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Employee investment undertakings: the AMF modifies its General Regulation and policy

Following the changes brought about by the PACTE law and its implementing legislation, in particular with regard to the retirement savings scheme, the AMF has amended its General Regulation and policy to take into account the impacts on employee investment undertakings.

Amendments to the General Regulation

To simplify and harmonise retirement savings schemes, the PACTE law has created [the Retirement Savings Plan \(PER\)](https://www.amf-france.org/fr/espace-epargnants/comprendre-les-produits-financiers/supports-dinvestissement/epargne-retraite-le) URL = [https://www.amf-france.org/fr/espace-epargnants/comprendre-les-produits-financiers/supports-dinvestissement/epargne-retraite-le] which may be in the form of a (collective or mandatory) company retirement savings plan or an individual retirement savings plan.

Company PERs, which may be created in the form of securities accounts or insurance contracts, may include units in an employee investment undertaking covered by Article L. 214-164 of the Monetary and Financial Code that meet certain specific investment rules. Insurance companies can now subscribe to units in employee investment undertakings, which were previously reserved for employees. In this regard, Article 424-3 of the AMF General Regulation has been amended to add that insurers, in addition to employees, may also subscribe to these units.

Furthermore, units in an employee investment undertaking are usually subscribed to through an employee savings unit custodian/account-keeper, which acts, among other things, as an intermediary between unitholders and the management company of the employee investment undertaking.

However, pursuant to the provisions of Order No. 2019-766 of 24 July 2019 reforming employee savings, for company retirement savings plans in the form of an insurance policy, the insurance company, mutual insurance company or union, provident institution or union is both the unit holder of the employee investment fund and the "manager" of the plan, thus serving as the main contact for the beneficiaries of the pension savings scheme. This means that it is not essential to have a custodian account-keeper for the employee savings units.

Article 322-73 of the AMF General Regulation has been amended accordingly to exempt retirement savings schemes in the form of insurance contracts from compliance with the provisions of the AMF General Regulation relating to custody account-keeping of the employee savings scheme.

Changes to the policy

The linkage between the provisions applicable to company retirement savings plans and those applicable to the employee investment undertaking, as well as the other changes introduced by the PACTE law to the employee savings scheme, has led the AMF to update its policy to take into account:

- The consequences linked to the subscription for units of employee investment funds by insurers, i.e. the modification of the information relating to the subscription procedures for units or categories of units reserved for insurance companies within the framework of a retirement savings plan and the taking into account of the representation of holders of insurance retirement savings plan in the governance of employee investment funds;
- The new provisions applicable to the representation of unitholders on the supervisory boards of employee investment funds covered by Article L. 214-164 of the Monetary and Financial Code. and the provisions relating to the election and conditions of exercise of voting rights on the supervisory boards of employee investment funds for employee share ownership savings plans;
- The modification of the conditions of creation and the holding period of the sums paid (at least three years instead of five years previously) into buyout employee investment undertakings;

- The eligibility for inclusion in the assets of employee savings funds of shares of cooperative undertakings subject to Law No. 47-1775 of 10 September 1947 on the status of cooperative undertakings.

Keywords

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