



WOJEWÓDKA I WSPÓLNICY
KANCELARIA PRAWA PRACY **10** | LAT NA RYNKU
2004-2014

REMARKS

ON PARTICIPATION OF FOREIGNERS IN POLISH EMPLOYEE PENSION SCHEME ESTABLISHED IN ACCORDANCE WITH PROVISIONS OF EMPLOYEE PENSION SCHEME ACT OF 20TH APRIL 2004

3RD International Conference

Social security systems and demographical challenges

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Pension system in Poland



MANDATORY PILLARS

I PILLAR

**SOCIAL
SECURITY
FUND**

II PILLAR

**OPEN
PENSION
FUND**

VOLUNTARY PILLARS

III PILLAR

**EMPLOYEE
PENSIONSCHEMES
(EPS)**

**INDIVIDUAL
PENSION
ACCOUNTS
(IKE)**

**INDIVIDUAL
PENSION PROVIDENCE
ACCOUNT
(IKZE)**

AGENDA



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- 1. ACCESSION OF FOREIGNERS TO EPS**
- 2. CONDITIONS OF PARTICIPATION OF FOREIGNERS IN EPS**
- 3. WITHDRAWAL OF FUNDS FROM EPS BY FOREIGNERS**



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ACCESSION OF FOREIGNERS TO EPS



Art. 5 ust. 1 of the Employee Pension Scheme Act

***Prawo do uczestnictwa** w programie przysługuje pracownikowi, który jest zatrudniony u danego pracodawcy, nie krócej niż 3 miesiące, chyba że umowa zakładowa stanowi inaczej.*

***Right to participate** – an employee, who is employed by the employer for not less than three months, has a right to participate in the program, unless the company pension agreement provides otherwise.*



Art. 2 pkt 2) of the Employee Pension Scheme Act

Pracownik – osoba zatrudniona, w pełnym lub niepełnym wymiarze czasu pracy, na podstawie umowy o pracę, powołania, wyboru, mianowania, spółdzielczej umowy o pracę, osoba zatrudniona na podstawie umowy zawartej w wyniku powołania lub wyboru do organu reprezentującego osobę prawną oraz członek rolniczej spółdzielni produkcyjnej lub spółdzielni kółek rolniczych;

Employee - a person employed full-time or part-time work, on the basis of a contract of employment, appointment, election, appointment, co-operative labor contract, a person employed under a contract as a result of appointment or election to a body representing a legal person and a member of an agricultural cooperative production or cooperative agricultural circles;



Art. 18 ust. 1 of the Employee Pension Scheme Act

***Przystąpienie** pracownika do programu na warunkach określonych w umowie zakładowej następuje na podstawie pisemnej deklaracji o przystąpieniu do programu, zwanej dalej „deklaracją”, po upływie jednego miesiąca od jej złożenia, chyba że pracodawca potwierdzi na piśmie przystąpienie do programu w terminie wcześniejszym.*

***Accession** of the employee to the EPS takes place under the conditions set forth in the company pension agreement on the basis of a written declaration to join the program, hereinafter referred to as "declaration", after one month of its submission, unless the employer confirms in writing to join the program at an earlier date.*

Legal conditions of accession to EPS



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Any person intending to join the EPS must meet the following conditions:

- To be an employee of an employer that runs the EPS
- Meet the criteria of length of service specified in the company pension agreement (umowa zakładowa)
- Deliver to the employer declaration of accession to the EPP.



Art. 5 ust. 6 of the Employee Pension Scheme Act

Umowa zakładowa nie może przewidywać dla uczestnictwa pracowników w programie żadnych innych warunków poza określonymi ustawą.

Company pension agreement may not provide for employee participation in the EPS any other conditions than those specified by the Act on EPS.

Legal conditions of accession to EPS of foreigners



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- Conditions of joining the EPS are uniform for all employees.
- There are no provisions in the Employee Pension Scheme Act that would permit the employer to differentiate in any way joining the citizens of other countries (ie. citizens of European Union countries or citizens of non-EU countries) to the EPS program in Poland.
- **A foreigner that fulfills the conditions for accession to the EPS is in no way limited with the possibility of accession to EPS in Poland.**



CONDITIONS OF PARTICIPATION OF FOREIGNERS IN EPS

Basic premium paid to EPS



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Art. 24 ust. 2 of the Employee Pension Scheme Act

Kwota wpłacanej składki podstawowej nie może przekroczyć 7% wynagrodzenia uczestnika.

The amount of the paid basic premium may not exceed 7% of salary of the participating employee.

Art. 2 pkt 15) of the Employee Pension Scheme Act

wynagrodzenie – podstawę wymiaru składek na ubezpieczenie emerytalne i rentowe uczestnika w rozumieniu ustawy z dnia 13 października 1998 r. o systemie ubezpieczeń społecznych (Dz. U. z 2013 r. poz. 1442, z późn. zm.¹⁰⁾), bez stosowania ograniczenia, o którym mowa w art. 19 ust. 1 tej ustawy;

salary - the contribution basis to the pension scheme participant within the meaning of the Act of 13 October 1998. social insurance system (Journal. Laws of 2013. pos. 1442, as amended. zm.¹⁰⁾), without the use of restriction referred to in art. Paragraph 19. 1 of the Act;

Condition for foreigner to be a subject of social security in Poland



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- The employer of the employee participating in the EPS is obliged to pay the basic premium, the amount of which is set up in company pension agreement.
- However the condition for payment by the employer of the basic contribution is that a participating employee receives a salary from this employer within the meaning of the Act on PPE.
- And as the per definition in Act of EPS the salary is only the amount that are basis of contributions for compulsory social security – **thus the foreigner to be the actual beneficiary of the EPS must be subject to social insurance in Poland.**

Lack of possibility of differentiate the conditions of participation



- There are no such provisions in the Employee Pension Scheme Act that would permit to differentiate in any way conditions of participation of any group of participants.
- It means that this is as well impossible to differentiate the conditions of the participation of the citizens of other countries (ie. Citizens of European Union countries or citizens of non-EU countries) in respect of conditions applicable to local citizens in the EPS program in Poland.
- As a result, the participation of a foreigner in EPS takes place on the same conditions as the Polish citizens, except the case on payment of basic premium what depends od social security status of the employee.



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WITHDRAWAL OF FUNDS FROM EPS BY FOREIGNERS

Possible forms of withdrawals of funds from EPS



Art. 42-45 of the Employee Pension Scheme Act

Payout

Lum-sum payout of accumulated amounts in EPS is possible once participant reaches age of 60

Transfer payout

Transfer payment from EPS possible after termination of employment with employer running EPS to another EPS or to Individual Pension Account of the participant

Payback

Payback takes place once the EPS is liquidated once there is no pay out or no transfer payout

Possible forms of withdrawals of funds from EPS



- Conditions of withdrawing the funds from EPS all equal to all participants.
- There are no provisions in Employee Pension Scheme Act that would permit the employer to differentiate in any way the conditions of withdrawing the funds from EPS by the citizens of other countries (ie. citizens of European Union countries or citizens of non-EU countries).
- **A foreigner that participates in EPS possesses right to withdraw the funds from EPS in Poland on the same rules that applies to local citizens,** however he/she in practice can be limited due to particular conditions attributable to some solutions eg. formal requirements to set up Individual Pension Account (IKE).

Summary



Remarks on the participation of foreigners in EPS in Poland:

- **A foreigner** that fulfills all the three standard conditions for accession to the EPS (employment, length of service and written declaration) **is in no way limited with the possibility of accession** to EPS in Poland
- **the participation** of a foreigner in EPS **takes place on the same conditions as the Polish citizens**, except the case on payment of basic premium what depends on social security status of the employee
- A foreigner that participates in EPS possesses **right to withdraw the funds from EPS in Poland on the same rules that applies to local citizens**, however he/she in practice can be limited due to particular conditions attributable to some solutions eg. formal requirements to set up Individual Pension Account (IKE)

General conclusion: EPS in Poland are open with no barriers to foreigners.



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Thank you for your attention

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