



**Kenston Pension Ltd –**

Court approved pension consulting firm for  
company pension schemes

# Legal certainty in all questions of occupational pension provision and remuneration



## Who we are

**Kenston Pension Ltd**, in its capacity as a court-approved pension consulting firm for occupational pension provision (opp), acts as a focused legal and special service provider focusing exclusively on the topics of **ops** and **working time accounts**. **Kenston Pension Ltd** is a nationwide and Europe-wide "Competence Centre" that serves **companies from all sectors, from small "one-man companies" to listed DAX companies, as well as tax advisors and auditors, lawyers and legal advisors, management consultants and financial service providers**. The aim of the cooperation between **Kenston Pension Ltd** and employers and the professional groups mentioned is to outsource to **Kenston Pension Ltd** all activities that are subject to licensing and relevant to liability from the legal and pension consultancy of the occupational pension funds and from working time account solutions.

These activities include above all consulting services in the following, exemplarily listed legal areas of occupational pension provision:

- Labour law;
- Tax and balance sheet law;
- Social security law;
- Insurance contract law;
- Legal and pension consulting law;
- Liability law, etc.

In the case of corporate mandates, the main aim is to provide legally secure support to employers in the implementation of pension and security strategies in the areas of consultancy listed above that are susceptible to liability.

The legal basis for **Kenston Pension Ltd** to exercise and execute the relevant consulting services is the Legal Advice Act (RBERG), the Federal Lawyers' Act (BRAO), the Lawyers' Fees Act (RVG) and, since 1 July 2008, the Legal Services Act (RDG). The core component of **Kenston Pension Ltd's** field of activity is the provision of third-party legal services or any activity in third-party legal services that may only be performed by court-approved or registered natural or legal persons. In addition, the pension consultant is always licensed or registered by the court and is subject to the supervision of the president of the responsible local, regional or higher regional court. In addition, the pension consultant is absolutely independent in representing the interests of his clients. Managing Director of **Kenston Pension Ltd** is **Sebastian Uckermann**. At the same time, Mr. Uckermann, in his function as a court-approved pension consultant for company pension schemes, is head of the **KENSTON Group of Companies** ([www.kenston.de](http://www.kenston.de)), "Chairman of the Federal Association of Legal Advisors for Company Pension Plans and Time Value Accounts" as well as author of numerous practical and scientific specialist publications in the field of company pension schemes and time value accounts. In addition, Mr. Uckermann is **editor** and **author of the standard commentary "Das Recht der betrieblichen Altersversorgung"** ("The Law of Company Pension Plans") published by **Beck-publishing house** and of the **reference book "Betriebliche Altersversorgung und Zeitwertkonten"** ("Company Pension Plans and Time Value Accounts") published by **Schäffer-Poeschel**.

## New standard comment on the Company pension scheme Overall view of all areas of the company pension scheme

Uckermann

**The law of company pension schemes Civil law, labour law, tax law, accounting law and social security law**



In linen

C.H.BECK ISBN 978-3-406-69561-2

### Content:

The company pension scheme as the second pillar of old-age provision has been significantly strengthened in recent years. The number of employees entitled to pensions has continued to increase, the number of offers has increased significantly and the assessment of all relevant legal issues has become increasingly complex.

In the interplay of civil, labour, tax, balance sheet and social security law, the risk of liability has grown steadily. Here the work provides orientation and answers to all questions.

The editors and authors are practitioners with many years of experience in the fields of law, insurance and pension consulting.

### Target group

For lawyers, pension consultants, insurance companies, employers' associations and trade unions, companies with pension institutions, staff councils, works councils who advise on occupational pension schemes.

### Publisher

Sebastian Uckermann, court-approved pension consultant for company pension schemes.



## KENSTON GROUP

**Kenston Pension Ltd** is a company of the **KENSTON GROUP**.

The **KENSTON GROUP** ([www.kenston.de](http://www.kenston.de)) acts as an independent solution partner for all areas of company pension schemes and working time account systems.

In addition, the **KENSTON GROUP**'s range of services includes all relevant consulting and processing services that affect a company's remuneration in addition to company pension schemes and working time account solutions.

These services are detailed:

- payroll accounting,
- pensioner payroll accounting,
- human resources (HR) and
- occupational health management ("work-life balance").

In this focused orientation, the **KENSTON GROUP**, as a nationwide "competence centre", looks after clients from the following groups of persons and areas:

- Tax consultants and auditors,
- lawyers and legal advisors,
- management consultants and high-quality financial service providers,
- companies of all sizes from all sectors.

The consultation and mechanism as well as the continuous monitoring of opp and HR systems require technical in the high-quality consultation,

legal and organizational effort and thus ties up company resources. The **KENSTON GROUP** of companies enables high-quality consulting by means of standardization and automation.

Through intelligent outsourcing, costs can be reduced while liability for consultants and employers is minimized. The combination of **Kenston's solutions** with the individual needs of consultants and companies, as well as the possible adaptation of the technology in terms of content, results in innovation and uniqueness.

Within the framework of **Kenston solutions**, indispensable legal and pension consulting activities are outsourced to affiliated authorised service providers. In this context, the **KENSTON GROUP** takes over the coordination of all relevant legal and pension consulting activities and provides you as a consultant or employer (and the associated employees) with an all-encompassing and legally secure occupational pension and HR back office.

Mr **Sebastian Uckermann** and Mr **Patrick Drees** are the heads of the **KENSTON GROUP**.

Mr. Drees, a graduate in business administration, is - in addition to his activities for the **KENSTON Group** - a member of the Board of Trustees of the BRBZ and author of numerous specialist publications in the field of company pensions and remuneration. Mr. Drees has many years of experience in the administration and organisation of company processes. After various positions with a well-known German insurance company, Mr. Drees joined the **KENSTON Group** in 2012.

The **KENSTON GROUP** also operates and markets sports clubs, which in turn run their own licensed player teams. Direct investments are also made in such corporations and partnerships which act as operators of sports teams participating in licensed gaming operations. The **KENSTON GROUP**'s sphere of activity is rounded off by safety-relevant and necessary accompanying services for the implementation of all Group-internal work tasks.



# Legal certainty in all questions of occupational pension provision and remuneration

## Occupational pension provision

Consulting in the area of occupational pension provision largely takes place in classical civil law. Thus, tax, social security, employment and accounting law, for example, are indispensable tangierungen and consequently classic fields of advice for legal advisors. However, for more than three decades, the insurance industry has been giving the impression that occupational pension provision is exclusively a product issue and that the associated legal advice is a classic ancillary business.

In this context, the relevant jurisdiction should make people sit up and take notice: The Federal Supreme Court has definitely made it clear that legal advice in the area of occupational pensions may only be provided by licensed legal advisors. Otherwise there is a risk of liability consequences (see BGH (federal court of justice) ruling of 20.03.2008 - IX ZR 238/06; DB of 02.05.2008, p. 983 - 985). This makes it clear to the consultant or employer involved that occupational pension provision is to be regarded as a "consulting area" and not as a "product sales vehicle".

This makes it clear to consultants operating at a high level of quality that occupational pension provision is to be regarded as a "consulting area" and a "service area" and not as a "product sales vehicle". These circumstances are also underlined with the introduction of the Retirement Income Act in 2005:

As a result, the subject area of occupational pension provision has undergone considerable changes, particularly with regard to the possibilities for shaping and applying this legislation under labour and tax law. At the same time the intro-

duction of the Retirement Income Act has led to a paradigm shift in the taxation of occupational retirement provision away from upstream taxation towards downstream taxation. This applies above all to the insurance-based methods of implementing occupational pension schemes.

In summary, it therefore becomes clear that in the broad field of occupational pension provision, high-quality specialist knowledge is indispensable in order to be able to provide clients with professional and task-oriented advice.

In this context, **Kenston Pension Ltd**, as an independent legal consulting company for occupational pension provision, takes over all legal and pension consulting activities in this regard and provides its clients with an all-encompassing and legally secure **occupational pension back office**.

## Pension commitments / managing partner provision

Direct pension commitments to controlling managing directors and managing directors of corporations are part of the general equipment standard for this group of persons. Against this background, this consulting field is on everyone's lips in daily consulting practice. Tax and financial advisors operate in the most complex and demanding field of occupational pension provision.

Main starting points in the qualified consultation in the context of a given or to be given pension promise to the circle of persons specified above are, apart from the indispensable juridical.

The Supervisory Board also examined and reviewed the internal tax and accounting control opti-

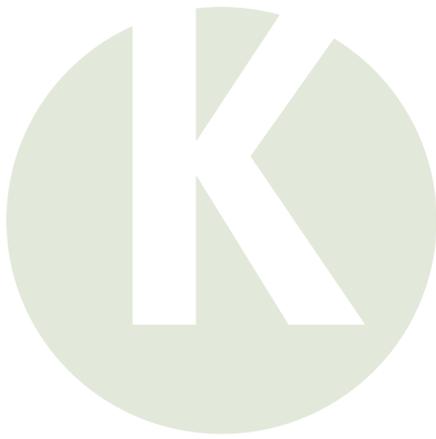
ons available to the company through the use of a pension commitment. This results in numerous advantages and effects both from the company's point of view and from the point of view of the person entitled to benefits.

It should also be noted that this group of persons fulfils a "dual function". On the one hand, there is the representative of the company with representative and management functions, on the other hand, there is the (co-)owner of the company. For this reason, the managing director or board of partners is managed as an employee from the point of view of wage tax, but as an entrepreneur from the point of view of labour law. Against this background, such pension commitments do not fall within the scope of protection of the German Company Pension Act (BetrAVG), so that, for example, insolvency protection for pension commitments to the aforementioned group of persons cannot be provided by the statutory insolvency protection of the "pension insurance association, mutual insurance association. Rather, insolvency insurance under civil or private law must be provided.

In the case of intra-company financing of pension commitments to controlling managing directors or members of the management board, both the assets and liabilities sides of the company balance sheet must be considered: The "basic financing" of a pension commitment takes place via a tax-effective formation of provisions in the company's income tax balance sheet. Section 6a of the German Income Tax Act (EStG) sets out the relevant prerequisites for the recognition of a net income for the year.

Legal certainty in all matters of occupational pension provision and remuneration pension provi-





**Reference book by Sebastian Uckermann:  
Company pension schemes and working  
time accounts - Labour and social law,  
tax and accounting law**

**Publishing House:** Schäffer-Poeschel publishing house  
for business taxes - law Ltd, Stuttgart ([www.schaeffer-  
poeschel.de](http://www.schaeffer-<br/>poeschel.de))



**Content:**

In labour and tax law matters I'm sure we can argue. The law of occupational pension provision provides a secure basis for the labour and social security law, tax and balance sheet law, civil law, insolvency and insurance law represent a very complex and therefore also liability-relevant area of con-

sultancy. The legal situation in the area of time value and working time accounts is similarly complex. With detailed explanations and suggestions for action, the application-oriented practitioner's guide provides a remedy.

**Use this application manual to successful implementation of your consulting and implementation activities in the areas of occupational pension provision and working time accounts!**

**Order information under:**  
[www.kenston-pension.com](http://www.kenston-pension.com).

sioning is regulated. The difference between the pension provision at the beginning and end of a financial year results in the annual amount of the allocation to the provision and the reversal of the provision. Only the balance of all allocations and reversals for the individual pension obligations is recognized in the income statement. To finance out the pension obligation, the company concerned can generally build up assets on the assets side of the balance sheet to cover the pension benefits to be paid at a later date. However, there is no legal obligation for "reinsurance". Assets and liabilities are separate assets.

In summary, the following core services of **Kenston Pension Ltd** for its customers in connection with consulting services for "direct pension commitments" can be presented:

- We provide assistance and advice in all matters of questions of social security law in the Framework of introduction and ongoing Support of direct pension commitments
- Legal, tax and accounting support in the implementation and ongoing support of direct pension commitments
- Evaluation and commentary of all legal and tax instructions as well as of decrees of the federal authorities (BMF letters)
- Review and interpretation of civil law contractual arrangements in connection with direct pension commitments
- Evaluation of the individual company situation with regard to the introduction of direct pension commitments
- Drafting of legally secure contractual documents for the introduction and ongoing support of direct pension commitments including, where applicable, the necessary share-holder resolutions
- valuation, appraisal and restructuring of direct pension commitments - preparation of actuarial reports
- international accounting standards

## Working time accounts

Flexible pension and remuneration systems for uncertain times - employers, employees, but also legal and tax advisors are increasingly looking for them. Not least because of the uncertainties on the labour market, the turmoil caused by the financial market crisis, the complicated legal situation under social security law and the considerable cuts in the statutory pension insurance system, those affected from all sectors are looking for sustainable hedging strategies in order to be able to plan certain phases of life in a balanced and responsible manner.

Fortunately, with the introduction of the Act on the Social Protection of Flexible Working Time Regulations of 6 April 1998 (the so-called "Flexi Act"), the legislator has created the opportunity to find an answer to these challenges. With the introduction of the resulting working time accounts, there have since been outstanding new opportunities for broad groups of employees and employees to make their working hours more flexible and to plan their individual pension situation during their working lives and in advance of receiving statutory pension benefits.

Against this background, it is possible for employees to waive the payment of any salary components in a freely definable amount in accordance with the tax and social security requirements of the legislator and to transfer these to the respective time value account free of tax and social security contributions. Only a salary subject to social insurance contributions above the limit of so-called "minor employment" must remain with the respective employee after a waiver of remuneration in this respect, provided that he also did not perform minor employment prior to the introduction of remuneration into a time value account.

The possibility of this "gross saving" enables employees to build up "wage reserves" from their own deferred remuneration components, whereby at a later point in time any desired leave or early retirement phases can be financed until the statutory retirement age is reached.

In this context, **Kenston Pension Ltd** supports both employers and consultants from all sectors in the complete legal implementation of working time account systems in their own company or in those under mandate. All necessary legal requirements and backgrounds, such as collective agreements, opening clauses, balance sheet treatment, etc., are analysed and implemented appropriately for you.



## Kenston Academy

The "Kenston Academy for Occupational Pensions and Working Time Accounts" is the independent seminar, competence and training centre of **Kenston Pension Ltd** for the following consulting and corporate groups:

- Tax Consultants and Auditors
- Lawyers, Legal Consultants and Management Consultants
- high quality acting financial service provider
- Company managers and personnel managers

The primary objective of the "Kenston Academy for Occupational Pensions and Working Time Accounts" is to provide the above-mentioned advisory and corporate groups with the necessary technical "tools" in the form of seminars lasting several days in order to be able to act as competent advisors in the complex areas of occupational pension provision and working time accounts. On three consecutive seminar days, which take place up to six times a year, all the main topics of the listed areas are presented in a goal-oriented and entertaining way. The conclusion of the three-day seminar series forms a short written final examination.

After passing the examination, each participant receives a certificate and is entitled to bear the designation "**Certified cooperation and consulting partner for occupational pension schemes and working time accounts of Kenston Pension Ltd**".

In addition, the "Kenston Certification Logo" can be placed on the respective business card or integrated into other marketing instruments from the time of certification.

You can also find further information on the "Kenston Academy for occupational pension schemes and working time accounts" at [www.kenston-akademie.de](http://www.kenston-akademie.de).

## BeckAkademie

Seminar series around the legal field of the opp in cooperation between the German opp Service and the BECK AKADEMIE



In cooperation with Sebastian Uckermann (**senior consultant**), as head of the KENSTON GROUP and managing director of Kenston Pension Ltd as well as chairman of the Federal Association of Legal Advisors for Occupational Pension Plans and Time Value Accounts the publishing house C.H. Beck partnership organizes in the context of its BeckAkademie seminars the very successful advanced training meeting ? Occupational pension provision - Legal advice within the occupational pension scheme.

### Participants

Attorneys, pension consultants, tax consultants, financial service providers, auditors and management consultants.

### The aim

The opp is one of the most complex areas of law. The aim of the seminar is to impart the necessary professional equipment to be able to act competently as a consultant in all areas of occupational pension provision. On two successive seminar days, the main topics will be presented in a well-founded and particularly practice-oriented manner. You have the opportunity to discuss your questions comprehensively with the speakers.

**Registration information for the advanced training course "Company pension scheme - legally secure advice within the opp" of the BeckAkademie can be found at: [www.kenston.de](http://www.kenston.de), [www.kenstonpension.com](http://www.kenstonpension.com) and [www.beck-seminare.de](http://www.beck-seminare.de)**