



Kenston Pension GmbH –

Court-approved pension consulting firm
for company pension plans

Legal certainty and scientific expertise regarding all matters of occupational pension plans



Kenston Pension GmbH, in its function as a court-approved pension consulting firm for company pension plans, acts as a focused legal and special service company that concentrates exclusively on the subject areas of **company pension plans (bAV)** and “related” implementations.

The activities of **Kenston Pension GmbH** primarily include consulting services for **corporate mandates of all sizes from all sectors** in the following, exemplarily listed, legal areas of occupational pension schemes:

- labor law;
- transformation law;
- corporate law;
- tax and accounting law;
- social security law;
- insurance contract law;
- legal and pension consulting law;
- liability law.

In this context, employers are supported in a legally secure manner in all implementations within the framework of company pension schemes.

In this orientation, **Kenston Pension GmbH** also serves clients from the following areas as a nationwide and international “competence center”:

- tax consultants and auditors (or corresponding companies);
- lawyers and legal advisors (or corresponding companies);
- management consultants and high-quality financial service providers (or corresponding companies).

The objective of the cooperation between **Kenston Pension GmbH** and the aforementioned legal, tax and financial consulting professions is regularly the outsourcing of all activities from legal and pension consulting in the broad consulting areas of occupational pensions and “related” areas to **Kenston Pension GmbH**.

The legal basis for **Kenston Pension GmbH** to exercise and perform the relevant consulting services is the German Legal Advice Act (RBeRG), the German Federal Lawyers’ Act (BRAO), the German Lawyers’ Fees Act (RVG) and since 01.07.2008 the German Legal Services Act (RDG).

The core of the activities of **Kenston Pension GmbH** is the provision of legal services for third parties or any activity in third party legal matters, which may only be provided by natural or legal persons licensed or registered by a court. Furthermore, the pension consultant is always judicially licensed or registered and is subject to the supervision of the president of the competent district, regional or higher regional court. In addition, the pension consultant is absolutely independent in representing the interests of his clients.

The **CO-CEOs** of **Kenston Pension GmbH** are Mr. **Sebastian Uckermann** and Mr. **Patrick Drees**.

Mr. Uckermann, court-approved pension consultant for occupational pensions, is also **CEO** of the **KENSTON GROUP®** (www.kenston.de) and “**Chairman of the Bundesverband der Rechtsberater für betriebliche Altersversorgung und Zeitwertkonten e.V.**” (**Federal Association**) as well as author of numerous

practical and scientific publications in the field of occupational pensions. In addition, Mr. Uckermann is **editor and author of a standard commentary on occupational pensions published by Beck-Verlag**.

Mr. Drees, graduated in business administration and court-approved pension consultant for occupational pensions, is also **COO** of the **KENSTON GROUP®** member of the Board of Trustees of the **BRBZ** and author of numerous practical and scientific publications in the field of occupational pensions. In addition, Mr. Drees is **author of a standard commentary on occupational pensions published by Beck-Verlag**.



KENSTON GROUP®

Kenston Pension GmbH is a company of **KENSTON GROUP®** (www.kenston.de).

Under the umbrella of **KENSTON GROUP®** operate interconnected companies, which act as independent solution partners for all aspects of company pension schemes. The focus in this context is the implementation of all possible outsourcing arrangements for direct pension obligations.

In addition, **KENSTON GROUP®** acts as an investor, co-investor and partner for financing of entrepreneurial sustainable investments. Such implementations are made globally and are central managed.

In addition, the range of services offered by the **KENSTON GROUP®** includes all relevant consulting and processing services that are additionally tangential to a company's operational provision and remuneration. These services include, among others:

- personnel and payroll accounting;
- retiree payroll.

In this orientation, the **KENSTON GROUP®**, as a national and international "competence center", also serves clients from the following groups of persons or areas:

- tax consultants and auditors (or corresponding companies);

- lawyers and legal advisors (or corresponding companies);
- management consultants and high-quality financial service providers (or corresponding companies).

The consulting, set-up, processing, and ongoing monitoring of occupational pension systems requires technical, legal, and organizational effort in high-quality consulting and thus ties up company resources. Through intelligent outsourcing, the **KENSTON GROUP®** enables comprehensive cost reduction while minimizing liability or simultaneously excluding liability for employers and the consultants involved. This results in innovation and uniqueness.

Within the framework of the **KENSTON solutions**, indispensable legal and pension advisory activities are outsourced to affiliated authorized service providers. In this context, **Kenston Services GmbH** and **Kenston Pension GmbH** take over the coordination and handling of all related legal and pension advisory activities and provide employers (and the associated employees) with an all-encompassing and legally secure bAV back office. **KENSTON Business GmbH** assumes corresponding coordination functions within the scope of the investor activities of the **KENSTON GROUP®**.

The shareholders of the **KENSTON GROUP®** are Mr. **Sebastian Uckermann** and Mr. **Patrick Drees**.



Standard commentary Overall view of all areas of occupational pensions

Uckermann

Das Recht der betrieblichen Altersversorgung Zivil-, Arbeits-, Steuer-, Bilanz- und Sozialversicherungsrecht



2nd edition 2022

In linen.

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

To the work:

Occupational pensions as the second pillar of retirement security have been significantly strengthened in recent years. The number of employees entitled to pensions has continued to rise, the number of offers has increased significantly, and the assessment of all relevant legal issues has become increasingly complex.

In the interplay of civil, labor, tax, accounting and social security law, the risk of liability has grown constantly. Here, the work provides orientation and answers to all questions.

The editors and authors are practitioners with many years of experience in the legal profession, insurance industry and pension consulting.

Target audience

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

Publisher

Sebastian Uckermann, court-approved pension consultant for occupational pensions

Legal certainty and scientific expertise regarding all matters of occupational pension plans

Occupational Pension Schemes

Consulting in the range of occupational pension schemes largely revolves around traditional civil law. Therefore, tangential areas such as tax law, social security law, labour law and accounting law are indispensable and consequently represent classic fields of consultation for legal advisors. However, for over three decades, the insurance industry has created the impression that occupational pension provision is solely a product related topic, and that the associated legal advice is merely ancillary business.

The relevant judiciary should make someone take note of this: The Federal Court of Justice has definitively clarified that legal advice in the field of occupational pension provision may only be provided by authorized legal advisors. Otherwise, there may be liability consequences (see BGH-decision from 20th of March 2008 – IX ZR 238/06; DB from the 2nd of May 2008, p. 983-985). Thus, it becomes clear for the involved advisor or employer that occupational pension provision should be viewed as a “field of consultation” rather than a “vehicle for product sales”. These circumstances are further underscored by the introduction of the Retirement Income Act in 2005:

Hereby, the field of occupational pension provision has undergone significant changes, particularly in terms of the definition and application possibilities in labour and tax law. At the same time, the introduction of the Retirement Income Act led to a tax paradigm shift in occupational pension provision, specifically moving from upstream taxation to downstream taxation. This primarily affects the insurance-based implementation methods of occupational pension provision.

In summary, it becomes evident that in the broad field of occupational pension provision, high-quality expertise is essential in order to provide clients with professional and task-appropriate advice.

The **Kenston Pension GmbH**, as an independent legal consulting company specializing in occupational pension provisions, takes on all related legal and pension consulting activities and provides its clients with comprehensive and legally secure occupational pension provision back-office services.

GGF Pension Schemes

Direct pension commitments to controlling managing directors and members of the management boards 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 consultants are active in the most complex and demanding field of occupational pension provision.



In addition to the indispensable legal assessment and review, the main starting points in qualified consulting within the framework of a pension commitment granted or to be granted to the above-mentioned group of persons are the company-internal tax and accounting control options through the use of a pension commitment. This results in numerous advantages and effects both from the point of view of the company and the person entitled to benefits.

It should also be noted that this group of persons fulfils a “double 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 BetrAVG – German Company Pension Act, 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 “PENSIONS-ASSURANCE-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) regulates the relevant

prerequisites for the recognition of a profit-reducing pension provision. 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. This results in period-related liquidity advantages for the company which can be used to finance the pension obligation from the pension commitment. This means that, as a rule, the company concerned will build up assets on the assets side of the balance sheet which will bear the pension benefits to be paid at a later date. In this context, however, it should be noted that a company is under no obligation to finance or “re-fund” a pension commitment to a shareholder-managing director or to a shareholder-managing board.

In summary, **Kenston Pension GmbH** provides, among others, the following services to its clients within the touched legal areas:

- Assistance and advice on all social security issues relating to company pension schemes
- Legal, tax and accounting support for the implementation, outsourcing and ongoing management of all implementation channels for company pension plans
- Evaluation and commenting on all legal and tax instructions as well as decrees of the federal authorities (BMF letters)
- Review and interpretation of collective bargaining clauses and work agreements
- Evaluation of pension funds with regard to spin-off, spin-off and outsourcing options
- Drafting of legally secure pension commitments for all implementation channels of the company pension plan, including any necessary shareholder resolutions
- Lead monitoring and control of spin-off, spin-off and outsourcing processes in the context of company pension schemes
- Valuation, appraisal, restructuring and outsourcing of all company pension schemes. Corresponding implementations in accordance with the German Reorganization Act and the provisions of the German Civil Code (e.g. assumption of debt in accordance with §§ 414 BGB ff.)
- Preparation of actuarial reports
- International accounting



Reference book by Sebastian Uckermann
Betriebliche Altersversorgung und Zeitwertkonten – Arbeits- und Sozialrecht, Steuer- und Bilanzrecht
2nd revised and updated edition 2014
ISBN 978-3-7910-3250-4



Content:

Arguing confidently in matters of labour and tax law. Due to the interaction of labour and social security law, tax and accounting law, civil law, insolvency law and insurance law, the law governing company pension plans represents a very complex and therefore also liability-relevant area of

consulting. 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 relief.

Order

Further book information, including ordering information, can be found on www.kenston-pension.de.

National and International Transaction Advisory

The purchase and sale of companies as well as company divisions continuously engages shareholders and corporations of all sizes. For portfolio clean-up and consolidation, capital market access, business succession to the next generation, company preservation through divestment, growth implementation, strategic acquisitions, credit improvement and balance sheet clean-up – the reasons for corporate transactions are various.

An essential component in the context of such divestment transactions is regularly the ongoing treatment of received recognized and off-balance-sheet pension obligations. In fact, pension obligations, especially when mishandled through improper treatment of pension provisions to be discontinued or continued, can become “deal breakers”.

Therefore, a high-quality transaction advisory service that combines the actual sales process with the requirements of economically and legally wise pension obligation administration through interdisciplinary networking is indispensable. **Kenston Pension GmbH** provides this service and has tailored structures in place to handle entered pension commitments on a case by case basis.

ZWK (Working Time Accounts)

Flexible pension and compensation systems for uncertain times – this is what employers, employees, but also legal and tax advisors are increasingly looking for. Not least because of the uncertainties on the labour market, the turmoil caused by the financial markets, the complicated legal situation under social law and the considerable

cuts in the statutory pension scheme, those affected from all sectors are looking for future-proof hedging strategies in order to be able to plan certain phases of their lives in a balanced and responsible way financially.

Fortunately, with the introduction of the Act on the Social Legal Protection of Flexible Working Time Arrangements of April 6, 1998 (the so-called “Flexi Act”), the legislature created the possibility of finding an answer to these challenges. Since then, the introduction of the resulting **working time accounts (in German: Zeitwertkonten / ZWK)** has opened up outstanding new opportunities for broad groups of employees and workers 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.

In accordance with the tax and social security requirements of the legislator, it is possible for employees to waive the payment of any salary components in a freely definable amount and to transfer these to the respective time value account free of tax and social security contributions. Only a salary subject to social security contributions above the threshold for so-called “marginal employment” must remain with the respective employee after a waiver of remuneration in this respect, provided that he or she also did not perform any marginal employment prior to the contribution of remuneration to a time value account.

The possibility of this “gross saving” enables employees to build up “wage reserves” from their own deferred remuneration components, which can be used at a later date to finance any periods of release or early retirement they may wish to take until they reach the statutory standard retirement age. Consequently, the employee can control his or her time value account savings independently (in accordance with the employer's defined framework conditions) in order to be able to determine the scope of release or early retirement phases in this way, in which the downstream tax and social security contributions then take place. At the same time, employers can use working time account solutions to manage the age structure of their workforce in order to achieve the desired realignment of the workforce.

In this context, **Kenston Pension GmbH** supports both employers and consultants from all sectors in the complete legal implementation and ongoing support of working time account systems in their own companies or in those from mandate relationships. For this purpose, all necessary legal requirements and backgrounds, such as collective agreements, opening clauses, balance sheet treatment are analyzed and implemented accordingly.





Kenston Akademie

The "Kenston Akademie für bAV und Zeitwertkonten" is the independent seminar, competence and training center of Kenston Pension GmbH for the following consulting and corporate groups:

- tax consultants and auditors
- lawyers, legal advisors and management consultants
- high-quality financial service providers
- corporate managers and human resources managers

The primary objective of the "Kenston Akademie für bAV und Zeitwertkonten" is to provide the above-mentioned consulting and corporate groups with the necessary technical "tools" in seminar units lasting several days, in order to be able to act as a competent consultant in the complex areas of occupational pension schemes 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 targeted and entertaining manner.

The three-day seminar series ends with a short written final examination. Upon passing this exam, each participant receives a certificate and is entitled to use the designation "Zertifizierter Kooperations- und Beratungspartner für bAV und Zeitwertkonten der Kenston Pension GmbH".

In addition, from the moment the certification is obtained, the "Kenston Certification Logo" can be placed on the respective own business card or integrated into other marketing tools.

You can also find more information about the "Kenston Akademie für bAV und Zeitwertkonten" on the following subpages:

www.kenston-akademie.de.

BeckAkademie

Series of seminars on the legal aspects of occupational pension schemes in cooperation between the Kenston Pension GmbH and BECK AKADEMIE



In collaboration with Sebastian Uckermann (**speaker**), court-approved pension consultant for occupational pensions, CEO KENSTON GROUP® and Chairman of the "Bundesverband der Rechtsberater für bAV und Zweitwertkonten e.V." (BRBZ), the publisher C.H. Beck oHG hosts in line with the Beck Akademie Seminare the very successful training seminar "Betriebliche Altersversorgung – Rechtssicher beraten innerhalb der bAV".

Participants

Lawyers, retirement consultants, tax consultants, financial service providers, auditors and management consultants.

Aim

Occupational pension schemes are one of the most complex areas of law. The aim of the seminar is to provide the necessary professional tools to be able to act competently as a consultant in all areas of occupational pension provision. On two consecutive seminar days, the main topics will be presented in a well-founded and particularly practice-oriented manner. You will have the possibility to discuss your questions extensively with the speakers.

For inquiries about publications and lecture or seminar activities of Kenston Pension GmbH employees, please contact the following e-mail address: info@kenston.de.