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Report on a procurement tender for the pension scheme for judges*

Tender for insuring of the pension scheme

1. During the meeting of the Committee on Budget and Finance of May 2006, the Court reported to the Committee that it was conducting a procurement tender to identify an insurer for the pension scheme for judges of the Court, and that it would inform the Committee of the outcome at the Committee's next session.

2. The Court contracted the services of Ernst & Young to conduct the tender exercise and to assist the Court in identifying the most suitable solution. The process and results of the tender exercise are outlined in the attached report from Ernst & Young (see annex).

3. It should be noted that only one solution was received that is in full compliance with the Court's requirements, namely:

- All risks should be insured and there should be no risk to the Court;
- Pension costs should be linked to years of service and paid as premiums on a yearly basis;
- Guaranteed return on investments;
- Investment of funds and administration of the scheme should be performed by experts;
- Minimal administrative involvement from the Court itself.

4. The other proposal outlined in the report brings to the table a new solution which is based on a shared-risk concept, meaning that the risks are shared between the Court and the insurer. The Committee may wish to consider this solution. However, as can be seen from the attached report, this solution does not fulfil all the above-mentioned requirements and will result in additional administrative activities for the Court, which would undoubtedly entail additional resource requirements.

5. The report includes a detailed analysis of the advantages and disadvantages of each solution for the Committee's further consideration.

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* Previously issued as ICC-ASP/5/CBF.2/5.

Limiting the level of pension to 12.5 or 16.5 per cent of final remuneration level

6. In paragraph 65 of its report ICC-ASP/5/1, the Committee requested the Registrar to submit a report containing a comparison of the current pension scheme with the option of limiting the level of the pension for judges to 12.5 or 16.5 per cent of the final remuneration level. This comparison is shown in table 1 below.

Table 1: Options for the level of pension of judges (in euros)

	Annual salary	Annual pension benefit	Average estimated annual cost to Court for pension, death and disability coverage per judge	Average estimated annual cost to Court for pension, death and disability coverage for 18 judges
Option 1: Pension benefit as per current scheme	180,000	90,000	155,560 [1]	2,800,000
Option 2: Pension as 12.5% of final remuneration level	180,000	22,500	38,890	700,000
Option 3: Pension as 16.5% of final remuneration level	180,000	29,700	51,333	924,000

7. The Court wishes to draw the attention of the Committee to the decision of the Assembly of States Parties that judges of the International Criminal Court are entitled to a pension benefit similar to that applicable to the judges of the International Court of Justice[2]. According to the International Court of Justice pension scheme, a judge's retirement pension should be defined as being equal to half of annual salary. Reducing the level of the pension for judges of the International Criminal Court to 12.5 or 16.5 per cent of the annual salary would therefore not accord with the pension scheme of the International Court of Justice.

Option of direct pension contributions to judges

8. The Committee also requested the Registrar to include in his report advice as to the possibilities of allowing judges to direct pension contributions to a fund of their choice. The report from Ernst & Young addresses the possibility of a judge opting to receive his/her pension in a lump sum at the end of his/her term. This option, however, does not result in any savings to the Court as the premiums have to be paid in full to the insurer prior to the judge's separation from duty.

[1] Based on the estimates for insurance premiums contained in the Ernst & Young report dated 25 November 2005.

[2] Budget for the first financial period of the Court, *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication), ICC-ASP/1/3, part III, Annex VI, para. 5.

9. The Court considered the option of making direct contributions to the judges during their term of service, as suggested by the Committee in paragraph 65 of its above-mentioned report. By definition and by its nature, retirement pension is intended to provide adequate after-service benefits to judges who have met the requisite eligibility criteria relating to retirement age and period of service[3]. This is based on the premise that the pension benefit maintains a standard of living as replacement income. The Court believes that this solution will only transfer the risk and administrative costs back to the Court instead of to the insurer. The Court thus foresees contradictions and a number of difficulties, some of which are outlined below:

a) A judge will receive both annual salary *and* pension contributions from the Court at the same time;

b) A judge is entitled to a pension only if he/she completes three years of service, but the accrual of the pension starts as of the date of appointment. Paying contributions from the beginning means that the judge would be receiving pension contributions which he/she has not yet earned. On the other hand, if payment is deferred until the end of the third year, the Court may have to establish and operate a special fund for the amounts accrued but unpaid;

c) The Court is not insured for the disability or death of judges;

d) In the absence of an insurer, the Court will have to be responsible for the calculations of the actuarial values of the pension of the judges not only on an annual basis but also on a continuous basis, depending on market changes and changes in the personal situation of judges;

e) By paying the annual premiums to an insurer, the latter guarantees a minimum rate of return on the investment of those funds, which is paid back to the Court. By paying these premiums directly to the judges, the responsibility for return on investment is transferred to the judges.

10. In view of the foregoing, allowing judges to direct their pension contributions to a fund of their own choice presents additional problems and does not seem to offer the best solution.

[3] The benefit is payable to a judge who has completed a full nine-year term with a proportional reduction for a judge who has not completed a full term. See annex to resolution ICC-ASP/3/Res.3, appendix 2, article 1.

Annex

Report by Ernst & Young Actuarissen BV to the International Criminal Court on a pension plan for judges of the Court

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1. Introduction

The International Criminal Court, hereinafter referred to as "the Court", operates two pension schemes, one for employees and one for judges. The employees' plan is insured under the United Nations Joint Staff Pension Fund. The judges' plan is currently not insured but is financed through a self-administered pay-as-you-go pension scheme.

The Court has determined that the risks associated with a self-administered pay-as-you-go pension scheme for its judges are too great to be borne by the Court itself. It sees two main risks:

- Insurance risk; and
- Investment risk.

The Court's intention is to outsource these risks and it has requested the assistance of Ernst & Young Actuarissen BV (EYA) in selecting a party which can provide the Court with the services set forth hereunder.

Current situation

<u>Pension system</u>

- A pay-as-you-go system is applied by the Court and there is no external funding. Pensions are self-administered and all risks are borne by the Court.
- The Court has made a reservation to cover the cost of pension accrual in the preceding years based on a rough estimate of the cost of accrual.

<u>Population</u>

- The normal active population consists of 18 judges.
- There are currently 3 inactive participants.
- The election of judges takes place every three years during which 6 judges separate and 6 new judges are elected.

Desired situation

- The Court desires an all-in-one solution, which means that the same party will be handling the:
- Insurance of the pension plan risks (mortality, longevity and disability);
- Investment of the allocated funds (with or without investment guarantees); and
- Administration of the pension plan.

2. Process

The Court has requested EYA to conduct a thorough investigation to ascertain whether insurance brokers and both national and international insurers would be willing to insure the judges' pension plan (phase 1). Based on the conclusions of this investigation, parties would be asked to submit a proposal for the administration, insurance and investment of the judges' pension plan (phase 2).

2.1 Phase 1

In this phase the Court invited 10 parties to assess the pension plan of ICC judges and to indicate whether they were willing and able to write a proposal within the given time frame. The invited parties may be divided into three groups: brokers, national insurers and international insurers.

The following parties were invited:

National insurers:

- AEGON NV
- Delta Lloyd (Aviva PLC)
- Nationale-Nederlanden (ING Group)

International insurers:

- Generali
- Allianz AG
- Prudential plc
- Axa Group

Brokers:

- AON
- Van Breda – Groep
- Van Hal Aanstoot, makelaars in Assurantiën

2.1.1 Results

National insurers

During phase 1, all three national insurers indicated their willingness to submit proposals for a pension plan for ICC judges.

International insurers

- Both Generali and Allianz indicated their willingness to submit a proposal and both did so. Their proposals will described later in this report;
- Axa Group indicated that the pension plan of the ICC would put too much pressure on its administration and that they would not be able to submit a proposal;
- No response was received from Prudential.

Brokers

- Both Van Breda Groep and AON indicated that they were in a position to help the ICC find a party to insure, administer and invest on behalf of the pension plan of ICC judges. However, both parties offered to perform exactly the same services as Ernst & Young Actuarissen BV is currently performing and they have therefore not been asked to submit a proposal;
- Van Hal Aanstoot has indicated that it was not in a position to submit a proposal.

2.2 Phase 2

In phase 2, the parties that indicated their ability to submit a proposal have been asked to do so.

2.2.1 Process

During phase 2, AEGON, Delta Lloyd and Nationale-Nederlanden indicated that they would not be able to submit a proposal after all.

1. Delta Lloyd and Nationale-Nederlanden researched the request for a proposal extensively and concluded that the special administrative features of the ICC pension plan would put too much pressure on their administration;
2. AEGON indicated that the relatively short time frame allowed for preparing the proposal, combined with the specialized needs of the Court made it impossible for them to submit a suitable proposal;
3. After AEGON indicated that it would be unable to submit a proposal, Achmea was asked to submit one. We have recieved their proposal by 29 August 2006. Based on the proposal Achmea is not able to meet the Court's requirements. They have tried to adapt the judges' pension scheme to their Dutch administration. Difficult parts of the pension plan are left out (for example the minima in relation with the spouses' pension and the various pension ages). Achmea did not answer at all the questions we added to our request.

EYA has had extensive communication with both Nationale-Nederlanden and Delta Lloyd for the purpose of finding a way to enable both parties to submit proposals. This, however, led to a scenario in which the judges' pension plan would need to be altered substantially. As that is not the intention of this project, we have decided to stop working on the proposal with these two parties.

Both Allianz and Generali have submitted proposals.

3. Submitted proposals

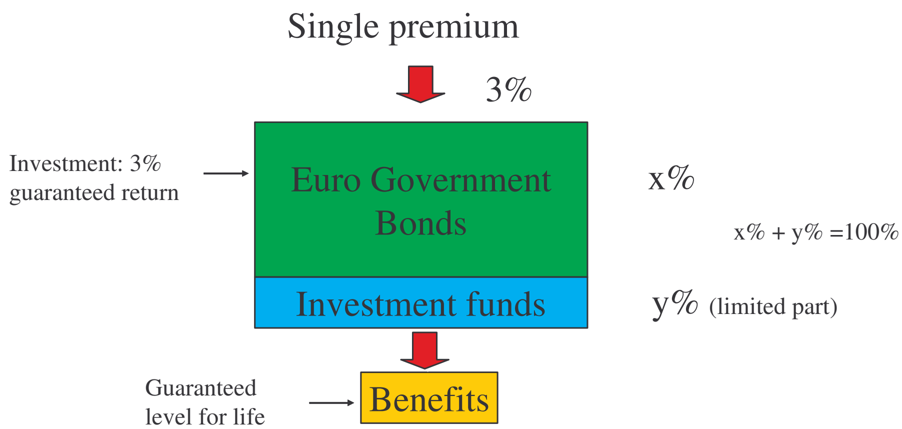
We have received two suitable proposals, one from Allianz and the other from Generali. The proposals received use different approaches based on different kinds of products and risk sharing and are therefore difficult to compare. Below is a short summary of the basic elements of each proposal, followed by a comparison between the two parties in terms of cost and risks.

3.1 Summary of the Allianz proposal

Allianz proposes to insure the judges' plan as a traditional (Dutch) pension plan.

- The ICC pays annual pension premiums, Allianz guarantees to pay all insured pensions related to those premiums;
- If the return on investments is more than 3,3%, the excess will be returned to the ICC.
- The administrative cost is 7% of the annual premiums.
- Allianz offers a new solution. The company has limited experience with international contracts and defined-benefit products (such as the ICC pension plan).

- Allianz indicated that it would be willing to offer judges an individual choice of waiver on the guarantees. The judges would therefore 'opt out' of the Defined Benefit (DB) scheme and 'opt in' to a Defined Contribution (DC) scheme. The advantage of this scheme for the individual judge is that the money is portable. The disadvantage is that all potential profits would go to the judge instead of to the Court, and the judge would carry his/her own risk.

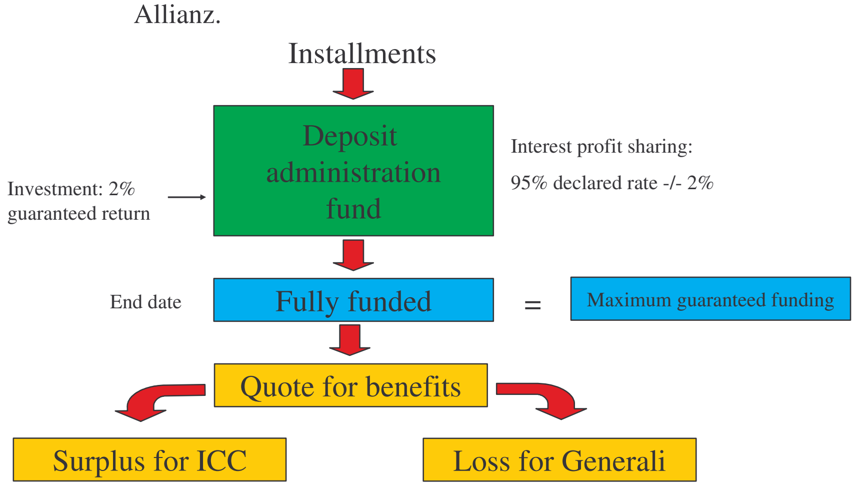


3.2 Summary of the Generali proposal

Generali offers a solution in which they provide the Court with two main guarantees:

1. At the beginning of a judge's service, Generali would fix the maximum cost of buying a pension at a given amount, depending on market conditions and on the age and sex of the judge.
2. The invested funds will yield a minimum fixed return (currently 2%). This return can be fixed annually, biennially or triennially.

- Generali offers a proven solution;
- Actual cost of pension is dependent on investment returns;
- Short-term risks (death and disability) are not insured, which means that Generali has not fully complied with the terms of the request for proposals;
- The proposed solution offers greater flexibility but holds greater risk for the Court;
- The interest guarantee offered is lower than the interest guarantee offered by Allianz.

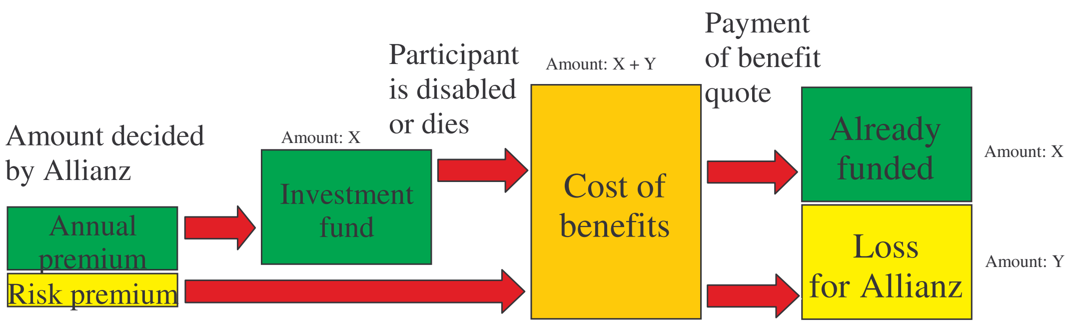


3.3 Comparison of proposals

3.3.1 Risk perception

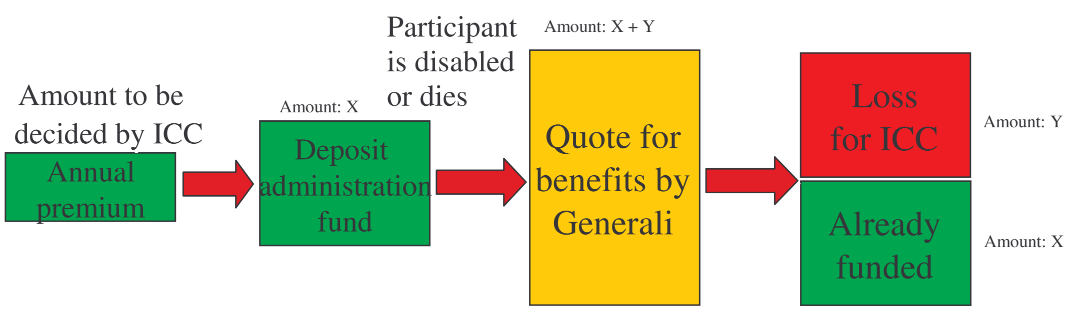
In the Allianz solution, all short-term and long-term risks are covered by the insurer and the Court will pay a premium for this insurance. Generali proposes a different framework. It does not insure the risks. In the following example we explain how the risks are covered by both parties.

Allianz:



With Allianz the Court will pay annual premiums which consist partly of a risk premium and partly of an investment premium. The investment premium is used to finance the pension at retirement age, whereas the risk premium is meant to finance the short-term risk. This means that if a judge dies or becomes disabled, Allianz will pay the difference between the amounts already funded and the cost of the benefits.

Generali:



The Court pays an annual premium to Generali. This premium is invested in the deposit administration fund. When a participant dies or becomes disabled, Generali gives a quote for the benefits. This quote may not be higher than the maximum funding level which is set at the beginning of the judge's term. This maximum funding level will be funded during the judge's active period at a premium level and the expected investment return is determined by the Court. If death or disability occurs before a judge has finished his/her term, the Court will have to pay the difference between the amount already funded and the amount quoted by Generali. The Court can choose how to finance this difference, either by a single premium or over a number of years. In this proposal the Court acts as its own insurer; the shortfalls on one judge's pension can be covered from the (expected) gains from other judges' pensions.

3.3.2 Cost

We distinguish three kinds of costs for the Court:

1 The cost of pension accrual;
2 The cost of risk insurance; and
3 Administration and investment costs.

Cost of pension accrual

It is not possible to compare the cost of pension accrual between the two parties. This is due to the fact that Generali does not give a quote for the cost of the benefits, only a guaranteed maximum cost.

- Generali will give a quote for the benefits at pension date which will be a quote based on the market conditions at pension date. They guarantee that it will be less then the maximum funding level. The Court is also invited to request a benefit quote from any other insurer if they so wish, thus insuring that it will get the best price;
- Since Allianz offers a guarantee, the price of the benefits is known in advance and can be easily budgeted by the Court.

In general one can say that if the market interest rate is below 3%, Allianz will offer a better deal because they always guarantee a 3% interest. If the market interest rate is above 3%, it will depend on different factors, such as cost loading, mortality tables, etc. However, with Generali, the Court is offered the opportunity to choose the best deal with different providers. The appendix contains a comparison of the maximum funding level of Generali with the estimated provision at pension date with Allianz.

Cost of risk insurance

Since Generali does not offer risk insurances it is not possible to compare the two parties at this point.

Administration and investment costs

Based on the cost structure as defined by the bidding parties, we have made an estimate of the initial and annual costs with both parties. The parties use different ways of calculating the costs. Generali offers fixed annual costs whereas Allianz calculates cost as a percentage of the premium. In this example, we have not taken into account the internal cost which the Court has to defray with both parties

Example of costs:	
Assumptions	
Return on investment	4%
Annual premium	2.000.000
Initial lump sum payment	6.500.000

Cost	**Allianz**		**Generali**	
	contractual	**estimate**	**contractual**	**estimate**
Initial cost	3% lump sum	195.000	50.000	50.000
Annual investment cost (*	0,3% of invested funds	25.500	5% of investment return	17.000
Annual administration cost	7% of premiums	140.000	70.000	70.000
Total annual cost		165.500		87.000

(* calculated for a capital of 6,500,000 + 2,000,000

The costs of the pension plan are not limited to the costs charged by the insurer. With both parties, the ICC will need to be actively involved with the pension plan. The Court will need to perform certain tasks, including:

- Communication with the insurer on population mutations ;
- Being available for questions of the judges.

If the Court decides to go with the Generali proposal a number of tasks would be added, including:

- Involvement in setting contribution levels and risk tolerances;
- Involvement in alteration of contribution levels if a judge is deceased or is disabled; and
- Involvement in requesting quotations from different insurers on pension date.

In comparing the cost loading of the different bidders, we advise the Court to take into account the additional resources it will require to operate the pension plan. For this reason, the Court needs to assess how much time it would need to perform the expected duties and what are the costs involved.

Because Generali's proposal assumes involvement by the Court, we expect the internal cost of the Court to be higher with Generali than with Allianz. On the other hand, Allianz's administrative costs are higher.

4. Summary

Process

- In the first phase of our investigation, we asked seven insurers and three brokers whether they were able to submit proposals for the judges pension plan. Five insurers and two brokers replied in the affirmative;
- Because the brokers offered exactly the same services already offered by EYA, they were not asked to submit proposals;
- Because the judges' pension plan of the Court is an unusual one for the Dutch market, the Dutch pension insurers Delta Lloyd, Nationale-Nederlanden and AEGON were unable to submit proposals.

Submitted proposals

- Allianz offers an all-in-one solution where the pension plan is executed by the insurer and all the risks are covered by the insurer. The involvement of the Court is limited. Any return on investment above 3,3% will be returned to the Court;
- Generali offers a solution where the insurer guarantees a maximum on the risk for the ICC and a minimum return on investment. Within these limits the Court can decide how to finance the pensions. The short-term risks of mortality and disability are not insured; the Court is expected to cover losses due to mortality and disability with future or past gains. Generali indicated that it expects that this solution will in the long term be beneficial to the Court.
- Based on the proposal Achmea is not able to meet the Court's requirements.

Appendix 1 – Comparison of proposals

	Allianz	Generali
Term of contract	5 years	Open duration with termination clause for both parties. Liquidation of the DA-fund will take up to 24 months
Risks		
Retirement Pension (RP)	Pensions for which premiums are paid are guaranteed	A maximum funding level is guaranteed.
Survivors Pension (SP) before pension date	Guaranteed by the payment of a risk premium	Risk for the Court, a maximum funding level is guaranteed.
Survivors Pension (SP) after pension date	Pensions for which premiums are paid are guaranteed	A maximum funding level is guaranteed.
Disability Pension (DP)	Guaranteed by the payment of a risk premium	Risk for the Court, a maximum funding level is guaranteed.
Financing and Cost		
Financing	RP single premiums, SP, DP and OP by annual renewal risk premiums, based on tariffs as set below.	Regular installments or ad-hoc amounts. The Court can decide on premium level.
Tariffs	RP: GBM/V 8085 -5/-6 3%. SP, OP GBM/V 9095 0/0, 10-year-bond rate -/- 0,25%, DP 6% premium.	Used for maximum funding level. UK mortality table, "92 series" no age corrections
Guaranteed interest (RP)	3% (benefits are guaranteed)	Guaranteed percentage interest can be annually updated (2% for 2006). Guaranteed maximum funding level.
Initial cost	3% of lump sum.	€ 50.000
Annual administration cost	7% of single premiums and risk premiums.	€ 70.000
Investment cost	Management fee for investment in bonds is 0.3%	Management fee for investments is 5% of investment return.
Profit sharing	No technical provision sharing. Interest rate above 3,3% is for ICC	All technical and interest gains and losses are for the ICC. 95% of investment return above guaranteed return is for ICC
Termination conditions after term of contract	The judges have the option of transferring the net reserve to a new insurer or to leave the value of the pension with Allianz	
Opting out DB, opting in DC	Individual choice of opting out at any time.	No DC option in the proposal. It is possible to shop at expiration date.
Investment choices DB	Limited choice, mainly government bonds	Bonds
Investment choices DC	Many different funds	No DC option in the proposal
International pension payments	Through the worldwide network of AGF and Allianz	Guernsey-based international insurer with years of experience in international pension payments.

Appendix 2 – Comparison on pension date

Judge	End of Term Benefit	Value on pension date Allianz	Maximum Funding Limit Generali	Difference
1	45.000	760.000	1.104.847	-31%
2	52.500	829.000	1.252.798	-34%
3	80.800	1.520.000	2.039.299	-25%
4	52.500	815.000	1.385.044	-41%
5	52.500	714.000	1.118.878	-36%
6	55.000	807.000	1.207.134	-33%
7	90.000	1.239.000	2.132.163	-42%
8	60.000	1.119.000	1.543.175	-28%
9	90.000	1.343.000	2.229.466	-40%
10	90.000	1.431.000	2.238.968	-36%
11	60.000	780.000	1.276.073	-39%
12	55.000	801.000	1.220.422	-34%
13	50.800	774.000	1.127.350	-31%
14	50.800	823.000	1.208.481	-32%
15	0	0	0	0%
16	90.000	1.169.000	2.061.101	-43%
17	80.000	1.491.000	2.107.649	-29%
18	90.000	1.545.000	2.340.829	-34%
19	90.000	1.675.000	2.420.907	-31%

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