



JONES DAY COMMENTARY

DEVELOPMENTS IN EUROPEAN BENEFITS

THE BELGIAN SUPREME COURT CLARIFIES THE LIMITATION PERIODS FOR CLAIMS RELATING TO OCCUPATIONAL PENSIONS

A recent Belgian Supreme Court decision has clarified the period of time after which claims relating to occupational pension plans can no longer be brought. Although it had been thought by some experts that the period of time to bring a claim ran for 10 years (following the common-law position) or three years (as provided for in Belgian insurance legislation), the court confirmed that the one-year period described in employment legislation is the appropriate limit. The Supreme Court also confirmed that this time period runs from the date the pension or annuity becomes payable, rather than the date the employment contract is terminated, giving ex-employees a long time, in some instances, to bring a claim.

FRANCE LEGISLATES TO CONTROL SENIOR EXECUTIVE REMUNERATION AND BENEFITS

Following a French law enacted August 22, 2007, any compensation, indemnity, or benefit (including, in particular, golden-parachute arrangements) granted to senior executives of listed companies is now subject to a stricter set of rules, such as double control by the board members and shareholders and the determination of objectives generally designed to tie compensation, and more specifically benefits such as termination packages, to performance standards. The senior executives targeted by this law are:

- Presidents (*Présidents*)
- General managers (*Directeurs généraux*)
- Deputy general managers (*Directeurs généraux adjoints*)

Noncompetition indemnities and top-hat plans are excluded from the scope of the law. These new measures follow increasing press coverage on the particularly lucrative golden parachutes granted in recent

years to departing senior executives in companies that had been the subject of important restructurings and downsizings.

With this new legislation, the compensation of senior executives will now be tied to the executives' individual performance. Under the new "compensation track" set by the law, the company's board of directors or supervisory board is responsible for setting the executives' "compensation package" along with the associated performance criteria. The shareholders will then have to approve the proposed performance criteria and ensure that these criteria are fulfilled before any actual payment is made to the executives. Additional filing obligations are also imposed on the company.

GERMANY INCREASES RETIREMENT AGE FOR STATE PENSION FROM 65 TO 67 YEARS

Recent German legislation will increase from 65 to 67 the age at which employees in Germany are eligible to apply for regular old-age pension payments from the statutory pension system. The step-by-step increase will be implemented between 2012 and 2029 by the new German law, which becomes effective on January 1, 2008. Currently, it is not clear whether this change in the regular retirement age will affect in any way the rights of employees who are participating in existing company-sponsored pension plans, which specify a retirement age of 65.

GERMAN FEDERAL LABOR COURT HOLDS THAT STATUTORY DEFERRED COMPENSATION IS CONSTITUTIONAL

In a decision on June 12, 2007 (3 AZR 14/06), the Federal Labor Court in Germany ruled against an employer that claimed the provisions of the Company Pension Act requiring employers to offer their employees a deferred-compensation pension plan upon request are unconstitutional. After the employer had rejected an employee claim for such benefits, the employer argued that the risk to employers, for instance on the insolvency of a third-party insurer, rendered the statutory obligations unconstitutional. Since German law does not permit pure defined-contribution plans, there is always a

funding risk. Even if the obligation is transferred to a third-party insurance company, there is a residual risk with the employer in the case of insurer insolvency. Notwithstanding these arguments and concerns, the court held that the compulsory provision is constitutional.

CLARIFICATIONS ISSUED BY THE ITALIAN TAX AUTHORITIES IN ORDER TO BENEFIT FROM THE FAVORABLE TAX REGIME FOR STOCK OPTIONS

By Circular No. 33/E, dated May 24, 2007, the Italian tax authorities issued a clarification in relation to one of the conditions required by the Italian tax law in order to take advantage of the favorable tax regime for stock options. Under Italian tax law, as amended by Decree No. 262 of October 2, 2006, the exercise of an option does not give rise to taxable income at the time of the exercise if, among other conditions, the plan provides for a vesting period before exercise of at least three years. Instead, taxation is deferred until the time of sale of the shares, and the gains are then taxed as capital gains. The new circular clarifies that the vesting-period requirement is satisfied for stock option plans in existence on October 3, 2006 (the effective date of Decree No. 262), if the stock options are in fact exercised by the employee at least three years after the date of grant, regardless of the terms of the plan.

NEW SPANISH INCOME TAX EXEMPTIONS FOR EMPLOYEES TRAVELING ABROAD

A new income tax law recently approved in Spain affects employees providing part of their services to their employers' subsidiaries or parent companies outside Spain, *i.e.*, in cases where employees travel on a regular basis to parent or subsidiary companies abroad. These employees are allowed to enjoy a total tax exemption from the prorated income obtained for the services rendered abroad, up to €60,100 per year. The only requirements to obtain such an exemption are that (i) the country in which the services are rendered must have similar income tax regulations or a double tax-imposition treaty with Spain and (ii) the services rendered abroad must be essential to the foreign company.

EUROPEAN COURT OF JUSTICE RULES ON EQUAL ACCESS TO PENSION PLANS

The ECJ ruled on June 21, 2007, that under the Equal Treatment Directive, when a Member State adopts rules intended to allow women retrospective membership in a plan from which they have previously been refused entry, the Directive does not preclude making membership conditional on payment of adjustment contributions, together with interest to compensate for inflation (but no interest applied on any other basis). However, the Directive does preclude requiring adjustment contributions to be paid as a single sum where this makes payment impossible or excessively difficult in practice.

U.K. GOVERNMENT ANNOUNCES CHANGES TO CAPITAL GAINS TAX REGIME

The U.K. Chancellor of the Exchequer announced substantial changes to the capital gains tax regime for individuals, creating a new flat rate of capital gains tax of 18 percent, which will apply to stock sales on or after April 6, 2008. The present system of “taper relief” acts by reducing the taxable gain depending on how long the relevant asset has been held, thereby reducing the effective rate of the capital gains tax to, in the case of higher-rate taxpayers, 10 percent and, in the case of basic-rate taxpayers, 5 percent if the asset is held for at least two years. Although there have been loud protests from groups representing businesses, entrepreneurs, and groups promoting employee share ownership, these changes are likely to proceed. The effect on existing employee share plans and holders of awards under those plans will vary, depending on whether or not they are tax-advantaged plans and whether the intention is to encourage longer-term share ownership. Employers will have to review their existing plans to ensure that those plans continue to meet their needs in light of this radical change in the tax treatment of capital gains.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General e-mail messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

CHICAGO

Ronald S. Rizzo

1.312.269.1568

rsrizzo@jonesday.com

LONDON

John J. Papadakis

44.20.7039.5272

jjpapadakis@jonesday.com

Rosalind J. Connor

44.20.7039.5446

rjconnor@jonesday.com

Nicola Rondel

44.20.7039.5176

nrondel@jonesday.com

MILAN

Carla Calcagnile

39.02.7645.4108

ccalcagnile@jonesday.com

FRANKFURT

Georg Mikes

49.69.9726.3914

gmikes@jonesday.com

MUNICH

Friederike Göbbels

49.89.20.60.42.249

fgoebels@jonesday.com

PARIS

Emmanuelle Rivez-Domont

33.1.56.59.46.33

earivez@jonesday.com

BRUSSELS

Chantal Biernaux

32.2.645.15.32

cbiernaux@jonesday.com

MADRID

Jesús Gimeno

34.91.520.3961

jgimeno@jonesday.com

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