A Regional Guide to Retirement Plans & Schemes

ASIA

CORRS CHAMBERS WESTGARTH
lawyers

SCROLL DOWN

Introduction

CORRS CHAMBERS WESTGARTH lawyers

Although retirement plans and schemes are generally jurisdiction-specific creatures, the governance of retirement plans and schemes maintained by multinational corporations is very much a global issue. These arrangements tend to be heavily regulated and pose numerous risks to the sponsor, including legal and regulatory compliance gaps, participant lawsuits, government investigations, embezzlement of trust funds, and plan funding and financial accounting consequences. There are also often tensions between a corporation's desire to harmonize global benefits and/or achieve cost control objectives and the reality of local labor markets and legal requirements. Many employers are in the process of assessing (or reassessing) their governance and risk management structures for their retirement programs on a global basis.

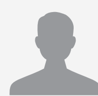
This publication provides a brief overview of the laws relating to the regulation of retirement plans and schemes in 16 key countries. We hope it will be a valuable starting point for multinational and global employers that are developing governance and risk management structures for their retirement programs. While this guide is not a comprehensive discussion of the law governing retirement programs in each applicable country, each chapter summarizes the general contours of the country's social security system and employer-sponsored broad-based plans/schemes. Key areas covered include the principal statutes governing, and the key features of the tax framework applicable to, such plans/schemes, employer-funding obligations and the material rules governing plan/scheme investments, the employer's principal reporting and disclosure obligations, circumstances in which a retirement plan/scheme may be terminated and the associated employer liability for any underfunded benefits, the portability of an employee's benefits, and the requirements, if any, to provide post-retirement cost of living adjustments.

We hope that you will find this publication useful. It has been compiled by lawyers from a major international law firm, as well as partner law firms in other jurisdictions.

User guide

Click to return to start

Click to return to list of countries and regions


Click to browse our directory

Click here to read our legal statement.

Contents

Select a Country/Jurisdiction

Australia

Hong Kong

India

Indonesia

Japan

Macau

Malaysia

Myanmar

New Zealand

Pakistan

PRC

Philippines

Singapore

South Korea

Taiwan

Vietnam

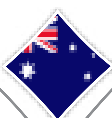
Australia

Contributed by: **Corrs Chambers Westgarth**

1. Does the state provide a pension, retirement income or social security program of some type?

The Australian government makes provision for an Age Pension pursuant to the Social Security Act 1991 (Cth). The Age Pension is a scheme which pays out a regular income to eligible Australians, or in the case of those with significant income and/or assets, a supplement to help them meet the costs of living.

To be eligible for the Age Pension, an applicant must be 65 years of age or older ("**Qualifying Age**"). From 1 July 2017, the Qualifying Age for the Age Pension will be 65 years and 6 months. The Qualifying Age then increases by 6 months every 2 years, until it reaches 67 from 1 July 2023 (as shown in the following table):



Australia

Date of Birth	Qualifying Age
1 July 1952 to 31 December 1953	65 years and 6 months
1 January 1954 to 30 June 1955	66 years
1 July 1955 to 31 December 1956	66 years and 6 months
From 1 January 1957	67 years

In addition to the Qualifying Age, to qualify for the Age Pension an applicant must satisfy:

(a) residency requirements;

(b) an income test; and

(c) an assets test.

The amount of Age Pension that an individual will receive depends on his or her income, assets and other circumstances, including whether the individual is single or not.

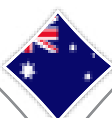
Residency Requirements

The applicant must be an Australian resident and physically present in Australia on the day the claim for the Age Pension is submitted.

Furthermore, the applicant must have been living in Australia continuously for a period of ten years. If the applicant has lived in Australia intermittently over a period of time, then the total of all such periods of residence must be equal to or more than ten years, with at least one period being five years or more.

Income Test

Applicants will be exempt from the income test if they are permanently blind and receive Disability Support Pension and do not receive rent assistance. There are different income cut-off points applicable, depending on whether the applicant is single, married, disabled, or if her or she has any dependents.



Australia

If an applicant's fortnightly income exceeds the cut-off point, the Age Pension is reduced to zero, as summarized below:

Applicant's family situation	Fortnightly Income Cut-off Point
Single	AUD 1,909.80
Couple (combined)	AUD 2,922.80
Illness separated (couple combined)	AUD 3,783.60
Transitional rate pensioners - Single	AUD 2,005.00
Transitional rate pensioners - Couple (combined)	AUD 3,261.00
Transitional rate pensioners - Illness separated (couple combined)	AUD 3,974.00

If an applicant's income is below these limits, then the amount of pension he or she receives will depend on his or her level of income.

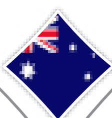
Asset Requirements

As assets can earn income, there are limits to the amount of assets an applicant can own when receiving the Age Pension. Like the income test, the applicable limit of assets will depend on whether the applicant(s) is/are single, a couple, a couple separated by illness, or a couple where only one person is eligible for the pension.

For every AUD 1,000 that an asset is worth over the limit, the Age Pension will be reduced by AUD 1.50 per fortnight. Generally, assets include cash, gifts, real estate, businesses, farms, vehicles and life insurance policies.

The asset limits are updated each year in January, March and September; updated limits can be found via the link below.

https://www.finder.com.au/australian-age-pension-eligibility-requirements



Australia

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/ schemes are employers permitted or required to maintain?

Superannuation Guarantee Scheme

The Superannuation Guarantee (Administration) Act 1992 (Cth) and the Superannuation Guarantee Charge Act 1992 (Cth) are the primary statutes in this area, setting out the responsibilities of employers and administrative arrangements for the operation of the Superannuation Guarantee Scheme ("**SGS**"). Introduced in 1992, the SGS is a compulsory system required to be maintained by employers for employees.

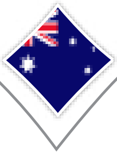
Under the SGS, up to 1 July 2013, employers paid 9% of the ordinary time earnings of their employees (including part-time and casual employees), aged 18 and over and earning AUD 450 (before tax) per month or more, into a compliant superannuation fund or retirement savings account. For the 2013/2014 financial year, the rate of compulsory employer superannuation contributions increased to 9.25%; and for 2014/2015, it increased to 9.50%.

The Australian government announced in the Federal Budget on 13 May 2014 that the rate of employer contributions would remain at 9.50% until 30 June 2018. The rate will then increase by 0.50% each year until it reaches 12% from 1 July 2022.

Under the SGS, an employer must make the minimum superannuation contributions at least four times a year, by the quarterly due dates. These dates are as follows:

Quarter	Period	Payment due date
1	1 July – 30 September	28 October
2	1 October – 31 December	28 January
3	1 January – 31 March	28 April
4	1 April – 30 June	28 July

If the due date falls on a weekend or public holiday, the payment can be made on the following working day.



Australia

Superannuation Guarantee Charge

If an employer fails to pay the minimum amount on time and into the correct fund, they may be liable to pay the superannuation guarantee charge (“**Charge**”).

The Charge is made up of:

(a) the superannuation guarantee amounts calculated on the employee’s salary or wages;

(b) 10% p.a. interest on those amounts; and

(c) an administration fee of AUD 20 per employee, per quarter.

The director of a corporate employer that fails to pay the Charge by the due date will automatically become personally liable for a penalty equal to the unpaid amount.

Employer superannuation contributions are paid into a complying superannuation fund or retirement savings account. These funds/accounts must meet specific requirements and obligations under various federal laws (see further responses below).

Accessing Superannuation Benefits

Access to superannuation benefits is generally restricted to fund members who have reached their “preservation age”. A person’s preservation age ranges from 55 to 60, depending on their date of birth, as summarized below:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

Australia

Types of Superannuation Funds

There are six main types of superannuation funds in Australia:

(a) MySuper accounts

MySuper accounts are a new type of superannuation account and will soon become the default superannuation option when an employee has not chosen a superannuation fund. In general, these accounts have low fees and simple features.

(b) Industry superannuation funds

Industry superannuation funds are often restricted to employees from a specific industry, however larger industry superannuation funds are open to the public. In general, industry superannuation funds are not-for-profit, so the fund directs all of the returns back to members.

(c) Retail superannuation funds

Retail superannuation funds are run for profit, usually by financial institutions (banks) or corporate investment firms. In general, these accounts have a large number of investment options and have medium to high fees.

(d) Corporate superannuation funds

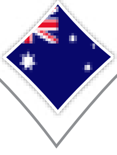
Corporate superannuation funds are organized by employers for their employees. These funds may be operated by larger retail or industry funds or, alternatively, they can be operated by the employer under a board of trustees.

(e) Public sector superannuation funds

Public sector superannuation funds were established for employees of federal and state government departments/agencies. In general, membership of these funds is only open to government employees, and they are run on a not-for-profit basis and have low fees.

(f) Self-managed superannuation funds ("**SMSFs**")

SMSFs are superannuation funds managed by their members. SMSFs may have up to four members, all of whom are trustees (or directors if there is a corporate trustee) and are responsible for the decisions of the fund. Unlike the mainstream funds which are regulated by the Australian Prudential Regulation Authority ("**APRA**"), SMSFs are subject to reporting and other requirements overseen by the Australian Taxation Office ("**ATO**").



Australia

Choice of Fund

Employers are required to allow employees to choose the superannuation fund into which they would like contributions to be paid, by completing a 'standard choice form' within 28 days of commencing employment.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The principal statutes governing superannuation funds in Australia are the:

(a) Superannuation Act 1976 (Cth);

(b) Superannuation (Resolution of Complaints) Act 1993 (Cth);

(c) Superannuation Industry (Supervision) Act 1993 (Cth); and

(d) Superannuation Industry (Supervision) Regulations 1994 (Cth).

The superannuation system is regulated by several key government agencies:

(a) ATO, which administers the relevant legislation for SMSFs;

(b) Australian Securities Investment Commission ("**ASIC**"), which regulates financial services to protect consumers; and

(c) APRA, which supervises superannuation funds other than SMSFs and reviews compliance with the Superannuation Industry (Supervision) Act 1993 (Cth).

Under the SGS, the material requirements for employers include mandatory employer contributions, offering employees a choice of superannuation funds, providing the standard choice form in a timely manner, and refraining from influencing or coercing an employee to choose a particular fund.

For superannuation funds and trustees, the material requirements include holding a Registrable Superannuation Entity Licence issued by APRA, fee and cost disclosure requirements, and stringent reporting and disclosure requirements.

Australia

4. What are the key features of the tax framework that applies to retirement plans/schemes?

The tax that is payable on superannuation contributions will depend on whether the contributions were made before or after income tax was paid; whether the superannuation contributions cap has been exceeded; and the employee's income.

Pre-tax superannuation contributions

These contributions, also known as "concessional contributions", are contributions made towards an employee's superannuation fund before any tax is paid on them. These contributions can include:

(a) the compulsory superannuation guarantee payments made by the employer;

(b) salary sacrifice contributions;

(c) costs paid by the employer on the employee's behalf such as administration fees; and/or

(d) personal contributions claimed as a tax deduction by a self-employed person.

In general, these contributions are taxed at 15%.

However, this concessional tax only applies for contributions below the level of the contribution caps. The applicable cap will depend on the individual's age, as summarized below for the 2016/17 financial year:

Cap	Applicable tax rate if the cap is exceeded
AUD 30,000 (if under 49 years of age in the 2016/17 financial year)	Amounts over AUD 30,000 will be added to the person's assessable income and taxed at their marginal tax rate (plus excess concessional contributions charge)
AUD 35,000 (if 49 years of age or older in the 2016/17 financial year)	Amounts over AUD 35,000 will be added to the person's assessable income and taxed at their marginal tax rate (plus excess concessional contributions charge)

Australia

After-tax superannuation contributions

These contributions, which are made after tax has been paid on them and are generally not subject to further taxation, can include:

(a) contributions an employee or his or her employer make from after-tax income;

(b) contributions an employee's spouse makes to the employee's superannuation fund; and

(c) personal contributions by an employee that are not claimed as an income tax deduction.

The applicable contribution caps are summarized below:

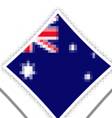
Financial Year	Non Concessional Cap	Tax on amounts over cap
2016–17	AUD 180,000	47% (plus 2% budget repair levy)
2015–16	AUD 180,000	47% (plus 2% budget repair levy)
2014–15	AUD 180,000	47% (plus 2% budget repair levy)
2013–14	AUD 150,000	46.5%

Please note that the Australian government announced on 15 September 2016 that the annual non-concessional contributions cap will be lowered from AUD 180,000 to AUD 100,000, with effect from 1 July 2017 (although legislation is yet to be passed by federal Parliament implementing this change).

Division 293 tax for high-income earners

Division 293 tax is an additional tax on superannuation contributions if an individual's annual income exceeds AUD 300,000.

Division 293 tax is charged at the rate of 15% of the taxable concessional contributions above the AUD 300,000 threshold.



Australia

The government has indicated that the income threshold for Division 293 tax will be reduced from AUD 300,000 to AUD 250,000 from 1 July 2017.

Taxation of superannuation benefits

Superannuation benefits, both lump sums and income streams, paid from a taxed superannuation fund to individuals 60 years of age or older are tax-free and not included as assessable income.

If an individual is over their preservation age, but under 60, superannuation benefits are included as assessable income. However, the individual is entitled to a 15% offset on the taxable component of any payments received from superannuation income streams.

Lump sum amounts are tax-free up to the low rate cap amount. The low rate cap amount for the 2016/2017 financial year is AUD 195,000.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Superannuation funds are generally made up of employer contributions, employee contributions and, in certain circumstances, additional government contributions. These funds are invested by the superannuation fund's trustee with the objective of growing the account while the employee is still working.

Employer Contributions

As indicated above, under the SGS, employers are required to make superannuation contributions (presently, 9.5% of income) on behalf of all their eligible employees. These contributions are paid directly to each employee's nominated superannuation fund.

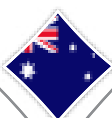
Employee Contributions

Under the SGS, there is no obligation on employees to make minimum personal contributions to their superannuation fund. However, employees are free to make personal contributions to their own or their spouse's superannuation fund.

These employee contributions are in addition to the compulsory contributions to be paid by the employer, and do not include contributions made through a salary sacrifice arrangement.

Personal contributions are paid by an employee from their after-tax income and are non-concessional. They will contribute to the non-concessional cap (discussed above) unless the employee has claimed a tax deduction for them.

Salary sacrifice, also known as salary packaging or total remuneration packaging, facilitates an arrangement between



Australia

an employer and employee where the employee agrees to forego part of their future entitlement to salary or wages, in return for the employer providing them with superannuation benefits of a similar value.

Government Contributions – low income superannuation contribution

The low income superannuation contribution ("**LISC**") scheme is a federal government initiative to help low-income earners save for retirement. Individuals who earn AUD 37,000 or less per year may be eligible to receive an LISC payment of up to AUD 500 for the financial year.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

A regulated superannuation fund, approved deposit fund or a pooled superannuation trust (collectively, "**Entities**") must comply with relevant provisions of the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation Industry (Supervision) Regulations 1994 (Cth).

Entities which fail to comply with applicable provisions of the above legislation may lose their complying fund status and their entitlement to tax concessions. In addition, civil penalties of up to AUD 360,000 may be imposed on any person who contravenes, or is involved in the contravention of, these statutory requirements. In some instances, contravention of the provisions may result in the imposition of criminal sanctions (including imprisonment).

The main duties and obligations of trustees and investment managers of the above Entities, in relation to superannuation investments, include:

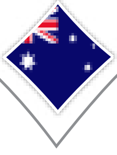
(a) engaging in investments on an "arm's length" basis;

(b) not engaging in misleading or deceptive conduct;

(c) maintaining the superannuation fund in accordance with the "sole purpose test", i.e., the sole purpose of providing retirement benefits to fund members (or their dependents);

(d) complying with covenants (the fund's general governing rules), such as acting honestly in all matters, exercising the same degree of care and diligence as a prudent superannuation trustee would exercise in relation to making investments, and allowing the beneficiaries (i.e., employees) to access any prescribed information or documents in relation to the fund and the investments;

(e) formulating, reviewing regularly and giving effect to investment strategies for the whole of the fund, and for each investment option offered, having regard to a range of factors such as the risks, likely returns, diversification and liquidity issues;



Australia

(f) avoiding conflicts of interests and managing those conflicts appropriately; and

(g) ensuring that records and accounts relating to investments are properly kept and are maintained for at least five years. These records include minutes outlining investment decision making, fund review strategies and consideration of insurance.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

Employment records and pay slips

Under the Fair Work Act 2009 (Cth) and Fair Work Regulations 2009 (Cth), employers are required to maintain records that contain information about the superannuation contributions made on behalf of employees under the SGS. Similar information must be provided on pay slips which are required to be provided to employees on a regular basis.

This information will generally include:

(a) the amount of each contribution that the employer actually made during the period to which the employee record/ pay slip relates, and the name of the fund to which the contributions were made; or

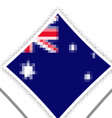
(b) the entitlements to superannuation that accrued for the employee during the period, and the name of the fund to which the contributions will be made.

Product Disclosure Statements

A Product Disclosure Statement ("**PDS**") is a document issued by a financial product provider in relation to the offer of that financial product. It gives information about the issuer, benefits, risks and costs of the product and other information.

The PDS provisions in Part 7.9 of the Corporations Act 2001 (Cth) apply to all superannuation entities and retirement savings account providers.

Generally, this requires the disclosure of all relevant information that investors and their professional advisers would reasonably require to make an informed assessment of the rights and liabilities attaching to the products; and of the assets and liabilities, financial position and performance, profits and losses and prospects of the body offering those products.



Australia

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

An employer is not able to alter the requirements to make mandatory superannuation contributions on behalf of eligible employees under the SGS.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

Employers are not permitted to withdraw from or terminate the SGS.

Under the SGS, an employer is exempt from making superannuation contributions in very limited circumstances, and penalties apply when an employer fails to make those contributions for eligible employees.

Employees not eligible under the SGS

Employers are not obliged to make superannuation contributions under the SGS for:

- non-resident employees for work they do outside Australia;
- some foreign executives who hold certain visas or entry permits;
- employees paid under the Community Development Employment Program;
- members of the army, navy or air force reserve for work carried out in that role; and
- employees temporarily working in Australia who are covered by a bilateral superannuation agreement.

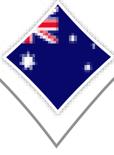
Furthermore, if an employer is a non-resident for taxation purposes, there is no obligation to make superannuation contributions under the SGS for resident employees for work performed outside of Australia.

Choice of fund and other liabilities employers may face

Under the SGS (as indicated above), employers are required to give employees a choice of superannuation funds. If an employer fails to do so, they are liable for the Charge.

Employers may breach this obligation if they:

(a) fail to provide employees with the standard choice form on time;



Australia

(b) fail to pay contributions to the nominated account; or

(c) charge a fee for implementing the employee's choice of fund.

Other potential liabilities under the SGS include:

(a) failing to keep adequate records;

(b) failing to pass on a Tax File Number; and

(c) arrangements to avoid SGS obligations.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Generally, when an employee changes jobs, they can transfer their accrued benefits between different superannuation funds. The accrued benefits made by an employee and their previous employer are held in an account selected by the employee (original fund). When an employee changes jobs, they may treat their accrued benefits in one of the following ways:

(a) transfer the accrued benefits from the original fund to a new superannuation fund of their choice and direct their new employer to continue making contributions to this new superannuation fund; or

(b) retain the original fund and direct their new employer to continue making contributions.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

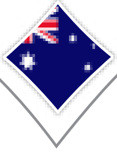
Superannuation Guarantee Scheme

See question 2 above regarding the applicable "preservation age" for accessing superannuation benefits.

The ability of workers aged over 65 to continue making superannuation contributions (e.g., if working part-time after retirement) is subject to satisfying a "work test", i.e., performing paid work for at least 40 hours in any 30-day period in the relevant financial year.

Age Pension

Currently, certain pensions including the Age Pension are indexed twice each year, by the greater of the movement in the Consumer Price Index ("**CPI**") or the Pensioner and Beneficiary Living Cost Index ("**PBLCI**"). Indexing the Age Pension in this way maintains the real value of pensions over time.



Australia

The CPI is a measure of changes in the prices paid by households for a fixed basket of goods or services. The PBLCI measures the effect of changes in prices on the out-of-pocket living expenses experienced by the age pensioner and other households whose main source of income is a government payment.

CORRS CHAMBERS WESTGARTH lawyers

Contributed by: **John Tuck**, Corrs Chambers Westgarth

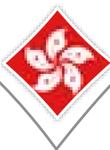
Hong Kong

Contributed by: **Mayer Brown JSM**

1. Does the state provide a pension, retirement income or social security program of some type?

The Hong Kong government does not provide a statutory pension, except for specified categories of civil servants, judicial officers and teachers in government-subsidized schools. The government has instead enacted the Mandatory Provident Fund Schemes Ordinance ("**MPFSO**") (Chapter 485, Laws of Hong Kong), which provides the statutory framework for a system of privately-managed retirement savings schemes, called Mandatory Provident Fund ("**MPF**") schemes, for employees to accrue financial benefits for retirement.

The MPF system is a compulsory retirement savings program whereby employees and employers are required to make monthly contributions into retirement protection schemes. MPF schemes are created and managed by MPF trustees. In general, employers must select a MPF trustee, join its MPF scheme and enroll its employees into that scheme.



Hong Kong

Under normal circumstances, an employee can only access and withdraw his or her accrued benefits under his or her MPF scheme account upon the age of 65. However, there are specific circumstances where accrued benefits may be withdrawn earlier (see response to question 2 for details).

An MPF scheme is required by the MPF legislation to be managed under trust by an approved trustee. Under a trust structure, the trustee is the legal owner of the funds under the relevant MPF scheme but holds those funds for the benefit of others, namely, members of the MPF scheme. An investment manager is responsible for managing the investment of the funds of the MPF scheme, and, therefore, accrued benefits in an employee's scheme account will consist of employer and employee contributions, as well as investment returns.

The Hong Kong government provides certain social security benefits for citizens who are in need through various assistance programs, including the Comprehensive Social Security Allowance Scheme (the "**CSSA Scheme**") and the Social Security Allowance Scheme (the "**SSA Scheme**"). To be eligible for assistance under the CSSA Scheme, an applicant must satisfy residence requirements and pass financial tests.

The SSA Scheme is designed to provide a monthly allowance for Hong Kong residents who are 65 years of age or above or who are severely disabled to meet special needs arising from old age or disability. Under the SSA Scheme, different types of allowance are paid at a flat rate to eligible applicants. These include the normal old age allowance, higher old age allowance, normal disability allowance and higher disability allowance. Except for the normal old age allowance, the allowances paid under the SSA Scheme are non-means-tested.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/ schemes are employers permitted or required to maintain?

In general, an employer is required to enroll an employee who is at least 18 but under 65 into an MPF scheme. Certain types of employees are exempted. These include those who are members of an MPF-exempt ORSO scheme that is subject to the regulation of the Occupational Retirement Schemes Ordinance ("**ORSO**") (Chapter 426, Laws of Hong Kong). While both types of schemes (MPF and ORSO) are retirement protection schemes for employees, MPF schemes are compulsory in nature while ORSO schemes are set up voluntarily by employers. The rules of MPF schemes (for example, rules governing the amount of contributions, whether employees have to contribute and the investment choices) must follow the provisions prescribed in the MPFSO and the related regulations. An employer has more discretion in the design of an ORSO scheme and the rules of such a scheme. That said, the employer and the trustee of the ORSO scheme are required to comply with the provisions of the ORSO.

MPF schemes

MPF schemes are defined contribution schemes. There are three types of MPF schemes: master trust schemes, employer-sponsored schemes and industry schemes.

Hong Kong

1. Master trust schemes are the most common type of MPF scheme and are open to employees of the participating employers, self-employed persons and persons with accrued benefits transferred from other schemes. This type of scheme is especially suitable for small and medium-sized enterprises. By pooling together contributions from various employers and their employees, master trust schemes have a high degree of efficiency in terms of scheme administration due to economies of scale.

2. Employer-sponsored schemes are set up by employers, and participation is limited to employees of that single employer who runs such a scheme and its associated companies. This type of scheme is only practical for companies with a large number of employees.

3. Industry schemes are schemes specifically established for employees of the catering and construction industries, particularly casual employees (i.e., workers employed on a day-to-day basis or for a fixed period of less than 60 days). Features are set up to minimize the costs involved in transferring accrued benefits when workers change employment within the same industry (for example, casual employees do not need to change schemes when they change jobs, so long as their previous and new employers have registered with the same industry scheme).

Under the MPFSO, benefits have to be preserved within the MPF System until the scheme members meet the MPF Retirement Criteria. The MPF Retirement Criteria are when a member reaches his or her 65th birthday (or 60th birthday if he or she retires early), dies, is diagnosed with terminal illness, is in total incapacity or is permanently leaving Hong Kong.

ORSO schemes

ORSO schemes are established by an employer for employees of that employer and its associated companies. Generally, ORSO schemes can be divided into two types: defined contribution schemes and defined benefit schemes.

- Defined contribution schemes are commonly known as provident funds under which the benefits are determined solely by reference to the contributions paid, the declared return, and, where appropriate, the qualifying service and age of the employee.

- Defined benefit schemes include all other schemes that are not defined contribution schemes. Generally, they are schemes under which the benefits are determined by a formula that takes into account the years of service and final salary of the scheme member. Schemes that contain elements of both the defined contribution scheme and the defined benefit scheme are to be classified as defined benefit schemes.

An ORSO scheme may be MPF-exempted or not MPF-exempted.

- If an ORSO scheme is <u>not</u> MPF-exempted, its members are still required by law to be enrolled in an MPF scheme that provides the mandatory and most basic level of retirement savings according to MPFSO. The ORSO scheme simply acts as a top-up scheme to provide additional voluntary contributions by the employer above and beyond the MPF savings.

Hong Kong

- An ORSO scheme that has received MPF exemption acts as an alternative to the MPF scheme. An employer that wishes to operate an MPF-exempted ORSO scheme must provide its employees with a one-off choice whether to join the ORSO scheme or the MPF scheme.

Benefits are normally paid to the scheme member upon retirement or termination of employment. However, as ORSO schemes are set up voluntarily by employers, an employer and the trustee may agree on the governing rules of the ORSO scheme, including when benefits are payable and the conditions of payment.

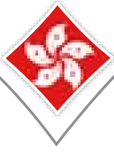
For the members who joined an MPF-exempted ORSO registered scheme after December 1, 2000, part of their accrued benefits under the ORSO scheme will be subject to the preservation, portability and withdrawal requirements under the Mandatory Provident Fund Schemes (Exemption) Regulation ("**MPF Exemption Regulation**"). This means that, when the member becomes entitled to receive benefits under the ORSO scheme, a portion of the benefits representing the minimum MPF benefits (which is determined pursuant to the MPF Exemption Regulation) shall be preserved and can only be withdrawn when he or she meets the MPF Retirement Criteria (see above).

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The MPFSO provides the statutory framework for the MPF system, and the Mandatory Provident Fund Schemes Authority ("**MPFA**") is the government authority regulating and supervising the operation of the MPF system.

Under the MPFSO, material requirements applicable to MPF schemes include employers' and employees' mandatory contributions to an MPF scheme (see response to question 5 for details), the duty of self-employed persons to become scheme members, separation of assets from employers and MPF trustees, rules regarding vesting and investment regulations, stringent approval and registration criteria for MPF trustees and intermediaries, reporting and disclosure requirements of MPF trustees and intermediaries, and the requirement for MPF trustees to take out professional indemnity insurance to indemnify scheme members in the event of misfeasance or illegal conduct by the trustee (or other service provider to which the trustee delegated its duties).

For ORSO schemes, the ORSO imposes affirmative requirements on employers that voluntarily choose to operate ORSO schemes. Requirements include registration and exemption criteria for ORSO schemes, separation of assets from the employer or administrator of the scheme, investment restrictions, the duty of an employer to fund the scheme to meet both its aggregate vested liability and aggregate past service liability, and reporting and disclosure requirements. MPF-exempt ORSO schemes are also subject to the requirements under the MPF Exemption Regulation.



Hong Kong

4. What are the key features of the tax framework that applies to retirement plans/schemes?

Contributions made to retirement schemes

The Hong Kong government grants certain tax concessions on the mandatory contributions made by employees and employers under the Inland Revenue Ordinance ("**IRO**") (Chapter 112, Laws of Hong Kong). Generally, the following tax deductions are available:

(a) an employee can claim tax deductions (from salaries tax) for his or her mandatory contributions to an MPF scheme, subject to the maximum amount per year as prescribed in the legislation. The maximum deduction from 2015/2016 onward is HKD 18,000, and this is subject to change.

Any contributions made exceeding 5% of an employee's relevant income or HKD 1,500, whichever is more, would be considered as voluntary contributions and not tax deductible.

(b) an employer can claim tax deductions (from profits tax) for the mandatory and voluntary contributions made by it to an MPF scheme to the extent they do not exceed 15% of the employee's total annual emoluments; and

(c) an employee can claim tax deductions for his or her contributions to an MPF-exempted ORSO scheme. The maximum amount deductible in any year of assessment should be the lower of the following three amounts:

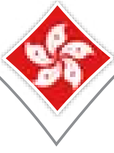
- his or her contributions to the MPF-exempted ORSO scheme in the year of assessment;
- the amount of the mandatory contributions that he or she would have been required to pay if he or she had contributed as an employee to an MPF scheme; or
- the maximum deductible amount (see subparagraph (a)) for the relevant year of assessment.

Withdrawal from retirement schemes

Whether an employee's withdrawals (or *deemed* withdrawals) from a retirement scheme are taxable depends on the nature of the contributions and the circumstances in which the withdrawals are made.

Generally, an employee's withdrawal from an MPF scheme of his or her accrued benefits attributable to both employer and employee mandatory contributions is not assessable to tax.

Withdrawals of accrued benefits from an MPF scheme are taxable only in the case of termination of employment where the employee's service is less than 10 years and the employer has made voluntary contributions.



Hong Kong

Generally, for both MPF schemes and recognized ORSO schemes (i.e., MPF-exempted), when an employee receives benefits upon termination of service and the period of employment is less than 10 years, any amount in excess of the “proportionate benefit” (as defined in the tax legislation) is taxable.

The employer contribution portion of any amount received from a registered ORSO scheme not due to termination of service, death, incapacity or retirement of the employee (such as payment of benefits during employment) is subject to tax.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

MPF schemes

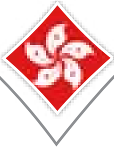
Under the MPFO, an employer must make a minimum monthly contribution of an amount equal to 5% of an employee’s relevant income (currently capped at HKD 30,000 per month). An employee (except for one whose monthly relevant income is less than HKD 7,100) must contribute a minimum of 5% of his or her monthly relevant income (currently capped at HKD 30,000 per month) to the scheme.

The obligation on an employer to pay the monthly contributions arises if the employee is in continuous employment for more than 60 days. Conversely, no contributions would be payable if the employee is in continuous employment for less than 60 days. However, an employer could not evade its obligations by intentionally breaking up an employee’s employment into periods of less than 60 days each; an employer must still make the necessary contributions if evidence indicates that the employment relationship lasts for 60 days in total or more. An employer commits an offense if it fails to make mandatory contributions to an MPF scheme in respect of an eligible employee.

ORSO schemes

Under a defined contribution scheme, an employer is required to contribute in accordance with the governing rules in the trust deed constituting the scheme. For defined benefit schemes, employers would need to contribute at a level necessary to fund the benefits on an ongoing basis. In practice, this means that the employer must implement the recommendations of the actuary regarding funding and periodical actuarial reviews.

The MPFA may impose on the employer of an MPF-exempted ORSO registered scheme a surcharge on the amount of contribution arrears. An employer will also need to pay a fee to the MPFA in respect of each period of 12 months during which the scheme continues to be a registered scheme and beginning on the first or any subsequent anniversary of its registration and part of such period. This fee shall be paid to the MPFA not later than one month after the first day of the period in respect of which it is payable. If the fee is not paid by each such deadline, the MPFA could additionally impose on the employer a surcharge. The MPFA could also initiate legal proceedings to recover any contributions in arrears, the financial penalty and/or contribution surcharge as a debt due.



Hong Kong

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

MPF schemes

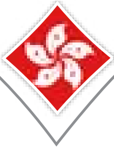
An employer has the choice as to which MPF scheme it will offer to an employee. Once enrolled in an MPF scheme, the employee has the right to choose the investment options within the MPF scheme. Relevantly, the legislation is changing such that from April 1, 2017 onwards each MPF scheme has to offer a Default Investment Strategy (the "**DIS**"). If, for any reason, scheme members do not give their scheme trustees an investment instruction for their MPF benefits, their MPF benefits will be invested automatically in accordance with the DIS.

Investments under MPF schemes are subject to strict regulations to safeguard the interests of scheme members. MPF investments must only be made by investment managers who are recognized by or licensed to carry on regulated activities by the relevant regulatory authorities (e.g., the Securities and Futures Commission ("**SFC**")). Both MPF trustees and investment managers are bound by the duties and powers as set out in the law regarding the administration and investment of the funds under an MPF scheme. MPF investments must be "permissible investments" as prescribed in the MPFSO and are subject to general restrictions, such as the spread of the investments, borrowing and lending of securities, and currency exposure.

Scheme trustees are required by the MPFA to provide details of the schemes they operate to enable participating employers and members to make appropriate decisions according to their own needs. Trustees are obliged to have a standardized fee table for disclosure of fees and charges; have fund fact sheets to summarize key information in relation to the particulars and performance of a fund; provide a fund expense ratio that shows the total level of fund expenses as a percentage of the fund value; and provide an annual benefit statement that confirms the scheme and membership details. Non-compliance with the above disclosure requirements would attract sanctions imposed by the MPFA. Additionally, scheme trustees must report an employer's default in paying mandatory contributions to the MPFA, and the MPFA will accordingly take action against the employer.

ORSO schemes

Under the ORSO, in relation to MPF-exempted ORSO schemes, not more than 10% of the assets of the scheme should consist of "restricted investments" as defined by the ORSO. Also, save to the extent allowed under the ORSO, no asset of the scheme should consist of investments in the share capital of a body corporate which is neither listed on a recognized stock market as defined in the Securities and Futures Ordinance (Chapter 571, Laws of Hong Kong) (the "**SFO**") nor publicly listed on a specified stock exchange. Further, under the MPF Exemption Regulation, trustees and investment managers of the scheme must ensure that derivatives are not used in a way that results in the assets of the scheme being leveraged. They must also ensure that money is not borrowed for any purpose of a scheme except to pay accrued



Hong Kong

benefits in respect of scheme members, or to settle transactions involving the acquisition or disposal of securities or other investments relating to the scheme. Any loan to the relevant employer of a scheme or to its associate from the assets under the scheme is strictly prohibited.

Employers are required to disclose to scheme members details including: the criteria and conditions of membership, how members' and the employer's contributions are calculated, what benefits are payable under the scheme, how such benefits are calculated, the conditions on which the benefits are paid, which benefits (if any) are payable on a discretionary basis, any amendment made to the scheme particulars, termination of the scheme, and when a member ceases employment, the particulars of his or her accrued benefits under the scheme. Furthermore, employers must provide each scheme member with an annual statement of his or her benefit entitlement under the scheme. Under the ORSO, each scheme member or a consultative committee of a scheme formed by election among scheme members has the statutory right to request the above information from the relevant employer and to inspect relevant documents.

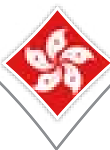
The SFC and the MPFA monitor the compliance of both MPF and ORSO scheme trustees and investment managers with the above requirements and may impose sanctions in the event of non-compliance.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

The Mandatory Provident Fund Schemes (General) Regulation sets out the requirements on reporting and disclosure obligations on MPF trustees. The MPFA has published a Code on MPF Investment Funds and various Guidelines that provide guidance and elaborate on these requirements. General reporting requirements include the filing of monthly returns, quarterly and annual statements and financial reports to the MPFA.

To ensure that employers and scheme members are provided with adequate information to enable them to make informed investment decisions, the MPFA has issued a Code on Disclosure for MPF Investment Funds to give guidance to trustees and other service providers about the disclosure of information on MPF schemes and constituent funds and information about fees, charges and performance. These include but are not limited to:

- Fee Table - a standardized table for disclosure of fees and charges, as may be updated from time to time when there is any change in fees.
- On-going Cost Illustration - a figure that illustrates the total effect of fees and charges payable in dollar terms by converting the latest Fund Expense Ratio figure into dollars and adding that to any direct charges that a scheme member might pay, such as a contribution charge or offer spread.
- Fund Fact Sheet ("**FFS**") - a summary of key information including particulars, e.g., fund size, investment objectives and performance of a fund. At least two FFS will be issued to scheme members for each financial period, one reporting as at the end of the financial period and the other as at a date six months after the end of the financial period.



Hong Kong

- Fund Expense Ratio ("**FER**") - a ratio that measures the expenses incurred in investing through a fund expressed as a percentage of fund size. The FER is calculated based on data from the latest completed financial period. It is not necessary for funds with less than two years of history to show an FER.
- Annual Benefit Statement - an historical record of the member's account at a point in time. It confirms scheme membership and membership details, the status and the number of accounts held by the member. It also allows scheme members to check the income and expenditure of their accounts (including contributions, transfers and transactions), account balance and accruals, the extent to which they are vested, and the gains and losses associated with their accounts over the relevant financial period.

The MPFA is empowered to regulate and monitor the operation of the MPF system and the MPF scheme trustees' compliance with statutory requirements. If the MPFA finds any of the approved trustees is breaching any statutory requirements, the MPFA may take enforcement measures, such as imposing fines or issuing warnings so that remedial actions can be taken. If the breach is of a serious nature, an audit on the trustee may also be conducted.

The SFC is involved in the regulation of MPF products as well but only to the extent that their offering documents and marketing materials are required to be authorized by the SFC prior to their issue or publication in Hong Kong.

The issue of any unauthorized advertisement, invitation or document to the public in Hong Kong to participate or invest in MPF schemes or pooled investment funds may amount to an offense under section 103(1) of the SFO. The SFC is empowered under section 105(1) of the SFO to authorize any advertisement, invitation or document referred to in section 103(1) and to impose any corresponding authorization conditions as it considers appropriate.

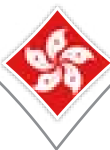
Notably, as of January 30, 2015, the MPFSO and ORSO were amended to allow disclosure of information by administrators and employers to foreign tax authorities, such as the United States Internal Revenue Service under the Foreign Account Tax Compliance Act.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

MPF schemes

Generally, an employer has a rather passive role in the administration and operation of an MPF scheme which is a master trust scheme. MPF schemes are administered by MPF trustees and their delegates. Generally it will be the trustee that has the power of amendment. Depending on the rules of the particular schemes, participating employers may have the right to be consulted for any amendments to the terms of the MPF scheme.

The position may be different for an employer-sponsored scheme. An employer tends to have more control over the operation of such scheme and that may include the power to amend the terms of the scheme.



Hong Kong

ORSO schemes

The ability of the employer to amend or alter the terms of the ORSO scheme will depend on the Trust Deed governing the scheme. In some cases, either the employer or the trustee has the power to amend. In other cases, the power of amendment needs to be exercised jointly by the employer and the trustee.

The ORSO also sets out certain restrictions on the power of amendment. The ORSO requires that the terms of the ORSO scheme:

(i) do not enable any person, without the consent of the scheme member concerned, to alter to the member's detriment either his or her accrued rights under the scheme or his or her vested benefits, unless such alteration is consequential upon an amendment to the terms of the scheme consented to by not less than 90% of the members of the scheme; and

(ii) provide that where an alteration described in sub-subparagraph (i) occurs, any vested benefit which the member concerned is entitled to receive as of the date of such alteration under the terms of the scheme as if the condition precedent (if any) of such entitlement had been satisfied shall, if he or she so elects, become payable to him or her.

The MPF Exemption Regulation contains further restrictions applicable to MPF-exempt ORSO schemes. It provides that:

"The governing rules of a relevant scheme shall provide for the situation that, where the relevant employer decides to reduce any member's future benefits or rights under the scheme, the member is given an opportunity to become a member of a registered scheme."

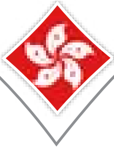
9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

MPF schemes

Generally, an employer may terminate its participation in an MPF scheme which is a master trust scheme by giving notice to the trustee of the MPF scheme. There is a statutory process which the employer can adopt. The employer will also need to comply with the terms of the MPF scheme in ceasing its participation, e.g., by giving the necessary notice.

Where there is an employer-sponsored scheme, the employer may have the power to terminate the scheme, and it needs to exercise that power in accordance with the terms of the scheme.

Such termination may give rise to the right of employees to switch their accrued benefits between schemes.



Hong Kong

ORSO schemes

An employer may have the power to terminate an ORSO scheme under the Trust Deed governing the scheme. An employer must give notice of the termination of the scheme to the MPFA shortly afterwards. On termination, the employer (and the trustee of the ORSO scheme) will have other obligations such as to apply for cancellation of ORSO registration or MPF exemption where this is relevant. An employer will remain liable to pay any periodic fee due before the effective termination date of the scheme.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Yes. Generally, employees can transfer their accrued benefits between MPF accounts. The MPF contributions made by an employee and their previous employer are held in a contribution account under the MPF scheme selected by the previous employer (i.e., the original scheme). When an employee changes jobs, he or she may treat the accrued benefits (i.e., the accumulated contributions and investment returns) in one of the following ways:

- transfer the accrued benefits from the contribution account in the original scheme to a personal account in any other master trust scheme or industry scheme held by the employee; or
- transfer the accrued benefits from the contribution account in the original scheme to the contribution account in the scheme of the new employer.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

No. Typically, benefits under an MPF scheme or an ORSO scheme are paid out upon a member's termination of employment (including upon retirement). Upon such payment, the member ceases to have any right under the scheme. Pension schemes are rare in Hong Kong.

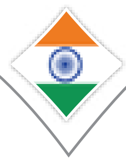
Contributed by: **Duncan Abate & Hong Tran,** Mayer Brown JSM

India

Contributed by: **Trilegal**

1. Does the state provide a pension, retirement income or social security program of some type?

The state provides a pension, retirement and social security program for government employees. However, these programs do not cover private sector employees. With respect to employees in the private sector, the mandatory social security requirement is provided under the Employees' Provident Funds and Miscellaneous Provisions Act 1952 ("**EPF Act**") – and the government authority under the EPF Act is the Employees' Provident Fund Organisation ("**EPFO**"). Under the EPF Act, there is a requirement to make monthly contributions on behalf of both the employer and the employee at 12% of the relevant components of the employee's wages. As a member of these funds, the employee would later be able to avail various benefits under the EPF Act.



India

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

Yes, employers in the private sector are required to maintain retirement plans/schemes. These requirements arise from the EPF Act under which employers covered under the EPF Act are required to make contributions in respect of the eligible employees to the Employees' Provident Fund Scheme 1952 ("**EPF Scheme**") and the Employees' Pension Scheme 1995 ("**EPS**").

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The EPF Act is the principal social security statute that governs the EPF Scheme and the EPS. The EPS was framed for the purpose of providing for a superannuation pension, retiring pension or permanent total disablement pension along with a widow/widower's pension, children pension and orphan pension to the beneficiaries of eligible employees.

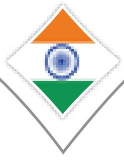
The EPF Act applies to factories engaged in industries listed in Schedule I to the EPF Act employing 20 or more persons and other establishments with 20 persons or more as notified by the Central Government. Further, the Central Government may, by providing two months' notice or upon receiving a specific request from a majority of the workers, extend the applicability of the EPF Act to establishments employing less than 20 persons. An employee is entitled to the benefits under the EPF Act if his or her basic wages are not more than INR 15,000. However, if the employee has been a member of the fund, he or she will continue to remain a member regardless of any change in the salary (i.e., even if the basic wages cross the threshold).

Over and above the mandatory contributions required under the EPF Act, the employer and/or the employee can also choose to make contributions to the National Pension Scheme ("**NPS**") as a voluntary investment option. There are two types of sub-accounts under the NPS account. The Tier-I account is a non-withdrawable retirement account which can be withdrawn only upon meeting certain prescribed exit conditions. The Tier-II account is a voluntary savings facility available as an add-on to any Tier-I account holder.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

With respect to the employer's contribution to the statutory provident fund under the EPF Act, such contribution amount is fully exempt from tax. With respect to the employee's contribution to the statutory provident fund, the employee can also claim this amount as a deduction for the purposes of tax. Further, the payment that the employee receives at the time of retirement or termination of service is also fully exempt from tax.

With respect to the voluntary contributions made to the NPS, deduction for the purposes of tax can be availed by an



India

employee up to a maximum amount of INR 50,000. When a contribution is made directly to the NPS by the employer, this contribution is considered a part of the employee's perquisite compensation – which is treated as part of the employee's salary for the purpose of tax. However, to the extent that the employer's contribution does not exceed 10% of the "eligible salary", the employee would be allowed a deduction equivalent to the amount contributed by the employer.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Yes. Under the EPF Act, in addition to the employee's contribution of 12% calculated on the basic wages, dearness allowance and retaining allowance, the employer is also required to contribute a total of 13.36% on these components which is split into:

(a) 8.33% towards the employee's pension account (subject to a maximum of INR 1,249.50);

(b) 3.67% towards the employee's provident fund account;

(c) 0.5% towards the Employee's Deposit Linked Insurance account (subject to a maximum of INR 75); and

(d) 0.86% over administrative charges.

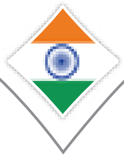
The contribution is managed by the EPFO unless otherwise exempted. However, for domestic employees, the employer is under no legal obligation to make contributions on the amount in excess of INR 15,000.

That said, it is relevant to note that the contribution for international workers should be made on their entire global salary. An employee working for an establishment in India (to which the EPF Act applies) and holding a foreign passport would fall within the definition of an "international worker" under the EPF Act and contributions would need to be made in respect of such employees, except in limited instances.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Paragraph 52 of the EPF Scheme and Paragraph 26 of the Employees' Pension Scheme 1995 require the EPFO to deposit all the monies contributed in the Reserve Bank of India or the State Bank of India or in any other Scheduled Bank approved by the Central Government or invest in the securities listed under section 20(a) to (d) of the Indian Trusts Act 1882, subject to the directions of the Central Government.

Where an employer is exempted from the EPF Act as a result of the employer operating a provident fund scheme that is more beneficial than that stipulated under the EPF Act, the Board of Trustees ("**BoT**") appointed to manage such



India

provident fund is required to make investments of the contributions to such fund as directed by the Central Government. Whoever contravenes such directions around the investment of the fund is liable to be punished with imprisonment ranging from one to six months and a fine of up to INR 5,000.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

While the EPF Act does not mandate any employee consultation, there are various records, registers and filings that are required to be maintained and submitted by an employer under the EPF Act. These requirements are enforced by the EPFO.

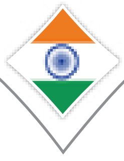
8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

Under the EPF Act, it is mandatory for the employer to follow the terms of the EPF Scheme and the EPS and an employer does not have the ability to alter the terms of the EPF Scheme and the EPS. However, section 17 of the EPF Act exempts certain establishments from the schemes laid down under the EPF Act and allows employers to maintain their own provident fund and pension schemes. This exemption is subject to certain conditions, such as, the rules of such provident fund with respect to the rates of contribution should not be less favorable than those specified under the EPF Act, and the employees should be in enjoyment of other provident fund benefits which, on the whole, are not less favorable to the employees than the benefits provided under the EPF Act or any scheme in relation to the employees in any other establishment of a similar character.

Such an exemption is provided if the appropriate government after consultation with the Central Board is satisfied with the provisions of the alternate schemes maintained by the employers. In such cases, the employer is required to establish a BoT for the administration of the provident fund consisting of such number of members as may be specified in the Scheme. This BoT is required to maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee, submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time, invest the provident fund monies in accordance with the directions issued by the Central Government from time to time and transfer, where necessary, the provident fund account of any employee.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

An employer is mandated to contribute towards the provident fund and pension under the EPF Act and cannot withdraw or terminate the same. In case the employer is exempted under section 17 and is managing its own provident fund or pension scheme through the BoT, such exemption could be cancelled if the conditions of the exemption are not complied



India

with. Further, where the conditions are not followed, a penalty with imprisonment ranging from one to six months and a fine of up to INR 5,000 may also be applicable.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Yes, employees can take their pension/retirement benefit entitlement under the EPF Act with them when they change jobs. Where a member of the provident fund moves to another job, he or she can ask for the balance of the provident fund in his or her previous account to be transferred to his or her new account in the new establishment.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

No, there are no such requirements under the EPF Act.

Contributed by: **Ajay Raghavan,** Trilegal

Indonesia

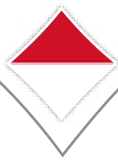
Contributed by: **SSEK Indonesian Legal Consultants**

1. Does the state provide a pension, retirement income or social security program of some type?

In 2011, the Indonesian government reformed its National Social Security System and passed Law No. 24 on the Social Security Organizing Body (B*adan Penyelenggara Jaminan Sosial* or "BPJS") (the "**BPJS Law**") to help meet the basic needs of the country's population.

The types of social security programs mandated under the BPJS Law are as follows:

- Health Care Security;



Indonesia

- Work Accident Security;
- Old Age Security;
- Pension Security; and
- Death Security.

BPJS of Health

Health Care Security is managed by BPJS of Health and is intended to cover all employees and residents (including foreign residents after working in Indonesia for six months) under a single health care system.

BPJS of Employment

Employment Security, including work accident, old age, pension, and death benefits, is managed by BPJS of Employment.

All employees in Indonesia were required to register with BPJS by January 1, 2015. Everyone else must register by January 1, 2019.

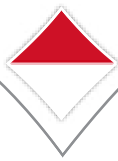
2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

Employers are required to enroll employees in the old age security and pension programs under BPJS of Employment. Also, employees are entitled to enhanced statutory minimum termination benefits upon reaching the retirement age. No other retirement plans/schemes are required.

Given the mandatory old age security and pension programs under BPJS of Employment, and the additional generous statutory minimum termination benefits upon reaching the retirement age, supplementary private pension plans are not commonly provided by employers in Indonesia.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The principal statute governing the BPJS program is Law No. 40 of 2004, dated October 19, 2004, regarding the National Social Security System.



Indonesia

Old age security

The main benefits of BPJS of Employment include old age security, which is a cash benefit paid when participants reach retirement age, pass away, suffer a permanent total disability, or leave Indonesia permanently. If the participant passes away, the benefits will be paid to his or her legal heirs.

Pension security

Another benefit is pension security, which provides regular payments to participants or participants' beneficiaries after participants retire, suffer a permanent total disability, or pass away.

Initially, the pension benefit paid to a participant will be between IDR 300,000 and IDR 3,600,000 per month, or between USD 23 and USD 272 at current exchange rates. The benefit is payable until the participant passes away. Participants can begin receiving payments only after they have:

(i) been enrolled in the program for at least 15 years, or 180 months; and

(ii) reached retirement age. Retirement age is currently 56, but will rise to 57 beginning January 1, 2019. The retirement age will then gradually increase by one year every three years until it reaches 65.

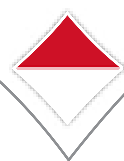
If an employee has reached retirement age but has not been enrolled in the pension security program for 15 years, the employee is entitled to the total accumulation of contributions paid with its additional yield (if any).

Contributions

Employers and employees, by payroll deduction, must make mandatory contributions to BPJS of Employment for the old age security and pension security plans, as discussed further under question 5.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

Income received in the form of pension benefits, old age allowance, or old age security that is paid in a lump sum is subject to a final employee income tax at progressive rates ranging from 0% to 25%. Payments made in installments over a period of more than two years are subject to non-final employee income tax at progressive rates ranging from 0% to 30%.



Indonesia

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Old age security

The contribution for the mandatory old age security program is 5.7% of the employee's monthly compensation of which 3.7% is paid by the employer and 2% by the employee by way of payroll deductions. The monthly compensation consists of base salary plus fixed allowance(s), if any.

Pension security

The contribution for the mandatory pension program is 3% of the employee's monthly compensation of which 2% is paid by the employer and 1% by the employee by way of payroll deductions.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Companies in Indonesia are required to register employees in the Indonesian government's employment social security programs. Employers that fail to register employees in the programs will be subject to warning letters, fines and will not be eligible to receive certain services from the government, including the issuance and renewal of necessary business licenses, approvals to employ foreign nationals, and building permits. Individuals who fail to register with BPJS will be unable to obtain a driver's license, land certificates, vehicle ownership certificates, and passports.

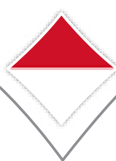
Investments under BPJS are subject to strict regulations to safeguard the interests of participants. Indonesia's Financial Services Authority (*Otoritas Jasa Keuangan* or OJK) and National Social Security Council (*Dewan Jaminan Sosial Nasional* or DJSN) monitor the BPJS for compliance.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

Employers must register new employees with BPJS within 30 days from the commencement of employment. If there are any changes to the data of a participant or his or her family, the changes must be reported to the employer and the employer must report those changes to BPJS.

Participants who change jobs must show their new employer their BPJS membership card. Employers collect program contributions from employees by way of payroll deduction and must transfer such contributions together with the employer contributions to BPJS. Employers are subject to a fine in the amount of 2% per month for delayed remittance of the employer and employee contributions.

BPJS is required to provide participants with information on their balance sheet once a year.



Indonesia

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

The above noted BPJS Health and Employment social security schemes, which include work accident, old age, pension and death benefits, are based upon legislation, are mandatory and cannot be altered by the employer.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

As indicated above, employers are required to participate in the BPJS social security program and withdrawal or termination of such participation is not possible. If an employer does not enroll employees in the BPJS pension security or old age security program, BPJS of Employment may impose the following progressive sanctions: written warnings, fine, and the withdrawal of certain public services under the prevailing laws.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Yes. In the event a participant changes jobs, the participant is required to report their BPJS membership to the new employer by showing their BPJS card.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

There is no such requirement under BPJS of Employment.

Contributed by: **Fahrul S. Yusuf,** SSEK Indonesian Legal Consultants

Japan

Contributed by: **Anderson Mori & Tomotsune**

1. Does the state provide a pension, retirement income or social security program of some type?

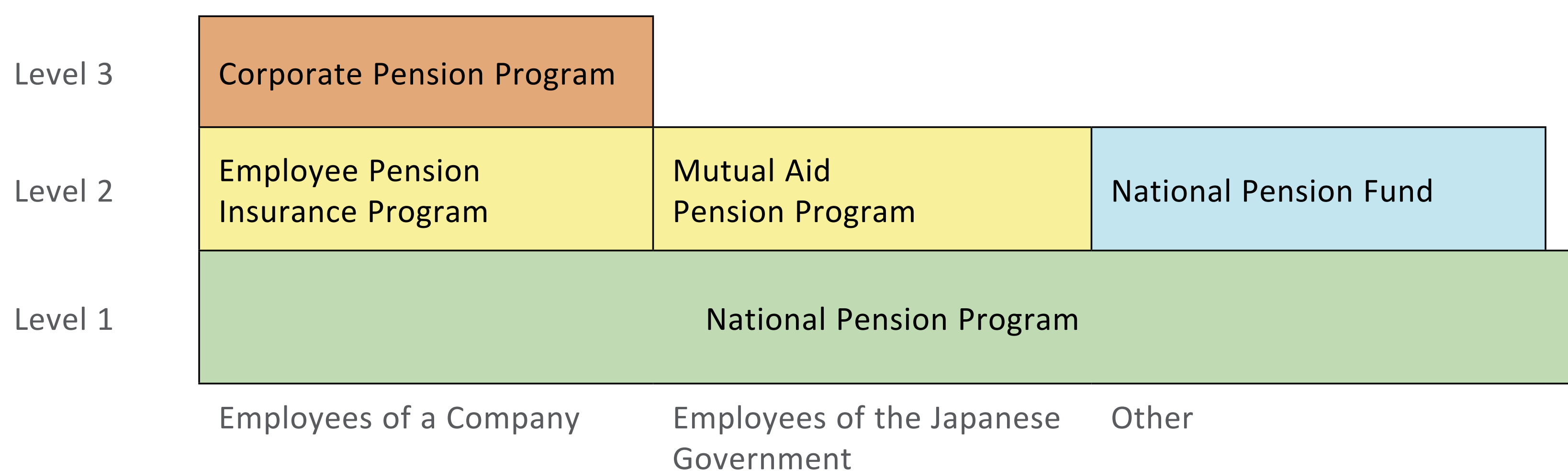
In Japan, there are three types of pension programs providing various levels of coverage. These are:

(a) the National Pension Program ("*kokumin-nenkin*") (the "**NPP**") for all persons who are living in Japan and who are at least 20 but under 60 years of age;

(b) the Employee Pension Insurance Program (*kosei-nenkin hoken*) (the "**EPIP**") for employees working at private sector enterprises, the Mutual Aid Pension Program (*kyosai-nenkin*) (the "**MAPP**") for public servants and teachers in private schools, and the National Pension Fund (*kokumin-nenkin kikin*) (the "**NPF**") for others; and

Japan

(c) the corporate pension programs voluntarily established by individual companies to provide benefits in addition to (a) and (b).



Among these pension programs, the NPP and the EPIP are administered by the Japanese government.

The NPP is a public pension program established under the National Pension Act, which provides basic benefits, such as old age basic pension, disability basic pension and survivors' basic pension, to all eligible persons in Japan. In principle, every person who is living in Japan and at least 20 but under 60 years of age must enroll in the NPP. According to their status, the insured are categorized as (a) Category 1 insured persons (i.e., the insured persons except Category 2 or 3 insured persons. For example, agriculture, forestry, or fishery business operators, self-employed persons and students fall within this category); (b) Category 2 insured persons (i.e., persons enrolled in the EPIP or MAPP); and (c) Category 3 insured persons (i.e., Category 2 insured person's dependent spouse). Category 1 insured persons must pay NPP premiums to the NPP by themselves. By contrast, Category 2 and 3 persons are not required to pay NPP premiums by themselves; instead, the EPIP or MAPP makes the contributions to the NPP on their behalf.

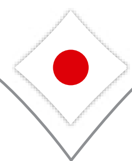
The EPIP is a public pension program established under the Employees' Pension Insurance Act (the "**EPIA**"), which provides additional benefits, such as old age employees' pension, disability pension and survivors' employees' pension, to employees working at private sector enterprises in Japan. Any employer who falls into one of the following categories (the "**EPIP Employer**") must enroll in the EPIP:

(a) an individual person who hires five or more employees and conducts any of the businesses listed in the EPIA in Japan;

(b) a company employing one or more employees in Japan; or

(c) an owner of a ship employing one or more paid crew member(s) in Japan.

Employees of an EPIP Employer are obliged to become participants of the EPIP as a condition of their employment. EPIP



Japan

premiums are borne equally by the EPIP Employer and its employee, although it is the EPIP Employer who is obliged to pay the entire premium. The EPIP premiums to be borne by the employee are usually withheld from the employee's wages.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/ schemes are employers permitted or required to maintain?

Employers are not required to, but may voluntarily, establish corporate pension and retirement programs. Popular corporate pension and retirement programs include an internally reserved type retirement allowance plan (the "**RAP**"), a Defined Contribution Pension Plan (*kakuteikyoshutsu nenkin*) (the "**DCPP**") and a Defined Benefit Pension Plan (k*akuteikyufu kigyo-nenkin*) (the "**DBPP**").

RAP

A RAP is a retirement allowance plan established by an employer. Unlike DCPPs and DBPPs, there is no law which provides the statutory framework for RAPs.

An employer may establish its own RAP at its discretion. An employee who satisfies requirements for eligibility under the RAP governing rules may participate in his or her employer's RAP.

An employer is not required to make periodic contributions. Retirement allowances will be paid from the employer's assets. Accordingly, funds for a RAP are not segregated from the employer's assets.

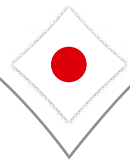
The amount of retirement allowance under a RAP is determined by formulae stipulated in the retirement allowance regulations. Accordingly, in principle, the amount of retirement allowance under a RAP is guaranteed.

DCPP

A DCPP is a pension plan established under the Defined Contribution Pension Act (the "**DCPA**").

An employer who falls within a category of an EPIP Employer may establish its own DCPP or participate in an existing DCPP, if the governing rules of such existing DCPP allow. An employee who is working in Japan and satisfies requirements for eligibility under the DCPP governing rules may participate in his or her employer's DCPP.

Once an employee becomes a participant of a DCPP, his or her employer is required to make a monthly contribution regarding such employee in accordance with the DCPP governing rules. If the DCPP governing rules allow, participants may make a monthly contribution themselves.



Japan

Funds reserved for each participant are segregated from the employer's assets and managed by a DCPP trustee in accordance with each participant's investment instructions.

The amount of pension benefits under a DCPP is varied depending on any profits or losses resulting from the management of the reserved funds for each participant. Accordingly, there is no guaranteed amount of pension benefits.

DBPP

A DBPP is a pension plan established under the Defined Benefit Pension Act (the "**DBPA**").

An employer who falls within a category of an EPIP Employer may establish its own DBPP or participate in an existing DBPP, if the governing rules of such existing DBPP allow. An employee who is working in Japan and satisfies requirements for eligibility under the DBPP governing rules may participate in his or her employer's DBPP.

An employer participating in a DBPP must make contributions at least once a year in accordance with the DBPP governing rules. If the DBPP governing rules allow, participants may make contributions themselves. The amount of contributions must be determined based on actuarial review and reviewed at least every five years.

Reserved funds are segregated from the employer's assets and managed by a DBPP trustee in accordance with the employer's instructions.

The amount of pension benefits under a DBPP is determined by formulae stipulated in the DBPP governing rules. Accordingly, in principle, the amount of pension benefits under a DBPP is guaranteed.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

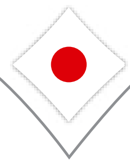
RAP

Unlike DCPPs and DBPPs, there is no law which provides the statutory framework for RAPs.

DCPP

The DCPA provides the statutory framework for the DCPP system and the Ministry of Health, Labor and Welfare (the "**MHLW**") is the government authority regulating and supervising the operation of the DCPP system.

Under the DCPA, material requirements include, but are not limited to, the establishment of governing DCPP rules, employers' mandatory contribution to a DCPP (see question 5 for details), the separation of assets from employers, the



Japan

appointment of DCPP plan administrators and DCPP trustees, the fair and appropriate selection of investment products and the provision of investment education to participants.

DBPP

The DBPA provides the statutory framework for the DBPP system, and the MHLW is the government authority regulating and supervising the operation of the DBPP system.

Under the DBPA, material requirements include, but are not limited to, the establishment of governing DBPP rules, employers' mandatory contribution to a DBPP (see question 5 for details), the periodical actuarial review, the separation of assets from employers, the appointment of DBPP trustees, and the disclosure of financial conditions of the DBPP.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

RAP

Retirement allowances under a RAP will be recognized as retirement income and deduction for retirement income will apply.

DCPP and DBPP

At the time of contribution, no tax is imposed. All amounts of contributions made by employers can be included in deductible expenses. All amounts of contributions made by participants are deductible from his or her income.

Old pension benefits will be recognized as other income, and deduction for public pension will apply. Lump sum benefits will be recognized as retirement income, and deduction for retirement income will apply.

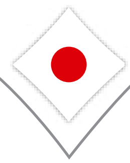
5. If an employer adopts a retirement plan/scheme, are employer contributions required?

RAP

The employer is required to come up with the necessary funds to pay retirement allowances to eligible employees under the program. However, the employer is not obliged to periodically make contributions.

DCPP

Once an employee becomes a participant of a DCPP established by an employer, the employer is required to make a monthly contribution regarding such employee in accordance with the DCPP governing rules. A monthly contribution per DCPP participant may not exceed (if the employer has a DBPP in addition to the DCPP) JPY 27,500 and (if the



Japan

employer does not have a DBPP) JPY 55,000. The employer will also need to pay periodic administration fees to financial institutions that administer a DCPP.

DBPP

An employer who has a DBPP must make contributions at least once a year in accordance with the DBPP governing rules. The amount of contributions must be determined based on actuarial review and reviewed at least every five years. An employer will also need to pay periodic administration fees to financial institutions that administer a DBPP.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

RAP

There are no applicable rules.

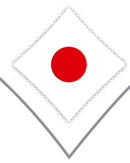
DCPP

Investments under DCPP schemes are subject to strict regulations to safeguard the interest of scheme members. Employers must appoint licensed DCPP plan administrators and DCPP trustees. DCPP trustees must be financial institutions such as trust banks, life insurance companies or general insurance companies. Both DCPP plan administrators and DCPP trustees are bound by the duties and powers as set out in the DCPA.

DCPP investments must only be made by DCPP trustees in accordance with each participant's instructions. DCPP plan administrators are required to select appropriate financial products in which participants may make an investment and provide to participants appropriate information regarding such financial products to enable participants to make appropriate investment decisions according to their own needs.

DBPP

Employers must appoint DBPP trustees that manage and administer funds for a DBPP. DBPP trustees must be financial institutions such as trust banks, life insurance companies and licensed investment advisers. DBPP trustees must follow the investment principle of the DBPP established by employers and adequately spread investments to reduce associated risks.



Japan

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

RAP

If an employer establishes or amends the governing RAP rules, the employer must obtain an opinion of the employee representative. The employee representative means a labor union to which the majority of employees belong or (if there is no such labor union) an employee/employees representing the majority of employees. Thereafter, the employer must submit the governing RAP rules/the amended governing RAP rules together with an opinion of the employee representative to the competent Labor Standards Inspection Office (the "**LSIO**").

There are no reporting and disclosure requirements.

DCPP

If the employer establishes or amends the governing DCPP rules, the employer must obtain the consent of the employee representative. Thereafter, the employer must submit the governing DCPP rules/the amended governing DCPP rules together with the consent of the employee representative to the MHLW and get approval of the MHLW.

To enable DCPP participants to make informed investment decisions, in accordance with the relevant guidelines, the employer must provide investment education, and DCPP plan administrators must provide adequate information regarding financial products in which DCPP participants may make an investment.

DBPP

If the employer establishes or amends the governing DBPP rules, the employer must obtain the consent of the employee representative. Thereafter, the employer must submit the governing DBPP rules/the amended governing DBPP rules together with the consent of the employee representative to the MHLW and get approval of the MHLW.

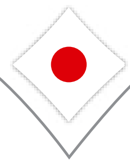
The employer is encouraged to provide employees, at least once a fiscal year, with information on its DBPP such as the standard amount of pension benefits, the number of participants, and those who receive pension benefits and their financial situation.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

Procedural requirements

RAP

The employer must first amend the governing RAP rules and obtain an opinion of the employee representative regarding



Japan

such amendments. Thereafter, the employer must submit the amended governing RAP rules together with the opinion of the employee representative to the competent LSIO.

DCPP & DBPP

The employer must first amend the governing DCPP/DBPP rules and obtain the consent of the employee representative regarding such amendments. Thereafter, the employer must submit the amended governing DCPP/DBPP rules together with the consent of the employee representative to the MHLW and get approval of the MHLW.

Requirements under the Labor Contract Act

Further, under the Labor Contract Act, in the absence of reasonable grounds and strong justifications, any change to the governing RAP/DCPP/DBPP rules that is disadvantageous to the existing employees does not bind an existing employee who does not agree to such disadvantageous change.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

In the absence of reasonable grounds and strong justifications such as insolvency, the termination of RAP/DCPP/DBPP does not bind an existing employee who does not agree to the termination. In other words, the employer will be liable to pay such employee the retirement allowance or pension benefits under the RAP/DBPP as if it were not terminated or compensate damage if he or she was a DCPP participant.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

In principle, with respect to a RAP and DBPP, employees may not take their pension and retirement benefit entitlement with them. By contrast, employees may transfer DCPP funds reserved for them from the DCPP of their previous employer to the DCPP of their new employer.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

There is no such requirement for RAPs, DCPPs and DBPPs.

Contributed by: **Nobuhito Sawasaki,** Anderson Mori & Tomotsune

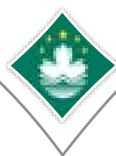
Macau

Contributed by: **MdME Lawyers**

1. Does the state provide a pension, retirement income or social security program of some type?

The Macau government has a specific social security program for civil servants and a social security system for non-civil servants ("**Social Security Fund**").

The Social Security Fund operates under the principles of social insurance and pay-as-you-go. Its financial income comes mainly from the defined contribution of the beneficiaries enrolled in this system (employees, employers, and arbitrary system contributors) and 1% appropriation from the recurrent income of the government budget and appropriation from gaming.



Macau

The Social Security System is composed of an obligatory contribution system and an optional contribution system. Employees and employers who have employment relations are required to make obligatory contributions to the Social Security Fund, and other residents who comply with the relevant legal requirements can make contributions by enrolling in the arbitrary system.

The Social Security Fund, however, does not provide its beneficiaries with a pension or retirement income but, rather, benefits like old age pension, disability pension, unemployment allowance, funeral allowance, marriage allowance, birth allowance and compensation for respiratory occupational disease. As such, it only provides basic social security to the residents.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/ schemes are employers permitted or required to maintain?

Employers are required solely to enroll their employees in the Social Security Fund and make the monthly social security fund contribution and retention and the quarterly payments. Employers are required to make a MOP 60 monthly payment, while employees pay MOP 30 a month for the Social Security Fund.

Additional retirement plans or schemes are entirely up to the discretion of the employer, and their setting up, management and winding up is regulated under Decree Law 6/99/M, which was later revised by Law 10/2001.

According to the above regulations, private pension plans are programs that provide for the right to pecuniary payments as a result of (a) early retirement, (b) old age retirement, (c) permanent incapacity for work, or (d) death. Pension plans may also provide for the right to pecuniary payments as a result of (a) serious illness, (b) long-term unemployment, or (c) final departure from the territory of Macau.

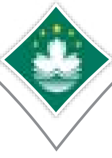
Pension funds are autonomous assets created solely for the purpose of financing one or more pension plans.

According to the type of guarantees provided, pension plans are classified as:

(a) *Defined benefit plans* – wherein the pecuniary payments payable to the beneficiaries (individuals entitled to the pecuniary payments provided for in the pension plans) are predefined, and the contributions made are calculated so as to guarantee the respective payments;

(b) *Defined contribution plans* – wherein the contributions are predefined and the pecuniary payments payable to the beneficiaries are determined according to such contributions; and

(c) *Mixed plans* – which have the features of the two plans mentioned above.



Macau

Based on the form of financing, pension plans are classified as:

(a) *Contributory plans* – wherein participants (individuals whose rights enshrined in the pension plans are defined according to personal and professional circumstances, regardless of whether or not they contribute to the respective financing) make contributions;

(b) *Non-contributory plans* – wherein the financing is done exclusively by the associates (corporate entities whose pension plans are financed by pension funds).

Pension funds can be either closed or open funds:

(a) A pension fund is regarded as closed when the respective plan concerns only one associate or, if there are several founder members, there is a link in terms of business, association, profession or of a social nature between them and their consent is necessary for new associates to be included in the plan financed by the fund. Closed pension funds are established at the initiative of a company or groups of companies, associations, namely social or professional associations, or by agreement between employer and employee associations.

(b) A pension fund is regarded as open when there is no requirement for any link between the various members of the respective plan, and joining such fund depends only on acceptance by the management company of the relevant fund. Open pension funds are established at the initiative of any entity authorized to manage pension funds, and their total net value is divided into units of participation represented by certificates.

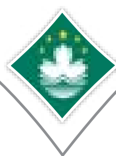
3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

Law 4/2010, "Social Security System", which entered into force on January 1, 2011, sets the legal framework for the social security regime, which is executed by the Social Security Fund – the public entity in charge of the management of the social security in Macau.

Decree Law 6/99/M, which was later revised by Law 10/2001, establishes the legal framework for private pension funds and private pension funds that are managed by insurers authorized to transact life insurance in Macau and supervised by the Macau Monetary Authority.

Social Security System

Under Law 4/2010, the material requirements applicable to the Social Security System include the differentiation of mandatory and optional regimes, registration of employees and employers in the Social Security Fund, employers' and employees' mandatory and optional contributions to the Social Security Fund, and rules regarding social security benefits (requirements, amounts, attribution).



Macau

Obligatory System

The obligatory system applies to any Macau SAR resident who works under the authority and direction of an employer in return for remuneration.

All employers, who employ workers under their direction in return for remuneration, must register with the Social Security Fund in the contribution month that immediately follows the commencement of the employment. Registration is required only once, and the employer will be assigned a permanent registration number.

Any employer who establishes labor relations with an employee for the first time must enroll the employee and pay contributions for him or her in the contribution month that immediately follows the commencement of such relations. Enrollment is required only once and the enrolled person will be assigned a lifetime beneficiary number.

The contributions of the preceding calendar quarter are payable quarterly in January, April, July and October, but contributions for casual workers are paid in the month that immediately follows the working month of the employee.

Employers are required to pay a late payment interest if the contributions are paid within 60 days after the statutory payment period. If the contributions remain unpaid after 60 days from the statutory payment period, a fine that is calculated quarterly and not exceeding half of the amount of unpaid contributions will be charged on top of the late payment interest, but the minimum fine is MOP 500.

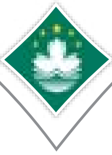
Any employer who attempts to improperly appropriate all or part of the social security system contributions that he or she deducted according to law from the employee's wages and fails to remit the money to the FSS within 60 days after the expiration of the statutory payment period may be subject to three years' imprisonment or a fine. If the offender is a legal person, he or she may be subject to a fine of up to 360 days' pay.

Lack of registration of the employer or enrollment of the employee is punishable with a fine ranging from MOP 200 to 1000 per employee affected by the infraction.

Optional System

The optional system is applicable to:

- employees who are married to their employer, or who have a de facto marital relationship with their employer, or who are a relative up to the second degree of relationship living and sharing meals with their employer; employees with relations established under a contract of apprenticeship training or through a vocational training system that aims to integrate the trainees into the employment market;



Macau

- civil servants who are already enrolled in the government social security program; and
- other Macau SAR residents.

Applicants can enroll at any time, except for other Macau SAR residents, who can only enroll if they stayed in Macau for at least 183 days during the 12 months preceding the application for enrollment. The contribution amount is MOP 60 per month.

The contributions of the preceding calendar quarter are payable quarterly in January, April, July and October, and the full amount of contributions is to be paid by the beneficiaries themselves.

If the beneficiary fails to pay the contributions within the statutory payment period, he or she cannot rectify the default contributions unless contributions are paid with a late payment interest within two months after the expiration of the statutory payment period or if the reason for failing to pay contributions within the statutory payment period is attributable to a force majeure situation accepted by the Administrative Committee of the Social Security Fund.

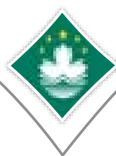
There are no liabilities under the optional regime.

Private Pension Funds

Under Decree Law 6/99/M, the material requirements applicable to pension funds and pension plans include the financing obligations, the acquired rights, the method of paying benefits, the definition of the concepts that give rise to the right to receive the benefits and the documentation necessary to support the right to receive the benefits. They also include the types, constitution, joining and leaving of pension funds; the actuarial valuation of liabilities; the duration, closure and liquidation of pension funds; the rules governing pension funds' assets; and the rules regarding management and deposit of pension funds. Private pension funds must be authorized by the Macau Monetary Authority.

Authorization to constitute closed pension funds is granted based on the joint petition from the management companies and the founder members. The petition is submitted together with a draft of the deed of constitution, an actuarial valuation of the liabilities to be guaranteed by the fund, in the case of pension plans with defined benefits or mixed plans, and the respective financing plan.

Authorization to constitute open pension funds is granted based on the petition from the management company duly accompanied by a draft of the management regulations.



Macau

4. What are the key features of the tax framework that applies to retirement plans/schemes?

The Macau tax system only grants tax concessions for the benefits arising out of the governmental social security schemes, but not the contributions per se. As such, contributions to the Social Security System are taxable, but the benefits that are received by the beneficiaries as a result of the enrollment in such schemes are considered nontaxable income.

Pension plans and pension funds are exempt from all taxes, rates or duties in relation to: (i) all juridical acts inherent in their respective constitution and subscription from third parties; (ii) the initial assets that form the respective patrimony, including their applications and the income generated therefrom; (iii) the contributions made by the associates, participants and contributors; and (iv) the installments paid on its account, with the exemption applicable both to the payer and the beneficiary of such installments.

Also, the contributions made to the pension plans and pension funds are considered revenue expenses of the year.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Under the Social Security System, employer contributions are mandatory and the employer must make a monthly contribution of MOP 60.

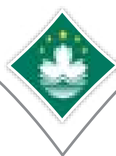
In relation to private pension schemes, although the law classifies pension plans based on the form of financing in contributory plans and non-contributory plans (see question 2 above), the law does not specify whether employer contributions are mandatory and what their amount should be. In practical terms, however, employers are always required to contribute, but the amounts are established on a case-by-case basis in accordance with the conditions of the constitution of the funds/plans.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Patrimonial autonomy

The assets of a pension fund can only be utilized for the execution of pension plans in respect of their beneficiaries. The only exceptions to this are related to the obligations arising directly from management or deposit expenses and those related to the payment of certain types of insurance.

The pension plans contained in the respective deed of constitution, management regulations or membership contract can only and exclusively be funded through the fund's assets or by its respective share in the total. The value of the said assets will be the maximum amount available to the management company, without prejudice to the liability of



Macau

associates, participants and contributors to pay their contributions and the eventual minimum income guaranteed by the management company.

Excess of financing

If, during five consecutive years, the value of the pension fund corresponding to the financing of a defined benefit plan exceeds, by more than 20%, the value of total liabilities inherent in the plan, the respective contributions may be temporarily suspended or reduced. No money shall be returned to the associate if the excess value of the fund has resulted from an alteration in the pension plan.

Financial, technical and actuarial management

The assets, contributions and pension plans must at all times be balanced in accordance with actuarial systems for capitalization, which permit the establishment of equivalence between assets and expected income of the pension fund on the one hand and, on the other hand, future payments to beneficiaries and future charges for management and deposits.

Pension funds that finance defined benefit plans may effect insurance to cover the risks of death and permanent incapacity for work and insurance for lifetime income, where the same is included in the pension plans.

Funds financing defined contribution plans are obliged to have individual accounts for each participant.

The technical, actuarial and financial plan must be reviewed at least once every three years.

The management company can make payment of the installments due only if the amount accumulated in the fund is equal to or more than the total current value of such installments.

Actuary in charge

At the time of submission of the request for the constitution of the fund, the management company shall indicate the actuary responsible for each closed pension fund to be so constituted.

Composition of assets

The nature of the assets that make up the patrimony of pension funds and their respective percentage limits, including the general principles of congruence and valuation of these assets, is established by notice of the Macau Monetary Authority.

There are no provisions concerning the failure to satisfy the above requirements.

Macau

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

The company managing the pension fund must inform the participants of the pension plan contained in the deed of constitution or of the collective membership contract, and the said management company shall bear the burden of proof in respect of compliance with this requirement.

In the case of contributory pension plans, failure to comply with the obligation referred to in the preceding paragraph results in the associate being liable to bear the participant's share of the contribution, without any loss of guarantees for the participant, until the obligation is fulfilled.

In closed pension funds and in the case of collective membership of open pension funds, the management company must provide, at the request of the participants, all the information necessary for a complete understanding of the contract.

In closed pension funds that finance contributory plans, and in the case of individual membership of open pension funds, the contributors and the participants are entitled to receive from the management companies, at least once a year, information on the amount of contributions made by them or in their favor and in their name, and on the value of their shares in the total value of the fund.

The law does not set out any penalties for the lack of compliance with duty of information.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

Any amendment to the deed of constitution or to the pension fund management regulations, including the transfer of pension fund management between management companies, shall be subject to the Macau Monetary Authority's approval. The amendments cannot reduce the amounts of pecuniary payments already fixed, nor affect the acquired rights of the beneficiaries.

Where the amendments to the deed of constitution affect the pension plan, the respective petition for authorization must include, in addition to the new text, the actuarial valuation of the new liabilities that will be guaranteed by the pension fund and the respective financing plan, taking into account the number of participants and beneficiaries covered, the basis and method of financing utilized, and any other information that the Macau Monetary Authority deems necessary for a complete understanding of the financing plan of the respective pension plan.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

The law does not specifically establish the situations under which an employer may withdraw from or terminate a plan/scheme.

Macau

Pension funds are wound up if: (i) there are no participants or beneficiaries; (ii) the respective object of the fund, for whatever reason, becomes redundant; (iii) the associates fail to pay the contributions to which they have committed themselves and the situation is not rectified and, within a period of one year, an adequate plan to rectify the situation is not submitted to the Macau Monetary Authority that is acceptable to this entity; and (iv) the pecuniary payments are not being duly financed.

The law is silent about eventual liabilities in connection with withdrawal or plan/scheme termination.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Yes. If the working relationship between the associate and the participant ceases for reasons other than the conditions for the formation of the right to pecuniary payments, the participants can either receive the pecuniary payments to which they are entitled (payments made to the pension plans, plus the product of the respective capitalization less management charges, according to the terms set out in the respective pension plan) or transfer the same to a new pension fund.

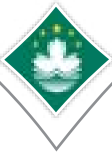
11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

As a general rule, payment to beneficiaries of the pecuniary payments provided for in the pension plans is made in the form of a lump sum payment, unless another form has been expressly indicated in the respective pension plan. As such, the eventual need and provision of adjustment/increase of benefit payments after retirement would have to be determined in the pension fund contract.

Note

Law 7/2017 on the Non-Mandatory Central Pension Scheme has recently been approved by the Macau Legislative Assembly but will only come into effect on January 1, 2018. This law will be regulated by other complementary legal diplomas (timing still to be confirmed as at the publication of this guide). This new regime aims to offer more protection to the elderly and will complement the existing social security regime, by creating joint pensions plans and allowing existing private pension funds to be maintained.

The new regime will only apply to permanent residents of Macau who are aged 18 or over or who are under 18 but are already registered in the Social Security Fund. Non-permanent Macau residents and blue card holders are excluded.



Macau

It is not a mandatory regime so employers and individuals can choose whether or not to join. Contributions can be made on an individual or joint basis. If an employer decides not to join the new regime, employees who meet the relevant conditions can still do so. If an employer does join the new regime, employees remain free to choose whether or not to join. Minimum contributions to the new regime will be 5% of the employee's base salary (5% for the employee and 5% for the employer). Exemptions/conditions may apply depending on the level of the employee's salary.

The new regime is expected to be advantageous for both employers and employees and may help with the retention of talent.

Contributed by: **Isolda Brasil,** MdME Lawyers

Malaysia

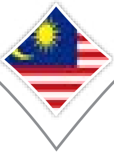
Contributed by: **Shearn Delamore & Co.**

1. Does the state provide a pension, retirement income or social security program of some type?

The Malaysian government provides the following types of scheme:

(a) Employment Provident Fund ("**EPF**") which provides retirement funds for employees who are employed in Malaysia; and

(b) Social Security Fund ("**SOCSO**") which provides social security for employment injury contingencies in favor of employees who are employed in Malaysia.



Malaysia

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/ schemes are employers permitted or required to maintain?

It is compulsory under the EPF schemes for employers to make contributions according to the prevailing statutory rates of contributions.

Please note that EPF is applicable to all employees except the following categories:

(a) Nomadic aborigines;

(b) Domestic servants, unless employed by a society, cooperative, business or a corporation;

(c) Outworkers;

(d) Any person detained in prison or other place of detention;

(e) Non-Malaysian citizens; and

(f) Persons over the age of 75.

Although the above categories of persons are not legally obliged to contribute to the EPF, they may elect to do so. In addition, casual workers or independent contractors or self-employed persons who are not employees are not required to make contributions to the EPF.

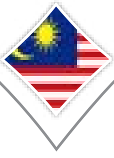
The contributions to the EPF scheme are credited to the individual employee account which is managed by the EPF Board.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The EPF scheme is governed by the Employees Provident Fund Act 1991 (the "**EPF Act**"). The material requirements under the said Act are the mandatory requirements required from employers and employees, the rate of contribution, the maintenance of a register by employers and the time period for payment.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

EPF contributions are tax deductible up to a maximum of MYR 6,000. An EPF member is also exempted from paying income tax for monies withdrawn from the EPF savings withdrawal schemes. Furthermore, returns from EPF investments are also tax-exempted.



Malaysia

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

It is compulsory for the employer to participate in/adopt the EPF. Accordingly, the employer is required to make contributions towards the EPF in line with the prevailing statutory rates.

Section 45 of the EPF Act creates a statutory duty on the employer to pay monthly contributions payable both by itself and also for the employee into the individual employee accounts under the EPF. In relation to the mode of payment, section 43 of the EPF Act stipulates that every employee and employer within the meaning of the EPF Act shall be liable to pay monthly contributions on the amount of wages for the month at a rate set out in the 3rd Schedule of the EPF Act. The current employer contribution rate is 12% for employees earning above MYR 5,000 and 13% for employees earning MYR 5,000 and below. In respect of the employees' monthly statutory rates, this has been reduced from 11% to 8% for members below the age of 60 and from 5.5% to 4% for members age 60 and above, effective March 2016 until December 2017. However members can opt to maintain the current contribution rates of 11%. Please note that the term "members" refers to employees who are members of the EPF.

An employer who contravenes section 43 of the EPF Act shall be guilty of an offense and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding MYR 10,000 and also liable to pay dividends accrued on such contributions had it been paid within the stipulated period.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Section 26(1) of the EPF Act, amongst others, provides how monies belonging to the fund are to be invested by the Board such as:

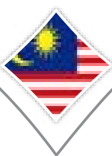
(a) a deposit with Bank Negara, banks or financial institutions;

(b) in shares of any public listed company listed on the stock exchange established in Malaysia and buying new shares, the issue or sale of which has been approved under the Securities Industry Act 1983;

(c) in debentures of any public company;

(d) in bonds or purchasing of mortgage papers, commercial notes, banker's acceptances, money market papers, certificates of deposits, private debt securities, promissory notes and bills of exchange within the meaning of the Bills of Exchange Act 1949 and other negotiable instrument of similar nature;

(e) in accordance with the provisions of the Trustee Act 1949;



Malaysia

(f) to provide loans to the Government of Malaysia or the State Government;

(g) by participating in or by carrying out dealings in any derivative instruments; or

(h) to provide loans to members of the Fund subject to such terms and conditions as may be determined by the Board for the purpose of purchasing or building a house.

Section 26(2) of the EPF Act, further provides that the Board may, with the written approval of the Minister, invest monies belonging to the Fund in the following manner:

(a) to be deposited in any bank or financial institution established by or under any written law;

(b) to be invested in any joint venture;

(c) by participating in any privatisation program;

(d) to provide loans to any company incorporated under the Companies Act 1965 or any corporation established by or under any written law;

(e) by investing in any investment outside Malaysia; or

(f) investing in any other form of investment.

In the event the member of the Board fails to discharge his or her duties as per the EPF Act, the Minister of Finance can revoke the appointment without assigning any reasons. Furthermore, the EPF Act provides that a disciplinary committee of the Board shall be responsible for matters relating to discipline of the officers and servants of the Board.

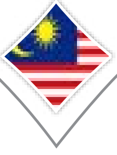
7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

An employer is required to keep a register containing the information as required by the EPF Rules, and such register must be available for inspection for up to six years.

A person or body who ceases to be an employer must inform the EPF.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

EPF is a scheme governed by statute. Hence, employers are not permitted to alter the terms of the schemes.



Malaysia

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

A company is not permitted to withdraw from or terminate the EPF and SOCSO schemes, unless the company has ceased to be an employer of the employee.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Where employees change jobs, the employees can take the contributions made by the previous employer with them. The new employer will be liable to continue making the contributions as prescribed under the statutes.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

All benefit payments to EPF are subject to the prevailing contribution rates at any material time.

Contributed by: **Sivabalah Nadarajah & Wong Kian Jun,** Shearn Delamore & Co.

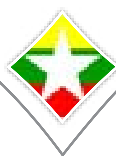
Myanmar

Contributed by: **Rajah & Tann NK Legal Myanmar Company Limited**

1. Does the state provide a pension, retirement income or social security program of some type?

Currently, the only pension or retirement income programs in place are provided for under the Political Pension Law 1980 (subsequently amended in 1994, 2000 and 2001) and the Public Servant Law 2013. These apply only to retirees from the government and public service.

In addition to the above, several social security programmes have been implemented; these are instituted under the Social Security Law 2012 (the "**SSL**"). Under Section 11(a) of the SSL, it is compulsory for all establishments with the prescribed minimum number of employees (currently set as five employees) or more to register with the relevant township social security office and to make the stipulated contributions to the social security fund. Under Section 13 of the SSL, the Social Security Board (the "**SSB**") is tasked to manage and keep the following categories of social security systems:



Myanmar

(a) Health and Social Care Insurance System;

(b) Family Assistance Insurance System;

(c) Invalidity Benefit, Superannuation Pension Benefit and Survivors' Benefit Insurance System;

(d) Unemployment Benefit Insurance System; and

(e) Other Social Security Systems which:

(1) provide for the right of insured persons to live, hire and live, purchase, own or use the Social Security Housings established under housing plans in accordance with the stipulations; and/or

(2) provide for compulsory registration and contribution specified by notification issued by the Ministry of Labor, in coordination with the SSB, with the approval of the Union Government, or other social security systems of voluntary contribution.

However, only two of the five social security systems set out above have been implemented to date, namely, the Health Care and Social Care Insurance System and the Family Assistance Insurance System. In addition to these systems, an Employment Injury Benefit scheme, separately provided for under Chapter 6 of the SSL, has also been implemented.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/ schemes are employers permitted or required to maintain?

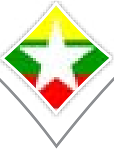
Employers are currently not required to maintain any retirement plans/schemes for their employees, although they are free to institute such retirement plans/schemes if they wish to do so. The SSL does envisage a superannuation pension benefit scheme being implemented. However, no further details have been provided on the nature of this scheme to date.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

As stated above, the SSL envisages the implementation of certain retirement plans/schemes, but no retirement plan/ scheme has been implemented to date. These plans/schemes, when implemented, will be managed by the SSB.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

The only provision under the current tax framework which pertains to retirement plans/schemes is Section 33(e) of the



Myanmar

Union Tax Law 2015, which states that income received in the form of pension and gratuity when a civil servant retires is exempt from income tax.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

There are currently no mandatory contribution requirements for retirement plans/schemes. However, if and when the envisaged superannuation pension benefit scheme under the SSL is implemented, employers will be required to pay contributions for such a scheme pursuant to Section 15(b) of the SSL.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Although no retirement plan/scheme has been implemented to date, Section 35(a) of the SSL sets out the following basic parameters for superannuation pension benefits:

(a) If contributions had been paid for 180 months prior to the date of the superannuation pension being granted, the employee would have the right to enjoy 15 times the average monthly wage obtained within the period of contribution of that employee, in installments or as a lump sum, as the employee so chooses;

(b) If contributions had been paid for more than 180 months, relating to such period of contribution in excess, the right to enjoy in addition to benefit contained in clause (a) in accordance with the stipulations;

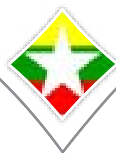
(c) If contributions had been paid for between 12 to 180 months, the right to enjoy 40% of the contributions paid by the employer and contributions of the employee together with interest in accordance with the stipulations; and

(d) If contributions had been paid for less than 12 months, the right to withdraw the money contributed by that employee as a lump sum.

In addition, Section 35(b) of the SSL states that where an employee receives superannuation pension benefit, the employer has the right to 25% of his or her personal contribution paid to the fund under Section 15(a)(3) of the SSL for 12 months and above, together with interest in accordance with specifications.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

Under Rule 66(a) of the Social Security Rules, every employer must, on a monthly basis, file a form with the relevant township social security office containing a list of the incomes of all its employees and relevant social security fund contributions payable.



Myanmar

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

There is currently no mandatory retirement plan/scheme in place. However, if and when the envisaged superannuation pension benefit scheme under the SSL is implemented, employers will have to follow the parameters for superannuation pension benefit schemes set out under Section 35(a) of the SSL.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

An employer may withdraw from or terminate a plan/scheme provided that (i) such a plan/scheme is not stipulated as mandatory under the SSL and (ii) if such a withdrawal or termination results in the employee's contract conditions becoming less favorable, the employee gives his or her explicit consent to the withdrawal or termination.

A withdrawal from or termination of a plan/scheme which is mandatory under the SSL may render the employer liable under Section 94(a) of the SSL to a penalty of a jail term of up to one year as well as a fine.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Retirees from the government or public service may take their pension/retirement benefits with them if they take jobs in the private sector after retirement. However, if they change jobs prior to retirement, they will be required to forego their pension/retirement benefit entitlement.

Other employees who are not from the government or public service may apply, when changing jobs, to the SSB to retain their former SSB registration numbers. Upon a successful retention of their SSB registration numbers, any pension/retirement benefit entitlements will also be retained.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

The existing laws do not provide for any adjustment or increase in pension/retirement benefit payments after retirement.

Contributed by: **Chester Toh**, **Dr Min Thein** & **Lester Chua**, Rajah & Tann NK Legal Myanmar Company Limited

New Zealand

Contributed by: **Simpson Grierson**

1. Does the state provide a pension, retirement income or social security program of some type?

The New Zealand government offers a form of pension, called New Zealand Superannuation ("**NZ Super**"). The people who are eligible for NZ Super must meet the following criteria:

- be 65 years or older;
- be a permanent resident or citizen of New Zealand and usually reside in New Zealand; and
- have resided in New Zealand for at least 10 years since turning 20 years of age (including five years since they turned 50 years old).

New Zealand

The last requirement above may not be applicable to migrants to New Zealand coming from a country that has a social security agreement with New Zealand.

The rates for NZ Super payments depend on certain circumstances. These circumstances include, for example, the person's relationship status, whether their partner (if any) receives NZ Super or any other benefit, their living situation (e.g., whether they live alone, live with dependent children, share accommodation with others), whether they receive overseas benefits or an overseas pension, whether they have other sources of income, or whether they receive accident compensation payments.

In addition to NZ Super, the government has enacted a regime for privately-managed retirement savings schemes, called KiwiSaver. KiwiSaver schemes are managed by private sector companies called KiwiSaver providers.

Contributions to a person's KiwiSaver account can be made by the person, their employer, and the government. A person's KiwiSaver account will be made up of both contributions and any investment earnings arising from investment of the contributions by KiwiSaver providers.

To be eligible to join KiwiSaver, the person must be under 65 years of age, live in New Zealand, and be a New Zealand or Australian citizen or have permanent residence in New Zealand.

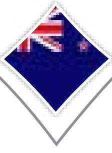
Generally, people will have to wait until they are 65 years of age (or for five years after becoming a member of KiwiSaver if the person joined KiwiSaver after 60 years of age) before they can access their KiwiSaver savings. However, in some circumstances, people may be able to access their KiwiSaver fund early if they are buying their first home, moving overseas permanently, suffering significant financial hardship or are seriously ill.

Receiving benefits from KiwiSaver does not affect a person's eligibility or level of entitlements to NZ Super.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

NZ Super is managed by the state. Employers are not required to make contributions to, nor maintain plans/schemes separately from, NZ Super.

In regard to KiwiSaver, employers, with some exceptions, must automatically enroll eligible new employees into KiwiSaver. However, while enrollment into KiwiSaver for new employees is mandatory, employees can opt-out if done so between 13 and 55 days of starting the new employment. In addition, existing employees can opt-in to KiwiSaver. For that reason, KiwiSaver is 'voluntary' from the employees' perspective.



New Zealand

Employers, with a few exceptions, are required to make contributions into employees' KiwiSaver accounts when the employee is:

- aged 18 years or over; and
- under 65 years (or if the employee is aged over 65 and has not been a member of KiwiSaver for five years, then after five years of membership).

KiwiSaver uses the pay-as-you-earn ("**PAYE**") employee payroll tax system for collecting contributions from employees and employers. Employers are required to contribute the equivalent of at least 3% of the employee's salary; however, employers may contribute more. Employers must also deduct employee contributions from the employee's salary to contribute into the KiwiSaver account (with some exceptions, for example, contributions holidays). Employees can choose to contribute 3%, 4% or 8% of their before-tax salary or wages.

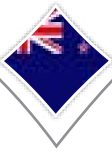
In addition to KiwiSaver, employers may establish private superannuation schemes for their employees. A superannuation scheme is a scheme that is not a KiwiSaver scheme, but is established principally to provide retirement benefits, and must be registered under the Financial Markets Conduct Act 2013 ("**FMCA**").

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

NZ Super is primarily governed by the New Zealand Superannuation and Retirement Income Act 2001. As discussed above, NZ Super is managed by the state and there are no obligations on employers in respect to contributions or enrollments.

KiwiSaver is primarily governed by the KiwiSaver Act 2006 ("**KiwiSaver Act**") and the FMCA. The KiwiSaver Act regulates the material requirements including membership into the scheme, employer enrollment, certain exemptions, and contributions.

Private superannuation schemes were primarily governed by the Superannuation Schemes Act 1989 ("**SS Act**"). The SS Act has been repealed, and superannuation schemes that were registered under the SS Act must have either wound up or have complied with the FMCA by no later than November 30, 2016. The FMCA provides a general framework for the regulation of financial products and applies to superannuation schemes.



New Zealand

4. What are the key features of the tax framework that applies to retirement plans/schemes?

NZ Super

NZ Super payments are taxable and included in recipients' annual gross income. The income of individuals is taxed at the following graduated scale rates:

Graduated income tax rates	
Income range (annualized salary, wages and extra pay)	Tax rate
NZD 0 – NZD 14,000	10.5%
NZD 14,001 – NZD 48,000	17.5%
NZD 48,001 – NZD 70,000	30%
NZD 70,001 and over	33%

KiwiSaver

KiwiSaver and other registered superannuation schemes are taxed on a "taxed-taxed-exempt" basis in New Zealand.

Employee contributions are calculated on the employee's before-tax salary or wages and deducted through the PAYE system from the employee's after-tax salary or wages. For example, if an employee's KiwiSaver contribution rate is 4% and they have a 30% blended effective tax rate based on the scale above, for every NZD 100 of salary and wages there will be a NZD 4 KiwiSaver contribution, which will be deducted from the employee's after-tax income of NZD 70 (i.e., the employee will receive NZD 66 in the hand after deduction of tax and KiwiSaver).

In addition, an employer superannuation contribution tax ("**ESCT**") is deducted on all employer contributions made into an employee's KiwiSaver account. The rate of ESCT for a particular employee is a blended rate having regard to the employee's earnings and the employer contributions and ranges between 10.5% and 33%.

Most (if not all) KiwiSaver schemes are portfolio investment entities ("**PIEs**") for income tax purposes. The tax on the investment income of the PIE is calculated by reference to the prescribed investor rates ("**PIR**") of members. The PIR is

New Zealand

based on the employee's taxable income from all sources over the last two income years and ranges between 10.5% and 28%. Withdrawals from or distributions by PIEs are free of income tax.

Non-KiwiSaver Registered Superannuation Schemes

Employer contributions to non-KiwiSaver registered superannuation schemes are subject to ESCT (as above). In addition, such schemes are generally taxed as PIEs (as above).

Superannuation Schemes not registered under the FMCA

Employer contributions to non-registered superannuation schemes are subject to fringe benefit tax ("**FBT**"). Generally, FBT is imposed at the rate of 49.25% on the taxable value of the fringe benefit (i.e., the gross employer contribution). FBT is deductible to the employer, so the net after-tax cost for the employer for contributions to an unregistered scheme should be similar to equivalent contributions to registered schemes.

Non-registered superannuation schemes are generally treated as "unit trusts" for tax purposes (and usually as managed investment schemes under the FMCA). Unit trusts are deemed to be companies for tax purposes. However, some non-registered superannuation schemes will qualify as PIEs for tax purposes, with tax consequences on individual income and distributions similar to KiwiSaver and registered superannuation schemes that are PIEs. In the absence of PIE status, a unit trust's (deemed company's) net income will be taxed at the 28% corporate tax rate. Tax paid by the unit trust will give rise to imputation credits that will wholly or partially remove any secondary layer of taxation on distribution of tax paid earnings to members.

Pension Schemes

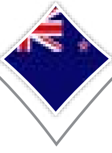
Traditional pension schemes are now largely absent from the New Zealand market although some immigrants to New Zealand receive benefits under overseas pension schemes. Pensions are taxed as income.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

KiwiSaver

Employers are required to make contributions (at a rate equal to 3% of the person's salary or wages) to employees' KiwiSaver accounts, if the employee is a KiwiSaver member and making employee contributions. However, an employer is not required to make contributions:

- where the employer is making contributions into a registered superannuation scheme which was established prior to May 17, 2007 and where the employee became a member of that scheme prior to April 1, 2008;



New Zealand

• the employee is under 18 years of age;

• the employee is over 65 years of age (and has also been a KiwiSaver member for more than five years); or

• the employee is not making employee contributions (for example, where the employee is on a "contributions holiday").

Private superannuation schemes

If the superannuation scheme is approved as a complying superannuation fund (and certain other requirements are met), then employer contributions are compulsory (subject to the comment below).

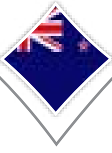
Contributions can be made to complying superannuation funds instead of, or in conjunction with, contributions to KiwiSaver schemes. Employer contributions made to existing private superannuation schemes reduce the amount of compulsory employer contributions to KiwiSaver in certain circumstances.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Under the FMCA, registered superannuation schemes and KiwiSaver schemes are treated as managed investment schemes. The requirements that apply to managed investment schemes vary depending on factors such as whether they are open to new members and whether membership is restricted. The types of requirements that may apply under the FMCA and Financial Markets Conduct Regulations 2014 include:

• The governing document of the scheme is required to cover a range of matters, such as:

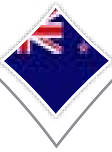
- transferability, redeemability, acquisition, and disposal of membership/funds;
- entry and exit;
- contributions;
- valuation methodology;
- determination and payment of benefits;
- fees and expenses;
- certain indemnification rights;



New Zealand

  - supervisor appointment and removal;
  - winding up;
  - other matters that materially affect scheme management, operation, rights and duties; and
  - any other matters required by regulations.

- For restricted membership schemes, a requirement to appoint a licensed independent trustee (or independent licensed director if the trustee is a company). The trustees will be bound by fiduciary-type obligations to the members, and the independent trustee will also be bound by certain reporting duties to the Financial Markets Authority ("**FMA**").
- For KiwiSaver schemes, a requirement to have a licensed manager.
- Scheme property must be held by an independent supervisor, a corporate trustee, corporate nominee or another independent custodian.
- The schemes are bound by certain registration and disclosure obligations, including:
  - producing a statement of investment policy and objectives (which sets out things such as the types of investments, proportions, limits and performance measurements);
  - (if the scheme is open to new members) producing a product disclosure statement (which describes how the scheme works and key terms and risks of the investment);
  - producing an annual report (including audited financial accounts) and distributing copies to members;
  - lodging amendments of governing documents with the FMA and getting prior FMA approval to those amendments;
  - publishing regular fund updates on performance of investments; and
  - lodging information and documents on the Disclose register and/or with the FMA.
- There are certain restrictions on related party transactions.
- There must be the ability for members to transfer between schemes.
- There are whistleblowing duties on certain people, including investment managers, auditors and custodians.



New Zealand

- The funds will be generally locked in until the age of retirement, being 65 (or for other limited reasons such as significant financial hardship, serious illness or for buying a first home).

The FMCA provides for an enforcement and liability regime, which covers civil liability, criminal liability and other enforcement options. The civil remedies range from declarations of contraventions through to pecuniary penalties of up to NZD 5 million for entities, as well as compensation and other orders. Criminal offenses range from “speeding ticket” type offenses through to large fines, or imprisonment (in the case of individuals).

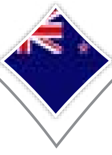
In addition, the KiwiSaver Act and the FMCA provide specific requirements for KiwiSaver schemes, including:

- fees must not be unreasonable, and the scheme must give notice to the FMA when fees increase;
- the manager of the fund must ensure that the full benefit derived by the member’s accumulation from their KiwiSaver account is credited to his or her KiwiSaver account;
- compulsory contributions from employers and employees; and
- the member meets certain New Zealand criteria (i.e., at the time of becoming a scheme participant the member normally lived in New Zealand or was a permanent resident or citizen).

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

In addition to the reporting and disclosure obligations that apply to registered superannuation schemes and KiwiSaver (listed above), employers are bound by certain obligations with respect to KiwiSaver. These include:

- checking whether new employees are eligible to join the KiwiSaver scheme and whether they should be automatically enrolled;
- providing the Inland Revenue document: *Your introduction to KiwiSaver - employee information (KS3)* to:
  - new employees who qualify for automatic enrollment; and
  - existing employees who want to opt-in;
- automatically enrolling new members who are eligible;
- providing information to the Inland Revenue about:
  - new employees who are automatically enrolled; and



New Zealand

- eligible employees who have opted-in to KiwiSaver;

• if the employer has an employer-chosen scheme, providing new employees with a written statement of the scheme, including the scheme's product disclosure statement;

• deducting employee contributions and making employer contributions and forwarding them to the Inland Revenue with the employer's PAYE payments; and

• acting on employees who decide to opt-out or request a contributions holiday.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

There are strict requirements for amending governing documents of registered superannuation or KiwiSaver schemes under the FMCA. These include:

• amendments must be made with the consent of the supervisor or, if there is no supervisor, the FMA;

• the supervisor or the FMA must not consent to an amendment to the governing document unless the amendment has been approved by, or is contingent on, approval by scheme participants (or if the supervisor or FMA is satisfied that the amendment has no material adverse effect on participants);

• in the case of the supervisor, the supervisor (or lawyer) must certify that the above has taken place.

The governing document must contain certain mandatory provisions (highlighted under question 6 above), which cannot be altered.

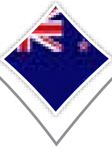
9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

An employer may cease contributing to a private superannuation scheme in accordance with the terms of the scheme trust deed.

However, employers are always required to pay the minimum statutory employer contribution to the KiwiSaver scheme.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

It is possible to transfer between KiwiSaver schemes at any time. KiwiSaver providers are required by the KiwiSaver Act to permit members to transfer their contributions to a different KiwiSaver scheme. A person who wishes to do so needs to



New Zealand

contract directly with a provider of a different KiwiSaver scheme to become a member of that scheme before the transfer can be made.

It may also be possible to transfer between registered superannuation schemes, but this would be unusual. A benefit is usually paid to the member by the superannuation scheme when the member leaves the employment of the sponsoring employer. A benefit paid from a registered superannuation scheme can usually be transferred by the member to a KiwiSaver scheme or another registered superannuation scheme that the member joins.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

As noted above, the rate of New Zealand Superannuation varies depending on individual circumstances. The rate is currently set as equal to 66% of the average net wage. The government passed legislation in 2011 tying the rate to the CPI, excluding the rise in tobacco excise tax.

The payment of benefits from a registered superannuation scheme, including adjustments to the amount of benefits payable, will be governed by the terms of the scheme trust deed.

For a KiwiSaver member, he or she will become eligible to withdraw all of his or her savings as a lump sum upon qualification for NZ Super (currently at the age of 65), as long as he or she has been a KiwiSaver member for a minimum of five years.

Contributed by: **Stephen Ward, Barney Cumberland, Carl Blake, Lincoln Matthews and Luke Strom,** Simpson Grierson

Pakistan

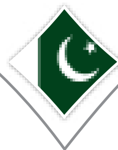
Contributed by: **Meer & Hasan**

1. Does the state provide a pension, retirement income or social security program of some type?

Pensions are provided to regular employees of the government and semi governmental organizations. In general, employees of private organizations employed in skilled or unskilled manual or clerical jobs ("**Workmen**") are entitled to old age pensions and disablement pensions (see answer to question 3 below for more detail).

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

The main liability of a private employer is to pay gratuity at the end of services. However, the employer, at its discretion, may instead opt to establish a Provident Fund or Pension Fund in which case it will not be required to pay gratuity.



Pakistan

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

Besides the voluntary/optional Pension Fund created by an employer under Industrial and Commercial Employment (Standing Orders) Ordinance 1968, Workmen are entitled to a pension under the following statutes:

(i) Employees' Old Age Benefits Act 1976

- A Workman who is over 60 years (55 years in the case of a woman), in respect of whom contributions have been paid for not less than 15 years, is entitled to receive an old age pension.
- 5% of wages of eligible employees is contributed by the employer, 6% is contributed by the government and 1% is contributed by the employee.
- Contributions are paid to the Employees Old Age Benefits Fund.

(ii) Employees' Social Security Ordinance 1965

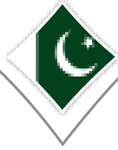
- Persons receiving more than PKR 18,000 per month are not considered employees.
- The employer is required to contribute 6% of the wages of eligible employees.
- The contribution is made to the Employees Social Security Fund.
- Under this law, Disablement Pension or Survivor Pension is paid to employees or their dependents when disablement or death occurs due to injury sustained in the course of employment.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

The contributions made to the Funds by employers and employees are tax deductible, whereas income of the Funds is exempted from taxes.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

An employer is primarily liable to pay gratuity only; however, it may opt to establish a Provident Fund or Pension Fund instead. If it establishes a Provident Fund or Pension Fund, it is required to make contributions to the same.



Pakistan

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

The material points concerning the employer have been mentioned in question 3 above. The Funds are managed by statutory institutions established under respective statutes. The statutes also contain provisions governing utilization/ investment of the Funds. If an employer fails to pay its contributions, an enhanced amount will be recovered from it as a penalty.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

There is a governing body appointed under each statute and any violation can be reported to it. The institution established under the Employees' Social Security Ordinance 1965 is required to maintain accounts of its income and expenditures and of its assets and liabilities and shall submit its Annual Report to the government. The Annual Report, together with the audited accounts, is published for the public.

Similarly, the affairs of the Employees Old Age Benefits Institution are controlled by the Board of Trustees with the assistance of its Chairman under the Employees' Old Age Benefits Act 1976.

The institution is required to submit its report to the federal government, together with its works and activities.

There are no rules regarding employee consultation.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

Employers cannot deviate from the terms of statutory pension plans. The terms of approved voluntary pension funds may be altered with the permission of relevant authorities.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

An employer can withdraw from a statutory pension plan if it ceases to be governed by the relevant laws e.g., it does not employ the required number of employees. As long as the provisions of relevant statutes remain applicable, it cannot withdraw from the plan. In relation to voluntary pension funds, an employer can withdraw or terminate the same, in which case it will have to pay gratuity to the employees.

Pakistan

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

If an employee changes job, he or she may get a certificate from his or her previous employer certifying the payment of contributions toward the period he or she worked in that establishment. The contributions made by the new employer will be added to his or her account with the Fund.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

Since the Funds are managed by the government, it may in its discretion increase the pension rate but the increase will be borne solely by the government and employers will not be affected by this increase.

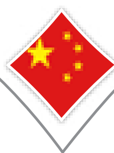
Contributed by: **Zeeshan Ashraf Meer,** Meer & Hasan

PRC

Contributed by: **Jingtian & Gongcheng**

1. Does the state provide a pension, retirement income or social security program of some type?

In 1997, the PRC government established a unified basic pension system ("**UBPS**") for employees of enterprises in the PRC. Both employee and employer are mandatorily required to make contributions to the pension fund in a broader government administered social security fund. Employees are required to contribute up to 8% of their individual wages. Employers are required to contribute at a percentage ranging from 19% to 22% of the total wages paid to their workforce. For Beijing, it is 20%, for Shanghai, before May 1, 2016, it is 21%. However, according to the *Circular on Reducing Social Insurance Premium Rates in Stages* dated April 14, 2016, enacted jointly by the Ministry of Human Resources and Social Security ("MOHRSS") and the Ministry of Finance, in case any provincial government provides the rate of contribution by employers is higher than 20%, the said provincial government may reduce the said rate of the



PRC

employers' contribution to 19%-20%. For Shanghai, it may be reduced to 20%, and for the other 20 provinces, it may be reduced to 19%.

An employee's contribution is paid into their respective personal account opened by PRC competent social security authorities. Upon the employee's retirement, the balance in the said personal account along with the accruing interest will be divided into 120 installments and paid to the employee in monthly installments over a period of 10 years. As long as the relevant employee contributes to the pension fund of the PRC social security fund for 15 consecutive years or more, the employee will receive payment from his or her personal account, and also receive general pension payments from the PRC social security fund from retirement until death. These general pension payments are funded by the employer's contributions to the social security fund. The amount of the general pension payments for an employee depends on the number of years of employment, the average wage in the locality, and life expectancy. Under the current schemes, in case of any shortfall, the relevant government will cover the said shortfall.

In the past, there was a separate pension system for civil servants and other government employees such as teachers, who were not required to pay their own pension contributions, but were entitled to a generous government-subsidized pension on retirement from the social security fund that was mainly contributed by the enterprises and their employees. This kind of dual system would cause a big shortfall of the social security funds. Thus in January 2015, *the State Council in its Decision on the Reform of the State Employee Pension System* planned to integrate the UBPS and that separate pension system for public sector employees, which means public sector employees must also make their own contributions to the pension fund.

Currently, the statutory retirement age of employees employed in the enterprises is 60 for men and 50 for women. However, for women civil servants working with governmental departments, the statutory retirement age is 55. Now because the UBPS funds would be in shortfall, the government is planning to extend the retirement age.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/ schemes are employers permitted or required to maintain?

Except for the UBPS, an employer is not mandatorily required to maintain any other extra retirement plans/schemes. However, according to *Trial Measures for Enterprise Pension* and *Trial Measures for the Administration of Enterprise Pension Funds*, in addition to participation in the UBPS, the enterprises and their employees may participate in a supplementary pension insurance system, that is, the Enterprise Annuity Fund ("**EAF**"). Where an EAF is established, the enterprise and its employees must jointly contribute to the EAF. The enterprise must pay not more than one-twelfth of the total wages of its workforce and the employees must pay not more than one-sixth of the total wages of the workforce.

PRC

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The PRC Labour Law enacted in 1994 and the PRC Labour Contract Law in 2008 provide for mandatory obligations for enterprises and employees to participate in the UBPS. In 2011, the PRC Social Insurance Law was enacted which integrated those regulations/clauses for the social insurance system into a comprehensive framework. Since the enactment of the PRC Social Insurance Law, all employees, including rural migrant workers, should be covered by UBPS.

Employees become entitled to pension benefits when they reach the statutory retirement age and also only when they have participated in the scheme for at least 15 consecutive years. If any employee reaches the retirement age but has not participated in the pension system for at least 15 consecutive years, the employee shall delay retirement and continue to pay pension contributions to the pension fund until the employee has paid pension contributions for 15 consecutive years.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

The payments contributed by employers and employees to UBPS may be tax-deductible. For the contribution paid by the employers to EAF, only the part of the said contribution being less than 14% of the total wages of the workforce is tax-deductible in terms of enterprise income tax. It is tax exempted for the part of the contribution paid by the employers to EAF that is credited for the employees' personal account. For the contribution paid by the employees to EAF, only the part of the said contribution being less than 4% of the taxable income of employees is tax-deductible in terms of personal income tax.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

An employer must pay contributions to UBPS. For EAF, once the employer sets up the EAF, the employer must pay contributions according to the *Trial Measures for Enterprise Pension.*

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

The relevant PRC governmental authority will determine the investment of the social security fund under UBPS according to relevant PRC laws and regulations. According to the *Circular of the State Council on Issuing the Administrative Measures for Investment with Basic Endowment Insurance Funds* dated August 17, 2015, the social pension fund may be invested in: bank deposits, bills of the central bank, and interbank certificates of deposit; national debts, policy and development bank bonds, financial bonds with credit ratings above the investment grade, enterprise (corporate) bonds, local government bonds, convertible debentures (including bonds with detachable warrants), short-term financing bills, medium-term notes, asset-backed securities, and bond repurchase; pension products, securities investment funds

PRC

tradable in the market, stocks, equities, stock-index futures and treasury bond futures. Furthermore, the social pension fund may be invested in major national engineering works and projects through appropriate ways and used in equity investments in the restructuring and listing of key state-owned enterprises, which enterprises are limited to central enterprises and their first-tier subsidiaries, as well as local industry leading enterprises with core competitiveness, such as state-owned and state-controlled enterprises funded by the departments of finance or the state-owned assets administration departments at the provincial level.

There are also amount limitations for investment of the social pension fund. According to the *Circular of the State Council on Issuing the Administrative Measures for Investment with Basic Endowment Insurance Funds*, the limitations are as follows:

(a) The proportion of investment in current deposits, term deposits with a term of one year or less, bills of the central bank, national debts whose residual maturity is within one year, bond repurchase, monetary pension products and monetary market funds may not be lower than 5% of the net value of the endowment fund assets in total. The clearing excess reserves, securities clearing accounts and funds for subscription of securities on the primary market shall be deemed as liquid assets.

(b) The proportion of investment in term deposits with a term of more than one year, contracted deposits, interbank certificates of deposit, national debts whose residual maturity is over one year, policy and development bank bonds, financial bonds, enterprise (corporate) bonds, local government bonds, convertible debentures (including bonds with detachable warrants), short-term financing bills, medium-term notes, asset-backed securities, fixed-income pension products, and hybrid pension products may not be higher than 135% of the net value of the endowment fund assets in total. The fund balance of bond repurchase on each trading day may not be higher than 40% of the net value of the endowment fund assets.

(c) The proportion of investment in stocks, stock funds, hybrid funds and stock-related pension products may not be higher than 30% of the net value of the endowment fund assets in total. The endowment funds shall not be used to provide loans and guarantees for any other person, or directly invested into warrants, but in case of warrants derived from investment in stocks, bonds with detachable warrants and other types of investments, such warrants shall be sold within 10 trading days as of the date when they are tradable.

(d) The proportion of investment in equities of major national projects and key enterprises may not be higher than 20% of the net value of the endowment fund assets in total. Where the proportion of investment exceeds the corresponding limit set out above passively due to market fluctuations, transfer of funds and other factors, the adjustment of the investment proportion of endowment funds should be completed within the trading days as prescribed in the contract.

PRC

According to *the Measures for the Administration of Enterprise Annuity Fund* dated April 30, 2015, and *the Circular on Expanding the Investment Scope of Enterprise Annuity Funds* dated March 19, 2013, the EAF is limited to domestic investment with the scope of bank deposit, national bonds, central bank bill, bond repurchase, universal insurance products, unit-linked insurance products, securities investment funds, stocks, and financial bonds, corporate bonds (debentures), convertible bonds (including detachable convertible bonds), short-term financing bills and medium-term notes, the commercial banks' finance products, trust products, infrastructure debt investment plans, specific assets management plans and stock index futures, and other financial products with credit rating no lower than investment grade. And also, there are limitations on the proportion of investment value that the EAF invests in each product.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

UBPS funds

Trustors and trustees of the investment with UBPS funds shall conclude an entrusted investment contract, and the trustees shall conclude a custody contract with custody institutions, and an investment management contract with the management institutions of the investment with UBPS funds ("investment management institutions"). The rights and obligations of the trustors, trustees, custody institutions and investment management institutions will be agreed in the entrusted investment contract, custody contract and investment management contract with respect to UBPS funds in accordance with the *Measures for the Administration of Enterprise Annuity Fund*:

(a) Trustors: the people's governments of provinces, autonomous regions and municipalities are the trustor of UBPS funds investment;

(b) Trustees: the trustees refer to management institutions of the endowment funds established by the State and authorized by the State Council;

(c) Custody institutions: the custody institutions refer to commercial banks that have experience in the custody of national social security funds and EAF, or have good fund custody performance and social reputation, and are entrusted by the trustees of UBPS funds to safely keep the UBPS fund assets;

(d) Reporting and disclosure: the trustees shall conduct the information disclosure and reporting of the relevant matters in compliance with the following requirements:

- announcing to the public the financial conditions including assets and earnings of the UBPS funds once a year;
- submitting the financial accounting report and the reports on investment assets, earnings and other aspects regarding the UBPS funds to the trustors and the relevant competent department under the State Council on a quarterly basis;

PRC

- submitting the annual audit report on the UBPS fund assets to the trustors, as well as the relevant competent department and the comprehensive economic department under the State Council; and

- in the event of any major event related to the UBPS funds, immediately reporting the event to the relevant trustors and the relevant competent department under the State Council, and preparing an interim report, and announcing the report upon approval.

There is no employee consultation rules arrangement in respect of the investment of the UBPS funds.

EAF

According to the *Measures for the Administration of Enterprise Annuity Fund*, the enterprise and its employees are the trustors, who will enter into the entrusted management contract with the EAF council or trusted institution with legal person status ("Trustee"). The Trustee shall respectively enter into trust management contracts with the account management institution of the EAF ("Account Manager"), the EAF custodian institution ("Custodian") and the investment management institution of the enterprise annuity fund ("Investment Manager").

(a) Trustor: refers to the enterprise with EAF and its employees;

(b) Trustee: refers to the pension management company and other entrusted institutions with legal person status or EAF council that are entrusted to manage EAF and meet the relevant requirements of the state. Enterprises with EAF plans shall elect a legal person entrusted institution or establish an enterprise annuity council to be the Trustee by means of deliberation and discussion through the general meeting of employees or the general meeting of employee representatives;

(c) EAF Council: The enterprise annuity council may consist of enterprise representatives, employee representatives and other members, or hire non-employee professionals. The number of employee representatives shall not be less than one-third under each circumstance. The council shall be staffed with a certain number of full-time personnel. The employee representatives and non-employee professionals of the enterprise annuity council shall be elected in a democratic way by the general meeting of employees, the general meeting of employee representatives or other means. Enterprise representatives shall be hired by the enterprises. The tenure of a director of the council shall be determined in the Articles of Association of the enterprise annuity council, provided that it may not exceed three years. One may serve another term if he or she is re-elected at the end of the tenure;

(d) Beneficiary: refers to the employees of an enterprise that have participated in the EAF and are entitled to beneficial interests;

(e) Account Manager: refers to the professional institution that accepts the entrustment of the Trustors to manage the EAF account;

PRC

(f) Custodian: refers to the commercial bank that accepts the entrustment of the Trustee to take custody of the EAF property;

(g) Investment Manager: refers to the professional institution that accepts the entrustment of the Trustee to invest and manage the EAF property; and

(h) Reporting and disclosure:

- The Trustee shall submit the EAF management quarterly report to the Trustors within 30 days upon the ending of each quarter; and shall submit the annual EAF management and financial accounting report to the Trustors within 60 days upon the ending of each year.

- The Account Manager shall submit the EAF account management quarterly report to the Trustee within 15 days upon the ending of each quarter; and shall submit the annual EAF account management report to the Trustee within 45 days upon the ending of each year.

- The Custodian shall submit the EAF custody and financial accounting quarterly report to the Trustee within 15 days upon the ending of each quarter; and shall submit the annual EAF custody and financial accounting report to the Trustee within 45 days upon the ending of each year.

- The Investment Manager shall submit the EAF portfolio quarterly report with financial management data confirmed by the Custodian within 15 days upon the ending of each quarter, and shall submit the annual EAF investment management report with financial management data confirmed by the Custodian within 45 days upon the ending of each year.

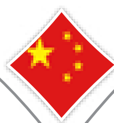
Except that the EAF council shall consist of enterprise representatives, employee representatives and other members, there are no employee consultation rules for EAF investment matters.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

Not applicable.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

Not applicable.



PRC

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

(i) For UBPS, the pension/retirement benefit entitlement will belong to the relevant employee and would not change upon the employee changing his or her job. When the employee changes his or her job and still works within the same province or the same municipality directly under the Central Government, the employee just needs to transfer his or her social insurance relationship to his or her new employer. If the employee leaves to work in another different province or municipality directly under the Central Government, the employee shall transfer his or her social insurance relationship to the relevant social security authorities of another different province or the municipality directly under the Central Government.

(ii) For EAF, if an employee changes his or her job, and the employee's new employer has also established an EAF plan, then the equity and interest of the employee in his or her individual account of the EAF plan of his or her previous employer shall be transferred to the EAF plan of the new employer. If the new employer has not established the EAF plan, the equity and interest of the employee in his or her individual account of the EAF plan of his or her previous employer may be still with the EAF plan of his or her previous employer.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

Yes. The adjustment range is subject to the then policy/notice to be promulgated by the competent governmental authorities at the provincial level.

Contributed by: **Deng Youping**, Jingtian & Gongcheng

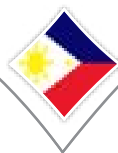
Philippines

Contributed by: **Romulo Mabanta Buenaventura Sayoc & de los Angeles**

1. Does the state provide a pension, retirement income or social security program of some type?

The Philippine government provides for laws providing pension, retirement income and social security programs. The two main state pension fund agencies are the Social Security System ("**SSS**") and the Government Service Insurance System ("**GSIS**").

The SSS and GSIS are laws that establish a provident fund for members that will consist of voluntary contributions of employers and/or employees and their earnings for the payment of benefits to such members or their beneficiaries. The difference between SSS and GSIS is that SSS pertains to employees and employers in the private sector while GSIS pertains to government employees.



Philippines

Philippine law provides that any employee may be retired upon reaching the retirement age of 60 years unless otherwise established in the collective bargaining agreement or other applicable employment contract. The mandatory retirement age is 65 years of age.

SSS Scheme

Retirement pay is equivalent to at least "one-half month salary" for every year of service, with a fraction of at least six months being considered as one whole year. One-half month salary shall mean 15 days plus one-twelfth of the 13th month pay and the cash equivalent of not more than five days of service incentive leaves or a total of 22.5 days' pay. Retail, service and agricultural establishments or operations employing not more than 10 employees or workers are exempted from the coverage of the SSS law.

GSIS Scheme

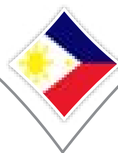
All employees in the government are compulsory members, provided they have not reached the compulsory retirement age, except members of the Armed Forces of the Philippines, Philippine National Police, and contractuals with no employee-employer relationship with the agencies that they serve. The retiree must have rendered at least 15 years of service, attained the age of at least 60 years at the time of the retirement and not be receiving a monthly pension benefit from permanent total disability.

The GSIS provides for lump sum payments for their retirement benefits, which are payable upon retirement plus an old age pension benefit payable monthly for life, upon expiration of the five-year guaranteed period of the lump sum, or a cash equivalent of up to 18 months of his or her basic monthly pension plus monthly pension for life payable immediately with no five-year guarantee.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/ schemes are employers permitted or required to maintain?

The purpose of Republic Act No. 7641 ("**RA 7641**") or the Retirement Pay Law is to prescribe minimum retirement benefits to be paid by the employer to its qualified employees. It does not require the setting up of formal retirement plans by employers. The law simply provides for the retirement pay to qualified private sector employees *in the absence* of any retirement plan in the employer establishment.

As mentioned above, the minimum retirement pay provided under RA 7641 to any qualified retiring employee is "one-half month salary" per year of service, which means the equivalent of 15 days plus one-twelfth of the 13th month pay, and the cash equivalent of not more than five days' service incentive leave or a total of 22.5 days' pay per year of service. This is without prejudice to the employer's discretion to provide its employees with better retirement benefits. The



Philippines

coverage includes all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The Labor Code of the Philippines, otherwise known as Presidential Decree No. 442 that was issued in 1974, is the principal statute governing retirement plans/schemes. It was amended in 1993 by RA 7641, otherwise known as the New Retirement Law, to provide for a retirement age and for the minimum retirement benefits that companies in the private sector must provide to their employees in the absence of any private retirement plan in the establishment.

Republic Act No. 1161, as amended by Republic Act No. 8282, provides for the Social Security System of the Philippines, while Presidential Decree No. 1146, as amended by Republic Act No. 8291, provides for the Government Service Insurance System, which provides for social security to government employees. (See questions 1 and 5 for the requirements.)

Republic Act No. 8799 provides for voluntary personal pensions funds offered by pre-need and life insurance companies. The Philippine Insurance Code allows insurance companies to offer endowment and annuity contracts that are availed of by those who want guaranteed retirement income.

Republic Act No. 6948, as amended by Republic Act No. 7696, provides for pension and benefits for military veterans and their dependents.

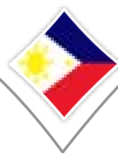
RA 7641, the Home Development Mutual Fund, or "Pag-IBIG Fund," provides retirement funds by way of forced contributions or savings from employers/employees, and housing loans. Company membership to this law was made mandatory unless the company had a retirement program and a housing loan facility.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

Generally, benefits received under a retirement plan do not constitute compensation subject to withholding tax if such plan complies with the following requirements:

(a) The benefit plan has been approved by the Bureau of Internal Revenue;

(b) The retiring employee must have been in the service of the same employer for at least 10 years and is not less than 50 years of age at the time of retirement; and



Philippines

(c) The retiring employee shall not have previously availed of the privilege of the withholding tax exemption under a retirement plan of the same or another employer.

Under Republic Act No. 4917, retirement benefits of employees of private firms who retire with at least 10 years of service and are not less than 50 years of age shall not be subject to attachment, levy, execution or any tax whatsoever.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Neither the Labor Code nor RA 7641 requires the employer to put up a private retirement plan, the adoption thereof being subject to the sound discretion of the employer. Should the employer adopt one, it may do so and put up either a “defined benefit” plan or a “defined contribution” plan. In a defined benefit plan, the employer is obliged to make the necessary contributions to the retirement fund *in full*, whereas in a defined contribution plan, both the employer and the employee are obliged to contribute their respective shares to the retirement funds.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

The management of private retirement plan funds is normally entrusted to a retirement trustee, usually a bank, who may, subject to the prior approval of the employer or the employer appointed retirement committee and in accordance with the plan implementing rules, invest the plan funds in various retirement schemes. Such investment should not, however, affect an employee’s right to the full measure of his or her retirement benefits in the event of failure of the investments to achieve their purpose or objective. Failure to pay the employee his or her retirement benefits in full when they accrue would violate the Labor Code’s prohibition against the elimination or diminution of employee benefits, which is punishable under the Code with fine or imprisonment or both, such fine and imprisonment being at the discretion of the court.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

The reporting, disclosure and employee consultation rules regarding a private retirement plan are governed by the plan rules. Such rules are enforced by the employer or by the retirement committee appointed by the employer.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

A private retirement plan partakes of a contract, with the employer and the employee as the contracting parties. Once entered into, it is subject to all applicable laws, including the prohibition against the unilateral diminution or elimination of employee benefits. Accordingly, the employer may not alter the terms of an accepted retirement plan/scheme without the consent of the employees. Moreover, any approved alteration or subsequent renegotiation of the retirement plan must not fall below the minimum requirements or benefits prescribed by law.

Philippines

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

The employer may terminate a private retirement plan in accordance with its terms in good faith and for valid reasons recognized by law, e.g., the employer has suffered a financial or business setback that materially prevents it from continuing with its contributions to the plan funds. In such an event, the employer may be excused from continuing with the private retirement plan/scheme but must comply with the provisions of the Labor Code regarding retirement benefits.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Private retirement plans invariably provide that in case of the employee's voluntary resignation or termination for cause, his or her entitlement to retirements benefits are automatically forfeited. However, for a pension or retirement scheme provided by the Social Security System, Republic Act No. 7699 ("**RA 7699**") or the Portability Law allows portability of pension or retirement benefits thereunder. Portability under RA 7699 refers to the transfer of funds for the account and benefit of a worker who transfer from one system to the other, i.e., from the private sector (administered by the SSS) to the government sector (administered by the GSIS) or vice versa.

In accordance with the aforementioned law, all creditable services or periods of contributions made continuously or in the aggregate of a worker under either the SSS or GSIS shall be added up and considered for purposes of eligibility and computation of benefits. All services rendered or contributions paid by a member personally and those that were paid by the employers to either system shall be considered in the computation of benefits, which may be claimed from either or both systems. However, the amount of benefits to be paid by one system shall be in proportion to the services rendered/periods of contributions made to that system.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

Pension or retirement benefits under a private retirement plan are by law based on the last pay of the employee. Once paid, the private retirement plan ceases to have any further obligations to the employee post-retirement. For pension or retirement benefits under the SSS or the GSIS, the laws governing both systems provide that the monthly pension of all pensioners in the government or private sector, including all those receiving survivorship pension benefits, may be periodically adjusted as may be recommended by the SSS/GSIS actuary and approved by the SSS/GSIS Board in accordance with the rules and regulations prescribed by the law.

Contributed by: **Enriquito J. Mendoza,** Romulo Mabanta Buenaventura Sayoc & de los Angeles

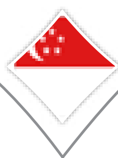
Singapore

Contributed by: **Rajah & Tann Singapore LLP**

1. Does the state provide a pension, retirement income or social security program of some type?

The Singapore government does not provide a statutory pension scheme. However, since July 1, 1955, the Singapore government has established a statutory social security system that is known as the Central Provident Fund ("**CPF**"). This social security system is governed primarily by the provisions of the Central Provident Fund Act (Cap. 36) ("**CPF Act**"), and is administered by the Central Provident Fund Board ("**CPF Board**"), which is a statutory body operating under the Ministry of Manpower.

The CPF is a compulsory savings scheme whereby employers of employees (who are Singapore Citizens or Permanent Residents) are required to make monthly contributions into the CPF accounts of such employees. In addition to the contributions by employers, employees are similarly statutorily required to make monthly contributions into their respective CPF accounts. As a general rule, when the employee reaches 55 years old, he or she is able to withdraw all the monies in his or her CPF account, after setting aside an amount that is known as the Basic Retirement Sum or the Full



Singapore

Retirement Sum, which are currently SGD 83,000 and SGD 166,000 respectively. The Basic Retirement Sum or the Full Retirement Sum will then be used for the purposes of making monthly payouts to the employee once he or she turns 65 years old, for a period of approximately 20 years.

Without prejudice to the above, an employee may also withdraw all the monies in his or her CPF account in certain limited circumstances, such as where the employee is terminally ill or is suffering from an illness, which has either rendered the employee permanently unfit from ever continuing in any employment or has caused the employee to have a severely reduced lifespan.

Apart from saving for the purposes of retirement, the monies contained in the employee's CPF account can also be used for housing and healthcare purposes. On this, the CPF Board administers a number of schemes that allows individuals to use the monies in their respective CPF accounts to purchase public and private property, as well as to subsidize their medical expenses or that of their immediate family. These schemes include the Public Housing Scheme, Private Properties Scheme, Medisave and MediShield.

Supplementary Retirement Scheme

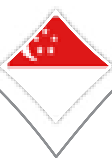
In addition to the CPF scheme, the Singapore government has also put in place a Supplementary Retirement Scheme ("**SRS**"), which is a voluntary scheme for all Singaporean Citizens or Permanent Residents and foreign nationals who are at least 18 years of age, are not undischarged bankrupts and who are mentally able to manage themselves and their affairs. The SRS is meant to complement and not derogate from the CPF scheme.

Under the SRS, an eligible individual may contribute up to SGD 15,300 (for Singaporean Citizens or Permanent Residents) and SGD 35,700 (for foreign nationals) per annum into his or her SRS account. This contribution can be made up to any age until the individual makes his or her first withdrawal from the SRS account or if there are applicable medical grounds. Unlike the CPF scheme, the SRS contribution by the individual can be made at any time so long as the cap for contributions is not reached.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

Pursuant to the provisions of the CPF Act, all employers in Singapore are statutorily required to make contributions into the CPF accounts of all Singapore Citizens and Permanent Residents who have entered into a contract of service with the employer and earn more than SGD 50 in a given month. This includes executive directors, part-time employees and temporary employees.

The contributions made by the employer are a percentage of all payments made by the employer to the said employee, which includes the fixed monthly salary, bonus payments, sales commissions, as well as other allowances (such as



Singapore

transport allowances, mobile phone allowances and attendance allowance), made to the employee. Without prejudice to the foregoing, no contributions will need to be made in respect of genuine reimbursements and termination payments.

The contribution rates are dependent on the age of the employees and are updated frequently by the CPF Board. As of January 1, 2016, the applicable contribution rates for employers are as follows:

Employee's Age	Contribution by employer (% of wage)
55 and below	17
Above 55 to 60	13
Above 60 to 65	9
Above 65	7.5

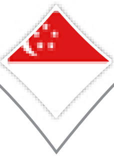
The employer's portion of contribution to the CPF is further subject to a ceiling, which is dependent on whether the payments made to the employee is classified as Ordinary Wage ("**OW**") or Additional Wage ("**AW**"). The CPF Act defines OW as being wages due wholly and exclusively for your employment in a (named calendar) month and are payable before the due date for payment of CPF contributions for that (named calendar) month. For a particular payment to fall within the ambit of being OW (i.e., for the OW ceiling of SGD 6,000 per month to apply), both conditions will need to be met. A common example of OW is the fixed monthly salary paid to an employee.

On the other hand, AW is simply defined as wages that are not granted wholly and exclusively for your employment in the (named calendar) month. In short, any payment made to the employee that does not meet the conditions of being OW will be classified as being AW. A common example of AW is bonus payments. The current AW ceiling is SGD 102,000 less the total OW subject to CPF for the period from January 1 to December 31.

Finally, the employer's portion of contribution to the CPF is in addition to the employee's wages. In other words, the employer's portion of contribution cannot be deducted from the employee's monthly wages.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The CPF Act and its subsidiary legislation sets out the statutory framework applicable to the CPF scheme.



Singapore

The material requirements applicable to the CPF scheme are that there are mandatory contributions by both employers and employees (see response to question 2 for details) and that such contributions are made within the period of 14 days after the end of a named calendar month (i.e., the contributions for January 2016 must be made by February 14, 2016).

4. What are the key features of the tax framework that applies to retirement plans/schemes?

Corporate Tax

As a general rule, contributions made by an employer to the CPF accounts of its employees who are Singaporean Citizens or Permanent Residents are deemed to be deductible expenses. In other words, they can be removed from the taxable income of an employer. However, it should be noted that the deductions are capped at the maximum statutory amount of contributions that must be made by the employer concerned (i.e., any contributions made by the employer that are in excess of the statutory contributions are non-deductible).

Individual Income Tax

Apart from the employer, the employee is also eligible for relief from income tax for the employee's contribution to his or her individual CPF account. Similar to that for the employer, the total amount of relief is capped at the statutory contributions (i.e., voluntary contributions made by the employee in excess of his or her statutory contributions are not eligible for relief from personal income tax).

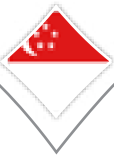
Under the SRS, the individual is able to obtain tax relief from all amounts that he or she contributes into his or her SRS account.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Yes. Pursuant to the provisions of the CPF Act, employers are statutorily required to make contributions into the CPF accounts of their employees who are Singaporean Citizens or Permanent Residents. More details are set out in our response to question 2 above.

Apart from contributions made by the employer, the CPF Act also mandates that employees who are Singaporean Citizens or Permanent Residents contribute to their individual CPF accounts. Such employee contributions are automatically deducted from the employee's monthly salary or other payments made by the employer to the employee.

In addition to mandatory contributions to their respective CPF accounts, employees are also required to make monthly contributions to the one of the following Self-Help Group Funds:



Singapore

- Chinese Development Assistance Council (CDAC) Fund
- Eurasian Community Fund (ECF)
- Mosque Building and Mendaki Fund (MBMF)
- Singapore Indian Development Association (SINDA) Fund

The amount of contribution to Self-Help Group Funds listed above is dependent on the employee's monthly wages, and the applicable fund into which contributions are to be made is dependent on the employee's ethnic background or religion. The amount of contributions is deducted automatically by the employer from the employee's wages each month.

Under the SRS, an individual may authorize his or her employer to make contributions into his or her SRS account. However, such contributions made by the employer are taxable in the hands of the individual, as such contributions are viewed as remuneration on the part of the individual.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

The material rules governing the CPF scheme are contained in our response to question 2 above.

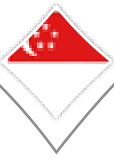
A failure to make the mandatory contributions or a failure to pay the CPF contributions on time is a criminal offense under the CPF Act, and the employer concerned may be subject to the following:

- A fine of between SGD 1,000 and SGD 5,000 per offense and/or a term of imprisonment of up to 6 months for the first offense; and
- A fine of between SGD 2,000 and SGD 10,000 per offense and/or a term of imprisonment of up to 12 months for subsequent convictions.

Alternatively, the CPF Board may make a composition offer to the defaulting employer of up to SGD 1,000 per offense.

In addition to the criminal penalties set out above, a defaulting employer is still required to make the relevant CPF contributions into its employee's CPF account, and late payment interest of 18% per annum will be applicable to such payments.

As a general rule, the CPF Board does conduct regular audits on employers in Singapore, and such audits have resulted in a number of employers being found to have infringed the relevant provisions of the CPF Act. The CPF Board states that



Singapore

its computerized system detects defaulting employers and lists them each month for follow-up action by Investigations Officers. A notice is sent by registered post to the employers informing them that legal action will be taken unless CPF contributions, interest and composition amounts are paid within the notice period.

CPF Investment Scheme

The CPF Investment Scheme allows individual employees to invest in a wide range of investment products if the individual employee is at least 18 years of age, is not an undischarged bankrupt and has at least SGD 20,000 in his or her Ordinary Account. The types of investment products that the individual can invest in include unit trust, endowment policies, fixed deposits, and exchange traded funds.

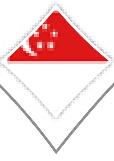
While there may be a wide range of investment products available to individual employees, these investment products must have obtained prior approval of the CPF Board, and can only be bought from service providers who have been approved by the CPF Board, which include banks, investment administrators, insurance companies and fund management companies.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

Under the CPF scheme, it is compulsory for all employers that intend to hire employees to register with the CPF Board. Upon registration, the employer will receive a CPF Submission Number (“**CSN**”), which is the number that employers must reference when transacting with the CPF Board.

One such transaction is the monthly submission of CPF contribution details by employers to the CPF Board. The details that must be provided to the CPF Board include the total CPF contribution for a given month, deductions for payment made to the Self-Help Group Funds, as well as the amount of OW and AW for a given month. Such submission can be made either electronically or through a hard copy payment advice. However, if the submission is made by way of a hard copy payment advice, a processing fee of SGD 7 per employee per month will apply for employers that have more than 10 employees.

Where the employee falls within the ambit of the Employment Act (i.e., where the employee is not employed in a managerial or executive position and does not earn a fixed monthly salary that exceeds SGD 4,500), the employer is statutorily required to provide the employee with an itemized payslip within three working days from the date payment is made to the employee for a given month. One item that must be contained in the itemized payslip is the amount of money that is deducted as a result of the employee’s contribution to his or her CPF account for the said month. In addition to providing such payslips to employees, the employer also has an obligation to retain the payslips for a period of at least two years.



Singapore

Save as set out above, there is no statutory obligation on employers to disclose to or consult their employees on matters related to the CPF scheme.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

As the CPF scheme is a statutory scheme, the employer cannot alter the CPF scheme.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

As the CPF scheme is a statutory scheme, the employer cannot withdraw from the CPF scheme. As mentioned in our response to question 6, the failure to comply with the statutory requirements in the CPF Act is a criminal offense that may be punishable by a criminal fine and/or term of imprisonment.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

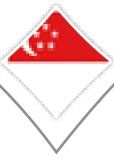
Yes, the entitlement to payouts under the CPF scheme is tied to the individual employee and a change of jobs will have no effect on such payouts. The new employer will also be required under the CPF Act to make the relevant contributions.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

No, there are no adjustments or increments to retirement benefits payments after retirement under the CPF scheme.

However, once an individual attains 55 years of age, the individual is able to withdraw the amounts contained in his or her CPF account after setting aside a minimum sum in his or her CPF account. The minimum sum that must be retained is dependent on whether the individual owns a property with sufficient property charge or pledge. If this is the case, the individual can withdraw all amounts contained in his or her CPF account after setting aside SGD 83,000. If the individual does not own a property, he or she can withdraw all amounts contained in his or her CPF account after setting aside SGD 166,000. Without prejudice to the foregoing, if the individual has SGD 5,000 or less in his or her CPF account upon attaining 55 years of age, the individual is not required to retain any monies in his or her CPF account and can withdraw all amounts.

In addition to the withdrawal of monies contained in the individual's CPF account at the age of 55 years, the CPF scheme also provides for monthly payouts to be made to individuals once the individual attains the age of 65 years. These monthly payments are made pursuant to two schemes – the CPF Lifelong Income For the Elderly Scheme ("**CPF Life**") and the Retirement Sum Scheme.



Singapore

CPF LIFE

CPF LIFE provides a monthly payout to an individual once he or she attains the payout eligibility age, which is currently 65 years for members who were born in 1954 or later. These monthly payouts will be made to the individual until the individual's death. The amount of payouts will be dependent on a number of factors, including the amount of monies standing in the individual's CPF account and the amount of monies that the individual chooses to set aside for his or her beneficiaries upon his or her demise.

Currently, all Singapore Citizens or Permanent Residents who attain 55 from May 1, 2016 and have at least SGD 60,000 in their CPF accounts are automatically enrolled in CPF LIFE.

Retirement Sum Scheme

If the individual does not meet the eligibility criteria for CPF LIFE, he or she will be placed on the Retirement Sum Scheme which provides a monthly payout to the individual once he or she attains the payout eligibility age, which is currently 65 years for members who were born in 1954 or later, for a period of approximately 20 years.

SRS

Under the SRS, an individual may make a withdrawal at any time. However, if a withdrawal is made before the individual attains his or her statutory retirement age, a 5% penalty is imposed unless such withdrawal is made on the grounds of death, medical reasons, bankruptcy and the individual has maintained his or her SRS account for a period of 10 years from the date of the first contribution.

Contributed by: **Kala Anandarajah,** Rajah & Tann Singapore LLP

South Korea

Contributed by: **Kim & Chang**

1. Does the state provide a pension, retirement income or social security program of some type?

In relation to retirement and pension programs in Korea, there exist (i) a National Pension, which is a nationwide social insurance system; and (ii) a retirement benefits scheme, which employers are required to have for their employees, pursuant to the Employee Retirement Benefit Security Act ("**Retirement Benefits**").

National Pension

Employers and employees are required to make equal contributions totaling 9% of the employee's monthly standard salary. The employee's contribution (i.e., 4.5%) is directly deducted from the employee's monthly standard salary. The

South Korea

employer's contributions are fully deductible under the Korean Corporation Tax Law (Article 45(1) of the Presidential Decree of the Corporation Tax Law). Benefits received can take the form of a retirement annuity, a disability pension, a survivors' pension or a lump sum refund (Article 49 of the National Pension Act).

Retirement Benefits

With regard to Retirement Benefits, an employer is required to adopt a severance payment plan ("**Statutory Severance Plan**"), or a retirement pension plan that may be in the form of a defined benefit plan ("**DB Plan**") or defined contribution plan ("**DC Plan**"). Employers with less than 10 employees have the option of establishing an individual retirement pension ("**IRP**") rather than adopting a Statutory Severance Plan or the DB or DC Plan.

In Korea, an employee who has one or more consecutive years of service with an employer and works on average 15 or more hours per week is entitled to receive Retirement Benefits within 14 days of separation from the employer, regardless of the cause of separation (whether it be due to unilateral termination, voluntary resignation or retirement).

There was a recent amendment to the Employee Retirement Benefit Security Act ("**ERBSA**") in order to encourage a shift away from the Statutory Severance Plan (which was the only Retirement Benefits scheme available before ERBSA was enacted). As such, employers established after July 26, 2012 must, within one year of their establishment, implement either the DB or DC Plan. That said, an employer (established after July 26, 2012) that fails to implement either a DB or DC Plan is not subject to any penalties but will be deemed to have adopted the Statutory Severance Plan.

If an employer delays payment of Retirement Benefits for longer than 14 days to an employee whose employment relationship has ended, the employer shall pay deferral interests for the unpaid Retirement Benefits at an annual rate of 20%. However, if the employer and the employee have agreed, within the 14 days, to extend the grace period to a particular date, the employer may delay the payment until that date.

Other Social Security Programs

In addition to the National Pension, there are three other statutory insurance programs in Korea, which are National Health Insurance, Employment Insurance and Industrial Accident Compensation Insurance.

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

Yes, employers with one or more employees are required to enroll employees under the National Pension and to provide Retirement Benefits, which may be in the form of a Statutory Severance Plan, DB Plan, DC Plan or IRP (in the case of an employer with less than 10 employees).

South Korea

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The Labor Standards Act ("**LSA**") and ERBSA (which incorporates the relevant provisions of the LSA) are the principal statutes in Korea.

The LSA is Korea's fundamental labor law regulating the minimum working conditions for employees and prescribing the basic legal framework for labor relations between employers and employees. Furthermore, the LSA generally applies to all workplaces employing five or more employees, with some variations depending on the number of employees in the workplace. Please note that an employer's requirement to enroll its employees under the National Pension and to provide them the Retirement Benefits applies regardless of the employee headcount.

ERBSA provides for a comprehensive retirement benefit system consisting of several different plans, in addition to the current severance system, available to the employer and the employee. The stated purpose of ERBSA is to provide employees with a stable income after retirement by encouraging conversion to a corporate pension over the statutory severance scheme, which otherwise applies by default. The legal minimum separation payment obligation for employers is 30 days' average wage for each consecutive year of service. For purposes of calculating separation payments, "average wage" includes all wages paid by the employer to the employee for the three-month period prior to the date of resignation or termination, divided by the total number of days during the same period.

Statutory Severance: In the case of Statutory Severance, the employee is entitled to Retirement Benefits equalling at least 30 days' average wage for every year of consecutive service.

DB Plan or DC Plan: Here, the employer entrusts an outside financial institution to manage a fund from which the employee will receive an annuity or lump sum payment upon separation.

In the case of a DB Plan, the amount of the Retirement Benefits payable to the employee is predetermined, while the contribution to be made by the employer may vary depending on how the fund performs. The amount of the Retirement Benefits that must be paid is the same as Statutory Severance (i.e., at least 30 days' average wage for every year of consecutive service).

In the case of a DC Plan, the employer's contribution is predetermined, while the amount of Retirement Benefits payable to the employee may vary depending on how the fund performs. The employer's contribution amount is 1/12 of the employee's total annual wage.

In both the DB Plan and DC Plan, the Retirement Benefits are paid as an annuity or as a lump sum payment.

South Korea

IRP: An IRP requires funds to be placed in an IRP account for which funds are managed by a qualified retirement pension manager. If an employer selects and adopts an IRP, then the employer will be deemed to have established a Retirement Benefits scheme as required under ERBSA. Here, too, the Retirement Benefits paid to the employee must equal at least 30 days' average wage for every year of consecutive service.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

Under Korean tax laws, when an employee (a) makes an employee contribution per the National Pension Act or (b) pays the employee (insurance) contribution per the National Health Insurance Act, Employment Insurance Act or Act on Long-Term Insurance Care for the Elderly, the entire contribution amount shall be deemed tax deductible from the employee's income. Similar to (a) and (b), when an employer makes an employer contribution per the National Pension Act or pays the employer (insurance) contribution per the National Health Insurance Act, Employment Insurance Act or Act on Long-Term Insurance Care for the Elderly, the entire contribution amount shall be deemed a tax-deductible expense.

With regard to Retirement Benefits, when an employee makes an additional contribution to his or her employee contribution ("**Additional Contribution**"), the Additional Contribution, as well as other contributions to the IRP amounting to up to KRW 7,000,000, shall be tax deductible from the employee's income. As for any such employer contribution to Retirement Benefits, the full amount shall be a tax-deductible expense.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

For the National Pension, employers and employees are both required to make equal contributions totalling 9% of the employee's monthly standard salary. With respect to Retirement Benefits, only employer contributions are required. For additional information on the employer contributions, please see our comments under questions 1 and 3.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Under ERBSA, a retirement pension trustee shall operate and manage the retirement pension in accordance with the methods and standards prescribed under the Presidential Decree to ERBSA (e.g., diversified investment, operating similar to a bank deposit/savings account as defined under the Banking Act, operating similar to an insurance contract as defined under the Insurance Business Act, etc.) in order to ensure mid- and long-term stable operation of reserves. In addition, a retirement pension trustee of a DC Plan shall suggest at least three operating methods with different risks and return structures at least once every half year, and shall supply information required by a participant to choose a method of operating reserves (e.g., information on the probability of making profits and losses for each operating method).

South Korea

Before adopting a DB Plan or DC Plan, the employer should (i) obtain the consent from the employee representative (i.e., a representative elected by the majority of employees) or majority labor union (i.e., a union in which a majority of employees are members) if such union exists, (ii) draw up the rules of the DB Plan or DC Plan and (iii) report it to the competent labor office. The rules of the DB Plan or DC Plan should be set up autonomously by the employer and employees within the limits of statutory standards. Furthermore, the employer should sign a contract with a DB Plan or DC Plan provider (financial institution) which will operate the DB Plan or DC Plan (e.g., manage the fund).

Any financial institution falling under any of the following subparagraphs that wishes to be a retirement pension trustee shall register itself with the Minister of Employment and Labor after meeting certain requirements (e.g., financial soundness, personnel and physical resource requirements).

- An investment trader, investment broker, or collective investment business entity under the Financial Investment Services and Capital Markets Act
- An insurance company under subparagraph 6 of Article 2 of the Insurance Business Act
- A bank under Article 2 (1)2 of the Banking Act
- The National Credit Union Federation of Korea under subparagraph 2 of Article 2 of the Credit Unions Act
- The Korean Federation of Community Credit Cooperatives under Article 2(3) of the Community Credit Cooperatives Act
- The Korea Workers' Compensation and Welfare Service under Article 10 of the Industrial Accident Compensation Insurance Act (the objects of the retirement pension business of the Korea Workers' Compensation and Welfare Service shall be limited to businesses employing less than 30 ordinary workers)

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

Reporting Requirements: As noted under question 6, the rules of a DB Plan or DC Plan must be reported to the competent labor office.

Consent Requirements: When an employer is establishing a DB Plan or DC Plan or changing an existing Retirement Benefits scheme (e.g., from a Statutory Severance Plan to a DC Plan), the employer must obtain consent from the employee representative (i.e., a representative elected by the majority of employees) or the majority labor union (i.e., a union in which a majority of employees are members) if such union exists.

South Korea

Consultation/Consent Requirements: When an employer intends to change the details of a Retirement Benefits scheme, the employer must consult (i.e., seek the opinion of) the employee representative or majority labor union. Furthermore, if the intended change would be an adverse change for the employees, the employer must obtain consent thereon from the employee representative or majority labor union. An adverse change that was implemented without the required consent from the employee representative or majority labor union is void and without effect.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

As noted in question 7, when an employer intends to change the details of a Retirement Benefits scheme, the employer must consult (i.e., seek the opinion of) the employee representative or majority labor union. If the intended change would be an adverse change for the employees, the employer must obtain consent thereon from the employee representative or majority labor union. An adverse change that was implemented without the required consent from the employee representative or majority labor union is void and without effect.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

An employer is free to withdraw from a Retirement Benefits scheme and to change to a different type of Retirement Benefits scheme for any reason, as long as the employer has obtained consent from the employee representative or majority labor union (hereinafter "**Requisite Consent**"). A change in Retirement Benefits scheme that is implemented without Requisite Consent is void and without effect.

Because employers are required to have a Retirement Benefits scheme, it is not possible for an employer to withdraw from a Retirement Benefits scheme without adopting another type of Retirement Benefits scheme. As discussed under question 1, employers established after July 26, 2012 must, within one year of their establishment, implement either the DB Plan or DC Plan, and, upon an employer's failure to do so (while there are no penalties), the employer will be deemed to have adopted the Statutory Severance Plan.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

No, it is not possible for an employee to take the Retirement Benefits that he or she accrued and was provided by the former employer to a new employer. When an employee starts employment with a new employer, he or she will begin to accrue (new) Retirement Benefits with this employer, provided the employee works on average 15 hours per week or more and has one or more consecutive year of service.

South Korea

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

No, there is no such requirement.

Contributed by: **Hoin Lee & Sun-Ha Kweon,** Kim & Chang

Taiwan

Contributed by: **Lee, Tsai & Partners, Attorneys-at-Law**

1. Does the state provide a pension, retirement income or social security program of some type?

Yes. Employees are eligible for a labor pension and a labor insurance old age benefit.

(1) Pension Schemes

There are two concurrent pension schemes in place. In general, employees who are Taiwan citizens hired on or after July 1, 2005 are subject to the Labor Pension Act ("**LPA**") pension scheme, and those hired before that date may choose between the Labor Standards Act ("**LSA**") pension scheme and the LPA pension scheme. However, even for employees hired before July 1, 2005 who choose the LPA pension scheme, the LSA pension scheme still applies to their seniority calculated under the LSA, as their seniority prior to their transferring to the LPA pension scheme is still recognized. (Note: Employees who are not Taiwan citizens should apply different rules. Please refer to question 3.)

Taiwan

Under the LPA pension scheme, an employer shall contribute, on a monthly basis, no less than 6% of an employee's monthly wages to the personal pension account of the employee, which is managed by the Labor Insurance Bureau. Employees who are 60 years old (or older) may claim pension payments under the LPA pension scheme.

Under the LSA pension scheme, employers shall deposit funds ranging from 2% to 15% of the total monthly wages of their employees and deposit such amount in a designated "pension reserve fund" account. This pension reserve account is managed by the Bank of Taiwan as entrusted by the Bureau of Labor Funds of the Ministry of Labor. When the employee retires, he or she would claim his or her pension from the employer. The criteria for payment shall be two "bases" for each full year of the employment service. Those having worked over 15 years are given one base for each full year of service and the total number of bases shall be no more than 45. Length of employment service is calculated as a half year when it is less than six months and as one year when it is six months or more but less than one year.

(2) Labor Insurance Old Age Benefit System

Employers shall enroll employees in the labor insurance program and, in general, both the employers and the employees shall pay the insurance premiums every month. Once the employee meets the requirements under the Labor Insurance Act, he or she may claim for the old age benefit.

Besides the above, there are also separate pension systems for veterans, public officials and teachers, as well as an old age benefit system for the general population (i.e., unemployed).

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

Employers are required to maintain the pension schemes as described under question 1 above and shall enroll employees in the labor insurance program and pay the insurance premiums every month.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

(1) The two statutory pension schemes are governed by the LSA and the LPA respectively, and the labor insurance old age benefit is governed by the Labor Insurance Act.

(2) For the LSA pension scheme, the LSA requires the employer to make monthly deposits for its employees who are (a) Taiwan nationals or (b) foreign nationals who do not engage in (i) marine fishing, (ii) domestic assistant/nursing or (iii) occupations designated by the central competent authority in response to key infrastructure projects or economic/social development needs. Under the LPA pension scheme, the LPA requires the employer to make monthly

Taiwan

contributions to its employees' personal pension accounts if the employee is (a) a Taiwan national (if the employee is employed on or after July 1, 2005 or is employed before July 1, 2005 and has chosen to follow the LPA pension scheme) or (b) a Mainland China, Hong Kong or Macau national or a national of any other country who has married or later divorced a Taiwan national and has been granted permission to reside and work in Taiwan.

(3) According to the Labor Insurance Act, all employees between the ages of 15 and 65, regardless of nationality, who are employed by a company with five employees or more, shall be enrolled in the labor insurance program by the employer. The employee may apply for old age benefit according to the following rules:

(a) An employee who is at least 60 years old and has at least 15 full years enrolled in labor insurance, or an employee who is at least 55 years old and has worked at least 15 years in an occupation that is considered dangerous and requiring a high level of physical fitness, is entitled to request annual old age benefit upon his or her resignation and withdrawal from the insurance plan.

(b) An employee who is at least 60 years old but does not yet have 15 full years enrolled in labor insurance is entitled to receive a one-time lump sum old age benefit upon his or her resignation and withdrawal from the insurance plan.

(c) The one-time lump sum old age benefit is also available to the following employees who have seniority under the labor insurance program prior to January 1, 2009:

(i) an employee who is at least 60 years old (or a female employee who is at least 55 years old) and who has accumulated at least one year of seniority under the labor insurance program,

(ii) an employee resigning at 55 years old with 15 full years enrolled in labor insurance, or

(iii) a resigning employee who has at least 25 years enrolled in labor insurance under the same employer/organization.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

(1) The employee does not include the employer-contributed pension amount in his or her income tax for the year that the contribution is made; the income tax is assessed only when the employee starts withdrawing from the pension in the future, thereby turning it into retirement income.

(2) According to the LPA, employees may voluntarily contribute up to 6% of their monthly wage to the personal pension account. The amount of labor pension voluntarily contributed by the employee may be deducted from his or her gross consolidated income for the year.

Taiwan

(3) According to the Income Tax Act, the employer may list as its expenses its contributions under either the LSA pension scheme or the LPA pension scheme for up to 15% of the wages paid in that year.

(4) In terms of tax exemptions on retirement income, the Ministry of Finance announced in 2016 that: For a one-time lump sum retirement income payment, if the amount is no more than "NT$175,000 multiplied by the seniority", it is considered tax-exempt; the taxable income for any portion between "NT$175,001 to NT$351,000 (multiplied by the seniority)" is one-half of that amount; and any amount beyond "NT$351,000 (multiplied by the seniority)" is fully taxable income. For retirement income payment paid in installments, the taxable income would be based on the total amount received that year minus NT$758,000.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Yes. Please refer to question 1.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

The Regulations for the Labor Pension Act on Labor Pension Fund Management/Utilization and Profit/Loss Allocation and the Regulations for Revenue, Expenditure, Safeguard and Utilization of the Labor Retirement Fund both contain rules on how the LPA pension fund and the LSA pension reserve, respectively, may be used and invested. For example, both the LPA pension fund and the LSA pension reserve may only be deposited in a domestic or foreign financial institution or invested in the items specified under the said regulations, such as domestic or foreign listed/OTC or private placement equity securities, or domestic or foreign real-estate based security products.

Article 45 of the LPA provides that investment of the LPA pension accounts outside the enumerated scope may be fined between NT$2 million and NT$10 million, and the central competent authority would require payment of interest accrued within a certain deadline. However, as the LSA pension reserve is managed by the Bank of Taiwan as entrusted by the Bureau of Labor Funds, and the LPA pension accounts are managed by the Bureau of Labor Funds itself or its designated trusts, the employer would never be held liable because the employer does not have access to use or invest those funds.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

LSA pension scheme

(1) Under the LSA, the employer's setting aside of the pension reserve shall be monitored by a pension reserve supervising committee formed by the employees and the employer. Representatives of employees must make up at least two-thirds of such a committee. Any changes contemplated by the employer regarding the percentage to be set

Taiwan

aside for the pension reserve shall require the approval of the aforementioned committee and later reported to the local competent authority for review.

(2) According to the Regulations for the Allocation and Management of the Employee Pension Reserve Funds, a contemplated use of the pension reserve shall also require the review of the committee and subsequently signed off by the employer with the committee chair and committee vice-chair.

(3) According to the Regulations for the Allocation and Management of the Employee Pension Reserve Funds, the accounting books of the pension reserve shall be submitted to the committee for review within one month of the end of every fiscal year.

(4) The failure to establish a supervising committee would cause employees to be unable to receive pension payments entirely, as withdrawals from the pension reserve require the signatures of the committee chair and committee vice-chair. The failure to receive the approval of the committee for any changes to the contribution percentage to the pension reserve, thereby causing the proposal to be unable to be submitted to the local competent authority for review, would affect the amount of expenses the employer may claim on its tax return (the pension reserve percentage is one of the factors considered by the tax authority in recognizing a company's expenses).

LPA pension scheme

According to the LPA, an employee who discovers noncompliance by his or her employer, such as a failure to contribute to the pension account according to the LPA, may submit a complaint to the employer, the Ministry of Labor, agencies responsible for labor inspections or the competent authority. The employer may not impose retaliatory measures against an employee who makes such a complaint.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

LSA pension scheme

As mentioned above, changes to the employer's percentage contribution to the pension reserve will require the approval of the pension reserve supervising committee and submission to the local competent authority for further approval.

LPA pension scheme

(1) Pursuant to the LPA, the employer may not stipulate any other pension scheme in place of the statutory labor pension scheme.

(2) As mentioned above, the LPA requires the employer to contribute at least 6% of the employee's monthly wages to

Taiwan

the pension account. If the employer is currently contributing more than the minimum 6% but desires to move down to the statutory level, depending on the provisions under the employment agreements, employee consent may be required.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

LSA pension scheme

The Regulations for the Allocation and Management of the Employee Pension Reserve Funds provide for three circumstances under which an employer may withdraw from the pension reserve fund managed by the Bank of Taiwan:

(1) The employer and the employee have settled the seniority under the LSA pursuant to law and found that there is no need to pay the employee the pension under the LSA pension scheme.

(2) The employer no longer has any employees who follow the LSA pension scheme.

(3) The employer is dissolved and does not owe severance or pension to its employees.

Employers found in violation of the above rule may be fined between NT$20,000 and NT$300,000.

As mentioned in (1) of question 1 above, for employees hired before July 1, 2005 who choose the LPA pension scheme, the LSA pension scheme still applies to their seniority calculated under the LSA, as their seniority prior to their transferring to the LPA pension scheme is still recognized. Such employees may reach an agreement with the employer to pay off the accrued LSA seniority with terms no lower than the pension calculation bases provided under the LSA. After the payoff, the employee will no longer remain under the LSA pension scheme (since they do not have any LSA seniority).

Finally, the employer may stop depositing funds in the pension reserve fund account for the employee after termination of the employment relationship with the employee.

LPA pension scheme

The personal pension account is the employee’s property. Thus, the employer does not have the power to “withdraw” or “terminate” the pension account upon the termination of the employment relationship; the employer may simply stop contributing to the employee’s personal pension account.

Taiwan

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

LSA pension scheme

An employee's seniority is limited to a single employer. A change of jobs would thus reset the seniority and affect the individual's rights in applying for pension payment upon retirement.

LPA pension scheme

As an employee's employer is required to contribute a certain amount to the employee's personal pension account, it does not matter who the employer is, and the pension amount will not be affected by the employee's change of jobs.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

There is no such requirement under the LSA and the LPA.

Contributed by: **Chung-Teh Lee, Elizabeth Pai, Ankwei Chen & Emily Chueh,** Lee, Tsai & Partners, Attorneys-at-Law

Vietnam

Contributed by: **Mayer Brown JSM (Vietnam)**

1. Does the state provide a pension, retirement income or social security program of some type?

The state provides a statutory framework for social insurances covering pension schemes under the Labour Code No. 10/2012/QH13 dated June 18, 2012 (the "**Labour Code**") and the Law on Social Insurance No. 58/2014/QH13 dated November 20, 2014, of the National Assembly of Vietnam (the "**Law on Social Insurance**").

Social insurance is contributed on a monthly basis by employers and employees. Subject to applicable retirement conditions, an employee is entitled to pension insurance upon reaching the age of (i) 60 for men and 55 for women if they have been working under normal working conditions or (ii) 55 to 60 (men) and 50 to 55 (women) if they have 15 years working under hazardous or arduous working conditions or in certain geographic regions.

Vietnam

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

Contribution to pension schemes is mandatory for both employers and employees.

The Labour Code and the Law on Social Insurance provide that, except for exceptional cases, an amount equal to 8% of the employee's wages must be contributed by the employee to the pension schemes. Employers have an obligation to contribute to the compulsory pension schemes in amounts ranging from 14% to 22% of the employees' wages. The percentage of the employer's contribution is subject to the type of job (Article 86 – the Law on Social Insurance).

The salary used to calculate the social insurance contribution is the salary stated in the labor contract. If such salary is higher than the 20 months' statutory pay rate, then the monthly salary used to calculate the social insurance contribution is equal to the 20 months' statutory pay rate.

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

The Labour Code and the Law on Social Insurance provides the statutory framework for retirement schemes, and the Management Board of Vietnam Social Security is the government authority responsible for directing and supervising the operation of social insurance agencies and giving advice on pension insurance policies.

Under the Law on Social Insurance, the responsibility for making pension contributions is on both the employer and the employee. Failure to make the required contributions may result in penalties for administrative violations against regulations on social insurance ranging from 12% to 18% of the compulsory social insurance premium at the time the administrative violation is recorded ((i) not exceeding VND 75,000,000 – approximately USD 3,400 (if the employer is an individual) and not exceeding VND 150,000,000 – approximately USD 6,800 (if the employer is a corporation) and (ii) from VND 500,000 to VND 1,000,000 – approximately USD 22 to USD 44 applicable to the employee) (Article 26 – Decree 95/2013/ND-CP dated August 22, 2013, as amended).

4. What are the key features of the tax framework that applies to retirement plans/schemes?

Pursuant to Vietnamese laws, mandatory contributions made by employee and employer are not subject to taxation.

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

It is mandatory for both employer and employee to contribute to a pension fund as discussed in question 2.

The obligation on an employer to pay the monthly contributions arises if the employee is in continuous employment for one month. Conversely, no contributions would be payable if the employee is in continuous employment for less than

Vietnam

one month. The Labour Code and the Law on Social Insurance are silent on whether an employer can avoid its obligations by breaking up an employee's employment into periods of less than one month each.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Under the government's Decree No. 30/2016/ND-CP dated April 28, 2016, investment in social insurance, health insurance and unemployment insurance funds is subject to the following order of priority:

(i) Purchase of government bonds;

(ii) Provision of loans to the state budget;

(iii) Making of deposits, purchase of bonds, promissory notes, bills or deposit certificates at high performance commercial banks rated by the State Bank of Vietnam;

(iv) Provision of loans to Vietnam Development Bank and Vietnam Bank for Social Policies in the form of purchase of government-guaranteed bonds that are issued by these banks; and

(v) Investment in important projects under the Prime Minister's decisions.

The investment in the two forms specified in paragraphs (iv) and (v) shall only be applied to the unemployment insurance funds.

At the proposal of the Director General of Vietnam Social Security, the Management Board of Vietnam Social Security shall decide upon and take responsibility for the types and structure of the proposed investment. The Ministry of Finance shall supervise the implementation of such investments. At this stage, there are no specific regulations covering the liabilities for failure to comply with requirements for such types of investments.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

The government and Ministry of Labour Invalids and Social Affairs (MOLISA) have issued various requirements and guidelines on the reporting obligations of employers. General reporting requirements are the monthly, quarterly, semi-annual and annual reports on the status of the mandatory contributions to the relevant social insurance agencies. Among others, these include:

- Semi-annual report: publicly provide information on employees' contribution payment of social insurance premiums at the request of employees or trade union organizations

Vietnam

- Extraordinary report: any changes in information of employees in social insurance

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

As discussed in questions 2 and 3 above, contribution to the pension fund made by the employer is mandatory as required by the Labour Code and the Law on Social Insurance. The employer does not form the retirement scheme and therefore cannot alter these schemes.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

Under no circumstances may an employer withdraw from or terminate a plan/scheme.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Under the applicable laws, if an employee pays social insurance premiums in interrupted periods, his or her period of social insurance premium payment is the total of such periods. In other words, if an employee changes his or her job, he or she can take the pension benefit entitlement with him or her.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

Subject to the state's policy from time to time, retirement benefit payments may be adjusted. In practice, such adjustment, if any, would be applicable to those who are entitled to retirement benefit payments.

Contributed by: **Hoang Anh Nguyen & Huong Nguyen,** Mayer Brown JSM (Vietnam)

Directory

Australia

John Tuck

Corrs Chambers Westgarth,

567 Collins Street, Melbourne, VIC 3000, Australia

+61 3 9672 3000 john.tuck@corrs.com.au

www.corrs.com.au/people/john-tuck

Hong Kong

Duncan Abate

Mayer Brown JSM,

16th - 19th Floors, Prince's Building, 10 Chater Road, Central, Hong Kong

+852 2843 2203 duncan.abate@mayerbrownjsm.com

www.mayerbrown.com/people/duncan-a-w-abate

Hong Kong

Hong Tran

Mayer Brown JSM,

16th - 19th Floors, Prince's Building, 10 Chater Road, Central, Hong Kong

+852 2843 4233 hong.tran@mayerbrownjsm.com

www.mayerbrown.com/people/hong-tran

Directory

India

Ajay Raghavan
Trilegal,
The Residency, 7th Floor, 133/1, Residency Road, Bangalore 560 025, India

+91 80 4343 4646 ajay.raghavan@trilegal.com

www.trilegal.com/index.php/member-profile/ajay-raghavan

Indonesia

Fahrul S. Yusuf
SSEK Indonesian Legal Consultants,
14th Floor Mayapada Tower, Jl. Jend. Sudirman Kav. 28, Jakarta 12920, Indonesia

+62 21 521 2038 fahrulyusuf@ssek.com

http://www.ssek.com/lawyer/attorney_intro/our_firm/attorneys/2/18/fahrul_s._yusuf

Japan

Nobuhito Sawasaki
Anderson Mori & Tomotsune,
Akasaka K-Tower, 2-7, Motoakasaka 1-chome, Minato-ku, Tokyo 107-0051, Japan

+81 3 6888 1102 nobuhito.sawasaki@amt-law.com

www.amt-law.com/en/professional/profile/ns

Directory

Macau

Isolda Brasil

MdME Lawyers,
Avenida da Praia Grande, 409 China Law Building, 21/F and 23/F A-B, Macau

+853 2833 3332 ibrasil@mdme.com.mo

http://mdme.com.mo/main/employment-and-immigration/isolda-brasil

Malaysia

Sivabalah Nadarajah

Shearn Delamore & Co.,
7th Floor, Wisma Hamzah-Kwong Hing, No.1 Leboh Ampang, 50100 Kuala Lumpur, Malaysia

+603 2027 2727 sivabalah@shearndelamore.com

www.shearndelamore.com/?id=43

Malaysia

Wong Kian Jun

Shearn Delamore & Co.,
7th Floor, Wisma Hamzah-Kwong Hing, No.1 Leboh Ampang, 50100 Kuala Lumpur, Malaysia

+603 2027 2727 wongkj@shearndelamore.com

www.shearndelamore.com/?id=1087

Directory

Myanmar

Chester Toh

Rajah & Tann NK Legal Myanmar Company Limited,
Myanmar Centre Tower 1, Floor 07, Unit 08, 192 Kaba Aye Pagoda Road, Bahan Township, Yangon, Myanmar

+959 7304 0763 chester.toh@rajahtann.com

www.rajahtannasia.com/chester.toh

Myanmar

Dr. Min Thein

Rajah & Tann NK Legal Myanmar Company Limited,
Myanmar Centre Tower 1, Floor 07, Unit 08, 192 Kaba Aye Pagoda Road, Bahan Township, Yangon, Myanmar

+959 7304 0763 min.thein@rajahtann.com

mm.rajahtannasia.com/

Myanmar

Lester Chua

Rajah & Tann NK Legal Myanmar Company Limited,
Myanmar Centre Tower 1, Floor 07, Unit 08, 192 Kaba Aye Pagoda Road, Bahan Township, Yangon, Myanmar

+959 7304 0763 lester.chua@rajahtann.com

mm.rajahtannasia.com/

Directory

New Zealand

Stephen Ward

Simpson Grierson,

Level 27, Lumley Centre, 88 Shortland Street, Auckland 1010, New Zealand

+64 9 358 2222 stephen.ward@simpsongrierson.com

www.simpsongrierson.com/people/stephen-ward

New Zealand

Barney Cumberland

Simpson Grierson,

Level 27, Lumley Centre, 88 Shortland Street, Auckland 1010, New Zealand

+64 9 358 2222 barney.cumberland@simpsongrierson.com

www.simpsongrierson.com/people/barney-cumberland

New Zealand

Carl Blake

Simpson Grierson,

Level 27, Lumley Centre, 88 Shortland Street, Auckland 1010, New Zealand

+64 9 358 2222 carl.blake@simpsongrierson.com

www.simpsongrierson.com/people/carl-blake

Directory

New Zealand

Lincoln Matthews
Simpson Grierson,
Level 27, Lumley Centre, 88 Shortland Street, Auckland 1010, New Zealand

+64 9 358 2222 lincoln.matthews@simpsongrierson.com

www.simpsongrierson.com

New Zealand

Luke Strom
Simpson Grierson,
Level 27, Lumley Centre, 88 Shortland Street, Auckland 1010, New Zealand

+64 9 358 2222 luke.strom@simpsongrierson.com

www.simpsongrierson.com

Pakistan

Zeeshan Ashraf Meer
Meer & Hasan,
1-Farid Kot Road, Lahore 54000, Pakistan

+92 42 3723 5812 mail@meerhasan.com

www.meerhasan.com/index.php/index.php?option=com_content&view=article&id=138&Itemid=533

Directory

PRC

Deng Youping
Jingtian & Gongcheng,
34/F, Tower 3, China Central Place, 77 Jianguo Road, Beijing 100025, China

+86 10 5809 1033 deng.youping@jingtian.com

www.jingtian.com/eng/node/241

PRC

Andy Yeo
Mayer Brown JSM,
Suite 4710, Tower I, Plaza 66, 1266 Nan Jing Road West, Shanghai 200040, China

+86 21 6032 0266 andy.yeo@mayerbrownjsm.com

www.mayerbrown.com/people/andy-s-yeo

Philippines

Enriquito J. Mendoza
Romulo Mabanta Buenaventura Sayoc & de los Angeles,
21st Floor, Philamlife Tower, 8767 Paseo De Roxas, Makati City 1226, Philippines

+63 2 555 9555 enriquito.mendoza@romulo.com

www.romulo.com/mendoza-enriquito-j/

Directory

Singapore

Kala Anandarajah
Rajah & Tann Singapore LLP,
9 Battery Road, #25-01 Straits Trading Building, Singapore 049910

+65 6 232 0111 kala.anandarajah@rajahtann.com

www.rajahtannasia.com/one-team/partners/kala-anandarajah-pbm

South Korea

Hoin Lee
Kim & Chang,
39, Sajik-ro 8-gil, Jongno-gu, Seoul 110-720, Korea

+82 2 3703 1114 hoin.lee@kimchang.com

www.kimchang.com/frame2.jsp?lang=2&b_id=87&mode=view&idx=2315

South Korea

Sun-Ha Kweon
Kim & Chang,
39, Sajik-ro 8-gil, Jongno-gu, Seoul 110-720, Korea

+82 2 3703 1114 Shkweon@kimchang.com

www.kimchang.com/frame2.jsp?lang=2&b_id=87&mode=view&idx=1738

Directory

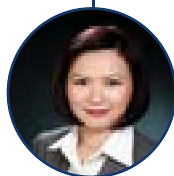
Taiwan

Chung-Teh Lee
Lee, Tsai & Partners, Attorneys-at-Law,
9F, 218 Tun Hwa S. Road, Sec. 2, Taipei 106, Taiwan

+886 02 2378 5780 ctlee@leetsai.com

www.leetsai.com/fyi/front/bin/ptdetail.phtml?Part=BS-E-LP-00001&Category=108212

Taiwan



Elizabeth Pai
Lee, Tsai & Partners, Attorneys-at-Law,
9F, 218 Tun Hwa S. Road, Sec. 2, Taipei 106, Taiwan

+886 02 2378 5780 elizabethpai@leetsai.com

www.leetsai.com/fyi/front/bin/ptdetail.phtml?Part=BS-E-LP-00007&Category=108212

Taiwan

Ankwei Chen
Lee, Tsai & Partners, Attorneys-at-Law,
9F, 218 Tun Hwa S. Road, Sec. 2, Taipei 106, Taiwan

+886 02 2378 5780 ankweichen@leetsai.com

www.leetsai.com/fyi/front/bin/ptdetail.phtml?Part=BS-E-LP-00029&Category=108247

Directory

Taiwan

Emily Chueh
Lee, Tsai & Partners, Attorneys-at-Law,
9F, 218 Tun Hwa S. Road, Sec. 2, Taipei 106, Taiwan

+886 02 2378 5780 emilychueh@leetsai.com

www.leetsai.com/fyi/front/bin/ptdetail.phtml?Part=BS-E-LP-00036&Category=107867

Vietnam

Hoang Anh Nguyen
Mayer Brown JSM (Vietnam),
Suite 606, 6th Floor, Central Building, 31 Hai Ba Trung, Hoan Kiem District, Hanoi, Vietnam

+84 4 3266 3113 hoanganh.nguyen@mayerbrownjsm.com

https://www.mayerbrown.com/people/hoang-anh-nguyen/

Vietnam

Huong Nguyen
Mayer Brown JSM (Vietnam),
Suite 606, 6th Floor, Central Building, 31 Hai Ba Trung, Hoan Kiem District, Hanoi, Vietnam

+84 4 3266 3113 huong.nguyen@mayerbrownjsm.com

https://www.mayerbrown.com/people/huong-thi-nguyen/

Legal Statement

This publication is introductory in nature. Its content is current at the date of publication. It does not constitute legal advice and should not be relied upon as such. You should always obtain legal advice based on your specific circumstances before taking any action relating to matters covered by this publication. Some information may have been obtained from external sources, and we cannot guarantee the accuracy or currency of any such information.

© 2017 The Mayer Brown Practices. All rights reserved.

Attorney advertising. Prior results do not guarantee a similar outcome.