International Criminal Court **ICC-ASP/4/26**

Assembly of States Parties

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Report on the long-term budgetary consequences of the pension scheme regulations for judges[*]

1. At its third session, the Assembly of States Parties ("the Assembly") requested the Committee on Budget and Finance ("the Committee") to consider the long-term budgetary consequences of the pension scheme for judges.[1] The Assembly also asked the Committee for a report thereon before the fourth session with a view to ensuring that appropriate budgetary provisions might be made.

2. Pending a decision by the Assembly of States Parties on how to fund the judges' pension scheme,[2] a sum of €75,000 has been included for that purpose in the proposed programme budget for 2006 under Major Programme I: Judiciary. This sum of €75,000 is based on a preliminary actuarial examination and cash-flow projection for the year 2006 and includes the old age, survivors' and disability pensions.

3. The International Criminal Court (the Court) engaged consultants to present a comparison of three possible ways of financing the judges' pension scheme: the current pay-as-you-go system under which no funds are accrued; a Court-administered accrual system; and an accrual insurance scheme. The annex describes these three options for long-term funding of pensions for judges of the Court. The Court also plans to explore further options such as cooperating with the pension schemes of United Nations courts and tribunals. The Court will report on these findings as soon as possible.

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[*] Previously issued as ICC-ASP/4/CBF.2/7 and submitted to the Assembly pursuant to paragraph 92 of the report of the Committee on Budget and Finance on the work of its fifth session (ICC-ASP/4/27).

[1] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third Session, The Hague, 6-10 September 2004 (International Criminal Court publication)*, Part III, ICC-ASP/3/Res.3, para 25.

[2] The three options currently under discussion are a Court-administered cash flow system, a Court-administered accrual system and an outsourced insurance contract.

4. Two of the three long-term options in the annex require significant funding during the initial set-up phase of the pension scheme. The Court accumulated a surplus of over €1.1 million in the financial year 2004 under Major Programme I: Judiciary. Should the Assembly decide on an accrual scheme to fund the pensions of judges of the Court, it is suggested that the surpluses from the financial year 2004 and future years be used to lay the basis for the judges' pension scheme.

Draft resolution of the Assembly of States Parties

on funding of the pensions of judges of the International Criminal Court

The Assembly of States Parties,

Having considered the report of the International Criminal Court and the conclusions and recommendations of the Committee on Budget and Finance thereon contained in the Committee's report,

1. *Decides* that the pension scheme for judges of the International Criminal Court should be initially funded through application of the surplus of the 2004 budget from Major Programme I: Judiciary in the amount of €1.1 million;

2. *Furthermore decides* that any future surpluses under Major Programme I: Judiciary should be used for the pension scheme for judges of the International Criminal Court.

Annex

Consultants’ paper

Results of the risk assessment for the judge's pensions

This proposal has been composed as follows:

1 Background and occasion

The International Criminal Court (ICC) has asked Ernst & Young Actuarissen B.V. (EYA) to assist with the determination of the effect on budget and expenditure for the expected payments of pension benefits to the judges of the ICC. In the initial assignment we have made calculations for the expected cash outflow to the 18 judges currently on duty. We have also made additional calculations including the replacement of these judges. We have reported our findings in a letter on April 18, 2005 and discussed these calculations on May 11, 2005. We have now taken a deeper look into the risk assessment to see what kind of options there are to finance the scheme.

2 Definition of the assignment

The ICC has asked EYA to make a comparison between three possible ways of financing the judges pension scheme:

1. The current pay-as-you-go-system, no accrual takes place. The pensions are self-administered. All the risks are taken by the ICC.
2. A self-administered accrual system. All the risks are for the account of the ICC.
3. An insured accrual scheme. The pensions are administered by an insurer. All the risks are for the account of the insurer.

We have made an analysis of the three systems containing quantitative as well as qualitative elements.

3 Summary of the applied pension plans

We have based our calculations on the pension plan we have received from the ICC.

3.1 Generalities

Eligibility requirements	All Judges with over three years of service, for the initial judges an exception has been made. All initial judges are eligible. All judges, except the initial judges, are appointed for a nine year period.
Normal Retirement Age (NRA):	60 years for both male and female participants
Pensionable Salary (PS):	€ 180.000[3]
Pensionable Service (N):	Number of years serving as judge (maximum 9)
Indexation	No indexation and no increase of the pensionable salary.

3.2 Benefits

Retirement Pension (RP)	N x PS x 5,5556%

[3] We understand the President of the judges receives an extra compensation of € 18,000. We have not included this extra compensation.

Swaps	If a judge ceases to hold office before the age of 60 years he can directly start receiving a pension with the same actuarial value as the pension he is entitled to at age 60 years.
Disability Pension (DP)	RP (the RP which would have been payable if the judge had completed his of her term)
Survivor's Pension (SP):	If the judge is no longer in service: 1 If the judge had not yet begun receiving his or her retirement pension: Actuarial discounted value of 50% x RP, minimum 1/12th of the annual salary 2 If the judge had begun receiving his or her retirement pension, before the age of 60 years: 50% x RP, minimum 1/12th of the annual salary 3 If the judge had begun receiving his or her retirement pension, after the age of 60 years: 50% x RP, minimum I/6th of the annual salary If the judge is in service or receiving a disability pension: 1 50% x DP, minimum 1/6th of the annual salary Upon remarriage the survivors pension shall cease. The surviving spouse shall be granted a lump sum equal to twice the amount of her current annual benefit as final settlement.
Orphan's Pension (OP)[4]	10% x RP, maximum 1/36th of the annual salary

We made the following assumptions about the pension plan

- We expect the minimum survivor's pension to have no material effects, therefore we did not include this in our calculations.
- We assume that a surviving spouse will not remarry.
- We have not included the orphan's pensions
- We assume that the judges will not choose to receive their pension before they are 60 years.

[4] Liabilities related to coming orphan’s pensions are considered non material and are not included in the projection.

4 Actuarial assumptions

The following actuarial assumptions have been discussed with the ICC.

Discount rate ICC	2.5%[5]
Discount rate insurer	3%
Lifetables	50% Coll 93 M + 50% Coll 93 V[6]
Age conversion	0
Disability	25% x AOV 2000 The expectation is that the chances of the judges becoming disabled are materially lower then the normal Dutch disability rates. We assume the chances to be 25% of the normal disability rate.
Replacement	At the end of the term[7] every judge will be replaced by a judge of age 55 years, with a spouse which is 5 years younger[8].

No salary increases are taken into account.

For disability we make the remark that insurance companies are not familiar with the disability risk in case this is determinated by others than governmental doctors or own docters of the insurance company. We therefore recommend to investigate whether the 25% is proper for the tariffs of the insurance company.

5 Comparison

In this part we will make a comparison between mentioned systems in paragraph 2. Here we will focus on the risks as well as the cost that are involved.

In our comparisons we made the assumption for the accrual system that reservations for prior years of service have already been made. In reality there is no reservation yet and it will be

[5] This is the rate of return the ICC receives on her investments as we received it from ICC. The ICC is restricted to short-term investments with a relatively low return.

[6] For the insurance calculations we have raised this table with 3% premium for longevity risk.

[7] We have assumed that a judge that ceases to hold office prematurely will not be replaced.

[8] This assumptions has been set by the ICC.

necessary to make reservations for these years. However, this can be filled in at a later point in time.

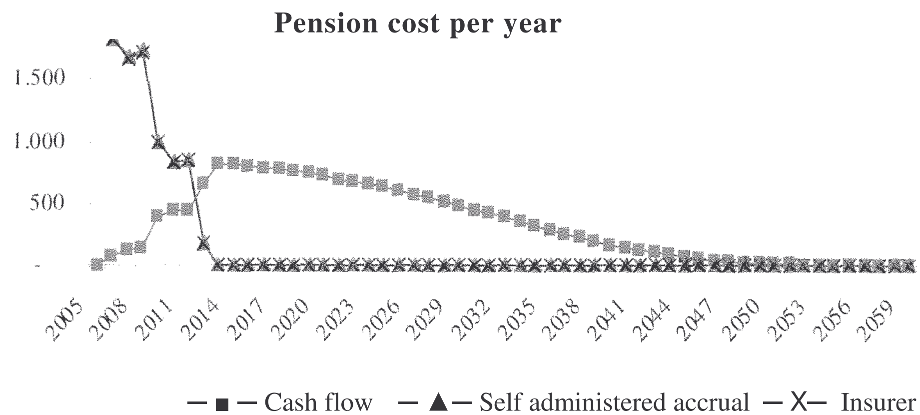
With a self administered pension plan the risks will lie with the ICC, however it is always possible to insure disability and mortality risks, this would give a mix between a self administered pension plan and a insured pension plan, An insurer will ask a risk premium for the disability and mortality risk, if the ICC takes on this risk herself it will not need to pay this risk premium, but it will have to pay for the benefit if a judge dies or gets disabled.

5.1 Cash flows

In the following table we compared the cash flows for the three schemes until 2020, in this table we only look at the current population. We see there are big differences between the current cash flow system wherein pension payments are not reserved for and the accrual systems in which reservations are made per year of service. The highest cash flows are seen in the years shortly after retirement of the judge (€ 820 K), while in the accrual system the pension expenses are paid in the judges active period, therefore the highest pension expense is in the first year (2005) when all judges are still in active duty.

	Cash flows	**Acccrual**	
		Self administered	**Insurer**
2005	4	2.236	2.174
2006	70	1.830	1.820
2007	118	1.680	1.671
2008	139	1.730	1.715
2009	391	988	990
2010	441	825	828
2011	442	852	852
2012	657	169	169
2013	820	-	-
2014	810	-	-
2015	798	-	-
2016	785	-	-
2017	772	-	-
2018	756	-	-
2019	740	-	-
2020	720	-	-

In the figure below the cash flow for the initial population has been shown in a graphical way. The expected average annual pension cost are shown for the current population of judges, we can see that twenty years after retirement of the judge the expected cash flow is still half of the cash flow in 2013. We can also see that in the cash flow system the cost are spread out for the remaining lifespan of the judge while in the other systems the cost are spread out for the remaining active service. Since judges are retiring in 2006, 2009 and 2012 we see a decrease in pension costs in these years.



The self administered accrual system is about as expensive as an insured plan. However there are differences. The expected (guaranteed) return on investment with an insurance company (3% per year) is higher as the expected return on investment with the ICC (2,5% per year). This makes the insured pension plan cheaper. This is offset by the risks premiums that have to be paid to the insurer. These risk premiums are paid for longevity risks and the risks of disability and mortality.

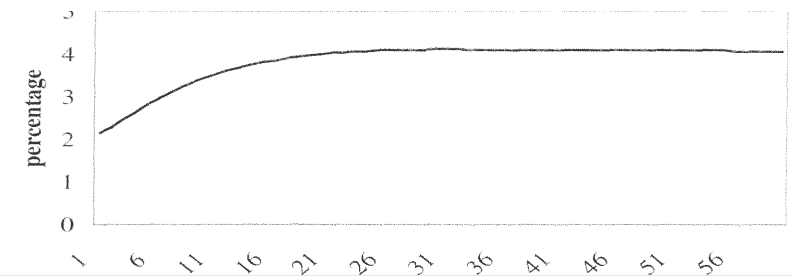
The three percent return on investment with an insurer is a guaranteed interest. An insurance company will expect to make an excess interest, the height of this excess interest depends on the market interest rates. It should be noted we did not include any administration cost for the insurance company in our calculations.

We understand the ICC is restricted to investments in short term deposits with a 2,5% return on investment. For pension investments long term investments are needed. If the restriction can be lifted it is possible to receive a higher return on investment on the pension investments. This should be taken into account in deciding on a pension plan.

In the next picture we show the interest curve the DNB (Dutch National Bank) uses per May 31, 2005 to determine what safe return can be made on pension obligations. If the duration of your obligation is longer then 20 years a return above 4% can be achieved using a risk free investment. On average the discount rate will become 3.5% at the situation as per January 1, 2005. This is applicable for the Dutch pension situation (pension funds).

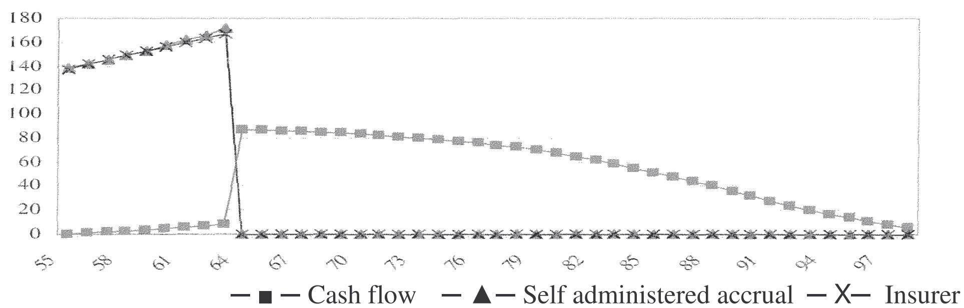
Interest rate curve

In the next picture we show the pension cost for one of the new participants. In this picture one can clearly see what the difference is in cash flow for a random participant. When he is in active service his premiums will annually increase due to the shorter period before his

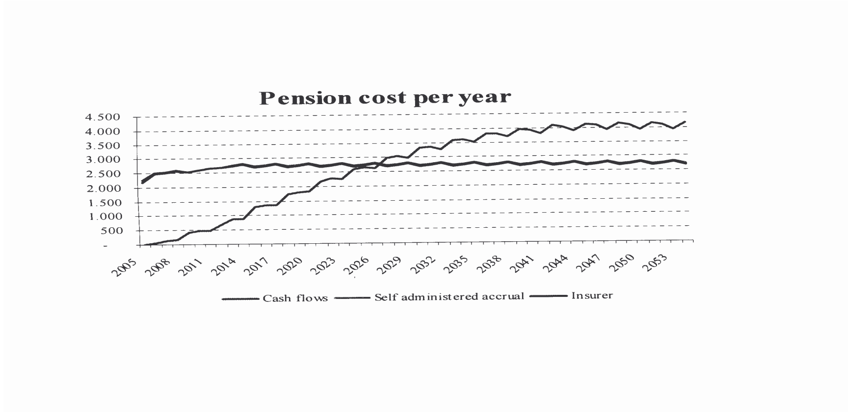


pension age wherein, amongst other, investment returns can be made, after that the provision will decrease with the annual pension payments (the green line), which are equal to the pension payments in the cash flow system. Within the self administered system the ICC is responsible for the payments. If the scheme is insured, the insurer will take care of the payments.

Pension cost per (new) participant



In the next picture we show the total long term pension cost for the three systems. Since no provisions are made the long term cost will be higher in the cash flow system. Two types of cost have not been included in this picture. The start-up cost for the accrual system has not been shown and the run off cost in the cash flow system. This means that in the cash flow system there remains a large unfunded pension obligation if the ICC would cease to exist. The graph doesn't show a fluent line because of the assumptions that new participants start once every three year.



5.2 Short term risks

With the current system as well as the self administered accrual systems the risks of the pension scheme are not covered, in the accrual system only the expected pension payments are covered, in the cash flow system nothing is covered. In the following example we show the cost of a judge dying before his term is finished. Here for we used one of the defined new participants.

	Self Administered accrual system			**Insurer**		
€ x 1000	Reservation	Extra cost when disability occurs in this year	Extra cost when death occurs in this year	Premium	Extra cost when disability occurs in this year	Extra cost when death occurs in this year
2006	111	2 019	869	111	-	-
2007	141	1.666	706	141	-	-
2008	144	1 476	536	145	-	-
2009	148	1.278	358	148	-	-
2010	152	1.072	172	152	-	-
2011	156	857	-	156	-	-
2012	161	632	-	159	-	-
2013	165	398	-	163	-	-
2014	170	154	-	166	-	-
2015	34	114	-	33	-	-
2016	-	-	-	-	-	-

In the table above we see six columns. The first three columns are for the self administered accrual pension plan, the last three columns are for the insured pension plan.

- The column "reservation" gives the amount of money the ICC would need to reserve if they want to be able to pay the pension expenses for the old age pension as well as the survivors pension. Hereby we assumed that this money is invested and will have a return on investment of 2,5%.
- The column "extra cost on disability in year" gives the estimated total extra cost the ICC would have if the participant would get disabled in that specific year. This cost contains the payment of a disability pension until the participant reaches his pension age and the remaining pension reservations. We see the extra cost are decreasing, this is because there are less pension reservation to make and because the disability pension will have to be paid for a shorter period. The extra cost will also occur for the current cash flow system. This cost can be taken at once when the participant gets disabled or as cash flows during the rest of his life span.
- In the column "extra cost on death in year" gives the total extra cost of a survivors pension for the remaining life span of the surviving spouse. These cost also decrease when more reservations are made. The extra cost will also occur for the current cash flow system. This cost can be taken at once when the participant gets disabled or as cash flows during the rest of his life span.
- The column "premium" refers to the premium an insurer would ask for the insurance of the pensions. We used net premiums, an insurer will ask a fee for administration cost and investment cost.
- The columns "extra cost on disability in year" and "extra cost on death in year" are the same as with the self administered pension plan.

We can draw the following conclusions.

1 With the current rate of return of the ICC the cost of reservation will be equal to the (net) premiums an insurer will ask. However, we expect the gross insurance premiums to be between 1096 and 1596 higher then the net premiums. These administration and investment cost are cost the DC[also has to make. The ICC has to investigate whether the internal administration cost are higher or lower then what an insurer will ask.

2 If a participant gets disabled or dies in the first years this will bring high additional cost, this can be up to a million of Euro's. This conclusion can also be drawn for the current cash flow scheme.

The risks mentioned above can be reinsured without reinsuring the total pension plan, an insurer will ask a risk premium for this.

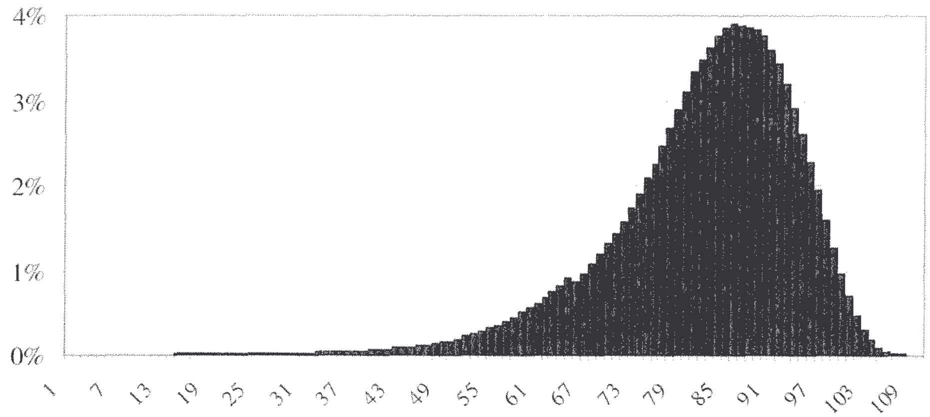
5.3 Long term risks

In paragraph 5.1 we have shown that the current cash flow system leads to a long period of expected cash flows. This will put pressure on the budget of the lCC. As the group of pensioners grows the pressure on the budget will also grow, especially if the members turn out to live long.

If the ICC self administers the pension plan there is also a risk when pensioners live longer then expected. Since the calculations have been made using an expected return on investment as well as an expected life expectancy there is a risk when the return on investment is lower then anticipated, of if the judge (or his/her spouse) lives longer then expected.

In the following figure we see the expected mortality per year for a newly born.

Annual mortality chance



In the figure we see that about 50% of the population will die between 80 and 93. For the ICC the pension provision is based on the expected age dying. In general one can say that if the population is large enough the provision can be based on the expected age of dying, since the mortality rates will average out (a participant that dies younger will compensate a participant that dies older), this is called the law of averages. If a population is smaller the margin of error grows (a participant that dies older might not be compensated by a participant that dies younger). With that the potential risk grows that the population grows older then anticipated. In the case of the ICC there are only 18 judges, which gives a large margin of error. In the following example we try to make this risk more explicit by showing an example for a judge that dies younger and a judge that dies older.

age participant	spouse	pension provision	pension payments	extra cash flow
82	77	384.481	90.000	-
83	78	301.843	90.000	-
84	79	217.139	90.000	-
85	80	130,317	90.000	-
86	81	41.325	90.000	48.675
87	82	-	90.000	90.000
88	83	-	90.000	90.000
89	84	-	90.000	90.000
90	85	-	45.000	45.000
91	86	-	45.000	45.000
92	87	-	45.000	45.000
93	88	-	45.000	45,000
94	89	-	-	-

In the table we assumed the judge dies at the age of 89 years as well as his spouse. However at age 85 years his pension provision is empty. This means the ICC has to provide the judge for his remaining lifetime with a pension for which has not been reserved, and after the judge dies his spouse also has to be provided for. This leads to an extra annual cash flow. Each extra year of life for the judge will cost the ICC € 90.000,-.

However if the judge and his spouse both die at age 79 years the following table results:

age participant	spouse	pension provision	pension payments	extra cash flow
76	71	839.661	90.000	-
77	72	768.403	90.000	-
78	73	695.363	90.000	-
79	74	620.497	45.000	-
80	75	589.884	45.000	-
81	76	558.506	45.000	-
82	77	526.344	45.000	-
83	78	493.378	45.000	-
84	79	459.587	-	(459.587)

In the table above we see a release of the provision.

The risk of pensioners growing older then expected can be made smaller by incorporating a surcharge to cover the risk.

If the ICC will take up an insurance contract these risks will be taken by an the insurer. The insurer has the advantage of being able to divide the risks between the total population of insured and profit from the law of averages.

5.4 Additional risks

If the ICC chooses to self administer her pension plan there also is the risk of the ICC ceasing to exist. If that would happen in the cash flow situation we assume ICC will have to cover the pension provision for the judges. However in the cash flow situation there is no provision for these pensions, so they have to be financed at once. With a self administered accrual system there is a provision which can be brought to an insurer, however, at that point one should have to see if this provision is enough to buy the insured contract.

5.5 Cost

An insurer will ask administration cost, which can be approximately 1896 of the pension premiums. This depends on the level of service and the type of pension contract. If the ICC chooses to self administer the pension contract there will also be administration cost.

6 Summary and conclusions

6.1 Pro's and contra's

We summarize are findings in this memo by looking at the pro's and contra's of the different pension systems.

6.1.1 *Self administered cash flow system*

Pro's

- Relatively low start up cost;
- No lock up of funds;;
- Flexibility;
- Disability and mortality risks can be reinsured;
- No attachment to an insurer.

Contra's

- Potentially large short term risks;
- Large run off period;
- No reservations are made if the ICC should cease to exist;
- The ICC is responsible for the administration of the plan;
- Current judges will put pressure on future budgets.

6.1.2 *Self administered accrual system*

Pro's
- Pension charges are linked to service years;
- Freedom of investment;
- Flexibility;
- Disability and mortality risks can be reinsured;
- No attachment to an insurer.

Contra's
- Potentially large short term risks;
- Potential long term risks;
- Restrictions in the investment policy of the ICC lead to inefficiency and mismatch; Investment risk;
- The ICC is responsible for the administration of the plan.

6.1.3 *Insurer*

Pro's
- Pension costs are linked to service years;
- Investment by professionals;
- Guaranteed investment return;
- Administration by professionals;
- All risks are insured.

Contra's
- Long term attachment to an insurer;
- Uncertainty on the implementation of the pension plan by an insurer;
- Uncertainty about the service level of an insurer;
- Possible problems with international implementation of the pension plan.

6.2 Conclusions

We can draw the following conclusions:

1 The current cash flow system is in the first couple of years a fairly cheap system, however, it gives (high) budgetary risks in the future. Because the long expected lifespan of the (retired) judges a long period of pension payments will follow the active period.

2 The self administered accrual plan allocates funds for pension payments to the active period of the judge. This accrual takes into account the average expected pension expenses. This means that, since the population is very small, the risks are large. For example the risk of a single judge dying young or getting disabled is very small, but the financial impact of this possibility is very high, up to two million Biros, The ICC should ask itself if this is desirable.

3 An insurance company can take up the disability and mortality risks of the ICC. In this case the ICC will. pay a risk premium to cover for the cost of taking these risks. With the current investment restrictions of the ICC it can also be cheaper to move the pensions to an insurance company.

4 If the ICC goes to an insurer the pension rights are better protected if the ICC would cease to exist.

5 The long term risks can be covered by the ICC by incorporating a surcharge into the premiums, however, this will lead to a more expensive pension plan.

7 Continuation

This memo can serve as a basis for the ICC to decide how they want to organize the judges pension scheme. We will be happy to give more specific explanation in a meeting at the ICC, which can help the ICC in deciding how they want the judges pension plan to be organized.

After deciding how to organize the pension plan, the ICC should start with the implementation of the chosen plan. In the case of the current system this can be done fairly easy. In this case the ICC will have to decide whether or not to reinsure disability and mortality risks. If the ICC would choose to start a self administered pension plan the administrative organisation will have to be adjusted to that, also there needs to be a discussion about the investment policy for the pension plan and the question whether or not to reinsure disability and mortality risks. If the ICC would choose to go to an insurer, a suitable insurer has to be selected on bases of quality and price and the transfer of the pension plan to the insurer has to be done.

Ernst & Young Actuarissen BV

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