age is attained (typically 50 or 55), but more often now such schemes do not have any locking in provisions, leading to some tension with the supervisory authority in terms of how to monitor that the principal purpose rule is being given effect by the way the scheme is operated.

These schemes invariably operate on defined contribution principles, and the benefits are nearly always paid in lump sum form. The principal exception is a closed scheme originally established by Government but now privatised, albeit with a remaining Government guarantee.

Plan parameters and tax treatment

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

a) Contributions

There are no legislative restrictions on contribution levels, which are set by the provisions of the trust deed governing the scheme. Prior to 1987, contributions, both member and employer, were deductible against tax to a certain level, but this deductibility was withdrawn in the structural reform of the late 1980s referred to above. Members are required to be informed of their contribution obligations prior to joining, along with disclosure of employer contributions and benefit entitlements.

The most common level of member contribution was 5% of salary. Increasingly however, members of defined contribution schemes are able to elect their own contribution rate, subject to minima and/or maxima.

In defined contribution schemes, employer contributions frequently match member contributions one for one, up to a certain maximum. In some cases the matching may be two for one or higher, or based on other factors such as age or length of service, although in other instances the employer will only meet administration costs. Employer contributions are deductible against business earnings, but attract a Specified Superannuation Contribution Withholding Tax at the company tax rate of 33% irrespective of the members own earnings level. Employer contribution obligations may be met from scheme reserve accounts, depending on scheme trust deed provisions.

In defined benefit schemes, employer contributions are linked to the cost of meeting benefit payments. However, no minimum solvency requirements exist as such. Actuarial reviews of the financial condition of such schemes are required on a three yearly basis, and a Professional Standard of the New Zealand Society of Actuaries governs such work, although no guidance is given on valuation assumptions other than the actuary concerned must take responsibility for them in terms of his or her professional judgement. Some trust deeds for defined benefit schemes require the employer contribution rate as recommended by the actuary to apply, but more commonly the rate is determined by the employer or the trustees after considering the advice of the actuary.

The tax position of schemes after the late 1980s reform discourages holding excess assets in superannuation schemes, and hence actuarial surpluses in defined benefit schemes are usually applied towards providing contribution holidays for the employer. Any other use of actuarial surplus for the benefit of the employer tends to be restricted by trust deed provision and legal precedent, which has lead employers to tend to favour minimum funding, and for them to encourage members of defined benefit schemes to transfer to defined contribution arrangements. A substantial amount of such conversion has in fact already occurred.

b) Income

Investment earnings on the assets of superannuation schemes are taxed at the company tax rate of 33%. This is regarded as a proxy for members, although actual marginal tax rates may be lower. All expenses incurred in administration of the scheme by the trustees are generally fully deductible against tax. Realised capital gains are generally taxable, unless the scheme can satisfy the tax authority that it is not a trader in investments. By contrast, individuals in New Zealand are not generally taxed on realised capital gains, unless they are clearly trading for professional gain.

In defined contribution schemes, the most common practice is for an interest rate net of tax to be declared at the year end, and allocated pro rata to member accounts and the reserve account (if any). An interim rate will generally be applied for benefits arising other than at year end. Administration expenses are generally either deducted from member employer accounts (the accumulation of employer contributions in respect of the member), met by the reserve account, or taken out of investment income with the interest rate for allocation to member accounts and the reserve account being calculated net of administration costs as well as tax.

A negative interest rate is permitted by many trust deeds, and may occur depending on the investment performance for the year, and whether or not the trustees hold an investment fluctuation reserve.

In a small minority of occupational defined contribution schemes, unitisation (or a form thereof) is used rather than an interest rate declaration. Unitisation is however much more prevalent in personal schemes.

The cost of ancillary benefits is nearly always met by a specific deduction from member accounts, or a general fixed levy on those accounts, rather than charged against interest.

c) Benefits

Benefits from superannuation schemes are payable free of any tax. The only legislative restriction on timing and form of benefits is that the scheme is providing benefits principally for the purpose of retirement. For occupational schemes, this has been interpreted to include payment on ceasing to be employed by the employer sponsoring the scheme, as there are no legislative requirements for portability or preservation placed on schemes. Occupational schemes may also have provisions allowing in-service withdrawal of savings in the event of hardship, or even at the free election of the member, although such options will generally be subject to trustee and/or employer consent, and apply only to member own contributions.

As noted above, benefits are generally in lump sum form. Pension entitlements arise on retirement from many defined benefit schemes, but at least one quarter of the entitlement may be commuted for a lump sum, and increasingly that fraction has been increased to 50% or 100%. Where pensions are being paid, from time to time “cash-out” offers are made by trustees (perhaps at the instigation of the sponsoring employer), and often accepted.

The most recent report of the Government Actuary shows the following changes in occupational defined contribution and defined benefit schemes between 1990 and 1999, excluding the schemes for Government employees:

	1990	1999
Number of DB schemes	452	229
Number of DC schemes	1,790	589
Assets of DB schemes (NZ$ m)	6,691	5,811
Assets of DC schemes (NZ$ m)	2,817	4,464
Members of DB schemes	101,217	71,128
Members of DC schemes	209,524	181,208

Bearing in mind that a number of schemes classified by the Government Actuary as defined benefit (particularly the larger ones) have substantial defined contribution sections, then a trend to defined contribution is clear, despite the marked drop in the number of such schemes.

Occupational schemes do not generally provide draw-down facilities in relation to lump sums, but a number do provide for members to receive advice on how to invest and manage their lump sums from external financial consultants. No research is available as to what members actually do with their benefits, although this is a matter that the Retirement Commissioner has under advisement.

The Government Actuary's report for 1999 shows there were 36,021 persons receiving pensions from all private occupational schemes, compared to 35,747 in 1990. The Government employees pension scheme had 45,570 pensioners in 1999, compared to 44,761 in 1990. This static picture, when considered with the growth in the over 65 population, shows a decline in pension provision in retirement.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

a) Contributions

As for occupational schemes, there are no legislative restrictions on contribution levels, which are set by the provisions of the trust deed governing the scheme. Both regular and occasional contributions are catered for. There is no tax deductibility to members for contributions.

During the early 1990s, a surcharge tax on income that applied to persons drawing the State universal social security retirement benefit could be avoided by holding savings in personal superannuation schemes. As a result, there was a very substantial inflow of contributions to these schemes. The surcharge tax was subsequently repealed, but the amounts invested by those seeking to avoid the effect of the tax appears by and large to have remained. Whether this will persist if investment returns fall from the levels of recent years remains to be seen. Unfortunately, this inflow makes it impossible to ascertain to what extent, if any, those in employment are using personal schemes as an alternative to occupational schemes.

b) Income

As for occupational schemes, investment earnings are taxed at the company tax rate of 33%, and trustee expenses in administering the scheme are fully tax deductible. Realised capital gains are usually taxable, but for some forms of investment, such as “index tracker” funds, where investments are held in assets that match a stock exchange index, the tax authority may issue an exemption from tax on capital gains (on the basis that such an investment style is passive and hence the fund is not a “trader”).

Returns to members are more often than not unitised, as compared to an interest rate being declared. Front end expenses (commission, etc) are permitted, and initial units may be subject to cancellation penalties on withdrawal prior to an agreed term.

c) Benefits

Benefits are payable free of any tax, and as lump sums. Draw down facilities are not generally provided.

In the absence of any special tax treatment, personal schemes are particularly subject to pressure to allow withdrawal of savings on demand. While “locked in” products are available, these are not generally favoured. Promoters of personal schemes argue that early withdrawals may simply be the result of competitive pressures, with members taking their savings elsewhere, but still with the intention of making retirement provision, and hence that such withdrawals do not contravene “principal purpose” rules. The supervisory authority has indicated that it is not persuaded by this argument, and it may be that a High Court case will be required to settle this issue, or legislative change made.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no legislative requirements in relation to indexation of benefits.

Those defined benefit schemes which continue to provide pensions often permit discretionary pension increases, controlled either by the employer or the trustees. The increase may be pre-funded, ie anticipated in the funding basis, or may depend on scheme experience producing actuarial surplus.

In some cases a minimum annual increase (but subject to a fixed cap) is mandated by the trust deed, generally as a percentage of the increase in the cost of living. In those cases the increases are always pre-funded, at least to the minimum level.

For closed pension schemes**,** where there are no active members, any scope for pension increases will depend very much on actual experience. It would be unusual for employer contributions to be made to such schemes, except where the basic obligation was underfunded (and not always then).

Employers generally have the power terminate a pension paying scheme and trustees would then usually purchase annuities from life insurance companies. In New Zealand, annuities are relatively expensive, and a reserve adequate for some level of pension increase within a scheme may not be adequate to purchase an annuity with any built-in level of increase.

Vesting and portability

There are no legislative requirements in relation to vesting, portability, or preservation.

Vesting issues generally arise in the context of defined contribution schemes, when members leave employment prior to retirement. Market practice is for relatively short vesting periods, 10 or even 5 years, although older schemes may still retain longer periods. In some instances, there is 100% vesting from day 1, particularly if employer contributions arise from some form of salary sacrifice, or as part of a total remuneration package.

For defined benefit schemes, the benefit on withdrawal may be defined by reference to member own contributions, accumulated at a fixed interest rate or at the scheme earning rate, and be a multiple thereof between 1 or 2 (or more) according to the period of membership. The vesting period in such cases is more likely to be greater than 10 years than is the case for defined contribution schemes, reflecting the different aims of defined benefit and defined contribution.

The facility to pay and receive transfer values frequently exists in trust deeds. No great use of these is made in practice, as transfer values are often no more than the withdrawal benefit. An exception is where members are offered the opportunity to transfer from one scheme or another taking the whole of their accrued benefit with them, possibly with some additional incentive.

Preservation arrangements can occur in defined benefit schemes, where a deferred pension may be offered as an alternative to a cash withdrawal benefit. A few defined contribution schemes also allow accumulations to remain when a member leaves service, at the member's option, although this is on the whole rare. The general rule is that members uplift their benefit when they cease to be members, and they would be much more likely, if they wished to preserve their retirement saving, to place it in a personal superannuation scheme.

Benefit guarantees

There are no legislative requirements in relation to benefit guarantees, as such. However, the Superannuation Schemes Act 1989 prohibits any trust deed amendment which would have the effect of reducing or adversely affecting benefits attributable to membership to date without member consents. There is also a requirement to inform members when they join a scheme as to whether there are any circumstances that the trustees foresee in which benefits could reduce over time, or in which members could receive less from the scheme than their own contributions.

There is no solvency requirement laid down by legislation. However, trustees are required to certify in the annual report to members whether or not the market value of the assets as at the end of the financial year would have been sufficient to provide for the benefits payable had all members ceased to be members at that date, including provision for pensions in payment. Note that these benefits may differ from the benefits due on termination of the scheme, depending on the scheme's financial position. Where a negative certificate is given, the trustees may (but are not required to) arrange for a guarantee of some kind to be given by the employer to make up any shortfall if the situation arises.

Refer also to the comments on Financial requirements below.

Access to pension schemes

There are no legislative requirements in relation to access to schemes. Access is generally by invitation, and may require a minimum period of employment to be completed first. A number of schemes became closed to new members in 1997 in order to avoid the need to prepare a prospectus and investment statement in accordance with the Securities Act 1978, although the decline in membership had started some three years earlier. For some defined benefit schemes with older membership and substantial actuarial surplus, employers may be waiting until all current members have exited in order that they may claim a reversion of assets on winding up.

Disclosure to members

The Superannuation Schemes Act 1989 provides for substantial levels of disclosure to members. Prior to entry, members must be informed as to contributions payable, fees and charges, principal rights and benefits (including rights and benefits on termination of the scheme), and their right to (a) a copy of the annual report prepared by the trustees within six months of the end of each financial year (b) an estimate of their benefits (c) peruse the trust deed and, if applicable, any actuarial examinations required under the Act (d) a statement of any actuarial assumptions relating to a proposed change in benefits. Members must be advised they can also obtain their own copy of the trust deed for payment of a reasonable fee, and be given a copy of the most recent annual report; if there is none, they must be advised of the names of the trustees, the administration manager and every investment manager, and a name and address for correspondence.

The annual report must include a copy of the annual audited accounts, a statement as to whether all contributions have been paid as required, a certificate as to whether all benefits have been paid as required by the trust deed, the position in respect of coverage of vested benefits alluded to above under Benefit guarantees, a notification if more than 10% of the assets by value is invested in any employer related to the scheme (and if so, details), a summary of any amendments to the trust deed since the last annual report, and the names of the trustees, the administration manager and every investment manager, any actuaries, auditors and solicitors of the scheme, and a name and address for correspondence. If a defined benefit scheme, a statement is required as to whether rates of employer contribution are in accordance with the most recent recommendation of the actuary, and a summary provided of any report by the actuary since the last annual report date.

In the event that a proposal is made to members to transfer to another scheme, or to give their consent to a deed amendment, the members must be given adequate information in order that any required consent is a fully informed consent. Where it is proposed to transfer a significant number of members from one scheme to another, the members of the recipient scheme are to be advised of the proposal and its implications for them.

Where the Securities Act 1978 applies, members are required to be given a copy of the investment statement, and advised of their right to obtain a copy of the prospectus. The requirement to provide the information under the Superannuation Schemes Act 1989 set out in the first paragraph above is waived when an investment statement is provided.

Individual and collective rights of action

Where a member considers that a contravention of the Act or the trust deed has occurred, either after considering a mandated disclosure or through some other means, they may contact the Government Actuary, the supervisory authority, to make a complaint. Should the Government Actuary be unable to act, either because there is no jurisdiction (there is power over trustees and, to a limited extent, over investment managers and investment managers, but no others), or because the trustees are able to rely on due process having been followed, members still have the ability to take legal action in the Courts. The Government Actuary may provide such members with information gained in the course of any investigation of a complaint. In practice, at least two significant cases taken by members have made substantial contributions to the application of pensions law in New Zealand, but it should be acknowledged that the process can be time-consuming and expensive, and it is likely that many members with a sustainable case do not follow this course of action because of that burden.

B. 1. PENSION PLAN ADMINISTRATION

Licensing and registration

Registration of a scheme under the Superannuation Schemes Act 1989 confers the protections of the Act on members, and also makes administration of the scheme more straightforward. There is no licensing of promoters, administrators, investment managers, auditors, actuaries or solicitors, although such persons are required to comply with any applicable professional standards.

The requirements for registration are set out in the Act, and amongst other things, require there to be at least one New Zealand resident trustee, and that the trust deed does not include any provisions that are contrary to implied provisions imposed by the Act. The trust deed must specify various matters, such as contributions, winding up provisions, entry provisions, determination of benefits, etc. The implied provisions imposed by the Act cover investment, powers of amendment, restrictions on transfer of members, and restriction on reversion of assets.

Pension fund governance

Trustees are the legal custodians of schemes. Even where certain powers are delegated, the trustees remain ultimately responsible. Trustees may be individuals or a body corporate; in the latter case, the directors are effectively the trustees. The employer may be the trustee, which gives rise to potential for conflict. There is no legislative requirement for appointment of member trustees, although there are instances where this does occur. More commonly senior executives of the employer are appointed trustees, which can also pose a conflict of interest in some circumstances.

Accountability of trustees to members is through disclosures as set out above. New Zealand law has a common law foundation inherited from the United Kingdom, and hence common law precedents have significant weight on the powers of trustees. A Court will not normally control trustees in the exercise of their discretionary powers unless they are shown to have acted ultra vires or in bad faith, or unless the power was a statutory power subject to the Court's review. A trustee decision will not be regarded by a Court as unreasonable unless it is one that no reasonable trustee could rationally have made in all the circumstances.

Financial requirements

A financial reporting standard issued by the Institute of Chartered Accountants of New Zealand, FRS32, applies to all registered superannuation schemes in terms of the Financial Reporting Act 1993. Accounts must be audited by a professional auditor. A copy of those audited accounts must be attached to the annual report sent by trustees to members within six months of the end of the financial year. An extract from the accounts may also be provided, subject to confirmation by the auditor as to the accuracy of the extract.

As noted earlier, the trustees are required to certify in the annual report whether the market value of assets at the year end exceeds the total value of benefits should all members of the scheme cease to be members on that date. There is however no mandatory action to be taken where such benefits would exceed the market value of assets, and it is left to the supervisory authority and/or members to assess the position according to the facts in each such case.

In the case of defined contribution schemes, the certificate should usually be automatic, although a negative reserve account could arise as the result of an excessive interest declaration, if the provisions of the deed allow that to occur. Such a situation may be covered by a guarantee from the employer to make up benefits if required.

For defined benefit schemes, the disparity between benefits on withdrawal and the actuarial value of accrued benefits is generally such that a positive certificate can almost always be given. However, where the scheme is predominantly (or entirely) providing pensions to retired members, a negative certificate may have to be given. As with defined contribution schemes, no remedial action is mandated. The Government Actuary may however order a scheme wound up if there is reasonable cause to believe the financial position of the scheme will worsen.

Defined benefit schemes are required to have an actuarial examination every three years, and in their annual report the trustees are required to state whether or not the employer is contributing at the rate recommended by the actuary in his or her most recent report. No action is prescribed if the employer and/or trustees have used a power under the trust deed to set a different contribution rate. It may also be noted that the professional standard of the New Zealand Society of Actuaries governing such actuarial examinations has been interpreted as allowing the actuary to make a range of recommendations.

There is no prescription as to funding levels. In practice, most schemes are operated so as to maintain a ratio of market value of assets to the actuarial value of accrued liabilities in excess of 100%, although any deficits tend to be amortised over a relatively long time frame; and a very small minority of closed pensioner-only schemes are being "funded" on a pay as you go basis with consequent lack of member security. Assets are almost invariably taken at market value. The actuarial value of accrued liabilities (including pensions in payment) is normally obtained by discounting at the expected earning rate on assets.

Technical requirements

There are no prescribed valuation assumptions required for defined benefit schemes. The Government Actuary reports annually on the range of assumptions being used for discounting and for salary growth. The use by an actuary of assumptions at variance with such observed conventional practice may lead to tension with the supervisory authority, but no mandatory procedures are prescribed for that situation.

Investment regulation

A section of the Superannuation Schemes Act 1989 imposes an implied provision in all trust deeds that all assets must be invested in accordance with relevant provisions of the Trustee Act 1956, and that the trustees shall exercise their powers with the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others. Any appointed investment managers are required to exercise the care, diligence, and skill that a prudent person engaged in that profession, employment, or business would exercise in managing the affairs of others.

The trustees are also required to disclose in the annual report each year whether at any time during the year, the scheme held assets of market value more than 10% of total market value invested in the employer or any associated entity, and if so, to give details. It may be noted that in one case, where scheme assets were largely all self-invested in the company's own shares, a legal opinion was obtained by the trustees, an independent trustee corporation, that this did not contravene the requirements of prudent investment set out above in the circumstances of that scheme.

Compulsory insurance and guarantees

There are no compulsory requirements for insurance or guarantees. If an employer goes out of business then any debts to the scheme fall under general insolvency law, with generally no preferential treatment. Any member contributions deducted from pay and not forwarded to the trustees are treated as unpaid wages and salary, which may have preferential treatment, but a limit for preferential treatment of $NZ6,000 per employee applies in relation to all such amounts. Failure by an employer to forward member and employer contributions to the trustees (or their appointed administration manager) can be the subject of civil legal action against directors by trustees and/or members, but may be difficult and expensive to pursue. If criminal negligence can be established, action may be taken by the Registrar of Companies, but this will not generally result in recovery of such contributions.

As noted earlier, an employer may give a guarantee to make up any shortfall of benefits when the market value of assets falls below the benefit payable should all members leave, and provision made for continuing pensions (if any). This guarantee will normally be arranged by the trustees, sometimes on the prompting of the supervisory authority, but enforceability may be questionable, and of course the guarantee will be of little value if the employer goes out of business.

Reporting to supervisory authorities

All information that must be given to members under the Superannuation Schemes Act 1989 must also be provided to the Government Actuary at the same time it is provided to members. The Government Actuary receives copies of all actuarial examinations. All trust deed amendments must be filed; however, a copy of the information to be given to members on joining the scheme needs to be supplied only when registration is applied for, and any subsequent changes need not be notified. Prospectuses and investment statements required under the Securities Act 1978 need not be supplied to the Government Actuary as a matter of course, although they may be requested; see below.

The Act contains a "whistle-blowing" provision that requires any person holding office as administration manager, investment manager, actuary, or auditor of the scheme who forms the view that there is a serious problem with the scheme, is required to disclose that to the Government Actuary, and is protected from action being taken against them for making any such disclosure. It will be noted that solicitors are not subject to this requirement.

The Government Actuary also has powers under another section of the Act to direct the trustees or administration manager of any scheme to supply such information as the Government Actuary may specify. This may be trustee minutes, copies of correspondence, etc, and may include prospectuses and investment statements. The Government Actuary does however need to show cause for requiring this information, and a direction may be appealed against to the Courts.

As a result of scrutinising information received, and/or consequent on a member complaint, the Government Actuary may raise matters with trustees, and may ultimately take, or be subject to, Court action. The Government Actuary is given certain powers to act under the Act if there is reasonable cause to consider management of the scheme inadequate, benefits insecure, or the financial position inadequate. The possible actions are to cancel registration, wind the scheme up, direct the trustees or administration manager or investment manager to operate the scheme in a specified manner, and to direct the trustees to provide members with specified information.

In practice the first two of these are generally unhelpful in protecting member interests, and the third is subject to not being contrary to any provisions of the trust deed. The trustees can not be directed to exercise a discretion in any particular fashion. The fourth action, directing that members be given certain information, tends to be the most practical option. Any exercise of these powers may be objected to, and the Government Actuary must reconsider ab initio. If the objection is not upheld, there is a right of appeal to the High Court.

Copies of prospectuses (but not investment statements) required by the Securities Act 1978 are filed with the Registrar of Companies, but scrutiny is more concerned with disclosure compliance than prudential matters. Investment statements are generally scrutinised only when a scheme is first registered.

B. 2. GROUP INSURANCE PLANS

Not applicable

II. iii REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

No legislative requirement; and in any case only one significant personal pension-paying scheme exists. All other schemes provide lump sums.

Vesting and portability

Vesting as such will not apply.

The issue of pressure to withdraw savings in cash at any time, since there are no tax concessions, is of increasing moment. As noted earlier, while “locked in” products are available, these are not generally favoured. Promoters of personal schemes argue that early withdrawals may simply be the result of competitive pressures, with members taking their savings elsewhere, but still with the intention of making retirement provision, and hence that such withdrawals do not contravene “principal purpose” rules. The Government Actuary has indicated that he is not persuaded by this argument, and it may be that a High Court case will be required to settle this issue, or legislative change made.

Refer also to the discussion under voluntary occupational schemes.

Benefit guarantees

Generally none. Some schemes offer capital guarantees, ie that members will never receive less than their own contributions, less fees and charges. Note there is no employer to provide any guarantee. Otherwise, refer to the comments under occupational schemes.

Access to pension schemes

While some schemes are closed to new members, many actively seek members. It can be difficult to distinguish some schemes from other savings products, such as life insurance, managed funds, unit trusts etc.

Disclosure to members

Refer to the discussion under occupational schemes. It is arguable that the prospectus/investment regime is a better fit for the activities of personal scheme promoters, and the Government Actuary has recently questioned in his annual report whether or not it is sensible for most personal schemes to remain under the Superannuation Schemes Act 1989.

Individual and collective rights of action

In general members of such schemes are less likely to have issues with their administration (although exceptions exist). A cause of contention for occupational schemes, the different interests of members and employer, is absent here. Bearing that in mind, the comments made under occupational schemes apply equally well here.

B. PENSION PLAN ADMINISTRATION

Licensing and registration

Most banks and insurance companies offer defined contribution accumulation schemes, along with other operators in the financial markets. On occasion a scheme will be established to raise finance for some business operation; these pose problems for registration, in terms of the "principal purpose" rule, but can not be automatically ruled out, depending on how they are presented.

Otherwise, refer comments under occupational schemes.

Pension fund governance

Refer comments under voluntary occupational schemes.

Financial requirements

Refer comments under voluntary occupational schemes. The comments in relation to defined benefit plans do not of course apply, except for the one pension paying scheme.

Technical requirements

Refer comments under voluntary occupational schemes. Again, the only application is actuarial valuation of the pension paying scheme.

Investment regulation

Refer comments under voluntary occupational schemes.

Compulsory insurance and guarantees

Refer comments under voluntary occupational schemes.

Reporting to supervisory authorities

Refer comments under voluntary occupational schemes.

NORWAY

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

Norwegian occupational pensions are regulated and funded largely on insurance principles. The main law in this field is the Act of 10 June 1988 on Insurance Activity (AIA). This act also imposes BIS capital standards for insurance companies and pension funds. An overview of the most relevant regulations laid down with a legal basis in the AIA that apply to occupational pensions is given in annex A to the present note.

Private sector funds and group pension schemes are also regulated by the Act of 24 March 2000 on Occupational Pensions (AOP) and the Act of 24 November 2000 on Defined Contribution Pension Schemes (ADC), to the extent they claim to receive tax allowance.

Private pension funds and group pension schemes issued in life insurance companies are both supervised by the Banking, Insurance and Securities Commission.

Overview of regulations laid down with a legal basis in the AIA that apply to occupational pensions

With legal basis in section 1–1 of the Act on Insurance Activity (AIA) the Ministry of Finance has laid down a set of regulations regarding the application of the AIA to pension funds. (These regulations were implemented on 19 February 1993.)

The majority of provisions in these regulations concerns the sections of the AIA (and the corresponding regulations, cf. below) that apply to the pension funds. However, section 5, 6 and 7 of the regulations contain provisions that are specially adapted to pension funds, that is regulations regarding the articles of association of the pension fund, the board and the manager of the pension fund and accounting and auditing of the pension fund, respectively.

With respect to the regulations laid down with legal basis in the AIA that are relevant to both insured pension schemes and pension funds, the following list should be appropriate in the present context (the relevant sections of the AIA are indicated in parenthesis):

Regulations on minimum standards of capital adequacy for financial institutions and investment firms (section 7–3).

Laid down by the Ministry of Finance on 1 June 1990.

Regulations on measurement of the own funds of financial institutions and investment firms (section 7–3).

Laid down by the Ministry of Finance on 22 September 1990.

Regulations on the calculation of solvency margin requirements and solvency margin capital for Norwegian life insurance companies (section 7–3).

Laid down by the Ministry of Finance on 19 May 1995.

(Note: These regulations apply only to life insurance companies, not to pension funds.)

Regulations on insurance companies’ asset management (section 7–4).

Laid down by the Ministry of Finance on 23 April 1997.

Regulations on the distribution of expenses, losses, revenues, funds etc. between insurance companies within the same group and between classes of insurance and insurance contracts within an insurance company (section 7–5).

Laid down by the Ministry of Finance on 21 November 1989.

Regulations regarding the duty to notify the technical bases for calculation of premiums (section 7–6).

Laid down by the Ministry of Finance on 10 November 1994.

Regulations regarding the right to transfer of accumulated funds on life insurance and pension contracts to another insurance company (section 7–8).

Laid down by the Ministry of Finance on 27 November 1991.

(It should be noticed that the heading of these regulations is somewhat imprecise, since the regulations also apply to transfer (of accumulated funds) to a pension fund.)

Regulations on keeping of accounts and statement of accounts in life and pension insurance (section 7–10).

Laid down by the Ministry of Finance on 26 May 1995.

Regulations regarding life insurance profits (section 8–1).

Laid down by the Ministry of Finance on 1 June 1990.

Regulations regarding premiums and insurance fund in life insurance (section 8–2).

Laid down by the Ministry of Finance on 15 September 1997.

Regulations on the contingency fund in life insurance (section 8–4).

Laid down by the Ministry of Finance on 29 November 1990.

Regulations related to actuaries (section 8–7).

Laid down by the Ministry of Finance on 1 June 1990.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

All central and local government employees are covered by an occupational pension scheme, while around one third of the employees in the private sector are covered by such a scheme.

In the private sector occupational pensions are firm specific and voluntary for the employer to set up. The plans enjoy tax advantages if they comply with certain criteria laid down in the above mentioned acts on occupational (defined benefit) pensions and defined contribution pension schemes, respectively. Tax advantages have so far been restricted to defined benefit schemes, but as from 1 January 2001 also defined contribution schemes enjoy tax advantages. The advantageous tax treatment consists in premiums being deducted from the employer's taxable income. The entire pension amounts are taxed as income when paid out.

Pension schemes are fully funded, and furthermore, about 70–75 per cent of private pensions are underwritten through life insurance companies (i.e. as measured by the total assets related to these pensions).

It should, however, be mentioned that as from 1 January 2001 occupational pension business is no longer restricted to insurance vehicles. Still, defined benefit schemes must be offered by life insurance companies or independent pension funds, but defined contribution schemes lacking any element of biometric risks may as well be offered by banks and securities funds.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Voluntary pension plans may be undertaken by individuals through life insurance companies, banks or securities funds. Such plans also enjoy certain tax advantages, if they comply with certain criteria which emerge from regulations given with title in the Act on Capital Tax and Income Tax. The plans can be either a “livrente” or an “IPA”[17], both free of capital tax. In a “livrente”, premiums are not tax deductible, but only the yields part of the pension amounts is submitted to income tax. In an “IPA”, premiums are tax deductible, but the entire pension amounts are submitted to income tax. A “livrente” must be issued in a life insurance company and comprise a minimum element of biometric risks, while “IPAs” also may be issued in banks and securities funds as pure savings contracts.

[17] A ”livrente” and an ”IPA” can both be classified as annuities. However, they are designed in a special manner to enjoy tax advantages, cf. also the further comments in section II.(ii)B (on pension plan administration).

Plan parameters and tax treatment

Voluntary occupational pension plans

a) Contributions

Premiums paid by employers and employees in defined benefit schemes on earnings up to 12G are tax deductible from income tax. So are contributions paid by employers and employees in defined contribution schemes not exceeding 5 per cent of earnings between 2G and 6G, and 8 per cent of earnings between 6G and 12G. ("G" is the basis amount of the National Insurance Scheme – at present approximately NOK 50 000 (Euro 6 250).)

The employers are liable for social securities taxes on contributions for pension plans started after 1988. The employers' contribution is on average around 8 per cent of the wage bill, while the employees usually do not contribute.

b) Income

Information to be provided

c) Benefits

Private plans include a retirement age of 67, and there are no general provisions for early retirement. For certain professions, however, the retirement age may be lower. The payment of pensions may be deferred until 70.

In defined benefit schemes benefits are determined according to the wage during the last year of employment. The minimum accrual period for full private pensions is 30 years, and the maximum accrual period is 40 years.

Annuitisation of benefits is mandatory. If the annuity is temporary, the benefits should be annuitised over a period of at least 10 years.

In defined contribution schemes, benefits are determined by the contributions and the yield achieved.

Voluntary personal pension plans

Individual pension contracts are taken out on a tax–advantaged basis ("IPA") but the annual premium is limited to NOK 40 000 (approximately Euro 5 000).

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no indexation requirements, neither within the AIA nor within the AOP/ADC. The AOP decides, however, that a proportionate part of the profits shall be allocated to a fund dedicated to financing increases in pensions under disbursement. But the level of the increases is dependent on the profits and not on an exogenous index.

Vesting rights and portability

In tax deductible schemes the vesting period is one year according to new legislation as from 1 January 2001. That is, all employees who have been employed for one year or more must be given a deferred pension right if he leaves the firm. The deferred pension right shall equal the mathematical reserve of the employee stipulated according to the applied basis of calculation. The deferred benefit cannot be paid out until the employee retires or becomes disabled.

Between the termination of his employment and the retirement age, the deferred benefits should be kept in the fund or transferred to a life insurance company having a contract with the pension fund on transfer of deferred pension rights.

Benefit guarantees

An informal norm is that public plus private pensions should ensure a replacement rate of 66 per cent after a full working career. This rate is equal to the replacement rate in the pension fund for civil servants. But, as already stated, pension schemes in the private sector are voluntary for the employer to set up, and thus, there is no requirement as to benefit guarantees.

Access to pension schemes

In tax deductible schemes, according to new legislation as from 1 January 2001, all new employees must be included from day 1, except from new employees younger than 20, and new employees with less than 10 years of service left till they reach retirement age.

All employees, seasonal workers included, working more than 20 per cent of normal/full time working hours, must be included.

Disclosure to members

Information as to the status of the members' occupational pension rights must be available on a regular basis, also to former employees.

Individual and collective rights of action

Right of action is not regulated within insurance legislation. However, right of action is regulated in an Act on procedures in civil case law. Several plaintiffs may take legal action when certain conditions are fulfilled. A labour union will sometimes take legal action on behalf of the members of the union.

B. PENSION PLAN ADMINISTRATION

All companies underwriting occupational pension business must be registered in Norway. There are mainly firm based occupational pension plans.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

All new private pension funds are subject to the establishment and licensing procedures laid down by the regulations regarding the application of the AIA to pension funds. The articles of association are to be approved by the supervisor, and so is the basis of calculation. Furthermore, the appointed actuary shall be approved by the supervisor.

Pension fund governance

Independent pension funds must be administered separately from both the employer and the unions, in an institution separated as an independent judicial entity. The pension funds must have a board of directors with at least 4 members, at least 2 of whom must be elected by the employees. The funds must also have a manager, appointed by the board of directors.

Financial requirements

Norway applies the 8 per cent capital requirements of BIS capital standard[18], also for insurance companies and pension funds.

In addition, the capital base of pension funds must in any case exceed a threshold which at present (April 2001) is stipulated to NOK 227 000 (approximately Euro 28 400). This threshold is adjusted on a yearly basis according to the changes of the consumer price index.

Technical requirements

Private pension premiums are calculated based on prospective benefit methods. For calculation purposes it is assumed that the employees continue to work until retirement. No future wage increases are assumed, but actual year by year wage increases are taken into account when calculating the new annual premium. Plans issued later than 29 November 1993 are to use a discount rate of 3 per cent in calculating liabilities. Plans issued prior to this date with a discount rate of 4 per cent may maintain this rate.

Investment regulation

[18] That is 8 per cent of the total of risk–weighted asset items and off–balance sheet items.

The investments of pension assets are governed by certain restrictions laid down by the regulations on insurance companies' asset management[19]. An upper limit of 35 per cent is set on equities. Concerning self–investment, loans to the employer are permitted only if the loans are secured by pledge, and must not exceed 20 per cent. The fund is not permitted to own shares or equity in the company for which the fund is founded.

There are no (direct) limits on foreign investment beyond those that follow implicitly from the matching rules of the regulations on asset management.

In accordance with EU regulations, the percentages quoted above are restricted to assets corresponding to the mathematical reserves, and thus not applicable to the total assets.

Compulsory insurance and guarantees

Pension funds in Norway are fully funded. Besides, the legal rights of the employees do not go beyond the benefits corresponding to the mathematical provisions already accumulated. Thus, the employer does not violate any law or regulation if he in case of insolvency is no longer able to pay the pension premiums.

Reporting to supervisory authorities

Pension funds report annually to the BISC key figures from their public accounts, along with some simple insurance portfolio statistics and a standardised report from the appointed actuary. Furthermore, the pension funds submit annually to the supervisor a report proving compliance with the BIS capital standards.

B.2 GROUP INSURANCE PLANS

As already mentioned, 70–75 per cent of the pension plans (as measured by their total assets) are written by life insurance companies. Requirements for pension funds and insurance companies are basically the same, due to the fact that insurance legislation is made analogously applicable to pension funds.

Thus, the information under B1 is by and large valid also for group insurance contracts issued by life insurance companies. However, some important differences to be observed are that life insurance companies are subject to the EU solvency rules as well as the BIS capital standards, and that the reports submitted to the supervisor by life insurance companies are more comprehensive than the reports of the pension funds. Moreover, some of the provisions of the regulations on asset management are stricter for life insurance companies than for pension funds.

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

[19] These regulations apply by and large to pension funds as well, cf. annex A.

II. iii. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

The individual policyholder may choose indexation of the benefits. The most common index for this purpose is G (the basis amount of the National Insurance Scheme). The increase of benefits caused by indexation must (of course) be financed by increased premiums. For "universal pensions" the common option is indexation of premiums, which eventually also leads to increase of benefits. Moreover, according to the AIA a proportionate part of the profits of a life insurance company shall be allocated to the policyholder. The profits are normally used for benefit increases, but this mechanism cannot replace indexation, as the profits may in principle be zero.

Vesting and portability

Assets and liabilities of a personal pension plan may without restrictions be transferred to an other life insurance company, under the condition that the terms of the contract is not changed as a consequence of the transfer as such. For contracts established under the tax regime "IPA", however, surrender is prohibited. For contracts established under the tax regime "livrente", surrender is allowed but early surrenders are subject to a penal tax.

Benefit guarantees

As already stated, an informal norm is that public plus private pensions should ensure a replacement rate of 66 per cent after a full working career. For persons not being entitled to membership in a pension fund or group insurance contract, the same norm is applicable. But, as the personal plans are decided upon and financed by the individuals themselves, there is no requirement as to benefit guarantees.

Technical requirements

Plans issued later than 29 November 1993 are to use a discount rate of 3 per cent in calculating liabilities. Plans issued prior to this date with a discount rate of 4 per cent may maintain this rate.

Access to pension schemes

Information to be provided

Disclosure to members

Information to be provided

Individual and collective rights of action

Information to be provided

B. PENSION PLAN ADMINISTRATION

Individual pension contracts may, as already stated, be undertaken through life insurance companies, banks or securities funds. Such plans enjoy certain tax advantages if they comply with certain criteria which emerge from regulations given with title in the Act on Capital Tax and Income Tax. The plans can be either “livrente” or “IPA”, both free of capital tax.

In a “livrente”, premiums are not tax deductible, but only the yields part of the pension amounts is submitted to income tax. A “livrente” must be issued in a life insurance company and comprise a minimum element of biometric risks. There is no minimum age of retirement, but the total contract period must be at least 12 years and the disbursement period must be at least 6 years. Surrenders before fulfilment of the 12 years rule or the 6 years rule are subject to penal tax. “Livrente” has gained increased popularity over the recent years, especially with large lump sums invested as a single premium. Since 1997, “livrente” has been available on a unit–linked basis.

In an “IPA”, premiums are tax deductible, but the entire pension amounts are submitted to income tax. “IPAs” may be issued not only in life insurance companies, but (since 1997) also in banks and securities funds as pure savings contracts. The minimum age of retirement is 64, and the disbursement must be at least 10 years. “IPA” has gradually lost popularity as an effect of the 1992 tax reform. Due to this reform, premiums are tax deductible with only 28 per cent, while the pension amounts are submitted to income tax in the interval 30–50 per cent (approx.) depending on the level of personal income.

SPAIN

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

It is not possible to assimilate pension plan instruments with insurance contracts, at least in Spain. There are several reasons to differentiate the two. First of all, legislation in Spain does not allow them to be considered in such a manner, the purposes and opportunities differ, and, as a result, the economic, financial and social effects are totally different. For instance, pension plans are non-liquid products, and members and beneficiaries receive vested rights or the benefits are paid on death, disability etc, but not before. On the other hand, insurance products are liquid at all times. In addition, in general, principles and guidelines to pension plan Spanish legislation (non-discrimination**,** irrevocable contributions, assignment of rights, participants and beneficiaries hold the title to the assets in each pension scheme, limitations on contributions) are not necessarily applicable to insurance policies.

Moreover, from a legal point of view, pension plans are a mutual contract between members. Insurance policies are contracts between insurer against the insured.

For these reasons, only pension schemes which meet the requirements in the Spanish legislation may avail themselves to the financial and tax permits established in that legislation.

The current legislation dates from 1987, the Law 8/1987 of Pension Plans and Pension Funds, on which the regulation of pension plans and pension funds is based. This was later amended by the Law 30 on the Legislation and Supervision of Private Insurance of November 8, 1995. Later legislation affecting the operation of pension plans includes the Law of Fiscal, Administrative, and Social Order Measures of 1998.

The authority supervising Pension Plan and Funds, the Managers and Depositories Entities is the one, which also supervises insurer entities – the Directorate-General of Insurance and Pension Fund in the Ministry of the Economy.

B. GENERAL STRUCTURE

Types of plans

In Spain, the law of 1987 recognised three main types of plans administered via pension funds, employer, “associated”, and personal plans. All plans are voluntary. The benefits provided do not in any way substitute for those under the social security system. It is private, and may or may not complement social security benefits.

“Pension plan”: the contractual component in which the savings-pension terms are established along with the saving formation lines, the contingencies covered and benefits. All “pension plans” must be attached to a pension fund.

The pension fund: defined as assets independent of any other person or entity, created for the sole purpose of fulfilling the pension scheme.

In Spain, pension funds do no have the legal capacity and it is for this reason that they incorporate two qualified entities –the management entity and the pension fund depository entity.

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Occupational pension plans include employer-sponsored and his employees, that is plans established by employment. Plans may be sponsored by a single employer or by a group of employers. The law contemplates both defined contribution and defined benefit plans, as well as mixed plans. On the other hand, group plans sponsored by companies with less than 250 employees can only be of a defined contribution nature to cover the retirement contingency.

The employer promotes the plan (scheme) and employees are the participants. For this type of scheme, the terms agreed in collective wage bargaining are fundamental.

The generals rules, were established in 1987: the sponsor, the employer, may only promote one scheme per company – one pension scheme/one company- and only the employees of the promoter company may join as participants.

However, the legislation does allow for the existence of sub-schemes within an occupational pension scheme, even in different categories (in terms of the obligations established) or even where they provide for different contributions and benefits. If there are a number of sub-schemes in a pension scheme, incorporation in to them, along with other aspects, follows the criteria agreed during collective wage bargaining.

The 1995 modification loosens that general rule, and allows the following:

Companies with less than 250 employees may jointly promote a single pension scheme.

Companies in a single corporate group may formulate the pension commitments of all the companies in the group through a single scheme.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

The Individual Pension Scheme: The promoter is a financial institution and the participants are individuals (consumers).

Pension fund administered plans can only be of a defined contribution nature during the accumulation stage.

There is also an Associate Pension Scheme: The promoter is an association or collective body. The participants are the associates or members.

Plan parameters and tax treatment

The tax treatment of pension fund-administered pension plans is as follows:

a) Contributions:

Contributions are eligible for tax relief up to 25% of gross earnings with a cap of 1.2 million pesetas. The ceiling for workers older than 52 years is higher, increasing by 100,000 pesetas every year, up to 2,500,000 when age 65 is reached. Tax relief for older workers is applied up to 40% of gross earnings.

Employer contributions on behalf of their employees are deducted as business expenses.

b) Income:

Pension fund income is tax-free.

c) Benefits:

1. Pension savings cannot be cashed out before retirement (minimum age of 65) except in specific cases such as long term unemployment and serious illness (Law of Fiscal, Administrative, and Social Order Measures from 1998).

2. Depending on the terms of the Pension Scheme, the benefit may take the form of capital or income or it may be mixed, i.e. combining income of any type with a single capital payment. No additional regulations are applied to the benefit stage. Benefits are taxed as regular income, but up to 40% of benefits can be paid in the form of a tax-free lump sum.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no specific indexation requirements on deferred or retirement benefits.

Vesting and portability

There is immediate vesting of employer and employee contributions. Defined contribution pension plans are fully portable only to another pension plan.

Benefit guarantees

The new legislative framework does not envisage any form of minimum benefits guaranteed by the State. Nevertheless 8/1987 Act, establishes some mechanisms and guaranties to avoid or reduce losses.

Access to pension schemes

Access to occupational pension plans must be guaranteed to any employee or beneficiary meeting the conditions for membership. All employees with over two years of service at a company must be covered by the plan (non-discrimination principle).

Disclosure to members

In Spain, pension plans are assimilated to a contract and the pension fund does not have legal capacity and it is necessary to consider a special financial entity. In Spain, it is called the "Entidad Gestora de Fondos de Pensiones". This entity does not only manage the institutional investments portfolio, but also carries out other essential activities, even more relevant than the pension fund: accounting of the institution, information to member and beneficiaries, relations with the competent authority

Individual and collective rights of action

Collective rights in occupational pension plans are protected via the Pension Plan and the Pension Fund Control Commissions, which represents the interests of plan members.

B. PENSION PLAN ADMINISTRATION

The law requires pension plans to be administered, exclusively, via pension funds, insurance policies, or mutual contracts. Book reserve plans were prohibited by the 1995 legislation (implemented in 1999), but companies have been granted an extension until 16 November 2002 to externally fund their pension commitments. Exceptionally, credit entities, insurers, and investment companies may retain their pension commitments assumed by means of internal funds, provided that they meet certain conditions.

Pension funds are defined as assets which are independent of any other person or entity, used solely for the purpose of fulfilling the pension scheme. Pension funds, therefore, have no legal capacity, but must incorporate two qualified entities, the Management Entity and the Pension Fund Depository Entity.

The management entity may be an entity set up specifically for this purpose, a Pension Fund Management Company, or an insurance company authorised to operate in the life insurance area.

The general rule, established in 1987, is that the promoter/ sponsor, the employer, may only promote one scheme per company – one Pension Scheme / one company- and only the employees of the Promoter company may join as participants or beneficiaries.

However, the legislation does allow for the existence of sub-Schemes within an Occupational Pension Scheme, even in different categories (in terms of the obligations established) or even where they provide for different contributions and benefits. If there are a number of sub-schemes in a Pension Scheme, incorporation in to them, along with other aspects, follows the criteria agreed during collective wage bargaining.

The 1995 modification loosens that general rule, and allows the following:

Companies with less than 250 employees may jointly promote a single Pension Scheme.

Companies in a single corporate group may formulate the pension commitments of all the companies in the group through a single Scheme.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

In order to establish an occupational pension plan, the sponsoring companies must prepare the draft rule of the Pension Plan and it must set up a Control Commission, which approves these rules and oversees their application. Once the rules are approved by the Commission, the plan sponsor has ten days to notify the supervisory authority, the Department of Insurance and Pension Funds of the Ministry of Economy. It must also obtain an actuarial certificate (in the case of defined benefit plans) and choose a pension fund managing company.

The registration mechanism for personal pension plans is much simpler, since the pension fund managing entity provides directly the relevant information (plan rules) to the supervisory authority. Personal pension plans are not required to have a Pension Plan Promoter Commission.

Pension fund managing entities must be provided of a letter of constitution, containing the norms of functioning of the fund. These must include the range of activities of the fund, the procedures for the election and renewal of the mandate of the Pension Fund Commission, the investment policy, the actuarial systems to be used, the maximum commission that will be charged, and the rules for the liquidation of the fund.

Pension fund governance

All plans must have a Pension Plan Control Commission. Representatives of the promoter/s and participants/members and beneficiaries must integrate this. There must be a minimum of *5* members, with absolute majority of the participants/members and beneficiaries of plan. The adoption of qualified majority agreements is permitted, whenever it is specified in the plan. Members are elected for a period of 4 years. Sponsor/s or promoter/s and members/participants and beneficiaries are elected in separate ballots. In order to be presented for election, they require the signatures from a minimum of 15% of Sponsor/s or promoter/s and members/participants and beneficiaries, respectively.

Persons who own over 5% of the capital of a pension fund managing entity are not eligible to become members of the control commission. Meanwhile, members of the Control Commission will be disqualified in their role if they acquire rights or shares of the entity that manages their pension fund.

The aim of the Control Commission is to ensure that pension plans operate correctly. Among other functions, it supervises the application of the plan's rules, selects the actuaries who must certify the situation of the plan, nominates the representatives of the plan's Control Commission in the Fund's Control Commission, and makes recommendations with regard to its competences.

The pension fund managing company acts as *board of directors* of the pension fund. It keeps the books of the fund, determines the amount of the different pension plan assets, and controls the depository of the fund. Investment policy is determined directly by the managing company in personal plans.

In short, pension fund managers have more functions than the simple management of the pension fund investment portfolio, because they are also responsible for disclosure of the relevant information to the participants/members and beneficiaries. Moreover they are responsible for accounting and for maintaining contact with the Supervisory Body.

Pension funds managing companies may delegate the management of assets to third entities. Royal Decree NO. 1351 of June 26 1998 dictates that at most 20% of pension fund assets may be managed by professional entities registered in EU countries. Fees charged by pension fund managing companies are limited to 2% of the pension fund assets.

All pension funds must be supervised by a Control Commission. Only in the case where the pension fund finances a single pension plan, can the Pension Plan Control Commission exercise the functions of Pension Fund Control Commission. Otherwise, the Pension Fund Control Commission is formed with proportional representatives from all the Pension Plan Commissions.

The functions of the Pension Fund Control Commission include choosing the managing and the depository entities, ensuring the adequate functioning of the fund according to its prescribed rules, examination and approval of the managing entity's activities, and demanding retribution for the damage caused by any failure to fulfil its obligations.

The depository agency must be a credit entity. It can charge a maximum of 0.6% of the pension fund assets (nominal value). The functions of the depository entity include, among others, the custody and deposit of transferable securities and other securities integrated in the fund, to exert oversight over the activities of the management company, and to carry out the operation agreed by the management company verifying their consistency with the applicable legislation.

Financial requirements

Defined benefit and mixed pension plans must be funded according to the winding-up approach. An independent actuary, different from the one used in the daily operation of the plan must carry out an examination of the financial solvency of the plan at least every three years.

In the case of defined contribution plans, the pension fund managing company must provide an economic-financial report, including the audited accounts.

Technical requirements

Pension fund assets are valued daily at market prices. For defined benefit plans, the interest rate used for calculating technical provisions cannot be greater than 4%. Mortality tables can be based on the experience of the group covered by the plan, as long as they are not more than twenty years old.

Investment regulation

Pension funds are subject to the prudent person rule. Funds must be invested in accordance with the criteria of security, profitability, diversification, and maturity matching.

Quantitative rules are applied in specific cases: investment in a single entity is limited to 10% of the fund's assets, as is investment in the securities of the sponsoring company or related entities.

Regulations also require that at least 90% of the portfolio be invested in assets traded in organized, officially recognized markets, bank deposits (a maximum 15% of this segment of the portfolio can be kept in this form), credits with mortgage guarantee, and property. Pension funds must also invest at least 1% of their portfolio in money market assets with a maturity of less than three months.

Pension funds' ownership of private companies is also restricted. They may not own more than 5% of the market value of the securities issued by a single entity.

Compulsory insurance and guarantees

There is compulsory insurance system for pension *plans* in some cases; for instance, with regard to the joint promotion of occupational pension plans (companies with less than 250 employees or a group) in cases of defined benefits and in case of death and disability.

Reporting to supervisory authorities

Pension fund managing entities must send to the supervisory authority at the beginning of each year its annual accounts, and the audit report of both the pension fund and the managing entity, confirming the compliance with existing regulations.

B.2 GROUP INSURANCE PLANS

Not applicable

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

Indexation of benefits

The same applies to personal pension plans as occupational pension plans

Vesting and portability

The same applies to personal pension plans as occupational pension plans

Benefit guarantees

The same applies to personal pension plans as occupational pension plans

Access to pension schemes

There are no restrictions for eligibility to personal pension plans. Members of occupational plans can also have personal plans. Spouses (including housewives) are eligible to make contributions to personal pension plans since April 2000.

Disclosure to members

The same applies to personal pension plans as occupational pension plans

Individual and collective rights of action

The same applies to personal pension plans as occupational pension plans

B. PENSION PLAN ADMINISTRATION

The same applies to personal pension plans as occupational pension plans

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

The registration mechanism for personal pension plans is much simpler than for occupational pension plans, since the pension fund managing entity directly provides the relevant information (plan rules) to the supervisory authority. Personal pension plans are not required to have a Pension Plan Promoter Commission.

Pension fund governance

The same applies to personal pension plans as occupational pension plans

Financial requirements

The same applies to personal pension plans as occupational pension plans

Technical requirements

The same applies to personal pension plans as occupational pension plans

Investment regulation

The same applies to personal pension plans as occupational pension plans

Compulsory insurance and guarantees

The same applies to personal pension plans as occupational pension plans

Reporting to supervisory authorities

The same applies to personal pension plans as occupational pension plans

SWEDEN

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

The design and operation of occupational pension plans are enshrined in the respective collective agreements of the ITP and the SAF-LO pension plan. Unlike other countries, in Sweden there is no specific piece of legislation that regulates occupational pensions.

The new individual account pension plans were established under the 1998 pension reform legislation. These personal pension plans operate under social security law.

B. GENERAL STRUCTURE

Types of plans

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Occupational pension plans are similar to state pensions in the sense that they are compulsory in the area covered by the relevant collective agreement. In practice, therefore, provision of occupational pension schemes is compulsory for most employers. Membership is compulsory for most employees, whether they belong to a trade union or not.

Occupational pensions in Sweden are based on centrally bargained, collective agreements between employer and employee organisations. There are four different centrally bargained pension plans for Swedish workers:

Two separate pension plans for employees in the private sector – one for white-collar workers (ITP) and one for blue-collar workers (SAF-LO).

Two separate plans for public-sector employees – one for those employed by the central government and one for persons employed by the municipalities and counties.

The ITP plan is a combination of a defined benefit and a defined contribution plan, whereas the SAF-LO plan is defined-contribution.

Mandatory personal pension plans

Mandatory, fully funded individual accounts were established in 1998 to complement a reformed public pillar.

Voluntary personal pension plans

Personal pensions can take the form of life insurance plans, individual pension savings in banks or mutual funds, or unit linked insurance policies. The latter are life insurance policies where the premiums are invested in Swedish mutual funds or foreign collective investment undertakings.

Plan parameters and tax treatment

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

a) Contributions

Contributions from the employer are tax deductible if the pension plan is judged to conform to normal standard as defined by praxis. They are deductible as taxable profits and do not constitute taxable income for the employee. New legislation for employers´ deductibility for costs of pension against income has recently come into force in Sweden. In this connection, the rules for taxation of pensions have been surveyed.

Employer contributions for ITP are 2% of the payroll and 1.7% for State employee plans.

For STP and SAF-LO employer contributions, the contribution is set at 3.5% of the payroll, which is split into two: 2% for the defined contribution scheme (for the new SAF-LO system) and 1.5% for the defined benefit scheme (an older out-phasing system).

b) Income

The pension capital is taxed with a yield tax.

c) Benefits

Payments from the SAF-LO plan and ITP pensions cannot be collected before the month of the individual's 65th birthday. There is no upper limit for retirement and no upper limit for gathering pension rights. There is no ceiling either on benefits paid, though tax deductibility of contributions only applies for replacement rates below 70%. Benefits are taxed as income.

Pension insurance must comply with the following conditions:

Benefits cannot normally be paid out before the age of 55;

Benefits are normally paid in the form of annuities;

The surrender of contributions is prohibited.

Contracts that do not comply with the conditions laid down above are regarded as endowment insurance contracts. In such case, contributions are not deductible. The annuities or lump sums paid by life insurance companies, pension institutions or banks are not regarded as taxable income. As with pension insurance, surrender of contributions is not applicable to these contracts.

Mandatory personal pension plans

a) Contributions

2.5% of a person's income, as defined under certain criteria, is deducted as taxable income and transferred to individual pre-funded pension accounts under the new individual account plans.

b) Income

Investment income derives from the mutual fund chosen or from the standard fund for those that do not make a choice. Such income is not taxed.

c) Benefits

Participants in the individual account plans can begin to receive life annuity benefits at retirement at age 61, although the normal retirement age is 65. There is no upper age limit for the start of the benefit payments.

Voluntary personal pension plans

Personal pension plan benefits are taxed as income. The yield linked to the capital of the policies is taxed within the insurance company. Payments of pension insurance premiums are tax deductible up to half a basic amount, presently 18,450 SEK.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no regulations concerning indexation of benefits, but all private plans aim at inflation-indexed benefits.

Vesting and portability

Vesting is immediate. There is full portability for employees moving between companies belonging to either the STP or ITP plan, but no portability rules apply in the case of workers moving across the two plans. The same is true for governmental or municipal plans.

Benefit guarantees

There is no form of statutory benefit guarantee.

Access to pension schemes

The minimum age for joining an occupational scheme in both the private and public sector is 28 years. All full-time employees are allowed to join the public sector scheme, the PA-91. For part-time employees there is a minimum requirement of 40 per cent of full-time working basis.

Disclosure to members

This is not regulated in Sweden.

Individual and collective rights of action

These are also not regulated.

B. PENSION PLAN ADMINISTRATION

According to collective agreements, employers can safeguard occupational pensions in three different ways:

Safeguarding through *life insurance (occupational pension insurance)* or a *mutual benefit society* means that the employer transfers the fulfilment of his commitment to an insurance company or a mutual benefit society and in return pays a premium.

Book reserve is a system where the employer makes an allocation to an account (provision) in the balance sheet. That allocation should normally correspond to the pension liabilities, but the employer is always responsible for the commitment even though the allocation is too small. The pension provisions must also be safeguarded by a pension guarantee in form of credit insurance, a state guarantee or a municipal guarantee.

Safeguarding the occupational pension can also be made through a *pension foundation* that is founded by the employer. Its sole purpose is to safeguard pensions. The employer allocates funds to the foundation for future pension payments. The responsibility for the commitment always remains with the employer (and thus the financial risk connected to the allocation of the foundation capital). The employer can be compensated by the foundation for his pension payments under the condition that, even after such compensation, the capital of the foundation is not less than the total pension liabilities.

Public sector occupational schemes are managed by municipal or government bodies. As a rule these schemes are based on the pay-as-you-go principle.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

ITP plans are either insured with the Swedish Pension Society mutual insurance company or are registered with the Pension Registration Institute which then manages the contribution and benefit administration. SAF-LO/STP plans are administered by the Arbetsmarknadsforsakringar (AMF) pension insurance company.

Pension fund governance

There are no statutory governance requirements for pension funds, regardless of the institutional structure chosen. In general, though, through their organisations, the employer and the employees each elect half the board of a pension foundation.

There is no mandatory appointment of an actuary. The calculation of the technical provisions of the pension foundations is performed according to rules laid down by Finansinspektionen (the Swedish Financial Supervisory Authority).

The auditor of the pension foundation is responsible for checking the evaluation of the pension provisions and the sufficiency of assets.

Financial requirements

Pension obligations are valued according to the accrued benefit principle (ABO) based on current salary. The Swedish Financial Accounting Standards Council is currently preparing a draft for a new standard that corresponds with the international standard (IAS 19). The international standard would, if the draft gets accepted, be used in the consolidated accounts whereas in the accounts for legal entities the traditional method would continue to be used for tax reasons.

Pension foundations are not submitted to any solvency margin requirements.

Technical requirements

The Swedish law on securing pensions states that for collectively bargained pension plans the employer is allowed to use the assumptions laid down in the plan. For other pension arrangements employers have to use assumptions decided by Finansinspektionen. In December 1998 Finansinspektionen issued new rules lowering the discount rate from 4% to 3.75% before yield tax. For pension commitments that are subject to tax the rate should be 3.2%. For the year 2001 Finansinspektionen has lowered the discount rate to 3.5% before yield tax. For pension commitments that are subject to investment yield tax the discount rate is 3.0%.

For ITP pension commitments the assumptions are decided by FPG and PRI. A discount rate of 3.64% is used and an extra reserve amounting to 10% of the present value is added. For an average company this corresponds to a discount rate of 3.3%. FPG and PRI have declared that no reduction of the discount rate is planned. The present size of reserves is regarded as sufficient. The different rates in use can be summarised as follows:

	New rate	Old rate
Premium reserves insurance companies	2.6%	4.0%
Premiums SPP new policies	2.6%	4.0%
ITP commitments book-reserve	3.3%	3.3%
Other pension commitments	3.2%	4.0%

The mortality tables are in accordance with actuarial practice in life insurance.

Investment regulation

There are no special rules governing the allocation of the foundation’s capital. Statutory provisions state that capital should be invested in a satisfactory way. There are also rules concerning currency matching. In this connection it is important to remember that the risks (financial and actuarial) connected to these pensions remain with the employer, and not with the foundation.

There is a ceiling on shares of 60% of the funds’ portfolio and a limit of 10% in a single company. Pension funds may not hold either more than 5% of the voting power of a single company.

Compulsory insurance and guarantees

These are not regulated in Sweden.

Reporting to the supervisory authorities

The regulatory and supervisory body of life insurance companies and mutual benefits societies is Finansinspektionen. These bodies are regulated through the national implementation of the insurance Directives.

Pension foundations are supervised by the regional councils of the counties in which they are established. There is some special legislation applicable on pension foundations.

B.2 GROUP INSURANCE PLANS

There are no group insurance plans.

B.3 BOOK RESERVE PLANS

Licensing and registration

Book reserve plans in Sweden are provided by the so-called FPG/PRI system. PRI (the Pension Registration Institute) calculates the pension debt that is to be reported in the company's balance sheet and pays out the pensions. The Pension Guarantee Fund (Pensionsgaranti FPG) is a mutual insurance company founded in 1961 and owned by policy holding companies.

Governance

FPG monitors the creditworthiness of each company or group of companies.

Financial requirements

There are no regulations regarding financial requirements in Sweden.

Technical requirements

The technical requirements for the book reserve plans are the same as for pension funds.

Investment regulation

Not applicable.

Compulsory insurance and guarantees

Bankruptcy insurance is provided by the FPG. It is compulsory for ITP plans funded via the book reserve method. Approximately 85% of the commitments of FPG are related to the ITP plan.

FPG charges a uniform premium of 0.2 per cent of the pension debt to FPG/PRI plans and 0.1 per cent to plans that have a related pension fund. The premium was reduced from a level of 0.3 per cent in 1998. The guarantee is written for a contract period of maximum three years. If a policyholder becomes insolvent, the FPG redeems the pension commitments. FPG is entitled to recover from the policyholder or the bankruptcy estate the amount paid.

Policyholders can terminate the contract with the FPG at any time through the purchase of pension insurance.

FPG also has a system of reinsurance to cover extremely unfavourable claims in any single year. The reinsurers' maximum exposure for 1998 totalled 1.4 billion SEK (Approx. 175 million USD).

Reporting to the supervisory authorities

Book reserves are implicitly supervised through the mandatory credit insurance.

II.iii REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

The basic system adjusts pension rights to keep in line with the general earnings trend, and pension payments will keep pace with nominal changes in income in relation to the norm (1.6 %). At the same time the value of pensions will follow the development of average income for the working population. This will ensure greater compatibility with the national economy.

The amount available from the pre-funded pension will then depend on the performance of the investment strategy the pensioner has chosen.

Vesting and portability

The system of mandatory personal plans is closed, as part of social security, and cannot be transferred elsewhere.

Benefit guarantees

There are no benefit guarantees in the pre-funded system, but there are some minimum guarantees in the basic system.

Access to pension schemes

The system is mandatory for all with a taxable income from employment, self-employment or similar.

Disclosure to members

Information on accumulated pension capital is provided annually by the funded system but can also be accessed on-line.

Individual and collective rights of action

This is not considered applicable since the system is not founded on contractual law but on special legislation.

B. PENSION PLAN ADMINISTRATION

The Premium Pension Agency (PPM) administers the funded pillar. The new individual account funds may be invested in Swedish mutual funds and foreign collective investment undertakings with the right to engage in fund activities in Sweden according to the Swedish Mutual Funds Act.

Mutual funds legible for participation in the prefunded pension system are, with some exceptions, funds established through the rules laid down in the UCITS directive. However, it is also possible for a fund management company to manage other types of funds - for example index funds that a person chooses as an investment vehicle in the prefunded pension system.

Management companies with their registered office in another country within the EEA, which carry out activities in accordance with the UCITS Directive, have the right to engage in fund activities from their home country within the framework of the premium pension system. Management companies from countries outside the EEA, which have been granted a licence by the FSA to engage in fund activities in Sweden may also participate in the system. With respect to management companies domiciled outside the EEA, the requirements for a licence to engage in operations in Sweden are that operations can be assumed to comply with the requirements for sound fund activities. This requirement also applies to the funds offered by these managers. If the individual investor abstains from making an active choice, the assets will be invested in a special sub-fund at the state owned National Swedish Pension Fund. This sub-fund is to be managed by a newly established fund board. Its is basically to follow the same investment provisions as mutual funds. For individuals who prefer a state mutual fund, the board will establish a separate fund in which savers can choose to invest.

The National Swedish Pension Fund has an obligation to keep accounts. Every year the balance sheet and the profit and loss account of the fund are to be adopted by the Swedish government. In addition, the Government also evaluates the management of the fund.

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

To the extent that such plans are similar to occupational plans, see these. Otherwise there is no regulation on indexation of benefits.

Vesting and portability

There is at present no portability, but it is possible within the fiscal system and may become more frequent in the future.

Benefit guarantees

There is no regulation, but individual insurance contracts contain a minimum yield guarantee. Such guarantees may also occur in unit-lined insurance, but has so far not been in common use.

Access to pension schemes

In 1997 about 31% of the population aged between 20-64 had an individual pension account.

Disclosure to members

Insurance contracts are subject to general information requirements as set out by the EU life insurance directive.

Individual and collective rights of action

There are no specific regulations regarding individual and collective rights of action.

B. PENSION PLAN ADMINISTRATION

Personal pension plans can be provided by insurance companies, banks or directly through the securities market. These pension savings institutes are supervised by the FSA. Many of the rules of supervision for securities institutions, which are harmonised with the Investment Services Directive, also apply to the supervision of pension savings institutes. These include powers of intervention.

Authorisation as a pension savings institute can only be granted to institutions that have been licensed as a securities institution under the Securities Business Act. Securities institutions are Swedish securities companies (limited liability companies), Swedish banking institutions licensed under the Securities Business Act to conduct securities business and foreign enterprises which conduct securities business through a branch in this country. That Act has been harmonised with the EC Directive on investment services in the securities field (the so-called Investment Services Directive, 93/22/EEC).

UNITED KINGDOM

I. STRUCTURE AND TYPOLOGY OF PENSION SYSTEM

A. LEGAL FOUNDATION

All types of private pension plans are covered by the 1995 Pensions Act. Occupational pension schemes and personal pension schemes are also covered by the 1988 Income and Corporation Taxes Act, which contains some requirements that must be fulfilled in order to obtain preferential tax status.

B. GENERAL STRUCTURE

Types of plans

U.K law stipulates that all public and private sector employees must be covered by *either* SERPs, *or* an occupational pension plan *or* a personal pension plan.

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Employers can contract-out of SERPS and establish occupational pension plans that provide benefits replacing those from SERPS. Employers that do not contract out of SERPS can offer occupational pension plans with benefits that are supplementary to SERPS. These plans are called contracted-in. Employer participation in industry-wide plans is also voluntary. Employee participation in occupational pension plans has been voluntary since 1988.

Membership of occupational pension plans has been voluntary since regulations were introduced in 1988.

Both defined benefit and defined contribution schemes are permitted.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

Full-time employees are required to participate in so-called appropriate personal pension plans (APPP) if they choose not to be covered by either SERPs or an occupational pension plan.

APPPs are defined contribution in the accumulation stage.

As part of its programme of welfare reform, the Government has announced proposals for innovations in pensions. Part of this programme of reform are the so-called 'stakeholder pensions' which will become available from 6 April 2001. These are intended to provide a low cost, privately funded supplement to the basic state pension. They may be funded by redirecting part of the National Insurance contributions to provide benefits instead of SERPs or creating an additional pension by direct contribution from the member or the member's employer. Stakeholder pensions are targeted at those earning £10,000 - £20,000 per annum. However, they will be available to almost everybody, including people in employment, fixed contract workers, the self-employed and people who are not actually working but can afford to make contributions. It is also possible to contribute to someone else's stakeholder pension - for instance someone can make contributions to their non-working partner's stakeholder scheme on their behalf, or pay into a child's stakeholder or personal pension plan.

The tax rules treat stakeholder pensions in the same way as personal pension plans.

Plan parameters and tax treatment

Mandatory occupational pension plans

Not applicable

Voluntary occupational pension plans

Only exempt approved occupational pension schemes (as defined in sections 590-612 of the 1988 Income and Corporation Taxes Act) are eligible for the full range of automatic tax relief's. An exempt approved scheme is one that has been established under irrevocable trust and has been approved by the Pension Schemes Office (PSO) of the Inland Revenue. The main requirements for a scheme to be granted exempt approved status are set out in legislation sections 590 and 591 ICTA 1988 and include that (i) it is established for the sole purpose of providing relevant benefits in respect services as an employee and (ii) it is established in connection with a business carried out in the UK by a person resident in the UK. It is not necessary for a scheme to be established in the UK, but if it is established overseas it must have a UK resident agent.

Additional conditions of tax approval determine certain plan parameters and the actual tax treatment on contributions, income, and benefits (EET) as follows:

a) Contributions

Conditions of approval specify that the employer must be a contributor to the scheme, making contributions of at least 10 percent of total contributions. Employers' contributions are tax deductible in determining profits chargeable to tax.

The employee's contributions, up to 15% of annual earnings (with "cap" on earnings 91800 GBP) for 2000/001 re tax-free.

Members of occupational pension schemes are allowed to make additional voluntary contributions (AVC) to their existing schemes. Since 1987 it has been possible to make free-standing additional voluntary contributions (FSAVC) outside the employer's scheme. Employees can pay up to 15% of earnings into their combined occupational AVC and FSAVC schemes, but employers are not permitted to contribute to FSAVCSs.

Minimum contribution rates are only set for plans that are contracted out of SERPS. This must equal at least the contribution rebate received from the government. The employer in DC schemes (COMPS) is supposed to make guaranteed minimum contributions (GMCs) that equals contracted-out rebate on National Insurance contributions (1,8% of earnings for employees and 3% of earnings for employers: a combined rebate of 4,8%).

b) Income

No tax is payable on investment income or capital gains of the pension fund (subject to a 105 percent maximum funding level).

c) Benefits

According to tax rules, pensions cannot be paid before the age of 50 except on incapacity grounds and taking a pension cannot be deferred beyond the age of 75. Pension benefits must be based on average or final remuneration times length of service for DB schemes, and annuities must be purchased by the age of 75 for DC schemes.

There have been changes to retirement age provisions since 1987, leading to an equalisation of ages as a result of the so-called Barber Judgement of the European Court. This ruled that it was illegal for retirement ages for men and women to be different. UK occupational schemes have been obliged to equalise retirement ages and pension rights for men and women for all rights accrued since 1990.

There are maximum benefit levels, required to conform to tax approval status for either contracted-out or contracted-in schemes. However, for an occupational plan to be contracted-out of SERPS (i.e. both employee and employer pay reduced rates of National Insurance contributions) the plan must meet one of the following two tests which relate to the basic level of benefit provision:

<u>Reference Scheme Test</u>: Plan must be certified by the Plan Actuary as providing at least 1/80 of covered earnings (90% of earnings between the LEL and UEL), averaged over 3 years, for each year of employment (up to a maximum of 40). If the actuary considers that more than 10 per cent of the members would receive benefits below the minimum standard, the scheme will not pass the test.

<u>Protected Rights Test</u>: Rebate of national insurance contributions (protected rights) for both the employer and employee built up under the plan must be used to buy an annuity on a unisex basis to provide a pension for the employee between ages 60 and 65.

In contracted-out schemes, at least ¾ of benefits must be paid as an annuity. The rest can be taken up as a tax-free lump sum. In contracted-in schemes, the tax-free lump sum at retirement is permitted up to 150% of final salary[20], but in the case the pension is based on the 1/80th scale, maximum ½ of the final salary can

[20] But note that the definition of final salary varies across plans.

be withdrawn as a lump-sum. If annuities are not purchased immediately, the level of income from the pension fund that may be "drawn down" in the interim period, is a maximum of 100% and a minimum of 35% of what an annuity might have been. The level can be varied within these limits each year.

Pensions are taxed as earned income. There is no tax on transfer values, which must be transferred to another pension arrangement.

Special tax rules apply to early leavers of an occupational pension scheme. Employees who leave a scheme before completing two years of qualifying service are entitled to a lump-sum equivalent to their contributions. This lump-sum, however, is taxed at 20 percent. Since the original contribution was relieved at 22 percent for a basic-rate payer this means that every £100 of contributions costs £78 and returns £80 if this right were to be exercised.

According to social security rules, after two years of plan membership, contributions are locked in until retirement or death.

Mandatory personal pension plans

Not applicable

Voluntary personal pension plans

a) Contributions

There are limits on the amount contributed (which depends upon age). Employer contributions are not compulsory. Employees contribute a percentage of earnings dependant on age. As from 6/4/01, for tax purposes, earnings capped at £ 91800 p.a. Earnings have been capped since 1989.

In addition, for individuals who opt out of SERPs the government pays an age-related rebate and tax relief on the employee's contributions into the personal pension plan via the plan provider.

b) Income

No tax is payable on investment income or capital gains of the pension fund, except that no repayment of tax credits are available on UK company dividends.

c) Benefits

For tax purposes, the Inland Revenue allows benefits to be received from age 50, except on incapacity grounds

A pension may be taken at any time up to age 75 , regardless of when the individual is actually retiring.

On pension date, up to 25% of the entitlement can be drawn as a tax-free lump sum. The balance must be used to either purchase an annuity or take a pension by income withdrawals (‘drawdown’) from the member’s fund. Annuities do not therefore have to be purchased immediately on retirement, when rates may be unfavourable. . If annuities are not purchased immediately, the level of income from the pension fund that may be "drawn down" in the interim period, is a maximum of 100% and a minimum of 35% of what an annuity might have been. The level can be varied within these limits each year.

Pension annuities bought with the element of entitlement provided by the rebate of National Insurance contributions since April 1997 must be raised each year by the RPI increase, up to a maximum of 5% p.a. For contributions made between April 1988 and April 1997, the level is 3% p.a.

II. i. REGULATORY FRAMEWORK OF MANDATORY OCCUPATIONAL PENSION PLANS

Not applicable

II. ii. REGULATORY FRAMEWORK OF VOLUNTARY OCCUPATIONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There is no requirement to index retirement benefits in contracted-in schemes. Contracted-out occupational pension plans are required each year to increase the pension accruing from employment since April 1997 in line with the increase in the Retail Price Index up to a maximum of 5% (maximum of 3% for pension accruing from employment between April 1988 and April 1997).

Vesting and portability

Vesting periods in defined benefit plans have been reduced to a maximum of 2 years.

Employees who leave a firm within two years of joining the firm’s pension plan can obtain a full refund on their own contributions, but they are not entitled to any interest on their contributions. In defined contribution schemes, on the other hand, members have a right to the accumulated balance in the pension fund, which includes the interest earned on the account at any point in time.

Workers with more than two years of membership to a pension plan cannot consume part of their accumulated pension rights before retirement (no lump-sums). Otherwise, their benefits must be deferred, the rights transferred to another pension scheme or a personal pension plan, or secured through the purchase of an annuity contract with an insurance company.

Deferred pensions (known as protected rights pension in the UK) are calculated using the same accrual rate as for those who remain in the scheme, but is based on earnings at the time of leaving. Deferred pensions are subject to limited price indexation. Pension benefits accrued before 6 April 1978 must be revalued by the rate of inflation (as measured by the RPI). Pension benefits accrued after this date (when SERPS began) are revalued in the same way for contracted in schemes. For contracted-out schemes, more generous revaluations rules apply, a choice between full revaluation in line with increases in national average earnings and minimum rates of revaluation at 7 per cent p.a. compound.

Special rules apply for transfers from occupational schemes to personal pensions plans. When it comes to regulated advice given relating to transfers there has to be:

an explanation in writing of why the shift is best advice;

the same assumptions must be used in projecting the returns on the occupational and personal pension funds;

all calculations must be done using a computerised transfer value analysis to increase the degree of objectivity;

only specially trained individuals may conduct such business;

such advice must be double checked with insurance companies.

Benefit guarantees

There are no statutory benefit guarantees.

Access to pension schemes

It is possible for employers to restrict membership by nature of employment.

Employers' occupational pension plans cannot discriminate between men and women or part-time and full-time workers. Different plans or benefit levels may, however, be provided for different types of workers (such as salaried employees and wage-earners) although in practice most have now been uniformised and only senior executives still frequently have separate arrangements.

Disclosure to members

Requirements provide for disclosure to members of a comprehensive range of information such as eligibility, conditions of membership, vesting and portability (in DB schemes), calculation of contributions, type and level of benefits and conditions for entitlement, information on options of retirement to retiring members and early leavers, the trust deed and rules and an annual report. The time limit is one year for accounts to be available to the members or beneficiaries. In the report, trustees must account for matters such as the collection of the contributions due, the investment of the scheme's resources, payment of benefits and the actuarial valuation of the assets and the liabilities. They must also disclose whether more than 5 percent of the scheme's assets are invested in the employer's business or in any one shareholding or property.

Individual and collective rights of action

Information to be provided

B. PENSION PLAN ADMINISTRATION

Administrative requirements differ between contracted-out and contracted-in occupational pension plans. However, they have some common features. For example, according to the 1995 Pensions Act, all occupational pension plans must be funded, and assets legally separated from the sponsoring institution

Occupational pension plans must apply to the Inland Revenue to receive a) appropriate tax status (see section on Tax treatment) and b) certification as meeting either the Reference Scheme Test (minimum benefit levels) or the Protected Rights Test (minimum contribution levels) in order to be contracted-out.

In order to obtain preferential tax status, occupational pension plans must be established under irrevocable trust and be approved by the Pension Schemes Office (PSO) of the Inland Revenue. The trust deed and rules contain the details of the pension plan, and is run by trustees, with the employee being the beneficiary under the trust.

Employers can administer their own pension plans or they can contract out administration to a financial institution or manager. . Employers can arrange for a defined contribution scheme for their employees. The administration costs are borne by the employer but the arrangements are made individually with each employee. The employer may contribute to each individual arrangement. Such arrangements are known as Group Personal Pension schemes.

Industry-wide pension schemes are defined contribution plans managed by financial institutions for workers in a particular industry. They are subject to the same regulations as group personal pension plans.

B.1 PENSION FUND ADMINISTERED PLANS

Licensing and registration

Pension funds are not subject to any specific licensing requirements.

Pension fund governance

As a rule, occupational pension schemes are set up by employers and administered by trustees, who will normally include representatives of the employer, members and beneficiaries. Some administrative functions may be delegated to the above-mentioned institutions. In principle, administration and financial management of assets provided by employer is in the hands of trustees responsible for the beneficiaries, i.e. members. The main duties of a trustee are:

fiduciary i.e. to preserve the capital and to apply it and its income in trust for members;

to act impartially, keep accounts, check funding and seek expert advice;

to ensure that self investment limits are followed;

to set the investment principles for fund managers to follow, to make the investment decisions;

to appoint auditors and actuaries.

The Pensions Act of 1995 provides that 1/3 of trustees should be elected in DB funds, and 2/3 in DC plans. Schemes with over 100 members must have a minimum of two employee trustees, under 100 they must have one. A person convicted of an offence of dishonesty and deception, who has been bankrupt, or disqualified as a director, may not be a trustee. Actuaries and auditors of the scheme in question may not be trustees of it.

Financial requirements

Funding rules are applicable to contracted-out occupational defined benefit schemes. Statutory funding rules were introduced in the UK in 1978, when employers were first permitted to contract out of SERPS by setting up pension plans for their employees. Contracted-out plans were required to fully fund the Guaranteed Minimum Pension. Funding in excess of this amount was not required.

A Minimum Funding Requirement (MFR), as laid down by the 1995 Pensions Act, was phased in starting in April 1997. Following recommendations made by the Treasury commissioned Myner's Review, however, the Government announced in March 2001 that the Minimum Funding Requirement (MFR) was to be abolished. No timetable has been set for the change but it is unlikely to be before 2002. Set up as a means of protecting pensions benefits, in response to the weaknesses highlighted by the Maxwell pension fund fraud case, the MFR had consistently been criticised for influencing asset allocation. Under the MFR, all pension plans were required to meet a solvency test based on the cash equivalent concept (accumulated benefit obligation – ABO). Firms which failed to meet this test (carried out at least every 3 years), were required to present a proposal to rectify the situation. If the plan's assets fell beneath 90 percent of the amount dictated by the solvency test, the occupational pensions regulatory authority, OPRA, required a cash contribution or equivalent arrangement by 2003 to bring the funding level back to 90 percent. Contribution rates also needed to be agreed to bring the level to 100 percent by 2007. If this were not forthcoming the pensions regulator could wind-up the plan and impose the funding shortfall as a debt on the firm.

The MFR will be replaced by an enhanced compensation scheme for fraud, by mandatory arrangements for the custody of pension fund assets, transparency and an independent review of pension funds' finances and plans on a scheme specific basis.

Tax regulations limit overfunding to 5% of projected benefit obligations (PBO), giving five years to remove surpluses. The sponsoring employer can recover the funding surplus with the specific agreement of the tax authorities by direct withdrawal (subject to a 40% tax charge) or by a contribution holiday[21]. Terminations must provide for indexed benefits.

In May 1988 the Accounting Standards Board (ASB) published the Statement of Standard Accounting Practice No. 24. This ruling standardizes accounting practice in respect of employers' pension schemes. It came into effect on 1 July 1988. Accounting standard SSAP24 obliges firms to include the true cost of providing pensions (the growth in assets and liabilities on the basis of standard actuarial assumptions) and not merely the contributions to funding pensions in the profit and loss account. It is however not compulsory to state the deficits in the balance sheet, unlike in the USA. SSAP 24 has since been replaced by FRS 17.

Technical requirements

The government accepts the judgement of actuaries with regard to interest rates in calculating funding.

21 Question of the ownership of surpluses arises only for defined benefit funds; in defined contribution funds there is no surplus to strip, as assets equal liabilities by definition.

Investment regulation

The trustees have the power to invest scheme assets acting in the "best interests[22]" of beneficiaries (prudent man concept) and subject to any restrictions of the scheme concerned. A statement of investment principles must be prepared by the trustees with help from a professional adviser and in consultation with the employer. This needs to cover the trustees' policy on meeting the Minimum Funding Requirement, the kinds of investment to be held and the balance between them, risk and expected return, and the realisation of assets.

There are no quantitative portfolio restrictions on pension funds, subject to the trust law. As long as trust deeds are appropriately structured funds are not constrained by regulations in their portfolio distributions except for limits on self-investment (5%) and concentration limit for defined contribution funds.

Compulsory insurance and guarantees

Historically, the UK has had no general system of benefit insurance. If there is an unfunded liability when a plan is wound up as the result of the sponsor's bankruptcy, the amount of the unfunded liability is treated as a debt of the employer. If this debt (which ranks with other creditors in the liquidation) is not paid, the trustees have the responsibility of reducing the benefits payable from the plan.

A limited benefit insurance system was in place for contracted out schemes only up to 1997. These schemes were required to provide a minimum income equal to the Guaranteed Minimum Pension (GMP) as well as a widow/er's pension. The state guaranteed the GMP in these schemes. If a plan contracted out of SERPS was terminated and benefit commitments could not be met, the plan reverted to SERPS and the state covered the financing gap. The GMP system has since been replaced by a reference scheme test.

In the early 1990s, however, about 750 pension plans were wound up with assets that were insufficient to meet their members' GMPs. Most of this shortfall was linked to the Maxwell companies that were wound up between 1992 and 1994. It also appeared that these fund shortfalls were due - at least in part -to fraudulent business practices.

Following the Maxwell affair, the government established the Pension Law Review Committee, chaired by Professor Roy Goode, in order to review the framework of law and regulation within which occupational pension schemes operate. The Goode Committee proposals were enshrined in the 1995 Pensions Act. This led to the set up of a new Pensions Compensation Scheme (administrated by a Pensions Compensation Board) to provide compensation of 90% of missing amount, including interest at specified rate, where the employer is insolvent and assets are insufficient as a result of theft, fraud or misappropriation. Payments are funded by a levy on occupational schemes.

Reporting to the supervisory authorities

Information to be provided

[22] Although there is no explicit "prudent man" rule in the UK, the duty of prudence to trustees can be interpreted as requiring prudent diversification, which may amount to the same thing.

B.2 GROUP INSURANCE PLANS

Defined contribution schemes run by insurance companies must be covered by (mutual) insurance compensation arrangements, covering 90% of the investment in the case of bankruptcy of the insurance company.

II. iii. REGULATORY FRAMEWORK OF MANDATORY PERSONAL PENSION PLANS

Not applicable

II. iv. REGULATORY FRAMEWORK OF VOLUNTARY PERSONAL PENSION PLANS

A. RIGHTS OF PARTICIPANTS

Indexation of benefits

There are no statutory rules for inflation-proofing of personal pensions in excess of the protected rights pension because the tax rules do not impose limits on benefits. The 1985 Social Security Act requires preserved or deferred pensions to receive the same treatment in terms of inflation indexing as active pensions remaining in the scheme.

Vesting and portability

Contributions to personal pension plans are immediately vested, i.e. non-returnable unless in excess of the limits to tax relief, and fully portable in that transfers may be received or made.

Benefit guarantees

There are no statutory minimum benefit guarantees.

Access to pension schemes

Those eligible to invest in personal pension plans are the self employed or those who are employed but are not in an occupational pension plan. From 6/4/01 they are also open to non-earners, provided their contribution do not exceed a monetary limit (£3,600) each year. .

Those who choose to take out personal pension plans are often i). individual employees who choose to opt out of the approved contracted out or contracted in occupational pension plan provided by their employer ii). individual employees who wish to contract out of SERPS and whose employer does not provide an occupational pension plan (or provides one that is not contracted out). iii). the self employed and non-earners as above.

Disclosure to members

Product disclosure, best advice for the circumstances of the individual and cooling off periods are requirements under the 1986 Financial Services Act for pensions and other investment products. Since 1990 pension plan providers have had to declare surrender values for the first five years of schemes and the commissions earned by sales people, as a proportion of contributions.

Individual and collective rights of action

The individual enters into a contract with the scheme. Such a contract may be an insurance contract where an insurance company is involved. The member agrees to be bound by the scheme rules and the terms of the contract, and the scheme administrator agrees to provide benefits in the form agreed in the contract. The scheme should give any third parties entitled to benefits i.e. financial dependants a right to be able to enforce their entitlement.

B. PENSION PLAN ADMINISTRATION

Personal pensions may be set up either in trust or formed as a deed poll. The personal pension trust parallels the form of trust set up for occupational pension funds. Some schemes provide for investment decisions to be under the control of the individual. In such a case, the scheme administrator must nonetheless ensure that all tax rules are met.

Personal pensions can be provided by life-insurance companies or friendly societies; unit trusts, building societies and banks. Life insurance companies have been the predominant players in the personal pension market in the U.K.

Fund managers i.e. those professionally investing on behalf of the scheme, must be approved under the Financial Services Act 1986.