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September 2020

Global Legislative Developments

This document summarises recent legislative developments and trends related to employee benefits and highlights recently passed and pending legislation that may require employers to take action to comply with new rules. This document should not be seen as exhaustive and any action should be taken in conjunction with your Global Benefits Consultant.

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Countries covered in this update:

Americas:	Canada and Ecuador
Asia Pacific:	Hong Kong
Europe:	Croatia, France, Germany, the Netherlands, Poland, Portugal, Spain and United Kingdom
Middle East & Africa:	Saudi Arabia, South Africa and Kenya

Recent developments summary

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Americas

Canada

Solvency special payments moratorium implemented by the Federal government

Under the new regulation, no solvency special payment instalments are required from May 27, 2020 until December 30, 2020. Therefore, federally regulated defined benefit pension plan sponsors are not required to make solvency special payments that are due from April 1, 2020 until December 30, 2020.

If a plan sponsor has made solvency special payments between April 1, 2020 and May 27, 2020, the amount of any such payments can be deducted from future normal cost contributions and going concern special payment requirements due from now until December 30, 2020.

The new regulation also provides that, from the date the new regulation comes into force, no interest will be payable in respect of solvency special payments that became due after March 31, 2020 and before the day on which the regulation comes into force.

Plan sponsors that use letters of credit to meet their solvency funding requirements may reduce the face values of letters of credit that have been obtained to cover solvency special payments in respect of the moratorium period by the amount of payments that would otherwise have been due.

All normal cost contributions and going concern special payments will continue to be required through the moratorium period. Plan sponsors can continue making contributions in respect of their plans' solvency deficiencies if they choose to do so. Any such contributions, to the extent that they exceed the solvency special payments that would ordinarily have been required in the absence of the new regulations, will be considered additional payments and applied to subsequent plan years.

Following the moratorium period, sponsors of federally regulated defined benefit pension plans will be required to resume making monthly solvency special payments, beginning with the December 2020 payment due January 30, 2021. Plan sponsors will not be required to repay the 2020 solvency special payments under a separate amortization schedule. Rather, the usual solvency funding requirements will apply.

Threshold for void amendments

Between May 27, 2020 and November 30, 2020, any plan amendment that would reduce a plan's solvency ratio to below 1.05 will require approval from the Office of the Superintendent of Financial Institutions (OSFI). Any plan whose solvency ratio is already below 1.05 will also require OSFI's approval for any plan amendment that would increase benefits or pension benefit credits. The usual threshold for void amendments is 0.85 in most cases and 1.0 in certain cases.

Disclosure requirements

The new regulation also introduces new disclosure requirements aimed at informing beneficiaries of the impact of the solvency special payment moratorium on their pension plans. In respect of a plan year in which solvency special payments are reduced under the new regulation, members' and former members' annual statements must indicate (a) the amount of reduced solvency special payments for the plan year and (b) what payments would have normally been required for the plan year to members and former members. This would affect annual statements covering any part of 2020 in which the solvency moratorium is taken, but not annual statements in respect of prior years.

Ecuador

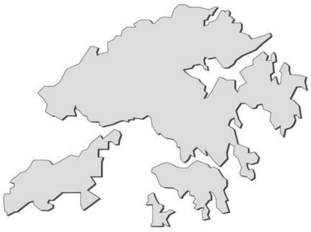
Prohibition of termination of health policies or suspension of coverage due to delay in payment

During the time that the state of exception lasts due to the health emergency of Covid-19, insurance companies offering health insurance coverage, must not cancel or terminate health insurance policies, or suspend coverage or benefits contractually stipulated, if the insured presents delays in the payments of up to three months.

Unpaid payments will be pro-rated for the remainder of the contract's validity, without generating interest on arrears.

This suspension does not imply waiver of any type of obligation, unless otherwise agreed by both parties.

Hong Kong



The HKSAR Government has launched the “Employment Support Scheme” (ESS) under the second round of the “Anti-epidemic Fund” to provide time-limited financial support to employers to retain employees who may otherwise be made redundant

Duration of the ESS:

To support salary payment for 6 months in two tranches

- 1st tranche: June, July and August 2020
- 2nd tranche: September, October, November 2020

Required undertakings:

- Not to implement redundancy during the subsidy period; and
- To spend all the government wage subsidies on paying wages to their employees

Eligible Employers and Employees:

Except for those who are not eligible, all employers who have made Mandatory Provident Fund (MPF) contributions or set up Occupational Retirement Schemes (ORSO), regardless of industries, are eligible for ESS. The relevant accounts should be set up on or before March 31, 2020 (i.e. no backdating to that date or any earlier dates)

First tranche of ESS:

Employers can choose either December 2019, January, February, or March 2020 as the “specified month”. Subsidy for June, July and August 2020 will be calculated on the basis of the wages paid in the “specified month”

Eligible employers and self-employed persons may submit online applications via the ESS Online Portal (www.ess.gov.hk) starting from 7.00 am, 25 May until 11.59 pm, 14 June.

<u>Calculation of monthly subsidy:</u>

“Regular employees” aged between 18 and 64

- based on 50% of actual wages paid to each “regular employee” in the “specified month”
- wage cap at HKD 18,000 per month (max. subsidy per employee at HKD 9,000 per month)

Employees aged 65 or above

- If employers have provided employees’ basic salaries when making MPF voluntary contributions - wage subsidies will be calculated based on 50% of the basic salaries actually paid in the “specified month”, wage cap at HKD 18,000 per month per employee (max. subsidy HKD 9,000 per month)

Undertakings for the first tranche:

In June, July and August 2020, the number of employees on payroll (i.e. with pay) cannot be smaller than the number of employees (with or without pay) in March 2020, all Government wage subsidies should be spent on paying wages to the employees.

Consequences of Breaching the Undertaking:

If an employer fails to use all the wage subsidies received for a particular month during the subsidy period (June to Aug) to pay the wages of employees in the same month, the Government will claw back the unspent balance of the subsidy
If the number of employees on the payroll in any one month of the subsidy period is less than the number of staff (whether paid or unpaid) in March 2020, the employer will have to pay a penalty to the Government

Auditing and Monitoring Mechanisms

During and after vetting of applications, ESS Secretariat/processing agent will :

- verify information submitted by employers
- conduct on-site checking at selected employers' organizations

Announce the list of employers who have received subsidies, the total number of employees benefited, and the amount of subsidies received
Should an employer be found to have abused or violated the conditions of ESS, the employees concerned, or members of the public may report to relevant authorities. To approach Labour Department for labour dispute issues. Making of false statements/declarations or furnishing false documents is guilty of criminal offence and subject to prosecution.

The application period for the second tranche of Employment Support Scheme (ESS) will available soon.

Croatia

Tax incentives for voluntary health, life and voluntary pension insurance.

As of 01.01.2020, the following changes have been announced in Croatia:

- Voluntary health insurance (including supplementary and additional health insurance) are non-taxable for employers up to HRK 2,500 per year per employee.
- The only condition is that the employer must place policies for the employees, and it does need to be in place for all employees to benefit from the tax incentives.
- Life insurance with saving component is also not taxable for insured/beneficiaries.
- Additionally, III pillar (voluntary pension insurance) considers up to HRK 500 per month of HRK 6,000 per year as non-taxable saving.

France

Contingency Fund for French living abroad

Early July, the French Senate has unanimously adopted a proposal of vote for a Contingency Fund set up. This fund would protect any French citizen living abroad, whenever they are victims of a natural disaster or a major political event.

This law is not aimed at spoiling expatriates with unnecessary gifts , but rather for France to react immediately to support its French citizen when confronted to critical sanitary situations such as the pandemic we just experienced, or in case of natural disasters across the world, as well as civil wars or revolutions.

The fund will focus on providing immediate help to its beneficiaries to face any threats or any critical individual financial situation. Financial or material support will yet be subject to a means test.

The law needs to be enforced by the National Assembly first. But clearly the recent sanitary crisis has stressed the solidarity duty the French government has towards the 3 and 1/2 million French living outside France.

Germany

Short-time working due to Covid19 – compensation payments by the state

Short-time work results in a loss of earnings which, under certain conditions, is compensated by the short-time working allowance of the Federal Employment Agency. The amount is calculated on the basis of the difference between the reduced net salary paid for the reduced working hours and the net salary that would have been paid without short-time work.

Employees on short-time work are generally paid 60 percent of this difference. If there is at least one child living in the household, the short-time working allowance is 67 percent of the difference. Since the so-called "Social Protection Package II" came into force on 29 May 2020 and is limited in time until 31 December 2020, the short-time working allowance is increased to 70 and 77 per cent from the fourth month and to 80 and 87 per cent from the seventh month.

If the employer pays a subsidy to the short-time working allowance, this is neither liable to contribute to social security nor - since the so-called "Corona Tax Assistance Act" came into force on 30 June 2020 for wage payment periods between 1 March and 31 December 2020 - taxable, provided that this subsidy together with the short-time working allowance does not exceed 80 percent of the net wage difference. Beyond this limit, the subsidy is subject to full tax and social security contributions.

Omission of the employer’s declaration upon termination of employment

Until now, employers who have issued defined contribution plans or defined benefit plans in the financing vehicles of direct insurance and pension funds had to explicitly declare the limitation of entitlement to the insurance benefit to both the person leaving and the pension provider within a period of three months after an employee left the company (so-called "insurance solution").

The declaration of intent to limit claims has no longer been required since the Amendment Act came into force. According to the explanatory memorandum (BT-Drucksache 19/19037), this is also to apply to employees who left the company before the new law came into force. A transitional rule was not formulated.

This welcome new regulation is expected to provide an enormous relief from administrative work in the field of company pension schemes.

Introduction of an insolvency protection obligation for regulated pension funds

Until now, pension fund benefits have not been subject to insolvency protection under the Occupational Pensions Act (BetrAVG). This is now being partially changed against the background of a decision of the European Court of Justice (ruling of 19 December 2019 - C-168/18).

If an employer becomes insolvent and the pension fund cannot pay the promised benefit to the employee (in full), the Pension Protection Association (PSV) will step in and pay the benefit to the beneficiary.

However, this new obligation to provide insolvency protection only applies to pension funds that are not subject to the statutory protection fund (protector). These are usually regulated pension funds.

On the other hand, pension funds that have an adequate protection mechanism against reductions in benefits are not subject to the new obligation to provide insolvency protection.

Portugal

Publication of Decree-Law no.20 F/2020 approving exceptional and temporary regime for insurance contracts

The Decree-Law no. 20-F/ 2020, of May 12th, establishes an exceptional and temporary regime related to the payment of the insurance premium and the effects of the temporary reduction of risk of the insurance contracts resulting from a significant reduction or suspension of activity, in the context of the due to the COVID-19 disease pandemic. This decree came into force on the day following its publication, May 13th and will remain in effect until September 30th, 2020.

Poland

Changes to PPK implementation deadline

The deadline for implementing PPK (new employee capital plans basis on the act) in entities employing 50 to 250 employees has been moved. The new implementation deadline is 27th of October.

Spain

Pension Developments

The Spanish Royal Decree 3/2020 has transposed the European Directive UE 2016/2341 regarding to the activities and supervision of Employment Pension Plans.

This new regulation, with the main objective of guaranteeing the protection of policyholders, and beneficiaries of insurance contracts, establishes various rules, among which the following should be highlighted:

- The definition of the figure of the complementary insurance mediator.
- It aims to standardize documentary information and coordinate the activities of supervision of the State and the autonomous communities, regulating, at the same time, the administrative registry of insurance and reinsurance distributors.
- The activities of insurance and reinsurance distributors are also subject of this Decree and, for the first time, the conditions for the exercise of the insurance and reinsurance distribution activity carried out by insurance and reinsurance entities, are regulated.
- Insurance and reinsurance entities must have an internal registry of employees who participate in the distribution, subject to the control of the General Directorate of Insurance and Pension Funds.
- The obligation to create a function that guarantees the correct execution of the internal policies and procedures established to monitor compliance with the requirements is established. Compliance function, in line with other national and European regulations that establish various internal control obligations for companies in most regulated sectors.
- Various information obligations to the client are also established, establishing additional requirements in relation to the distribution of insurance-based investment products, seeking to avoid or, where appropriate, prevent potential conflicts of interest. At this point, a new compliance obligation is introduced, forcing entities to adopt effective organizational measures aimed at detecting and preventing them from harming the interests of their clients.
- Title II also establishes regulatory compliance obligations for pension fund management entities, which will include the risk management function, the internal audit function and, where appropriate, an actuarial function when the managing entity provides actuarial services with respect to pension plans.

The Netherlands

Introduction of parental and birth leave

Details of legislative changes:

- January 1st, 2019: Partner leave, one week off, against regular pay (based on the actual working hours a week). This should be used within 4 weeks after birth.
- **New July 1st, 2020**: Birth leave “geboorte verlof” 5 weeks extra. 70% of the employee’s salary up to the social security ceiling (2020: EUR 55,927).
- Parental leave. During the first 8 years of the child’s life the employee is entitle to 26 weeks unpaid leave
  New August 1st, 2022: During the first year, 9 weeks are partially paid. 50% of the employee’s salary up to the social security ceiling.

Updates to Dutch pension reform

June 2019, The Dutch government, the employee organizations and unions agreed to a fundamental new pension system but needed until June 2020 to work out most of the details.

- The Dutch government froze the state retirement age at 67 and 4 month for the next 3 years and in addition reducing the pace of future increases to 8 month per year expected age increase and in line with the original agreement

- **June 2020**, Industry (wide) pension funds will change their funding to a collective DC system. This new funding system intends to improve solvency and equality between ages.
  Also, regular insured DB and DC plans are impacted by these changes however most likely only for future hires! New hires will be offered a fix percentage instead of an age-related percentage as commonly used for existing employees.

- A 5-year transition period (Jan 1st 2026). However, the date of change may vary per industry or possibly one specific change date will be dictated.

United Kingdom

DB Superfunds guidance issued by the Pensions Regulator

The Pensions Regulator has issued guidance for those setting up and running a ‘DB Superfund’ including directors, senior managers and trustees, to demonstrate good governance and adequate capital.

A superfund is a model that allows for the severance of an employer’s liability towards a DB scheme and one of the following conditions applies:

- the scheme employer is replaced by a special purpose vehicle (SPV) employer. This is, to all intents and purposes, a shell employer and is usually put in place to preserve the scheme’s PPF eligibility

- the liability of the employer to fund the scheme’s liabilities is replaced by an employer backed with a capital injection to a capital buffer (generally created by investor capital and contributions from the original employers)

This main purpose of the guidance covers how trustees of a superfund’s pension scheme should approach managing the funding and governance risks associated with being part of this model. The guidance is also contains important information for those setting up and running a superfund, including directors and senior managers. It is not exhaustive, and we may require further steps to meet the systematic risks. The full guidance is available here.

Saudi Arabia

Value Added Tax Rate Increased for Insurance plans

Effective from 01 July, 2020, the VAT rate is increasing from 5% to 15%. Following guidelines have been issued for the VAT rate increase:

- **Contracts started before May 11, 2020**
  - If the contract has been started before May 11, 2020, and the policy extends beyond July 1, 2020, a 5% VAT will continue to be applicable on the total premium until contract expiry if the:
    - Client is a Government entity or
    - Client is a Valid KSA VAT registered with eligibility to reclaim input VAT in full and provide a Declaration Certificate. Otherwise, a transitional invoice will be issued to collect the additional 10% VAT for the period from July 1, 2020 until the contract expiry date against premium invoiced.
- **Contracts started between May 11, 2020 and June 30, 2020**
  - If the contract (New/Renewal) and amendment has been started between May 11, 2020 and June 30, 2020, and the policy extends beyond July 1, 2020, then it is subject to transitional rules according to Article (79) of the VAT Implementing Regulation as the following:
    - The premium related to insurance coverage period to June 30,before will be subject to 5% VAT.
    - The part of the premium related to insurance coverage period July 1, 2020 or after will be subject to 15% VAT.
- **Contracts started on or after July 1, 2020**
  - All issued policies (new/renewals/amendments) on or after July 1, 2020 will be subject to 15% VAT rate.

Confirmed COVID-19 infection declared a Prescribed Minimum Benefit

On 07 May 2020, the Minister of Health approved a submission from the Council for Medical Schemes (CMS), the regulator of private healthcare in South Africa, for the inclusion of COVID-19 as a Prescribed Minimum Benefit (PMB), in terms of section 67 of the Medical Schemes Act, 1998 (Act No. 131 of 1998).

COVID-19 is now included in the list of PMBs and defined as “an acute respiratory illness caused by a novel coronavirus” under the heading "Respiratory System". The treatment includes screening, clinically appropriate diagnostic tests, medication, medical management including hospitalisation and treatment of complications, and rehabilitation of COVID-19.

As a PMB, all registered medical schemes are now obliged to cover the cost of treatment for COVID-19 as set down in regulation, in full and without co-payment from scheme risk benefits, irrespective of the member’s chosen plan type or benefit option.

Protection of Personal Information Act

With effect of 1 July 2020, a number of material provisions of the Protection of Personal Information Act (“POPIA”) 2013, South Africa’s data protection law, will come into operation, eight years since it was first enacted. Companies have until 01 July 2021 to make sure they are fully POPIA compliant.

The sections that come into effect regulate how personal information (which is any information that can identify and infringe the privacy rights of a natural or juristic person) may be processed in South Africa or transferred across borders. Anyone processing personal information will now have an obligation to notify the Information Regulator of any unauthorised access to personal information, especially with the growing number of cyber breaches. Obligations on employers include, among others:

- The appointment of an Information Officer;
- Procedures to ensure information is processed in a lawful manner;
- Ensuring that the processing of personal information is done in accordance with the eight conditions provided for in the legislation;
- Obtaining consent from employees for the processing of their personal information;
- Providing training and information to human resources practitioners as well as employees in order to ensure that information is processed lawfully and that employees, as ‘data subject’s , are aware of their rights;
- Putting in place measures to ensure the processing of ‘special personal information’ is lawful;
- Dealing with any cross-border processing of information; and
- Implementing procedures to address and deal with any complaints from, among others, employees regarding the processing of their personal information.

Kenya

Amendments to Section 38 of Retirement Benefits Act (1997)

The Tax Law (Amendment) Bill 2020, has amended Section 38 of the Retirement Benefits Act (1997) to allow access of retirement benefits for the purpose of purchase of a residential property. This is aimed at increasing home ownership in the country as envisaged in the housing pillar under the Big 4 Agenda.

The bill was approved by His Excellency President Uhuru Kenyatta on 25th April 2020.

Tax Exemptions for certain income classes maintained in Tax Laws (Amendment) Bill 2020.

According to the Tax Laws (Amendment) Bill 2020, tax exemptions on the following types of incomes have been maintained:

- Income of the National Social Security Fund
- Investment Income of a pooled fund or other kind of investment consisting of retirement schemes whose constituent schemes are registered by the Commissioner
- Monthly or lump sum pension granted to a person who is 65 years of age or more.

The bill was approved by His Excellency President Uhuru Kenyatta on 25th April 2020.

Changes to Public Service Superannuation Scheme

To ease the pension burden to the exchequer, the National Treasury is rolling out the Public Service Superannuation Scheme (PSSS) in the current financial year 2020/21, in which all civil servants will be expected to contribute towards their pension.

Prior to this directive, the scheme operated on non-contributory basis. This directive is effective from 01 July 2020.

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