Deloitte.

No. 002

Noviembre **2024**

Panama Legal News

Proposed Reforms for the Social Security Fund: Analysis of Bill 163

Recently, Bill 163 (the "Bill") has been presented to the National Assembly of Deputies of the Republic of Panama. This bill aims to carry out a comprehensive, integral, and urgent reform to strengthen the efficiency and transparency in the administration of the resources of the Social Security Fund (the "CSS"), thereby guaranteeing the protection and rights of the contributors. The Bill seeks to modify and repeal some articles of Law 51 of December 27, 2005 (the "Law 51"). It is important to clarify that this Bill does not affect contributors who are seven years or less away from retirement; they will continue under the same conditions of Law 51 without any changes.

In light of this intention to reform the social security system, we have conducted an analysis from a legal perspective to inform you about the proposed modifications to the CSS regulations. This analysis covers the main proposed reforms, their legal and operational implications, and the possible consequences for the different actors involved in the social security system.

Mandatory Affiliation

The bill clarifies the mandatory affiliation to the CSS for all workers, both national and foreign, including employees and independent workers. Independent workers must submit an affidavit about their professional fees in their annual tax return, using 52% of their gross fees as the base to contribute to the Disability, Old Age, and Death Risk (IVM). The bill prohibits denying affiliation or payment of contributions to foreign workers without a work permit, temporary or permanent residence.
The State is obliged to verify the affiliation to the CSS of individuals contracted under professional services (national or foreign), provided they perform functions similar to those established in the institutional job structure, and will act as a collection agent for the contributions due to the CSS. Additionally, any legal entity contracting the services of independent workers must request a clearance certificate from the CSS before making payments.

Unified Information System for Enrollment and Affiliation

A novel aspect to highlight is that the CSS, together with the Ministry of Labor and Workforce Development (the "MITRADEL"), will create, within a term not exceeding three (3) years, a unified information system to automatically enroll and affiliate all employers and employees who register a work contract or notify its termination, without the need for an application

Contributions

Regarding contribution quotas, the bill contemplates an increase for employers of 3% and for independent workers of 4.5%. The employee will continue to pay the same amount. Meanwhile, the State will make an additional annual contribution to stabilize the financial situation of the institution over the years. Below are the modifications included in Article 101 of Law 51 (highlighted text is ours):

Proposed Reforms for the Social Security Fund: Analysis of Bill 163

Article 101: The resources of the Social Security Fund to cover the administrative expenses required by the institution's administrative management and the benefits of the Disability, Old Age, and Death Risk will be constituted by the following income:

1. The contribution paid by employees, which will be equivalent to nine point seventy-five percent (9.75%) of their salaries.
2. **The contribution paid by employers, which will be equivalent to fifteen point twenty-five percent (15.25%) of the salaries paid to their employees.**
3. **The contribution paid by independent workers, which will be equivalent to eighteen percent (18.00%) of the total annual gross fees to cover the Disability, Old Age, and Death Risk and eight point five percent (8.5%) of monthly gross income for the voluntary contribution to the Health and Maternity Risk.**
4. The special contribution of the employer, which will be made based on each of the three parts of the Thirteenth Month, equivalent to ten point seventy-five percent (10.75%) of the amount paid by the employer in this concept to their employees.
5. The special contribution made by the employee, based on each of the three parts of the Thirteenth Month, which will be equivalent to seven point twenty-five percent (7.25%).

Retirement Pension

The Bill introduces significant changes in the calculation of retirement, proposing to replace the Mixed System of Law 51 with a Single Capitalization System with Solidarity Guarantee. According to this new system, retirement would be calculated as follows

1. **Single Capitalization System with Solidarity Guarantee: This system is based on two main components:**

   - Contributory Solidarity Capitalization Component: The contributions of workers and employers are accumulated in an individual account, capitalized based on the return on their investments in the Solidarity Single Fund.
   - Non-Contributory Solidarity Component: This component provides a Solidarity Benefit Pension to those who, upon reaching the reference age, have not accumulated sufficient funds in their individual account for a pension equal to or greater than the Solidarity Guaranteed Pension.

2. **Calculation of the Retirement Pension:**

The amount of the retirement pension will correspond to a lifetime annuity in favor of the insured, guaranteed in its entirety by the Solidarity Single Fund managed by the Social Security Fund, and will always be equal to or greater than the Solidarity Guaranteed Pension.

The monthly amount of the Retirement Pension will be calculated at the time of the pension request, based on the balance of the insured's Contributory Solidarity Capitalization Component, multiplied by an actuarial pension factor for each thousand balboas of savings at the retirement age.

Proposed Reforms for the Social Security Fund: Analysis of Bill 163

3. **Determination of the Contributory Solidarity Capitalization Component:** The way to determine the Contributory Solidarity Capitalization Component varies according to the insured's situation

a) Insured persons who belonged to the Exclusively Defined Benefit Subsystem before the new law:

- For employee/employer contributions made before the new law comes into force, if approved without changes, they will be calculated by multiplying the registered monthly salary by a 15% rate. The salary used for this calculation cannot exceed B/.2,500 per month. These annual contributions will be accumulated in an account that will be capitalized at an annual return of 4%. The capitalized account will be multiplied by a specific percentage according to the age and gender at the time of the pension request, according to the following discount table.

Age Men	Percentage	Age Women	Percentage
44	0%	44	0%
45	0%	45	5%
46	0%	46	10%
47	0%	47	15%
48	0%	48	20%
49	0%	49	25%
50	5%	50	30%
51	10%	51	35%
52	15%	52	40%
53	20%	53	45%
54	25%	54	50%
55	30%	55	55%
56	35%	56	60%
57	40%	57	65%
58	45%	58	70%
59	50%	59	85%
60	55%	60	100%
61	60%	61	100%
62	65%	62	100%
63	70%	63	100%
64	85%	64	100%
65 and more	100%	65 and more	100%

- The previous result will be added to the employee and employer contributions made after the law comes into effect, calculated with a rate of 13.50% on the total monthly salary, plus 18% on the registered thirteenth-month contribution. These contributions will be accumulated and capitalized according to the performance of the Solidarity Single Fund. The accumulated and capitalized value will be multiplied by a factor of 100%.

- In case the amount of the old-age retirement pension, calculated according to the new law, is lower than the old-age pension that would correspond according to Law 51, multiplied by the age and gender factor according to the Discount Table, the most beneficial amount between both calculations will be granted.

Proposed Reforms for the Social Security Fund: Analysis of Bill 163

b) Insured individuals who have participated in the Mixed Pension Subsystem:

- For employee/employer contributions made before the law comes into effect, they will be the result of multiplying the registered monthly salary by a rate of 15%. These annual contributions will be accumulated in an account that will be capitalized at an annual return of 4%. The accumulated and capitalized value will be multiplied by a specific percentage according to the age and gender at the time of the pension request, according to the same discount table from point a) above.

- The previous result will be added to the employee and employer contributions made after the law comes into effect, calculated with a rate of 13.50% on the total monthly salary, plus 18% on the registered thirteenth-month contribution. These contributions will be accumulated and capitalized according to the performance of the Solidarity Single Fund. The accumulated and capitalized value will be multiplied by a factor of 100%.

c) Insured individuals entering the Single Capitalization System with Solidarity Guarantee for the first time:

- Employee/employer contributions will be calculated with a rate of 13.50% on the total monthly salary, plus 18% on the registered thirteenth-month contribution. These contributions will be accumulated and capitalized according to the performance of the Solidarity Single Fund. The accumulated and capitalized value will be multiplied by a factor of 100%.

4. **Conditions for Access to the Old-Age Retirement Pension:** Starting March 1, 2032, the old-age retirement pension will be granted upon the corresponding request, regardless of the applicant's age. This pension is designed to replace, within certain limits, the income lost from the contributor's occupation/work, provided that the balance of the contributory solidarity capitalization account is sufficient to finance a pension equal to or greater than the solidarity guaranteed pension. Otherwise, applicants may be eligible for a benefit from the non-contributory solidarity component of the Single Capitalization System with Solidarity Guarantee, which they can access upon reaching the age of 65.

5. **Universal Basic Pension:** The Social Security Fund will manage the B/.120 at 65 Program, also known as the Special Economic Assistance Program for the Elderly, aimed at people aged seventy or older without retirement or pension, who are in a situation of social risk, vulnerability, marginalization, or poverty.

Proposed Reforms for the Social Security Fund: Analysis of Bill 163

6. **Solidarity Guaranteed Pension:** It is the minimum pension amount guaranteed for insured individuals who, upon reaching the age of 65, have not accumulated sufficient funds in their individual account. The value of this pension will be 1.84 times the value of the Universal Basic Pension. If the monthly economic benefit calculated based on the contributory solidarity capitalization component is lower than the Solidarity Guaranteed Pension, the difference will be covered by the Solidarity Benefit Pension.

7. **Solidarity Guaranteed Pension:** It is a minimum pension amount guaranteed to insured individuals who, upon reaching the reference age for the Non-Contributory Solidarity Component, have not accumulated sufficient funds in their individual account.

8. **Solidarity Benefit Pension:** It is the non-contributory economic benefit granted to contributors who meet the requirements of the Non-Contributory Solidarity Component and whose pension calculated with the Contributory Solidarity Capitalization Component is lower than the Solidarity Guaranteed Pension.

As the above is a summary of the proposed changes to the old-age retirement pension regime, we clarify that there may be particularities not covered in this section due to its general nature.

Voluntary Savings

Article 86 of the current Law 51 allows independent workers not obligated to the Savings component of the Mixed Subsystem to open a voluntary savings account in the CSS for their old-age retirement. The bill modifies this article, allowing all insured individuals to make voluntary contributions to their solidarity capitalization through the following modalities:

1. Additional voluntary discount requested and paid by the employee.
2. Additional voluntary payments driven by employers as a counterpart to employee contributions.
3. Additional payments made by independent workers.
4. Voluntary contributions through non-ordinary means provided by the CSS. These voluntary contributions will be subject to the limits and tax conditions established by Law 10 of 1993 (the "Pension Law") and any other provision regulating this matter.

Fines

Regarding fines for contraventions of the provisions contained in the Law, the bill contemplates the following:

1. Fine of USD100.00 for domestic employers and independent workers not registered in the CSS.
2. Fines ranging from USD1,000.00 to USD50,000.00 for false declarations, under-declaration, and omission, excluding independent workers who falsely declare their income as fees.
3. Fines ranging from USD20,000.00 to USD100,000.00 for employers who do not provide the information required by the CSS.
4. Fines ranging from USD1,000.00 to USD50,000.00 for simulating legal acts to evade obligations with the CSS.
5. Fines ranging from USD500.00 to USD50,000.00 for:
    a. Infractions without specific sanctions.

    b. Failure to request the CSS clearance certificate by legal entities contracting independent workers.

    c. Omission of the Income Tax Return to the CSS by independent workers.

Proposed Reforms for the Social Security Fund: Analysis of Bill 163

Exceptional Payment of Contributions

The exceptional payment of contributions will apply when, due to a liquidation process, the employer has not paid the necessary contributions for the employee to access the Solidarity Guaranteed Pension. In this case, the employee may pay the missing contributions under the following conditions:

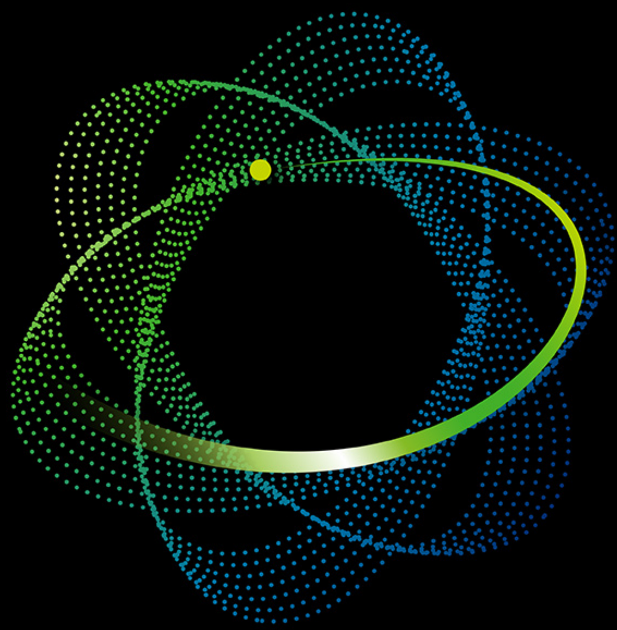
1. The insured must have reached at least the reference age.
2. The number of missing contributions must not exceed the equivalent of 24 contributions.
3. The employee must have been on the payroll during the period of the missing contributions to be paid, even if the company has disappeared, without prejudice to the corresponding criminal and civil actions..

Additional Aspects

The Bill expands the CSS's powers to audit and control the payment of contributions by employers and workers, including access to databases of other public entities; also establishing clearer governance rules for decision-making within the CSS, aiming to improve efficiency and transparency in management.

****

Notice: On November 14, the first debate of Bill 163 began, which establishes reforms to the Organic Law of the Social Security Fund, with a process of discussion and consultation of the bill by interested groups. Therefore, the information shared here may vary depending on the modifications incorporated in the consultation process of this legislative proposal before the Labor, Health, and Social Development Committee of the Legislative Body.



Contacts

Michelle Martinelli
Partner Tax & Legal
mmartinelli@deloitte.com

Yira Cobos
Partner Tax
ycobos@deloitte.com

Desiree Esáa
Partner Tax
desaa@deloitte.com

Bélgica González
Manager Tax
begonzalezi@deloitte.com

Marilyn Fernández
Manager Tax
marifernandez@deloitte.com

Katiushca Navarro
Manager Tax
kanavarro@deloitte.com

Marissa González Ruiz
Manager Tax
mgonzalezruiz@deloitte.com

Juan Fábrega
Manager Legal
jufabrega@deloitte.com

Zumara Garrido
Manager Tax
zgarrido@deloitte.com

Bryan Antillón
Manager Transfer Pricing
bantillon@deloitte.com

www.deloitte.com

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (DTTL), its global network of member firms, and their societies affiliated to a member firm (hereinafter “Related Entities”) (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and Related Entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and Related Rntity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our people deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society, and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 457,000 people worldwide make an impact that matters at www.deloitte.com.

As used in this document, " Deloitte S-LATAM, S.C." is the member firm of Deloitte and comprises three Marketplaces: Mexico-Central America, Southern Cone and Andean Region. It is comprised of several, separate and independent Related Entities, which have the exclusive legal right to engage in, and limit their business to, providing auditing, consulting, tax consultancy, legal, risk and financial advisory and other professional services, under the name "Deloitte".

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their Related Entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, Related Entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their Related Entities, are legally separate and independent entities.

© 2024 Deloitte S-Latam, S.C.