

ALLEN & OVERY



Presenting our Pensions
practice in Belgium

*Employee Benefits Law Firm
of the Year in Belgium*

Corporate INTL Legal Awards 2013

HR top supplier of choice

HR Excellence Awards 2014

“There are strict regulations in the countries we work in, and we have used the firm in several jurisdictions. The firm understands the EU framework and the local regulations.”

Chambers Europe 2014 – Employment

Our Belgian Pensions team

Allen & Overy's Belgian cross-practice Pensions team, led by Pensions partner Christian Bayart, has extensive experience of advising on pensions, employment, insurance, banking, tax, litigation, corporate, insolvency and data protection law. Our cross-practice approach ensures that clients receive truly integrated advice.

The advice we give ranges from local law advice on **pension fund governance** and assistance in exploring **novel and complex pension structures**, to the provision of integrated advice on (pension plan) change management, **cross-border pensions issues** and transactional assistance on pension issues in **M&A deals**.

Our Pension team also undertakes **litigation** in connection with pensions, either by negotiating out of court settlement arrangements or by representing clients in court proceedings.

We aim to consistently provide our clients' businesses with outstanding service and superior value. We strive to deliver technically excellent advice, understand the commercial aspects of our clients' businesses, anticipate our clients' requirements, and provide pragmatic solutions.

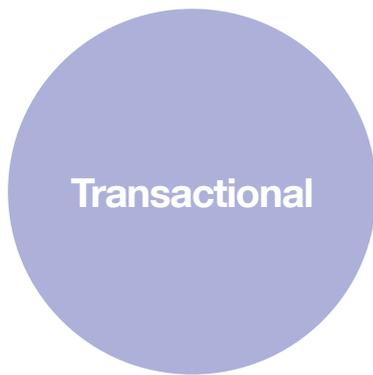


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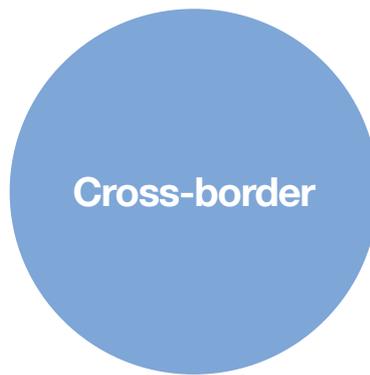
“Christian Bayart is described by sources as ‘an authority in Belgium,’ who is ‘able to explain complex subjects in very easy terms.’”

Chambers Europe 2014 – Employment – Belgium

Assisting you in achieving your key strategic goals



Transactional



Cross-border



Litigation

Our experience includes advising:

TRANSACTIONAL

- a major food company on possible occupational pension scenarios and on the **design of the new pension plans** to be applied in the context of an (aborted) M&A transaction. A set of entirely new plans were designed with complex offset arrangements resulting from the combined application of the new plans, the previous plans and the sector pension plan. This work involved **contact with the industry on the sector pension plan**, and with tax authorities, review of communications to employees and to the works council, drafting of plan rules, review of agreements between employer and insurer, and coordination and discussions with the insurer and the client's employee benefits consultant and actuary.
- multiple clients in the context of M&A transactions, on **mergers and demergers** of pension plans and/or pension funds, on **pension plan harmonisations**, and on collective pension plan **asset transfers** between pension funds and/or group insurers.

CROSS-BORDER

- a Belgian employer on the possibility of contributing to a **non-EEA pension fund** and an analysis of the best way to deal with pension entitlements for **internationally mobile employees**.
- an insurer on the feasibility of setting up a **pan-European employee benefit plan** providing death and disability benefits to senior management in multinationals.
- a global chemical company on a review of its pension plans in Belgium, Germany and the United Kingdom in order to **reduce and manage pension contribution costs**, led by our Belgian Pensions team.
- an insurer on issues of applicable law regarding **insured health and assistance arrangements for individuals** who are internationally mobile. This work also involved amending the contractual documents.

LITIGATION

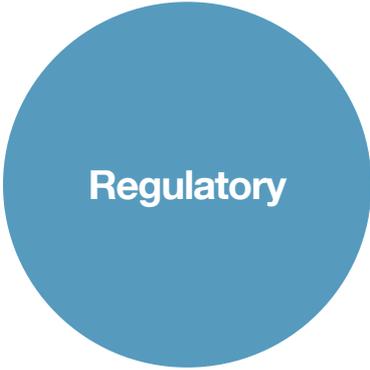
- a financial institution in two separate proceedings before the labour court concerning a claim initiated by former employees regarding **(state) pension funding during expat assignments**.
- a global information technology research and advisory company in a dispute with the insurer of its group cafeteria plan relating to the **insurer's refusal to provide disability cover** to a management employee who fell sick during the period when medical formalities were being completed. This work also involved advising the company on the insurer's compliance with applicable tax and equal treatment regulations, contractual and pre-contractual obligations, and market practice rules and included assisting the company in its negotiations with the insurer.
- a client in the context of legal proceedings in Belgium and in Spain initiated by employers offering and employees benefitting from pension arrangements insured with an **insurer who was forced into liquidation** by the regulator.
- a leading professional services and audit company in proceedings before the labour court concerning a claim initiated by two former employees regarding an **individual pension promise and the surrender of the corresponding insurance policy**.



Combined and integrated advice

COMBINED AND INTEGRATED ADVICE

- a large multinational company on different scenarios by which to **pool pension assets internationally**. This included an analysis of how to establish a pooling arrangement through a captive insurance company (either established in the EEA or offshore) and the various options available to it (eg the captive insurer becoming the pension institution and related transfer of pension assets, the captive insurer insuring the pension fund's obligations, etc).
- several clients on the consequences of the **insolvency of an insurer** and, as a result, the **ultimate liability of the employer**.
- a client on **multi-employer group insurance plans** (in particular combining funds from two separate plans) and on the exceptional structure of a **multi-insurer occupational pension plan**. This advice covered pensions, insurance and tax implications.
- several clients on the **liability of pension fund directors**.



Regulatory

REGULATORY

- a major consumer goods producer on a full **review and redesign** of its various pension schemes in Belgium. The work was pioneering on the Belgian market since it involved a fundamental redesign of pension plans in light of tightening pension regulations and new mandatory equal treatment and non-discrimination regulations.
- several clients on the design and set-up of **cafeteria bonus plan and bonus pension plan arrangements** (including obtaining clearance from the relevant authorities).
- a utilities company on **equal treatment issues** relating to industry-wide occupational pension plans.
- an employee benefit consultant on the reorganisation of its pension plan in Belgium (including carrying out an equal treatment due diligence review of the pension plan, **conversion of the DB plan into a DC plan**, and advising on dynamic management obligations).
- a utilities company on former, partially unfunded, **public sector pension funds** and on the design and set-up of an occupational pension plan for employees formerly employed as **statutory employees** (employment status under public law).
- a financial institution on the design and implementation of **novel compensation policies** aimed at meeting cost containment objectives while providing sustainable performance-driven compensation tools and choice-based options ("cafeteria plan"), including an **innovative variable pay plan related to pension plan funding**. The work included negotiations with tax authorities, social security authorities and the pension regulator.

Project management

Effective project management is a particular strength of Allen & Overy and a key factor in delivering an efficient service. With our extensive experience in transaction management, we frequently coordinate all the necessary transaction documentation, liaise with local counsel and other advisers, organise meeting schedules and timetabling and provide back-office support as well as traditional legal advice.

Below are two good examples of how our Pensions team is managing complex pensions matters:

Since 2008 our Belgian Pensions team, led by Christian Bayart, has been coordinating the roll-out of individual country studies and the implementation of employee benefit products (retirement, death, disability and health) for a major worldwide insurer.

The insurer asked us to test the **legal feasibility of introducing novel cross-border employee benefit insurance products** (including two IORP based products) for **multinational employers** and products focusing on the **expatriate and migrating employees** market.

The project includes advice on the feasibility of offering a particular product in a specific jurisdiction as well as assistance in the implementation phase (including the amendment of standard contractual documents).

To date, this project has been rolled out in 18 jurisdictions worldwide (in Europe, the Middle East, Asia and Central and Latin America).

Throughout 2011 and 2012 the Belgian Pensions team has been leading a pension reorganisation project for an international bank. In the context of an M&A transaction, the bank's Belgian pension plan needed to be demerged. The fact that one of the plans was strongly underfunded and the Belgian pensions regulator (FSMA) had initiated a thorough review of the pension fund added complexity to the project.

The **demerger operation** required:

- a split of assets and liabilities within the current Belgian pension fund between the seller retained company and the target company;
- the **establishment of a new pension fund**; and
- the transfer of assets and liabilities related to the seller retained company to the new pension fund.

The Belgian Pensions team coordinated this project and worked closely with the pension fund's actuary and board members. The Belgian Pensions team also assisted the bank in its discussions and negotiations with the works council, the pension fund board members and the Belgian pensions regulator.

Your strategic partner on Pensions issues

Working with regulatory bodies

Our Belgian Pensions team is in regular contact with the Belgian pensions regulator (the FSMA, formerly known as the CBFA), the Belgian social security authorities and the Belgian tax authorities. Many of the solutions we bring to our clients have been proactively checked with one or more of these authorities.

International integration



“Belongs to our first choices as far as complex and international matters are concerned.”

Chambers Europe 2014 - Employment Europe-wide

Allen & Overy's Global Pensions Practice brings together partners and associates with pensions expertise from our offices around the world.

Pension provision has an increasingly cross-border dimension. Recent years have seen a steady flow of national reforms to reduce the burden on state pension schemes and boost employer-sponsored pension arrangements. Multinationals are considering strategies to design and manage their pension arrangements globally. This is due to a variety of factors: globalisation, governance, and cost management pressures, as well as legal developments and a move towards international accounting standards.

The Global Pensions Practice is at the forefront of this developing market, and our experience includes advising on cross-border pensions offerings, global pensions harmonisation, merger, demerger, and outsourcing projects.

Our expertise has been recognised with the team winning the Global Pensions Magazine's "Law Firm of the Year" award in 2008, 2009 and 2010, and European Pensions Magazine's "Law Firm of the Year" in 2010.

At a local level, the members of the Global Pensions Practice advise clients (including companies, pension plan fiduciaries and national governments) on pensions issues relating to plan design, compliance, cost management, funding and investment, and tax, as well as the consequences of restructurings, terminations and corporate transactions.

Your key contacts in Belgium



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