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## COMPANY-SPONSORED SUPPLEMENTAL WELFARE INSURANCE SCHEMES: A NEW SOURCE OF RISKS FOR COMPANIES

April 01, 2009

1. Employer's contributions to company-sponsored supplemental welfare insurance schemes can be exempted from social security charges in certain conditions only:
2. Obligation to subscribe to the welfare insurance fund designated in the applicable collective bargaining agreement:

While companies have always had interest to be extremely vigilant with respect to company-sponsored supplemental welfare insurance schemes in order to be able to negotiate the corresponding contracts in the best conditions or regularly amend the same over the years to respond to changing needs, they must now ensure that all such contracts fully comply with legal requirements.

If companies do not comply with any of such requirements, they might receive significant repayment claims from URSSAF (social security contribution collection agency).

Companies have been granted an additional period of time up to December 31, 2008 to perform a compliance check and, as the case may be, amend their company-sponsored supplemental welfare insurance schemes.

We will recall below the main requirements to be eligible for exemption from social charges on the funding contributions paid by companies to such supplemental welfare insurance schemes (1) and provide a status report on the recent case-law evolution with respect to welfare insurance funds designated in applicable collective bargaining agreements (2).

The Fillon Law of August 21, 2003 set forth new provisions on the conditions in which employer's contributions to company-sponsored supplemental welfare insurance schemes may be exempted from social security charges.

These conditions must be mandatorily fulfilled by December 31, 2008 at the latest, failing which companies may be subject to a reassessment by URSSAF – and therefore receive repayment claims – with respect to all employer's contributions paid over the past three years to fund company-sponsored supplemental welfare insurance schemes. Consequently, this constitutes a potentially high-risk area for companies.

Company-sponsored supplemental welfare insurance contracts – which include

contracts covering incapacity for work, invalidity and death as well as contracts covering medical expenses – must:

- Be entered into on a collective basis, i.e. they must apply to an objectively defined group of employees (such as employees with a managerial position for example);
- Be mandatory for all the employees belonging to the defined category; no exclusion is allowed. As such, employees belonging to a defined category who have entered into an individual welfare insurance contract or who are insured under their spouse's welfare insurance contract must all the same subscribe to the supplemental welfare insurance scheme implemented within the company. If this is not the case, the "collective basis" requirement mentioned above will not be met and the URSSAF may decide not to exempt employer's contributions from social security charges. However, company's-sponsored supplemental welfare insurance contracts may provide for limitatively enumerated exceptions;
- Comply with the so-called "Responsible Contract" charter imposing on welfare insurance funds the obligation to comply with certain coverage terms and conditions.

If these conditions are not cumulatively met, the employer's contributions to such supplemental welfare insurance schemes shall not be exempted from social security charges.

Companies must therefore imperatively consult with their insurer before December 31, 2008 to make sure that the supplemental welfare insurance schemes they have implemented fully comply with the new standards recalled above.

Companies must also perform an internal check to see that applicable rules – in particular the "collective basis" requirement – are duly observed.

In judgment n° 05-15850 of October 10, 2007, the Cour de Cassation (French Supreme Court) laid down the following principle: when branch agreements or inter-branch agreements provide for collective guarantees to the benefit of employees, former employees or employees' assigns in addition to those paid by the Social Security, by pooling risks and designating one or several welfare insurance fund(s), companies subject to applicable collective bargaining agreements must subscribe to the designated welfare insurance fund(s) even if they have already subscribed to equivalent or even more comprehensive guarantees with another welfare insurance fund.

Do not hesitate to contact our Labor and Employment Department should you wish additional information on the above.

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