GERMANY – NATIONAL REPORT

1. Professional organization

1.1 During the past two years the membership of the association of independent, self-employed actuaries and economic mathematicians in the Federal Republic of Germany has decreased from 19 to 18 members.

1.2 The professional education of the members is not uniform as no Actuary Diplomas are issued in Germany. Most of the members have a degree in mathematics. Now, the Consulting Actuaries are facing problems in connection with their consulting services. In the Federal Republic of Germany it is stipulated by law that general legal advice may only be given by lawyers, and that advice concerning tax laws may only be given by auditors and tax consultants. Consulting Actuaries may render legal advice only in connecting with actuarial valuations, and not as the main subject.
At the moment the German Consulting Actuaries do not see any chance to define their professional organization by a chamber. Therefore, on their initiative, and together with the the German Association of Actuaries, the Association for companies' pensions, as well as administrative authorities and universities, an examination board was established. In future, it will be possible for all actuaries engaged in the field of companies' pension plans to take an examination as "Pension Expert" which renders them capable of giving legal advice in this field.

2. General Information

2.1 During the past two years in the Federal Republic of Germany

- the average rate of increase of wages and salaries was 5 to 6% p.a.
- the rate of increase in the cost of living index was 3 to 5% p.a.
- the rate of increase in social insurance pensions 4.5 respectively 4% p.a.

The rate of interest on bonds was raised from approx. 6% to more than 8% p.a. at the moment.

2.2 In July, 1977, a new divorce law came into force in Germany. This law is no longer based on the principle of guilt but on the principle of derangement. Accordingly, decisions regarding divisions of property or payment of maintenance grants are made without considering which one of the partners is to blame for the divorce. Within the frame of this new divorce law a maintenance compensation has been initiated. This means that the claims of both partners for social insurance pensions and companies' pensions – as far as accrued during the time of marriage – are considered as a kind of property. All pension accruals are added and then split; the partner who owns more than 50% of the total accruals must make up for the difference between this 50% and the personal accruals of the other partner. Claims for social insurance pensions are equalized directly by transferring an appropriate portion of the accrued pension from the pension account of the partner, bound to make the compensation to the pension account of the other partner. Compensation for vested companies' pension rights in most cases must be made by paying an appropriate and often considerable single premium to the social insurance by that partner bound to make the compensation in favour of the other partner.
Thus, the companies' pension is not split; the compensation payer retains his full rights of company pension, however, he must make up for it by paying the mentioned dues to the social security.
Even though companies' pensions will be linked in the future to the cost of living index (see 4.2), the law differentiates between the dynamic pensions (social insurance pension, civil servants' pension) and the companies' pensions which, after retirement, are independent of the general income development. Therefore, by order of the act on the determination of a present value, the companies' pensions must first be revalued to a fictive dynamic pension in order to make it comparable with pension rights derived from dynamic salaries. This complicates the settlement to a great extent, and for many lawyers and judges it is difficult to understand. In a legal proceeding, the German Constitutional Court presently is clarifying if this law is applicable to marriages prior to the 1st July 1977.

3. Compulsory Pension Schemes

3.1 The Federal Republic of Germany is one of the countries with the lowest rate of birth. Even though several millions of foreign workers (so called guest workers) and their families are living here, the population in Germany is declining considerably according to various, generally agreeing, prognostic calculations. At the same time, however, the number of the more than 60 year old inhabitants is rising. As the social insurance pensions are financed by the pay as you go method, it must be expected that the active employees will be burdened with heavily in-increasing premiums, especially after the year 2000.
At present, the premium rate of the compulsory pension schemes is 18% (18.5% after January 1, 1981) of the income up to the social insurance premium celing of DM 50 400. – p.a. This premium rate has to be paid at 50% each by the employer and the employee.
Following below are some essential figures on the prospective development of the population, the relation of the over 60-years old to the total population between the age of 15 and 60 (old age ratio) and the required premium rate for the social insurance.

Year	Population	Old Age Ratio	Premium Rate Social Insurance
	Million	%	%
1980	60.1	30.9	18.0
1990	57.6	33.0	18.5
2000	55.6	39.2	19.5
2010	52.3	41.7	21.0
2020	48.4	47.9	23.0
2030	44.0	64.1	29.0

When determining the prospective, premium rates, the reductions caused by the 21st Social Insurance Changing Act (21st RAG) are approximately taken into account, and they are briefly mentioned again below.

3.2 Up to the year 1977 the pensions of the compulsory pension schemes were linked to the development of the gross income of all assureds. By the 21st RAG this regulation was suspended for the years 1978 to 1981, and it was stipulated that during this 4-years-period the current pensions as well as the pension claims are increased only by a total of approx. 13%. As, at the same time, an increase of the income at 6% p.a. to a total of approx. 26%, is expected, the level of the social insurance pensions decreases by at least 10% up to the end of 1981. For employees with an income up to the social insurance premium ceiling of DM 50 400. – p.a., the average social insurance pension level is falling from approx. 50% to 45% of the last income.

Besides this change, and the increase of the premium rate as of January 1, 1981 from 18.0% to 18.5%, the 21st RAG enacted another basic change in connection with the compulsory health insurance of the social insurance pensioners. Up to now the social insurance pensioners were insured through the compulsory pension schemes for the compulsory health insurance free of charge.

As of January 1, 1982, the free health insurance will probably no longer be granted to the pensioners, but they then will get a pension increase of approx. 11%. The premiums for the compulsory health insurance would then have to be paid by the pensioners themselves, amounting to approx. 10 to 12% of their retirement income out of compulsory pension and company's pension. Thus, the compulsory health insurance (non profit institution) would in the future receive higher premiums for the insured pensioners, and may then probably be able to lower the uniform premium rate for active employees and pensioners. Lately, another regulation is being discussed, planning that a portion of the premium to the health insurance should be paid by the pensioners, and, therefore, the mentioned increase in pension will be lower.

3.3 According to a decision of the highest competent court, the compulsory pension scheme must newly regulate the dependants' allowance until the year of 1984. At present, a pensioner gets the pension due to him lifelong, independent of being married or not. After the death of the pensioner, the widow gets only 60% of her husband's pension. Pension for a widower is not paid – apart from some exceptions.

In the meantime, a government-appointed committee of experts has presented proposals for changes. Among the different versions, the following proposal has the best chances to be accepted by the various parties and organizations concerned. The dependants' pension should in future come to 70 or 75% of the total of both social insurance pensions of a couple, independent of who dies first – the husband or the wife; the minimum will amount to the personal accrual of the surviving partner. Details are still to be laid down by law in the next years.

4. Companies' Pension Plans

4.1 In Germany there are still many companies' pension plans in which the social insurance pension is one main factor to determine the company pension. Under these pension plans the reduction of the social pension level by the 21st RAG will result in a considerable increase of the company pension. If a plan provides for a total pension of 70% of the last income, than the mentioned reduction of the social pension level from 50% to 45% causes an increase of the company pension from 20% to 25% of the income, thus a quarter of the former company pension. This has in the meantime in principle also been recognized by the tax departments regarding calculations of the prospective social insurance pensions for tax purposes, and it has resulted in a considerable increase of the pension plan book reserves during the last two years.

4.2 In the report of 1978 it was already mentioned that there is an obligation for all companies to review current companies' pensions every three years, and – unless the economical situation of the company is bad – amend the pensions by at least 50% of the increase of the cost of living index. After the latest verdict of the Federal Court of Labour of January 17, 1980, the amendment by 50% of the cost of living index increase is considered to be adequate only for the first amendment as made on January 1, 1975. As of the second amendment, generally from January 1, 1978 on, a full compensation of the increase in cost of living will be generally necessary. Furthermore, the Federal Court of Labour confirmed in this connection once more that the amendment of current company pensions has to be done without consideration of the increase of the social insurance pensions.

In a second verdict, the Federal Court of Labour has at the same time determined that the amendment of companies' pensions per paragraph 16 of the Act for the Improvement of Companies' Pension Plans may not be rejected only for that reason, that the pensioner's total retirement income without any compensation for the loss of purchasing power already exceeds the net income of a comparable active employee.

Legal comments to the two verdicts giving particulars are at present not yet available. Supplementary statements to this subject can be made while discurring all National Reports at Vienna.

4.3 A principal verdict of the Federal Court of Labour also dealt with the equality of treatment of men and women in the scope of companies' pension plans. It clarified especially that it is not permissible to specify a lower entry age limit for women than for men, even though the pension age may be lower.
Furthermore, actual service years of women between the age of 60 and 65 must not be excluded from pension-contributing service years.

4.4 A special problem has arisen for subsidiaries of US companies in connection with the financing method over book reserves which is most commonly used in Germany. When determining the profit of the US company on the basis of the consolidated balance, the US tax authorities no longer accept the book reserves of the German subsidiary as tax deductible liabilities, as there is no outside funding. We cannot accept this US view as there is compulsory insolvency insurance which has the same security effect as outside funding. In spite of the agreement on dual taxation between the USA and Germany, this view of the US tax authorities means for German US-companies that the accumulation of book reserves and thus the main portion of the pension plan expenditure are not tax deductible. Various large German subsidiaries of US companies are, therefore, now investigating thoroughtly which outside funding method is the best alternative to the pension plan financing over book reserves, without causing considerable disadvantages concerning liquidity and income tax for both employers and employees.

All in all: we have a lot of problems in Germany, and the Consulting Actuaries are faced with many difficult and interesting tasks.