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A Brief Guide to Pensions in Ireland

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Comprising 50 lawyers including 21 partners, at LK Shields Solicitors we provide the comfort and assurance of a large firm with the individual care and attention normally associated with a smaller niche practice.

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1. Introduction to Pensions

This guide provides a brief overview of the legislation and related rules and regulations which govern the operation of pensions in Ireland.

A pension scheme is an arrangement that provides for payments to be made to an individual on retirement or to his or her dependants in the event of death.

For further information on any of the topics covered, please contact the LK Shields Pensions Group. You will find contact details on page 6.

2. Pensions Provision in Ireland

Ireland has a three pillar pension system. First, the Irish Government provides a basic old age retirement pension through the State social welfare system. This is paid at a rate of €230.30 per week for a fully qualified person for 2010. Additional payments may arise for a qualified dependant. Secondly, individuals can choose to make supplementary private provision by saving in a formal tax approved pension arrangement. Thirdly, other savings top up the foregoing.

Private pension provision is entirely voluntary in Ireland. Statutory plans are set up by legislation and provide benefits to public sector employees and employees of semi-state bodies.

Many employers establish arrangements known as occupational pension schemes for their workforce (i.e. employer and employee sponsored schemes). These are mainly written under trust and



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managed by trustees. The trustees hold the assets separately and invest the assets for the benefit of the scheme members.

3. Employers' Obligations

Employers are not obliged to set up a company pension scheme. However, employers must either offer their employees access to an occupational pension scheme or provide access to at least one Standard Personal Retirement Savings Account (PRSA). If the employer sponsors a pension scheme it will design the benefit structure and deal with who is entitled to join the scheme, as well as conferring on it certain powers and discretions such as the power, with trustee consent, to amend the scheme and the discretion to provide special benefits. These are all bespoke terms. There are, however, statutory obligations which oblige the employer to pay contributions within certain time frames and provide members with details of contributions withheld from pay and paid to the scheme trustees. Other statutory obligations require members to be provided with a summary of key information in relation to the pension scheme.

The full extent of employer obligations in relation to pension schemes is outside the scope of this guide. However, suffice to say that an employer establishing such a scheme should obtain suitable advice in advance to ensure it establishes an arrangement which is suitable to its circumstances and that it is fully aware of its obligations in relation to the scheme.

It is usual practice for employers to provide some type of death-in-service arrangement.

4. Types of Benefits

Benefits provided are typically defined benefit or defined contribution. A defined benefit arrangement is where the member receives a pension based on their final salary at the date of leaving service or retirement. (Defined benefit arrangements are subject to triennial actuarial valuations and the scheme must meet the required funding standard.) A defined contribution arrangement is where the benefits arising depend on the value of the investments available at time of draw down of benefits.

Some employers provide alternative design structures including cash balance plans or hybrid arrangements.

Alternatively, a contractual arrangement known as a Personal Retirement Savings Account (PRSA) or Retirement Annuity Contract (RAC) can be taken out. PRSAs are taken out with a PRSA provider, which may be an insurance company or other regulated investment provider. Individuals may take out PRSAs personally or in conjunction with an employer which may also contribute to the PRSA. An RAC is another contractual arrangement which is personal to the individual and is taken out with an RAC provider. Employers do not contribute to RACs.

5. Tax Incentives

Occupational pension schemes, PRSAs and RACs qualify for generous tax benefits which avail of the "EET" model of taxation. Contributions (employer and employee) payable qualify for tax relief (subject to certain conditions and limits), the investment income and gains generated by the vehicle are exempt from tax and on draw down of benefits taxation arises.

6. Regulatory Background

The Pensions Acts 1990 to 2009, which implement the Pensions Directive (2003/41/EC) regulate the operate of approved pensions vehicles in Ireland.

The Taxes Consolidation Act 1997 (as amended each year) regulates from a tax perspective the operation of approved pensions arrangements in Ireland.

Regulations, guidance, practice notes (from both the Revenue Commissioners and the Pensions Board) and decided case law are also relevant.

The Family Law Act 1995 and Family Law (Divorce) Act 1996 confer rights on pension scheme members and their dependants where judicial separation or divorce occurs and enable the court

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to vary a member's pension scheme entitlements.

7. Pensions Regulatory Bodies

The pensions regulator is the Pensions Board. This body is responsible for the regulation of occupational pension schemes, PRSAs and certain aspects of trust RACs as part of its statutory role to monitor and supervise the operation of the Pensions Act. The Pensions Board also advises the Minister for Social and Family Affairs on pension matters generally. The Pensions Board seeks to protect the interests of pension scheme members and to encourage supplementary pension provision.

The Revenue Commissioners oversee the tax treatment of pension arrangements in Ireland. This includes granting/refusing exempt tax approval status to occupational pension schemes, approving PRSA products jointly with the Pensions Board and approving personal pension products such as RACs. In order to avail of applicable tax incentives all these pension arrangements must be approved by the Revenue Commissioners which are also authorised to withdraw approval should there be an infringement of the applicable tax laws and practice.

8. Disputes

Disputes may be litigated before the courts or the Pensions Ombudsman.

Some pensions disputes are litigated in the High Court.

The Pensions Ombudsman investigates complaints of financial loss due to maladministration and disputes of fact or law in relation to occupational pension schemes, PRSAs and trust RACs (usually industry wide arrangements structured as RACs set up under trust). The office is completely independent in the performance of these duties and acts as an impartial adjudicator. The ruling of the Pensions Ombudsman is binding on all parties (subject to a right of appeal). The services provided by the Office of the Pensions Ombudsman are free of charge.

Increasingly, arbitration or mediation are used as methods to settle pension disputes.

9. Establishment of a Pension Scheme

An occupational pension scheme must be established under an irrevocable trust to enjoy the relevant tax benefits.

A "**trust**" is a legal concept whereby property is held by one or more persons (trustees) for the benefit of another person or persons (beneficiaries). A trustee may also be a beneficiary. In a pension scheme the property held in the trust fund is the assets of the scheme.

This means that an employer cannot use the proceeds of contributions/assets of the scheme for a different purpose. An employer may, however, wind up a pension scheme in accordance with the terms of the governing scheme documentation. An employer may also access surplus assets from a pension scheme where its terms so allow.

In practice, most Irish pension schemes are established by an employer (known as the sponsoring employer) under documentation known as a trust deed and rules. The assets in a pension trust are legally separate from those of the related employer, thereby affording greater security to employees and members of the scheme. The trust deed normally provides for the appointment of trustees and for their subsequent replacement. The trust deed and rules will set out the obligations, powers and discretions of the trustees and detail the terms of benefit structure available to members.

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10. Trustee Duties and Responsibilities

Trustees are responsible for the administration and management of the trust. Their duties and obligations are many and varied and arise under trust law, the terms of the trust deed and rules other relevant legislation and under the Pensions Act. Very briefly, trustees must operate the rules of the scheme in accordance with law and terms of the trust deed and rules. They must also act in the best interests of the beneficiaries. Due to the nature of trustees' duties and obligations, it is essential that trustees receive adequate and appropriate trustee training and apply appropriate corporate governance principles in the discharge of their obligations.

Pension scheme administration must be carried out by an administrator registered with the Pensions Board.

Pension scheme trustees are responsible for the proper investment of the scheme's funds. The trust deed will usually set out express and wide powers of investment. Trustee investment rules apply which will require the trustees to usually appoint an investment manager to invest the scheme assets in accordance with the trustees' statement of investment principles and in compliance with applicable regulations.

The annual report of the trustees of a pension scheme will contain information on how the scheme assets are invested and the investment policies followed by the trustees.

11. Benefits on Retirement

At retirement pension benefits will be drawn down. Disputes can arise sometimes over a member's right to retire early and the benefits then payable. Accordingly, it is vital that the retirement rule is clear and that the employer has not given the member an additional side promise which the member then seeks to rely on.

The benefits payable on retirement depend on the nature of the pension arrangement. If a defined benefit promise has been given the member will be entitled to a fixed rate of pension linked to salary at time of leaving or retirement. The trustees may either buy an annuity to discharge this benefit or pay it from the scheme, depending on the profile of the scheme.

Depending on the rules of the scheme the member may be able to exchange some of his pension for a tax free lump sum.

Sometimes scheme members may be able to apply their benefits under the scheme by investing in an Approved Retirement Fund (and related Approved Minimum Retirement Fund). These are investment accounts which the member may hold and is required to draw down a certain minimum percent each year. ARFs are tax efficient as the investment gains realised are exempt from tax and other tax advantages may arise with them.

12. Leaving Service of the Employer

If the employee has taken out a PRSA or RAC he or she will be entitled to the full value of the relevant product on leaving service. This may not be accessed, however, until the individual's retirement or earlier death.

If the employee is a member of an occupational pension scheme the rules will set out what the member is entitled to on leaving service of the sponsoring employer. This flexibility is subject to overriding statutory obligations which give members vested rights in certain circumstances. Broadly, after two years scheme membership on leaving service the employee is entitled to a vested benefit. The nature of the vested benefit depends on the status of the scheme as defined contribution or defined benefit.

13. Pensions Equality Laws

Approved pensions arrangements (and access to these) must be operated in compliance with pensions equality laws. Where non compliance arises the general principle is to require the more favourable treatment to be given.



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14. Transactions Affecting Pension Schemes

Pension issues may arise in a wide number of corporate transactions including a share or asset sale or group reorganisation. The nature of the transaction and the type of arrangements in place will determine how pension matters ought to be dealt with. Both the purchaser and seller of a business need to be aware of their responsibilities and potential liabilities under applicable legislation.

The purchaser of a business will carry out a pension due diligence exercise to identify any potential risks and/or liabilities which may affect such purchase and the seller of the business makes disclosure in relation to all relevant pension arrangements.

The trustees may need to take action where a corporate transaction arises which affects the scheme's sponsoring employer.

15. Cross-border (EU) Pension Schemes

The EU Directive 2003 41/EC on the activities and supervision of institutions for occupational retirement provision (the Pensions Directive) permits the operation of cross-border pension schemes in the EU. This means that (subject to certain authorisation and notification requirements) a pension scheme can be established in an EU Member State which provides benefits to employees working in one or more other EU Member States.

The operation of cross-border pension schemes is of particular relevance to multinational companies with subsidiaries and employees located in more than one EU Member State.

Ireland is a favoured jurisdiction to establish a cross-border scheme because there are no local investment restrictions (in addition to those imposed by the Pension Directive). The Irish Pensions Regulatory regime is easy to understand, and there are experienced administrators and other service providers available to advise on the running and operation of a cross-border pension scheme. The tax system is also facilitative of cross-border pension plans.

16. LK Shields Solicitors Pensions Group

The LK Shields Solicitors Pensions Group is highly regarded and consistently highly ranked and recognised by legal directories such as the Legal 500. The LK Shields Pensions Group seeks to adopt a practical approach to resolving issues which may affect employers, trustees and individuals acting in accordance with clients' commercial objectives.

Scope of our services:

The LK Shields Pensions Group has considerable experience in advising employers, pension providers, scheme trustees, actuaries and individuals on all aspects of pensions. The scope of our services includes:

- Pension scheme design and planning (e.g. defined benefit and defined contribution schemes, PRSAs etc.)
- Documentation (e.g. drafting, amending and reviewing trust deeds, explanatory booklets etc.)
- Changes to schemes (e.g. merging pensions schemes, moving from defined benefit to defined contribution, hybrid defined benefit/defined contribution schemes, benefit changes, etc.)
- Advice to actuaries
- Scheme winding up (e.g. priority of payments, dealing with surplus etc.)
- Disputes and complaints (e.g. providing arbitration and litigation support, dealing with complaints to the Pensions Ombudsman, Pensions Board investigations etc.)
- Regulatory and compliance aspects of pension schemes including corporate governance issues
- Revenue Commissioners and Pensions Board approvals (e.g. registering schemes, obtaining tax clearance, consents, dealing with regulator's queries etc.)



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Useful Contact Details

Pensions Board

Verschoyle House
28/30 Lower Mount Street
Dublin 2
T +353 1 613 1900
W www.pensionsboard.ie

Pensions Ombudsman

36 Upper Mount Street
Dublin 2
T +353 1 661 2427
W www.pensionsombudsman.ie

Irish Association of Pension Funds

Slane House
25 Lower Mount Street
Dublin 2
T +353 1 661 2427
W www.iapf.ie

Revenue Commissioners

Large Cases Division
Financial Services (Pensions)
4th Floor Grattan House
Lower Mount Street
Dublin 4
T +353 1 647 4022
W www.revenue.ie

- Trustees' duties and obligations (e.g. member trustees, attendance at trustees meetings, trustee training, compliance with pension legislation, etc.)
- Investment management/custodianship (e.g. preparing agreements, reviewing reports etc.)
- Equality issues (e.g. equal treatment between men and women, ageism etc.)
- Retirement planning (e.g. ARFs, annuities etc.) cross-border/pan-European schemes
- Pension aspects of insurance products and services

17. Other Areas of our Pensions Practice

We work with the Business Department on the pension and benefits aspects of commercial transactions including company mergers and acquisitions, financing transactions and outsourcings (e.g. pension due diligence, negotiation of warranties, disclosures, transfers, communications with employees etc.).

We work with the Employment Group on such matters as the pensions aspects of employment contracts, varying terms and rates of pay and dealing with termination of the employment relationship.

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