

THE SIGNIFICANCE OF OCCUPATIONAL PENSIONS IN STRENGTHENING THE PRIVATE PENSION SYSTEM IN ROMANIA

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Abstract

Occupational pensions are a component of the Romanian private pension system, along with privately managed pensions (Pillar II) and voluntary pensions (Pillar III), being an integral part of the Romanian pension system and aiming to ensure a separate private pension, which supplements the pension granted by the public system. Law no. 1/2020 on occupational pensions, which created the premises for obtaining an occupational pension, in addition to the other types of pensions granted, represents the legal framework that regulates the organization and functioning of occupational pension funds. The introduction of occupational pensions is a new stage in pension reform, aiming to reduce the pressure on the public pension system, thus contributing to its development and sustainability. The occupational pension funds aims to ensure an additional level of security for future retirees.

Keywords: occupational pension, fund, employer, scheme, pension management company (PMC).

JEL Classification: J32, J11.

Introduction

The Chamber of Deputies, in the meeting of December 11, 2019, unanimously adopted the legislation transposing Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORP). Subsequently, after the promulgation by the Decree of the President of Romania no. 1 of January 6, 2020, Law no. 1/2020 on occupational pensions was published in the Official Journal of Romania, Part I no. 10 of

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January 8, 2020, being in force since February 7, 2020. This law contains provisions regarding the establishment of occupational pension funds, as well as the elements related to their management activities.

General aspects regarding occupational pensions

Area of applicability of Law no. 1/2020 on occupational pensions includes:

- occupational pension funds;
- pension management companies for occupational pension funds;
- employers;
- depositories (regarding the activity of depository and custody of the assets of occupational pension funds);
- financial auditors;
- The Private Pension System Rights Guarantee Fund

Occupational pensions are connected to the profession, related to employment and are optional, the pension scheme being established by each employer who intends to offer his employees such benefits, the right to propose an occupational pension scheme belonging exclusively to him.

The occupational pension fund is constituted by a pension management company, according to the provisions of the Civil Code and of Law no. 1/2020 on occupational pensions and must have a minimum of 100 participants. The pension fund is authorized and supervised by the Financial Supervisory Authority (A.S.F.) and will receive contributions only after its authorization. It is important to note that an occupational pension fund cannot be declared bankrupt.

Only a pension management company authorized and supervised by the A.S.F. carries out the management of an occupational pension fund. The entities that can manage occupational pension funds are a newly established pension management company, a pension management company that already manages a privately managed pension fund and / or a voluntary pension fund, an investment management company or a life insurance company. For all, however, the authorization of the A.S.F. is necessary to manage occupational pension funds. Pension management companies, who have been authorized, authorized or subject to a similar procedure in order to function as a pension management company of occupational pension funds in a Member State of the European Union or belonging to the European Economic Area, are exempted from the requirement of authorization by the A.S.F. A pension management company may manage one or more occupational pension funds.

The quality of participant in an occupational pension fund may be held by the employee, civil servant or person authorized to carry out an independent activity, according to the law, the person who carries out his activity in elective positions or who is appointed within the executive, legislative or judicial authority during the term of office, the member of a cooperative society according to the provisions of Law no. 1/2005 regarding the organization and functioning of the cooperation, republished, with the subsequent modifications, as well as another person who realizes incomes assimilated to salaries, incomes from professional or agricultural activities, the person for whom contributions to a

fund are paid, on the basis of mandate contracts or management contracts, the person who acts as his own employer, is self-employed or any association between them. The category of self-employed individuals includes persons insured in other social insurance systems not integrated in the public pension system, in which case they negotiate and sign directly with the pension management company the contract for the administration of the occupational pension and the individual act of adhesion to the fund. A participant in a fund is a person who has signed an individual act of adhesion to that fund, who has paid or on whose behalf contributions have been paid to that fund and who has a future right to an occupational pension. The rights and obligations of the participants in a fund are set out in the prospectus.

The employer has the possibility to set differentiated levels of contribution for his employees, being able to take into account criteria such as seniority, position or salary rights. The employer cannot oblige a person to contribute in his own name to a fund, nor can he condition the conclusion of contractual relations with such a contribution.

According to the law, a participant has the possibility to contribute in his own name to the occupational pension fund, in addition to the contribution paid by his employer, his contribution being established by the individual act of adhesion. The amount of a participant's own contribution may not exceed one third of its gross monthly salary income or income assimilated to it. No deductions that the participant would have can exceed 50% of the net monthly salaries, respectively of the assimilated income.

The amounts representing the contributions to occupational pension funds in Romania are tax deductible in accordance with the tax legislation.

The employer has the possibility to include in the occupational pension scheme the vesting clause, which involves postponing the acquisition by the employees of the property right over the personal asset (the amounts transferred by the employer to the occupational pension fund). This can be applied for a maximum period of 3 years, during which time the participant (employee) cannot contribute in his own name to the respective occupational pension fund. Upon expiry of the vesting clause, the employee acquires the aforementioned property right, if the employment relationship based on which the respective contributions were paid is in force.

The right to an occupational pension opens, at the participant's request, as follows:

- under the conditions provided by the scheme and prospectus and in accordance with the legislation on the payment of private pensions;
- starting with the date of reaching the standard retirement age (provided by the public pension system, respectively with the date of reaching the retirement age regulated by other normative acts, in relation to the professional category to which it belongs, as the case may be).

If the value of the personal asset is not sufficient for the payment of an occupational pension, the participant will receive, upon request, a single payment or instalment payments in instalments for a maximum period of 5 years.

The interests of the participants and beneficiaries of the occupational pension funds are protected by the A.S.F., through the attributions and prerogatives related to the regulation,

authorization, supervision and control of the activity of the pension management companies.

At the level of secondary legislation, the A.S.F. carried out an intense activity in the process of regulating the occupational pension funds, aiming at creating the legal framework necessary for their functioning by completing the secondary legislation in the field of private pensions. In this sense, normative acts were elaborated, debated, adopted, and published in the Official Journal of Romania, regarding: the share capital of the pension management company, the authorization of the occupational pension fund, the prospectus of the occupational pension fund, the authorization of pension management companies for occupational pension funds, accession and record of participants in occupational pension funds, use of the personal assets of the participant in an occupational pension fund, transfer of participants from one occupational pension fund to another occupational or voluntary pension fund, collection and payment operations carried out through the bank accounts of the occupational pension fund, the investment and valuation of the assets of the occupational pension funds, etc.

In addition, because of the need to introduce provisions on occupational pension funds, a series of normative acts regulating areas such as internal control, internal audit and risk management in the private pension system, inventory of assets of private pension funds, organizing the archive activity, applying the principles of corporate governance, etc. were updated.

Conclusion

By adopting Law no. 1/2020 on occupational pensions, the process of harmonizing the legislative framework in Romania with the European directive on occupational pensions was continued. The regulation of the organization and functioning of the occupational pension funds allowed the construction of the legal framework for providing occupational pensions. This is obtained by a participant in an occupational pension fund, and is distinct and additional to that provided by the public system.

The private pension system, implicitly also occupational pensions, has an essential social role in the Romanian economy, through the budgetary relief of public social insurance, given the demographic forecasts on the aging population, declining birth rates, increasing life expectancy and number of retirees.

At the same time, a very important aspect to which the private pension system, including occupational pensions, contributes is represented by the formation of domestic capital and its investment in the national economy.

Bibliography

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