Employee Benefits Multinational Employee Benefits & Compensation Issues Update

Subcommittee on Multinational Employee Benefits & Compensation Issues

Chairs:
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March, DWP issued a proposal to allow a collective defined contribution scheme or “CDC”

- Rollout with scheme for 140,000 employees of the Royal Mail backed by the Communication Workers Union
- Changes needed to disclosure, tax, other legal requirements
- No “capital buffer” in RM plan
- Participation after 12 months of continuous service
- Contributions designed to support pension of 1/80th of pay/year of service, NRA of 67
- To be invested in two portfolios: 100% in return-seeking assets until age 67 and then shifted to low-risk portfolio over the following 23 years, with 100% in low-risk at age 90
- Pension Adjustment Mechanism: annual value of assets, excluding expense reserve, compared to the liability for all accumulated pensions if there were no further increases
  - This is known as the “Parity” funding level. If “above Parity”, the benefits may increase. If “below Parity”, pension cuts are required to bring the plan back to Parity
  - RM proposal would limit reduction of benefits to no more than 5% for up to 3 years more; larger reductions would be permitted if necessary to bring the plan back into Parity within 3 years
- Annual charge cap 75BPs
UK proposals to tighten DB plan regulation

- March 2019: The Pension Regulator ("TPR") “Annual funding statement 2019 for defined benefit pension schemes”
  - If the employer is weak and unable to support the scheme, TPR expects the payment of shareholder distributions to cease
  - Proposes new offences, including:
    - Wilful or reckless behaviour in relation to a pension scheme
      - Criminal offence: up to 7 years’ imprisonment and/or unlimited fines
      - And/or new civil penalty: up to a maximum of £1 million
    - Sponsoring employers and others associated or connected are liable
• Article 3(1) of the GDPR provides that the regulation applies to:
  • The processing of personal data in the context of the activities of
  • An establishment of a controller or a processor in the EU, regardless of whether the processing takes place in the Union or not
• Draft guidelines published in November 2018
• Application of GDPR Where an Establishment Exists in the EU: “The processor not subject to the GDPR will therefore become indirectly subject to some obligations imposed by controllers subject to the GDPR by virtue of contractual arrangements.”
  • Finnish research institute example
• Application of GDPR Where Neither the Controller nor Processor has an Establishment in the EU: Applies to “The offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the EU; or The monitoring of their behaviour as far as their behaviour takes place within the EU.”
  • Example: U.S. citizen is travelling through Europe during holidays
  • Example: Monaco company (not EU) processes personal data of its employees (French and Italian) for the purposes of salary payment
Other international issues to watch

- Cross-Border Plans
  - PEPP
  - Efforts in the EU to push cross-border
- International implications of ESG
  - Driven by IORP II
  - UK: trustees must update statement of investment principles (SIP) by October 2019 with a policy on how they take account of financially material ESG considerations, including specifically climate change, “over the appropriate time horizon of the investments”
    - Dropped requirement for taking into account members’ views
    - Increasing focus on value for money
- Brexit?