Taiwan's pension system makes giant strides

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On 1 July 2005, a new retirement pension law is scheduled to take effect in Taiwan that will dramatically change the existing pension system, increasing the rights of employees and obligations of employers.

Under the current scheme, set forth at Articles 53 through 58 of the Labour Standards Law (LSL), no employee is eligible to receive a retirement pension until the employee has worked 25 years for the same employer or is over age 55 and worked 15 years for the same employer. If eligible, the employee is entitled to receive upon retirement a lump-sum payment based on his or her monthly salary, capped at 45 month's wages. Employers are not required to make any payments or fulfill any obligations until an eligible employee retires. Because the plan takes so many years to vest and is not portable from one employer to the next, only about 20,000 workers drew retirement pensions between 2001 and 2003, according to the Council of Labour Affairs.

The new Labour Pension Act (LPA), which becomes effective 1 July (but was enacted a year earlier), significantly increases the number of eligible employees by making retirement accounts portable and eliminating vesting requirements. Under the LPA, every company conducting business in Taiwan will be required to make monthly contributions on behalf of each eligible employee, in an amount equal to at least six percent of the employee's monthly salary, into a portable, individual account administered by the Bureau of Labour Insurance (BLI). The funds will be invested by the government, which will guarantee a rate of return at least equal to that paid by local banks on two-year certificates of deposit, and may be withdrawn by the account's owner upon reaching the age of 60.

According to Enforcement Rules issued this year by the Council of Labour Affairs (CLA), contract, hourly and temporary workers, who were not covered under the LSL, will be covered under the new scheme. On the other hand, while the old system provided coverage for foreign employees, the new system excludes non-citizens and it is unclear whether non-citizens will retain their rights under the LSL, although few foreigners worked enough years in Taiwan to earn a pension under the LSL. Also excluded are certain professional service providers such as attorneys, accountants and physicians, although non-professionals employed by them, such as secretaries and the like, may be entitled to mandatory coverage under the new law, and exempted professionals may be included in the plan by voluntary agreement.

In addition to the employer's mandatory contributions, each eligible employee may contribute up to six percent of his or her pre-tax salary per month into the account. According to the Enforcement Rules, when calculating monthly contributions, all fixed payments to the employee, including overtime, bonuses and food or travel allowances shall be included as wages. However, monthly wages are capped at NT$150,000 (US$4,757) per employee when

calculating the employer's mandatory contributions (that is, an employer must contribute six percent of each eligible employee's wages, not to exceed NT$9,000 per month). Both employer and employee contributions are expected to be tax-deductible, but some uncertainty remains concerning such tax issues.

The law provides for a guaranteed rate of return by the government and in the event of a deficiency, the Treasury is required to make up the shortfall. Upon reaching age 60, an eligible employee who retires may receive the contents of his or her account in one payment; if the employee contributed to the fund for at least 15 years the contents may be received in monthly installments. If an employee dies before claiming the funds, the employee's heirs are entitled to receive the funds. Unlike existing law, the accounts are portable, so employees may switch employers without losing their accrued funds.

Employers with over 200 employees may elect to purchase annuity insurance for the employees instead of making pension contributions (with the consent of a labour union or half of the employees), but the premiums for such insurance must be at least six percent of each employee's monthly salary. The LPA requires the authorities to issue guidelines explaining the annuity option in greater detail, but those have not yet been published.

Not surprisingly, the transition from the old system to the new one will be complex. Employees who were subject to the old pension system prior to the effective date of the new system may choose to remain subject to the old law. If they later switch employers they shall then be covered by the new law instead (one may not be covered by both). Prior to the effective date of the new law, employers are required to send written notices to all employees, inquiring which plan they wish to be covered by and employees who wish to switch plans must do so within five years. Employees who do not respond shall remain covered under the old law. Although some long-term employees may choose to remain covered by the old system, it is expected that most employees will request coverage under the new scheme.

Every employee who continues working for the same employer but switches from the old system to the new one shall maintain credit for years served under the old law and the employer may buy out that credit by making a cash payment to the employee's new account, although most employers are not expected to choose that option.

In addition to payment obligations, the new system creates added reporting requirements for employers. Within seven days after commencement, termination or death of each employee, the employer must notify the BLI, which shall provide the employer with a statement showing all amounts due under the LPA. The employer must make such payments by the 25th day of the following month. The authorities have the right to inspect each employer's books to ensure compliance, and failure to comply with the above requirements and others may result in substantial penalties.

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While the new system will increase most employers' obligations for retirement pensions, employers may see some savings regarding severance pay for terminated employees. Taiwan does not recognise 'at-will' employment agreements; employees may be terminated only for certain reasons specified in the LSL and in most cases are entitled to severance pay equal to one month's wages for every year of employment (and proportional amounts for shorter periods). Upon the effective date, any employee eligible for pension payments under the new law, but severance pay under the old law, shall receive a reduced severance pay of just one half month pay per year of employment, capped at six month's wages. Those who opted to remain under the LSL for purposes of pension payments shall remain eligible for severance payments as previously calculated under the LSL.

While the details have not all been worked out regarding the new system, the government has given no indication that it will delay implementation beyond the scheduled effective date of 1 July 2005. **AC**

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