AUTORITÉ DES MARCHÉS FINANCIERS

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Employee savings: what is the trigger event date for early release on the grounds of a marriage outside France?

This month again, the focus is on employee savings and more particularly on requests for early release of funds. Requests for early release on the grounds of marriage must be made within a six-month deadline. The issue in this case was to define the starting point of this deadline which, contrary to what is believed, is not necessarily the date of marriage when this marriage is celebrated abroad.

The facts

Mr. Y. got married in Lebanon on 29 August 2015 and applied for the early release of his employee savings plan in October 2020.

He explained to his account keeper that his marriage had been transcribed into the civil register in France only on 8 May 2020, which was why he had made the request only in October 2020.

The account keeper did not accept this explanation and refused to grant his request for early release on the grounds that it should have been made within six months of the marriage ceremony, pursuant to Article R. 3324-23 of the Labour Code.

Mr. Y. therefore referred the matter to the AMF Ombudsman.

Investigation

I questioned the account keeper who initially confirmed the position that he had taken with Mr. Y. He said that he would not release the funds because the marriage had been transcribed into the civil register in France five years after the marriage took place. This meant that the deadline for requesting for early release had long expired.

I carried out a careful legal analysis of this case and the answer given by the account keeper. The Labour Code does indeed stipulate that the employee has six months as from the occurrence of the trigger event to present a request for early release. The list of these trigger events is set out in Article R. 3324-22 of said Code.

If we refer to this list, we can see that the text only mentions "marriage" in its first paragraph without any further distinction. Is this referring to the ceremony or the transcription? What about marriages celebrated abroad?

For the first question, we understand from the Employee Savings Guide and practice that the date used is the date of the civil ceremony for marriages celebrated in France.

Conversely, for the second question, I found it difficult to apply the same solution, from a strictly legal point of view.

This is because the principle of equality presupposes that similar situations are treated in the same way in law, but the corollary of this principle is that different situations receive different legal treatments.

In the case of a marriage celebrated in France, it is perfectly understandable that the trigger event is the date on which the marriage takes place, since it is on this date that the marriage becomes enforceable against all third parties in France. A marriage celebrated abroad by a foreign authority is however enforceable against third parties only after it has been transcribed in accordance with Article 171-5 of the Civil Code. This specific provision results from a law of 14 November 2006 and applies to marriages celebrated after its entry into force.

Recommendation

I considered in this case, that the account keeper could not validly invoke a legal deed which was not enforceable against him.

By setting the deadline as from the date the marriage took place abroad, the account keeper had given the marriage celebrated abroad a legal existence in France that could only be allowed by transcription.

It should also be pointed out that this transcription is not systematic and is not subject to a time limit. It may be refused, since the case could have been referred to the public prosecutor. In this case, it would be all the more incoherent to imagine an early release on the grounds of marriage, when the French government does not recognise the existence of the marriage in question.

After examining similar cases in the past, I had informed the Directorate-General for Labour of my analysis. They agreed with me and I included this general recommendation in my 2017 annual report (page 25) while waiting for a new update to the Guide to Employee Savings Schemes. The last update was in 2014.

I therefore informed the account keeper of my position and after re-examining the case, he accepted my proposal.

Lessons to be learned

Since a marriage celebrated abroad by a foreign authority is enforceable against third parties in France only after it has been transcribed in the Civil Register, I think that it is important and good practice to consider that the trigger event that starts the six-month period for requesting for early release of an employee savings plan should be the date on which the marriage was transcribed and not the date on which it was celebrated.
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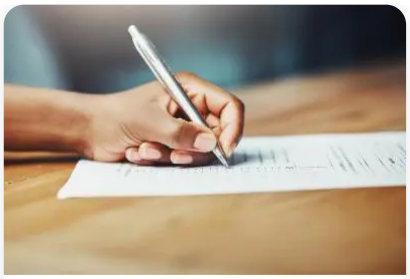

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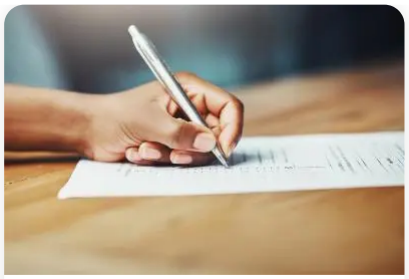

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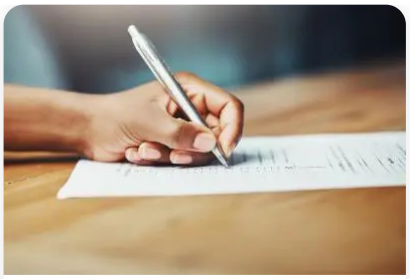

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