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## Pension funds are "legal owners of pension assets"

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NETHERLANDS - Pension funds are the only owners of pensions assets so legislation is required to prevent pension assets from draining away in the event of mergers, transformation of pension providers or liquidation, according to Dutch pension fund lobby organisations.



According to the professional bodies the Association of Industry-wide Pension Funds (VB), the Foundation for Company Pension Funds (OPF) and the Union of Occupational Pension Funds (UvB), such changes should be made subject to approval by pensions supervisor De Nederlandsche Bank (DNB).

VB, OPF and UvB have set out their position in a joint paper on the legal ownership of pension assets, following the takeover of life insurer and group pension specialist Optas by Aegon. In the wake of this €1.3bn transaction, assets from the harbour workers' pension fund – managed by Stichting Optas – it was found assets would be used for an art subsidy.

In the organisations' opinion, the legal ownership of pension assets - raised with contributions from employers and workers - is with the pension fund.

A scheme's board can make specific arrangements about the destination of the assets for its participants, provided it is related to the scheme's goal and balances the interests of all parties, VB, OPF and UvB added.

"However, a pension fund is in principle not allowed to allocate part of its assets for, for example, idealistic purposes. Moreover, such a destination is at odds with a scheme's legal requirements which make it exempt from corporate tax."

Although the bodies refrained from judging the Optas case, they stressed the social partners, or the occupational association, determine the content of a pension scheme or contract. "Together with a scheme's board, the parties must agree clear rules for in case of a shortfall or a surplus of funds."

The Optas case shows the present pensions legislation could allow, for example, the proceeds of the sale of shares to be used for other purposes following the transition of a pension fund to a pension insurer, the lobby organisations pointed out.

The Optas case triggered the Netherlands parliament to embrace a motion – put forward by MPs Pieter Omtzigt and Mariette Hamer – asking the cabinet to clarify the issue of legal ownership of pension assets, when they are managed by pension funds and insurers.

The government is supposed to provide the requested clarification before 15 March. However, the parliamentary select committee will probably also set up hearings in which experts and players in the Optas case are invited to give their opinion.

Social Affairs' minister Piet Hein Donner had already suggested his department could make the transition of a pension fund to an insurer subject to DNB approval.

Over the coming months, the former management of the harbour workers' pension fund (PVH) is expected to explain in court, via a preliminary hearing, why and how it can use pensions money to buy art.


Officials who are authorised to speak for the Optas foundation were unavailable for comment at the time of publication.


*Do you agree with this opinion? If so, why is this the right opinion? If you have any comments you would like to add to this or any other story, contact Julie Henderson on + 44 (0)20 7261 4602 or email [julie.henderson@ipe.com](mailto:julie.henderson@ipe.com)*

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