PENSIONS & RETIREMENT PLANS

France

LEXOLOGY
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Pensions & Retirement Plans

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Quick reference guide enabling side-by-side comparison of local insights, including into the statutory and regulatory framework; state pension provision; occupational pension schemes; compliance and enforcement; plan changes and termination; fiduciary responsibilities; legal challenges; future prospects; and current hot topics.

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France

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STATUTORY AND REGULATORY FRAMEWORK

Primary laws and regulations

What are the main statutes and regulations relating to pensions and retirement plans?

Retirement plans in France are legally organised around three pillars.

First pillar: Mandatory social security plan – 'pay as you go' – governed by the Social Security Code and annual bills on social security funding.

Second pillar: Mandatory inter-professional complementary retirement plan (AGIRC –ARRCO) – pay as you go.

The AGIRC-ARRCO Plan was renegotiated in 2017. The new plan came into effect on 1 January 2019. Contributions are paid on salaries up to eight social security ceilings (€351,936 in 2023), with two brackets of contributions (Bracket 1 and Bracket 2 for the fraction of the salary comprising between €43,992 and €351,936).

Participants acquire retirement points (based on the acquisition value determined by the executive board of AGIRC ARRCO). A supplemental contribution of 27 per cent of the base contribution is paid to maintain the plan's financial balance.

At retirement date, points are converted to a pension annuity (using the service value of the AGIRC ARCCO point).

The 2019 AGIRC-ARRCO plan postpones the payment of a full pension to one year after the date when the employee has become eligible for a full-rate social security pension. In practice, for most employees, the AGIRC-ARRCO pension represents two-thirds of their pension income. As a result, senior employees find themselves tempted to defer retirement by another year.

Occupational pensions – third pillar

General overview

Pension arrangements are implemented through a Pension Promise that is undertaken by the employer according to Employment Law rules. The law (codified in the Social Security Code) provides for different ways to implement a pension plan to the benefit of employees:

- collective bargaining agreement signed at branch level or at company level by trade unions and employers;
- ratification by a majority of employees, of a draft pension agreement proposed by the employer; and
- unilateral decision of the employer that must be then notified to the employees concerned.

New plans or modification of existing plans must be submitted to the Workers' Economic and Social Council before implementation.

Most pension promises (whether defined benefit (DB) or defined contribution (DC)) are funded through contracts subscribed by the employer with external providers (insurance contracts or company long-term savings plans) governed either by insurance laws or by commercial and financial regulations.

Legal provisions

French occupational pensions are not regulated by a specific piece of legislation.

Relevant provisions are scattered through the Labour Code, the Social Security Code, the Tax Code, the Insurance Code, the Financial and Monetary Code, and various specific bills, namely the Pension Bills of 21 August 2003, 9 November

2010, 21 December 2011, 22 May 2019 (with two Ordinances of 3 July and 24 July 2019), and the very recent Pension Reform of 17 March 2023.

This legal framework implements the main EU pension directives (on IORPs, preservation of pension rights in the case of mobility of workers in the EU, and protection against insolvency).

Directive 2000/78/EC and Labour Code provisions establish a general framework for equal treatment in employment and occupational pensions. The French Labour Code also includes specific anti-discrimination provisions of great importance.

For occupational Plans, the most prevalent type of plans are group insurance contracts subscribed by the employer to the benefit of its employees. These plans are funded through the regular payment of contributions that are capitalised by the insurance company until the beneficiaries reach retirement age.

Insurance coverage for pension plans

Insurance providers in France are subject to three different sets of rules depending on their legal form (insurance companies are governed by the Insurance Code, mutual companies are governed by the Mutuality Code, and providence institutions are ruled by the Social Security Code). Although most provisions regarding supplementary pensions have been harmonised through the three codes, there are still differences, which can make the matter quite complex.

In 2017, the government adopted the regulation transposing the EU directive of 23 December 2016 on IORPs. This regulation creates a new category of operators on the French market, entitled an Additional Occupational Pension Fund (FRPS), which are fully dedicated to retirement operations. FRPS is governed by French insurance laws but are subject to prudential rules set by the Solvency I directive (as opposed to general insurance providers that are governed by Solvency II regulations). French insurance providers are allowed to transfer their portfolio of existing retirement contracts to a FRPS under certain conditions. The transfer is subject to approval by the French insurance Regulatory Authority (ACPR) https://acpr.banque-france.fr/ , and must be implemented by 31 December 2022, at the latest. As of March 2023, a significant number of major insurance providers operating in the retirement market in France have completed the process of transferring their retirement operations to a newly created FRPS.

In 2019, the Parliament adopted the Loi Pacte of 22 May 2019, which brought very significant changes to DB plans, DC plans and to company long-term savings plans (PERCO Plans).

Law stated - 31 March 2023

Regulatory authorities

What are the primary regulatory authorities and how do they enforce the governing laws?

The French Regulatory Authorities include the ACPR, which has competence over the insurance, banking and credit institutions, as well as the Financial Markets Authority http://www.amf-france.org .

Both are independent administrative authorities, but have different jurisdictions and powers. For operators in the retirement and pension plans area, the ACPR is the main authority.

Law stated - 31 March 2023

Pension taxation

What is the framework for taxation of pensions?

Pensions annuities are subject to income tax under the ordinary progressive tax schedule (income tax brackets range from 0 to 45 per cent, with intermediary rates of 11 per cent, 30 per cent, 41 per cent), after the deduction of a 10 per cent rebate. They also are subject to social charges at a rate of a 3.80 per cent, 6.60 per cent or 8.30 per cent depending on the amount, to Social Debt Repayment Contribution at a rate of 0.50 per cent and to potential solidarity surtax (Casa) at 0.30 per cent.

In addition, AGIRC ARRCO pensions are also subject to a 1 per cent contribution to finance the healthcare social security plan.

Certain plans may allow the payment of a lump sum. Taxation will vary depending on the plan design.

Law stated - 31 March 2023

STATE PENSION PROVISIONS

Framework

What is the state pension system?

France has implemented a mandatory State Pension Plan based on 'pay as you go' principles.

This national legal plan is mandatory for all private employers and covers pensions for the bracket of salary up to the social security ceiling (€43,992 in 2023 – 'bracket 1'). It is funded through mandatory contributions and can be liquidated at a minimum legal age determined by law, which is currently 62. According to a new pension Bill voted on 17 March 2023, amid major parliamentary and social turmoil, this minimum legal age is gradually postponed for generations born from 1 September 1961 onward, until age 64. A minimum legal age of 64 will fully apply to generations born on 1968 and onwards. This new Bill also increases the total number of insurance quarters contributed to the State Pension Plan, which are required to liquidate a full rate pension.

Law stated - 31 March 2023

Pension calculation

How is the state pension calculated and what factors may cause the pension to be enhanced or reduced?

The State Pension Plan provides an annual pension calculated as follows:

Pension Annuity = SM * T * d/D, in which:

- 'SM' is the average salary calculated on the basis of the 25 highest salaries (up to the social security ceiling);
- "T' = liquidation rate. T is determined according to the total number of insurance quarters contributed to a social security plan (on whatever professional ground). The full rate is 50 per cent and is accrued at the latest at age 67;
- 'd' = the number of insurance quarters contributed to the State Pension Plan (CNAV), for salaried employees; and
- 'D' = the total number of insurance quarters required for liquidation at the full rate (which varies based on the year of birth).

Enhancements

Additional quarters of insurance exceeding the duration required for a given generation will procure a lifetime increase of the state pension by 1.25 per cent.

Parents of three children or more are entitled to receive a 10 per cent lifetime increase of the state pension annuity.

Reduction

Any beneficiary can liquidate the state pension as soon as the minimum legal age has been reached. If, at this date, the beneficiary does not fulfil the number of insured quarters required for his or her generation, he or she will be subject to a reduction of his or her liquidation rate by 1.25 per cent for each missing quarter of insurance.

Law stated - 31 March 2023

Aims

Is the state pension designed to provide a certain level of replacement income to workers who have worked continuously until retirement age?

Yes, it is designed to deliver a replacement income equal to 50 per cent of the average salary over 25 years for workers who have contributed for the required number of insurance quarters. For instance, an employee born in July 1960 will be eligible to liquidate a pension annuity equal to 50 per cent of his or her average salary when the employee reaches 167 quarters of insurance and the minimum legal age of 62.

Law stated - 31 March 2023

Current fiscal climate

Is the state pension system under pressure to reduce benefits or otherwise change its current structure in any way on account of current fiscal realities?

The State Pension system is under financial pressure to increase the minimum requirements to liquidate a full-rate pension annuity. The new Pension Reform voted on 17 March 2023 increases requirements for generations born between 1 September 1961 and 1968 onwards.

Minimum legal age requirement

The Pension Bill increases the minimum legal retirement age from 62 to 64 and increases the duration of insurance (number of quarters of contributions) required for full-rate liquidation.

Law stated - 31 March 2023

OCCUPATIONAL PENSION SCHEMES

Types

What are the main types of private pensions and retirement plans that are provided to a broad base of employees?

The most common plans are defined contribution plans (DC and PER-OB) and long-term savings plans (PERCO and PERECOL).

Defined contribution plans

Eligibility and plan design

Under those plans, the employer's promise is limited to the payment of a certain level of contributions.

Income tax and social security charges exemptions are granted on contributions paid for the funding of the plan, provided both the plan and the insurance contract meet certain requirements:

- The plan must be collective and mandatory for an objective category of beneficiaries, defined according to criteria that are set by provisions of the French Social Security Code.
- The plan must provide for an employer's contribution at a similar rate for all the beneficiaries.
- The employer's contribution must not substitute a benefit or element of salary that was previously subject to social charges or income tax.

The benefits provided by the insurance contract can only be liquidated at retirement and served as a pension annuity; lump sums and early withdrawals are not available except in limited cases.

Tax and social treatment

Social charges exemptions are granted on employers' contributions up 5 per cent of the gross remuneration capped at five social security ceilings (€219,960 in 2023). These exemptions only apply to plans that are mandatory for an objective category of employees.

The employer's contribution remains subject to a social surtax for the employee and the employer.

Income tax exemptions are granted on mandatory employees and employers' contributions up to 8 per cent of the gross remuneration capped at eight social security ceilings (€351,936 in 2023). If the plan also allows employees' voluntary contributions, those contributions can also be deductible for income tax under certain conditions and within certain limits.

Long-Term Savings Plan – PERCO

Plan design

Eligibility rules

- all employee plan – If the employer decides to implement a PERCO, the plan must be offered to all employees in the company, as an adjunction to the company savings plan (PEE);
- seniority requirement cannot exceed three months; and
- the employee is free to contribute or not to the plan.

Funding and contributions

Employee contributions to PEEs and PERCOs are limited to 25 per cent of the gross annual salary.

At minimum, the employer must pay for administration fees. In addition, the employer can provide for a matching contribution, which is at maximum equal to 300 per cent of the employee's contribution.

Benefits

The PERCO provides benefits that can be liquidated only at retirement age. The PERCO plan must offer a benefit expressed as pension retirement annuity, but plan rules can also provide for an option to choose a lump sum payment at retirement. Early withdrawals are allowed in the case of death, disability, unemployment, insolvency or acquisition of the employee's main home.

If the employee leaves the company, assets are held in his or her name until retirement age (except for the early withdrawals rule).

Other main features

PERCO plans can be managed and administered only by registered entities dedicated to this sole purpose. The plan is based on the accumulation of individual savings.

Tax and social charges

The employee's contribution is not tax deductible. The employer's contribution is exempt from social charges and income tax up to 16 per cent of the social security ceiling (€7,039 for 2023) but is subject to a social surtax of 20 per cent at the employer's expense and at 8 per cent at the employee's expense.

Last of all, the employer's matching contribution is taken into account in the global social and income tax exemptions granted for company-sponsored DC pension plans.

When the plan is set, the employer's contribution must not substitute a benefit or element of salary, which was previously subject to social charges and/or income tax.

Warning

Collective retirement insurance contracts (for DC contributions) and long-term savings plans (PERCO) set before 1 October 2020 can remain active and open to new entrants and new contributions.

However, from 1 October 2020 onwards:

- If a company wants to set a pension plan for part or all of its employees, it must fund it only under the new PER legislation.
- Entitlements and assets accrued through an individual pension plan (such as PERP), a PERCO or a DC insurance contract, continue to be transferable, but the employee can only transfer them to a new retirement savings plan (PER) contract.

Loi Pacte – new PER plan

In 2019, a new vehicle was created, the PER, governed by a new set of rules (articles L.224-1 and subs of the Financial and Monetary Code).

All PERs have to:

- set three contributions compartments (one for employees' voluntary contributions, one for employer's contributions coming from company profit sharing plans, and one for employer's and employees' mandatory contributions);

- provide that contributions are invested in gestion pilotée (pre-defined allocation monitored by the asset manager), unless otherwise decided by the employee;
- offer early withdrawals in case of death, disability, unemployment, insolvency and acquisition of the main residence by the beneficiary;
- provide that pension rights can be liquidated at retirement age either as an annuity or a lump-sum payment, except for the rights funded through mandatory contributions in the third compartment of the PER; and
- implement full transferability.

From a practical point of view, the PER works as an aggregation, in one same insurance contract, of the rules governing previous retirement products, which were set separately under the former legislation.

As a result, the employer can implement either a PER-OB (mandatory plan) or a PERECOL (long-term saving plan).

The tax and social treatment of contributions remain changed, except on one point: the voluntary contribution, which an employee pays into the PERECOL, is tax deductible, unless he or she decides otherwise.

Each PER contract, whether subscribed individually or through a PERECOL or a PER-OB set by the employer, must include each of the three compartments, and open each of them, at minimum to receive the transfers of long-term and retirement savings coming from other individual or group retirement plans.

Law stated - 31 March 2023

Restrictions

Are employers required to arrange or contribute to supplementary pension schemes for employees? What restrictions or prohibitions limit an employer’s ability to exclude certain employees from participation in broad-based retirement plans?

There is no general legal requirement that an employer provide workers with a supplementary pension plan.

Since 2010, companies, which provide DB benefits to a category of employees, must provide all employees with access to at least one type of company pension plan. Companies that operate DB plans, which were closed to new entrants before 10 November 2010, are exempted from this obligation. Companies that operated existing DB plans at this date and or that created new DB plans after this date must comply with this obligation.

Law stated - 31 March 2023

Can plans require employees to work for a specified period to participate in the plan or become vested in benefits they have accrued?

In DC and PER-OB plans, a minimum seniority can be required but it cannot exceed 12 months. In PERECOL, it cannot exceed three months.

Law stated - 31 March 2023

Overseas employees

What are the considerations regarding employees working permanently and temporarily overseas? Are they eligible to join or remain in a plan regulated in your jurisdiction?

Different rules apply on first, second and third pillar arrangements.

On first pillar, affiliation to the State Pension Plan is determined according to the EU Social Security Regulations and to the applicable international Social Security Agreement https://www.cleiss.fr/index_en.html .

On third pillar plans, employees assigned abroad under a secondment pursuant to EU Social Security Regulations must be maintained for the pension plan. Employees transferred to France under a secondment agreement should be exempted from affiliation.

Law stated - 31 March 2023

Funding

Do employers and employees share in the financing of the benefits and are the benefits funded in a trust or other secure vehicle?

Yes, this is common practice in France, partly dictated by plan design rules for eligibility to social charges and income tax exemptions.

Law stated - 31 March 2023

What rules apply to the level at which benefits are funded and what is the process for an employer to determine how much to fund a defined benefit pension plan annually?

The insurance contract must guarantee at least 50 per cent of the pension entitlement of each beneficiary during active service in the case of insolvency of the company, and must guarantee 100 per cent coverage for pension annuities in service.

Law stated - 31 March 2023

Level of benefits

What are customary levels of benefits provided to employees participating in private plans?

Legal pensions still represent a high replacement ratio. As a result, most companies' pension plans are not designed to target a replacement ratio, but rather to optimise compensation from a social charges and income tax point of view.

Law stated - 31 March 2023

Pension escalation

Are there statutory provisions for the increase of pensions in payment and the revaluation of deferred pensions?

By law, State Pensions are increased every year on 1 January, to compensate for inflation. The annual Social Security Bill may adopt a different rule (this was the case in 2019, 2020 and 2021).

AGIRC ARRCO pensions are increased on 1 November of every year, upon the decision of the board of directors.

Private pensions are governed by contractual provisions of the Plan. As a minimum, the Insurance Code provides for mandatory sharing of financial returns on a regular basis.

Law stated - 31 March 2023

Death benefits

What pre-retirement death benefits are customarily provided to employees' beneficiaries and are there any mandatory rules with respect to death benefits?

State pensions include a survivor's benefit that is payable upon the death of the employee when the surviving spouse reaches age 55, and has income under a certain threshold.

Mandatory inter-professional complementary retirement plan (AGIRC-ARRCO) provides a pension equal to 60 per cent of the main pension to the surviving spouse upon age 55, without income conditions.

In DC plans and in the new PER-OB, options can be offered for a survivor's benefit.

Law stated - 31 March 2023

Retirement

When can employees retire and receive their full plan benefits? How does early retirement affect benefit calculations?

Full plan benefits in the State Pension plan and AGIRC-ARRCO can be received, provided the employee reaches minimum legal age (62 to 64 years, depending on birth date) and has contributed the required number of quarters.

Law stated - 31 March 2023

Early distribution and loans

Are plans permitted to allow distributions or loans of all or some of the plan benefits to members that are still employed?

State pensions and AGIRC-ARRCO pensions are pay as you go schemes and do not offer any of these possibilities.

For private pensions, such distributions or loans will be governed by the insurance code, but during the period of accrual and active service, any withdrawal or distribution, which does not qualify as 'a regulated early withdrawal', will jeopardise the tax and social treatment.

DC and PER-OB plans, PERCO and PERECOL plans regulations provide a list of permitted early withdrawals.

Law stated - 31 March 2023

Change of employer or pension scheme

Is the sufficiency of retirement benefits affected greatly if employees change employer while they are accruing benefits?

No, it should not. When an employee leaves the company, the savings accrued remain invested under the company sponsorship and should continue to yield financial return.

Law stated - 31 March 2023

In what circumstances may members transfer their benefits to another pension scheme?

DC and PER-OB plans must include a transfer clause, for those employees who leave the company for whatever reason.

PERCO and PERECOL plans must also contain such provisions.

Transfers can only be implemented to another PER contract that can be a private PER plan subscribed individually either by the employee or the PERECOL or PER-OB in place at the new employer.

Pension entitlement accrued in DB plans is not transferrable for historical reasons.

Law stated - 31 March 2023

Investment management

Who is responsible for the investment of plan funds and the sufficiency of investment returns?

For insured plans (DB, DC and PER-OB), investment rules are set by the Insurance Code general provisions on life insurance.

As a result:

- liabilities and assets related to pension operations are mutualised in the insurance provider general accounts. Investments are regulated and can be in euros or units of accounts; and
- specific rules apply to pension contracts subscribed under the FRPS legislation.

For PERCO and PERECOL, the French Labour Code sets investment rules; the money must be placed in collective investment funds subject to certain diversification and liquidity rules (corporate mutual funds (FCPE) and collective investment schemes).

Employees must be offered a choice of at least three different investment funds with diversified investment profiles, and one of them must be a fund invested in 'solidarity entities'.

There is no general legal rule giving responsibility to the employer as plan sponsor for the investment of plans funds and the sufficiency of investment returns. In practice, when the employer implements a plan by unilateral decision, the employer will choose the insurance company and investment funds. If the plan is implemented through an agreement with the trade unions, a clause may provide that the providers and investments are selected through a procedure, which involves employees' representatives.

Law stated - 31 March 2023

Reduction in force

Can plan benefits be enhanced for certain groups of employees in connection with a voluntary or involuntary reduction in workforce programme?

Such a provision would be difficult to implement in France due to tax and social security rules.

Law stated - 31 March 2023

Executive-only plans

Are non-broad-based (eg, executive-only) plans permitted and what types of benefits do they typically provide?

PER-OB can be implemented for executives only (exempt employees) but the criteria must meet the requirements of 'objective category' in the meaning of Social Security and Employment Law rules.

There is more flexibility on DB plans.

Defined benefit plans

Since 2010, companies that provide DB benefits to a category of employees must provide all employees with access to at least one type of company pension plan only (with some exceptions).

DB plans that are newly created must be funded through an insurance contract. DB plans created before that date can remain funded on book reserves. However, at least 50 per cent of pensions in service must be guaranteed through an insurance contract, a fiducial arrangement or any other type of security or personal guarantees.

In most of DB Plans implemented before July 2019, the vesting of pension rights is conditional upon the fact that the employee will finish his or her career in the company. Early termination clauses are accepted at age 55 or more (such as termination at company's initiative).

New regulations since 2019

Existing non-vested DB plans are mandatorily closed to new entrants from 4 July 2019 onwards.

Law stated - 31 March 2023

How do the legal requirements for non-broad-based plans differ from the requirements that apply to broad-based plans?

The rules of the Social Security Code to define an 'objective category' do not apply. As a result, provided the company respects 'Equal Treatment' requirements, the group of beneficiaries can be defined narrowly. For the premiums paid to fund the plan to be deductible from taxable results, the plan must be designed as a 'general and impersonal engagement'. In other words, it cannot provide directly or indirectly for individual benefits.

All new DB plans created on 4 July 2019 or afterwards must provide vested benefits.

New DB plans are regulated by an Ordinance of 2019, which sets rules that must be complied with, so that the plan can qualify for favourable social and tax treatment.

The plan must provide for benefits payable as a lifetime pension annuity.

The plan can stipulate a minimum age requirement up to 21 years maximum; it can set minimum seniority requirements or minimum period of contributions requirements. The addition of those cannot exceed three years.

Pension rights must be accrued every year and fully vested. They must be calculated as a percentage of the beneficiary's annual remuneration of the year capped at 3 per cent of the remuneration. The cumulated pension entitlement accrued by one beneficiary, all employers included , is capped at 30 per cent of his or her annual latest remuneration.

There can be no acquisition of rights retroactively.

For corporate officers, and for executives earning salaries exceeding eight social security ceilings (€351,936 for 2023), the acquisition of pension entitlement for any given year is subject to performance conditions.

Every year, the company must notify the list of beneficiaries and the additional pension rights accrued for this given year, to the social authorities.

The company must provide all employees with access to at least one type of company pension plan.

The DB Plan must be funded through an insurance contract subscribed with a regulated insurance provider or IORP.

Funding

The insurance contract must guarantee at least 50 per cent of the pension entitlement of each Beneficiary in case of insolvency of the company, and must guarantee 100 per cent coverage for pension annuities in service.

Social and income tax treatment

Employers' contributions to DB Plans that meet the design and funding requirements listed above are eligible to a complete exemption from all social charges (both for the employer and for the employee) and from income tax. They are subject to a special social charge of 29.7 per cent at the employer's charge.

For the retiree, pension annuities are subject to social surtax (generalised social contribution and social debt repayment contribution), and to a social security health care tax. In addition, pension annuities, which exceed certain amounts, are subject to a specific tax according to a progressive schedule with three income brackets (progressive taxation at 0, 7 and 14 per cent of the gross annuity).

Law stated - 31 March 2023

Unionised employees

How do retirement benefits provided to employees in a trade union differ from those provided to non-unionised employees?

This is not applicable in France. Trade unions cannot sponsor a mandatory plan of their own. They can however negotiate and sign collective retirement agreements implementing mandatory pension plans with an employer or at branch level.

Law stated - 31 March 2023

How do the legal requirements for trade-union-sponsored arrangements differ from the requirements that apply to other broad-based arrangements?

Not applicable in France.

Law stated - 31 March 2023

ENFORCEMENT

Examination for compliance

What is the process for plan regulators to examine a plan for periodic legal compliance?

At employer's level, the most common review occurs when the company is controlled by the social security administration (URSSAF). The URSSAF controller verifies the company practice in implementing exemptions rules on employers' contributions to a mandatory company-sponsored pension plan. The URSSAF Controller will verify that the plan meets all the criteria set by applicable regulations to obtain the exemptions.

At the level of the insurance company: all insurance providers are subject to the supervision of the French Prudential Supervision and Resolution Authority (APCR). The ACPR also monitors compliance with anti-money laundering and anti-terrorist financing measures, and the protection of customers, policyholders, members and beneficiaries. ACPR can organise on-site inspections of any insurance provider to verify that such entity complies with all applicable regulations.

Law stated - 31 March 2023

Penalties

What sanctions will employers face if plans are not legally compliant?

URSSAF supervision : Failure to comply with social security rules will result in the loss of exemptions of social charges on employers' contributions to the pension plan. The company can go to the Judicial Court to challenge an URSSAF decision.

ACPR supervision: If violations of the law are reported, the ACPR can launch a disciplinary procedure and decide to apply graduated sanctions. The ACPR can inflict a financial penalty of up to €100 million (€1 million for bureaux de change). Decisions are published and can be appealed directly to the French administrative courts.

Law stated - 31 March 2023

Rectification

How can employers correct errors in plan documentation or administration in advance of a review by governing agencies?

Employers can modify plan documentation but must follow the rules of employment laws, which are stringent. A minimum period of three months applies.

Law stated - 31 March 2023

Disclosure obligations

What disclosures must be provided to the authorities in connection with plan administration?

For all plans (Labour Law Code), the employer must comply with the rules of information and consultation of the Workers' Social and Economic Council.

The employer must also comply with a number of obligations relating to the information of members of the plan on insurance conditions.

Insurance providers must notify employees every year of the accrued rights of the previous years. They must also send an information notice when an employee leaves the company with details of rules for liquidation at retirement and transfer conditions to another retirement plan.

Law stated - 31 March 2023

What disclosures must be provided to plan participants?

For all plans (Labour Law Code), the employer must comply with the rules of information and consultation of the Workers' Social and Economic Council.

The employer must also comply with a number of obligations relating to the information of members of the plan on insurance conditions.

Insurance providers must notify employees every year of the accrued rights of the previous years. They must also send an information notice when an employee leaves the company with details of rules for liquidation at retirement and transfer conditions to another retirement plan.

Law stated - 31 March 2023

Enforcement mechanisms

What means are available to plan participants to enforce their rights under pension and retirement plans?

Plan participants can bring their claims against the employer in the labour courts and/or against the insurance company in civil courts. Mediation is available.

Law stated - 31 March 2023

PLAN CHANGES AND TERMINATION

Rules and restrictions

What restrictions and requirements exist with respect to an employer changing the terms of a plan?

An employer can notify the modification or denunciation of a pension plan but must respect formalities, and a minimum period of notice.

The employer must inform and consult the workers council prior to making such a decision.

Law stated - 31 March 2023

What restrictions and requirements exist with respect to an employer terminating a plan?

An employer can notify the modification or denunciation of a pension plan but must respect formalities, and a minimum period of notice.

The employer must inform and consult the workers council prior to making such a decision.

When a plan is implemented through a collective agreement signed with trade unions, the employer can notify the denunciation, but if no substitution agreement is signed, employees are entitled to a 'remuneration guarantee' equal to the contributions paid over the preceding year.

Law stated - 31 March 2023

Insolvency protection

What protections are in place for plan benefits in the event of employer insolvency?

Plan Rules cannot include any provision that would result in the loss of pension entitlement for employees and former employees in the case of insolvency of the employer.

A company insolvency should have no adverse effect on long-term savings plans (PERCO and PERECOL) plans, PER-OB and DC plans for rights already accrued as the contributions are invested in individual accounts open in the name of the employees and managed by an outside provider, which has its own solvency rules.

For DB plans, protection against sponsor insolvency is gradually implemented through the obligation made to employers to guarantee at least 50 per cent of pensions in service through an insurance contract, a fiducial arrangement or security guarantees.

Law stated - 31 March 2023

Business transfer

How are retirement benefits affected if the employer is acquired?

Plan Rules cannot include any provision that would result in the loss of pension entitlement for employees and former employees in the case of transfer of the business or sale of the company.

In broad based plans, retirement savings already accrued should not be impacted. Depending on a number of factors, the plan may be challenged and even waived, or may continue to apply mandatorily.

Law stated - 31 March 2023

Surplus

Upon plan termination, how can any surplus amounts be utilised?

Not applicable in France, except for old DB plans with no vested rights.

Law stated - 31 March 2023

FIDUCIARY RESPONSIBILITIES

Applicable fiduciaries

Which persons and entities are ‘fiduciaries’?

Not applicable in France except in very limited cases.

Law stated - 31 March 2023

Fiduciary duties

What duties apply to fiduciaries?

Not applicable in France, except in very limited cases.

Law stated - 31 March 2023

Breach of duties

What are the consequences of fiduciaries failing to discharge their duties?

Not applicable in France, except in very limited cases.

Law stated - 31 March 2023

LEGAL DEVELOPMENTS AND TRENDS

Legal challenges

Have there been legal challenges when certain types of plans are converted to different types of plan?

In 2019, the closing of old non-vested DB plans to new entrants with no more accrual from 1 January 2020 onwards, has raised many issues, particularly on the calculation of pension entitlement at the closing date.

Alternatively, the law allows transformation and transfer into a new DB plan with vested rights but implementation instructions from the Social Security administration are still expected.

DC plans are growingly transformed into a new PER-OB, and long-term savings plans (PERCO) into a new long-term savings plan (PERECOL). Transfer of assets and liabilities must be monitored carefully as legal rules are not very explicit.

Law stated - 31 March 2023

Have there been legal challenges to other aspects of plan design and administration?

Low interest rates have put the pension industry under stress over recent years.

The administration issued very substantial instructions on the many rules that a pension plan must respect to qualify for social charges exemptions.

The insurance market has been targeted for many years by the authorities for not delivering pension payments to retirees who do not spontaneously claim their benefits. Since a law was passed in Parliament, the situation is slowly improving due to the determination of the French Prudential Supervision and Resolution Authority.

Law stated - 31 March 2023

Future prospects

How will funding shortfalls, changing worker demographics and future legislation be likely to affect private pensions in the future?

The French state pension plan and mandatory inter-professional complementary retirement plan are under strong demographic pressure as the population is aging. There is a growing need for more private pension funding.

Law stated - 31 March 2023

UPDATE AND TRENDS

Hot topics

Are there any current developments or trends that should be noted?

The new Pension Bill passed on 17 March 2023, which modifies the minimum legal age to retire, applies to senior staff born in the last quarter of 1961, who had planned to retire at the end of 2023. As a result, the Pension Bill has an immediate impact, and it forces employees and employers to reassess all their HR policies and strategies in a very short timeframe.

The Pension Bill also included provisions to encourage flexible retirement and set new obligations for employers (Senior Index, special surtax on termination of senior employees).

Several appeals were submitted to the Constitutional Council regarding the constitutionality of some provisions.

On 14 April 2023, the Constitutional Council rendered its decision, which was highly awaited. Most of the reform is adopted but a series of legislative riders (provisions not falling within the scope of the law) are censured.

The Constitutional Council validated the main part of the pension reform and, in particular, the progressive postponement of the legal retirement age from 62 to 64 years old, as well as an accelerated timeline for the increase of the insurance period required to benefit from a full pension. It decided that the legislator had taken measures that were appropriate in light of the objectives pursued by this text in order to ensure the financial balance of the pay-as-you-go pension system and to guarantee its sustainability, since it has:

- taken into account the increase in life expectancy;
- maintained or extended the possibilities of early retirement (in case of long careers, disability, or for disabled workers); and
- maintained the age of 67 years old as the age at which private sector employees may benefit from a full pension, regardless of the duration of contributions.

On the other hand, the Constitutional Council censured a series of measures on the grounds that they did not belong in a social security financing law, notably:

- the introduction of an index relating to the employment of seniors in companies with at least 300 employees (the Senior Index);
- the application of a new type of senior employment contract; and
- specific individual monitoring for employees who are particularly exposed or have been exposed to certain occupational risk factors.

The amended social security financing law for 2023 was promulgated by the Head of State and published in the Official Journal on 15 April 2023.

Accordingly, the main measures contained in the pension reform are:

- increase of the legal retirement age to 64;
- accelerated timeline for the increase of the insurance period required to benefit from a full pension;
- new rules for granting additional quarterly terms of pension insurance contribution in respect of children;
- creation of new pension rights in cases of additional accumulation of employment and retirement;
- more flexible access to progressive retirement; and
- reorganization of the system of early retirement for long careers (all discussed in more detail in turn below).

Increase of the legal retirement age to 64

The age of entitlement to a retirement pension will increase steadily at a rate of three months per annum for all insured persons born on or after 1 September 1961, starting on 1 September 2023. It will gradually increase from 62 to 64 by 2030.

Accelerated timeline for the increase of the insurance period required to benefit from a full pension

The insurance period required to receive a full pension will gradually increase to 43 years by 2027 (instead of 2035) at a rate of one additional quarter per annum (instead of one quarter every three years) for insured persons born on or before 1 September 1961. However, insured persons who retire at 67 will continue to benefit from a full pension even if they do not have the required insurance period.

In the opinion of the authors, it is clearly those closest to retirement that are targeted by this reform. These changes, coming into effect shortly, will modify the end-of-career provisions as of 2023 for retirements under consideration for employees reaching the age of 62 as of 1 September 2023.

The consequences for companies are significant because the following company activities are impacted immediately:

- ongoing negotiations for the departure of older employees;
- voluntary departure plans for older employees as well as early retirement and end-of-career leave schemes, which are designed to end as soon as the employee meets the conditions for retirement. With the increase in the legal retirement age, these employees will have to remain in such schemes for longer;
- accounting provisions for retirement benefits, which consider employees' length of service; and
- the balance of supplementary provident and health insurance schemes.

New rules for granting additional quarterly terms of pension insurance contribution in respect of children

For children born after 2010, the increase of four quarters of pension insurance awarded to the mother remains unchanged. Of the increase of four quarters of pension insurance reflecting the child's education during the four years following the birth or adoption of the child, a minimum of two quarters is granted to the socially insured mother, although no such increases apply to parents convicted for crimes committed against children.

Creation of new pension rights in cases of additional accumulation of employment and retirement

Additional accumulation of employment and retirement (reserved for insured persons who have liquidated all their retirement pensions at the full rate) will generate new pension rights, without affecting the amount of the retirement pension resulting from the first liquidation. The new retirement pension benefits are at the full rate and no increase or supplement can be granted for this pension. The new pensions may not exceed a certain annual ceiling (to be set by decree).

More flexible access to progressive retirement

The new age and insurance period requirements will be specified by decree. The duration of insurance would remain fixed at 150 quarters and the required age, currently 60, should follow the gradual increase of the legal age minus two years, until reaching 62 years in 2030. When an employee who has reached the required age asks to work part-time, the employer's agreement will be deemed to have been obtained in the absence of a written and reasoned response within two months of receiving the request. Any refusal must be motivated by the incompatibility of the working hours requested by the employee with the economic activity of the company.

Reorganization of the system of early retirement for long careers

This will be organized around four age limits, the highest of which may not exceed 21 years of age. Specifically, these age limits are: 16 years of age for retirement age 58; 18 years of age for retirement age 60; 20 years of age for retirement age 62; 21 years of age for retirement age 63. The option of early retirement is thereby extended to cover employees with a certain number of quarterly terms of pension before the age of 21 (as against 20 previously).

The measures listed above will take effect on 1 September 2023 unless otherwise stated.

Law stated - 16 May 2023

Jurisdictions

France	Ogletree Deakins France
Germany	CMS Germany
Netherlands	Eversheds Sutherland (International) LLP
United Kingdom	Irwin Mitchell LLP
USA	Sullivan & Worcester LLP