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WOLF THEISS

EXPECTED DEVELOPMENTS IN THE PENSION SYSTEM

INTRODUCTION OF EMPLOYEE CAPITAL PLANS

In July 2016 the Polish Minister of Finance proposed the Capital Development Program; a comprehensive plan for developing a voluntarily funded pension system with long term saving products in Poland. It includes eight major pillars. In this alert we will describe one of the main pillars which aims to establish a public system of voluntary saving for retirement in the corporate sector to be known as Employee Capital Plans ["PPK"].

The Act implementing PPK should have been published between June and July 2017. Although it has not been published yet (only presented to the Council of Ministers), we are able to make the following assumptions about the Act based on the limited information we currently have:

ELEMENTS OF THE ACT

PPK aims to replace the currently binding Employee Pension Schemes ["PPE"] set forth in the Act on Employee Pension Schemes, and should come into force at the beginning of 2019. The obligation to establish PPK will apply to employers employing at least one employee or entities hiring at least one person who conducts work under a civil contract for which such employer or entity pay contributions towards Social Insurance. For the purpose of this alert, employers and other entities will be mutually referred to as an Employer. Employees and other persons who conduct work under a civil contract will be collectively referred to as Employees.

PPK will be introduced in phases. This obligation will initially cover Employers employing more than 250 Employees. Employers employing less than 250 Employees will participate in PPK from mid-2020. Employees between the ages of 19-55 will be entered into PPK automatically. Employees over the age of 55 may opt into PPK. PPK will not affect people over the age of 70.

Notwithstanding the above, Employees will be entitled to opt out. An opt-out declaration must be made within 3 months from the date of the establishment of PPK (although some sources suggest that this term may be lessened to 1 month). The opt-out declaration must be resubmitted every 12 or 24 months. If an Employee fails to resubmit an opt-out declaration he or she will be automatically entered into PPK again. The possibility for Employees to opt-out from PPK does not change the obligation of Employers to offer and conduct PPK for Employees.

CONTRIBUTIONS BY EMPLOYEES/EMPLOYERS

The obligation to provide PPK will generally not be mandatory for Employers that have established PPE previously. This exception will only apply to Employers who have paid at least 6 months of appropriate contributions to PPE, i.e., the amount of such contributions cannot be lower than the contribution that would be paid within PPK. Employers who wish to avoid the obligation to establish PPK should immediately establish PPE.

PPK contributions will be paid by both the Employer and the Employee. The Employee's contribution will be 2% of the basis for contributions to retirement and pension insurance with the possibility, at the Employee's choice, of an additional 2%. The basis for contributions to retirement and pension insurance with regard to Employees is stipulated in the Act on the Social Insurance System and essentially amounts to an Employee's net remuneration from an Employer. Such contributions will be deducted from the Employee's remuneration.

Contributions made by the Employer will amount to 1.5% of the above mentioned basis with the possibility, at the Employer's choice, of an additional 2.5%. Contributions made by an Employer will be completely financed by the Employer. The Employer's contributions will be calculated on the basis of the Employee's net remuneration. However, such contributions will not be deducted from the Employee's remuneration. The State will make a one-off, welcome contribution of PLN 250 with additional annual contributions in the amount of PLN 240. The press notes mention that contributions made by an Employer may be released from the contribution made towards social insurance and will constitute tax deductible costs.

CONTRIBUTION TO INVESTMENT FUNDS

PPK will operate under an agreement authorizing an Employer to pay defined contributions for Employees to an investment fund. PPK will be managed by a Society of Investment Funds, under a permit issued by the Financial Supervision Authority. An Employer will be entitled to choose, at its sole discretion, the Society of Investment Fund that will accumulate an Employee's savings. The Employee's savings accumulated by such Fund may be inherited by a person specified in a registration form or under the general rules of the Polish Civil Code. After reaching the age of retirement, an Employee will be entitled to a one-off withdrawal of up to 25% of the accumulated savings. A minimum of 75% of the savings must be dedicated to term or life-long annuities. Such savings may also be used as a down payment on the purchase of a first home.

PROS AND CONS OF PPE VS PPK

Bearing in mind the fact that the above assumptions may be subject to change, at this time it is difficult to estimate which program (PPE or PPK) is more reasonable and favorable for Employers. However, it should be noted that participation in PPE may be viewed as a more favorable incentive for Employees to work for a given Employer because PPE contributions are made only by Employers. PPE do not oblige Employees to make any contribution, although they may contribute at their sole discretion.

About WOLF THEISS

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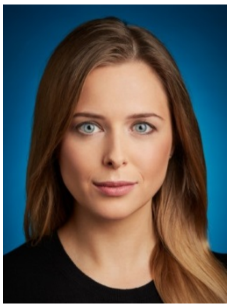

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