

**Social and labor law requirements applicable to cross-border activities in pension funds in the Principality of Liechtenstein according to article 20 of Directive 2003/41/EC**

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**General remarks**

On 17 January 2007, the Law of 24 November 2006 and the associated Ordinance of 12 December 2006 on Supervision of Institutions for Occupational Retirement Provision (Pension Funds Act; PFA, Liechtenstein Law Gazette LGBl. 2007 No. 11 and Pension Funds Ordinance; PFO, LGBl. 2007 No. 16) entered into force. The PFA and the PFO serve to implement Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.

Institutions for occupational retirement provisions (pension funds) domiciled in an EEA Member State must comply with the following domestic provisions when engaging in cross-border activities in Liechtenstein:

- I. General legal regulation
- II. Social law requirements
- III. Labor law requirements
- IV. Information requirements

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**I. General legal regulation**

**Pension Funds Act and Pensions Funds Ordinance (PFA; LGBl. 2007 No. 11 / PFO; LGBl. 2007 No. 16):**

**Article 6 PFA - Licensing requirement**

Institutions for occupational retirement provision with registered offices in another Contracting Party to the EEA Agreement shall not require a license for taking up business activities in Liechtenstein, provided that they meet the special conditions under article 21 PFA.

**Article 21 PFA - Procedure for taking up cross-border activities**

Institutions with registered offices in another Contracting Party to the EEA Agreement that intend to carry out cross-border activities in Liechtenstein or that intend to accept sponsoring undertakings from Liechtenstein must notify this to the competent supervisory authorities of the domiciliary State. The competent authorities of the domiciliary State shall notify the FMA within three months of the intent of the pension fund to carry out cross-border activities in Liechtenstein. The FMA comments on the proposed operations within two months of receiving the information and communicates the requirements of social and labor law relevant to the field of occupational retirement provision.

**Article 34 PFA - Obligation of secrecy**

The members of the organs of institutions, their employees, and other persons working on behalf of the institution shall be obliged to maintain secrecy of facts not publicly known that have been entrusted or made available to them pursuant to their business relationships with clients. The obligation of secrecy shall be subject to the legal requirements concerning the duty to give information or evidence to judicial authorities. Members or beneficiaries may grant exemptions to the obligation of secrecy.

**Article 41 PFA - Measures against institutions authorized in another Contracting Party to the EEA Agreement**

If it is determined that an institution from another Contracting Party to the EEA Agreement carry out cross-border activities in Liechtenstein is not in compliance with domestic legal requirements, then the FMA shall immediately inform the competent authorities of the home Member State and request them to take action against the institution. If infringements of domestic legal requirements continue, the FMA may, upon notification of the competent authority of the home Member State, prohibit the institution from further business activities in Liechtenstein and may take all necessary measures.

**Article 44 PFA - Notification requirement of foreign institutions**

Institutions whose registered office or main administration is situated abroad operating in Liechtenstein must notify the FMA immediately if their license to carry out business operations has been withdrawn in another State.

## **II. Social law requirements**

### **1. Compulsory insurances in the Principality of Liechtenstein**

#### **Old Age and Survivors' Insurance (AHV)**

The administration of compulsory Old Age and Survivors' Insurance pursuant to the Law on Old Age and Survivors' Insurance (AHV Act, LGBl. 1952 No. 29) (1st pillar) is the responsibility of the Liechtenstein AHV-IV-FAK Authority. Employers active in Liechtenstein must comply with the contribution and accounting duties set out in the AHV Act.

#### **Occupational pensions**

The Occupational Pensions Act (OPA; LGBl. 1988 No. 12) and the associated Occupational Pensions Ordinance (OPO; LGBl. 2005 No. 288) govern compulsory occupational old age, disability, and survivors' pensions, setting out minimum requirements for compulsory pensions (2nd pillar). Employees required to make contributions under the AHV Act who meet the requirements set out in article 4 OPA are subject to compulsory insurance under the OPA. The employer is responsible for administering the requirement. The legal entities carrying compulsory pensions must be foundations domiciled in Liechtenstein and entered in the Public Registry (article 13 OPA).

The provisions of the Pension Funds Act (PFA) must be clearly demarcated from the provisions of the existing Occupational Pensions Act (OPA). Institutions may not simultaneously offer occupational retirement provision under the OPA and the PFA.

Liechtenstein pension institutions which previously only offered voluntary occupational pension plans for employees not subject to AHV in Liechtenstein or were only carried out cross-border activities abroad have been subject to the PFA since its entry into force. Liechtenstein employers now have the choice of administering purely voluntary occupational retirement provision for their employees either in accordance with the OPA or in the form of a pension fund in accordance with the PFA. The OPA and the OPO therefore only apply to persons who are insured under the Liechtenstein AHV (article 2, paragraph 1(a) OPA, article 1 OPO).

Compulsory occupational pension plans must continue to be administered in accordance with the OPA.

### **Health insurance**

For health insurance, the legislation on health insurance applies, the requirements of which are compulsory for all health insurance contracts (see Law of 24 November 1971 on Health Insurance; LGBl. 1971 No. 50, and the Ordinance of 14 March 2000 on the Health Insurance Act; LGBl. 2000 No. 74).

The Law on Health Insurance distinguishes compulsory insurance (basic healthcare, daily sickness allowance) and voluntary insurance (benefits exceeding compulsory insurance). Compulsory insurance coverage under the Law on Health Insurance (basic healthcare and daily sickness allowance) is reserved to the recognized health insurance schemes (articles 1 et seqq. Law on Health Insurance).

### **Compulsory accident insurance**

Compulsory accident insurance (against occupational accidents, non-occupational accidents, occupational diseases) is governed by the Compulsory Accident Insurance Act of 6 December 1995 (LGBl. 1990 No. 46) and the Compulsory Accident Insurance Ordinance of 4 September 1990 (LGBl. 1990 No. 70).

Pensions funds may not interfere with the scope of the abovementioned compulsory social insurances.

## **2. OPA provisions applicable to pension funds**

Since pension funds are carried out in the field of voluntary occupational old age, disability, and survivors' pensions as referred to in article 2, paragraph 3 OPA, they are subject to the provisions of the OPA referred to in that paragraph with respect to their activities in Liechtenstein. The most important of these provisions are the following:

### **Article 5 OPA - Association of self-employed persons**

Self-employed persons may associate with a pension fund if its rules and regulations so provide. Where such an association occurs, the self-employed person must pay full contributions.

### **Article 7, paragraphs 5, 6 and 8 OPA - Contributions**

The employee contributions (if there are any) must be withheld from the paycheck and transferred to the institution at the latest at the end of each calendar quarter, together with

the employer contribution. The employer has the option of transferring its contributions in advance as a contribution reserve.

The contributions of employees shall be used individually for their insurance. The employer contributions shall be levied globally for all insured employees. They may be used predominantly for the benefit of older insured parties.

If employees are sent abroad, contributions may continue to be paid for the duration of the assignment.

**Article 8c, paragraph 2 OPA - Reduction of disability and survivors' benefits**

If there is an increased risk of disability or death for an employee for health reasons as set out in article 8c, paragraph 2 OPA, then the disability or survivors' benefits to be insured for him that exceed the minimum benefits under this Act may be reduced appropriately, but at most by half. The reduction must be mitigated upon expiry of each insurance year by at least one tenth of the original reduction rate, so that the employee is fully insured after at most ten expired insured years.

**Article 9, paragraphs 4, 6 and 7 OPA - Insured benefits**

According to article 9, paragraphs 4, 6 and 7 OPA, the nature and amount of the insured benefits must be specified in the rules and regulations of the institution. The benefits must be determined such that they can be funded with the income of the institution.

The benefits may be reduced to the extent that, together with the other allowable income, they exceed 90% of the presumptive earnings lost (the allowable income is defined in article 10 OPO).

Neither benefits from insurances which the insured employee has concluded voluntarily and has paid for himself shall be allowable, nor incapacity benefits, nor settlements.

**Articles 11 and 12 OPA - Vested benefits / Use of vested benefits**

Where an employee withdraws from the institution for reasons other than age, disability, or death, then vested benefits shall be paid. Any shortfall may be allowed on a pro rata basis.

### **Articles 12a to 12d OPA - Divorce**

Based on article 12 OPA, these articles govern the division of vested benefits in the event of divorce. It should be noted that the legislative power has specified the rules for calculating the share in the vested benefits of the other spouse (article 12a OPA) or reasonable compensation has been fixed by the court in divorce proceedings. According to article 12c OPA, the obligated spouse may buy back into the pension within the scope of the transferred withdrawal benefits. The institution must fulfill certain information and documentation requirements in the regard (article 12d OPA).

### **Article 16 OPA - Rules and regulations**

Every institution is required to issue rules and regulations (a provision plan) that set out the rights and obligations of the insured employees and of the employer in respect of the pension fund. In particular, the rules and regulations must specify the insured benefits, the amount of the contributions to be made, and the vested benefits, and they shall govern the organization of the institution.

### **Article 18 - Assignment, pledging, and offsetting**

Entitlements and future benefits arising from occupational old age, disability, and survivors' insurance may not be assigned or pledged before the benefits become due.

Recognized or judicially certified claims of the institution or claims of the employer assigned to the institution which refer to contributions that were not deducted from wages may be offset with pension benefits in respect of a member or a beneficiary.

### **Article 18a OPA - Period of limitation**

Entitlements to benefits shall not be subject to a period of limitation, as long as the insured party has not left the institution at the time the insured event occurs.

Claims to periodic contributions and benefits shall be subject to a period of limitation of five years, and other claims to a period of limitation of ten years.

### **Article 19a OPA - Transparency**

Institutions must observe the principle of transparency with respect to the contribution system, funding, assets and accounting.

The pension fund must be able to provide information on return on capital, actuarial risk trend, calculation of the technical provision, accumulation of reserves, and the cover ratio. The general administrative costs, the asset management costs, and the costs for marketing and advertisement must be reported in the income statement.

### **Article 22d OPA - Cancellation of contracts**

Upon cancellation of contracts between insurance undertakings and pension funds or between pension funds and employers (sponsoring undertakings), the requirements set out in article 22d OPA with respect to calculation of the technical provision and the surrender costs must be observed.

### **3. Law of 10 March 1999 on Gender Equality (Gender Equality Act; LGBl. 1999 No. 96)**

No one may be directly or indirectly discriminated due to marital status or family status or pregnancy. This also applies to access to employment, professional advancement, compensation and organization.

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## **III. Labor law requirements**

### **General Civil Code of 1 June 1811 (ABGB; LGBl No. 210.0):**

§1173a articles 1 et seqq. of the General Civil Code (ABGB) govern labor contract law. The following requirements apply to pensions funds and the Liechtenstein sponsoring undertakings:

#### **§1173a article 28a ABGB - Processing of personal data**

The employer may only process data concerning the employee to the extent that the data concerns the employee's qualifications for the employment relationship or is necessary for execution of the labor contract. The requirements of the Data Protection Act apply mutatis mutandis.

### **§1173a articles 37 and 38 ABGB - Responsibilities of the employer/Claims of the employee**

Article 37 ABGB governs allocations to Institutions for occupational retirement provision and the payment of contributions and information requirements relating to employee benefits. In this connection, article 37, paragraph 4 ABGB requires employers to provide employees with the requisite information concerning the employees' claims vis-à-vis an employee benefit institution or an insurance carrier. This provision is in general binding, and paragraph 4 may only be deviated from for the benefit of the employee.

Article 38 ABGB governs the claims of the employee in the case of savings schemes as follows:

If the employee has paid contributions to a savings scheme for the purpose of old age, survivors' or disability provision, and if the employee does not receive benefits from this scheme upon termination of employment, then the employee may assert a claim vis-à-vis the scheme that corresponds at least to his/her contributions plus interest.

If contributions have been made by the employee and the employer or, pursuant to an agreement, only by the employer for five or more years, then, in addition to the employee's own contributions, the claim of the employee shall amount to a share of the employer contributions commensurable to the number of years contributions were made, in both cases plus interest.

If contributions have been made for 20 or more years, then the claim corresponds to the entire savings balance accumulated by the employee and employer contributions, plus interest.

If the savings scheme is connected with risk insurance, then the expenses to cover the risk for the duration of the employment relationship are deducted from the employee's claim.

### **§1173a articles 43 et seq. ABGB - Transfer of employment relationship**

Articles 43 et seq. ABGB govern the transfer of the employment relationship (and the transfer of all associated rights and duties from the seller to the buyer) where an undertaking, an operation, or part of an undertaking or operation is transferred by contract or merger. See, however, §1173a article 43, paragraph 1, sentence 2 ABGB. According to this rule, rights are



not transferred which the employee is entitled to with respect to benefits of internal or external social insurance schemes not covered by the legislative mandate.

§1173a article 43a ABGB governs the right to information and the right to be heard (also in the event of transfer of parts of the operation, etc.). In particular, employee representatives must, in accordance with §1173a article 43a, paragraph 1 ABGB, be notified of the legal, economic, and social consequences of the transfer for employees in the course of the information and hearings process.

§1173a article 43b ABGB excludes application of §1173a article 43, paragraphs 1, 4 to 9 ABGB with a view to ensuring the survival of insolvent undertakings in the case of transfers as part of the liquidation procedure.

#### Article 43b - Bankruptcy of the seller

In the case of transfers of undertakings, operations, or parts of undertakings or operations in which bankruptcy proceedings have been initiated against the seller, or an equivalent procedure with the goal of dissolving the assets, article 43, paragraphs 1, 4 to 9 do not apply.

#### **§1173a article 60 et seq. ABGB**

§1173a article 60 ABGB governs the maturity of claims arising from the employment relationship, and §1173a articles 62 to 64 ABGB govern compensation for termination.

The principle of free mobility applies with respect to (compulsory and above-compulsory) occupational pensions, which entails a reduction of the compensation for termination.

According to §1173a article 60 ABGB, the employer is not required to pay compensation to the extent that the employee benefit scheme must pay future pension benefits exceeding the contributions made by the employers, including interest in the case of savings scheme, minus the expenses to cover risks for the duration of the employment relationship. The employer is also not required to pay compensation if the employer guarantees future pension benefits to the employee by way of a binding agreement or has a third party guarantee these benefits.

#### **IV. Information requirements**

##### **Article 33 PFA - Information to be provided to members, beneficiaries, and sponsoring undertakings**

The pension fund is required to regularly inform members, beneficiaries, and sponsoring undertakings on the requirements of the pension schemes, the benefits, and the course of business of the institution.

##### **Article 32 PFO - Information to be given to the members and beneficiaries**

The institution must meet the following information requirements:

- 1) The institution shall inform the members every year on the situation of the institution as well as the current level of financing of their accrued individual entitlements.
- 2) The institution shall, within a reasonable time, provide the members and beneficiaries with any relevant information regarding changes to the pension-scheme rules.
- 3) Each beneficiary shall receive, on retirement or when other benefits become due, the appropriate information on the benefits which are due and the corresponding payment options.
- 4) On request, members and beneficiaries and their representatives shall receive the following from the institutions:
  - a) the annual account statement and the annual report, and where an institution is responsible for more than one pension scheme, the annual account statement and the annual report relating to each specific scheme;
  - b) information on the investment policy principles;
  - c) detailed and substantial information on the target level of the individual retirement benefits and the level of benefits in case of cessation of employment;
  - d) where the member bears the investment risk, information on the range of investment options, the investment portfolio, the risk exposure, and the costs related to the investments;
  - e) indications of the arrangements relating to the transfer of pension rights to another institution in the event of termination of the employment relationship (see § 1173a article 43, paragraph 1 ABGB).

**How to obtain copies of Liechtenstein laws**

All abovementioned laws may be obtained from the following address:

Government Chancellery, FL - 9490 Vaduz

Tel. + 423 236 61 11

or <http://www.gesetze.li>

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**General information:**

Additional information is available from:

Financial Market Authority Liechtenstein (FMA)  
Heiligkreuz 8  
FL- 9490 Vaduz

Tel. + 423 236 73 73

Fax + 423 236 73 74

or <http://www.fma-li.li>

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Insurance and Pension Funds Supervision

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