



## Pensions & Retirement Plans 2013

### Contributing editor

Steven J Friedman, Melissa B Kurtzman and David M Weiner  
Littler Mendelson, PC

### Business development managers

Alan Lee  
George Ingledew  
Dan White

### Marketing managers

Rachel Nurse  
Zosia Demkowicz

### Marketing assistants

Megan Friedman  
Cady Atkinson  
Robin Synnot  
Joseph Rush

### Administrative assistants

Parween Bains  
Sophie Hickey

### Marketing manager (subscriptions)

Rachel Nurse  
subscriptions@  
gettingthedealthrough.com

### Head of editorial production

Adam Myers

### Production coordinator

Lydia Gerges

### Senior production editor

Jonathan Cowie

### Chief subeditor

Jonathan Allen

### Senior subeditor

Caroline Rawson

### Subeditor

Davet Hyland

### Editor-in-chief

Callum Campbell

### Publisher

Richard Davey

### Pensions & Retirement Plans 2013

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2013  
No photocopying: copyright licences do not apply.

ISSN 2052-8310

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of May 2013, be advised that this is a developing area.

Printed and distributed by Encompass Print Solutions  
Tel: 0844 2480 112

**Law**  
**Business**  
**Research**

<b>Global Overview</b> Steven J Friedman <i>Littler Mendelson, PC</i>	<b>3</b>
<b>Argentina</b> Mercedes Balado Bevilacqua <i>MBB Balado Bevilacqua Abogados</i>	<b>5</b>
<b>Brazil</b> Luis Antonio Ferraz Mendes, Luiz Roberto Peroba Barbosa, Cristiane Ianagui Matsumoto Gago and Mauricio Froes Guidi <i>Pinheiro Neto Advogados</i>	<b>11</b>
<b>Canada</b> Michael G Sherrard, Ryan D Treleaven and Jennifer Hodgins <i>Sherrard Kuz LLP, Employment &amp; Labour Lawyers</i>	<b>16</b>
<b>China</b> Jiang Junlu and Jin Shan <i>King &amp; Wood Mallesons</i>	<b>23</b>
<b>Germany</b> Jochen Leßmann and Rüdiger Hopfe <i>Schweibert Leßmann &amp; Partner, Fachanwälte für Arbeitsrecht</i>	<b>29</b>
<b>Hong Kong</b> Dominic Hui <i>Ribeiro Hui</i>	<b>36</b>
<b>India</b> Veena Gopalakrishnan and Vikram Shroff <i>Nishith Desai Associates</i>	<b>42</b>
<b>Ireland</b> Brian Buggy, Jane McKeever and Deirdre Cummins <i>Matheson</i>	<b>48</b>
<b>Italy</b> Luca Failla and Sharon Reilly <i>LABLAW – member of L&amp;E Global</i>	<b>56</b>
<b>Japan</b> Yoshikazu Sugino <i>Nagashima Ohno &amp; Tsunematsu</i>	<b>62</b>
<b>Mexico</b> Mónica Schiaffino and Tania Ávila <i>Littler, De la Vega y Conde, SC</i>	<b>69</b>
<b>Portugal</b> Ricardo Rodrigues Lopes and Madalena Coelho Ferreira <i>Caiado Guerreiro &amp; Associados – Sociedade de Advogados RL</i>	<b>74</b>
<b>Russia</b> Irina Anyukhina and Olga Pimanova <i>ALRUD Law Firm</i>	<b>79</b>
<b>Sweden</b> Lars Lövgren <i>MAQS Law Firm Advokatbyrå AB</i>	<b>85</b>
<b>United Arab Emirates</b> Rebecca Ford and Antonio Michaelides <i>Clyde &amp; Co LLP</i>	<b>91</b>
<b>United Kingdom</b> Penny Cogher <i>Speechly Bircham LLP</i>	<b>96</b>
<b>United States</b> Steven J Friedman, Melissa B Kurtzman and David M Weiner <i>Littler Mendelson, PC</i>	<b>102</b>
<b>Venezuela</b> Juan Carlos Varela <i>Littler Mendelson, PC</i>	<b>109</b>

# Argentina

**Mercedes Balado Bevilacqua**

MBB Balado Bevilacqua Abogados

---

## Statutory and regulatory framework

- 1** What are the main statutes and regulations relating to pensions and retirement plans?

The national social security system is currently regulated by Law No. 26,425, enacted in 2008, which amended Law No. 24,241. The former determined the unification of the National Pension and Retirement System provided by the state when citizens comply with requirements to request the state-granted pension. Such unification concluded in what is referred to as the Argentine Integrated Pension System (SIPA). Such system is financed through a solidarity system of distribution, which guarantees those affiliated to the system to be covered by the public pension system. Such guarantees are in line with section-14 bis of the Argentine Constitution. Such provision grants that the state must grant social security benefits to citizens and such benefit cannot be waived.

Prior to Law No. 26,425, there were two systems: one provided by the state (exactly like the system in force now); and the other referred to as ‘capitalisation’, which implied the deposit of social security withholdings and contributions with private financing organisations as personal savings, known as the Pension Fund Administrator. With the enactment of Law No. 26,425, such a possibility was eliminated and now the social security system is based solely on the above-mentioned solidarity system of distribution.

- 2** What are the primary regulatory authorities and how do they enforce the governing laws?

The National Administration of Social Security (ANSES) and the Federal Tax Administration (AFIP) are the national authorities that control compliance with social security obligations. Both are entitled to inspect compliance with their regulations and the deposit of mandatory withholdings and contributions. They can file requirements to all retention agents or inspect establishment and review the accuracy of compliance with national regulations. A deficit or a failure to comply is subject to interest and fines on the amount that was not deposited in violation of regulations. Individuals may also file a complaint before the AFIP for it to inspect a certain entity that may be failing with the compliance of its social security obligations. Also, in certain serious cases there may be criminal charges.

- 3** What is the framework for taxation of pensions?

The SIPA is financed through the following sources:

- employers’ contributions, which equal 16 per cent of the total salary of its personnel per month;
- monthly contributions from independent professionals equal to 27 per cent; and
- employees under a labour relationship must contribute 11 per cent of their salary on a monthly basis.

---

## State pension provisions

- 4** What is the state pension system?

The SIPA is financed through a solidarity system of distribution, which guarantees those affiliated to the system are covered by the public pension system when certain requirements are met.

- 5** How is the state pension calculated and what factors may cause the pension to be enhanced or reduced?

Under the SIPA, an affiliated person who complies with certain requirements – stated below – receives a benefit called a Regular Pension (JO) and it includes:

- the Basic Universal Benefit (PBU);
- the Complementary Benefit (PC);
- the Benefit for Permanence (PAP); and
- a coefficient for mobility (m).

The JO must grant a minimum pension benefit to all persons who meet the requirements to obtain it. Currently, according to Resolution No. 30/2013 issued by the ANSES, the minimum amount granted as a JO is 2,165 Argentine pesos.

There are no factors that can result in a reduction to this amount. The requirements to obtain the JO are:

- 30 years of service evidenced through contributions made to the SIPA since the age of 18 years until retirement;
- where the years of service are greater than 30 and less than 45, the PBU increases by 1 per cent per year up to a maximum of 15 per cent; and
- attaining the age of 65 for both men and women, but women have the opportunity to apply for retirement at 60.

### PBU

The PBU must grant a uniform benefit to those who have achieved the age and have made contributions to the social security system for the greater part of his or her active life, regardless of the amount of the compensation received. It is equal to 2.5 MOPREs (see below) and its amount can increase by up to 15 per cent, at 1 per cent per year between 30 and 45 years of service.

The MOPRE is the reference unit for establishing the value of the PBU. The value of the MOPRE is determined by the Labour Risks Superintendence (SRT).

In regard to such value, there are contradictory regulations for its determination. However, from the analysis and interpretation of the same it can be concluded that, at present, the MOPRE is equal to 714.45 Argentine pesos. The PBU is calculated as follows: 2.5 x 714.45 = 1,786.12 Argentine pesos.

Decree No. 1,694 determines that the SRT shall establish the MOPRE as 33 per cent of the minimum guaranteed wage, which is currently 2,165 Argentine pesos. Thus, the MOPRE is equal to 714.45 Argentine pesos.

**PC**

In addition, the state grants the PC. The PC is addressed to compensate the contributions made to the social security system under the prior regime until 30 June 1994. Such PC is equal to 1.5 per cent of the MOPRE per year of service or fraction greater than six months, up to a maximum of 35 years, calculated upon the average of compensation subject to social security withholdings and contributions, updated and collected for the period of 120 months prior to retirement.

For independent workers, the PC is equal to 1.5 per cent of the MOPRE per year of service or fraction greater than six months, up to a maximum of 35 years, calculated upon the monthly average of the updated amounts of the category that applies to independent workers.

As stated above, the PC is only granted to workers who contributed to the social security system until 30 June 1994. Thus, all workers who made contributions after that will not benefit from the PC.

**PAP**

This benefit is granted to those affiliated persons that have complied with the requirements to be granted the PBU. Under Law No. 26,425, all contributions made to the social security system are considered to calculate the PAP.

It is calculated in the same way as the PC, but includes contributions to the system after 1 July 1994 and there is no ceiling for the PAP.

**Mobility coefficient**

For the purpose of calculations, each gross monthly salary is multiplied by the coefficient 'm'. Such coefficient is provided by the ANSES each year and is currently set at 15.18 per cent.

The monthly gross salary considered must not exceed the maximum or be less than the minimum established as a taxable base, which is established as 24,473.92 and 753,05 Argentine pesos, respectively.

The calculation is made considering the average of the last 120 monthly salaries.

There is a possibility that the person has contributed as an employee under a labour relationship and as an independent worker, in such a case the benefit will be calculated adding the amount resulting from the services rendered under a labour relationship and the amount resulting from the years of service as an independent worker.

**Compensating age for lack of years of service**

Lack of years of service can be compensated with age if the affiliate person exceeds the age of 65 in the case of men and 60 in the case of women. In this case, one year of service will be compensated with two years of age that exceed the age requirement referred to above.

**6** Is the state pension designed to provide a certain level of replacement income to workers who have worked continuously until retirement age?

The state provides the following main social security benefits:

- The state provides the JO (see question 5): this benefit aims to grant a benefit to older persons and it is intended to replace a wage. However, the amount granted is not sufficient and that is the reason why some companies provide for additional private retirement benefits. Men must be 65 and evidence 30 years of service and women must be 60 with 30 years of service.
- Disability benefit: this is granted to those persons who have contributed to the social security system and suffer a labour disability equal to 66 per cent of full function (as confirmed by a medical committee appointed by law following an examination) and have not accomplished the age requirement to get the universal basic benefit.

- Death benefit: this is granted to the heirs of the person that was receiving the benefit.

In addition, a special pension is granted by specific regulation with the aim of protecting, acknowledging or rewarding special activities or situations. The main special regulations provide pensions to:

- descendants from the veterans of independence;
- state workers;
- veterans from national wars;
- persons who have obtained the national award for science or literature;
- persons affected by mal hansen disease (leprosy);
- victims of acts of terrorism;
- relatives of disappeared persons;
- mothers with seven or more children;
- veterans from the 'Malvinas' war;
- presidents and vice presidents; and
- judges from the National Supreme Court.

**7** Is the state pension system under pressure to reduce benefits or otherwise change its current structure in any way on account of current fiscal realities?

As stated in question 1, the system was restructured in 2008. There are no signs that there is going to be an additional modification in the near future.

**Plan features and operation**

**8** What are the main types of private pensions and retirement plans that are provided to a broad base of employees?

The majority of the plans offered to employees are complementary to the JO granted by the state.

Company plans are aimed at retaining employees and providing them with an additional income upon retirement due to the insufficient amount granted by the state through its system, as described above.

There are two main types of retirement plans granted by companies:

- Defined contribution (DC): also referred to locally as a 'share effort': this kind of plan determines that the employer contributes a certain percentage of the employee's monthly salary (usually between 10 and 20 per cent) and the employee contributes some other percentage (usually no more than 10 per cent) of his or her salary and the amount is deposited with a trust or with the execution of a retirement insurance policy. In most cases, the percentage contributed by the employee is withheld from his or her monthly salary. Prior authorisation from the Ministry of Labour is advisable before withholding an amount from an employee's salary. Once requirements defined in the plan are met (age and seniority in employment), the beneficiary's accumulated amount is vested and granted.
- Defined benefit (DB): this plan determines that, upon retirement of the employee, the employer continues to pay him or her a certain percentage of his or her salary either on a monthly basis or as a lump sum. The percentage considered is usually between 40 and 60 per cent.

**9** What restrictions or prohibitions limit an employer's ability to exclude certain employees from participation in broad-based retirement plans?

Private pension or retirement plans are not specifically regulated. However, they must respect local labour and social security regulations to avoid contingencies, including fines from the Ministry of Labour, the ANSES or the AFIP.

Thus, when granting a private retirement plan, an employer must avoid any kind of discrimination not based on objective grounds. For example, an employer may grant a retirement plan to employees above a certain position or based on the productivity or seniority of employees. However, if the employer decides to grant a retirement plan and excludes an employee who is in the same position and complies with the same requirement as an employee who is eligible, the employer may be exposed to a discrimination claim.

**10** Can plans require employees to work for a specified period to participate in the plan or become vested in benefits they have accrued?

Retirement plans are not specifically regulated. Locally they are referred to as an 'open benefit' due to such lack of regulation.

Thus, employers are able to design a plan keeping in mind compliance with local labour and social security regulations and also the nature of the plan, which is a benefit for retirement that contributes to employees' state-granted pension.

Most regular retirement plans in Argentina are DC (see question 8), which is the type that would most apply to this question.

Thus, within the DC it is very common:

- for participating employees to have to comply with certain seniority rules within the company; and
- that vesting is tied to:
  - an average participation in the plan of five to 10 years; and
  - there being no more than three vestings of the plan.

Under Argentine regulations, having more than three vestings can be understood as a denaturalisation of the plan and the benefit that the employee obtains runs the risk of being considered part of their salary and thus subject to social security withholdings and contributions.

Under a 'DB' scheme, there would be only one vesting, the retirement of the employee, which would trigger the grant of the DB to the employee once termination due to retirement has occurred.

**11** What are the considerations regarding employees working permanently and temporarily overseas? Are they eligible to join or remain in a plan regulated in your jurisdiction?

Due to the lack of specific regulation, the employer is entitled to grant the plan to all those employees that it would consider to be eligible, regardless of whether they are overseas or temporary, keeping in mind compliance with local labour and social security general regulations (avoiding discrimination not based on objective grounds). However, locally it is not common for these plans to be granted to temporary employees due to the nature of a retirement plan (which is to retain employees, grant a benefit to those employees who have showed a commitment to the employer over the years by making a positive contribution to the company and to complement the state pension system).

**12** Do employer and employees share in the financing of the benefits and are the benefits funded in a trust or other secure vehicle?

Due to the lack of specific regulations, it is possible to design a plan where employee and employer share the financing of the plan as long as it is within the boundaries of local labour regulations. The most common vehicles used for DC retirement plans are a trust or a retirement insurance policy.

**13** What rules apply to the level at which benefits are funded and what is the process for an employer to determine how much to fund a defined benefit pension plan annually?

There are no specific rules for an employer regarding how much to fund a pension plan. It is determined depending on the scope of the benefit that the employer wishes to grant.

**14** What are customary levels of benefits provided to employees participating in private plans?

Under the DC, it is common that the employer contributes between 10 and 20 per cent of the monthly salary and, if the plan is a 'share effort', the employee is usually asked to contribute between 5 and 10 per cent of his or her monthly salary.

It must be noted that if the percentage contributed by the employee is withheld from his or her salary, it may not be a withholding authorised by local labour laws and thus, it is advisable to request authorisation from the Ministry of Labour to avoid fines from the local labour administrative authority or claims from employees in case of a conflict.

Under the scheme of a DB retirement plan, employees grant a percentage of between 50 and 70 per cent of the employees' monthly salary once the benefit is triggered.

**15** Are there statutory provisions for the increase of pensions in payment and the revaluation of deferred pensions?

No.

**16** What pre-retirement death benefits are customarily provided to employees' beneficiaries and are there any mandatory rules with respect to death benefits?

It is not specifically regulated. However, under the DC, the plan can state that, upon the death of the beneficiary, the benefit will be vested and his or her legal heirs will receive it.

Under the DB, death would imply the end of the benefit and, unless otherwise agree in the terms of the plan, heirs will not benefit from the DB granted to the employee.

**17** When can employees retire and receive their full plan benefits? How does early retirement affect benefit calculations?

Since there are no specific regulations, it depends on the terms of the retirement plan granted. The plan can establish early retirement given certain conditions and early retirement may or may not affect the benefit depending on the plan.

However, please note that under the scope of local labour regulations, participating employees who are terminated without cause will be entitled to get the benefit if there is a conflict. The same conclusion applies in the case of termination with cause, being the cause challenged before a court of law by the employee evidencing that the alleged cause did not comply with the legal requirements and the termination was without cause.

**18** Are plans permitted to allow distributions or loans of all or some of the plan benefits to members that are still employed?

Due to the lack of regulation, plans can be designed to grant advance vesting in some cases. The purpose of retirement plans in Argentina is to retain employees, so it is not common to grant advance vesting.

- 19** Is the sufficiency of retirement benefits affected greatly if employees change employer while they are accruing benefits?

Due to the lack of specific regulation, it is possible to do determine the continuity of the benefit despite the fact that the employee changes employers. However, in Argentina benefits under retirement plans will end with the resignation of the employee and, depending on the terms of the plan, the employee will or will not be entitled to get the accrued benefit. In practice, it is common that the granting of the benefit is tied with the permanence of the employee in the company.

However, if the employer that grants the plan is purchased by another company and employees that benefit from the plan are assigned to the purchaser, the purchaser will have to respect the acquired labour conditions of the assigned employee, and with it the terms of the granted retirement plan. Otherwise, the employee can claim its grant and, eventually, consider him or herself constructively dismissed.

- 20** In what circumstances may members transfer their benefits to another pension scheme?

It is not possible to transfer benefits to the state-granted retirement plan. However, since it is not regulated, the terms of the plan can determine the transfer of the benefits to another pension scheme if such new pension scheme does not cause any economic damage to the employees involved.

- 21** Who is responsible for the investment of plan funds and the sufficiency of investment returns?

Responsibility is determined in the terms and conditions of the retirement plan. Usually the responsibility falls with the trust or vehicle where contributions are allocated.

- 22** Can plan benefits be enhanced for certain groups of employees in connection with a voluntary or involuntary reduction in workforce programme?

Yes. This is common practice in Argentina. However, if the number of employees involved is considerable it is advisable to meet with the corresponding union – if applicable depending on the position of employees that are laid off – to avoid conflicts and reduce company exposure.

- 23** Are non-broad based plans permitted and what types of benefits do they typically provide?

Yes. As there are no specific regulations, they are permitted and commonly used. However, the employer must grant it on an equal basis to avoid discrimination claims. Lately, the most common type of granted retirement plan is the DC.

- 24** How do the legal requirements for non-broad based plans differ from the requirements that apply to broad-based plans?

There are no legal requirements due to the lack of legislation for the private granting of retirement plans. However, in practice in the DC plan there is a difference in percentage of contribution. For executive employees, the amount or percentage granted is greater than that granted to broad-based employees. The same criteria applies if the type of retirement plan granted is a DB.

- 25** How do retirement benefits provided to employees in a trade union differ from those provided to non-unionised employees?

The commercial employees' union grants a retirement plan through a special insurance company and this is established in the collective bargaining agreement (CBA). It is mandatory that employers who have employees under such CBA contribute 3.5 per cent of the employees' salary on a monthly basis. This a mandatory contribution.

The non-unionised employees have the retirement benefit granted by local regulations as stated in questions 4 to 7. In addition, they can get a complementary one if their employer wishes to grant such a benefit, which is discretionary.

- 26** How do the legal requirements for trade-union-sponsored arrangements differ from the requirements that apply to other broad-based arrangements?

Legal requirements for trade union-sponsored arrangements depend on the collective negotiation between unions and chamber of commerce representing the companies of a certain activity. Requirements that apply to other broad-based arrangements are discretionary as long as they respect the minimum general labour standards determined by local laws due to the lack of specific regulations, as stated above.

### Enforcement

- 27** What is the process for plan regulators to examine a plan for periodic legal compliance?

There is no specific process. Within the scheme of an inspection by either the Ministry of Labour, the AFIP or the ANSES, they can request information about private pension and retirement plans to verify they respect local mandatory general labour and social security regulations, for example, that they are not discriminatory and that salary retentions are not made without authorisation from the Ministry of Labour.

- 28** What sanctions will employers face if plans are not legally compliant?

Sanctions can vary from modification and amendment to the plans if irregularities are detected for monetary fines if plans are found to be violating employees' general rights, (such as the right not to be discriminated against or not to deduct amounts from their salary except in the cases specifically provided by law, which is not the case for private retirement plans.

- 29** How can employers correct errors in plan documentation or administration in advance of a review by governing agencies?

It is recommended that plans are reviewed and analysed by lawyers who are experts in the field of labour, employment and social security before they are granted. For example, in certain countries it is important that the plans are translated into the native language of employees.

- 30** What disclosures must be provided to the authorities in connection with plan administration?

There are no requirements to disclose the plan to the authorities prior to the grant unless they request it within an inspection or there is a withholding from the compensation (see question 28).

**31** What disclosures must be provided to plan participants?

It is important that all documentation related to the operation of the plan is provided in their native language and they should sign a copy as an acknowledgement of the terms and conditions.

**32** What means are available to plan participants to enforce their rights under pension and retirement plans?

If the company violates the plan or the employee believes the plan violates his or her rights he or she can file a claim before a court of law. Whether the violation will justify an eventual constructive dismissal depends on the seriousness of the violation.

**Plan changes and termination**

**33** What restrictions and requirements exist with respect to an employer's changing the terms of a plan?

The plan can be considered as part of employees' labour conditions depending on its terms, thus changes must be limited to minor matters and do not cause any material or moral harm to the employee. Otherwise, the employee can consider that the employer has abused his or her right to modify labour conditions and claim the return of the original conditions, otherwise he or she may be able to consider him or herself constructively dismissed and claim statutory severance compensation.

**34** What restrictions and requirements exist with respect to an employer terminating a plan?

There are no specific regulations but, if terminating the plan causes harm to employees' rights, the employee can sue the employer and claim compensation.

**35** What protections are in place for plan benefits in the event of employer insolvency?

There are no protections due to the lack of regulations in the specific area of private retirement plans.

**36** How are retirement benefits affected if the employer is acquired?

In the case of assignment of personnel, the purchaser must maintain the same labour conditions. Thus, technically, employees should be granted the plan. It is possible, depending on the plan's terms, to liquidate the DC and vest the funds kept in the trust or applicable vehicle. For the DB, upon retirement, the option – depending on the plan terms – could be to terminate the plan if the conditions established allow and the employees involved were duly notified or

**Update and trends**

It has become more common recently for employers to grant retirement or pension plans to their employees as a complementary benefit to the public pension system with the purpose of retaining employees and due to the insufficiency of the public system benefit. At present, 45 per cent of companies grant a private retirement or pension plan to their employees. This percentage is calculated on a base of 200 analysed local companies. This survey also states that 29 per cent of local companies offer the plan to all their employees, 60 per cent offer it to management and directors and 11 per cent only to directors. Also, it is a trend more commonly used by international companies with subsidiaries in the country since they are more familiar with this type of benefit. However, local companies are not that familiar with them and they are more willing to grant benefits other than pension or retirement plans due to the lack of local specific legislation.

to grant an amount of money equal or similar to the DB agreed by the employee involved in the prior agreement.

**37** Upon plan termination, how can any surplus amounts be utilised?

There are no regulations in this regard.

**Fiduciary responsibilities**

**38** Which persons and entities are 'fiduciaries'?

Law No. 24,441 regulates the figure of trust and applies in general to the fiduciaries under the scheme of private pension or retirement benefits.

Any person or legal entity can be fiduciary. In the case of financial entities, they must be authorised by the National Value Commission. In most of the plans, the fiduciary depends on the vehicle decided to administrate the benefit granted in the case of a DB. Most common fiduciaries are retirement insurance companies, a certain trust fund or an employer if the plan is administered in-house.

**39** What duties apply to fiduciaries?

The activities and responsibilities of fiduciaries depend on the terms of the retirement plan and obligations determined in its regulation. In general, the duties consist of the administration of the plan, management of the investments and issuance of reports under the legal standard of a 'good businessman' that acts with responsibility and diligence based on the trust that has been given to them.



**Mercedes Balado Bevilacqua**

**mercedes.balado@baladolaw.com.ar**

Jose A Cabrera No. 2938 1°'A'  
C1186AAD Ciudad de Buenos Aires  
Argentina

Tel: +54 11 4963 1310/4962 5988/3697  
Fax: +54 11 4963 1310/4962 5988/3697  
www.baladolaw.com.ar

---

**40** What are the consequences of fiduciaries' failing to discharge their duties?

A failure to discharge their duties is addressed in the regulation of the plan. However, in such a case the role of the sponsor of the plan and the proposer of the fiduciary is also a factor. In most cases, a failure will result in termination of the role of fiduciaries and liability will fall with the sponsor of the plan.

---

**Legal developments and trends**

---

**41** Have there been legal challenges when certain types of plans are converted to different types of plan?

There are no legal developments that specifically regulate private retirement plans. Thus, if a plan is converted to a different type of plan, it will be understood that it is part of the employer's decision and thus, an exercise of its power to modify labour conditions.

Thus, when taking the decision, the employer will have to bear in mind that the change of plan does not cause any material or moral harm to employees involved in avoiding a company's exposure.

---

**42** Have there been legal challenges to other aspects of plan design and administration?

Not so far, except that there is an inspection and the administrative authority must verify that the plan violates any employees's determined statutory rights.

---

**43** How will funding shortfalls, changing worker demographics and future legislation likely affect private pensions in the future?

There are no legal projects to be referred to that would specifically regulate private pension plans in the near future.



GETTING THE DEAL THROUGH

**Annual volumes published on:**

Acquisition Finance	Licensing
Air Transport	Life Sciences
Anti-Corruption Regulation	Mediation
Anti-Money Laundering	Merger Control
Arbitration	Mergers & Acquisitions
Asset Recovery	Mining
Banking Regulation	Oil Regulation
Cartel Regulation	Pensions & Retirement Plans
Climate Regulation	Patents
Construction	Pharmaceutical Antitrust
Copyright	Private Antitrust Litigation
Corporate Governance	Private Client
Corporate Immigration	Private Equity
Data Protection	Product Liability
Dispute Resolution	Product Recall
Dominance	Project Finance
e-Commerce	Public Procurement
Electricity Regulation	Real Estate
Enforcement of Foreign Judgments	Restructuring & Insolvency
Environment	Right of Publicity
Foreign Investment Review	Securities Finance
Franchise	Shipbuilding
Gas Regulation	Shipping
Insurance & Reinsurance	Tax on Inbound Investment
Intellectual Property & Antitrust	Telecoms and Media
Labour & Employment	Trade & Customs
	Trademarks
	Vertical Agreements



**For more information or to purchase books, please visit:**  
[www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com)



Strategic research partners of the ABA International section



THE QUEEN'S AWARDS  
FOR ENTERPRISE:  
2012



The Official Research Partner of the International Bar Association