Regulation of state and supplementary pension schemes in Indonesia: overview

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A Q&A guide to pensions law in Indonesia.

The Q&A gives a high level overview of the key practical issues including: state pensions; supplementary pensions; funding and solvency requirements; tax on pensions; business transfers; participation in pension schemes; and employer insolvency and overall scheme solvency.

The Q&A is part of the Global Guide to Pensions law. For a full list of jurisdictional Q&As visit *www.practicallaw.com/pensions-mjg*.

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Pensions

State pensions

1. Do employers and/or employees make pension contributions to the government in your jurisdiction?

Contributions paid to the government

Employers and employees are required to participate in the Manpower Social Security *Jamsostek* programme (a government-operated pension fund). The contributions that must be made by employers and employees to the fund are as follows:

- 3.7% of the employee's monthly salary paid by the employer.
- 2% of the employee's monthly salary paid by the employee.

Taxation of contributions

Jamsostek contributions are tax deductible.

Monthly amount of the government pension

The monthly amount of the pension contributions to the government will depend on the salary of the employee. The overall amount paid is the total *Jamsostek* contributions made plus interest.

Employees are entitled to the pension benefit when they either:

- Reach 55 years of age.
- Are permanently disabled, as confirmed by a physician.

An employee who resigns from a company before reaching 55 years of age and who has made contributions under the *Jamsostek* program for at least five years can claim the payment of their pension. The payment can be made in a lump sum or in several instalment payments, as requested by the employee.

Supplementary pensions

2. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? If they do, are they:

- **Occupational (that is, linked to an employment or professional relationship between the plan member and the entity that establishes the plan)?**
- **Personal (that is, not linked to an employment relationship, established and administered directly by a pension fund or a financial institution acting as pension provider, where individuals independently purchase and select material aspects of the arrangements, though the employer may make contributions)?**

There is no requirement for a private sector employer to provide a pension plan for its employees. Law No. 11 of 1992 regarding Pension Funds (Pension Fund Law) provides two types of pension fund:

- Employer's Pension Fund (*Dana Pensiun Pemberi Kerja*) *(*DPKK). DPKK can be categorised as an occupational pension fund as it is based on the employment relationship between the employer (as the founder of the pension fund) and the employees (as members of the pension fund). A DPKK can offer two pension programmes:
  - a defined benefit programme: a pension fund programme where the benefit is fixed and stipulated under the pension fund rule or other pension fund programme that is not categorised as a defined contribution programme.
  - a defined contribution programme: a pension programme where the contribution is fixed and stipulated under the pension fund rule and the whole contribution and investment result is recorded in the accounts of each member as a pension benefit.
- Financial Institution Pension Fund (*Dana Pensiun Lembaga Keuangan*) (DPLK). DPLK can be categorised as a personal pension fund that is not linked to the employment relationship, as a DPLK is established by a bank or a life insurance company. A DPLK can only offer a defined contribution programme (*see above*).

Approval from the Financial Services Authority (*Otoritas Jasa Keuangan) (*OJK) is required to establish and maintain both types of pension fund.

3. Where supplementary schemes are provided, do these schemes provide pensions, the value of which:

- **Is linked to the employee's salary (defined benefit)?**
- **Is linked to employer and/or employee contributions and investment return on those contributions (defined contribution)?**

Linked to the employee's salary

The pension is linked to the employee's salary but the value of the employee's contributions will depend on the terms of the pension fund rules.

The membership requirements for a pension fund (either voluntary or mandatory) will be based on the pension fund rules as determined by the employer as the founder of the pension fund.

Linked to employer and/or employee contributions

Contributions under the DPPK programme (*see Question 3*) are based on either:

- Employer and employee contributions.
- Employer contributions only.

The pension benefit for defined contributions (*see Question 3*) is calculated based on the contributions made by the employer and the employee and the investment return on the contributions.

4. For supplementary pensions:

- **Is there a minimum period of service before workers are entitled to receive vested rights?**
- **Are there any legal requirements for schemes or providers to index pensions in payment and/or revalue pension rights in deferment?**

Minimum period of service

An employee who has been a member of a pension fund for more than three years is entitled to receive vested rights.

Legal requirement to index

The formula for pension payments and the revaluation of deferred pension rights is provided in the pension fund rules.

Funding and solvency requirements

5. In relation to supplementary schemes, are these generally funded or unfunded? If funded, are there any solvency requirements on the sponsoring employer or provider?

Funded or unfunded

The employer must pay the normal and additional contributions (if any) in order to maintain the solvency level of the pension fund.

Solvency requirements for funded schemes

Under Minister of Finance Regulation No. 510/KMK.06/2002 regarding Funding and Solvability of DPKK, as amended (PMK No. 510/KMK.06/2002), the founder of the pension fund is responsible for maintaining the assets of the pension fund at no less than the Actuary Obligation (Sufficient Fund). The regulation defines the Actuary Obligation as the calculation of a pension fund's obligation with the assumption that the pension fund will remain active until its obligations to the members and entitled persons are fulfilled.

There are three funding levels for pension funds:

- **First level.** Sufficient Fund level (*see above*).

- **Second level.** Where the assets are less than the Actuary Obligation but not less than the Solvability Obligation. The Solvability Obligation is defined as the calculation of a pension fund's obligations with the assumption that the pension fund will be liquidated at the level as calculated by the actuary.
- **Third level.** Where the assets are less than the Solvability Obligation (*see above*).

In addition, Minister of Finance Regulation No. 199/PMK.010/2008 regarding Pension Funds Investment (PMK 199/PMK.010/2008), as amended, provides the investment instruments that can be placed by pension funds. These include state commercial paper, savings at banks, time deposits at banks, on call deposits at banks and Bank of Indonesia Certificates (SBI). PMK 199/PMK.010/2008 also provides both the procedures and requirements for placing each of the permitted investment instruments.

The accounting procedures for pension funds are provided in Bapepam-LK Regulation No. PER-05/BL/2012 regarding Preparation of Financial Statement and the Basis of Investment Calculation for Pension Funds.

6. In relation to access for members to the funds in their supplementary pension scheme:

- **To what extent can members transfer their funds to another pension scheme?**
- **How do members normally take the benefit of their funds (for example, lump sums, income withdrawals (drawdown), life annuity arrangements)?**
- **What are the legal restrictions upon access to the funds (for example, age)?**
- **What are the common arrangements for early retirement and ill-health retirement?**
- **Are dependants of deceased members entitled to receive benefits payable on the member's death? What form do these commonly take?**

Member's transfer of funds

The transfer of funds to another pension fund occurs when the member of a pension fund transfers his membership to another pension fund. The transfer can occur as a result of the employer's policy and must fulfil the following requirements:

- Both pension funds must have the same programme.
- Before the transfer, the employer must be responsible for the obligations relating to the transferred employee's duration of service, as provided in the pension fund rules.

If the member stopped working more than ten years before the normal retirement age of 55, the member can choose for the pension benefits to be transferred to another pension fund.

Taking pension benefits

Pension benefits are usually paid on a monthly basis.

Legal restrictions

Legal restrictions for access to pension benefits will be based on the respective pension fund rules.

Early and ill-health retirement

Arrangements for early and ill-health retirement are typically based on a formula provided in the pension fund rules.

Dependants' benefits

Spouses and children, under 21 years of age, of deceased pension fund members are entitled to receive the benefits payable and typically will be paid monthly.

7. Is there a regulatory body that oversees the operation of supplementary pension schemes? Do any other governance regimes apply to supplementary pension schemes?

Regulatory body

The Financial Services Authority (*Otoritas Jasa Keuangan*) (OJK) is the regulatory body that oversees the operation of pension schemes in Indonesia. The taxation of pensions is regulated and overseen by the Directorate General of Tax, which is part of the Ministry of Finance.

Regulatory framework

The OJK has the authority to oversee and monitor pension funds. The responsibility includes managing pension funds and implementing pension programmes, from a financial and technical viewpoint.

Supervision activities conducted by the OJK include:

- Licensing activity.
- Reporting obligations.
- Audits by the OJK.
- Imposition of sanctions.

Other key governance requirements

Pension scheme requirements are usually based on the pension fund rules provided by the founder of the pension fund. The rules must be examined and approved by the OJK before they can take effect.

Penalties for non-compliance

The sanctions provided under Law No. 11 of 1992 regarding Pension Funds and its implementing regulations range from penal sanctions to fines and administrative sanctions.

Tax on pensions

8. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)?

Tax relief on employer contributions

Employer contributions to supplementary pension schemes are not taxed.

Tax relief on employee contributions

Employee contributions to supplementary pension schemes are not taxed.

9. Are there any approval or registration requirements with the local tax authority where a supplementary scheme is established?

A pension fund must be registered at the local tax office by obtaining a Taxpayer Identification Number (*Nomor Pokok Wajib Pajak*) (NPWP).

10. What is the tax treatment of investments made by the scheme?

Minister of Finance Regulation No. 234/PMK.03/2009 regarding Certain Investment Sectors Generating Income for Pension Funds Excluded as Income Taxable Objects provides non-income taxable investments by pension funds as follows:

- Interest, discount and remuneration of deposits, deposit certificates and savings in Indonesian banks.
- Interest, discount and remuneration from bonds, sharia bonds (*sukuk*), sharia commercial state bonds and treasury notes that are traded/reported to the Indonesia Stock Exchange.
- Dividends from Indonesian listed companies.

11. What is the tax treatment of pension and lump sum payments made to members?

Tax treatment for lump sum pension benefits to members

Under Government Regulation No. 68 of 2009 regarding Article 21 Income Tax Rate for Income in the form of Severance, Pension Benefits, Annuities and Pension Plans paid in Lump Sum (GR68), lump sum payments of pension benefits will be free of income tax for the gross benefit of less than IDR50 million. A 5% income tax rate will be imposed if the pension benefit is more than this amount.

Tax treatment for pension benefits paid monthly

Pension benefits that are paid monthly will be subject to a progressive income tax rate based on Law No. 7 of 1983 regarding Income Tax (Income Tax Law), as amended.

12. Are there any other applicable tax charges on schemes?

There are no applicable tax charges on schemes.

Business transfers

13. Is there any legal protection of employees' pension rights on a business transfer?

Transfer of accrued pension rights

The transfer of business (either by way of a merger or spin-off) can only be completed if there is certainty that an employer will be responsible for any obligations related to the time of service of the employees as provided in the pension fund rules.

Other protection for pension rights

Arrangements for the pension benefits accrued by employees whilst in employment with the transferring employer will be provided in the pension fund rules.

Participation in pension schemes

14. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- **Employees who are working abroad?**
- **Employees of a foreign subsidiary company?**

Employees working abroad

Employees working abroad can participate in a pension scheme established by a parent company in Indonesia.

Employees of a foreign subsidiary company

Employees of a foreign subsidiary company can participate in a pension scheme established by a parent company in Indonesia.

Employer insolvency and overall scheme solvency

15. Is there any protection provided for pension scheme benefits where the sponsoring employer becomes insolvent? If so, who provides the protection, and how does this operate? If the scheme itself is underfunded, are there any funding obligations on connected or associated legal entities?

If the employer is the founder of the pension fund and is insolvent and in the process of liquidation proceedings, the pension fund will also be liquidated. The liquidation will be based on a decision by the Financial Services Authority (*Otoritas Jasa Keuangan*) (OJK), which will also appoint a liquidator. The liquidator will then determine the pension benefit entitlements of members or their eligible heirs on approval from the OJK.

Until the liquidation process is completed, the employer will remain responsible for the payable contributions until the pension fund is dissolved.

Online resources

Financial Services Authority (Otoritas Jasa Keuangan) (OJK)

W www.ojk.go.id

Description. The official website of the OJK, the supervisory body for pension funds in Indonesia.

Directorate General of Tax (Direktorat Jenderal Pajak)

W www.pajak.go.id

Description. The official website of the Directorate General of Tax, the tax regulator in Indonesia. Regulation relating to the taxation of pension funds can be found on the website.

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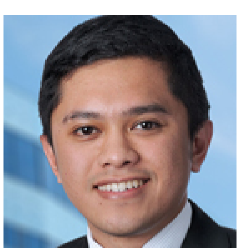

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