

# **ACT**

of 20 April 2004

## **on Occupational Pension Schemes**

**(Journal of Laws No. 116, item 1207)**

### **Chapter 1**

#### **General provisions**

**Article 1.** The Act specifies the principles of the establishment and operation of occupational pension schemes, the conditions which should be met by entities implementing the schemes, and the terms of participation in those schemes.

**Article 2.** The following terms used in the Act shall mean:

- 1) scheme – a company scheme or an inter-company scheme;
- 2) employee – a person employed on the basis of a contract of employment, appointment, election, nomination, cooperative contract of employment, on a full or part-time basis, and a person employed on the basis of a contract concluded as a result of an appointment or election to a body representing a legal person;
- 3) insurance company – a life insurance company in the form of a joint-stock company or mutual life insurance company within the meaning of the Act of 22 May 2003 on the Insurance Business (Journal of Laws No. 124, item 1151, and of 2004 No. 91, item 870, and No. 96, item 959);
- 4) investment fund – an open-end investment fund or specialist open-end investment fund within the meaning of the Act of 28 August 1997 on Investment Funds (Journal of Laws of 2002 No. 49, item 448, and No. 141, item 1178, and of 2003 No. 124, item 1151);
- 5) pension fund company – an occupational pension fund company within the meaning of the Act of 28 August 1997 on the Organisation and Functioning of Pension Funds (Journal of Laws No. 139, item 934, as amended<sup>1</sup>);
- 6) pension fund – an occupational pension fund within the meaning of the Act of 28 August 1997 on the Organisation and Functioning of Pension Funds;
- 7) financial institution – an insurance company or an investment fund, administering the funds collected in the scheme on the basis of a contract concluded with the employer;

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<sup>1</sup> Amendments to the Act mentioned have been published in the Journal of Laws of 1998 No. 98, item 610, No. 106, item 668 and No. 162, item 1118, of 1999 No. 110, item 1256, of 2000 No. 60, item 702, of 2001 No. 8, item 64 and No. 110, item 1189, of 2002 No. 25, item 253, No. 153, item 1271 and No. 241, item 2074, of 2003 No. 124, item 1153, No. 166, item 1609 and No. 170, item 1651, and of 2004 No. 96, item 959.

8) financial institution maintaining the IRA – a financial institution maintaining the member's IRA within the meaning of the Act of 20 April 2004 on Individual Retirement Accounts (Journal of Laws No. 116, item 1205);

9) administrator – a financial institution or a pension fund;

10) conversion – a simultaneous redemption of participation units in one investment fund and purchasing participation units in another investment fund managed by the same company using the funds obtained from the redemption of participation units, provided that the redeemed units are registered as constituting a member's funds from the basic contribution or from the supplementary contribution;

11) member – an employee or another person who has joined a scheme;

12) eligible person – a person indicated by the member in a declaration, who will receive funds from the scheme in the case of the member's death, a person mentioned in Article 832 § 2 of the Act of 23 April 1964 – Civil Code (Journal of Laws No. 16, item 93, as amended<sup>2</sup>), and the member's heir;

13) funds - financial resources collected in order to implement the scheme, invested in investment fund participation units, units of an insurance capital fund operating on the basis of provisions on insurance business, and pension fund clearing units – on the member's account maintained by the administrator, or cash in the member's account maintained on the basis of a company pension agreement by an insurance company, an investment fund or a pension fund;

14) supervisory body – the Commission of Insurance and Pension Fund Supervision;

15) remuneration – the basis for the assessment of the retirement pension and disability pension insurance of the member within the meaning of the Act of 13 October 1998 on the Social Insurance System (Journal of Laws No. 137, item 887, as amended<sup>3</sup>), without the application of the limitation mentioned in Article 19 paragraph 1 of that Act;

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<sup>2</sup> Amendments to the Act mentioned have been published in the Journal of Laws of 1971 No. 27, item 252, z 1976 No. 19, item 122, z 1982 No. 11, item 81, No. 19, item 147 and No. 30, item 210, z 1984 No. 45, item 242, z 1985 No. 22, item 99, z 1989 No. 3, item 11, of 1990 No. 34, item 198, No. 55, item 321 and No. 79, item 464, of 1991 No. 107, item 464 and No. 115, item 496, of 1993 No. 17, item 78, of 1994 No. 27, item 96, No. 85, item 388 and No. 105, item 509, of 1995 No. 83, item 417, of 1996 No. 114, item 542, No. 139, item 646 and No. 149, item 703, of 1997 No. 43, item 272, No. 115, item 741, No. 117, item 751 and No. 157, item 1040, of 1998 No. 106, item 668 and No. 117, item 758, of 1999 No. 52, item 532, of 2000 No. 22, item 271, No. 74, item 855 and 857, No. 88, item 983 and No. 114, item 1191, of 2001 No. 11, item 91, No. 71, item 733, No. 130, item 1450 and No. 145, item 1638, of 2002 No. 113, item 984 and No. 141, item 1176, of 2003 No. 49, item 408, No. 60, item 535, No. 64, item 592 and No. 124, item 1151, and of 2004 No. 91, item 870, and No. 96, item 959.

<sup>3</sup> Amendments to the Act mentioned have been published in the Journal of Laws of 1998 No. 162, item 1118 and 1126, of 1999 No. 26, item 228, No. 60, item 636, No. 72, item 802, No. 78, item 875 and No. 110, item 1256, of 2000 No. 9, item 118, No. 95, item 1041, No. 104, item 1104 and No. 119, item 1249, of 2001 No. 8, item 64, No. 27, item 298, No. 39, item 459, No. 72, item 748, No. 100, item 1080, No. 110, item 1189, No. 111, item 1194, No. 130, item 1452 and No. 154, item 1792, of 2002 No. 25, item 253, No. 41, item 365, No. 74, item 676, No. 155, item 1287, No. 169, item 1387, No. 199, item 1673, No. 200, item 1679 and No. 241, item 2074, of 2003 No. 56, item 498, No. 65, item 595, No. 135, item 1268, No. 149, item 1450, No. 166, item 1609, No. 170,

16) account – an entry in the register of investment fund members, an account into which contributions to the pension fund are paid, or an account in the insurance capital fund operated on the basis specified in the Act, and to the extent not regulated in the Act – on the basis of principles specified in applicable regulations for those registers and accounts;

17) IRA – an individual retirement account within the meaning of the Act of 20 April 2004 on Individual Retirement Accounts;

18) withdrawal – a cash withdrawal or execution of a transfer of funds collected under the scheme, performed by the member or an eligible person, to the bank account indicated by the member or by that person – on principles specified in the company agreement, if the conditions specified in the Act have been fulfilled;

19) transfer withdrawal – a transfer of funds on terms specified in the Act to another scheme, to the member's IRA or to the eligible person's IRA, or from the member's IRA or the eligible person's IRA to the scheme, in cases and on terms mentioned in the provisions on Individual Retirement Accounts;

20) refund – a withdrawal of funds collected in a scheme in the case of the scheme being wound up, if there are no prerequisites for a withdrawal or a transfer withdrawal;

21) instruction – an instruction to make a withdrawal or a transfer withdrawal submitted by the member to the administrator;

22) NIP – the taxpayer identification number within the meaning of the Act of 13 October 1995 on Principles of Records and Identification of Taxpayers and Payers (Journal of Laws No. 142, item 702, as amended<sup>4</sup>).

**Article 3.** The scheme is created in order to collect members' funds earmarked for payment.

**Article 4.** A person employed in establishments of several employers operating schemes may participate in more than one scheme at the same time.

**Article 5.** 1. An employee who is employed in the establishment of a particular employer for a period no shorter than 3 months, unless the company agreement provides otherwise, is entitled to a membership in the scheme.

2. On the date of the submission of an application for the registration of the scheme, the entitlement mentioned in paragraph 1 must be vested in at least half of the employees employed in the establishment of the employer who creates a scheme.

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item 1651, No. 190, item 1864, No. 210, item 2037, No. 223, item 2217 and No. 228, item 2255, and of 2004 No. 19, item 177, No. 64, item 593 and No. 99, item 1001.

<sup>4</sup> Amendments to the Act mentioned have been published in the Journal of Laws of 1997 No. 88, item 554, of 1998 No. 162, item 1118, of 1999 No. 83, item 931, of 2000 No. 116, item 1216 and No. 119, item 1249, of 2001 No. 110, item 1189, of 2002 No. 74, item 676 and No. 126, item 1067, of 2003 No. 130, item 1188, No. 137, item 1302 and No. 217, item 2125, and of 2004 No. 93, item 894.

3. If the employer has more than five hundred employees, the entitlement mentioned in paragraph 1 must be vested in at least one third of employees employed in the establishment of the employer who creates a scheme.

4. The entitlement to membership to the scheme is also vested in a private individual conducting business activity, a partner in an ordinary partnership, a registered partnership, a professional partnership, a limited joint-stock partnership and a limited partnership liable without limitation, who is subject to compulsory retirement and disability pension insurance, if those persons or companies operate schemes for their employees.

5. The provisions of the Act concerning employees apply accordingly to persons who are members pursuant to paragraph 4.

6. The company agreement may not provide for the membership of employees in the scheme any other terms than those specified in the Act.

**Article 6.** 1. Schemes may be operated in one of the following forms:

1) a pension fund;

2) an agreement on employer contributing employee's contributions to an investment fund;

3) a group life insurance contract between employees and an insurance company in the form of group life insurance with an insurance capital fund.

2. Contracts mentioned in paragraph 1 subparagraph 2 may be also concluded by the employer with various investment funds managed by the same investment fund company. In the case of such a contract, the employee has the right to change the investment fund or divide funds invested in those investment funds on terms specified in the company agreement. The conversion between those funds does not constitute a transfer withdrawal.

3. In the case of the opening of the liquidation of one of the funds in which member's funds are invested on terms mentioned in paragraph 2, the administrator shall notify the employer immediately about the opening of the liquidation of the fund. The notification should contain the information about the business name and registered office of the fund liquidator.

4. The employer shall notify the member of the need to submit the declaration of will within 14 days, concerning the disposal of the funds obtained as a result of the liquidation of the fund.

5. The member submits the declaration of will mentioned in paragraph 4 to the employer within 14 days of the notification mentioned in paragraph 4.

6. The submitted declaration of will mentioned in paragraph 4 is immediately forwarded by the employer to the liquidator.

7. The liquidator shall forward member's funds allocated to the member in the liquidation proceedings for the purchasing of participation units, in accordance with the declaration of will submitted by the member.

8. In the case where the member has failed to submit the declaration of will mentioned in paragraph 4, the funds allocated to the member in the liquidation proceedings are forwarded

by the liquidator, in equal parts, for the purchasing of participation units in other funds in which the member's funds may be invested.

9. If the scheme is operated in the form of a group life insurance for employees with the insurance company mentioned in paragraph 1 subparagraph 3, the agreement should provide for the:

- 1) non-deduction of the costs of the insurance cover from the funds collected in the insurance capital fund in the case where the life insurance premium has not been paid and related to sickness or accident risk;
- 2) allocation of at least 85 % of each basic contribution to the insurance capital fund;
- 3) collection of charges related exclusively with the covering of transaction costs and fund management fees from the assets of the fund mentioned in subparagraph 2;
- 4) member receiving insurance cover in the case of later provision of the insurance premium by the employer.

10. The maintenance of the insurance cover mentioned in paragraph 9 subparagraph 4 shall remain valid for a period of at least 45 days of the premium payment due date. After that deadline the insurance cover may be suspended, provided that the insurance company, before the date of termination of the insurance cover, notifies the employer about the suspension.

11. The suspension of insurance cover mentioned in paragraph 10 may last no longer than for a period of 12 months, subject to paragraph 12.

12. In the case where an agreement is concluded between the employer and the employee representation, as mentioned in Article 38 paragraph 4, the period of suspension of the insurance cover mentioned in paragraph 10 may be extended to the end of the period of suspension of the provision of premiums specified in that agreement.

13. The agreement mentioned in paragraph 1 subparagraph 3 may provide for accident and sickness insurance if the agreement is supplementary to life insurance.

14. The agreement mentioned in paragraph 1 subparagraph 3 may not provide for the allocation of funds from the supplementary contribution to the costs of the insurance cover.

**Article 7.** 1. The maintenance of more than one scheme at a time by the employer is permitted in the case of:

- 1) purchasing the entire employer's establishment or its organised part, or acquisition of the shares of the pension fund company, or
- 2) merger of employers operating schemes.

2. In the cases mentioned in paragraph 1, in order to propose that funds are collected in one scheme only, within 3 years of the purchase or merger, the employer should change the company agreement and:

1) terminate or amend the agreement concluded with the financial institution, or

2) from the merged pension fund companies create one company and organise the take-over of the pension fund by one of the companies, or liquidate the other company and sell the shares of the pension fund company.

3. Article 41 shall apply accordingly to the amendment of the company agreement in the cases specified in paragraph 2.

4. In the cases mentioned in paragraph 1 the new employer takes over the rights and duties of the previous employer resulting from the company agreement. The provision shall apply accordingly if the scheme is operated by one of merging employers, or by an employer whose establishment or its organised part has been purchased.

**Article 8.** 1. The administrator records all contributions paid, transfer withdrawals accepted and made, withdrawals and other operations in the account. Before the transfer withdrawal is performed, the administrator draws up information concerning the member of the scheme who has submitted an order for a transfer withdrawal. This information is also drawn up by the administrator in the case of submission of the member's withdrawal order.

2. The information mentioned in paragraph 1 contains:

1) the number under which the scheme has been entered in the register;

2) member's identification data: first name, surname, date of birth, address of residence, taxpayer identification number NIP and PESEL number, or passport number, or the number of another document confirming the member's identity in the case of persons without Polish nationality;

3) employer's identification data: name, REGON number, taxpayer identification number NIP, registered address and address for correspondence;

4) identification data administrator who draws up the information: name, number, taxpayer identification number NIP, registered address and address for correspondence;

5) amount of payments made during each calendar year broken down by payments of basic contributions and supplementary contributions;

6) amounts and dates of transfer withdrawals accepted by the administrator and identification data of the administrator or the name of the financial institution maintaining the IRA, performing those transfer withdrawals;

7) amounts and date of the transfer withdrawal and identification data of the administrator or the name of the financial institution maintaining the IRA to whom the transfer withdrawal is performed;

8) amount of basic contributions paid in - in the case where a transfer withdrawal is performed to the IRA;

9) date on which the information was drawn up as well as the first name, surname, function and signature of the person responsible for drawing up the information.

3. The information mentioned in paragraph 1 is drawn up by the administrator in two copies.

4. The administrator, in the case of performing a transfer withdrawal, together with that transfer withdrawal forwards one copy of the information mentioned in paragraph 1 as well as information obtained from all previous administrators and financial institutions maintaining the member's IRA to the next administrator or the financial institution maintaining the IRA, respectively. The administrator hands the second copy of the information mentioned in paragraph 1 over to the member.

5. In the case of a withdrawal, the administrator provides the member with the information mentioned in paragraph 2 subparagraph 1-6 and 9, and with the information about the withdrawal amount.

6. The minister competent for public finance, in coordination with the minister competent for social security, shall specify, by regulation, the method of drawing up the information mentioned in paragraph 1, as well as the procedure of forwarding it, taking into account the need to ensure efficient transfer of information.

**Article 9.** The term "pension scheme" may be used exclusively to describe schemes regulated in this Act.

## Chapter 2

### Establishment and operation of a scheme

**Article 10.** 1. A scheme is established:

1) through the conclusion of a company agreement or an inter-company agreement;

2) then, through the conclusion of an agreement with a financial institution, subject to Article 17 paragraph 3, or the establishment of a pension fund company and a pension fund, or acquisition of shares of the existing pension fund company by the employer;

3) then, through the registration of the scheme by the supervisory body.

2. The agreements may not contain any terms of the employee's membership in the scheme which would be incompliant with the provisions of the Act.

**Article 11.** 1. The company agreement is an agreement concluded by the employer with the employee representation.

2. The representation of employees is formed from all company trade union organisations active in the establishment of the particular employer.

3. If there is no trade union organisation in the employer's establishment, the employer concludes the company agreement with the employee representation elected on the basis of a procedure adopted in that employer's establishment.

4. The authorisation of the employee representation elected on the basis of the procedure mentioned in paragraph 3 to undertake actions provided for in the Act expires 24 months after the election of the representation.

5. The authorisation mentioned in paragraph 4 expires before the end of the 24-month period starting on the date of election of the representation in the case where:

1) at least half of the persons included in the employee representation cease to be the employer's employees;

2) a company trade union organisation starts operating at the employer's establishment.

6. In the case of an expiry of the authorisation of the employee representation for reasons mentioned in paragraph 4 and 5, a new employee representation is elected on the basis of the procedure specified in paragraph 3.

7. The employer presents to the employee representation the offer for establishing a scheme containing:

1) draft company agreement;

2) conditions of the agreement with the financial institution agreed in the preliminary agreement, or the articles of association of a pension fund company or a pension fund statute, or draft versions of those documents;

3) determination of the validity period of the offer, no shorter than 3 months.

8. If, during a period of 2 months from the date of presenting the offer concerning the establishment of a scheme mentioned in paragraph 7 to the employee representation by the employer, the company agreement is not concluded due to the parties' inability to agree upon its contents, the employer may enter into a company agreement with representative trade union organisations within the meaning of Article 241<sup>25a</sup> of the Act of 26 June 1974 – Labour Code (Journal of Laws of 1998 No. 21, item 94, as amended<sup>5</sup>). The provision of paragraph 7 shall apply accordingly.

**Article 12.** Any disputes arising from legal relationships between the parties to the company agreement are resolved by common courts of law competent for the employer's registered office.

**Article 13.** 1. The company agreement specifies in particular:

1) the form of the scheme together with the indication of the administrator who will collect the funds and administer them on the basis of an agreement concluded with the employer or on the basis of the provisions of the pension fund statute;

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<sup>5</sup> Amendments to the uniform text of the Act mentioned have been published in the Journal of Laws of 1998 No. 106, item 668 and No. 113, item 717, of 1999 No. 99, item 1152, of 2000 No. 19, item 239, No. 43, item 489, No. 107, item 1127 and No. 120, item 1268, of 2001 No. 11, item 84, No. 28, item 301, No. 52, item 538, No. 99, item 1075, No. 111, item 1194, No. 123, item 1354, No. 128, item 1405 and No. 154, item 1805, of 2002 No. 74, item 676, No. 135, item 1146, No. 196, item 1660, No. 199, item 1673 and No. 200, item 1679, of 2003 No. 166, item 1608 and No. 213, item 2081, and of 2004 No. 96, item 959 and No. 99, item 1001.



- 2) terms and procedure of accession to the scheme and leaving the scheme;
- 3) proposed terms of collection of funds and their administration;
- 4) terms of collection of funds and their administration in the case mentioned in Article 17 paragraph 3;
- 5) cases and terms of termination of the agreement between the employer and the financial institution, or terms of disposal of all shares of the pension fund company held by the employer and terms of winding up that company;
- 6) terms, dates and method of making a withdrawal, a transfer withdrawal and a refund;
- 7) date of indication by the member of an account to which the administrator or the liquidator is to perform the transfer withdrawal in the case of the winding up of the scheme, agreed in accordance with Article 41 paragraph 5;
- 8) cases and terms of changing the form of the scheme or the administrator;
- 9) amount of the basic contribution;
- 10) minimum amount of the supplementary contribution which may be declared if the company agreement does not prohibit the declaration of a supplementary contribution;
- 11) method of declaring supplementary contributions by members and dates of the assessment and deduction of those contributions by the employer in order to transfer them to the member's account;
- 12) dates of assessment and transfer of basic contributions to the member's account;
- 13) costs and charges to be paid by the member and the employer, as well as terms on which those costs and charges may be reduced without the need to amend the company agreement;
- 14) terms of amendment and termination of the company agreement;
- 15) terms of unilateral suspension of the payment of basic contributions and temporary limitation of the amount of basic contributions by the employer, as mentioned in Article 38;
- 16) period of termination of the company agreement by the employer, as mentioned in Article 40 paragraph 2 subparagraph 3;
- 17) period of termination of the company agreement by the employer, as mentioned in Article 40 paragraph 2 subparagraph 4.

2. If the scheme is operated in the form of an agreement on employer contributing employee's contributions to an investment fund, the company agreement specifies the terms of conversion in the case of changing the fund under the same scheme.

**Article 14.** 1. Employers, in order to execute a scheme on identical terms, may create an inter-company scheme.

2. In order to establish an inter-company scheme, an inter-company agreement and an agreement with a financial institution common for the employers mentioned in paragraph 1 must be concluded.

3. Article 13 paragraph 1 shall apply accordingly to the specification of the contents of the inter-company agreement.

**Article 15.** 1. The inter-company agreement is concluded between the representation of employers and the inter-company representation of employees.

2. The procedure for electing and changing the composition of the representations mentioned in paragraph 1 shall be specified in written form by employers and employee representations elected on the basis of the procedure of Article 11.

3. The offer for conclusion of the inter-company agreement is presented by the representation of employers to the inter-company representation of employees.

**Article 16.** Representations mentioned in Article 15 paragraph 1, upon the motion submitted by the new employer, may agree to that employer's accession to the inter-company agreement.

**Article 17.** 1. The employer concludes an agreement with the financial institution, which specifies the terms of collection of funds and their administration. In the case of a scheme in the form of a pension fund the terms of collection of funds and their administration are specified in the fund statute.

2. In the case of an inter-company scheme, the terms of collection of funds and their administration are specified in the agreement concluded between the representation of employers and the financial institution, or the pension fund statute.

3. In the case where the insurance company is at the same time an employer establishing a scheme and an administrator of that scheme, the agreement mentioned in paragraph 1 is not concluded; the terms of collection of the funds and their administration are specified in the company agreement.

4. In the case where the investment fund company is at the same time an employer establishing a scheme and an administrator of that scheme, the agreement mentioned in paragraph 1 is not concluded; the terms of collection of the funds and their administration are specified in the company agreement.

5. The agreement with the financial institution or the pension fund statute may not provide for any costs to be incurred by the member in the case of a withdrawal, a transfer withdrawal, payment of funds for the transfer withdrawal performed or a refund.

**Article 18.** 1. The accession of an employee to the scheme on terms specified in the company agreement takes place on the basis of a written declaration of accession to the scheme, hereinafter referred to as the "declaration", one month after the submission of the declaration, subject to paragraph 5.

2. The declaration contains the employee's statement that he or she has received a copy of the company agreement, has become acquainted with the contents of the agreement, accepts its terms and conditions, and it may contain a disposition in the event of the employee's death.

3. In the case where the company agreement does not prohibit the submission of a supplementary contribution, and the member has declared the payment of supplementary contributions, the declaration contains also the amount of the supplementary contribution declared and the authorisation for the employer to assess it and deduct from the remuneration, and to transfer it to the member's account.

4. The employer accepts the declaration and confirms its acceptance to the member in writing.

5. If the employee is not entitled to be a member of the scheme, the employer returns the declaration together with a written justification of the refusal to accept it. The return of the declaration should take place no later than within one month of the submission of the declaration by the employee.

6. In the case of an intended transfer of funds collected by the member in the IRA into the scheme, the employer, at the member's request, issues a confirmation of accession to the pension scheme.

7. The confirmation of accession to the scheme should contain the data mentioned in Article 8 paragraph 2 subparagraph 2, and the name of the employer operating the scheme, the name of the scheme administrator and the number of the account to which the transfer withdrawal should be performed.

8. Cases concerning the refusal to accept the declaration and the claims between the member of the scheme and the employer are resolved by labour courts competent for the employer's registered office.

**Article 19.** 1. The company agreement may provide for voluntary contribution by the member of shares obtained by the member of the pension fund into that pension fund, free of charge or on preferential terms, as a result of the privatisation of the employer.

2. In the case mentioned in paragraph 1, the company agreement specifies the dates and terms of the contribution of shares to the quantitative account in the pension fund and the terms of operating those accounts. The member specifies in his or her declaration the number of the employer's shares resulting from the company agreement, which will be contributed to that member's account.

**Article 20.** 1. In cases concerning the scheme, the member submits written declarations of will to the employer or through the intermediation of the employer.

2. The member is obliged to inform the employer of each change of address for correspondence and the data mentioned in Article 8 paragraph 2 subparagraph 2.

3. The provisions of paragraphs 1 and 2 apply accordingly after the termination of the employment.

4. In the case of a merger, split-off, disposal of the entire establishment or its organised part, the member submits a declaration of will through the intermediation of the new employer.

5. In the case of a liquidation of the employer's establishment, the member submits a declaration of will through the intermediation of the liquidator, and after the completion of the liquidation, directly to the administrator.

6. In the case of the employer's bankruptcy, the member submits the declaration of will directly to the administrator. The receiver in bankruptcy shall notify the scheme members about the method of submission of a declaration of will in matters concerning the scheme in relation to the bankruptcy of the employer within 45 days of the announcement of bankruptcy.

7. In matters concerning the scheme, the employer may not be the legal representative of the member.

**Article 21.** 1. Agreements forming the scheme are in force from the date of registration of the scheme.

2. Any amendment to the agreements is introduced on the basis of a procedure appropriate for the conclusion of the particular agreement.

**Article 22.** 1. The employer shall notify employees in a manner customary at its establishment about the terms of functioning of the scheme.

2. Such notification should contain in particular:

- 1) the form of the scheme together with the indication of the administrator;
- 2) the specification of the amount of the basic contribution;
- 3) the specification of the maximum amount of the supplementary contribution mentioned in Article 25 paragraph 3;
- 4) a statement that it contains only a discussion of the terms of the scheme, and the basis for the functioning of the scheme is the company agreement;
- 5) the minimum and maximum amount of a monthly supplementary contribution which may be declared and the method of its declaration;
- 6) indication of appropriate tax regulations concerning the funds collected;
- 7) discussion of the:
  - a) principles of withdrawal, transfer withdrawal and refund of funds collected in the member's account,
  - b) procedure of amending the declaration, consequences, including financial ones, of those amendments, and terms of the member's leaving the scheme,
  - c) rights of the eligible person in the case of the member's death,

d) cases in which the scheme is liquidated and consequences of such liquidation,

e) possibilities of members disposing of their rights to the funds collected.

3. The administrator shall immediately submit to the employer any information indicating the provisions of generally binding law containing changes with regard to the provisions of paragraph 2 subparagraph 7.

4. The employer shall update the information concerning the principles of functioning of the scheme immediately after obtaining them.

5. The employer shall highlight in the information mentioned in paragraph 2 any changes which have taken place within the scope of that information during the period of 12 months preceding the date of the update.

6. The employer shall additionally submit to the member written information concerning the terms of withdrawal of funds collected in the scheme:

1) in the first quarter of the calendar year in which the member turned 60, or

2) within 30 days of termination of the employment relationship due to the acquisition of early retirement rights.

**Article 23.** 1. The employer shall submit annual information concerning the operation of the scheme to the supervisory body.

2. The annual information mentioned in paragraph 1 is forwarded by 1 March for the previous year.

3. The minister competent for social security shall determine, by regulation, the scope of the annual information concerning the operation of the scheme and the procedure of forwarding that information to the supervisory body, with a view to the need of the minister competent for social security and the supervisory body to have the necessary data concerning the operation of schemes at their disposal, and to the appropriate protection of rights of members of those schemes.

**Article 24.** 1. The basic contribution is financed by the employer.

2. The amount of the basic contribution paid in may not exceed 7 % of the member's remuneration.

3. The amount of the basic contribution is determined:

1) as a percentage of the remuneration, or

2) in an identical amount for all members, or

3) as a percentage of the remuneration, with the specification of the maximum amount of that contribution.

4. The employer assesses and deducts the basic contribution:

1) with regard to the components of the remuneration due for periods no longer than one month – on the date of payment of all those components adopted by the employer, and paid at monthly intervals;

2) with regard to the components of the remuneration due for periods longer than one month – on the date of payment of those components, and paid also on that date.

5. The basic contribution is not included in the remuneration constituting the basis for determining compulsory social insurance contributions.

6. In the cases specified in paragraph 3 subparagraphs 1 and 3, the amount of the basic contribution is determined on the basis of the remuneration using the same percentage range for all members.

**Article 25.** 1. A member may declare a supplementary contribution if the company agreement does not prohibit this.

2. The amount of the supplementary contribution is specified by the member in his or her declaration.

3. A member may change the amount of the supplementary contribution or give up its payment, effective in the future, in the form of a change of declaration.

4. The total supplementary contributions submitted by a member to one scheme during a calendar year may not exceed thirty times the value of maximum payment to the IRA mentioned in the provisions on Individual Retirement Accounts.

5. The supplementary contribution is deducted from the remuneration after taxation.

**Article 26.** 1. The employer shall perform the following operations timely and correctly:

1) assessing and allotting basic contributions;

2) assessing, deducting and allotting supplementary contributions.

2. The contributions are allotted to accounts maintained for the purpose of the scheme.

**Article 27.** In the case where the member's employment with the employer operating the scheme has ceased or the scheme has been liquidated, funds remain in the member's account until the moment of withdrawal, transfer withdrawal or refund.

**Article 28.** As regards issues not regulated in the Act, the principles of administration of funds collected in accounts:

1) in the pension fund, are determined by the provisions on the organisation and functioning of pension funds;

2) in investment funds, are determined by the provisions on investment funds;

3) of insurance companies, are determined by the provisions on insurance business.

## Chapter 3

### Registration of the scheme

**Article 29.** 1. The scheme is subject to registration by the supervisory body.

2. The supervisory body conducts a register of schemes.

**Article 30.** 1. The employer's application for the registration of a company scheme should contain the employer's and the administrator's data: name (business name), registered address, REGON number, and address for correspondence.

2. The following should be attached to the application:

- 1) information about the authorisation of the employee representation to enter into a company agreement;
- 2) a certificate from the Social Insurance Institution confirming the absence of arrears of social insurance contributions issued no later than three months before the submission of the application;
- 3) a certificate from the tax office confirming the absence of tax arrears issued no later than three months before the submission of the application;
- 4) the company agreement;
- 5) the agreement with the financial institution, or the pension fund statute;
- 6) a specimen of the declaration on the accession to the scheme;
- 7) a statement of the employer that the terms of the scheme membership do not violate the provisions of Article 5 paragraph 2 and 3;
- 8) documents confirming the employer's data mentioned in paragraph 1.

**Article 31.** 1. The applications of the representation of employers for the registration of an inter-company scheme should contain the data of each employer, as mentioned in Article 30 paragraph 1.

2. the following should be attached to the application:

- 1) the inter-company agreement;
- 2) a document confirming the principles of election of the representation of employers and the inter-company representation of employees;
- 3) documents confirming the authorisation of the representation of employers and the inter-company representation of employees elected in accordance with the procedure provided for, including the data of those persons: first name, surname and the PESEL number, or, in the case of persons without the Polish nationality – the passport number;

4) an agreement concluded by the representation of employers with the financial institution, or the pension fund statute;

5) information concerning each employer and documents mentioned in Article 30 paragraph 1 and paragraph 2 subparagraphs 1-3 and 7;

6) a specimen of the declaration on accession to the scheme.

3. The inter-company agreement, as of the date of registration of the inter-company scheme, becomes the company agreement. The parties to that agreement are the employer and the employee representation elected on the basis of the procedure mentioned in Article 11.

4. The agreement concluded by the representation of employers with the financial institution, as of the date of registration of the inter-company scheme, becomes an agreement between the employer represented and the financial institution.

**Article 32.** 1. When acceding to the registered inter-company scheme the employer submits to the supervisory body an application for the entry of the employer acceding to the inter-company scheme in the register, providing the number of the inter-company scheme in the scheme register and the data and information mentioned in Article 30 paragraphs 1 and 2 subparagraphs 2 and 3, concerning the acceding employer.

2. The following documents are attached to the application mentioned in paragraph 1:

1) an agreement on accession to the inter-company agreement;

2) an agreement on the employer's accession to the agreement concluded by the representation of employers with the financial institution;

3) the employer's statement that the terms of scheme membership do not violate the provisions of Article 5 paragraphs 2 and 3;

4) information about the authorisation of the representation of employees to enter into the inter-company agreement.

3. The agreement on the employer's accession to the inter-company scheme comes into effect as of the date of the entry of a change in the inter-company scheme mentioned in paragraph 1 in the register.

4. The parties to the agreement mentioned in paragraph 2 subparagraph 1 are as follows:

1) the acceding employer and the representation of its employees elected on the basis of the procedure mentioned in Article 11, and

2) the representation of employers and the inter-company representation of employees.

5. The provision of Article 31 paragraph 3 shall apply accordingly.

**Article 33.** 1. In the case of a change in the company agreement mentioned in Article 31 paragraph 3, based on the procedure specified in Article 11, the employer who is party to that agreement shall submit an application for the register of the company scheme to the supervisory body, in accordance with Article 30.



2. At the moment of the entry of the company scheme mentioned in paragraph 1 to the register, the supervisory body removes from the register an annotation on the employer's participation in the inter-company scheme.

**Article 34.** 1. The entry of the company scheme in the scheme register includes:

- 1) the employer's data contained in the application;
- 2) the administrator's data contained in the application;
- 3) the terms of scheme membership contained in the company agreement or in the inter-company agreement;
- 4) the form of the scheme;
- 5) the number of the scheme register.

2. The entry of the inter-company scheme into the scheme register includes all data of all employers forming that scheme.

3. The employer shall submit all changes of data mentioned in paragraph 1 subparagraph 1 to the scheme register within 30 days of the occurrence of those changes.

4. The employer shall submit all changes of data mentioned in paragraph 1 subparagraph 2 to the scheme register within 30 days of receiving the information of such changes from the administrator.

5. The supervisory body notifies the employer of the registration of changes mentioned in paragraphs 3 and 4 within 30 days of the date of notification.

6. The employer submits to the supervisory body an application for the entry of changes in the register to the extent specified in paragraph 1 subparagraphs 3 and 4 within 14 days of the occurrence of the changes. The change of the company agreement comes into effect as of the date of the entry in the register.

7. The change of the company agreement resulting from the change of the investment fund statute or the pension fund statute become effective as of the entry of changes in the register, no earlier than at the moment of the changes in the statute coming into effect. The application for the registration of such a change of the company agreement may be submitted before the change of the statute become effective.

8. If any changes in the scheme register have been performed to the extent specified in paragraph 1 subparagraphs 3 and 4, the employer shall provide the members with changes in the company agreement.

**Article 35.** 1. If the application for the registration of the scheme does not meet the terms resulting from the provisions of the Act, the supervisory body, within one month, shall call upon the employer or the representation of employers mentioned in Article 15 paragraph 1, to remove the irregularities, establishing an appropriate deadline for that purpose, no shorter than three weeks.

2. The supervisory body refuses the registration of the scheme in the following cases:

- 1) where the irregularities have not been removed within the deadline specified;
- 2) where the scheme is incompliant with the provisions of the Act.

**Article 36.** 1. The supervisory body supervises over the functioning of the schemes with regard to their compliance with law.

2. If it obtains information justifying the suspicion that irregularities in the functioning of the scheme have taken place, the supervisory body shall demand that the employer or administrator operating the scheme provide all information, documents and explanations related to that fact.

3. If it finds any irregularities in the operation of the scheme, the supervisory body notifies the employer of those irregularities and calls him to remove the irregularities within the deadline specified in the call, no shorter than 14 days.

4. If the employer fails to remove the irregularities within the deadline specified in the call, the supervisory body may impose a fine of up to PLN 50,000 on the employer operating the scheme.

5. When determining the amount of the fine mentioned in paragraph 4, the supervisory body shall take account of the type and relevance of the irregularities found.

6. If irregularities are found in the operation of the scheme by the administrator mentioned in:

- 1) Article 2 subparagraphs 3 and 6, the supervisory body shall undertake the supervisory actions provided for by the law;
- 2) Article 2 subparagraph 4, the supervisory body shall notify the Securities and Exchange Commission about the irregularities.

**Article 37.** 1. The provisions of the Act of 14 June 1960 – Administrative Procedure Code (Journal of Laws of 2000 No. 98, item 1071, as amended<sup>6</sup>) shall apply to the proceedings before the supervisory body.

2. The registration of the scheme, the refusal to register the scheme, the entering of changes in the scheme register with the exclusion of Article 34 paragraph 5, the refusal to enter changes in the register, the entering and refusal to enter provisions of agreements mentioned in Article 38 and 39 to the register, the permitting and refusal to permit the suspension of the assessment and allotting of basic contributions, the imposition of a fine and the removal of a scheme from the register takes place by an administrative decision.

3. The minister competent for social security shall specify, by regulation, the method of maintenance of the scheme register as well as the dates and procedure of issuing excerpts from that register, and shall also specify which terms of membership in the scheme contained in the company agreement and the inter-company agreement should be entered in the register in accordance with Article 34 paragraph 1 subparagraph 3, considering the need to ensure the efficiency of the registration process conducted.

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<sup>6</sup> Amendments to the uniform text of the Act mentioned have been published in the Journal of Laws of 2001 No. 49, item 509, of 2002 No. 113, item 984, No. 153, item 1271 and No. 169, item 1387, and of 2003 No. 130, item 1188 and No. 170, item 1660.

## Chapter 4

### **Suspension of the allotting of basic contributions and liquidation of a scheme**

**Article 38.** 1. The employer may unilaterally:

- 1) suspend the allotting of basic contributions, or
- 2) temporarily limit the amount of the basic contribution assessed by specifying the contribution assessment principle binding during that period, in accordance with Article 24 paragraph 3.

2. During the period including 12 subsequent calendar months the total period of unilateral suspension mentioned in paragraph 1 subparagraph 1 may not exceed 3 months.

3. If the company agreement provides for this, the total period of unilateral suspension mentioned in paragraph 1 subparagraph 1 may amount up to 6 months during the period including 12 subsequent calendar months.

4. After the period of suspension mentioned in paragraphs 2 or 3, the employer may, if this is justified by the financial situation, enter into an arrangement with the employee representation concerning:

- 1) the suspension of the assessment and allotting of basic contributions, or
- 2) the temporary limiting of the amount of basic contributions by determining the basic contribution assessment principle binding during that period, in accordance with Article 24 paragraph 3.

5. The arrangement mentioned in paragraph 4 is concluded if the parties to the arrangement decide that it is justified by the financial situation of the employer.

6. The provisions of Article 11 concerning the conclusion of the company agreement shall apply accordingly to the conclusion of the arrangement.

7. The employer submits the arrangement to the supervisory body immediately after it has been concluded.

8. The supervisory body enters the following information in the scheme register within 7 days of receiving the arrangement mentioned in paragraph 4:

- 1) the date of conclusion of the arrangement;
- 2) the date from which the arrangement comes into force;
- 3) the date of expiry of the arrangement;
- 4) the amount of the basic contribution in force during the validity of the arrangement – in the case specified in paragraph 4 subparagraph 2.

9. The arrangement is in force from the date specified in it but no later than from the date of entering the provisions of the arrangement into the scheme register.

10. The supervisory body refuses to make an entry if the provisions of the arrangement are incompliant with the provisions of the Act.

11. The employer terminates the arrangement if the reason behind its conclusion ceases to exist.

12. The employer notifies the supervisory body of the termination of the arrangement within two weeks of the commencement of assessment and allotting of basic contributions on terms included in the company agreement.

13. The employer shall recommence the assessment and allotting of basic contributions starting from the month following the month in which the arrangement was terminated or in which it expired.

**Article 39.** 1. During the period including 48 subsequent calendar months, the total period during which the arrangement concluded on the terms specified in Article 38 is in force may not exceed 24 months.

2. The term of validity of the arrangement may not exceed the period mentioned in paragraph 1, in the case where any further assessment and allotting of basic contributions would lead to the necessity of submission of the application mentioned in Article 21 of the Act of 28 February 2003 – Bankruptcy and remedial law (Journal of Laws No. 60, item 535, as amended<sup>7</sup>).

3. In the case where the arrangement has been concluded on principles specified in paragraph 2, the employer, when submitting the arrangement to the supervisory body, presents documents justifying the existence of the situation mentioned in paragraph 2.

4. The arrangement on terms mentioned in paragraph 2 may be concluded for a period no longer than 24 months. If this is justified by the financial situation of the employer, the employer may re-enter into the arrangement.

**Article 40.** 1. The liquidation of the scheme may take place in the case of:

1) the opening of the liquidation of the insurance company if the transfer (assignment) of rights from the agreement between the employer and the insurance company to the benefit of another company does not take place,

2) the existence of a prerequisite for termination and, in consequence, the liquidation of all investment funds in which contributions were collected under the scheme if none of those funds is taken over by another investment fund company,

3) the opening of the liquidation of a pension fund if this fund is not taken over by another pension fund company,

4) the occurrence of an event mentioned in Article 7 paragraph 1,

5) the termination of the agreement by the financial institution

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<sup>7</sup> Amendments to the Act mentioned have been published in the Journal of Laws of 2003 No. 217, item 2125, and of 2004 No. 91, item 870 and 871 and No. 96, item 959.

- if the employee representation fails to express its consent to the change of the company agreement based on the procedure of Article 41.

2. The liquidation of the scheme may also take place in the following case:

- 1) the liquidation or bankruptcy of the employer;
- 2) a decrease in the value of funds collected in the scheme below the amount agreed in the company agreement;
- 3) the employer making a decision on the winding up of the scheme, provided that the employer has concluded an arrangement concerning the termination of the company agreement with the employee representation;
- 4) the employer making a unilateral decision concerning the termination of the company agreement, provided that the notice period of at least 12 months is observed, if previously, for the period of at least three months, the allotting of basic contributions was suspended or the amount of basic contributions was limited.

3. The scheme is liquidated if the person mentioned in Article 5 paragraph 3 is not employing any employees who are scheme members.

4. The liquidation of the scheme results in the removal of the scheme from the register.

5. The removal of the scheme from the register may also take place for reasons mentioned in Article 7 or Article 59.

**Article 41.** 1. In the case of the liquidation of the scheme for reasons mentioned in Article 40 paragraph 1, the employer shall present to the employee representation the offer containing a draft agreement with the new financial institution or the statute of a pension fund to which it intends to accede, and the proposed change of the company agreement.

2. If during the period of 2 months of the presentation of the offer mentioned in paragraph 1 to the employee representation by the employer the representation does not express its consent to the change in the company agreement, the employer, presenting the documents confirming the submission of the proposed change of the company agreement, submits a motion to the supervisory body requesting that the scheme is removed from the scheme register.

3. In the cases mentioned in Article 40 paragraph 2 the employer or the liquidator of the employer shall submit a motion to the supervisory body requesting that the scheme is removed from the scheme register, presenting documents confirming the existence of reasons for the liquidation of the scheme.

4. After obtaining a legally valid decision for the removal of the scheme from the scheme register, the employer, the employer's receiver in bankruptcy or the liquidator of the employer, respectively, notifies the members, against confirmation or by registered post, of the liquidation of the scheme, informing them also about the date by which it shall cease the assessment and allotting of contributions, and about reasons for the liquidation of the scheme, as well as actions undertaken in accordance with legal regulations.

5. The information mentioned in paragraph 4 contains also the call upon the member to indicate to the employer, liquidator or administrator, respectively, the account to which the transfer withdrawal is to be performed, as well as instruct the member that in the case where such an account is not quoted within the deadline specified in the company agreement the refund mentioned in Article 44 paragraph 1 shall take place, and inform the member of the financial consequences of such refund.

6. The deadline for the member to indicate the account mentioned in paragraph 5, specified in the company agreement, may not be shorter than one month of receiving the information mentioned in paragraph 4 by the member.

7. The obligation of the employer, employer's receiver in bankruptcy or employer's liquidator, respectively, as mentioned in paragraph 4, shall be deemed to have been fulfilled if the member fails to collect the registered post twice.

## Chapter 5

### **Principles for withdrawals, transfer withdrawals and refunds from the scheme**

**Article 42.** 1. The withdrawal takes place:

- 1) at the request of a member after he or she has turned 60;
- 2) at the request of a member after he or she has presented a decision on the awarding of the pension entitlement and after he or she has turned 55;
- 3) in the case where the member has turned 70 if he or she has not applied for the withdrawal of funds previously;
- 4) at the request of the eligible person, in the case of the member's death.

2. The provision of paragraph 1 subparagraph 3 shall not apply if the member is the employee of the employer operating that scheme. In such a case the withdrawal takes place after the termination of the employment relationship.

3. The withdrawal may be performed as a one-off event or in instalments, depending on the request submitted by the member or by the eligible person. The one-off withdrawal is performed within a deadline not exceeding 1 month of the submission of the application, and in the case of the withdrawal by instalments the first instalment is paid within a deadline not exceeding 1 month of the date of submission of the application, unless the member or the eligible person applies for the withdrawal to take place at a later date.

**Article 43.** 1. The transfer withdrawal is performed within a deadline not exceeding one month of the submission of the application by the member.

2. The transfer withdrawal is performed:

- 1) to another scheme the member of which is a member of the scheme;
- 2) to the member's IRA;
- 3) to the IRA of the eligible person in the case of the member's death;

4) from the member's IRA to his or her account in the scheme on terms specified in the Act on Individual Retirement Accounts.

3. The application for the transfer withdrawal is tantamount to the termination of the scheme membership.

4. The transfer withdrawal mentioned in paragraph 2 subparagraphs 2 and 3 is performed on the basis of the instruction given by the member or the eligible person after presenting the confirmation of the conclusion of the agreement mentioned in the provisions on Individual Retirement Accounts to the employer.

5. The transfer withdrawal from the scheme may not take place in the case where the member remains in an employment relationship with the employer operating that scheme.

6. The provision of paragraph 5 shall not apply if the transfer withdrawal takes place in the case of the liquidation of the scheme.

**Article 44.** 1. The refund takes place in the case where within the deadline mentioned in Article 41 paragraph 6 the account for performing the transfer withdrawal is not indicated.

2. The employer, the employer's receiver in bankruptcy or liquidator of the employer transfers to the administrator or the liquidator of the administrator information about the bank account indicated by the member to which the refund is to be performed and about the account to which the amount mentioned in Article 45 is to be transferred.

3. The liquidator of the administrator or the administrator may specify also different forms of performing the refund, other than the transfer to the member's bank account.

4. The liquidator of the administrator or the administrator, at the employer's request, performs a refund after the prior transfer of the amount of tax assessed on those funds to the bank account of the competent tax office.

5. In the case where there are no possibilities of transferring funds mentioned in paragraph 4 to the member, they are transferred into the court deposit.

6. In the case mentioned in paragraph 5, funds transferred into the court deposit become the property of the State Treasury 20 years after their transfer into the court deposit, unless the member issues an instruction to forward those funds to the bank account indicated before the expiry of that period. The provisions of Article 187 of the Act of 23 April 1964 – Civil Code shall apply accordingly.

7. The provisions of paragraphs 5 and 6 shall apply accordingly in the case where there are no possibilities for making a withdrawal, in the case specified in Article 42 paragraph 1 subparagraph 3.

8. The company agreement specifies the deadline for the transfer of the member's funds by the administrator or the liquidator of the administrator to the account mentioned in paragraph 2; this deadline may not be longer than 3 months of the member receiving information mentioned in Article 41 paragraph 4.

**Article 45.** 1. In the case of a refund, the administrator or the liquidator of the administrator transfers, from the member's funds, to the bank account indicated by the Social Insurance Institution, the amount of 30% of the amount of basic contributions paid into the scheme.

2. The amount mentioned in paragraph 1 constitutes the income of the Social Insurance Institution.

3. The information about the amount mentioned in paragraph 1 is recorded on the account of the insured person mentioned in Article 40 paragraph 1 of the Act of 13 October 1998 on Social Insurance System as the pension insurance contribution due for the month in which the amount was forwarded to the Social Insurance Institution.

4. The minister competent for social security, taking into account the need to ensure the correct recording of data on the insured person's account, will specify by regulation:

1) the detailed range of data, including the data concerning the administrator and the member, provided by the administrator on the payment document on the basis of which the amount mentioned in paragraph 1 is transferred;

2) the method and procedure of recalculation of the amount mentioned in paragraph 1 into the benefit assessment base if the pension of the member or the eligible person is to be calculated on the basis of the assessment base.

**Article 46.** The withdrawal, the transfer withdrawal or the refund is performed in cash.

**Article 47.** 1. The member may terminate his or her membership in the scheme at any time by submitting a written declaration of will to the employer, and the notice period provided for by the company agreement may not be shorter than 1 month and longer than 3 months. The provisions of Articles 43-45 shall apply accordingly.

2. In the case of the termination of the scheme membership, funds previously collected in the account remain in that account until the time of withdrawal, transfer withdrawal or refund.

**Article 48.** 1. In his or her declaration, the member may dispose of the funds collected in the account under the scheme by indicating the natural person entitled to collect the funds in the event of the member's death.

2. The member may change or withdraw the disposal at any moment.

3. If the member indicated several persons eligible to receive funds after the member's death, and failed to indicate their individual shares in those fund, it is deemed that the shares of those persons are equal.

4. In the case where the member did not leave a disposal for the event of his or her death, the heirs are eligible on general principles, subject to paragraph 5. The withdrawal to their benefit should take place within 1 month of the submission of a legally valid court decision on the acquisition of the entitlement to the deceased person's estate, and joint statement of all heirs about the method of division of funds collected by the member or a legally valid court decision about the division of the estate.

5. If the scheme is operated in the form mentioned in Article 6 paragraph 1 subparagraph 3, Articles 831 and 832 of the Act of 23 April 1964 – Civil Code shall apply accordingly.

6. The employer may not be eligible for the withdrawal of the benefit unless he or she is a member of the closest family of the scheme member. Members of the closest family of the scheme member include: the spouse, children, parents and grandchildren.



**Article 49.** The funds from basic contributions are not subject to court and administrative enforcement procedure, unless an obligation to refund or withdraw them has arisen, and then they are subject to the enforcement procedure from the due date. Those restrictions shall not apply to the enforcement procedure aimed at satisfying claims for alimony.

## Chapter 6

### Penal provisions

**Article 50.** 1. Whoever, not being authorised to do so, uses the term “pension scheme” in the business name, or to describe the business activities conducted, or in an advertisement, shall be liable to a fine of PLN 1,000,000 or imprisonment for up to 3 years.

2. The same penalty shall apply to anyone who commits the offence specified in paragraph 1, acting on behalf of a corporation.

3. Rulings in cases concerning offences mentioned in paragraphs 1 and 2 shall be issued on the basis of provisions on the penal procedure.

## Chapter 7

### Changes in binding regulations, transitory and final provisions

**Article 51.** In the Act of 26 July 1991 on Personal Income Tax (Journal of Laws of 2000 No. 14, item 176, as amended<sup>8</sup>) the following changes are introduced:

1) in Article 21, in paragraph 1, subparagraph 58 shall read as follows:

"58) withdrawals:

a) transfer withdrawals of funds collected under occupational pension scheme into another occupational pension scheme or to an individual retirement account within the meaning of the provisions on Individual Retirement Accounts,

b) of funds collected in the occupational pension scheme, performed for the benefit of the member or eligible persons entitled to those funds after the member's death,";

2) in Article 30a:

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<sup>8</sup> Amendments to the uniform text of the Act mentioned have been published in the Journal of Laws of 2000 No. 22, item 270, No. 60, item 703, No. 70, item 816, No. 104, item 1104, No. 117, item 1228 and No. 122, item 1324, of 2001 No. 4, item 27, No. 8, item 64, No. 52, item 539, No. 73, item 764, No. 74, item 784, No. 88, item 961, No. 89, item 968, No. 102, item 1117, No. 106, item 1150, No. 110, item 1190, No. 125, item 1363 and 1370 and No. 134, item 1509, of 2002 No. 19, item 199, No. 25, item 253, No. 74, item 676, No. 78, item 715, No. 89, item 804, No. 135, item 1146, No. 141, item 1182, No. 169, item 1384, No. 181, item 1515, No. 200, item 1679 and No. 240, item 2058, of 2003 No. 7, item 79, No. 45, item 391, No. 65, item 595, No. 84, item 774, No. 90, item 844, No. 96, item 874, No. 122, item 1143, No. 135, item 1268, No. 137, item 1302, No. 166, item 1608, No. 202, item 1956, No. 222, item 2201, No. 223, item 2217 and No. 228, item 2255, and of 2004 No. 29, item 257, No. 54, item 535, No. 93, item 894, No. 99, item 1001, No. 109, item 1163 and No. 116, item 1203, 1205 and 1207.

a) in paragraph 1, in subparagraph 10, the full-stop is replaced with a comma, and subparagraph 11 is added, reading as follows:

"11) on the income of the member of the occupational pension scheme from the refund of funds collected under the scheme, within the meaning of the provisions on occupational pension schemes.",

b) paragraph 8 shall read as follows:

"8. Article 30 paragraph 3a shall apply to the income mentioned in paragraph 1 subparagraphs 10 and 11."

**Article 52.** In the Act of 29 January 2004 – Law on Public Procurement (Journal of Laws No. 19, item 177 and No. 96, item 959), in Article 4, after subparagraph 4, subparagraph 4a is added, reading as follows:

"4a) conclusion by the employer of agreements on the payment of employee contributions into an occupational pension scheme;"

**Article 53.** In the Act of 30 August 1996 on Commercialisation and Privatisation (Journal of Laws of 2002 No. 171, item 1397, as amended<sup>9</sup>), in Article 38, after paragraph 3a, paragraph 3b is added, reading as follows:

"3b. The restrictions resulting from paragraph 3 shall not apply to the employer's shares acquired from the State Treasury, contributed to a pension fund in accordance with Article 19 paragraph 1 of the Act of 20 April 2004 on Occupational Pension Schemes (Journal of Laws No. 116, item 1207)."

**Article 54.** In the Act of 28 August 1997 on Organisation and Functioning of Pension Funds (Journal of Laws No. 139, item 934, as amended<sup>10</sup>), the following changes are introduced:

1) in Article 26, after paragraph 2, paragraph 3 is added, reading as follows:

"3. The employee company may commission the performance of all or part of duties involved in the keeping of books of accounts of an employee fund to other entities authorised on the basis of separate provisions.";

2) Article 146 shall read as follows:

"Article 146. 1. No more than 5% of the value of assets of the employee fund may be invested in shares or other securities issued by shareholders of the employee company managing that fund.

2. No more than 10% of the value of assets of the employee fund may be jointly invested in shares or other securities issued by entities which are related entities with regard to shareholders mentioned in paragraph 1.

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<sup>9</sup> Amendments to the uniform text of the Act mentioned have been published in the Journal of Laws of 2002 No. 240, item 2055, of 2003 No. 60, item 535 and No. 90, item 844, and of 2004 No. 6, item 39.

<sup>10</sup> Amendments to the Act mentioned have been published in the Journal of Laws of 1998 No. 98, item 610, No. 106, item 668 and No. 162, item 1118, of 1999 No. 110, item 1256, of 2000 No. 60, item 702, of 2001 No. 8, item 64 and No. 110, item 1189, of 2002 No. 25, item 253, No. 153, item 1271 and No. 241, item 2074, of 2003 No. 124, item 1153, No. 166, item 1609 and No. 170, item 1651, and of 2004 No. 96, item 959.

3. The assets of an employee fund may be invested in securities issued by shareholders of an employee company managing that fund or entities which are related entities with regard to those shareholders, provided the statute of that fund permits it.";

3) after Article 173, Article 173a is added, reading as follows:

"Article 173a. The employee fund may commission the performance of all or part of the duties provided for in this chapter to other entities.";

4) after Article 194, Article 194a is added, reading as follows:

"Article 194a. 1. The employee fund shall prepare a declaration of principles of the investment policy of the fund.

2. The declaration includes at least the presentation of the risk assessment methods and risk management procedures implemented, as well as the principles of investment of funds in securities.

3. The employee fund submits the declaration to the supervisory body once every three years or immediately after the introduction of significant changes in the investment policy of the fund.

4. The employee fund shall submit the first declaration to the supervisory body within 6 months of the payment of the first contribution into the fund.

5. The employee fund submits the declaration also at the written demand made by a member.".

**Article 55.** In the Act of 3 March 2000 on Remuneration of Persons Managing Certain Legal Entities (Journal of Laws No. 26, item 306, as amended<sup>11</sup>), after Article 15, Article 15a is added, reading as follows:

"Article 15a. The restrictions resulting from the Act shall not apply to basic contributions paid into occupational pension schemes.".

**Article 56.** 1. The employers who on the effective date of the Act operates group life insurance related to an investment fund or another form of a group saving scheme for pension purposes of their employees lose the right to deduct expenses incurred from the social insurance contribution assessment base resulting from separate regulations if by 31 December 2004 they fail to submit an application for entering that scheme into the scheme register resulting in the entering of that scheme into the register.

2. In the case mentioned in paragraph 1:

1) funds collected before the employee's accession to the scheme are transferred to that scheme and treated as funds from basic contributions within the meaning of this Act;

2) the employer and the administrator shall store the documentation concerning the dates and amounts of contributions paid into the employee's

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<sup>11</sup> Amendments to the Act mentioned have been published in the Journal of Laws of 2001 No. 85, item 924 and No. 154, item 1799, of 2002 No. 113, item 984, and of 2003 No. 45, item 391, No. 60, item 535, and No. 180, item 1759.

account maintained under the group saving scheme together with the documentation of the scheme; provisions concerning information mentioned in Article 8 shall apply accordingly to the documentation.

3. The provisions of paragraphs 1 and 2 shall apply accordingly if the employer and the employee representation, when establishing the scheme, have performed a change of the administrator of funds collected under the w group life insurance related to the investment fund, or under another form of group saving scheme for pension purposes, or have selected another administrator of the scheme, or have changed the form of the scheme.

4. In the case mentioned in paragraph 3, the insurance company or the investment fund, after the effective termination of the agreement, on the basis of the employee's instruction, shall forward the funds to the employee's account maintained under the scheme and submit to the employer all documentation concerning dates and amounts of contributions paid into the employee's account maintained under the group savings scheme.

5. The supervisory body shall notify the Social Insurance Institution of any case in which administrative proceedings initiated on the basis of the application mentioned in paragraph 1 results in the failure to consider the application, refusal to enter the scheme into the register, or discontinuance of the proceedings.

**Article 57.** The employer's activities related to the conclusion and performance of the company agreement, assessment and allotting of contributions, withdrawal, transfer withdrawal and refund do not constitute insurance agency activities within the meaning of the provisions on the insurance business.

**Article 58.** The applications for the registration of schemes submitted before the effective date of the Act are considered on the basis of the provisions of this Act.

**Article 59.** 1. Employers operating the scheme, on the effective date of the Act, shall adapt the scheme to the provisions of the Act by 31 December 2005, subject to paragraph 2.

2. The adaptation of the scheme to Article 6 paragraph 9 subparagraphs 2 and 3 should take place by 31 December 2008.

3. The contributions on behalf of persons who are scheme members in relation to the new contract of agency or contract of mandate may be paid in no longer than until 31 December 2007. Article 27 shall apply accordingly.

**Article 60.** The pension fund into which the first contribution was paid before the effective date of the Act shall submit the first declaration of investment policy of the fund, as mentioned in Article 194a of the Act mentioned in Article 54, to the supervisory body by 30 September 2004.

**Article 61.** The Act of 22 August 1997 on Occupational Pension Schemes (Journal of Laws of 2001 No. 60, item 623, and of 2002 No. 25, item 253 and No. 141, item 1178) is repealed.

**Article 62.** The Act comes into effect as of 1 June 2004, with the exception of Article 8 paragraph 2 subparagraphs 6, 7 and 8, Article 18 paragraph 6, Article 25 paragraph 4 and Article 43 paragraph 2 subparagraphs 2, 3 and 4, which come into effect on 1 September 2004.