Towards a Pan-European Pension Fund for Researchers

Overview of Labor Law, Social Security and Tax Considerations Vol.1.

Belgium
France
Germany
Ireland
Italy
Netherlands
Poland
Spain
Sweden
United Kingdom

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## Table of Contents

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>1</td>
</tr>
<tr>
<td>France</td>
<td>5</td>
</tr>
<tr>
<td>Germany</td>
<td>9</td>
</tr>
<tr>
<td>Ireland</td>
<td>14</td>
</tr>
<tr>
<td>Italy</td>
<td>18</td>
</tr>
<tr>
<td>Netherlands</td>
<td>22</td>
</tr>
<tr>
<td>Poland</td>
<td>28</td>
</tr>
<tr>
<td>Spain</td>
<td>32</td>
</tr>
<tr>
<td>Sweden</td>
<td>37</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>41</td>
</tr>
</tbody>
</table>
1. Belgium

1.1 Social and Labour Law implications

Benefits and Contributions

Belgian legislation contains some restrictions on the benefit structure of a plan.

SLL imposes the following requirements for the private sector:

■ Normal retirement age must be 65 (for new plans). If provided by the plan rules, withdrawal of benefits is permitted from age 60—with no requirement for the employee to have ceased work (although plan rules can require this). For a DB plan the maximum actuarial reduction for early payment is determined based on a specified method and assumptions (for example using a 6% discount rate). However, this is not relevant for Defined Contribution plan structures.

■ Minimum vesting period of benefits is one year.

■ Access to benefits prior to retirement is only permitted to buy, build or refurbish a home and only if this is stated in the pension rules. Depending on the pension rules it is possible either to withdraw the funds or to assign the future benefit as security for a loan. Any outstanding amount due at retirement age is deducted from the retirement benefit.

■ Age related contributions are allowed, but with a restriction on the extent to which they may be increased by age. (The contribution rate at any age cannot exceed 104% of the rate of the previous age. It is permitted to set contribution rates for larger age bands so long as they on average meet the previous requirement.)

■ There are no contribution limits in the SLL but there are for tax reasons, which are described later.

■ Voluntary/variable employee contributions are forbidden to be made into occupational pension funds.

■ There is a minimum investment return on the contributions paid; 3.75% on employee contributions and 3.25% on employer contributions. This minimum return is assessed at the time the benefit is paid, based on the full period of membership and not as an annual minimum return.

■ Former members have the right to transfer out their benefits to a qualified insurance provider or a pension plan of an employer. The minimum transfer payment from a DC plan must take account of the minimum investment return. From a DB plan a minimum value is also specified (based on 6% discount rate).

In order to receive tax relief on the pension and contributions, the following rules also apply:

■ The total benefit (including the social security pension) must not exceed 80% of salary.

■ Benefits may not be taken before the minimum early retirement age of 60 except on death or disability retirement.
Access
There is no requirement for employers to offer a pension plan. However, if a pension plan exists, membership is compulsory for all eligible employees and there is no option to opt out (except when a new plan is introduced). The plan must cover an objectively defined group of employees. If the membership definition means that an employee is eligible to join two pension plans, then he/she can have the option to remain in the original plan or, if the plan rules permit, to move to the new plan.

It is possible to restrict membership of a pension plan to those aged 25 and over. No other restriction based on age or service is permitted for employees older than age 25.

Investments
Funding must be externalised to an insurance company or pension fund.

SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. Due to the minimum guaranteed return on contributions in a DC fund, the investment options which are offered to the employees are normally restricted by the sponsoring company.

Ring-fencing of assets is not required—but can be done.

Management of IORP
If employees contribute to the plan, there is a requirement for at least 50% employee representation at some level of the management. This can be satisfied by setting up a committee in Belgium (possibly for each separate employer) that has responsibility for supervising the pension fund—and then including the employee representatives on this committee.

If there are any changes in the benefit structure then the works council must be informed and consulted, and if applicable the collective labour agreement amended (if employees contribute). The same is true in the case of a change of providers.

Information Requirements
Belgian pension funds are required to provide a variety of items of information to members. These include:

- Annual benefit statements which includes, for DB members, the funding status.
- The cost structure and fees must be annually reported.
- Members have the right to request a copy of the annual report of the IORP, the Statement of Investment Principles and pension rules.
- Members have the right to receive plan documentation in French or Dutch. However, in practice English is sometimes used, where employees agree to this.

These requirements also apply to Belgian members of an overseas IORP.

1.2 Taxation and Social Charge Comparison
This section of the report compares the impact of taxation and social charges resulting from membership of a locally established IORP retirement arrangement with that of a cross border arrangement.
## Overview of Host-Country Tax and Social Charge Issues

<table>
<thead>
<tr>
<th>Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</th>
<th>No specific requirements other than registration with tax authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation of employer contributions to an IORP</td>
<td>Contributions to a tax-approved IORP are deductible as a business expense to the extent that the corresponding accrued benefit is less than 80% of employee’s salary. For a DC plan this is assessed based on a projection of the expected benefits. They do not generate a tax charge for the employees. Employer and employee contributions are subject to a tax of 4.4% (payable by the IORP). Employers normally pay an additional contribution to the fund to cover the entire tax liability (although it is possible to require the employees to meet their share of this).</td>
</tr>
<tr>
<td>Taxation of employee contributions to an IORP</td>
<td>Contributions to a tax-approved IORP are tax-deductible (at a rate between 30% and 40%, depending on the average tax rate of the employee) to the extent that the total accrued benefit does not exceed 80% of employee’s salary. Employees may be liable (depending on the plan rules) to pay an additional contribution (4.4% of the basic employee contribution) to meet the IORP’s tax liability (see employer contributions above).</td>
</tr>
<tr>
<td>Social security or payroll charges on contributions to an IORP</td>
<td>Employer contributions for retirement and death benefits are subject to social security charges at the rate of 8.86%. There are no payroll taxes. Employee contributions are subject to social security charges at the standard rate.</td>
</tr>
<tr>
<td>Taxation to the employee of investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Social security charges to the employee based on investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Taxation of benefit payments from an IORPs</td>
<td>Pensions and lump sum payments paid to Belgian residents are subject to a social security charge of 3.55%, increased with a solidarity contribution of 0% to 2% (depending on the gross amount of the benefit). Unless exempted by a double tax treaty, pensions paid to Belgian residents are taxed as income, regardless of where the pension was earned. Benefits paid as a lump sum are taxed at the rate of 16.5% (reduced to 10% in case of continued employment until age 65). A communal tax is raised on the tax amount equal to an average of 7%. There is a possibility to purchase an annuity with the net lump sum amount in order to avoid the higher income tax charged on pensions.</td>
</tr>
</tbody>
</table>

There are no key differences in taxation, social charge, and payroll taxation between membership of a domestic IORP and nondomestic cross-border IORP, nor between membership of a domestic insured arrangement and a nondomestic insured retirement arrangement.
1.3 Portability of Retirement Assets
No difference between domestic and nondomestic cross-border IORP. A transfer of retirement assets of a Belgian resident to another country belonging to the European Economic Area is not subject to social security charges. The asset value will usually not be taxed (depending on Double Taxation treaties).

1.4 Employment Status of Researchers
Public-sector employees (except for those employees who have employment contracts rather than being civil servants) are covered by a separate social security retirement plan which is more generous than that covering private-sector employees (providing up to 75% of pay after a full career). This is financed on a pay-as-you-go basis. Membership is compulsory. Complementary pension plans for public-sector employees do not exist in Belgium.

Most, but not all, university employees are also covered by the public sector pension system.

1.5 Implications for Design of Researchers IORP
There are a number of issues which need to be addressed when establishing an IORP to ensure access to Belgian researchers:

■ There is a guaranteed minimum investment return of 3.25% on employer contributions and 3.75% on employee contributions. This will normally lead to a much more restricted (and cautious) range of investment options for Belgian members, compared to those from other countries.

■ The employer and employee contribution rates can be age- and/or service-related, but must be fixed for every member in a given category. They are normally stepped, with a low contribution up to the pension ceiling (€47,960.29 p.a.)¹ and a higher benefit above the ceiling. Voluntary employee contributions are not permitted.

■ If employees contribute to the fund then a Belgian committee will need to be set up to supervise the fund. Given the likely number of different employers involved, this could be a complex process.

■ Membership of a pension plan must be open to all employees within a well-defined employment category. In order for Belgian researchers to be admitted to a pan-euro fund it would be necessary for each employer (separately) to create an objective definition of a researcher. All eligible employees of that employer would then have to join the pan-euro fund. However, if the researchers are already covered by an existing pension plan then their employers will need to decide whether researchers will automatically join the newly established plan. In this case the works council will need to be informed and consulted. The exception is where the existing plan covers all employees and also has employee contributions—in this case the plan will be included in the CLA and that will need to be amended.

■ Most public-sector employees (including employees of some universities) are not "contractual" employees and are covered by different SLL. The public- and private-sector employees are eligible for different first-pillar pensions, and due to the public sector being more generous it is not market practice that public-sector employees have access to a second-pillar pension.

■ The IORP will be liable to pay a tax of 4.4% of contributions to the Belgian tax authorities.

¹ This ceiling refers to 2011. It is annually revised by the "Office National des Pensions"
2.1 Social and Labour Law Implications

Benefits and Contributions

French legislation contains some restrictions on the benefit structure of a pension plan. There are two forms of locally funded complementary pension plans upon which SSL conditions are based:

- Article 83 plans—employer sponsored. Typically defined contribution in structure, but could also be defined benefit. (These are named after the article in the French tax code which sets out the conditions that must apply for the tax advantages to be given.)

- PERP—Defined contribution plans with employee contributions only.

A cross-border IORP can be treated as either type.

SLL imposes the following requirements:

- Normal retirement age must be between 60 and 65. Early retirement (before receipt of the social security pension) is not permitted. However, retirement can be delayed. As the result of social security reforms passed at the end of 2010, the minimum retirement age is age 62 for individuals born on or after January 1, 1956; for individuals born between July 1, 1951 and January 1, 1956, the minimum retirement age increases by four months each year. The retirement age for a full pension will increase from age 65 to age 67 for individuals born on or after July 1, 1951 by four months each year beginning in 2016 (reaching age 66 in 2019 and age 67 in 2023).

- DC contributions are always fully vested once they have been paid. However, there is no requirement for contributions to be paid into the fund immediately—companies can choose to set up a plan where the contributions are not invested in the fund during an initial period of service (rather, they are deferred until the end of that period). In effect, this is equivalent to a vesting period. There is currently no vesting requirement for DB benefits.

- Benefits cannot be received before retirement age (except due to death or severe disability). Benefits may not be assigned to third parties.

- If a member has been divorced, and the former spouse has not remarried, the member must purchase a pension for the former spouse (in respect of the period of marriage).

- There are no contribution limits in the SLL but there are for tax reasons which are described later. However, pensions in a private-sector plan must not exceed those in the public sector (75% of final pay after a full career—including social security, AGIRC, and ARRCO).

- Former members have the right to transfer out their benefits to a qualified insurance provider or a pension plan of an employer.

In order to receive tax relief, the following rules also apply:

- Benefits from both Article 83 plans and PERPs must be paid as an annuity (either a lifetime annuity or for a fixed period of at least 15 years).
In an Article 83 plan, the employer and employee contributions must be at fixed rates for all employees. Contributions may not vary by age but it is permitted to pay different levels of contributions on different tranches of salary (based on social security limits). Employees are not permitted to pay AVCs to an Article 83 plan.

**Access**
Membership of a plan must be open to all employees within a specified category. The permitted categories are broad (for example, white-collar employees) and cannot be narrowly defined by job title. For example, it would not be possible to restrict membership to only researchers.

Membership of Article 83 plans is then compulsory for all eligible employees, but individual employees can choose whether to join a PERP.

Membership can be restricted to employees with at least 12 months' service. No other restrictions are possible.

**Investments**
SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. Lifestyle investment options are permitted and employees can choose their own investment funds (from the list offered by the fund).

Ring-fencing of assets is not required—but can be done.

**Management of IORP**
There is a requirement pensioner representation on the “comité de surveillance” of the management board of a PERP (known as a "GERP") when there are more than 100 members in the PERP. In addition, this comité must have a majority of members that are independent of the PERP provider (so, made up of employee and employer representatives, for example). These representatives do not need to be French employees. It is not clear how this requirement would apply to an overseas IORP and we do not believe that it has ever been tested in practice.

There is no such requirement for member representation in an Article 83 plan.

The employer has the power to change the benefits provided by an Article 83 plan (so long as accrued benefits are not reduced). For a PERP, the managing body (known as a GERP) can change the plan (although there is no fixed contribution rate, members choose their own contribution rates).

Works councils have to be informed and consulted on any changes of a benefit plan but have no veto power. The provider for pensions already in payment can only be changed with the consent of each individual pensioner.

**Information Requirements**
Collective company retirement schemes (including Article 83 plans) are required to provide employees with an annual statement, in French, about their retirement savings. This must show the amount invested (net of expenses) and the "revaluation" applied (i.e., the change in value of accrued benefit), although in practice much more information is provided.

PERPs must also provide an annual statement, together with information about the investment funds (whether they are risky or not).

These requirements also apply to French members of an overseas IORP.
2.2 Taxation and Social Charge Comparison

This section of the report compares the impact of taxation and social charges resulting from membership of a locally established IORP retirement arrangement with that of a cross border arrangement.

<table>
<thead>
<tr>
<th>Overview of Host-Country Tax and Social Charge Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</td>
</tr>
<tr>
<td>Taxation of employer contributions to an IORP</td>
</tr>
<tr>
<td>Taxation of employee contributions to an IORP</td>
</tr>
<tr>
<td>Social security or payroll charges on contributions to an IORP</td>
</tr>
<tr>
<td>Taxation to the employee of investment returns credited within an IORP</td>
</tr>
<tr>
<td>Social security charges to the employee based on investment returns credited within an IORP</td>
</tr>
<tr>
<td>Taxation of benefit payments from an IORPs</td>
</tr>
</tbody>
</table>

There are no key differences in taxation, social charge, and payroll taxation between membership of a domestic IORP and nondomestic cross-border IORP, nor between membership of a domestic insured arrangement and a nondomestic insured retirement arrangement.

2.3 Portability of Retirement Assets

An individual who leaves France may transfer the retirement funds to the new country of residence. However, this can only be done to a pension fund that pays the benefit as an annuity and prohibits early retirement. No French tax is payable on the transfer.

2.4 Employment Status of Researchers

Public-sector employees are covered by a separate social security retirement plan which is more generous than that covering private-sector employees (providing up to 75% of pay after a full career). This is financed on a pay-as-you-go basis. Membership is compulsory.
Most, but not all, university employees are also covered by the public sector pension system.

Public-sector employees are also permitted to pay additional personal contributions to "Prefon" (a supplementary pension plan for public servants) and to receive tax relief on these. They may also contribute to a nondomestic cross-border IORP but, based on information that we have received informally from Prefon, French law does not allow them to receive a tax deduction for this.

2.5 Implications for Design of Researchers IORP

There are a significant number of difficulties with including French researchers in the Researchers IORP:

- The IORP must be treated as an Article 83 plan if there are employer contributions. However, this means all employees in a wide group must become members. Except for pure research companies it does not seem possible for only researchers to be granted access. Further, contributions must be at fixed rates for all employees in this case.

- For an Article 83 plan, an objective category is either as defined in the labour code (employés, ouvriers, agents de maîtrise, cadres or cadres dirigeants) or any social category existing in the collective bargaining agreement. Researchers cannot be defined as an objective group.

- If the IORP is classed as a PERP then only employee contributions are permitted and access must be offered to all employees in a wide group (for example, white collar). However, employees can choose not to join. Employees can choose their own rate of contribution.

- Public-sector employees are unable to opt out of their mandatory pension plan, and this provides a relatively high level of benefit. Public-sector employees are permitted to pay additional personal contributions to a supplementary pension plan for public servants and to receive tax relief on these contributions. However, we understand that additional contributions to a nondomestic cross-border IORP but would not receive any tax relief.

- If it is possible for any particular employer to join the IORP, then the IORP should be able to provide French pension benefits without much difficulty. However, it will need to be able to provide retirement benefits in pension form.
3. Germany

3.1 Social and Labour Law Implications
Benefits and Contributions
German SLL contains the following rules:

- There are two local types of pension vehicles which could form an IORP covered by the SLL. The Pensionskasse (PK) and the Pensionsfonds (PF). Different requirements are placed on each vehicle. In assessing SLL applicable to IORPs with a home-country other than Germany, we understand the BaFin will decide which SLL is most applicable depending on the structure and benefits provided, combined with the definitions available in the law. Ultimately it is BaFin’s interpretation which leads to the final decision. One of the key criteria is whether the IORP is an insurance company, in which case it is more likely to be treated as a PK, or similar to an insurance company, in which case it will be treated as a PF.

- There is no restriction on the form of benefit (pension or lump sum) from a PK. Benefits from a PF may, in principle only be paid in annuity form; i.e., lump sum benefits are not permitted. However, the business plan of a PF may provide that benefit payments are to be made in accordance with a so-called payment plan under which a part of the existing technical reserve for a member (the cash balance in the member account) is paid in defined annual instalments and only the remainder as a life annuity. The first payment under a PF payment plan on retirement or other event that triggers benefit payments may not exceed 30% of the existing reserve (otherwise the tax exemption of contributions would not apply).

- For DC plans there is a minimum benefit equal to the sum of the total contributions; i.e., there is a minimum interest guarantee of 0%. This is assessed when the benefits are paid, so the total minimum benefit is the sum of the total contributions excluding any interest credited.

- There are no restrictions on the type of contributions allowed; age, service, and flat rate are all permitted.

- There exists no limit of contributions payable within the social labour law, but see tax implications later.

- Voluntary individually determined employee contributions into a PK are permitted but employer consent is required. For an employee to make additional voluntary contributions into a PF, then it must be in the form of salary sacrifice; i.e., employees exchange parts of their salaries for additional employer contributions.

- PKs and PFs do not offer investment options; i.e., members cannot individually choose between investment options for their contributions. All employees fall under the same investment strategy as set by the PK or PF.

- Cost-of-living adjustment reviews for pensions in payment are required at least every three years. Rather than adjusting pensions in line with the cost-of-living index, employers can guarantee a fixed increase of not less than 1% per year. This is the typical approach for PFs. PF DC plans with a minimum benefit guarantee are not required to adjust pensions at all. PKs increase pensions by the investment return in excess of the guaranteed interest (currently 2.25% guaranteed interest).

- Risk benefits cannot be provided in the form of a lump sum from a PF; i.e., they have to be paid in accordance with a payment plan or as life annuities.
Accrued benefits are not allowed to be reduced. Should existing assets not be sufficient to pay a benefit when due, the employer has to cover the shortfall by lump sum asset injections or in accordance with an amortization plan. A PK in severe financial hardship may also reduce benefits under a financial recovery plan. A clause to that effect is normally in the statutes of a PK.

SLL does not place any restrictions on when a PF or PK can pay a retirement benefit. However, age 60 is the earliest age for old-age retirement under tax law; i.e., retirement benefits paid before that age will not receive tax relief. The early retirement age for a Social Security pension is 63 (with an exception for employees with a bodily handicap). Normal retirement age from Social Security is 65 but is currently increased in steps and by age groups to age 67. It is normal practice for a PK or PF to apply the normal retirement ages in accordance with Social Security, and not to permit earlier payment. However, if state pensions are paid, employees can require IORP pensions to be paid as well regardless of the plan provisions of the IORP.

Minimum vesting for employer benefits is the latter of 5 years of pension plan membership or reaching the age of 30. Benefits from employee contributions vest immediately.

If the transfer amount is not higher than the Social Security Contribution Ceiling, then employees who change employers can require a transfer-out to a PK, PF, or Direct Insurance Plan of their new employer. Any amount above this ceiling requires authorisation via an individual agreement with the pension provider, employee, and employer(s).

Transfers from one PK or PF plan to another of the same employer are just a change of the vehicle used for the operation of the pension plan and should be possible—at least by agreement between the parties involved. However, it is possible (subject to negotiation with the tax authorities) that this would generate an immediate tax charge.

Mandatory German insolvency cover through the PSVaG applies to an employer with a PF when German-based employees participate in a cross-border IORP. The PSVaG covers the insolvency of the employer—not the PF. It does not apply where the cross-border IORP is classified as a PK.

Access
If an employer operates a pension plan then it must be open to all employees under SLL; i.e., general nondiscrimination rules apply. However, individual agreements are permitted which will allow different pension arrangements for individuals in managerial or leadership positions. It is possible to have waiting periods during which employees or their dependants will not get a benefit while already a member of a plan.

Membership of a plan is established automatically unless the employee is required to make contributions or sacrifice parts of the salary. In this case, employees can choose on an individual basis not to participate (unless participation is a requirement under union agreements).

Investments
SLL does not place any restrictions on investment strategy of an overseas IORP in addition to those in the IORP Directive.

Management of IORP
No direct employee representation in the IORP management board is required. In mutual forms of domestic PKs, members have to be represented in the highest body of the entity, although this does not apply to cross-border IORPs. General labour law requires co-determination of employee representatives (normally Works Councils) but includes no requirements as to how this is established.

Any changes to the benefit structure will need approval from the works council, except for closure of the plan this can be done at discretion of the company.
There are ring-fencing requirements required for German sections of cross-border IORPs; i.e., it is not permissible from the German perspective for a German section to subsidise another country section of an cross-border IORP.

**Information Requirements**

A PK or PF based in Germany or a cross-border IORP has to meet the same mandatory information requirements towards plan members that apply to life insurance companies under German supervision law towards policy holders; i.e., the so-called consumer information requirements. Compliance with the requirements is monitored by BaFin. The information requirements are very detailed but include:

- Annual benefit statements.
- The cost structure and fees must be annually reported.
- Annual statement of the ethical, social and ecological aspects of the investment strategy.
- Members have the right to request a copy of the annual report of the IORP, and quotations of retirement or termination benefits (including terms and conditions of transfers to another provider).

Information must be supplied in German.

Cross-border IORPs need BaFin approval in accordance with the relevant EU requirements to operate in Germany but they are not subject to German supervision requirements in addition to those in the IORP Directive.

**3.2 Taxation and Social Charge Comparison**

This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross-border arrangement.

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</td>
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</tr>
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</tr>
</tbody>
</table>
Social security or payroll charges on contributions to an IORP

Employer and employee contributions are not subject to social security charges up to the annual limit of 4% of the Social Security Contribution Ceiling. Any contribution in excess of this limit is subject to social security charges for the employer and employee, provided that the employee's salary does not yet exceed the ceiling. There are no payroll taxes.

Taxation to the employee of investment returns credited within an IORP

None

Social security charges to the employee based on investment returns credited within an IORP

None

Taxation of benefit payments from an IORPs

Pension benefits funded with tax-free contributions are fully taxable as deferred income.

The taxation of pension benefits funded with taxed contributions depends on their payment form as follows: Annuities are taxed on their interest portion only (depending on the employee's age at the pension commencement date). Lump sums are tax free if certain minimum conditions are met.

We understand that benefits paid by non-German IORPs that are registered as cross-border IORPs and relate to service when members were German resident are taxed in the same way as those paid by German IORPs. Any tax withheld at source can be offset against the German tax charge for that benefit in accordance with the relevant double taxation agreement.

Retirement benefits for German retirees are subject to retiree health care charges. If a benefit (or parts of it) is paid in the form of a lump sum future health care charges that would have been payable had the benefit been paid as annuities have to be anticipated (using an approximation method) and deducted from the lump-sum payment.

There are no key differences in taxation and social charges between membership of a domestic IORP and nondomestic cross-border IORP (assuming it is considered equivalent to a "Pensionskasse" or a German "Pensionsfonds").

### 3.3 Portability of Retirement Assets

If the transfer amount is not higher than the Social Security Contribution Ceiling, then employees who change employers can require a transfer-out to a PK, PF or Direct Insurance Plan of their new employer. Any amount above this ceiling requires authorisation via an individual agreement with the pension provider, employee and employer(s).

German pension insolvency fund (PSV) covers the event of bankruptcy of an employer that grants pension rights through a PF and guarantees the solvency of the PF. The PSVaG covers benefits that a PF cannot pay because of the insololvency of the employer. Employers using a PK as pension plan vehicle are exempted from the mandatory PSVaG coverage. If vested PF-pension obligations are to be transferred to a new foreign IORP (the PF-like pension plan vehicle used by the new employer) this PSVaG protection of vested accrued benefits cannot be eliminated. The PSVaG should be asked for an opinion before a transaction takes place. This may hinder the portability of retirement assets from an IORP that covers German employees (on a PF basis) to a foreign pension provider. Furthermore, German income tax may be levied on the transfer payment unless the German tax office confirms otherwise.
There are no restrictions (other than potential tax issues as set out) on the portability of retirement assets from a nondomestic cross-border IORP into a German IORP in respect of German based members. However, the transfer payment may be subject to German income tax unless this can be negotiated with the German tax office. Transfers-in require the consent of the IORP (PK or PF) that assumes the assets (and liabilities).

3.4 Employment Status of Researchers
Researchers are often employed as private employees. However, in some cases researchers can be public-sector employees.

There is a pension plan for public-sector employees to which they are assigned if their employer (e.g., a university) participates in this plan (VBL—Versorgungswerk des Bundes und der Laender) where benefits are based on contributions of 4% and the benefit is determined according to a formula based on such contributions. Once in the VBL it is not possible to opt out. When joining a public-sector employer the first time and if the employment contract is concluded for a temporary period of not more than 60 months an individual may opt for not joining the VBL. Many other public sector bodies operate their own similar pension funds.

3.5 Implications for Design of Researchers IORP
An IORP should be able to provide German approved pension benefits. The main implications of German legislation are:

- Design requirements include that payments must generally be made in annuity form and with minimum indexation requirements. Risk benefits cannot be paid in lump-sum form.

- If the IORP wishes to pay benefits as a lump sum of more than 30% of existing reserves to German members, it will need to be classed as a PK.

- No investment choice is permitted and a minimum 0% investment guarantee must be provided for DC-type plans.

- Access to an employer sponsored pension arrangement must be open to all employees. Care will need to be taken in defining researchers as an objective group so membership of the cross-border pension fund can be restricted to just those people.

- If a researcher works for the public sector they may be covered by the VBL (which they are not allowed to opt out of). Alternatively they may be covered by other public-sector plans which they also cannot opt out of or may not wish to leave.

- There are detailed member information requirements.

- Works council approval is needed for changes to the benefit structure.

- Mandatory insolvency insurance applies where the IORP is classified as a Pensionskasse.

- A transfer of assets from a non-domestic IORP to a German IORP may cause tax issues.
4 Ireland

4.1 Social and Labour Law Implications

Benefits and Contributions

Irish legislation contains a number of restrictions on the form and level of retirement benefits that may be provided to employees whose employment contractual relations are governed by Irish law. Some of these are features of the taxation system—and only apply to retirement plans that receive the benefits of tax relief. These are summarised below and detailed in section 7.2 below.

SLL imposes the following requirements:

■ Benefits must vest within a maximum of 2 years. On leaving service after 2 years the benefits must be retained in the pension fund, unless the members opts to transfer them to a new employer’s pension fund (or a personal pension plan).

■ Vested benefits must be indexed until retirement—in a DC plan in line with investment returns; in a DB plan at the lesser of Irish CPI and 4% per annum.

■ There is no requirement for pensions in payment to be increased.

■ There is no requirement to have terminated employment with the sponsoring employer, or to be in receipt of a Social Security pension, before receiving a retirement pension at the plan’s Normal Pension Age. However, early retirement benefits are not available until the member has left the service of the sponsoring employer.

■ SLL does not place any restrictions on how employer contributions to a DC plan can be determined. However, equality legislation requires that this only be done to the extent that it can be objectively justified (in general only on ground of age).

■ Benefits may not be assigned to a third party other than assignment to a dependant by surrender of own pension (dependant's resulting pension must not be greater than the member's reduced pension). On employee's bankruptcy, where there is a pension in payment, the trustee in bankruptcy is able to request a court to issue an attachment of earnings or income payments order against the pension.

In order to receive tax relief on the pension and contributions, the following rules also apply:

■ Only part of the pension may be taken as a cash lump sum—but this cash sum is limited to 150% of the member's final remuneration (further restriction for large benefits—see table below).

■ Benefits may not be taken before the minimum early retirement age (normally 50) except on death or disability retirement.

■ There are limits (see §7.2) on the total benefits payable from a tax-approved pension fund, and the annual accrual and contributions permitted.

■ Pensions in payment may not normally be reduced.
Access
There is no requirement for membership of plans to be open to all employees, nor for benefits to be the same for different groups of members. However, employment law requires that access to the plan must not discriminate on grounds of gender and there are limits on how access can be restricted by age.

Employers may choose to make membership of the pension fund a condition of employment.

Investments
SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. DC funds may offer a default lifestyle investment option.

Ring-fencing of assets is not required—but can be done.

Management of IORP
Irish SLL imposes no restrictions on the management of an overseas IORP. There is no requirement for member-nominated representatives to be on the IORP Board.

Information Requirements
Irish pension funds are required to provide a variety of items of information to members. These include:

■ Prescribed basic information about the plan must be provided to members on joining (usually an explanatory booklet).

■ Costs and charges must be disclosed to members in DC plans who have an investment choice.

■ Statements of fund value and contributions to DC plans, together with a Statement of Reasonable Projection showing estimated benefits at retirement must be provided annually. Statements of DB benefits must be provided annually.

■ Statements of benefits and options must be provided on retiring or withdrawing from the plan.

■ A copy of the latest annual report and accounts must be provided on request.

■ Trust Deed and Rules, actuarial valuation reports and Statements of Investment Principles must be available.

These requirements also apply to Irish members of overseas IORPs who must receive "similar information." The information must be available in English.

4.2 Taxation and Social Charge Comparison
This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross border arrangement.
### Overview of Host-Country Tax and Social Charge Issues

<table>
<thead>
<tr>
<th>Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</th>
<th>Once the IORP is registered with the Pensions Board there is no further requirement in order to receive tax relief.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation of employer contributions to an IORP</td>
<td>Contributions to a tax-approved IORP are deductible as a business expense, so long as, when combined with employee contributions, they fall within a limit that is determined annually for each person based on the funding required to provide a maximum level of benefit (a pension of 2/3 of final pay after a full career). They do not generate a tax charge for the employees.</td>
</tr>
<tr>
<td>Taxation of employee contributions to an IORP</td>
<td>Contributions to a tax-approved IORP are tax-deductible with relief being granted at the employee's marginal rate of income tax. Tax relief is restricted in any year of assessment to a percentage of the member's remuneration from the employment being pensioned. The percentage relief limits are age related:</td>
</tr>
<tr>
<td></td>
<td>Under 30  15%</td>
</tr>
<tr>
<td></td>
<td>30-39  20%</td>
</tr>
<tr>
<td></td>
<td>40-49  25%</td>
</tr>
<tr>
<td></td>
<td>50-54  30%</td>
</tr>
<tr>
<td></td>
<td>55-59  35%</td>
</tr>
<tr>
<td></td>
<td>60 or over  40%</td>
</tr>
<tr>
<td></td>
<td>For the purposes of calculating relief, there is an overall aggregate earnings limit on an individual’s tax relieved contributions in a tax year. A limit of €115,000 applies to earnings beginning with the 2010 tax year. In addition, the employee contribution forms part of the limit set out above for the total contribution and tax relief is only available up to that limit.</td>
</tr>
<tr>
<td>Social security or payroll charges on contributions to an IORP</td>
<td>PRSI is levied on gross income minus any approved pension contributions payable. Effective January 1, 2011, the employer PRSI exemption for employer contributions to occupational schemes and other arrangements is reduced by 50%. There are no payroll taxes. Effective January 1, 2011, employee contributions are subject to employee PRSI and the Universal Social Charge.</td>
</tr>
<tr>
<td>Taxation to the employee of investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Social security charges to the employee based on investment returns credited within an IORP</td>
<td>None</td>
</tr>
</tbody>
</table>
Taxation of benefit payments from an IORPs

Pensions are taxed as income and also are subject to the Universal Social Charge. Up to €200,000 may be taken as a lump sum free of tax. The Universal Social Charge is only payable on lump sum pension payments on the portion exceeding €575,000.

There is a maximum fund of €2,300,000 (the "standard fund threshold") above which tax will be levied at the rate of 41% on the happening of a Benefit Crystallisation Event e.g. payment of pension or transfer to an overseas arrangement. A higher threshold may apply.

There is an exemption from income tax for pensioners who live outside Ireland if the last 10 years' service was abroad, or if at least half of the total service and at least 10 of the last 20 years were abroad. There may also be exemptions under the provisions of bilateral Double Taxation Agreements.

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and nondomestic cross-border IORP, nor between membership of a domestic insured arrangement and a nondomestic insured retirement arrangement.

4.3 Portability of Retirement Assets

There are no legal, tax (other than the triggering of a charge where the amount transferred exceeds the standard fund threshold) or practical/economic implications for the portability of retirement assets when an individual leaves Ireland and wishes to transfer his or her pension assets to an IORP in another member state, or moves to Ireland and wishes to transfer his or her pension assets to an IORP in Ireland.

However, there is no statutory right to a transfer value from an Irish IORP if the individual does not have vested rights; i.e., has not completed at least 2 years' qualifying service. In such cases, unless the plan rules state otherwise, the individual will receive a refund of the value of his or her contributions, less a tax charge for which the scheme trustees are liable.

4.4 Employment Status of Researchers

Public-sector employees in Ireland have traditionally been included on a compulsory basis in the relevant public-sector defined benefit scheme, which provides retirement pensions and lump sums related to final salary and service within the broad public sector. These arrangements also cover university employees. This means that researchers in these sectors are unlikely to join an overseas IORP.

The Minister for Finance has recently announced the Government's intention to introduce in 2010 a new scheme for all future entrants to the public service, which will be designed on a career-average basis. The full details of this arrangement are likely to be published shortly.

4.5 Implications for Design of Researchers IORP

An IORP should be able to provide Irish approved pension benefits without much difficulty.

- It will need to be able to provide retirement benefits mainly in pension form.

- There is a full range of DC pension design possibilities permitting flexible contribution structures, possibility for employees to make voluntary contributions on a tax-effective basis (within limits), and a wide range of potential investment options.

- Public-sector researchers have been covered on a compulsory basis in public sector DB arrangements. We expect researchers would be unlikely to opt out.
5. Italy

5.1 Social and Labour Law Implications

Benefits and Contributions

SLL imposes the following requirements:

- A benefit plan must be in the form of a defined contribution plan. Prior to 1993 defined benefit plans were allowed and therefore there still exist some DB plans from this period, but they are closed to new members.

- A statutory requirement is a compulsory termination indemnity payable (TFR) upon termination of employment. This is now generally financed on a DC basis (at least for current benefit accrual).

- Benefits can be paid in the form of lump sum and/or annuity. The maximum lump-sum payment (except for pre-1993 benefits) is 50% of the total benefit value.

- Risk benefits can be provided within the pension plan—although this is not normal practice as many collective bargaining agreements already require separate insurance cover. The benefit from the pension plan is normally a lump sum or annuity, equivalent to the residual member account.

- Access to preretirement benefits must be allowed in certain circumstances; unemployment, medical expenses for critical illness, purchasing a first house (only 75% withdrawal), and disability.

- The minimum contributions to be paid by an employee are set out in either the collective bargaining or company agreement (and must be agreed by the unions and employee representatives). If an employee pays this amount then the employer is required to pay contributions at the agreed rate. The employer can agree to pay higher contributions than required by the collective bargaining agreement and these can vary between different groups of employees (including by age and by service).

- If an employer wishes they are allowed to set a maximum limit for employer contributions (so long as the collective bargaining agreement requirements are met).

- Additional contributions are allowed by the employee both pre- and postretirement.

- Pension fund benefits cannot be paid before the employee’s social security pension has started. Late retirement is permitted- there is no maximum age.

- Employer contributions must vest within 5 years for retirement benefits. Employee contributions are always vested.

- Any member (including current employees) may transfer to another pension fund the accrued account under the pension fund provided that they have at least 2 years of membership of the current pension fund. Any former member is permitted to transfer their accrued fund to a new employer's plan.

- Benefits may not be assigned to a third party.
Access
Many collective bargaining agreements in Italy require employers to contribute to a specific pension fund for that industry—for those employees who choose to join and to contribute. Membership to a plan must be voluntary and employees are free to contribute to a different fund if they prefer. However, there is no requirement for the employer to contribute to a different fund (although they may do so if they agree with the employee).

Employers are permitted to set up their own pension funds (in addition to the industry fund, or where no industry fund exists) in which case they can define the membership as they wish subject to complying with discrimination legislation (sex, race, etc.). Employees can then choose whether to join.

Investments
SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund with one exception. Italian members of an IORP must be given access to an investment option which is expected, with a high probability, to produce a return at least equal to that which has to be guaranteed by Law in Italy for TFR benefits (1.5% plus 75% of the inflation rate). In addition, this investment option (only) must return at least the contributions paid (net of administrative expenses).

DC funds may offer a default lifestyle investment option and individuals are free to choose their own investment strategy (there is no requirement to invest in the "TFR" fund option).

Ring-fencing of assets is not done automatically and only at the request of the national supervisory pension authorities (Covip).

Management of IORP
Italian SLL imposes no restrictions for the management of an overseas IORP. There is a requirement for 50% of the Board to be represented by an audited body representing the members—but this does not apply to overseas IORPs.

Information Requirements
Italian pension funds are required to provide a variety of items of information to members. These include:

■ Informative leaflet covering contribution rates, administration costs, management fees, and portfolio characteristics.

■ Individual annual statements about accrued benefits, projected benefits at retirement and fund performance.

They are also required to provide Covip with annual information about, for example, membership numbers, financial statements.

These requirements are all also applied to overseas IORPs, in respect of Italian members only.

There are no official language restrictions; however, in practice the Covip will only accept official documentation in Italian.

5.2 Taxation and Social Charge Comparison
This section of the report compares the impact of taxation and social charges resulting from membership of a locally established IORP retirement arrangement with that of a cross-border arrangement
## Overview of Host-Country Tax and Social Charge Issues

<table>
<thead>
<tr>
<th>Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</th>
<th>The Cross-border IORP has to be authorized by Covip to cross-border activities. It must then offer the &quot;TFR* investment fund option and provide Covip with the required annual information.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation of employer contributions to an IORP</td>
<td>Contributions are deductible as a business expense (without any ceiling). Contributions are not taxable income for the employee up to € 5,164.57 per fiscal year. This limit includes both employer and employee contributions.</td>
</tr>
<tr>
<td>Taxation of employee contributions to an IORP</td>
<td>Contributions are tax-deductible to the extent that the total contribution (employer and employee) does not exceed the limit of € 5,164.57 per fiscal year.</td>
</tr>
<tr>
<td>Social security or payroll charges on contributions to an IORP</td>
<td>Employer contributions are subject to a solidarity security charge of 10%. Employee contributions are subject to the full social security charges.</td>
</tr>
<tr>
<td>Taxation to the employee of investment returns credited within an IORP</td>
<td>Domestic IORP: 11%—paid by the pension fund. Nondomestic IORP: On the basis of the fiscal rules of the nondomestic country.</td>
</tr>
<tr>
<td>Social security charges to the employee based on investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Taxation of benefit payments from an IORPs</td>
<td>If the relevant contributions have been taxed, benefits at retirement are not subject to income tax. Otherwise benefits paid by the pension funds are taxed at a flat rate of 15%. After 15 years of membership in a pension fund this rate is reduced by 0.3% for every additional year of membership with a minimum rate of 9% after 35 years of membership. The component of the benefits payment corresponding to the return on investments is not taxable, to the extent that they have been taxed (either in Italy or elsewhere) prior to retirement. There are no social security charges on benefit payments from IORPs.</td>
</tr>
</tbody>
</table>

There are no key differences in taxation, social charge, and payroll taxation between membership of a domestic IORP and nondomestic cross-border IORP, nor between membership of a domestic insured arrangement and a nondomestic insured retirement arrangement. The taxation of benefits from a nondomestic IORP will be higher if the investment returns have not previously been taxed.

### 5.3 Portability of Retirement Assets

An employee who leaves Italy may transfer the individual account abroad. Transfers to an EU IORP or a USA pension fund are totally tax exempted. Otherwise, the transfer payment is taxed at rate of 23% (only on the part corresponding to not taxed contributions).

An individual who moves to Italy may transfer an individual account from an EU IORP or USA pension fund with no Italian tax charge. To set up tax treatment of benefit, the Italian IORP has to know the tax treatment of contributions in the country of origin. Transfers from elsewhere are tax exempted only up to € 5,164,57 (it is considered like an annual contribution).
5.4 Employment Status of Researchers
Researchers in the private sector will be covered by the collective bargaining agreement that covers their employer. This may, or may not, require the right to join a pension fund (and to receive employer contributions). As stated above, the employer's responsibility to contribute is limited to the official industry pension fund—although they may voluntarily contribute to other funds.

In addition, all private-sector employees must receive the TFR (*Trattamento di Fine Rapporto*). Employers with more than 50 employees must fund this on a DC basis through a pension fund (chosen by each employee) or through a central state fund. Employers with fewer than 50 employees can choose to provide this on a DB pay-as-you-go basis covered by a balance sheet provision although employees have the option to request a contribution to a DC pension fund instead.

Public-sector employees do not receive the TFR. Most do not have access to a pension fund (although a fund exists for teachers and primary and secondary schools).

Employees of universities may be either public or private sector (depending on the university). They do not have any pension provision in addition to social security.

5.5 Implications for Design of Researchers IORP
There are a number of issues which need to be addressed when establishing an IORP to ensure access to Italian researchers:

- The cross-border IORP can be used to receive the minimum TFR contributions.
- The contributions required for each member will need to at least meet the minimum required for that member's collective bargaining agreement.
- At least 50% of the benefits must be paid as a lifetime annuity.
- Employees have the right to withdraw some or all of their funds before retirement in certain circumstances.
- The IORP must offer at least one investment option which complies with the minimum expected return requirement of 1.5% plus 75% of inflation. This option must also have a minimum guarantee of 0% net of expenses.
- A record must be kept of which contributions have been taxed and which have not, and whether the investment return has been taxed. This will lead to more complicated administration requirements.
- There is a requirement to send information to Italian regulator about the Italian section on an annual basis.
- CLAs often require that membership of a specific domestic pension arrangement is offered. Employers are required to contribute unless members choose voluntarily to opt out.
6. Netherlands

6.1 Social and Labour Law Implications—the Netherlands

DC Benefits and Contributions

Dutch legislation for DC schemes contains a number of restrictions on the form and level of retirement benefits that may be provided to employees. Most of these are features stem from the pension taxation system.

SLL imposes the following requirements:

■ Specific requirements for Dutch DC schemes are limited since the Dutch pension market and legal framework traditionally has been dominated by—and shaped around—DB schemes.

■ Pension benefits and risk benefits (if any) may only be paid-out in the form of life-long annuities. Lump-sum payments are not allowed. Some exceptions for small pension benefits do exist.

■ Benefits must vest immediately. There is no minimum vesting period or minimum vesting age. On leaving, service benefits must be retained in the pension fund, unless the members opt to transfer them to a new employer's pension fund (see below—Portability).

■ Indexation of vested pension rights and/or benefits in payments is not regulated by law. This is a scheme design issue which is agreed between the employer and employees (or respective trade bodies) and is covered in the scheme rules.

■ "Conditional indexation" is also permitted—where pension increases are not guaranteed but instead are dependent on the financial performance of the pension fund. This is covered in the scheme rules. For DC schemes, (conditional) indexation is usually not applicable (a few exemptions exist).

■ Reduction of pension benefits in payment or vested pension rights (for instance due to shortfalls in the IORP) is allowed if a Dutch pension scheme is managed by a Dutch pension fund. However, this feature is not part of Dutch host country SLL (but part of Dutch home country IORP funding requirements). This means that Dutch SLL would not prohibit the reduction of accrued benefits.

■ Benefits may not be assigned to a third party.

■ No minimum retirement age exists in law, although benefits cannot be taken until the employee has left service with the employer. Benefits must commence by age 70 at max.

■ No requirements regarding minimum or maximum DC contributions do exist. Additional voluntary contributions by individual members are allowed by law, given the scheme rules do accommodate this feature. Dutch anti-discrimination rules are strict. Contributions may not be varied by sex. However, they can vary by age with a fiscal limit for age groups.

■ No mandatory minimum return on investments applies. Financial guarantees are not required in Dutch DC schemes.

■ There are no legal requirements regarding Dutch first-pillar state pensions that affect Dutch second-pillar pension arrangement.
Dutch SLL contains several explicit rules regarding divorce and pension rights. The same goes for the basic right of singles to replace survivors benefits by old-age benefits.

Dutch SLL contains a requirement that disputes regarding a Dutch pension scheme managed by a foreign IORP must be solved before a Dutch court.

The benefit pay-out, the vested rights and the contributions must be set in euro.

Access
In the Netherlands, there is no overall requirement for employers to provide for a pension arrangement for their employees. Nevertheless, around 98% of Dutch employees receive a second pillar pension.

Companies belonging to certain industries (e.g., health and well-being, construction) are obliged to provide a pension arrangement and have to join the respective industry-wide pension fund and the associated pension scheme (it is, however, possible for companies to opt out under certain strict conditions). The industry itself will ask the regulator to appoint its industry-wide pension fund and pension scheme as a mandatory arrangement. Around 60% of the Dutch pension market is organized along the lines of mandatory industry-wide pension arrangements. Individual employees cannot opt out of an industry-wide scheme.

It is not clear yet, to what extent the mandatory nature of industry-wide pension funds and schemes is part of Dutch SLL. For instance, it has not been tested yet, to what extent mandatory industry-wide pension schemes can be managed by non-Dutch IORPs. Similarly, it has not been tested yet to what extent an individual company can opt-out of the mandatory industry-wide pension fund and have its pension scheme managed by a foreign IORP.

Companies and employers that do not belong to a specific industry, may voluntarily create an own company pension fund and design a pension scheme.

If an employer has a pension arrangement in place, all employees of 21 years and up must be able to participate in this arrangement and employer contributions are mandatory (opting out by individual employees is feasible). However, it is possible for an employer to operate more than one pension scheme for different groups of employees so long as each pension arrangement is for a well-defined group of employees within the company. There is no compulsory law to ensure all employees are offered some form of pension.

Investments
In the Netherlands, the prudent person principle applies in pension investments. There are no quantitative investment restrictions applicable. Risk mitigation in investment policy is controlled via risk-based solvency requirements for Dutch IORPs.

In line with the above, the Dutch SLL does not place any quantitative restrictions on investment strategy for Dutch schemes managed by overseas IORPs, nor on the range of funds offered by a DC fund. Other than the quantitative restrictions on self investments in the plan sponsor, investments in group companies and in regulated markets, as stated in the IORP Directive.

Dutch DC schemes may offer a default lifestyle investment option and individual members may fully decide themselves on the asset allocation. However, strict “advice”, “care” and “communication” requirements apply to the IORP that manages the Dutch scheme (see below—Information Requirements).

Ring-fencing of assets belonging to the Dutch pension scheme managed by a foreign IORP is not required by Dutch SLL—but can be done.
Management of IORP
Dutch home country regulation contains several very strict governance requirements for Dutch IORPs (for instance, governing bodies, Board structure, and member representation). However, these requirements are not required under the Dutch SLL. As such, Dutch SLL imposes no restrictions on the management of an overseas IORP. For instance, there is no requirement for member-nominated representatives of Dutch schemes to be on the overseas IORP Board.

Dutch home country law contains several requirements for IORPs regarding reporting to the supervisory authorities. However, these requirements are obviously not made part of Dutch SLL, but left to the home country regulation and regulator.

Similarly, Dutch home country law contains strict requirements regarding the funding of Dutch IORPs that manage a Dutch pension scheme; e.g., technical provisions, solvency requirements, etc. None of these financial requirements are made part of Dutch SLL. It is left to the home country of the IORP to set the financial / funding requirements. One exception applies, though. If conditional indexation applies to a Dutch pension scheme, stress testing and “consistent funding” requirement is made part of Dutch SLL. It has not been tested yet to what extend this SLL requirement might interfere with other home country funding requirements. For Dutch DC schemes, (conditional) indexation is usually not in place. As such, this requirement will NOT be demanding.

The same goes for priority order in case of IORP bankruptcy. Dutch rules are not made part of Dutch SLL. It is up to the home country of the IORP to determine bankruptcy rules.

There is an extensive list of items in Dutch SLL, though, that have to be covered in a management contract between a Dutch plan sponsor and a foreign IORP. However, these requirements are qualitative in nature and in practice not all of the requirements are relevant for foreign IORPs. There are no quantitative requirements in Dutch SLL regarding profit sharing, maximum charges, exit clauses, contribution levels, etc. The Dutch SLL leaves it up to the foreign IORP and its client (the scheme) to negotiate the terms of the management contract.

Information Requirements
Dutch IORPs managing Dutch DC pension schemes must live up to very strict information to members requirements. Foreign IORPs managing a Dutch DC pension scheme must also comply with all these information requirements. These include:

- The information must be “clear and understandable”; although the Dutch language is not explicitly required one could assume that Dutch is applicable.

- Upon start, end of membership and once every five years if deferred member status: information on scheme rules, indexation, vested rights, etc, must be provided.

- Annually, member benefit info, statements of fund value, contributions, and indexation must be provided to the members. This statement has a standardized format, predefined by Dutch law and is made part of Dutch SLL.

- Adjustments in scheme rules and financing plan must be provided to members immediately.

- IORP financial and statutory info: a summary funding statement, statutes, etc., must be sent upon request.
For Dutch DC schemes, a special and strict clause is included in Dutch SLL aiming at informing and ‘educating’ individual members regarding the investment options and associated risks. The foreign IORP has to live up to these strict requirements.

6.2 Taxation and Social Charge Comparison
This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP versus a cross border IORP.

| Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment | ■ To be qualified as an IORP by the applicable foreign home country supervisor  
■ To be formally registered and “designated” by + contract to be signed with Dutch tax authorities / Minister of Finance |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation of employer contributions to an IORP</td>
<td>DC Contributions to a domestic IORP are deductible as a business expense. No explicit ceiling applies although the company’s tax inspector will review whether the contributions exceed &quot;normal practice&quot;. This ceiling is high and generally not felt to be restrictive. Employer contributions do not generate a tax charge for the employee; the employer contribution is not included in the salary for tax purposes.</td>
</tr>
<tr>
<td>Taxation of employee contributions to an IORP</td>
<td>DC Contributions to a tax-approved IORP are tax-deductible to the extent that the total contribution (employer and employee) does not exceed an annual contribution level (see above). If the contribution exceeds a certain level, the employee will be charged.</td>
</tr>
<tr>
<td>Social security or payroll charges on contributions to an IORP</td>
<td>Employer contributions do not generate social security charges for the employer or the employee. There are no payroll taxes. Employee contributions are subject to social security charges at the standard rate.</td>
</tr>
<tr>
<td>Taxation to the employee of investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Social security charges to the employee based on investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Taxation of benefit payments from an IORPs</td>
<td>Pensions paid to NL residents are taxed as income, regardless of where the pension was earned. There are social security charges on benefit payments from IORPs. Payroll taxes are not deducted from the benefit. Premiums for social insurance schemes are deducted from the benefit via the first tax band. That rate is currently 13.25% on a benefit of up to €33,436. It is possible (although not compulsory) for a nondomestic IORP to be given the power to deduct tax and social security charges at source.</td>
</tr>
</tbody>
</table>

For members in a Dutch pension scheme, there are no key differences in taxation, social charge, and payroll taxation if the scheme is being managed by a domestic Dutch IORP or by a nondomestic cross-border IORP. The same goes for a pension arrangement managed by a domestic insurer or a foreign insurer.
The only prerequisite is that the foreign IORP has to be formally designated by the Dutch tax authorities / Dutch Minister of Finance and has to sign a contract. This is a standard procedure and standards forms are available.

6.3 Portability of Retirement Assets
Pension rights are transferable to a qualifying recognised overseas IORP. All foreign pension institutions categorized as IORPs by their own local authorities qualify. A foreign IORP has to formally register with the Dutch tax authorities beforehand in order to become "recognised" and to assume tax liability (i.e., the tax relief granted by the Dutch authority in the accumulation phase should be paid back to the Dutch fiscal authorities via withholding taxes in the pay-out phase). Registration requires certain reporting requirements.

Individual asset transfers have to comply with strict value calculation methods, set out in the Dutch SLL. In contrast, group bulk asset and liability transfers do not meet strict calculation methods, and should be mutually agreed upon by the plan sponsor and the Dutch IORP.

Dutch SLL contains strict requirements on the decision-making process regarding a change of IORP provider. The Dutch Workers' Council and—in case of an intended group asset transfer to a foreign IORP—also the Dutch tax authorities, the Dutch pension supervisor, and the Board of the existing Dutch IORP must approve the transfer of a Dutch scheme to another (overseas) IORP.

6.4 Employment Status of Researchers
There are no requirements for researchers in the Netherlands (whether in the public or private sectors) to join any particular retirement arrangement—except where membership of an industry-wide fund is required for the employer and as such for the researchers.

Researchers in the public sector join either the Universities pension scheme or the general Dutch civil servants pension scheme—both of which are DB schemes. Both schemes are managed by the ABP pension fund. Opting out of the scheme and of the ABP pension fund by individual researchers would be very challenging. Restrictions may apply. However, opting out by a single university or the entire group of Dutch universities from ABP would be feasible, although still challenging. For instance, the European scheme has to be proved to be at least "equivalent" to the current DB scheme. Moreover, leaving ABP pension fund would activate certain, potentially costly, exit clauses.

Researchers in the private sector—both nonprofit and profit sector—are normally either a member of an industry-wide pension fund or a company pension fund, depending on which employer is involved. If they are members of an industry-wide fund then they cannot normally opt out (although their employers can).

6.5 Implications for Design of Researchers IORP
Any IORP should be able to provide Dutch DC pension benefits without much difficulty. Dutch DC schemes are not tightly regulated. Dutch host country SLL is condensed and disciplined, not causing major issues with home country regulation in other countries. However, there are a number of issues that need to be considered:

- Local member reporting requirements are strict.
- The IORP must pay the benefit as a lifetime annuity (the IORP vehicle must be allowed to be risk bearing) or enter into an agreement with an insurer to outsource the biometric, longevity risks.
- It is possible for Dutch pensions to have "conditional indexation" (a formal practice of determining the level of pension increases based on the financial performance of the pension fund). However, if this is included in benefit design, it could result in additional implicit Dutch funding requirements.
In the private sector, many researchers will be members of industry-wide funds. They are not permitted to opt out of these funds on an individual basis. Employers are able to opt out but may choose not to if that means that other nonresearch employees also have to leave the fund and have alternative pension provision elsewhere. No issue private-sector access where no CLA, and researchers can be covered under a separate pension fund.

Dutch public-sector researchers (including those at universities) are grouped together within the ABP pension fund and are unlikely to want to (or be able to) leave their existing DB pension schemes.

6.6 Recent Developments With Regard to IORPs

Effective January 1, 2011, a new type of pension administrator was introduced—the Premium Pension Institution (premiepensioeninstelling, PPI). A PPI is permitted to operate in other Member States of the EEA on the basis of its license in the Netherlands.

The PPI administers DC schemes for different companies or groups of companies. It may ring-fence the schemes’ assets. PPIs may not guarantee returns on investment or guarantee the amount of the pension benefit. Hence, it is permitted to operate only during the pension accrual phase. When a participant is ready to retire, the PPI must transfer the invested assets to a pension administrator that is permitted to bear risk (e.g., a life insurer). The life insurer will pay out the pension benefit. For non-Dutch pension schemes that provide a programmed withdrawal or lump-sum payment, a PPI can operate in the pay-out phase.

Since many Dutch DC pension schemes include disability and survivors’ provisions, employers must have a contract with an insurance company to administer those elements of the scheme. The PPI may act as an intermediary between the employer and insurer.

PPIs must be licensed by the Dutch Central Bank; this license serves as a “European passport.” It must be a legal entity and is required to have two policymakers that operate from the Netherlands and an internal supervisory body. Its governing structure does not have to include representatives of employers or employees. It is subject to a minimum capital requirement of EUR 225,000.

PPIs must invest contributions according to prudent person principles, ensuring the security, liquidity, and profitability of the portfolio as a whole. It must provide annual information regarding the status of contributions and investments to participants, as well as provide information upon request. If participants assume responsibility for their investments, the PPI must provide advice regarding the distribution of these investments in relation to the projected date of retirement.

PPIs are exempt from Dutch corporate income tax and are entitled to a rebate for any dividend tax withheld from dividends distributed to the PPI. Employer contributions to a scheme administered by a PPI are tax deductible.

The introduction of the PPI is part of a three-phase reform, designed to facilitate the administration and pooling of pension schemes. In the second phase, effective June 1, 2010, two or more company pension funds are permitted to merge. This phase is expected to allow small company pension funds to achieve cost savings and economies of scale. In the third phase, the general pension institution (algemene pensioeninstelling, API) will be introduced; APIs will administer cross-border defined benefit schemes.
7. Poland

7.1 Social and Labour Law implications

Benefits and Contributions

Pension schemes in Poland can be set up in two ways:

- A PPE (Pracowniczy Program Emerytalny) which needs to comply with SLL and has tax advantages; or
- A "non-qualified" pension plan, which does not need to comply with SLL but does not have the same tax advantages. A significant proportion of pension schemes in Poland are set up in this way, due to the flexibility about access and contributions that this provides.

Polish SLL imposes the following requirements:

- PPEs must be established on a Defined Contribution basis.
- A PPE may be operated in one of the following forms: 1) a pension fund; 2) agreement regarding the employer depositing the employees' contributions into an investment fund; 3) employees' group life insurance with an insurance society in the form of a group life insurance with a capital insurance fund; or 4) foreign management. The first type assumes gathering the contributions in a pension fund which is managed by a fund society and second refers to investing in one or multiple funds which are managed by a society. Both of these fund types are legal persons. The third regards the so-called 'investment life insurance' and money is gathered by the insurer within his assets. In such case, the fund is separated only for accounting purposes and is not a legal person. The fourth type (foreign management) regards any foreign IORP, regardless of whether the fund is a legal person or not and whether it has a separate fund manager or is self-managed.
- Risk benefits are not normally part of a PPE but they may be, if the form of the agreement is a group life insurance agreement. However, this is not allowed under foreign management. If a member dies than the sum of the accumulated fund is paid to the person the employee nominated.
- Access to benefits preretirement is allowed. If the employer contract ends then the employee is allowed to transfer to an individual pension account ("IKE") where the fund is allowed to be withdrawn prior to retirement, however there will be significant taxes payable (reflecting the loss of past tax exemption on investment returns).
- Employer contributions may be based on a percentage of pay and/or a fixed monetary amount. The same rule must apply to all members. They are limited to 7% of employee's salary. If the pension scheme rules permit, employees are allowed to pay additional contributions which is capped at an annual limit which is a formula based on the forecasted monthly remuneration of the national economy. For 2011, this is PLN 15,115.50. There are no specific limits for nonqualified arrangements.
- Normal retirement is 60 for a female and 65 for male. There is no restriction to the age you retire but assets must be released by the age of 70. Benefits can be requested from age 60 (or from age 55 if the social security pension has started). (Workers in certain occupations may retire earlier.)
- Pension schemes must offer members the option to receive their retirement benefit as a cash sum. They can also be set up (if desired) to pay the benefit through a programmed withdrawal over a number of years.
Members have a right to transfer their accrued benefits to a new pension scheme or to an individual plan (IKE) so long as they no longer has an employment contract with the company. The transfer amount is calculated on the last working day of the month and is the funds net assets divided by the number of accounting units determined on that day.

Vesting rights are immediate.

Access
In normal circumstances a company may only operate one PPE and that must then be offered to all employees, although membership is voluntary. Companies are allowed to operate more than one scheme only in limited cases such as a merger and acquisition.

An employee is only eligible to join a scheme after three months of service, unless the pension agreement states a lesser period. Those aged over 70 are not allowed to join. A PPE cannot be set up if less than 1/3rd of employees meet these eligibility requirements

A person employed by more than one company is allowed to join both schemes; however joining is optional. Membership cannot be restricted to a particular group of employees and all employees must have the same rights.

Investments
There are no material investment restrictions in addition to those in the IORP Directive.

If the pension scheme agreement permits it, employees can choose how their funds are invested (from the range of funds offered by their pension scheme). Pension schemes are not prohibited from offering a default lifestyle investment option, although this is not normal practice.

Ring-fencing of assets is not required—but can be done.

There is no minimum guaranteed investment return required by law, although pension funds can offer these.

Management of IORP
Polish SLL imposes no restrictions on the management of an overseas IORP. There is no requirement for member-nominated representatives to be on the IORP Board.

Pension schemes can be set up so that they are automatically liquidated if the assets fall below an amount stated in the pension schemes rules.

Information Requirements
Polish pension schemes must provide information in accordance to the law of 25 June 2004, including a plan description on joining, and a benefit statement on request when a member leaves the plan. There is no requirement to provide members with annual benefit statements.

Employers who operate PPEs must send the Polish authorities annual information covering; for example, employees covered, contributions paid, transfer payments made.

All information to participants must be in Polish.

These requirements also affect Polish members of overseas IORPs and their employers.
7.2 Taxation and Social Charge Comparison
This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross-border arrangement.

<table>
<thead>
<tr>
<th>Overview of Host-Country Tax and Social Charge Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</strong></td>
</tr>
<tr>
<td><strong>Taxation of employer contributions to an IORP</strong></td>
</tr>
<tr>
<td><strong>Taxation of employee contributions to an IORP</strong></td>
</tr>
<tr>
<td><strong>Social security or payroll charges on contributions to an IORP</strong></td>
</tr>
<tr>
<td><strong>Taxation to the employee of investment returns credited within an IORP</strong></td>
</tr>
<tr>
<td><strong>Social security charges to the employee based on investment returns credited within an IORP</strong></td>
</tr>
<tr>
<td><strong>Taxation of benefit payments from an IORPs</strong></td>
</tr>
</tbody>
</table>

There are no key differences in taxation, social charge, and payroll taxation between membership of a domestic IORP and nondomestic cross-border IORP, nor between membership of a domestic insured arrangement and a nondomestic insured retirement arrangement.
7.3 Portability of Retirement Assets
After leaving employment, a member can only transfer funds to another PPE or to an IKE (individual pension account). Funds in an IKE can then be withdrawn but they are taxed in that case.

Funds cannot be transferred to any other funding vehicle so, to transfer to an overseas IORP (unless this is the funding vehicle for a PPE), the funds would need to be transferred to an IKE, withdrawn (and taxed) and then paid into the overseas IORP as AVCs.

SLL does not prohibit the transfer of funds from an overseas IORP into a PPE. This is likely to generate an income tax charge for the member (subject to the exact conditions of the transfer and negotiation with the tax authorities).

7.4 Employment Status of Researchers
Most public-sector employees in Poland (including those at universities) do not have any supplemental pension plans. (There are pension plans for certain public employees, for example police and army, but not any groups that are likely to include researchers.)

7.5 Implications for Design of Researchers IORP
There are a number of issues which need to be addressed when establishing an IORP to ensure access to Polish researchers:

■ Benefit flexibility is limited if the vehicle is classified as a PPE in terms of level of contributions.

■ Access must be offered to all employees within an organisation. To cover only researchers, it will be necessary to treat the cross-border IORP as a nonqualified plan. Approximately 2/3rd of all pension funds are nonqualified.

■ PPE benefits are taxed on a favourable basis. Nonqualified plans receive no preferential tax treatment, although benefits are tax-free.

■ The IORP must be able to pay benefits from a PPE as a cash sum, if requested by the member.

■ Transfers to other arrangements from PPEs are limited.

■ There is a requirement to send information to Polish regulator about the Polish section on an annual basis.
8. Spain

8.1 Social and Labour Law Implications
Benefits and Contributions
Qualified Pension Plans in Spain fall into three categories:

- **Company plan**: Set up by single employers or groups of employers. Can receive contributions from employers and employees.

- **Individual plans**: Used by individual people. Receive employee contributions only.

- **Associate plans**: Set up by bodies that represent workers in a particular industry or profession (for example, trade unions or professional/trade bodies). Receive employee contributions only (although employees can permit their employers to make these payments out of their salary on their behalf).

Spanish SLL contains the following rules:

- There is no restriction on the form of benefit (pension or lump sum).

- Normal Retirement Age must be equal to the age at which it is normal to receive the pension from Social Security (currently 65).

- Early retirement is permitted from age 60, but only if the Social Security pension has started or if the employee stops working (or any professional activity) and paying contributions to Social Security (and if the plan rules permit retirement). It is possible to defer retirement after age 65 but once the Social Security pension has started no more retirement benefit may be earned (but death benefits may still be provided).

- There exists an annual contribution limit within the social labour law. This annual limit is €10,000 for those aged under 50 and €12,500 for employees aged 50 and over. This limit is the total amount of contributions from both the employer and employee.

- If the plan rules or the collective agreement permit then different contribution rates for participants are allowed in different sub-plans. Membership of each sub-plan must be for a defined group of employees and employees cannot choose which sub-plan to join. The company contribution rate can be zero for some sub-plans. The differences can be in relation to type of plan (DB or DC), age, employment status, date of hire, etc.

- Employees can pay AVCs if the plan rules permit this. If the company contribution rate is zero in a sub-plan then the employees must be permitted to pay AVCs.

- There must be full and immediate vesting for the employees. For a DC plan the accumulated fund is the sum of direct and imputed contributions plus the corresponding profit sharing/returns minus expenses.

- For company qualified pension plans, transferring of benefits is only permitted if the plan rules allow it or in the case of dismissal.

- Preretirement access to benefits is limited to collective dismissals which must be authorised by the labour authorities. Access to benefits in this scenario is independent of age.
The employer may reduce benefits for future service, but not accrued rights. The Control Committee (representatives of the pension fund) must be informed but cannot veto the change.

Benefits may not be assigned to a third party until they are in payment or, alternatively, until such time as they could be paid to the member, even if the benefit has not yet been requested.

Access
If an employer operates a Qualified Pension Plan then all employees with two or more years of service must have the option to join the plan. However, although employees are eligible to join, the law allows different contributions levels even zero employer contributions if the plan has different sub plans established in the plan rules or by collective agreement.

An employer may only operate one company qualified pension plan.

Membership of the plan is voluntary.

Investments
SLL does not place any restrictions on investment strategy of an overseas IORP in addition to those in the IORP Directive.

Individuals in a company or associate DC fund are not allowed to select their own investment allocation nor allowed to use a default lifestyle investment option. The plan or sub-plan must decide on the investment allocation and in an associate or company plan, employees do not have a choice about which sub-plan to join (and, therefore, have no investment choice).

There is no requirement to provide a minimum guaranteed return.

Management of IORP
Spanish SLL requires that the Control Committee decides the funding vehicle that the pension plan will use. If it is a new plan which is being established then SLL requires a ‘promoting committee’ to decide this. The representation on a Control Committee or a Promoting Committee is the same: 50% employer and 50% employee/trade unions.

It is possible for a pension plan to have both DB and DC sub-plans. In this case (only) it is permitted to use separate funding vehicles for the DB and the DC sections.

There is not a requirement for an employee nominated representatives to be on the IORP Board. However, the IORP must designate an official representative (an individual or a corporate entity) based in Spain. This representative is responsible for answering the claims presented by the control committee, members, and beneficiaries of the plans subject to Spanish legislation, representing the IORP to the Spanish administrative and judicial authorities and representing the IORP for any tax obligations as result of their activities in Spain.

Any changes to the benefit structure must be authorised by the Control Committee or the Collective Agreement.

Information Requirements
It is mandatory that individuals receive annual benefit statements (contributions, vested rights, and a summary of the plan benefits and information about any excess on the contribution limits). Every six months, information must be provided on the movement of the individual accumulated funds, any legislative, plan, fund or investment changes, movement in plan asset, and information on the fees and commission as a percentage on the accumulated fund.
These requirements apply to Spanish members of foreign IORPs. There is no requirement that the communication be in Spanish—although it is unlikely that the Control Committee would agree to use a funding vehicle that could not do this.

8.2 Taxation and Social Charge Comparison
This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross border arrangement.

<table>
<thead>
<tr>
<th>Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</th>
<th>The IORP must be registered with the Dirección General de Seguros. It must also have a formal Representative based in Spain who deals with the tax authorities (see 11.1.4 above). There are no further requirements in order to receive tax relief.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation of employer contributions to an IORP</td>
<td>Contributions, within the limit, are fully and immediately tax deductible in the corporate tax return. The annual contribution limit in 2011 is €10,000 for employees under age 50 and €12,500 for employees age 50 and over. Employer contributions generate a benefit in kind tax charge for the employee if the total contribution (employer and employee) exceeds the limit on employee contributions (see below).</td>
</tr>
<tr>
<td>Taxation of employee contributions to an IORP</td>
<td>The annual contribution limit in 2011 is €10,000 for employees under age 50 and €12,500 for employees age 50 and over. There is also a tax-deductible limit applicable in the employees’ personal tax returns. This limit in 2011 is the lower between €10,000 or 30% of the total personal income for employees under age 50 and the lower between €12,500 or 50% of the total personal income for employees age 50 and over.</td>
</tr>
<tr>
<td>Social security or payroll charges on contributions to an IORP</td>
<td>Employer and employee contributions do not generate social security charges for the employer or the employee. There are no payroll taxes.</td>
</tr>
<tr>
<td>Taxation to the employee of investment returns credited within an IORP</td>
<td>None. Pension funds and domestic IORP are levied to Corporate tax rated at 0%, and taxes withheld on dividends and interests must be reimbursed by the Spanish treasury.</td>
</tr>
<tr>
<td>Social security charges to the employee based on investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Taxation of benefit payments from an IORPs</td>
<td>Income tax rates are applied to the whole amount of the pension (no reductions) paid to the beneficiary. There are no social security charges on benefit payments from IORPs. Lump-sum payments are also taxed as income. However, 40% of lump sum benefits payments funded with contributions made up to 31 December 2006 are free of tax.</td>
</tr>
</tbody>
</table>

There are no key differences in taxation, social charge, and payroll taxation between membership of a domestic IORP and nondomestic cross-border IORP, nor between membership of a domestic insured arrangement and a nondomestic insured retirement arrangement.
At the employer’s decision, there are two possible tax treatments for domestic insured retirement arrangements:

- To consider contributions/premiums as taxable salary in kind for the plan members and subject to withholding tax. In this case, no tax reduction or deduction is applicable, social security charges are applied to the contribution and the plan member is fully and immediately vested. The employer receives tax relief on the contributions when they are paid. When the benefits are paid, only the part relating to investment returns is taxable.

- Not to consider contributions/premiums as taxable salary in kind for the plan members. In this case, the plan member does not pay tax while contributions are paid, social security charges are not applied and vested rights design depends on the company’s decision. The benefits are then fully taxed, and the employer only receives tax relief at the time that the benefits are paid.

8.3 Portability of Retirement Assets

On individual basis, in company pension plans, participants can only transfer the accumulated fund in case of termination of labour relationship if the Plan Rules allow for transfer of funds. No restrictions in case of individual or associate pension plans, assets are fully portable to another qualified pension plan (individual, associate or company) at member decision.

No taxes or penalties are applied in case of transferring of the accumulated funds to another pension plan (funded through a local fund or an IORP).

8.4 Employment Status of Researchers

Researchers in the public sector have a special Social Security regime and are also eligible to join a Company Qualified Pension Plan (plan for the general administration of the Spanish State). This QPP is a defined contribution plan, with very low employer contributions.

The plan is applicable to a number of ministries, state agencies, research centers, state councils, colleges, court accounts, constitutional court, National University of Distance Education, Universidad International Menendez Pelayo, etc. Unless the EC Researchers plan offers benefits that are at least as valuable as the existing QPP, it is unlikely that many public-sector researchers will join.

Under the special Social Security regime for public servants are included:

- The public servants working for the administration of the State, Administration of Justice, and parliament.

- Former Presidents, Vice Presidents, and Ministers of the Government of the Nation.

- Career military personnel, professional soldiers and sailors, etc.

For Social Security purposes, the employees of local administrations (city councils), autonomous bodies and the Autonomous Communities are not treated as public servants.

Most universities not included in the above list and they frequently also offer company qualified pension plans to their employees. These plans are usually defined contribution plans and split the annual contribution of the University between the plan participants during the year with the criteria established in the plan rules.
8.5 Implications for Design of Researchers IORP
An IORP should be able to provide Spanish approved pension benefits. The main implications of Spanish legislation are:

■ Contributions are limited in cash amount by individual member under SLL.

■ It is necessary to establish a Control Committee with equal employer and employee representation—and there must be a Spanish-based official representative for the cross-border IORP.

■ Members may not be given any investment choice. The investment choice is made for the plan (or sub-plan) by the Control Committee.

■ If an employer sets up a company pension plan then all employees of that employer must be eligible to join the plan (if the employer and employees are to receive tax relief). It is possible to have different sections with one representing researchers, and there is no requirement for the employer to contribute for those other employees. However, employers can only operate one qualified pension plan, and can only have one IORP providing DC benefits for their employees. This means the only potentially viable route in Spain is to create a professional industry-wide plan for researchers, which would not restrict employers providing domestically financed benefits to other groups.

■ Different benefits would be appropriate for those researchers covered by the special social security regime for public servants.
9. Sweden

9.1 Social and Labour Law Implications

Benefits and Contributions
Swedish social and labour law legislation does not include restrictions on the benefit structure of a plan (benefits, vesting, indexation, contributions). However, significant constraints are imposed by various Collective Labour Agreements, which cover a large proportion of the Swedish workforce.

Tax rules also constrain the level of contributions and benefits that can be paid. In particular, in order for a pension plan to receive tax relief, pension benefits must be paid as an annuity (for at least 5 years), rather than a lump sum.

Access
There is no requirement for employers to offer a pension plan, unless this forms part of a relevant Collective Labour Agreement. Membership of a pension plan that is set up voluntarily by an employer can be limited to whichever groups of employees the employer chooses (subject to not breaching discrimination legislation, e.g., on grounds of sex or nationality).

Employers can make membership of the plan a condition of employment. However, where plans are funded, this is normally only with employer contributions (DB and DC plans). Therefore, compulsory membership is not an issue for employees. For employees covered by a plan provided through a Collective Labour Agreement, employees can only opt out with the employer's agreement and further approval from the plan governing authority—this is not a simple process.

Investments
There is no requirement for benefits to be funded externally through an insurance company or pension fund. The revised Business Insurance Act, effective April 1, 2011, creates a new structure for “friendly societies.” They will remain special purpose vehicles; however, since they are now covered by the Business Insurance Act, they will be able to compete on equal terms with other insurance companies. The Tjänstepensionskassor—the Swedish equivalent of IORPs will be affected by this change.

SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. Lifestyle investment options are permitted (subject to any restriction in the Collective Labour Agreement).

Ring-fencing of assets is not required—but can be done.

Management of IORP
SLL imposes no restrictions on the management of an overseas IORP.

There is no requirement for employee representation in the management of the IORP in SLL (although this is a common requirement for plans set up under Collective Labour Agreements).

Voluntarily set up pension plans can be changed by the employer.
Information Requirements
Swedish pension plans are required to provide a variety of items of information to members. This must be provided in Swedish, but may also be provided in other languages. This includes:

- Annual information regarding the value of benefits.
- Information about fees.
- Information regarding the terms of the contract.
- The main features of the tax rules that apply.
- Information regarding the right to transfer.

These requirements would apply to overseas IORPs that cover Swedish employees.

9.2 Taxation and Social Charge Comparison
This section of the report compares the impact of taxation and social charges resulting from membership of a locally established IORP retirement arrangement with that of a cross-border arrangement.

<table>
<thead>
<tr>
<th>Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</th>
<th>Once the IORP has been authorised to accept Swedish employees, there are no specific additional requirements.</th>
</tr>
</thead>
</table>
| Taxation of employer contributions to an IORP | Contributions to a tax-approved IORP are deductible for corporation tax. Different rules apply for defined benefit and defined contribution plans.  
- For DC plans, the main rule is that the maximum tax-deductible premium for the employer is the lower of 35% of salary or 10 price base amounts (approx €428,000). (1 price base amount equals €42,800 in 2011).  
- For defined benefit plans, there is a supplementary rule setting out the maximum level of benefits that can be provided for tax deductibility of contributions. Also there are complicated maximum funding rules (for tax deductibility) relating to Swedish GAAP.  
Employer contributions are not counted as taxable income for the employee.  
An additional investment yield tax also applies. This is calculated based on 15% of the average yield available on specific Swedish government bonds over the past year (the rate is published annually by the Swedish tax authorities). The tax is paid by the employer for DB pension plans, but for DC plans it is paid by the IORP. |
| Taxation of employee contributions to an IORP | Contributions to a tax-approved IORP are tax-deductible to the employee up to a limit of 1 price base amounts (around €42,800).  
Employee contributions are rare, and are therefore implemented through salary sacrifice. |
<table>
<thead>
<tr>
<th>Social security or payroll charges on contributions to an IORP</th>
<th>There is a special payroll tax of 24.26% which applies on all employer pension costs. This is paid by the employer and is based on the contributions (to DC plans) or the cost of benefit accrual (to funded DB plans). There is no social security charge in respect of employer contributions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation to the employee of investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Social security charges to the employee based on investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Taxation of benefit payments from an IORPs</td>
<td>Pensions are taxed as income for the employee. Taxation for employer depends on type of vehicle (i.e., employers own pension fund, insurance company, or book reserved). There are no social security charges on benefit payments from IORPs.</td>
</tr>
</tbody>
</table>

There are no key differences in taxation, social charge, and payroll taxation between membership of a domestic IORP and nondomestic cross-border IORP based in another EU country, nor between membership of a domestic insured arrangement and a nondomestic insured retirement arrangement based in another EU country.

### 9.3 Portability of Retirement Assets

For domestic IORPs, any conditions relating to transfer capital is normally set out in Collective Labour Agreements. There are usually restrictions on the level of charges, whether a transfer is possible at all and the providers that have been authorized. There is no difference between transfers to a domestic or nondomestic cross-border IORP. Public sector pensions currently are not permitted to be transferred.

### 9.4 Employment Status of Researchers

Public-sector employees, included university employees, are covered by one of a number of retirement plans (depending on the exact role). These are unfunded and provide a reasonably generous DB pension. Membership is compulsory. In exceptional cases, it may be possible for employees to opt out, but they would need approval from the designated board responsible for the management of the pension plan according to the Collective Labour Agreement.

A high proportion of private-sector employees in Sweden are covered by a Collective Labour Agreement which sets out a required retirement benefit plan. In 2009, around 80% of the private-sector workforce was covered by a CLA.

For white-collar workers, this is normally a DB pension (although some newer employees in certain Collective Labour Agreements receive benefits on a DC basis). Benefits are sometimes funded but can be unfunded (including DC benefits). Employees do not usually have the right to opt out of all of these arrangements, although as they normally require no employee contribution it seems unlikely that employees would do this in order to join an overseas IORP.

Where plans are financed, the Collective Labour Agreements require that the benefits be financed through a defined list of approved (Swedish) providers.

Where this is not the case, an employer would be able to finance the CLA benefits through an overseas IORP and the form of benefits can be chosen by the employer (typically DC).
9.5 Implications for Design of Researchers IORP
The main issue in respect of Swedish researchers which needs to be addressed is the level of provision already provided.

- Member reporting requirements are relatively extensive and extend to key features of tax implications

- An investment yield tax will need to be paid each year in respect of Swedish members by the IORP making administration more complicated.

- Private-sector access is complicated with CLAs which mandate relatively generous and usually DB plans. 80% of the private-sector workforce are covered under such arrangements. Employees can opt out only with employer consent. It should be possible (unless prohibited by the Collective Labour Agreement) for employers to finance the benefits through an overseas IORP—but that would need to follow the required benefit structure (normally DB).

- For employers who are not covered by a Collective Labour Agreement there are very few restrictions on the contributions or benefits or investment options that can be given. However, in order for the plan to receive tax relief, contributions or benefit levels must be restricted. Pension benefit must be taken as an annuity for at least 5 years.

- Public-sector access is limited as researchers are covered under relatively generous DB plans. Opting out on an individual basis is possible but very complicated, and unlikely.
10. United Kingdom

10.1 Social and Labour Law Implications

Benefits and Contributions

UK legislation contains a number of restrictions on the form and level of retirement benefits that may be provided to employees whose employment contractual relations are governed by UK law. Some of these are features of the taxation system—and only apply to retirement plans that receive the benefits of tax relief. These are summarised below.

SLL imposes the following requirements:

- Benefits must vest within a maximum of 3 months. On leaving service after 2 years the benefits must be retained in the pension fund, unless the members opts to transfer them to a new employer’s pension fund (or a personal pension plan). Before 2 years the member has the option of a transfer to another pension arrangement or a return of his own contributions (unless the scheme offers full vesting).

- Vested benefits must be indexed until retirement—in a DC plan in line with investment returns; in a DB plan at the lesser of UK Retail Prices Index ("RPI") and 2.5% per annum—for benefits earned after 2009 (and up to 5% per annum for benefits earned before that date). The government has indicated that, in 2011, it intends to move to the Consumer Price Index ("CPI") to measure price inflation for regulating occupational pension schemes. A statutory minimum requirement will continue to apply to the revaluation and indexation of pension rights.

- Pensions from DB plans earned after 1997 must be indexed in payment in line with UK RPI (with an annual maximum of 2.5% for benefits earned on or after 6 April 2005 and 5% for those earned from 6 April 1997 to 5 April 2005). There are no such restrictions for pensions purchased from a DC plan. The government has indicated that, in 2011, it intends to move to the Consumer Price Index ("CPI") to measure price inflation for regulating occupational pension schemes. A statutory minimum requirement will continue to apply to the revaluation and indexation of pension rights.

- There is no requirement to have terminated employment with the sponsoring employer, or to be in receipt of a Social Security pension, before receiving a retirement pension.

- Employer contributions to a DC plan may be varied by age (but not by sex). However, employment law requires that this only be done to the extent that the increase in contributions with age can be proved to be reasonable in the light of the benefits generated.

- Between 2012 and 2017 (depending on the size of the employer) it will become a requirement for employers to contribute to a pension arrangement ("Personal Account") for all employees (unless they are covered by an alternative arrangement or the employee chooses to opt out). The contribution, once fully phased in, will be 3% from the employer, 4% from the employee and 1% tax relief.

- Benefits may not be assigned to a third party other than assignment to a dependant by surrender of own pension (dependant's resulting pension must not be greater than the member's reduced pension). On employee's bankruptcy, where there is a pension in payment, the trustee in bankruptcy is able to request a court to issue an attachment of earnings or income payments order against the pension.

In order to receive tax relief on the pension and contributions, the following rules also apply:
■ No more than 25% of the pension may be taken as a cash lump sum.

■ Benefits may not be taken before the minimum early retirement age (55 from April 2010) except on death or disability retirement. They must commence by age 75 if restrictions on the amount of pension permitted to be drawn are not to apply.

■ There are limits on the total benefits payable from a tax-approved pension fund, and the annual accrual and contributions permitted.

■ Pensions in payment may not normally be reduced.

Access
There is no requirement for membership of plans to be open to all employees, nor for benefits to be the same for different groups of members. However, access to the plan must not discriminate on grounds of gender and there are age-based restrictions.

Investments
SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. DC funds may offer a default lifestyle investment option.

Ring-fencing of assets is not required—but can be done.

Management of IORP
UK SLL imposes no restrictions on the management of an overseas IORP. There is no requirement for member-nominated representatives to be on the IORP Board.

Information Requirements
UK pension funds are required to provide a variety of items of information to members. These include:

■ Statements of fund value and contributions to DC plans must be provided annually. Annual statement of DB benefits must be provided on request (and is frequently provided automatically).

■ A Summary Funding Statement must be sent annually to all DB members.

■ A copy of the latest annual report and accounts must be provided on request.

■ Trust Deed and Rules, actuarial valuation reports, and Statements of Investment Principles must be available.

These requirements do not apply to overseas IORPs that provide benefits for UK employees, although best practice would be to follow them where appropriate.

10.2 Taxation and Social Charge Comparison
This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross-border arrangement.
## Overview of Host-Country Tax and Social Charge Issues

<table>
<thead>
<tr>
<th>Requirements for a nondomestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment</th>
<th>Registration with tax authorities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation of employer contributions to an IORP</td>
<td>Contributions to a tax-approved IORP are deductible as a business expense (no ceiling). They do not generate a tax charge for the employees unless they exceed, when combined with employee contributions, an annual limit (from 6 April 2010—£255,000). The government has indicated that the annual limit will be reduced to £50,000 in 2011; tax relief will be given at the individual’s marginal rate. (For testing against it, DB pension accrual will be valued using a flat factor.) The 2011 changes are included in the Finance Bill 2011.</td>
</tr>
<tr>
<td>Taxation of employee contributions to an IORP</td>
<td>Contributions to a tax-approved IORP are tax-deductible to the extent that the total contribution (employer and employee) does not exceed the Annual Allowance (from 6 April 2010—£255,000). The government has indicated that the annual limit will be reduced to £50,000 in 2011; tax relief will be given at the individual’s marginal rate. (For testing against it, DB pension accrual will be valued using a flat factor.) The 2011 changes are included in the Finance Bill 2011.</td>
</tr>
<tr>
<td>Social security or payroll charges on contributions to an IORP</td>
<td>Employer contributions do not generate social security charges for the employer or the employee. There are no payroll taxes. Employee contributions are subject to social security charges at the standard rate.</td>
</tr>
<tr>
<td>Taxation to the employee of investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Social security charges to the employee based on investment returns credited within an IORP</td>
<td>None</td>
</tr>
<tr>
<td>Taxation of benefit payments from an IORPs</td>
<td>Pensions paid to UK residents within the Lifetime Allowance are taxed as income, regardless of where the pension was earned. Up to 25% of the benefit may be taken as a lump sum that is free of all UK taxes. Penal tax rates (around 55%) apply to individuals with total fund values (from all pension plans with UK tax approval) in excess of the Lifetime Allowance. The Lifetime Allowance will be £1.80 million with effect from 6 April 2010. It is expected to be reduced to £1.50 million with effect from 6 April 2012. There are no social security charges on benefit payments from IORPs. For a UK tax resident, there is a 10% deduction from taxable pension income relating to non-UK service that is received from overseas pension arrangements. Also, lump sum payments in respect of non-UK service from such arrangements are free of UK tax.</td>
</tr>
</tbody>
</table>
There are no key differences in taxation, social charge, and payroll taxation between membership of a
domestic IORP and nondomestic cross-border IORP, nor between membership of a domestic insured
arrangement and a nondomestic insured retirement arrangement. Income from overseas pension plans that
does not relate to UK service is taxed at a preferential rate.

It should be noted that the method and timing of tax relief on UK member contributions differs for an IORP
and an insured retirement arrangement. Immediate tax relief is given (via payroll) for IORP contributions.
Relief under insured contract given in arrears—basic tax relief paid directly to insurer.

10.3 Portability of Retirement Assets
Pension rights are transferable to a “qualifying recognised overseas pensions schemes” in the other EU
state (or Norway, Iceland, or Liechtenstein). All IORPs in these countries would qualify as qualifying
recognised overseas pensions schemes if they register as such with UK tax authorities. Registration
requires certain reporting requirements where UK tax liabilities may arise.

10.4 Employment Status of Researchers
There are no requirements for researchers in the United Kingdom (whether in the public or private sectors)
to join any particular retirement arrangement. Membership of pension plans is always voluntary.

However, many Researchers in the public sector will be eligible to join either the Universities
Superannuation Scheme or part of the Local Government Pension Scheme, both of which provide a high
level of Defined Benefit pension, and they may therefore be unwilling to join an alternative plan unless it
offers a comparable level of benefit.

10.5 Implications for Design of Researchers IORP
An IORP should be able to provide UK approved pension benefits without much difficulty.

■ Public-sector access is possible by unlikely as researchers are already covered under generous DB
plans and are unlikely to opt out voluntarily It will need to be able to provide retirement benefits mainly in
pension form.
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